

Greater Sydney, Place and Infrastructure

IRF20/2643

Plan finalisation report

Local government area: The Hills Shire Council

1. NAME OF LEP

The Hills Local Environmental Plan 2019 (Amendment No 14)

2. SITE DESCRIPTION

The LEP applies to land at 55 Coonara Avenue, West Pennant Hills (Lot 61 DP 737386).

The north-eastern portion of the site is occupied by seven interconnected low-rise office buildings with 36,000m² of commercial floor space, and car parking. The remainder of the site contains significant vegetation communities including Blue Gum High Forest and Sydney Turpentine Ironbark Forest. Cleared areas within the forest were formerly used for recreation associated with the business park. This entire site is zoned B7 Business Park, which does not reflect the significance of the vegetation communities.

The vegetation communities are identified as critically endangered by the Commonwealth under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and critically endangered ecological communities under the *Biodiversity Conservation Act 2016* (NSW). These communities are also present in the Cumberland State Forest that adjoins the site to the east and south. The communities provide habitat for the Powerful Owl which is a threatened species. The site is located within 800m of the Cherrybrook Metro Station (Figure 1).



Figure 1: Subject site (outlined in yellow)

3. PURPOSE OF PLAN

The LEP seeks to facilitate a medium to high density residential development with a maximum yield of 600 dwellings. It also seeks to protect critically endangered ecological communities and threatened species.

The Department has amended the proposed LEP since public exhibition to:

1. reduce areas of land to be zoned residential;
2. increase areas of land to be zoned environmental protection;
3. remove a proposed RE1 Public Recreation zone;
4. include additional local provisions to allow recreation and selected other uses consistent with the objectives of the E2 zone; and
5. ensure asset protection zones (APZs) do not require clearing or management of critically endangered ecological communities.

In summary, the amended LEP seeks to:

- a) Rezone the site (Figure 2) from B7 Business Park to part:
 - R3 Medium Density Residential;
 - R4 High Density Residential; and
 - E2 Environmental Conservation;
- b) Amend the minimum lot size for the site to:
 - 700m² for majority of land to be zoned R3 and for part of the land to be zoned E2;
 - 1,800m² for land to be zoned R4; and
 - 6,000m² and 2ha for land to be zoned E2;
- c) Amend maximum height of buildings to:
 - 9 metres applied to the Coonara Avenue frontage which is zoned R3 and 12 metres for the remaining part of the R3 zoned land;
 - 22 metres for the R4 zoned land; and
 - 9 metres for part of the E2 zoned land and no maximum height limit for the remainder of the E2 zoned land;
- d) Remove the maximum floor space ratio of 0.2:1 for the site;
- e) Include an additional local provision to provide a 600 dwelling cap;
- f) Include an additional local provision to facilitate the following:
 - Exceptions to minimum lot sizes by dwelling type for the site as follows:
 - Detached Dwellings – 180m²; and
 - Attached or semi-detached dwellings – 86m²;
 - Design excellence;
- g) Include an additional permitted use of 'recreation area' and 'recreation facility (indoor)' to one part of the E2 zoned land to form part of private recreation under community title subdivision subject to consent;
- h) an additional permitted use of 'kiosk', 'recreation area', 'restaurant or café' (with a maximum gross floor area of 50m² and 'business identification sign' to another part of the E2 zoned land (formerly proposed for an RE1 zone);

- i) Include additional local provisions guiding stormwater design; and
- j) Include an additional local provision requiring a setback from Coonara Avenue.

As outlined in Section 8 of this report, the Department has made post-exhibition changes to the exhibited proposal to respond to matters raised during public exhibition and in response to advice from public authorities which has resulted in the proposed zoning as shown in Figure 2.

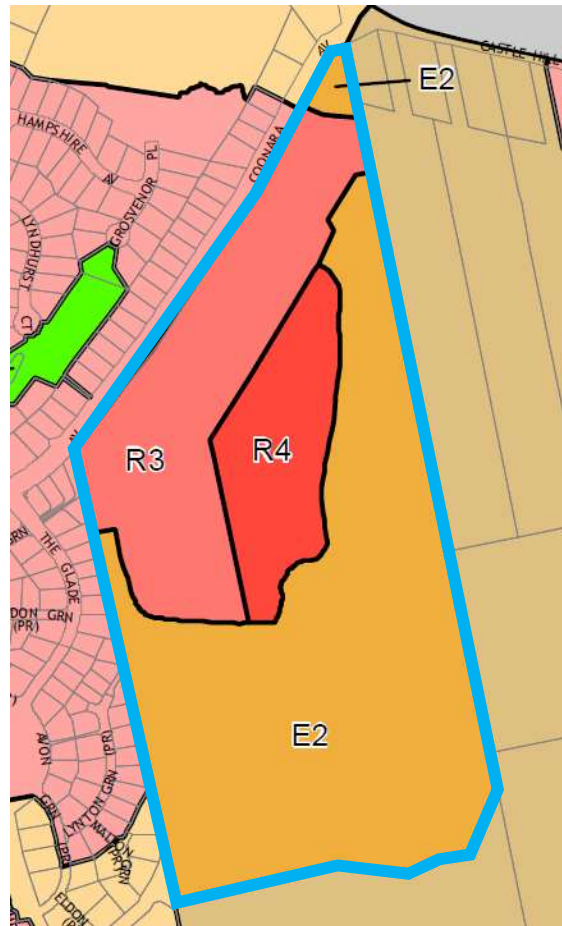


Figure 2: Proposed zoning map (outlined in blue)

4. STATE ELECTORATE AND LOCAL MEMBER

The site is within the Baulkham Hills State electorate. David Elliott MP is the State Member.

The site is within the Mitchell Federal electorate. Alex Hawke MP is the Federal Member.

David Elliot MP made representations to the former Minister for Planning in September 2018 on behalf of residents in West Pennant Hills. The representations requested assistance in responding to resident concerns and to progress the proponent's offer of dedicating forested areas of the site to Forestry Corporation NSW.

NSW Government Lobbyist Code of Conduct: There have been no meetings or communications with registered lobbyists with respect to this proposal.

NSW Government reportable political donation: There are no donations or gifts to disclose and a political donation disclosure is not required.

5. GATEWAY DETERMINATION AND ALTERATIONS

The Gateway Determination issued on 31 October 2017 (**Attachment C**) determined that the proposal should proceed subject to conditions. The Gateway determination was altered on:

- 13 June 2018 – for an extension of time to make LEP, alteration of conditions to amend the proposed zones and to introduce a 600 dwelling cap;
- 29 November 2018 – for an extension of time to make LEP; and
- 9 August 2019 – for an extension of time to make LEP (by 31 January 2020).

All the Gateway conditions, apart from the making of the LEP on time, have been met.

6. PUBLIC EXHIBITION

6.1 Exhibited proposal

In accordance with the Gateway determination, the planning proposal was publicly exhibited by Council from 30 April 2019 to 31 May 2019. A site-specific development control plan (DCP) and draft local voluntary planning agreement (VPA) were exhibited concurrently.

A summary of the key exhibited documents is provided below.

a) Planning proposal

The planning proposal sought to enable medium to high density residential development on site with a maximum of 600 dwellings (400 apartment dwellings and 200 medium density dwellings). Medium density dwellings included micro-lot housing and terrace style dwellings ranging from 86m² to 300m². The proposal also identified public open space (land for a sporting field) and the protection of significant environmental lands (Figure 3).

b) Development Control Plan

A draft site-specific DCP was exhibited to demonstrate how it could guide the future development outcomes on the site. The DCP aimed to ensure that the intended built form outcome could be delivered. The development controls related to matters such as streetscape, character, setbacks, access to the site, vegetation management, parking and preservation of a vegetated setback along the Coonara Avenue frontage. The draft DCP was not supported by Council at its meeting of 26 November 2019 and is no longer applicable. There is scope for Council to prepare a DCP for the site but it is not mandated by the LEP.

c) Local Voluntary Planning Agreement

A draft local Voluntary Planning Agreement (VPA) provided for the dedication of 2.49ha for a new public park and an adjoining open air car park, construction of a playing field (specified as synthetic) as well as dedication and construction of a perimeter road to provide access to the playing field. No additional monetary contribution was proposed under the VPA. This local VPA was not supported by Council at its meeting of 26 November 2019 and is no longer applicable. Further, as outlined in Section 7 of this report, EES does not support the use of cleared land within the forest for active recreation. Private recreation facilities will be provided on site for the proposed community title development and a local contribution will be payable by the developer to address the need for local facilities off site. Alternatively, the developer may make a new local VPA offer. Arrangements to provide local infrastructure will need to be made before a development application is determined.

