NSW GOVERNMENT | Office of Environment & Heritage

Our ref: DOC19/388520
Your ref: 1/2018/PLP

Ms Kayla Atkins
Town Planner
The Hills Shire Council
PO Box 7064
NORWEST NSW 2153

Dear Ms Atkins

OEH comments on Public exhibition of Planning Proposal – 55 Coonara Avenue, West Pennant Hills – draft Development Control Plan and draft Voluntary Planning Agreement

Thank you for your email of 1 May 2019, requesting comments from the Office of Environment and Heritage (OEH) on the above Planning Proposal. OEH appreciates Council providing it with an extension of time to provide its comments.

OEH provides its recommendations and comments in Attachment A. Please note that OEH has decided not to provide comments on Aboriginal cultural heritage matters at this time. This does not represent OEH support for the proposal and this matter may still need to be considered by the consent authority. A separate response may be provided on heritage matters by the Heritage Division of OEH as delegate of the Heritage Council of NSW.

Should you have any queries regarding this matter, please contact Janne Grose on [redacted] or janne.grose@environment.nsw.gov.au.

Yours sincerely

14/6/19

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Attachment A

OEH comments on Public exhibition of Planning Proposal – 55 Coonara Avenue, West Pennant Hills – draft Development Control Plan and draft Voluntary Planning Agreement

The Office of Environment and Heritage (OEH) has reviewed the following documentation:

- Planning Proposal
- Ecological Assessment – 12 November 2018
- Biodiversity Assessment (BA) – 8 February 2018
- Ecological Assessment (EA) – 24 April 2017
- Urban Design Report (UDR) – Rev C – July 2018
- Bushfire Site Compatibilities Assessment (BSCA) – 28 August 2017
- Bushfire Site Compatibilities Assessment (BSCA) – 27 April 2017
- Report on Geotechnical Assessment (RoGA)– November 2017
- Geo-technical and Utility Infrastructure review – 11 April 2017
- Planning Agreement Explanatory Note
- Minutes of Ordinary Meeting of the Hills Shire Council – 25 September 2018
- Draft - The Hills Development Control Plan – Part D Section 18 – 55 Coonara Avenue, West Pennant Hills

and provides the following comments.

Biodiversity

Significant remnants of Blue Gum High Forest (BGHF) and Sydney Turpentine-Ironbark Forest (STIF) have been mapped on site. As Council will be aware, BGHF is listed as a critically endangered ecological community (CEEC), and STIF is listed as an endangered ecological community (EEC) but there is a preliminary determination for listing of this ecological community as critically endangered. As such, all attempts should be made to avoid impacts on these communities. It is noted that the footprint of the proposal will result in the loss of only 0.02 ha of BGHF. However, the asset protection zones (APZs) will result in modification of almost 1 ha of BGHF and STIF. It is unlikely that these areas will still classify as these communities, and as such, the imposition of APZs should be seen as a loss of these communities.

OEH recommends that all attempts are made to reduce the footprint so that no remnants of BGHF or STIF are impacted by either the development footprint or the necessary APZs. This is consistent with the *Biodiversity Conservation Act 2016* (BC Act) and the NSW Government Biodiversity Assessment Method 2017 (BAM) which is established under section 6.7 of the BC Act:

- The purpose of the BC Act requires impacts to biodiversity to be first avoided:
  (k) to establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity
- The BAM includes the guidelines and requirements that apply the avoid, minimise and offset hierarchy for assessing direct and indirect impacts.

Section 2.2 of the BA states that the proposal will be subject to the Savings and Transitional provisions and so the former planning provisions apply. OEH advises that the savings and transitional provisions only affect development applications, not planning proposals. It should also be noted that the BGHF and STIF communities on site are mapped on the Biodiversity Values Map and Threshold Tool and as such, impacts to these communities will trigger inclusion of future development in the Biodiversity Offsets Scheme.

<u>Biodiversity Assessment</u>

OEH's comments on the BA are as follows:

- The BA should have included a map of the extent of BGHF and STIF on site. It is also noted that the BA states that more data is required to determine the extent of the vegetation types on site.
- The BA should also have included a map showing the location of the remnant vegetation to be impacted and its vegetation type.

