



ORDINARY MEETING OF COUNCIL

Tuesday, 13th April 2021

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	<ul style="list-style-type: none">- Ordinary meeting of Council – 23 March 2021- Extraordinary Meeting of Council – 1 April 2021	
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ITEM-2	PLANNING PROPOSAL - CUMBERLAND STATE FOREST (13/2019/PLP)
THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	13 APRIL 2021 COUNCIL MEETING
GROUP:	SHIRE STRATEGY, TRANSFORMATION AND SOLUTIONS
AUTHOR:	TOWN PLANNER GIDEON TAM
RESPONSIBLE OFFICER:	MANAGER FORWARD PLANNING NICHOLAS CARLTON

REPORT

The report relates to the planning proposal applicable to land at Cumberland State Forest, specifically part 87-97 Castle Hill Road and part 121-131 Oratava Avenue, West Pennant Hills. The application is being reported to Council for a decision on whether or not the planning proposal should be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination.



Figure 1
Planning Proposal Status and Timeline

RECOMMENDATION

1. The planning proposal for land at 87-98 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination, amended in accordance with this Report to apply a minimum lot size standard of 1,140m² to the Northern site and 1,700m² to the Southern site.

2. Should a Gateway Determination be issued, the Proponent 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 assesses all trees 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) Justification for the subdivision plan's inconsistency with The Hills DCP 2012 minimum frontage requirements.

PROPONENT Mecone on behalf of Forestry Corporation of NSW

OWNERS Forestry Corporation of NSW

POLITICAL DONATIONS Nil disclosures by the Proponent

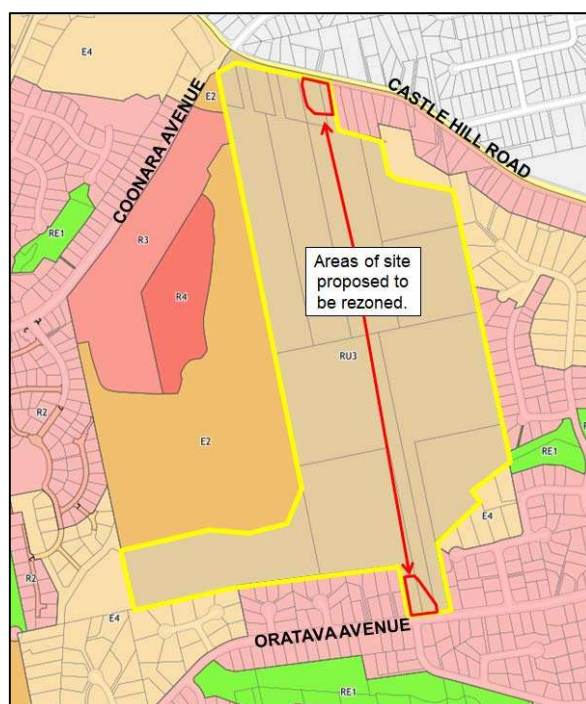
THE SITE

The site is known as the Cumberland State Forest (the Forest), though the proposal relates only to two smaller portions of the site at 87-97 Castle Hill Road (Northern site) and 121-131 Oratava Avenue, West Pennant Hills (Southern site) as identified in Figure 2. The Forest is owned by the State of NSW and is under the control of the Forestry Corporation of NSW (Forestry NSW). It comprises significant tracts of vegetation and also operates as a research facility and office for the Forestry Corporation of NSW.

The Forest also contains a nursery, café and the 'Tree Tops' adventure park. It is located adjacent to the former IBM business park, which was subject to a separate planning proposal that was finalised on 18 June 2020 (1/2018/PLP). Cherrybrook Metro Station (located on Castle Hill Road) is situated approximately 640m walking distance from the Northern site.

Council has also received correspondence from the Minister for Energy and Environment, Matt Kean MP, dated 15 March 2021, advising that he has referred the issue of making the State Forest into a National Park to the responsible Minister as well as asking the National Parks and Wildlife Service (NPWS) to carry out a detailed assessment of the area. A copy of the letter is attached.