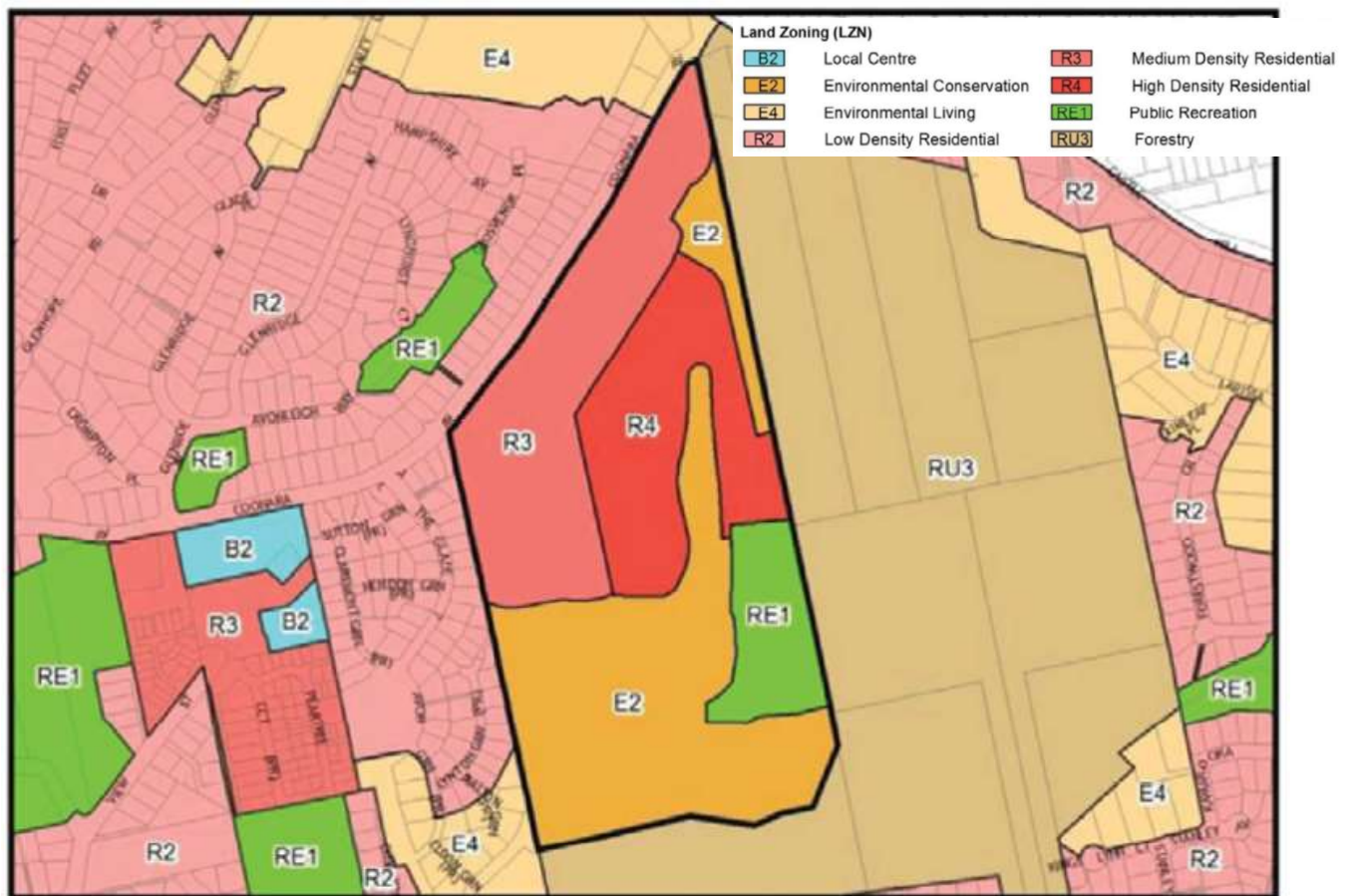


Figure 3: Exhibited zoning map

6.2 Community submissions

Council's post-exhibition report (**Attachment B**) notes Council received 4,130 submissions including:

- 203 submissions (from 190 individuals) prior to commencement of the exhibition period. These submissions objected to the proposal and were predominantly received in late-2017, when Council was considering the planning proposal to proceed to Gateway Determination. The issues raised within these submissions have been considered in the same way as submissions received during the exhibition period.
- 3,927 submissions (from 3,622 individuals, organisations and community groups) received during the public exhibition period. These submissions comprised 3,487 form letters and 440 individual (unique) submissions. With respect to these submissions:
 - 11 submissions were in support of the proposal, six of these lodged by or on behalf of the Proponent (by Mirvac or consultants engaged by Mirvac);
 - Three submissions were neutral;
 - 3,913 submissions objected to the proposal; and
 - 56 people contacted Council following completion of the exhibition period and requested that their objection be withdrawn. These requests were for a range of reasons including re-location, no longer interested in the proposal and/or concern that their personal information was used to make a submission without their consent.
- Over 700 representations were received by the Department of Planning Industry and Environment to Tuesday 16 June 2020 after the proposal was referred to the Minister for Planning and Public Spaces by Council.

Seven key issues were raised in submissions as discussed below.

a) Appropriateness of development

Concerns included:

- excessive built form, height and density;
- mirco-lots are not appropriate and not found elsewhere in The Hills Shire;
- an alternative land use for site (e.g. school or university) would provide a better outcome; and
- no development should occur on the site.

Department comment

The site is considered to be a suitable location for additional housing given its proximity to the Cherrybrook Metro station. With appropriate planning controls it has the ability to accommodate a well-designed residential community within a bushland setting. Zoning approximately 15.9 hectares of the site Environmental Conservation would secure this land for conservation. Around nine hectares of vegetated ecological communities would be secured in public ownership for conservation, subject to conclusion of the State voluntary planning agreement (**Attachment N**).

The development concept proposes a height transition and vegetated setback (along Coonara Avenue) to provide a suitable transition to existing low density areas. Subject to a future development application, two storey dwellings at the north and west of the site would transition to taller building elements in the centre of the site. The LEP includes a dwelling cap of 600 dwellings, maximum building height controls and site specific provisions to ensure a quality built form outcome in lieu of a floor space ratio control.

The LEP includes a local provision to facilitate an exception to the minimum lot size control by dwelling type. This was part of a master planned approach for the site and provides for an alternative housing product to traditional apartment living. This local provision provides flexibility in the distribution of lot sizes on the site. It will ensure that subdivision is only approved when supported by dwelling design and to ensure that where smaller lot sizes for detached, attached or semi-detached dwellings are proposed it is appropriate for the site. Further, the development concept's height transition will be enforced through maximum building heights in the LEP. The LEP includes a maximum building height of 9m for future dwellings fronting Coonara Avenue and interfacing with the adjoining dwellings.

As outlined in Section 8 of this report, the Department also proposes other local provisions to guide future development of the site.

In respect of the site and its uses remaining unchanged, the site does not form part of a broader strategic employment precinct and it lacks connectivity with knowledge-intensive industries located elsewhere in The Hills Shire. The original tenant of the site (IBM) has relocated and given its isolated nature, it is unlikely a similar tenant will be identified. Until recently the site was occupied by a construction project office and equipment laydown area which was incompatible with ecological values of the site.