- Table 1 of the BA lists threatened flora species recorded from the area and their likelihood of occurrence on site. Some species are listed with a moderate likelihood of occurrence. Section 3.1 of the BA states that 'targeted random meanders' were carried out on site, it is assumed that this method was used to survey for threatened flora species. Figure 7 of the BA shows the location of these 'random meanders'. However, it is noted that large parts of the site, including areas that are proposed to be cleared, do not appear to have been surveyed for threatened flora. Therefore, it is unclear as to whether threatened flora species may be impacted by the proposal.
- OEH considers the habitat for the Powerful Owl on site is significant and is therefore concerned about the potential impacts on this species. According to the BA, this includes the proposed loss of more than 1 ha of potential foraging habitat, and the inability to impose 100m buffers around nest trees, both of which (as the BA acknowledges) are not in accordance with the Land Manager guidelines for the species (Bain, 2014) (see page 48 of BA). It is noted in the BA that the recommended buffer distances around the nesting sites are 200m (see recovery activities, point 6 on page 52) and that no habitat degradation occurs within 100m of nest sites (see action (2) of OEH 2017b, page 51) in accordance with Office of Environment and Heritage (2017a) Threatened Species Profile (http://www.threatenedspecies.environment.nsw.gov.au/tsprofile/) and Office of Environment and Heritage (2017b) Species Conservation Project (http://www.environment.nsw.gov.au/savingourspeciesapp/SearchResults.aspx) respectively. The BA indicates these ameliorative measures have been achieved with this proposal (see pages 51 and 52). OEH disagrees with this conclusion.

  The BA notes Council required further assessment of the potential impacts to the resident Powerful Owls including a detailed impact assessment of sports field lighting and potential light spill into owl nest tree territory but indicates this has not been addressed as the Planning Proposal does not include sports field works and that embellishment of the open space area will be designed and constructed by Council following the dedication of the land parcel (Section 1.1, pages 1- 2). It is noted that the BA includes an ameliorative mechanism that activities in recreational areas that have the potential to disturb owls are to be restricted including:
  - Maintain grass cover instead of hard surfaces (such as asphalt) as heat reflection from artificial surfaces has the potential to impact on the microclimate of the adjoining roosting and nesting habitat
  - Prohibit the use of high wattage floodlights (page 25)

  While the Planning Proposal does not include sports field works it proposes to use the existing open grass area in the south eastern corner of the site as a synthetic soccer field. The proposed location of the soccer field should be assessed in terms of potential impacts on the resident Powerful Owls including impacts from lighting and use of the synthetic turf.

  Additional ameliorative mechanisms recommended by the BA which are specific to the Powerful Owl (section 5.4, pages 24- 25) include:
  - the prohibition of free-ranging cats in the development with only indoor cats and/or those with enclosed runs to remove the predation by cats on prey species.
  - Dogs are to be under control at all times but especially near the bushland areas

  Council needs to clarify how these ameliorative mechanisms will be implemented at the site as the BA indicates locals currently use the bushland on the site for leash free exercise (page 24). It is recommended the bushland reserve is fenced to prevent dogs and cats from having access.
- The BGHF and STIF on site are listed as potential ecological communities that meet the principles and criteria for serious and irreversible impact (SAII) (see https://www.environment.nsw.gov.au/resources/bcact/guidance-decision-makers-determine-serious-irreversible-impact-170204.pdf). Development consent cannot be granted to proposals which impact on SAII entities.

- The BA proposes to dedicate the high conservation value areas as a Stewardship site, as an offset for the losses on site. It should be noted that if a Stewardship Site is created, at least some of the credits that are generated from the site should not be available for purchase, otherwise the credits will not be offsetting losses on site but losses elsewhere.
- The BA states that 0.47 ha of remnant vegetation on site can be managed for both hazard control and biodiversity protection. OEH considers that these two objectives are incompatible and as such, the remnant vegetation at these sites may not meet the definition of the remnant ecological community in the long term. Therefore, these areas should potentially be included in the areas lost to the proposal.
- The assessment of significance (section 5A of the EP&A Act) focuses on local populations, as it is recognised that conservation of the genetic diversity in local populations is important, as well as species diversity. The assessment of significance in the BA for the Powerful Owl argues that if the pair of owls on site abandon the territory or die as a result of the proposal, either existing neighbouring birds will expand their territories to take up the newly-vacant habitats or a new pair will move in and take over the newly-vacant territory. The assessment concludes that neither of these outcomes are likely to threaten the viability of the local population. However, OEH considers that if the pair of owls on site were to abandon the territory or die as a result of the proposal, this would equate to a loss of a local population, as it will lead to a loss of genetic diversity.
- OEH has reviewed Keystone Ecological's November 2018 report on the likelihood of Koalas being recorded on site and agrees with the assessment that there is a low likelihood this species is on site. OEH understands that the 2014 record of the koala on site was an error.