These issues will be fully considered as part of the Gateway process should Council resolve to proceed.

**Figure 2**

Cumberland State Forest (outlined yellow) and areas proposed to be rezoned (outlined red)

The sites have a combined area of approximately 6,699m² (the Northern site has an area of 3,322m² and the Southern site has an area of 3,377m²). The sites subject to rezoning are at the periphery of the Forest, are not publicly accessible and currently contain vacant and dilapidated caretaker dwellings (see Figures 3 and 4). The sites also contain Blue Gum High Forest and Sydney Turpentine-Ironbark Forest, both of which are identified as Critically Endangered Ecological Communities (CEEC) under the Biodiversity Conservation Act 2016 and are of high conservation significance.

**Figure 3**

Northern site of the Cumberland State Forest (outlined yellow)
proposed to be rezoned (outlined red) and existing vacant dwelling



Figure 4

Southern site of the Cumberland State Forest (outlined yellow)
proposed to be rezoned (outlined red) and existing vacant dwelling

DESCRIPTION OF THE PLANNING PROPOSAL

The planning proposal seeks to facilitate the creation of four residential lots, with subdivision of the Northern site into two lots fronting Castle Hill Road and the Southern site into two lots fronting Oratava Avenue. Indicative subdivision plans are provided in Figures 5 and 6.