The Hills Shire Council has planned for the provision of employment uses within key strategic centres which have capacity for additional commercial floor space such as Norwest and Castle Hill. These centres have the benefit of existing business agglomerations and are more attractive to these uses.

The Economic Impact Assessment prepared by Hill PDA (**Attachment D8**) notes the site's previous tenants (IBM) vacated the site and there were considerable challenges in maintaining the site for commercial office uses. The assessment noted the floorplate and

location make the site unlikely to meet the demands of potential commercial tenants and even if costly upgrades were carried out, the site risks long term vacancies.

The potential job loss (1,200 to 1,700 jobs) is offset by the forecast that The Hills Shire will generate 32,000 new jobs by 2036, most of these located in planned locations such as Box Hill (over 11,000 jobs), Castle Hill (over 5,00 jobs), Showground (7,700), Norwest and Bella Vista (over 23,000), Annangrove Road Employment Area (over 16,000) Rouse Hill (over 2,000). In respect of an alternative land use, a planning authority cannot require a private landowner to redevelop for a specific purpose and there are no plans for any State Government agencies to compulsorily acquire the site for a public purpose.

In considering the suitability of the site, the Department has considered the Schedule 6 Liability for contaminated land under the *Environmental Planning and Assessment Act 1979* and the Department's Draft Contaminated Land Planning Guidelines. The site has historically been used for orchards/agricultural purposes (Figure 4). The preliminary site investigation report (**Attachment D6**) concluded:

- there may be potential contamination emanating from three underground gas storage tanks located in the existing loading dock area of the business park complex located in the centre of the site (Figure 5);
- widespread contamination was not identified on the key areas of the site proposed to be developed as analysed soil samples and monitoring wells did not contain compounds in concentrations that pose risks to human health; and
- after demolition further detailed investigation of soil, and potentially groundwater at the site can be undertaken as the areas of the site occupied by buildings will be accessible for analysis prior to redevelopment.

The Department is satisfied that sufficient information has been provided to demonstrate the suitability of the site for rezoning, and that further site assessment and a remediation action plan can be subject to detailed assessment as part of any future development application.



Figure 4: Historical aerial of site showing agricultural use dated 1943



Figure 5: Location of underground storage tanks (circled yellow)

b) Consistency with strategic framework and Cherrybrook Precinct Plan Vision

Concerns included:

- The site is not within easy walking distance and is on a steep hill down from Cherrybrook Metro Station;
- Non-compliance with the Greater Sydney Region Plan, Central City District Plan and Ministerial Directions;
- Inconsistency with the Cherrybrook Precinct Plan as the site is not identified for residential uplift;

- Support for commencement of planning in the vicinity of the railway station; and
- Rezoning enquiries by nearby landowners have not been supported by Council.

Department Comment

The site is within reasonable walking distance (800 metres) of Cherrybrook Metro station as supported by Transport for NSW's advice to Council. The site is also within 430m of Coonara Shopping Village and 1.7km from Thompsons Corner.

The North West Rail Link Cherrybrook Structure Plan (2013) identified the site as a short-term opportunity for a business park land use. The Structure Plan recognises the need for future consideration and collaboration with stakeholders to determine the likely role of this specific site.

Section 9 of this report contains a commentary on the planning proposal's compliance with Section 9.1 Direction 3.4 Integrating Land Use and Transport.

c) Traffic generation

Concerns included:

- The local area already experiences traffic delays and congestion;
- The proposal will increase traffic, pollution and vehicle noise in the locality;
- Traffic or transport accessibility improvements have not been offered; and
- Parking and vehicle access.

Department comment

To minimise environmental impacts, the proposal seeks to retain the existing access points and retain and upgrade the existing ring road around the site (rather than reconstructing these in new locations). Having regard to the reduction in intensity of traffic generation associated with a residential use compared with a commercial use, the existing vehicular access arrangements to the site will continue to be adequate.

Traffic generation is addressed further under Section 7 of this report.

d) Environmental Impacts

Concerns included:

- Removal of flora (including Blue Gum High Forest and tree removal generally), impact on fauna (such as koalas and Powerful Owls) and impacts on the ability for residents to enjoy the forest;
- General environmental impacts of the proposal (stormwater runoff, air quality, creeks, weed incursion and impacts of the construction process);
- Impact of tree removal on climate change (including the urban heat island effect and intergenerational equity), air quality and oxygen generation;
- Bushfire, including concerns that APZs would impact on the Cumberland State Forest and will require removal of protected vegetation; and
- Future ownership, care and management of the critically endangered ecological communities, including the lack of a Stewardship Agreement and potential for the forest to be managed as part of the community title subdivision.

Department comment

Blue Gum High Forest and Sydney Turpentine-Ironbark Forest are present on the site. Both are classified as Critically Endangered Ecological Communities under the *Biodiversity Conservation Act 2016* (BC Act) and Critically Endangered under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The communities on site vary in condition due to former land use and other factors. Powerful Owl nesting sites are also present on and adjoining the site.

The Department has received detailed advice from the Environment Energy and Science Group (EES) and recognises the importance of conserving these communities and species. For this reason, the zoning plan has been amended by reducing the areas proposed to be rezoned residential. This has the effect of:

1. ensuring that all APZs will not encroach upon any Critically Endangered Ecological Communities; and
2. securing an adequate buffer zone to the Powerful Owl nesting sites from residential buildings.
3. Ensuring intensive outdoor recreation uses will not be permitted adjoining these nesting sites by changing this area from RE1 to E2 with associated zone objectives focussed on conservation.

The LEP seeks to increase the level of protection applicable to remnant forest on the site through an E2 Environmental Conservation land use zone. With the ecological value of the vegetation, an E2 zone is a more appropriate zoning than the existing B7 Business Park zoning.

The proponent has made an offer for a State Voluntary Planning Agreement (VPA) to dedicate land to NSW Forestry Corporation (**Attachment N**). Implementation of the State VPA offer would enable the transfer of forested areas to public ownership for management with the adjoining Cumberland State Forest. The proposed E2 Environmental Conservation zone will prevent development for other purposes and ensure ongoing protection of the vegetation and is the highest protection that can apply to private lands through land use zoning in an LEP.

In relation to the concern about the implications of bushfire protection associated with the plan, native vegetation is to be managed in accordance with the BC Act and EPBC Act. Any development applications on sensitive land (including any clearing) will require assessment under the BC Act. Further, under the EPBC Act, an environmental assessment and approval for clearing of ecological communities is required from the Federal Minister for the Environment.

Permits can only be issued by the Minister (in summary) if an activity such as clearing contributes significantly to the conservation of the listed threatened species or ecological community, or it will not adversely affect the survival or recovery in nature of the listed threatened species or ecological community.

The NSW *Rural Fires Act 1997* takes precedence over an environmental planning instrument zone. It provides that the *Environmental Planning and Assessment Act 1979* (EP&A Act) cannot prohibit, require development consent for or otherwise restrict:

- (a) emergency bush fire hazard reduction work on any land, or
- (b) managed bush fire hazard reduction work on land other than excluded land.

The EP&A Act does not override the EPBC Act. Even if subsequent bushfire advice requires additional APZs, approval to encroach on Critically Endangered Ecological Communities is unlikely to be secured and would need to be accommodated within residential zones.

Blue Gum High Forest or Sydney Turpentine-Ironbark Forest area not excluded land under the NSW BC Act. Therefore, the Department has contracted the urban zone in four places to ensure that an APZ does not encroach upon any Critically Endangered Ecological Communities.

The proposed zoning approach, including contracting proposed residential zones ensures all APZs would avoid the need for clearing or modifying Blue Gum High Forest or Sydney Turpentine-Ironbark Forest.

The zoning approach resolves the potential for future conflict between the planning, bushfire and conservation legislation at the development assessment phase and provides clarity to the community and the developer. The zoning approach also recognises the significant environmental value of the CEEC lands, even if some are in a disturbed state.