Site Masterplan

OEH recommends the Site Masterplan is amended to protect all of the remnant BGHF and STIF. The Masterplan should first avoid impacts to native vegetation on the site, particularly as:

- BGHF is listed as CEEC and there is now less than 5% of the original extent of the community remaining intact (see BA, section 7.2.1, page 33)
- STIF is listed as EEC and there is less than 10% of its original extent remaining (see BA section7.3.1, page 37).

OEH recommends the Masterplan avoids the clearing of remnant native vegetation and as many remnant native trees as possible. Where remnant native vegetation is to be cleared and removed it is recommended it is transplanted (especially juvenile trees, shrubs and groundcover) into the E2 zoned land and landscaped areas including the 8 m wide buffer zone along Coonara Avenue frontage (see page 18 of UDR). A site-specific development control should be included in the DCP for this.

OEH notes that the former business park development at the site had a population of 2500-3000 people at its peak occupation (UDR, page 2). The proposed rezoning will result in 600 new dwellings on the site which includes 200 medium density dwellings and 400 apartment dwellings but no details have been provided on the estimated maximum population associated with the development. Based on the number of proposed apartments and homes the population could be approximately 1320 people (see Planning Proposal). Details are required on the estimated maximum population associated with the development as residential development (as opposed to the business park) is likely to increase the number of people and companion animals using the remnant vegetation on the site and the adjoining Cumberland State Forest for open space/recreational purposes.

The rezoning will place additional pressure on the bushland reserve and the Cumberland State Forest and impact native flora and fauna. The planning proposal should assess the impact of increased numbers of people/companion animals potentially using the remnant vegetation on the site and the Cumberland State Forest.

The 'Masterplan Components' in the UDR shows the remnant native vegetation, the proposed soccer field and carpark as 'public open space' (see Masterplan components, page 15). It is recommended

the Masterplan is amended so that the remnant native vegetation is identified for conservation purposes rather than for public open space to be consistent with the proposed E2 zoning of the bushland.

The UDR states '*informal walking trails will be opened up for public recreation access*' within the bushland reserve (page 34 of UDR). The BA notes the Conservation Management Plan will formalise the use of pathways through the forest and based on the BA it appears there are already many existing tracks through the forest (see Photograph 11, page P8 of BA).

Details are required on the number of existing walking trails /pathways and their location within the bushland reserve. OEH recommends the existing pathways/walking trails are closed and revegetated and any new pathways/walking trails are located outside the bushland reserve to minimise impacts caused by people and companion animals disturbing the CEEC, EEC, native flora and fauna. This is consistent with the Central City District Plan which includes an Action 65(c) "managing urban development and urban bushland to reduce edge-effect impacts" (see Planning Priority C15 Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes, page 105 of the District Plan).

The UDR shows numerous pathways are proposed within the 'bushland edge' which is the interface between the protected bushland and the formal landscaped areas. OEH recommends:

- the number of pathways/walking trails within the 'bushland edge' is minimised
- a perimeter path is located between the remnant vegetation and the 'bushland edge' to reduce edge-effect impacts, such as the mown lawn / weeds escaping and invading into the remnant vegetation
- details are included in the Masterplan on the number of proposed walking trails /pathways and their location within the 'bushland edge'
- the location of the proposed walking trails /pathways in relation to the Powerful Owl nesting sites as the BA indicates that human disturbance immediately around the nesting site is not well tolerated (see page 43)
- the proposed widths of the walking trails /pathways
- the materials used to construct the walking trails (ie boardwalks, gravel, asphalt, concrete, grated etc)

The materials used to construct the walking trails should minimise interference with the connectivity of native vegetation.

<u>Active Recreation</u>

The UDR notes the existing grassed open space area on the south of the site will be retained for public recreation use along with the existing carpark which will be retained for public parking. The UDR indicates it is proposed to convert the existing grassed area to a synthetic soccer field (page 37). It is recommended Council considers potential issues associated with using synthetic grass instead of using natural non-invasive grass (preferably local native grass) including:

- natural grass provides a cooler surface than artificial turf surfaces which get much hotter and absorb radiant heat (sunlight) and potentially add to the urban heat island effect by radiating the heat back into the air
- natural grass surfaces (as opposed to synthetic grass) provide some habitat value for certain native fauna.