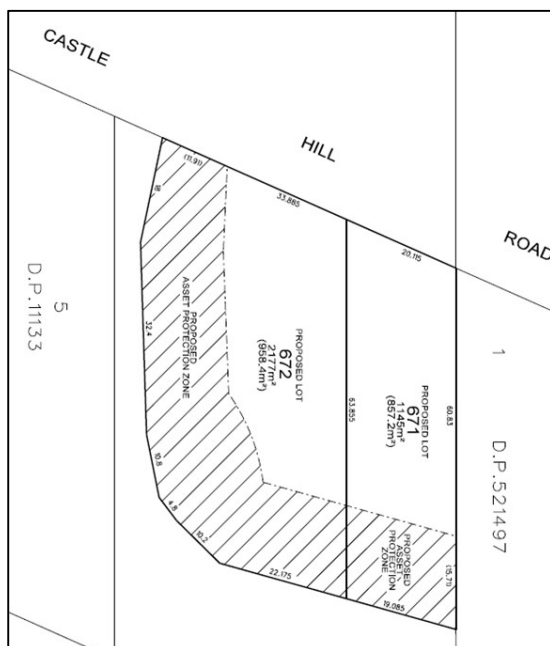


Figure 5

Northern site indicative subdivision layout

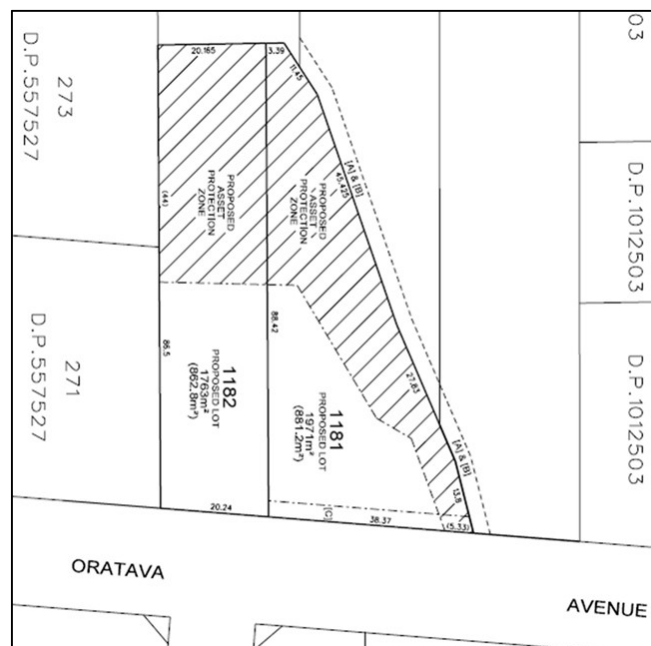


Figure 6

Southern site indicative subdivision layout

The Proponent has initiated the planning proposal on the basis that the two existing vacant caretaker dwellings are in disrepair and the management of these dwellings has become financially burdensome alongside other duties such as regeneration works and general management of the Forest. The planning proposal would enable the sale of this land to redirect funds and resources towards managing more critical areas of the Forest with better condition vegetation.

To enable this development outcome, the application seeks to amend LEP 2019 as shown in Table 1 below.

	Current (LEP 2019)	Planning Proposal (as submitted by Proponent)	Council Officer Recommendation
Zone	RU3 Forestry	Part RU3 Forestry Part R2 Low Density Residential	Part RU3 Forestry Part R2 Low Density Residential
Maximum Height of Building	N/A	Part 9m	Part 9m
Minimum Lot Size	40ha	Part 40ha Part 700m ² (Northern and Southern sites)	Part 40ha Part 1,140m ² (Northern site) Part 1,700m ² (Southern site)
Maximum Floor Space Ratio	N/A	None Proposed	None Proposed

Table 1
Proposed LEP Amendments

It is noted that the proposal, as submitted by the Proponent, seeks to apply a minimum lot size of 700m², in order to reflect the existing minimum lot size control applying to surrounding residential properties. However, having regard to the desired development outcome and objective of the planning proposal, this report recommends the application of larger minimum lot size controls of 1,140m² (for the Northern site) and 1,700m² (for the Southern site) respectively, to better reflect the proposal's intended outcome and provide greater certainty of the outcome of any future subdivision application. This potential alternate approach has been discussed with the Proponent, who has not raised any objection to the increased minimum lot sizes, if supported by Council. The recommended amendments to the minimum lot size control are shown in Figure 7.

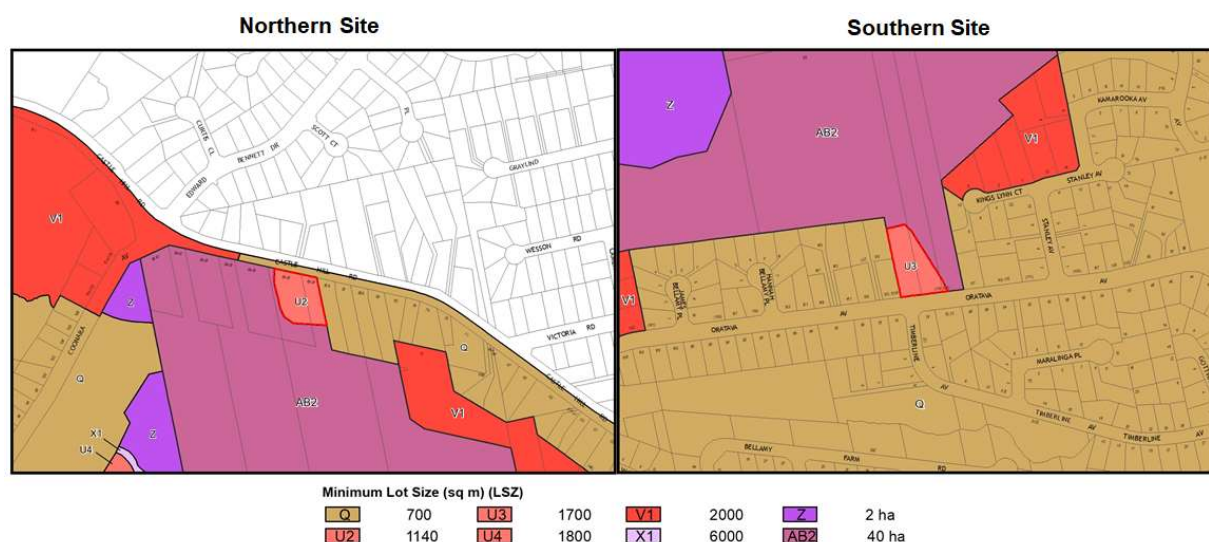


Figure 7
Recommended Minimum Lot Size Control for the Northern Site (1,140m²) and Southern Site (1,700m²)

MATTERS FOR CONSIDERATION

A detailed description and technical assessment of the planning proposal application is contained within the Council Officer's Assessment Report to the Local Planning Panel, provided as Attachment 1.