Concerns regarding stormwater runoff and impacts on local creeks from the construction process must be addressed as part of a future development application for the site (irrespective of whether that application is for a commercial development under the current controls or a residential development under the proposed controls). As outlined in Section 8 of this report, the Department has included additional local provision guiding stormwater design and management in the LEP.

Environmental impacts are addressed further in Section 7 of this report.

e) Availability of local services and jobs

Concerns included:

- Local facilities are already at capacity (shopping centres, schools and car parking); and
- The planning proposal will result in the loss of local employment opportunities.

Department comment

Neighbourhood shops are not proposed as part of the development concept. However, it is noted that this use is permitted within the R4 High Density Residential Zone (limited to 100m² in size). Retail and shopping services will continue to be provided at the Coonara Avenue Shopping Village and the nearby shopping facilities at Thompsons Corner.

It is acknowledged that the rezoning of the subject site from B7 Business Park to permit residential uses will result in the loss of employment land and as discussed earlier in this report, it is anticipated commercial growth within The Hills Shire designated Strategic Centres will offset the loss of employment land. The Department is in the process of planning the State Significant Precinct immediately surrounding the Cherrybrook Metro. This work is focused on creating a mixed use local centre that supports the function of the station and the needs of the local community.

f) Playing fields

Concerns were raised regarding the exhibited RE1 Public Recreation area that was to be used for a synthetic turf soccer field.

Department comment

As outlined in Section 8 of this report, the Department has removed the RE1 Public Recreation area from the LEP and this area is to be zoned E2 Environmental Conservation. This is further discussed in Section 7 of this report.

g) Developer Contributions/ Voluntary Planning Agreement

Concerns were raised that the proponent's contribution to local and State infrastructure was inadequate.

Department comment

Any future development of the site would be levied at a 1% rate for cost of development under The Hills Section 7.12 Contributions Plan unless it is reviewed before development consent is granted or other arrangements are made between Council and the proponent for a new local VPA.

Regarding State infrastructure, as discussed earlier, the proponent has made an offer to enter into a State Voluntary Planning Agreement to dedicate forested land on the site to Forestry NSW (**Attachment N**).

State infrastructure is discussed further in Section 7 of this report.

6.3 Council Resolution

The Hills Shire Council resolved 26 November 2019 (post-exhibition report **Attachment B**) for the planning proposal (**Attachment D1**), associated DCP and local VPA not progress and to write to the Minister for Planning and Public Spaces requesting that the Minister determine the proposal not proceed (as the delegate of the Minister is the plan-making authority) (**Attachment A**).

Delegation to finalise the planning proposal was not issued to Council by the Department due to the site's proximity to the Cumberland State Forest and the ecologically significant vegetation present on the site.

7. PUBLIC AUTHORITIES

Council was required to consult TfNSW and the former Roads and Maritime Services (now part of TfNSW), former Office of Environment and Heritage (now EES), NSW Rural Fire Services, former UrbanGrowth NSW, Hornsby Shire Council, and relevant authorities for the supply of water, electricity, and the disposal and management of sewage in accordance with the Gateway Determination.

Council consulted these authorities. No response was received from UrbanGrowth NSW/Landcom.

Matters raised by all agencies are discussed as follows.

7.1 Environment, Energy and Science Group

Environment, Energy and Science Group's (EES) (former Office of Environment and Heritage) initial submission raised key matters that required to be addressed (**Attachment K**). Following EES's initial submission, Council, the proponent and the Department

subsequently liaised with EES to address issues which are the subject of further correspondence (**Attachment L**).

Key matters raised by EES are discussed below.

a) Impacts on ecologically endangered communities

EES recommended the development footprint be reduced so that no Blue Gum High Forest (BGHF) or Sydney Turpentine-Ironbark Forest (STIF), are impacted by either the development footprint or bushfire management APZs.

EES noted the exhibited planning proposal building footprint would have resulted in the loss of 0.02ha of BGHF and the proposed APZs would have resulted in the modification of multiple patches of BGHF and STIF totalling approximately 1 hectare. EES also noted this would have triggered the need for the proponent to address this impact under the Biodiversity Offset Scheme.

Department comment

Since the exhibition of the planning proposal, at the Department's request, the proponent provided more detailed vegetation mapping to allow accurate analysis of the critically endangered ecological communities potentially affected by the proposal. The proponent provided detailed vegetation mapping with an overlay of the proposed zoning and APZs (**Attachment M**).

After reviewing the updated information, EES recommended the land use zoning and resultant APZ be amended to avoid impacting 0.23ha of Critically Endangered Ecological Community areas. The areas would still have been affected by APZs (in the proponent's updated scheme).

The Department has amended the LEP to reduce the extent of proposed R3 Medium Density Residential and R4 High Density Residential land and increased the extent of the proposed E2 Environmental Conservation land. This will ensure that bushfire management APZs do not impact on critically endangered ecological communities. The LEP includes a minimum lot size of 2 hectares to apply to E2 to promote conservation.

The site is identified on EES's Biodiversity Values Map and Threshold Tool prepared under Part 7 of the BC Act. These will apply to development applications and clearing of vegetation under *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2007*. Clearing of any vegetation as part of any future development application or work carried out on site will be subject to an assessment of whether thresholds for a Biodiversity Offset is triggered and/or referral to the Native Vegetation Panel is required. As there are no urban zones proposed for the CEECs this is not expected to be triggered.

The Department has satisfactorily addressed these EES concerns through post-exhibition amendments to the LEP (including zoning boundary amendments and site-specific provisions) discussed below. As such, a Stewardship Agreement /Biodiversity Offset is not required at this stage.

These amendments to the LEP recommended by the Department are further outlined in Section 8 of this report.

b) Impacts on fauna (including Powerful Owl) habitat

In relation to koalas, EES note there is a low likelihood of the species being on site and that the previous 2014 record of a koala on the site was an error (**Attachment K**).

EES was concerned the proposal would have an impact on the Powerful Owl, particularly from increased noise from the proposed sports field and development, and that insufficient buffer distances were provided from identified nesting trees. EES also noted the proposal's Biodiversity Assessment recommended additional Powerful Owl ameliorative measures

including the prohibition of free-ranging cats in the development and that dogs would need to be under control at all times but especially near bushland areas. This would require fencing critically endangered ecological communities.

EES provided further comment following further information provided by Council (**Attachment L**) that the issues such as fencing the bushland reserve, the restriction of pathways in the proposed reserve and the ownership of the bushland, had been adequately addressed. Other matters will be addressed at the development application stage and through a future voluntary planning agreement.

EES noted on 2 April 2020 (**Attachment L**), the additional information still did not demonstrate that the proposed location of the sports field / RE1 zoned land was appropriate, particularly due to increased noise and light. This no longer forms part of the final LEP and no land is to be zoned RE1.

EES also recommended the potential impact on the Powerful Owl be addressed by the planning proposal, particularly to ensure a 100 metre buffer distances between residential buildings to nest trees in accordance with guidelines for conserving Powerful Owl habitat (Bain et al 2014).

Department comment

As discussed in Section 8 of this report, the LEP adequately responds to this final matter by ensuring the residential footprint is 100m from nesting sites. The LEP replaces the RE1 zone with E2 Environmental Conservation with additional permitted uses which would be subject to a future development application Council assessment process and must be consistent with the zone objectives.

c) Impacts on bushland reserve

EES noted the exhibited Urban Design Report (**Attachment D3**) showed the RE1 zoned land remnant native vegetation, soccer field and car park as 'public open space.' EES recommend that the remnant native vegetation (shown as '1a' and '1b' in Figure 6) be identified for conservation purposes rather than public open space and zoned E2 Environmental Conservation. EES stated this would allow for consolidation with adjoining bushland reserves and to be rehabilitated and revegetated with local native species from the relevant local native vegetation community. EES also recommended the area proposed to be 'community open space' / 'resident communal facilities' at the eastern part of the site be located elsewhere within the development footprint and the area be rehabilitated and revegetated.