<u>Farm dams</u>

The RoGA notes two small existing farm dams are located in a natural drainage gully that run in a southerly direction near the eastern boundary (section 2, page 1). The Illustrative Masterplan in the UDR appears to indicate the dams are to remain. Council needs to clarify if the dams are to remain, or if they are proposed to be dewatered. If the dams are proposed to be dewatered as part of the proposed development an assessment should be undertaken to:

- assess the potential impact on native fauna (including any water dependent species) and provide adequate provisions to protect and manage native fauna and the downstream environment.
- Provide details on the farm dams to be dewatered; including size, volume, depth

- provide details on the watercourse effected by the works including stream order; whether the watercourse is ephemeral or perennial; the condition of the watercourse and riparian vegetation
- describe background conditions for any water resource likely to be affected by the development including hydrology, including volume, frequency and quality of discharges at proposed intake and discharge locations
- assess the existing environmental assets provided by the farm dams and watercourses
- assess the impacts of dewatering the dams on native fauna and flora species (including any water dependent species) and includes:
  - details on native fauna and flora species known to occur or potentially inhabit or use the dams; the area surrounding the dams; or the creeks and downstream environment
  - mitigation measures to mitigate impacts on native fauna including details on the location and adequacy of the proposed relocation sites for any impacted fauna
- assess the impacts of the development on water quality including:
  - the nature and degree of impact on receiving waters including:
    - assess impacts on water quality including the potential to release nutrient rich water; water with low oxygen levels; blue-green algae etc; aquatic weeds downstream
    - the potential to disturb bottom sediments; increase turbidity and release sediment; organic loads downstream etc
    - assess the potential impact on the instream habitat below the dams
  - identification of proposed monitoring of water quality and instream habitat
- assess the impact of the development on hydrology including:
  - effects to the downstream environment / stream channel dynamics and morphology
  - effects to downstream ecological functions / water-dependent fauna and flora
  - impacts to natural processes and functions within watercourses
  - mitigating effects of proposed stormwater and wastewater management during and after the proposed works on hydrological attributes such as volumes, flow rates, management methods and re-use options.
  - identification of proposed monitoring of hydrological attributes

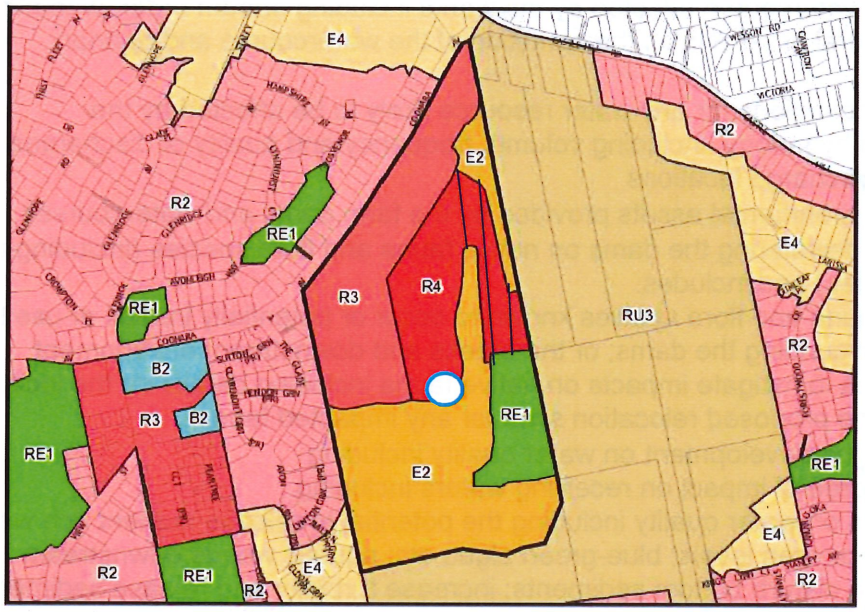
Environmental Protection Zone

The Planning Proposal proposes to rezone the majority of the remnant native vegetation on the site as E2 – Environmental Conservation. OEH supports the use of the E2 zone as it provides much greater protection than the current zoning but recommends additional areas of the site are zoned E2, particularly:

- remnant BGHF and STIF that is proposed to be cleared/ used for APZs.
- the area proposed to be used as 'community open space' / 'resident communal facilities'
- the area to the south of the Apartment Precinct (see pages 10 and 14 of UDR) which contains remnant native vegetation and is proposed to be zoned R4 zone and adjoins the E2 zone to the east and south (see proposed land use zoning map below).