A summary of the key considerations is provided in the following table:

Key Consideration	Comment
Strategic Context	<p>The planning proposal is generally consistent with the applicable strategic planning framework. It will facilitate the delivery of two additional residential dwellings in a well-serviced location in a form which is consistent with the existing low density residential character of the surrounding locality. Both the Northern and Southern sites will be adequately serviced by existing public infrastructure.</p> <p>There are some inconsistencies with the strategic planning framework with respect to protection of biodiversity however these are considered to be adequately justified. Further discussion on biodiversity impacts is provided below.</p>
Bushfire Risk	<p>Existing vegetation within and surrounding the Northern and Southern sites serve as fuel load and pose bushfire risk to future development on both sites. The Planning Proposal's accompanying Bushfire Protection Assessment Report (BPAR) considers bushfire risk to be low, given existing access roads and surrounding managed land serve as fire breaks.</p> <p>To minimise potential bushfire risk, concept subdivision plans include generous Asset Protection Zones (APZs) at the rear of both sites and adjacent to the source of bushfire risk. It is considered that bushfire risks for both sites are moderate and acceptable subject to the implementation of recommended bushfire protection and mitigation measures identified in the BPAR.</p> <p>Should the planning proposal receive Gateway Determination, formal consultation with the Rural Fire Service would be required and a Vegetation Management Plan and landscape plan would need to be submitted to clearly communicate the implementation of the identified APZs.</p>
Ecological Impacts	<p>The proposed development outcome would require the removal of 0.55 hectares of vegetation (including 0.45 hectares of Critically Endangered Ecological Communities), small loss of seasonal foraging habitat and loss of four small and one medium sized hollowed trees.</p> <p>Given that both sites are identified on the Biodiversity Values Map, the Biodiversity Offset Scheme would be triggered under the Biodiversity Conservation Act 2016. The requirement to prepare a Biodiversity Development Assessment Report (BDAR) is warranted, and a BDAR has been prepared and submitted by the Proponent in support of the application.</p> <p>The BDAR concludes that despite the removal of vegetation, impacts on native vegetation will be minor and acceptable, subject to the recommendations identified in the BDAR.</p> <p>Pre-gateway consultation was undertaken with Environment, Energy and Science (EES) and comments received on 26 September 2019</p>