In discussions with EES, the Department flagged that the proposed 'resident communal facilities' area of the site is occupied by a concrete parking structure and that it is appropriate for already developed parts of the site to be utilised as part of any future development application, and further that it is not reasonable to require demolition and revegetation for this part of the site.

EES noted the exhibited proposal and supporting documents state informal walking trails would be opened up for public recreation access within the bushland reserve and a future conservation management plan will formalise the use of pathways. EES recommended the existing pathways/walking trails be closed and revegetated and the number of pathways/walking trails within the 'bushland edge' and close to the Powerful Owl nesting sites be minimised. Further, EES recommended the new pathways/walking trails be located outside the bushland reserve and constructed of appropriate materials to minimise impacts on biodiversity. It is noted the walking trails are in the forested areas proposed to be dedicated to Forestry NSW and will be subject to a future plan of management.

On 2 April 2020 (**Attachment L**), EES advised the issues such as fencing the bushland reserve, the restriction of pathways in the reserve and the ownership of the bushland, have been adequately addressed at the planning proposal stage.

d) Other matters

EES queried if the two dams on site are to remain or if they were to be dewatered, and if the dams were proposed to be dewatered further information was required. It has been confirmed the dams on site are to remain, so this matter is resolved.

EES recommended additional provisions to guide management of vegetation, riparian corridors, flood management and the design of green roofs as part of future development.

Department comment

As outlined in Section 8 of this report, additional local provisions are recommended to be included in the LEP to address these matters.

As part of the Department's finalisation process, further consultation with EES has been undertaken to satisfactorily address EES' objections. Subsequently, the Department has made post-exhibition amendments to the planning proposal as discussed in this report.

7.2 Department of Premier and Cabinet (Heritage)

The Department of Premier and Cabinet (DPC) (Heritage) (**Attachment E**) confirmed there are no State Heritage Register items on or near the subject site. However, land adjoining the site contains an archaeological site listed under The Hills LEP 2019 - 'Cumberland State Forest, Bellamy Quarry and Sawpit' at 89-97 Castle Hill Road (Item A26). DPC (Heritage) requested that Council prepare a Statement of Heritage Impact, including an assessment of the visual setting of the items, the curtilage of the item and whether archaeological remains associated with the quarry and sawpit extend into the planning proposal site.

Department comment

It is noted a preliminary Heritage Report (16 September 2019) (**Attachment D7**) provided to Council by the proponent concluded that there will be no physical or visual impact on these heritage items or any known heritage resource either on or in proximity to the site. Further, a detailed Statement of Heritage impact is required as part of any future development application.

The LEP adequately responds to the submission from DPC (Heritage).

7.3 Transport for NSW

TfNSW and the former RMS (**Attachment F1-F4**) raised no objections to the proposal but noted several matters for consideration in relation to:

- the need for detailed cumulative studies and infrastructure contributions in place to support the proposed precinct uplift;
- pedestrian and cycle access across Castle Hill Road;
- potential bus service planning options;
- vehicular access to Coonara Avenue;
- appropriate maximum parking controls; and
- proponent's traffic study to be updated to include extended future modelling on Coonara Avenue and the impact on the Castle Hill Road intersection, to separate vehicle and pedestrian movements, and to reflect consistent peak hour factors.

The former RMS' submission indicated it was satisfied that vehicular trip generation associated with the proposed residential land use is lower than that of the existing business land use. This position is supported by the Traffic Assessment (**Attachment D4**) and Council's peer review of the Traffic Assessment concluded the proposal would have marginal impact on the performance of the existing network.

The traffic generated by the proposed development is expected to have marginal impact on the performance of the existing network. The network under current conditions already has existing capacity constraints. However, Cherrybrook Metro, NorthConnex, as well as other infrastructure upgrades for the Cherrybrook Precinct are expected to reduce traffic volumes on the arterial road network, which in turn may relieve congestion on local roads.

Department comment

On 10 September 2019 (**Attachment F4**) former RMS advised that it had reviewed the proponent's additional information and all matters previously identified had been satisfactorily addressed. TfNSW will require the proponent to provide a signalised pedestrian phase on the western leg of the intersection of Castle Hill Road, Edward Bennett Drive and Coonara Avenue, at no cost to government under a "Works Authorisation Deed". TfNSW has advised this matter can be satisfactorily resolved during future development assessment process.

7.4 NSW Rural Fire Service

NSW Rural Fire Service (RFS) raised no objection (**Attachment G**), subject to the future subdivision and development complying with *Planning for Bush Fire Protection 2006* (now 2019). The RFS noted that a revised bushfire report would be required at the development application stage to address the complexities of multi storey development in bushfire areas. Supplementary advice provided by the proponent in November 2019 (**Attachment D5**) indicated that potential asset protections outlined in supporting information to date would be adequate for multi storey development and noted that any increase identified to be required at DA stage would need to be accommodated in an urban zone not in land to be zoned E2.

Department comment

RFS would be further consulted as part of any future development application for the site. The proponent provided supplementary information to the Department in November 2019 (**Attachment D5**) outlining the adequacy of proposed APZs. If these are increased at DA stage through further consultation with RFS they will be provided in the urban zone and not affect critically endangered ecological communities.

7.5 Utility providers

Sydney Water (**Attachment H**) and Endeavour Energy (**Attachment I**) raised no objection to the proposal with both agencies indicating that the development can be serviced, with augmentation to the existing networks which can be adequately assessed as part of any future development application.

7.6 Hornsby Shire Council

Objections were raised by Hornsby Shire Council (**Attachment J**). In summary Hornsby Shire Council does not support the planning proposal on the basis that a whole of precinct approach should be undertaken for the Cherrybrook Precinct to consider growth and infrastructure issues in an integrated and holistic way and ensure the capacity of the entire precinct is identified at the strategic level.

Matters raised by Hornsby Council included:

- The proposal is likely to trigger further owner/developer-led spot rezoning applications in the area, leading to an ad-hoc approach to land use planning for the Precinct. This

would undermine the planning framework for both Councils and lead to poor outcomes for the Cherrybrook community.

- The Urban Design Report has been developed in isolation and does not consider the relationship of the site to the larger precinct, or whether the proposed development is contextually appropriate.
- The proposed sporting facility would be located the furthest away from existing established communities, in the least accessible part of the development site. The facility may become privatised due to lack of visibility and connectivity to the wider community and as a result of proposed subdivision under a community title scheme for local roads which would impede permeability across the subject site.
- The economic assessments do not consider whether the subject site is best placed to support higher density residential uses (as opposed to other land parcels in the area) with respect to opportunities and constraints within the broader precinct.
- A cumulative assessment of traffic and transport impacts is not evident in the supporting material, as the proposed redevelopment of the subject site cannot be considered in isolation of its wider surroundings.

Department comment

The Department is working with Landcom as well as Hornsby Shire and The Hills Shire councils, TfNSW, Sydney Metro and other agencies to progress planning for the Cherrybrook Station government land. Each planning proposal within the precinct can be assessed in terms of its individual site specific and strategic merit. The LEP has demonstrated sufficient merit particularly as it is consistent with the strategic planning framework and additional local provisions within the LEP will ensure a quality design outcome for the site.

The Department concludes that Hornsby Shire Council's concerns have been adequately addressed through amendments outlined in this finalisation report.

8. POST-EXHIBITION CHANGES

8.1 Summary of Department changes

A number of post-exhibition changes have been made to the proposal by the Department in response to matters raised during the community consultation period and advice from public authorities.

Final Land Zoning (Figures 7 and 8)

- Extent of proposed R3 Medium Density Residential & R4 High Density Residential reduced;
- Extent of proposed E2 Environmental Conservation zoned land increased; and
- RE1 Public Recreation zoning removed.