The proposed land use zoning map isolates, fragments and narrows an area of E2 zoned land along the eastern boundary of the site from the remaining E2 zoned land by a proposed area of R4 zoning. It also narrows an area of E2 zone land to the south of the R4 zone (see map below).

The RoGA indicates an existing multi-storey car park is located midway along the eastern boundary of the site (section 2, page 1). The existing carpark appears to be located where the 'community open space' / 'resident communal facilities' is proposed which includes a swimming pool (see pages 14, 15, 26 and 33 of the UDR). The resident communal facilities will be surrounded by the E2 zoned land/bushland reserve. If the existing multi storey carpark is proposed to be demolished to construct the 'resident communal facilities', it is recommended the communal facilities are located elsewhere within the development footprint and the area is rehabilitated and revegetated and included in the E2 zoned land. This would widen the proposed E2 zoning along the eastern boundary and remove the fragmentation between the northern and southern E2 zoned land at the site.



Land Zoning (LZN)

B2	Local Centre	R3	Medium Density Residential
E2	Environmental Conservation	R4	High Density Residential
E4	Environmental Living	RE1	Public Recreation
R2	Low Density Residential	RU3	Forestry

Proposed Land Use Zoning Map

OEH recommends the remnant vegetation area that is marked on the land use zoning map is zoned E2 instead of R4

OEH recommends the area marked on the land use zoning map is zoned E2 instead of R4

The Ordinary Meeting of Council (25 September 2018) recommends the RE1 Public Recreation Zone be applied to the future public open space and notes a 'fall-back' zone of E2 be applied to the open space should the Voluntary Planning Agreement (VPA) not proceed (page 109). If the VPA does not proceed the open space area should be rehabilitated with the appropriate native vegetation community.

Development Control Plan

OEH recommends the following amendments are made to the draft DCP:

2.2 Streetscape and Character
Development Controls

(a) Future development should retain ~~mature~~ ***remnant native*** vegetation ***including mature vegetation*** where possible and provide landscaping within the housing lots and apartment development ***which consists of a diversity of local native species*** at a scale which compliments the built form

2.4 Vegetation
Objectives

(i) To preserve the existing significant ***remnant native*** vegetation on the site

Development Controls
Development Control (a) states that future development on the site should include a Vegetation Management area of approximately 18 ha over the significant vegetation located in the southern portion of the site. It is recommended the DCP includes a figure which clearly shows the location of the 'vegetation management area', particularly as it is not to form any part of the APZ on the site.

Development Control (c) states future development of the site should include the provision of a Vegetation Management Plan (VMP). OEH agrees that a VMP needs to be prepared and

implemented and recommends a figure is included in the DCP which shows the area covered by the VMP. Council should clarify if the VMP is also intended to also apply to the E2 zoned land.

Where revegetation is required instead of retention of existing vegetation or regeneration, OEH recommends a diversity of local native provenance plant species from the BGHF and STIF are used and this is included as a development control as the use of local genetic plant material has numerous environmental benefits.

It is also recommended advanced size local native trees are used in the street planting and the landscaped areas of the site. The tree species should be from the BGHF and STIF communities.

In terms of assisting to mitigate the urban heat island effect, improving biodiversity, habitat etc at the site it is recommended any trees that are to be removed from the site are replaced at a ratio greater than 1:1.

It is suggested section 2.4 of the DCP is amended to include the following additional development controls.

(e) Where revegetation is required on the development site (rather than retention of existing vegetation or regeneration), a diversity of native trees, shrubs and groundcover species from the BGHF and STIF (rather than non-local native species and exotic plant species) shall be used in the street planting, development lots and site landscaping.

(f) The street planting shall use advanced and established local native trees preferably with a minimum plant container pot size of 200 litres.

(g) A Vegetation Management Plan shall be submitted for future development on the site. The plan should:

- *identify any existing remnant native vegetation including trees or shrubs to be removed, retained or transplanted;*
- *specify that and planting within the development area will use a diversity of local provenance species (trees, shrubs and groundcovers) from the BGHF and STIF that occurs on the site, to improve biodiversity and include details on the location and number of trees and other plants that are proposed to be planted and a list of local provenance species (trees, shrubs and groundcovers) to be used for landscaping*
- *specify that plants are to be propagated from locally sourced seeds to ensure genetic integrity.*

(h) Any native trees required to be cleared from the site shall be salvaged (for example tree hollows and tree trunks greater than approximately 25-30cm in diameter and 3 m in length) and placed in the E2 zoned land to enhance habitat.