	<p>raised a number of concerns, including:</p> <ul style="list-style-type: none"> ▪ The proposed minimum lot size of 700m² has potential for a greater number of lots to be created than the proposed two lots per site; ▪ Removal of vegetation for the identified building sites, infrastructure and APZs; and ▪ Potential threat to two hollow-bearing trees located 75 metres from the northern site, which are potential breeding habitats for the Powerful Owl. <p>Detailed discussion on these issues is provided in the Council Officer's Assessment Report to the Local Planning Panel, provided as Attachment 1. It is considered that some of these concerns have been partially addressed (namely the recommendation to increase the minimum lot size) and the remaining matters can be resolved following a Gateway Determination.</p> <p>In particular, should a Gateway Determination be issued, further consultation with EES would be required, as well as the preparation of an Arborist Report, Vegetation Management Plan (VMP), landscape plan and updated BDAR. Any future Development Application will also need to be accompanied by a BDAR that addresses the VMP.</p>
Subdivision, Vehicle Access and Infrastructure	<p>The Proponent's planning proposal report articulates that the intent of the proposed development outcome is to remain consistent with the local character and prevailing minimum lot size for surrounding residential properties, being 700m².</p> <p>Under Council's Development Control Plan (DCP), the minimum frontage for a subdivision on a classified road (Castle Hill Road) is 27 metres and 18 metres on local roads (Oratava Avenue).</p> <p>For the Northern site, the proposed lot sizes and resulting frontages are impacted by the required APZ, the existing telecommunications tower and adjoining access way. In consideration of these environmental constraints, both lots facilitate a developable area of 857m² and 958m² respectively, which is not dissimilar to the size of adjoining residential properties that accommodate developable areas ranging from 930m² to 1,000m².</p> <p>Whilst it is reasonably justified that the Northern site would be effectively limited to a two (2) lot subdivision based on the environmental constraints and associated design requirements, it is recommended that a minimum lot size of 1,140m² be applied to provide greater certainty with respect to potential development yield under a future subdivision application.</p> <p>Due to the proposed location of the APZ and other environmental constraints, the proposed subdivision plan for the Northern site does not comply with the minimum frontage width specified in Council's DCP of 27 metres (the 2 proposed lots have frontages of 45 metres and 20 metres respectively). While there appears to be adequate justification for variation, in this instance, should Council support the</p>

	<p>planning proposal, the Proponent should submit further information demonstrating that the subdivision plan can achieve the objectives of the clause within the DCP.</p> <p>The Proponent's traffic consultant has indicated that the existing access points along Castle Hill Road are appropriate for the Northern site, given that future traffic generation would be minimal and visibility along Castle Hill Road is acceptable at this location.</p> <p>Access to the Southern site could be facilitated via direct access from Oratava Avenue, or via Bryant Road (being the southern entry point to the Cumberland State Forrest, adjoining the southern site) and a right of carriageway. Any proposed access would need to comply with Council's DCP.</p> <p>With respect to the Southern site, the minimum lot size requested by the Proponent in combination with the minimum frontage controls in Council's DCP could, in isolation, potentially allow for an achievable yield of three lots. However, due to the existing environmental constraints it is considered unlikely that the three lots could be achieved on this site. Notwithstanding this, it is recommended that a minimum lot size of 1,700m² should be applied to the Southern site to provide greater certainty that the subdivision will be limited to a maximum of two lots.</p> <p>The proposed development outcome would result in two additional dwellings within an existing low density residential environment that is adequately serviced by existing public infrastructure. Given there is an existing dwelling on each site, this extent of growth is within the realm of yield and density fluctuation that would be expected within the surrounding locality having regard to the potential development opportunities available on surrounding land (in particular, secondary dwellings and/or dual occupancies). It is therefore considered reasonable for the development to be levied under the existing Section 7.12 Contribution Plan which applies to the land.</p>
Protection of Cumberland State Forest	<p>While the proposal would result in small areas being excised from the Forest and small loss of vegetation, these areas are not publicly accessible and currently contain vacant and dilapidated caretaker dwellings. The planning proposal would allow NSW Forestry Corporation to divest the surplus sites and reduce the associated cost burden. The funds from the sale of these sites could be redirected towards the protection and management of other areas of the Cumberland State Forest, which are publicly accessible and contain more critical and high quality vegetation.</p> <p>This includes an additional 10ha of land to be dedicated by Mirvac to Forestry NSW from the adjoining site at 55 Coonara Avenue and incorporated in the Cumberland State Forest, via a State Voluntary Planning Agreement. It is understood that negotiations are ongoing between the Department of Planning Industry and Environment, Forestry NSW and Mirvac.</p>

	In addition to the protections offered under the Biodiversity Conservation Act 2016 and Environmental Protection and Biodiversity Conservation Act 1999, Cumberland State Forest is further protected by the Forestry Act 2012. Provisions under Section 7 of Schedule 2 of the Forestry Act require Ministerial approval to revoke the dedication of an area of State Forest which does not exceed 20 hectares and contains a relevant building (in this instance, the two vacant caretaker dwellings). Should a Gateway Determination be issued, NSW Forestry Corporation would ultimately need to undertake this process in order to facilitate the divestment of the northern and southern sites.
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Table 2

Key Matters for Consideration

LOCAL PLANNING PANEL ADVICE

On 17 February 2021 the planning proposal was presented to the Local Planning Panel (LPP) for advice. A copy of the Council Officer's report is provided as Attachment 1.