Final Minimum Lot Size (Figure 9)

- 6,000m² Minimum Lot Size introduced for part of site to be used for communal facilities;
- 10ha Minimum Lot Size removed and replaced with 2ha Minimum Lot Size to enable the creation of an appropriate allotment for areas proposed to be dedicated to Forestry NSW;
- 700m² Minimum Lot Size boundary extent updated to reflect bushland areas to be maintained by the proponent/not dedicated to Forestry NSW; and

- 1,800m² Minimum Lot Size extent reduced to match the R4 High Density Residential zoned land.

Final Maximum Height of Building (Figure 10)

- No maximum height limit for the remainder of E2 zoned land as the forested areas are not suitable for development.

Additional local provisions

- Introduce a design excellence provision for the site;
- Introduce a stormwater design provision for the site; and
- Introduce a provision requiring an 11 metre setback from Coonara Avenue.

Additional permitted uses (Figure 11)

- Include an additional permitted use of 'recreation area' and 'recreation facility (indoor)' to part of the E2 zoned land at the north eastern part of the site to enable the provision of communal facilities for use by residents of the site as subject to approval;
- Include an additional permitted use of 'kiosk', 'recreation area', 'restaurant or café' and 'business identification sign' to part of the E2 zoned land at the south eastern part of the site to enable detailed assessment of potential low impact uses with consent only where they are consistent with the zone objectives; and
- Include a maximum gross floor area of 50m² for any restaurant or café in part of the E2 zoned land at the south eastern part of the site.

