

27 September 2023

The Secretary
Department of Planning and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Attention: Jane Grose

Subject: Request for Rezoning Review – Planning Proposal not determined by The Hills Shire Council after 90 days
Address: Cumberland State Forest located at part Lots 6-7 DP 11133, 87-97 Castle Hill Road and part Lots 15-17 DP 11133, 121-131 Oratava Avenue, West Pennant Hills

We request a rezoning review on behalf Forestry Corporation of NSW in relation to a planning proposal request submitted to The Hills Shire Council on 10 May 2019. The proposal relates to part Lots 6-7 DP 11133, 87-97 Castle Hill Road and part Lots 15-17 DP 11133, 121-131 Oratava Avenue, West Pennant Hills (the Land) that is located on the periphery of the Cumberland State Forest. The Land currently contains caretaker dwellings associated with the forestry function.

On 10 May 2019, a planning proposal request was lodged with The Hills Shire Council seeking the following amendments to *The Hills Local Environmental Plan 2019* (The Hills LEP 2019), consistent with the controls that apply to the surrounding residential lots:

- rezone the Land from RU3 Forestry to R2 Low Density Residential
- apply a maximum height of buildings control of 9 m
- reduce the minimum subdivision lot size control from 40 ha to 700 sqm.

Council considered the planning proposal request at its Ordinary Meeting on 13 April 2021. At that meeting, Council resolved the following:

1. *The planning proposal be held in abeyance until the NSW Government concludes its consideration of the proposal to transfer the Cumberland State Forest to a reserve category under the National Parks and Wildlife Act 1974.*
2. *Council write to Mirvac and the Department of Planning, Industry and Environment seeking information on the timing of the intended dedication and transfer of forested areas at 55 Coonara Avenue, West Pennant Hills, to Forestry NSW via a State Voluntary Planning Agreement.*

Council notified us of its decision on 20 April 2021. The resolution requires a decision of the NSW Government in order for Council to be satisfied that the planning proposal can proceed to Gateway determination. We cannot resolve this matter.

Regardless, the Land is surplus to the Forestry Corporation, irrespective of its classification. Accordingly, we request a rezoning review of our proposal.

This request for rezoning review is made on the grounds that Council has failed to indicate its support for the planning proposal request within 90 (and 115) days of lodgement. Our request is consistent with the LEP Making Guideline that states that a rezoning review can be requested where the council has:

Failed to indicate its support for the planning proposal within 90 or 115 calendar days (depending on the planning proposal category) of the proponent lodging the planning proposal.

I have attached to the letter:

- an overview of the Land
- description of the planning proposal request
- justification of strategic and site specific merit
- context.



As required by the LEP Making Guideline, I have also attached:

- a completed rezoning review application form
- copy of the planning proposal request lodged with Council, with all supporting information
- a copy of the Council report and resolution of 13 April 2021
- letter from Council advising of its resolution.

We request that the Department consider this rezoning review and make a recommendation to the Sydney Central City Planning Panel for determination.

If you would like to discuss this matter further, please do not hesitate to contact me on 0414 194 473 or cshannon@mecone.com.au.

Yours sincerely,

Chris Shannon

1. CONTEXT

Lodgement

On 10 May 2019, the planning proposal request was lodged with The Hills Shire Council.

The Hills Local Planning Panel advice

On 17 February 2021, the planning proposal request was considered by The Hills Local Planning Panel. The Panel provided the following unanimous advice on 18 February 2021:

1. *The planning proposal for land at 87-98 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills is suitable to proceed to Gateway Determination, amended to apply a minimum lot size standard of 1,140 sqm to the Northern site and 1,700 sqm to the Southern site.*
2. *Should a Gateway Determination be issued, the Proponent should be required to submit the following information prior to public exhibition and public agency consultation:*
 - a. *An updated Biodiversity Development Assessment Report addressing the issues identified in this report;*
 - b. *An Arborist Report which assess all tree potentially impacted by the proposed development;*
 - c. *A Vegetation Management Plan addressing vegetation impacts identified in this report, mitigation measures and recommendations identified in the Proponent's Biodiversity Development Assessment Report and Arborist Report;*
 - d. *a landscape plan that outlines an appropriate integration with bushfire protection and mitigation measures identified in the Proponent's Bushfire Protection Assessment Report; and*
 - e. *Clarification on the subdivision plan's inconsistency with The Hills DCP 2012 minimum frontage requirements.*

Council resolution

On 13 April 2021, Council Officers reported the planning proposal request to Council's Ordinary Meeting with the following recommendation:

1. *The planning proposal for land at 87-98 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills is suitable to proceed to Gateway Determination, amended to apply a minimum lot size standard of 1,140 sqm to the Northern site and 1,700 sqm to the Southern site.*
2. *Should a Gateway Determination be issued, the Proponent should be required to submit the following information prior to public exhibition and public agency consultation:*
 - a. *An updated Biodiversity Development Assessment Report addressing the issues identified in this report;*
 - b. *An Arborist Report which assess all tree potentially impacted by the proposed development;*
 - c. *A Vegetation Management Plan addressing vegetation impacts identified in this report, mitigation measures and recommendations identified in the Proponent's Biodiversity Development Assessment Report and Arborist Report;*
 - d. *a landscape plan that outlines an appropriate integration with bushfire protection and mitigation measures identified in the Proponent's Bushfire Protection Assessment Report; and*
 - e. *Clarification on the subdivision plan's inconsistency with The Hills DCP 2012 minimum frontage requirements.*

We have discussed these recommendations with Council Officers and are satisfied with the changes and can provide the additional information as requested.



However, Council resolved the following:

1. *The planning proposal be held in abeyance until the NSW Government concludes its consideration of the proposal to transfer the Cumberland State Forest to a reserve category under the National Parks and Wildlife Act 1974.*
2. *Council write to Mirvac and the Department of Planning, Industry and Environment seeking information on the timing of the intended dedication and transfer of forested areas at 55 Coonara Avenue, West Pennant Hills, to Forestry NSW via a State Voluntary Planning Agreement.*

This resolution is more than 90 (and 115) days since lodgement.

On 20 April 2021, Council notified us of its decision.

Advice from the former Minister for Energy and Environment

We understand that a request has been made to the NSW Government to transfer the Cumberland State Forest to a reserve category under the *National Parks and Wildlife Act 1974* (NPW Act), however we are not aware of any commitment to a timeframe for a decision.

Attachment 3 of the Council report includes a letter to Council from the former Minister for Energy and Environment, the Hon Matt Kean MP, dated 15 March 2021, advising that he has:

written to the Minister responsible for forestry to seek his views on your [Council's] proposal to add Cumberland State Forest to the national parks system. Any transfer from state forest to a reserve category under the NPW Act would also require an Act of Parliament.

[Emphasis added]

2. LOCATION

The Land is located on the northern and southern edges of the Cumberland State Forest, adjacent to residential properties, in the suburb of West Pennant Hills. The two distinct parcels are shown in Figures 1-3 and described below.

TABLE 1 – LEGAL DESCRIPTION

ITEM	NORTHERN SITE: CASTLE HILL ROAD	SOUTHERN SITE: ORTAVA AVENUE
Address	87-98 Castle Hill Road, West Pennant Hills	121-131 Oratava Avenue, West Pennant Hills
Legal description	Part of Lot 6 DP 11133 Part of Lot 7 DP 11133	Part of Lot 15 DP 11133 Part of Lot 16 DP 11133 Part of Lot 17 DP 11133