The Panel generally agreed with the Council Officer's recommendation that the planning proposal should proceed to Gateway Determination. However, some concerns were raised regarding Asset Protection Zones with respect to their enforcement and management and the ecological impacts associated with the proposed development. Further, the Panel acknowledged the uncertainty of delivering the indicative subdivision layout and the potential resulting inconsistency with the local character. The Panel's advice is provided as Attachment 2 to this Report.

The advice of the Local Planning Panel is reflected in the discussion and recommendations of this report. The Panel's advice reinforces the need for an updated Biodiversity Development Assessment Report, preparation of an Arborist Report, Vegetation Management Plan and accompanying Landscape Plan, and justification with respect to inconsistency with The Hills DCP 2012 minimum frontage requirements.

IMPACTS**Financial**

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Strategic Plan - Hills Future

The planning proposal will facilitate the delivery of two additional residential dwellings, consistent with the existing low density residential environment and local character. It will be supported by existing public transport infrastructure and serviced by nearby open space.

RECOMMENDATION

1. The planning proposal for land at 87-98 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination, amended in accordance with this Report to apply a minimum lot size standard of 1,140m² to the Northern site and 1,700m² to the Southern site.
2. Should a Gateway Determination be issued, the Proponent 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 assesses all trees 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) Justification for the subdivision plan's inconsistency with The Hills DCP 2012 minimum frontage requirements.

ATTACHMENTS

- 1. Council Officer Assessment Report – Local Planning Panel, 17 February 2021 (19 pages)
- 2. Local Planning Panel Minutes, 18 February 2021 (2 pages)
- 3. Letter from the Minister for Energy and Environment, Matt Kean MP, dated 15 March 2021 (2 pages)

LOCAL PLANNING PANEL MEETING 17 FEBRUARY, 2021

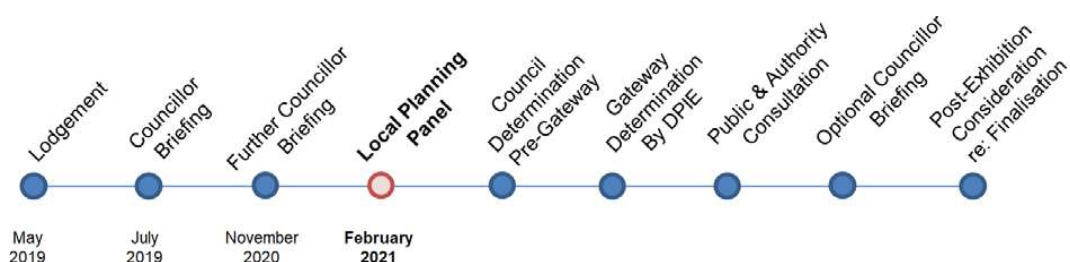
THE HILLS SHIRE

ITEM-1	PLANNING PROPOSAL - CUMBERLAND STATE FOREST (13/2019/PLP) - LOCAL PLANNING PANEL
THEME:	Shaping Growth
OUTCOME:	5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity.
STRATEGY:	5.1 The Shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.
MEETING DATE:	17 FEBRUARY 2021 LOCAL PLANNING PANEL
AUTHOR:	TOWN PLANNER GIDEON TAM
RESPONSIBLE OFFICER:	MANAGER FORWARD PLANNING NICHOLAS CARLTON