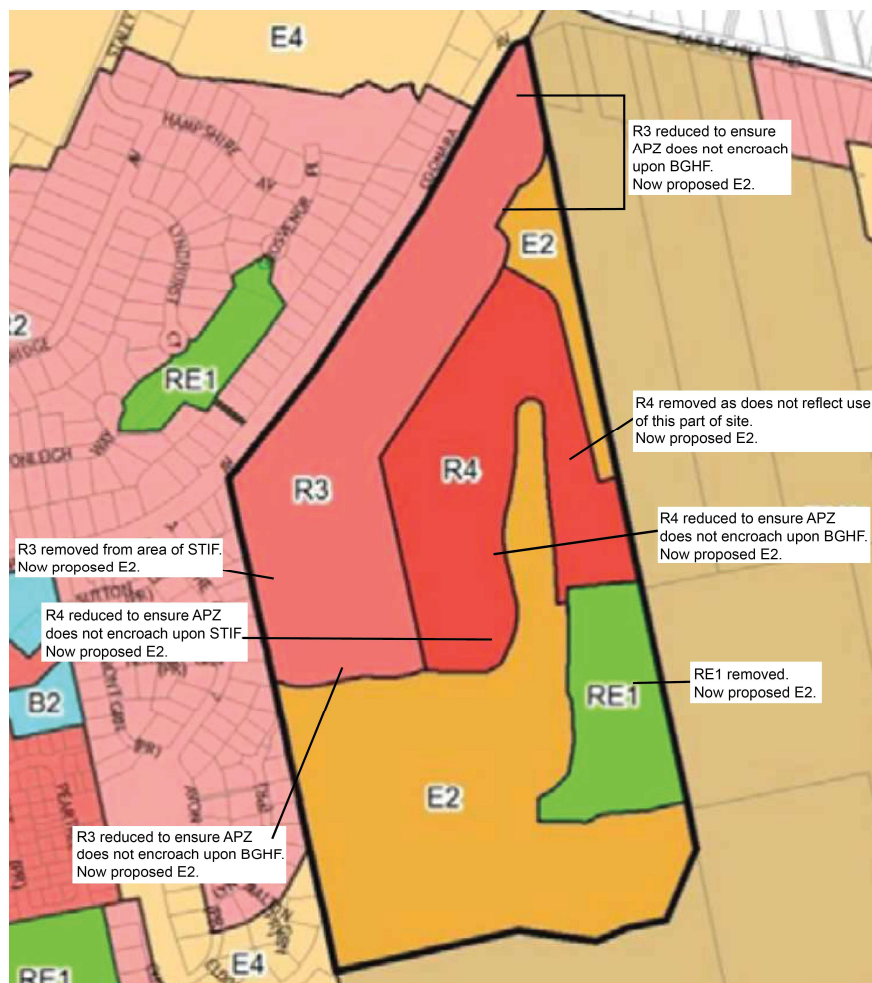


Figure 7: Amendments to the exhibited zoning map

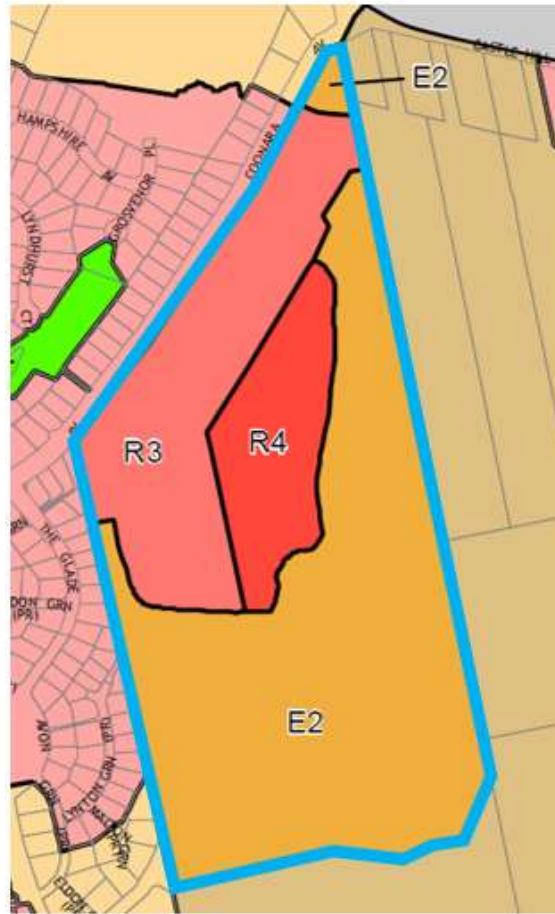


Figure 8: Proposed LEP zoning

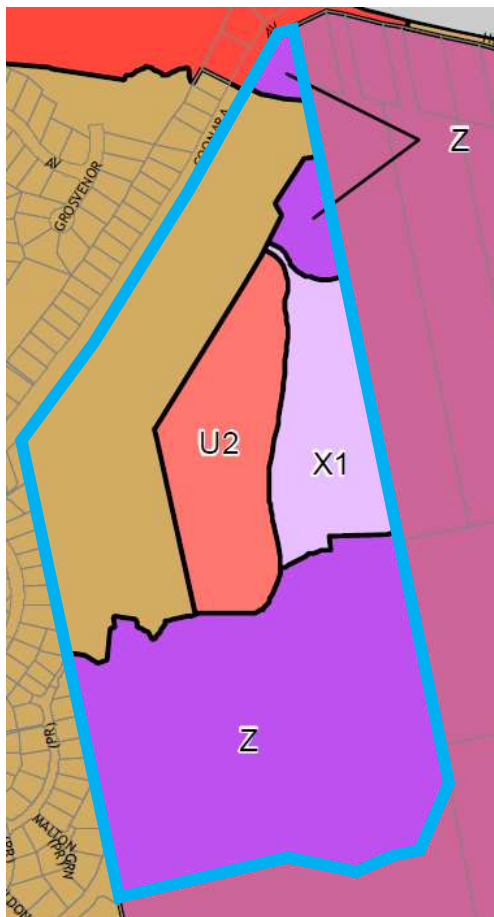


Figure 9: Proposed LEP Minimum Lot Size

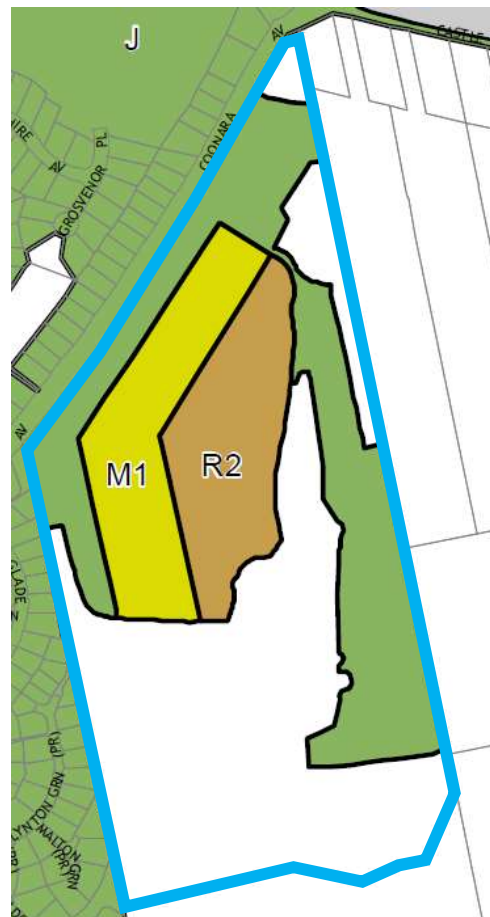


Figure 10: Proposed LEP height

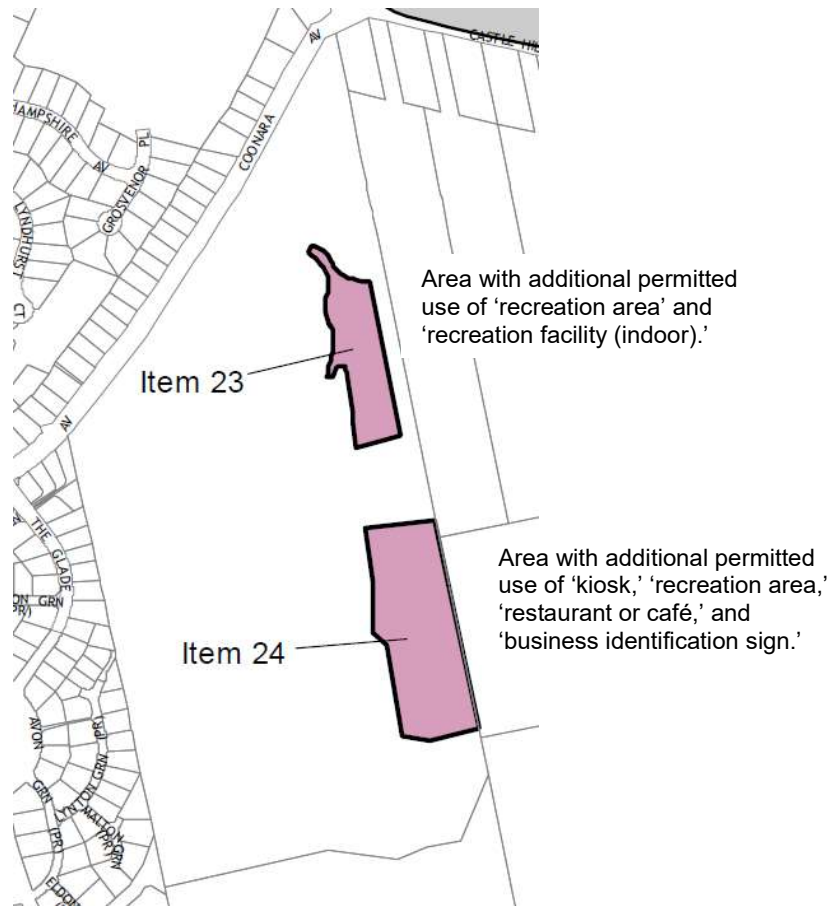


Figure 11: Proposed LEP areas with additional permitted uses

8.2 Justification

It is recommended that these amendments be endorsed without requiring further exhibition as the amendments do not change the intent of the planning proposal as exhibited. The reduction in residential zones and adjustment of boundaries responds concerns raised in submissions about potential impact on bushland and the advice from EES to protect the critically endangered ecological communities and threatened species on site. The amendments clarify and strengthen the provision of a quality design outcome while securing conservation of environmentally sensitive areas on site.

9. ASSESSMENT

As discussed earlier in this report, the LEP has sufficiently demonstrated site-specific merit with adequate provisions in place to ensure environmental protection and a quality designed built form outcome on site.

As outlined below, the LEP has strategic merit as it is consistent with relevant Section 9.1 Directions and State Environmental Planning Policies and gives effect to the Central City District Plan.

9.1 Section 9.1 Directions

As per the Gateway Determination (**Attachment C**) the delegate of the Secretary, agreed that the planning proposal's inconsistency with Section 9.1 Directions 1.1 Business and Industrial zones and Direction 5.9 North West Rail Link Corridor Strategy were of minor significance.

Further commentary on the unresolved consistency with certain Directions are discussed below.

Direction 2.1 Environment Protection Zones

The objective of this Direction is to protect and conserve environmentally sensitive areas and requires a planning proposal to include provisions that facilitate the protection and conservation of environmentally sensitive areas.

This Direction applies as the site is heavily vegetated and Blue Gum High Forest and Sydney Turpentine Ironbark Forest are located on the site, Critically Endangered Ecological Communities under the BC Act. Further, nesting trees for the Powerful Owl and surrounding habitat have also been identified on site.

The Gateway determination required the planning proposal to be updated to include the application of appropriate land use zones, including Environmental zones (such as E2 Environmental Conservation) to facilitate the protection and conservation of environmentally sensitive areas. The Gateway also required the Ecological Assessment and other technical studies to be updated in accordance with any comments received from the NSW Rural Fire Service and the Environment, Energy and Science Group.

As discussed under Sections 7 and 8 in this report, and under Section 9.1 Direction 4.4 Planning for Bushfire Protection below, the LEP includes sufficient provisions to protect and conserve environmental sensitive areas on site and is consistent with Direction 2.1 Environment Protection Zones.

Direction 3.4 Integrating Land Use and Transport

The objectives of this Direction are to ensure that planning proposal outcomes improve access to housing, jobs and services by walking, cycling and public transport and reducing dependence on cars, where the planning proposal seeks to introduce zoning which enables urban development, including residential zones.

The LEP is consistent with this Direction.

The Gateway determination required the proposal to be updated prior to public exhibition to provide further evidence to demonstrate it is supported by improved choice of available transport access options by identifying traffic and transport accessibility options for the site within the context of the Cherrybrook precinct. The Gateway also required the proposal to be referred to TfNSW (and former Roads and Maritime Services) during the consultation period to ensure consistency with this Direction, as discussed under Section 7 of this report.

The planning proposal was updated prior to public exhibition to include further assessment of the traffic and transport access to the site within the Cherrybrook Precinct.

Direction 4.3 Flood Prone Land

The objectives of this Direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and the provisions of an LEP on flood prone land is commensurate with flood hazard, includes consideration of the potential flood impacts both on and off the subject land.

The LEP is consistent with this Direction.

This Direction applies as the site is identified within a flood prone area. First and second order tributaries of Darling Mills Creek diagonally traverse the property from northeast to southwest. The flooding associated with these tributaries is a constraint over the land and its future development. Flood extent mapping for the 100-year average recurrence interval (ARI) flood event expected to impact the property is shown in Figure 12. The Gateway determination required consultation with relevant public authorities to ensure consistency with this Direction, as discussed under Section 7 of this report.



Figure 12: 100-year ARI Flood Extents

The LEP does not seek any changes to existing flood related development controls, and future development will be subject to the relevant development controls in The Hills LEP 2019 and The Hills DCP 2012. The Hills DCP gives effect to the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005. Potential flood constraints on the land can sufficiently be addressed as part of the development assessment process and appropriate flood mitigation measures determined and implemented.

The LEP includes an additional local provision guiding stormwater design and management.

Direction 4.4 Planning for Bushfire Protection

The objectives of this Direction are to protect life, property and the environment from bush fire hazards and to encourage sound management of bush fire prone areas.