(i) Remnant native vegetation that is required be removed from the site, especially native juvenile plants and groundcover species shall be translocated to the E2 zoned land and/or used in the landscaped areas of the site.

(j) Topsoil from areas of remnant native vegetation that are to be cleared shall be collected and used in the landscaped areas and any rehabilitation required in the E2 zoned land.

(k) Seed from any remnant native plants to be removed shall be collected and used in the landscaped areas and any rehabilitation required in the E2 zoned land.

2.5 Coonara Avenue frontage

Development Controls

(a) A vegetated buffer zone of a minimum 8 metres width shall be provided along the Coonara Avenue frontage generally in accordance with Figure 5 consisting of remnant and planted local native species

Fauna friendly fencing

As the site adjoins remnant native vegetation it is recommended future development of the site incorporates fauna friendly fencing to assist native fauna movement and the DCP includes a development control to use fauna friendly fencing:

- Fauna friendly fencing shall be used on the site to assist native fauna movement. The fauna friendly fencing may include:
  - local native plants to form a living fence which would also enhance habitat;
  - garden edging or bollards / wooden posts to define the property boundary;
  - the provision of a gap between the ground and the bottom of any fence to allow fauna to pass underneath;
  - the construction of the fencing around existing native trees rather than remove existing trees;
  - the provision of a wider top rail on the fence to provide a fauna walkway;
  - fauna proof exclusion fencing to separate wildlife from domestic dogs, swimming pools etc.

Watercourse Crossings

The Planning Proposal indicates two watercourses traverse the site which are tributaries of Darling Mills Creek. It is unclear if watercourse crossings already exist, or if any additional new crossings are proposed, or if the existing crossings require an upgrade as part of the proposed development to access the communal open space and the soccer field.

As the riparian corridor is located in E2 zoned land, if new crossings are required, or the existing crossings require an upgrade it is recommended they consist of a bridge structure. The design should allow sufficient natural light and moisture to penetrate beneath the structure to allow for plant growth along the banks of the creek. This would assist maintain connectivity along the creek and minimise the extent of disturbance /impact within the watercourse and riparian corridor.

OEH recommends development controls are included in the DCP for the watercourse crossings:

- The watercourse crossings should preferably be a bridge structure and the bridge design should:
  - span the full width of the riparian corridor.
  - allow sufficient natural light and moisture to penetrate beneath the structure to allow for plant growth along the banks of the creeks.

- If a culvert crossing is required, the culvert design should maintain connectivity including:
  - elevated "dry" cells to encourage terrestrial movement and recessed "wet" cells to facilitate the movement of aquatic fauna.
  - maximise light penetration into the culvert by the use of skylights or grates in the culvert structure.
  - a naturalised base along the bed of the wet cells.
  - 'fauna furniture' (such as rocks, logs, ropes and ledges) to facilitate fauna movement.

Building design

OEH recommends future development of the site incorporates Green Roofs and Cool Roofs into the design of the buildings where possible and the DCP includes controls to address this. The numerous benefits of Green Roofs and Cool Roofs are outlined in the OEH (2015) Urban Green Cover in NSW Technical Guidelines which can be found at the following link:
http://climatechange.environment.nsw.gov.au//Adapting-to-climate-change/Green-Cover

In addition to regulating the temperature of roofs and building interiors, reducing the energy needed for cooling and the impact of the UHI effect, the provision of Intensive Green roofs would provide additional recreational areas at the site and thereby assist to reduce the use of, and potential impacts on the remnant native vegetation and the adjoining Cumberland State Forest.

Flood

Council's planning proposal report identifies the site as flood prone land and indicates that consistency with s9.1 Direction 4.3 would be achieved through relevant flood related development

controls. The report states *'The proposal does not change the existing flood related development controls. Any future development on the site will be subject to the relevant development controls in The Hills Local Environmental Plan 2012 and The Hills DCP 2012. The Hills DCP in particular gives effect to the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005'.*

However, consistency with the s9.1 Direction 4.3 is not limited to the application of flood development controls for area below the flood planning level, rather it requires the planning proposal to be commensurate with flood hazard. Therefore, it is prudent to undertake a flood assessment that provides a sound understanding of flood behaviour for the proposed developed scenario for the full range of floods, so that flood risk to the community can be understood. This facilitates informed decision-making on the management of this risk and in investing in development of the floodplain.

(END OF SUBMISSION)