Proponent	MECONE ON BEHALF OF FORESTRY CORPORATION OF NSW
Owner	FORESTRY CORPORATION OF NSW
Planning Consultant	MECONE
Traffic Consultant	INROADS GROUP
Environment Consultant	TRAVERS BUSHFIRE AND ECOLOGY
Bushfire Consultant	TRAVERS BUSHFIRE AND ECOLOGY
Land Surveyor	RYGATE SURVEYORS
Site Area	6,699m²
List of Relevant Strategic Planning Documents	GREATER SYDNEY REGION PLAN CENTRAL CITY DISTRICT PLAN SECTION 9.1 MINISTERIAL DIRECTIONS THE HILLS LOCAL STRATEGIC PLANNING STATEMENT
Political Donation	NONE DISCLOSED
Recommendation	THAT THE PLANNING PROPOSAL PROCEED TO GATEWAY DETERMINATION

LOCAL PLANNING PANEL MEETING 17 FEBRUARY, 2021

THE HILLS SHIRE

**EXECUTIVE SUMMARY**

This report provides a summary and assessment of the planning proposal applicable to land at the Cumberland State Forest, specifically part 87-98 Castle Hill Road and part 121-131 Oratava Avenue, West Pennant Hills. The report recommends that the proposal proceed to Gateway Determination, on the basis that:

- The planning proposal will make more efficient use of land within the Cumberland State Forest landholding which is currently occupied by two dilapidated residential dwellings and is inaccessible to the public. Future development facilitated by the proposal will enable Forestry NSW to direct its resources in a more productive manner towards the critical areas of the forest;
- The proposed development outcomes will have manageable ecological impacts subject to mitigation measures identified in the Proponent's Biodiversity Development Assessment Report and as articulated in a future Vegetation Management Plan; and
- The proposed controls will facilitate an appropriate built form outcome that is consistent with the existing surrounding low density residential development and local character.

The planning proposal, as recommended within this report, would rezone both subject sites from RU3 Forestry to R2 Low Density Residential, apply a maximum building height limit of 9m and apply minimum lot sizes of 1,140m² and 1,700m² to the Northern and Southern sites respectively.

THE HILLS LOCAL ENVIRONMENTAL PLAN 2019

The planning proposal, as submitted by the Proponent, seeks to amend The Hills LEP 2019 as follows:

	Current (LEP 2019)	Proposed (Planning Proposal)
Land Zoning	RU3 Forestry	Part RU3 Forestry Part R2 Low Density Residential
Maximum Building Height	N/A	Part 9m
Minimum Lot Size	40ha	Part 40ha Part 700m ²
Floor Space Ratio	N/A	None Proposed

Table 1
Proposed LEP Amendments

LOCAL PLANNING PANEL MEETING 17 FEBRUARY, 2021**THE HILLS SHIRE**

HISTORY

10/05/2019	Planning proposal lodged with Council.
2/07/2019	Planning proposal presented at Councillor Workshop.
17/07/2019	Planning proposal forwarded to Environment Energy and Science (EES) Group for pre-Gateway Determination comments.
27/09/2019	Submission received from EES raising a number of issues relating to biodiversity impacts and advising that additional winter surveys should be undertaken.
28/09/2020	Proponent submitted a response to EES's letter and a Biodiversity Development Assessment Report (as provided in Attachment 9 to this report).
17/11/2020	Planning proposal presented at Councillor Workshop.

REPORT

The purpose of this report is to present the planning proposal for land at the Cumberland State Forest, specifically part 89-98 Castle Hill Road (part Lot 6 and part Lot 7 DP 11133) and Part 121-131 Oratava Avenue (part Lot 15, Part Lot 16, part Lot 17 DP 11133), West Pennant Hills to the Local Planning Panel for advice, in accordance with Section 2.19 of the Environmental Planning and Assessment Act 1979.