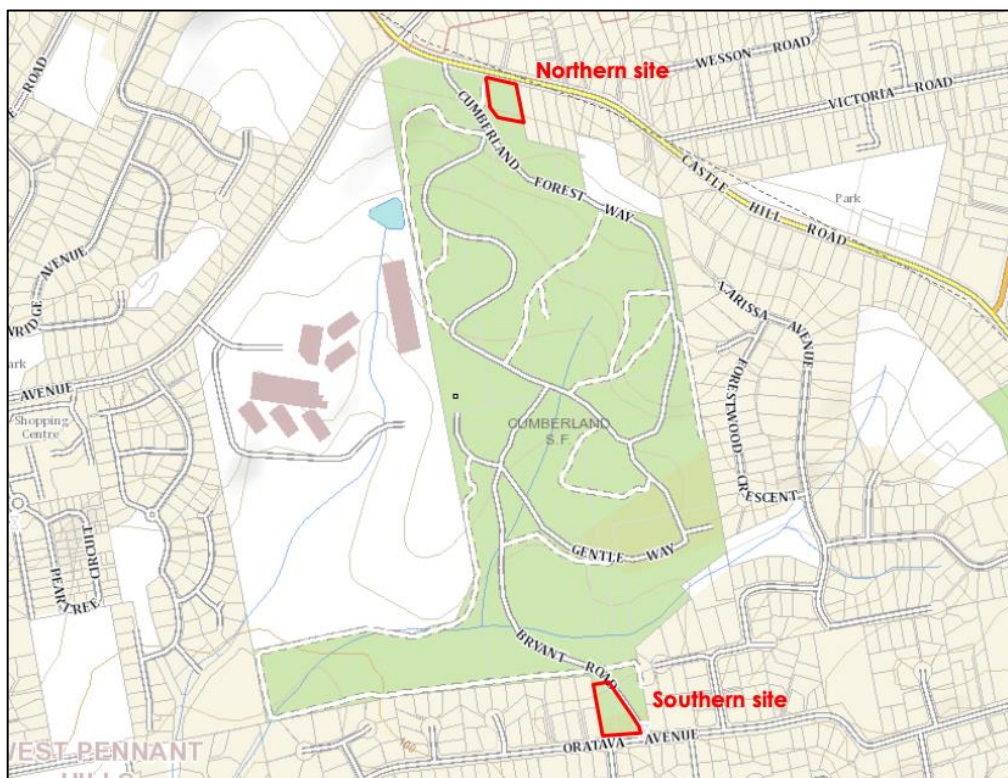


FIGURE 1 – SITE LOCATION

Source: Mecone Mosaic



FIGURE 2 – NORTHERN SITE AERIAL IMAGE

Source: Mecone Mosaic



FIGURE 3 – SOUTHERN SITE AERIAL IMAGE

Source: Mecone Mosaic

3. THE PROPOSAL

The planning proposal request submitted to Council sought to amend The Hills LEP 2019 as follows, consistent with the controls that apply to adjoining residential lots:

- rezone the Land from RU3 Forestry to R2 Low Density Residential
- apply a maximum height standard of 9 m
- amend the minimum lot size from 40 ha to 700 sqm.

These amendments would be achieved via map amendments to The Hills LEP 2019

It is noted that in the 13 April 2021 Council Report, Council Officers recommended a larger minimum lot size than what was proposed. We are satisfied with the Council's Officers recommendations of:

- 1,140 sqm for the Northern site
- 1,700 sqm for the Southern site.

Notwithstanding, Council resolved to hold the planning proposal in abeyance waiting for a NSW Government decision on its request to transfer the Cumberland State Forest to a reserve category under the *National Parks and Wildlife Act 1974*.



4. JUSTIFICATION

Need for the planning proposal

The proposal is the result of the Forestry Corporation of NSW identifying an opportunity to improve management of its assets and allocation of its resources and to meet the housing needs of the local community. Divesting the Land will enable the Forestry Corporation to direct its resources in a more productive manner towards more other critical areas of the Cumberland State Forest.

A planning proposal to amend the zoning and reduce lot size is necessary to achieve the intended outcome as it would enable the permissibility of dwelling houses and subdivision of the land from the larger parcels and into large dwelling lots. This can only be achieved by amending The Hills LEP 2019.

The proposed introduction of the corresponding maximum building height provides a level of certainty to the community and neighbours that the scale of future dwellings will be compatible with adjoining residential dwellings.

Strategic merit

The planning proposal request demonstrates its consistency with the objectives and priorities in:

- the Greater Sydney Region Plan 2018
- the Central City District Plan 2018
- The Hills Shire Local Strategic Planning Statement 2019
- draft Local Housing Strategy 2019
- relevant state environmental planning policies
- relevant Ministerial Directions.

The proposal will promote a healthy community by facilitating additional housing in a walkable residential neighbourhood in close proximity to recreational opportunities in the Cumberland State Forest and in the vicinity of the Cherrybrook Metro Station, which will provide a 30-minute service to Sydney CBD in the future.

Site-specific merit

The planning proposal request also demonstrates that it will not result in any unacceptable environmental impacts relating to biodiversity, bushfire protection, future subdivision, traffic and access and heritage. We note and accept the recommendations from the Local Planning Panel and Council Officers for further information to be provided following Gateway determination. We can provided the information as recommended.

Overall, it is considered that the biodiversity impacts and bushfire risk associated with the proposal are manageable, subject to further assessment and the implementation of appropriate mitigation measures at any future dwelling design and approval stage.

The concept subdivision plans provided with the planning proposal request indicates a yield of two residential lots on each of the two parcels, with lots ranging from 1,145m² to 2,177m² in size, taking account of bushfire Asset Protection Zones. Based on the concept, it is considered that acceptable vehicle access arrangements are achievable at both the northern and southern sites.

Archaeological areas of significance within the Cumberland State Forest are not located within or immediately adjacent to the parcels proposed for rezoning and it is considered that the proposal will not result in any significant heritage impacts.

The Land is currently serviced by all essential services and infrastructure. Certain infrastructure may be required to be upgraded to service future development and would be determined at the future development application stage in consultation with the relevant utility authorities.