The LEP is consistent with this Direction.

This Direction applies as the site is bushfire prone with the developable area noted as both Category 1 bushfire risk (orange in Figure 13) Bushfire Prone Land Vegetation Buffer 100m and 30m (red in Figure 13).

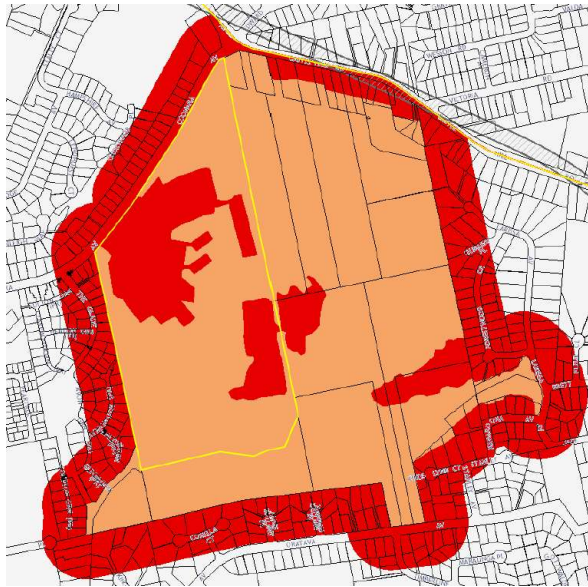


Figure 13: Bushfire prone land (site outline in yellow)

The Gateway determination required consultation with the NSW Rural Fire Service (RFS) prior to and during the public exhibition period to assess consistency with this Direction.

As discussed in Section 7 of this report, RFS did not raise any objections to the planning proposal. The potential extent of APZs and managed lands are shown on the vegetation mapping (**Attachment M**). However, the LEP has been amended to ensure bushfire APZs are excluded from Critically Endangered Ecological Communities. The extent of the managed lands at the western part of the site does not have any development potential as it has a minimum lot size of 2ha and no height provision; and the managed lands at the eastern part of the site are where future communal facilities will be provided for residents.

Sufficient detail has been provided at the planning proposal stage and it is considered further detailed bushfire assessment can adequately be addressed as part of any future development application stage.

Direction 6.2 Reserving Land for Public Purposes

The objectives of this Direction are to facilitate the provision of public services and facilities by reserving land for public purposes. The Gateway determination required the planning proposal to be updated prior to community consultation to address the reservation of land for public purposes, i.e. proposed zoning of RE1 Public Recreation to accommodate a synthetic soccer field.

The LEP is consistent with this Direction.

The LEP no longer provides for RE1 Public Recreation zoned land as discussed in Section 7 Advice of this report, EES objected to the provision of the provision of public recreation zoned land at the south eastern part of the site as intensive recreation could adversely impact the Powerful Owl.

Direction 6.3 Site Specific Provisions

The objective of this Direction is to discourage unnecessarily restrictive site-specific planning controls. The Gateway determination required the proposal to be amended prior to community consultation to seek to include amendments to land use zones, minimum lot size, floor space ratio and height of buildings under The Hills LEP 2019 Part 2 Permitted or prohibited development and Part 4 Principal development standards rather than wholly under Schedule 1 Additional Permitted Uses. The proposal was updated accordingly.

A LEP may be inconsistent with this Direction if the delegate of the Secretary is satisfied the provisions of the Plan that are inconsistent are of minor significance. The LEP includes several site specific provisions (as described in Section 8 of this report). However, these provisions cannot be prescribed as development standards under Part 4 of the LEP and appropriately complement the proposed land use zoning and principal development standards.

It is considered that the provisions proposed are consistent with this Direction.

9.2 State environmental planning policies

State Environmental Planning Policy No. 19 – Bushland in Urban Areas

The LEP is consistent with this SEPP as the E2 Environmental Conservation land boundary has been increased to protect all areas of significant bushland on the site. Further, the potential dedication of land to Forestry NSW will ensure that future development on the site is consistent with the aims of this Policy; and that significant vegetation and the Powerful Owl are effectively protected and managed.

9.3 State, regional and district plans

Central City District Plan

The site is within the Central City District and the Greater Sydney Commission (GSC) released the Central City District Plan on 18 March 2018. The Plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets. It should be noted that the Gateway determination for the site was issued prior to the District Plan coming into effect.

The LEP gives effect to the Central City District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979* and gives effect to the following planning priorities of the Plan:

- Planning Priority C3 - Providing services and social infrastructure to meet people's changing needs and Planning Priority C5 - Providing housing supply, choice and affordability with access to jobs and services.

These priorities require planning to recognise the changing composition in population groups in local places and provide social infrastructure and services accordingly. The LEP is consistent with these priorities as it would provide a variety of dwelling sizes and configurations, suitable for existing and expected household types within the Cherrybrook Precinct. The proposal includes consideration of the social infrastructure needs of future residents through the provision of communal recreation areas.

- Planning Priority C15 – Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes.

This priority aims to protect and enhance biodiversity and attempts to strengthen the protection of bushland in urban areas. The LEP is consistent with this priority, as discussed previously in this report, the proposed E2 Environmental Conservation zoning and dedication of land to Forestry NSW ensure significant vegetation on site is adequately retained and managed.

- Planning Priority C17 – Delivering high quality open space

The Plan notes that access to high quality open space is becoming increasingly important as higher housing densities, more compact housing and changing work environments develop. Where land for additional open space is difficult to provide, innovative solutions will be needed, as well as a strong focus on achieving the right quality and diversity of open space. The LEP zones the majority of the site E2 Environmental Conservation enabling the provision walking trails through forested areas where appropriate and recreation areas

(such as picnic areas) where it will not impact upon critically endangered ecological communities or the Powerful Owl habitat on site. Further, the concept for the proposed residential zoned land illustrates communal open space for future residents of the site will be provided.

10. MAPPING

There are 5 maps associated with the LEP amendment as follows:

- Land Zoning - LZN_24;
- Height of Building - HOB_24;
- Minimum Lot Size - MLS_24;
- Floor Space Ratio - FSR_24; and
- Additional Permitted Uses - APU_24.

The maps (**Attachment Maps**) and map cover sheet (**Attachment MCS**) have been checked by the Department's ePlanning Team and sent to Parliamentary Counsel.

11. CONSULTATION WITH COUNCIL

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979* (**Attachment O**).

Council confirmed on 12 June 2020 that it does not support the making of the plan (**Attachment P**).

Council raised the following concerns in relation to the draft instrument:

- No DCP has been provided and the draft LEP does not include matters such as streetscape and character, dwelling size and mix, maximum building length and private open space; and
- No reference to the restricted dwelling yield map in the legal instrument.

The Council resolved 26 November 2019 not to proceed with the DCP. It is considered that the matters regarding the design of the development can be addressed at the Development Application stage.

Since Council provided comments on the draft LEP the draft instrument has been amended to exclude the map.

12. PARLIAMENTARY COUNSEL OPINION

On 16 June 2020, Parliamentary Counsel provided the final Opinion that the LEP could legally be made. This Opinion is provided at **Attachment PC**.

13. RECOMMENDATION

It is recommended that the Minister's delegate as the local plan-making authority determine to make the LEP under clause 3.36(2)(a) of the Act because it:

- Enables a more appropriate zoning for the site that reflects its modification for existing development and the extensive environmental values of its remnant bushland.
- Will secure the protection of the forested areas and Powerful Owl habitat on site through an E2 Environmental Conservation zoning;
- Adequately responds to matters raised in advice from public authorities and public submissions;

- Gives effect to the Central City District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*;
- Inconsistencies with Section 9.1 Direction 6.3 Site Specific Provisions are of minor significance and justified; and
- Is consistent with other relevant Section 9.1 Directions and State Environmental Planning Policies.

Catherine Van Laeren
Executive Director
Central River City and Western Parkland City

Assessment officer: Angela Hynes
Senior Planning Officer
Central (Western)

ENDORSED

17 June 2020