1. THE SITE

The site is known as the Cumberland State Forest (the Forest), though the proposal relates only to two smaller portions of the site at 87-97 Castle Hill Road (Northern site) and 121-131 Oratava Avenue, West Pennant Hills (Southern site) as identified in Figure 1. The Forest is owned by the State of NSW and is under the control of the Forestry Corporation of NSW (Forestry NSW). The Forest is located adjacent to the former IBM business park, which was subject to a separate planning proposal which was finalised on 18 June 2020 (1/2018/PLP).

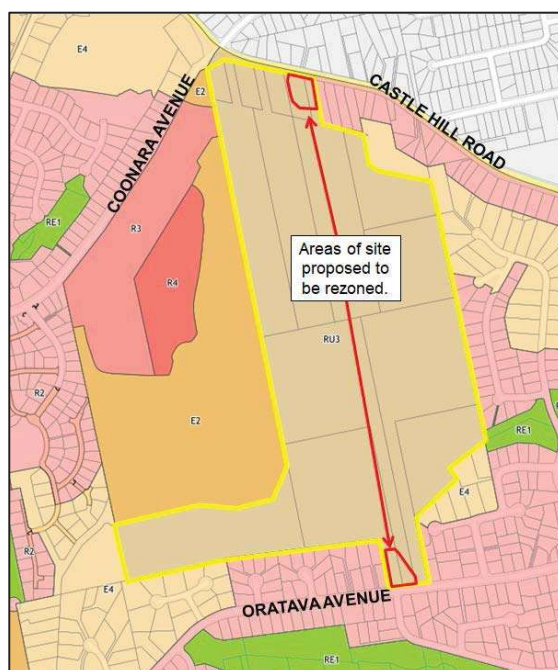


Figure 1

Cumberland State Forest (outlined yellow) and areas proposed to be rezoned (outlined red)

The Northern and Southern sites have a combined area of approximately 6,699m² (the Northern site has an area of 3,322m² and the Southern site has an area of 3,377m²). The Forest's northern boundary fronts Castle Hill Road and the adjacent boundary between The Hills Shire and Hornsby Shire local government areas.

The Forest is comprised of significant tracts of vegetation and operates as a research facility and office for the Forestry Corporation of NSW. It also contains a nursery, café and the 'Tree Tops' adventure park. Cherrybrook Metro Station (located on Castle Hill Road) is situated approximately 640m walking distance from the site. Both the Northern and Southern sites subject to rezoning contain an existing vacant dwelling, as identified below in Figures 2 and 3.



Figure 2

Northern site Cumberland State Forest (outlined yellow)
proposed to be rezoned (outlined red) and existing vacant dwelling



Figure 3

Southern site Cumberland State Forest (outlined yellow)
proposed to be rezoned (outlined red) and existing vacant dwelling

2. DESCRIPTION OF THE PLANNING PROPOSAL

The planning proposal seeks to facilitate the creation of four residential lots, with subdivision of the northern site into two lots fronting Castle Hill Road and subdivision of the southern site into two lots fronting Oratava Avenue. Indicative subdivision plans are provided in Figures 4 and 5.

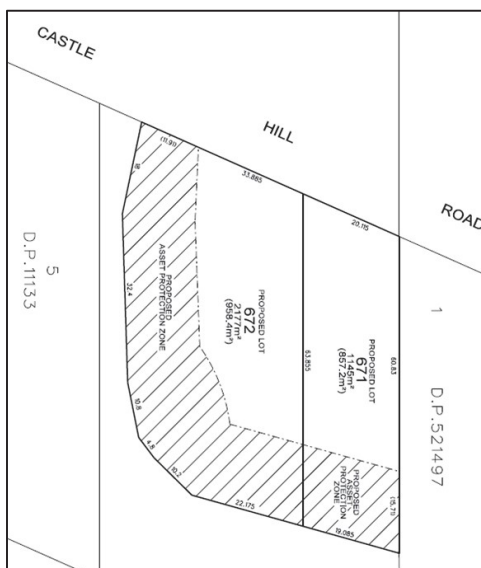


Figure 4

Northern site indicative subdivision layout

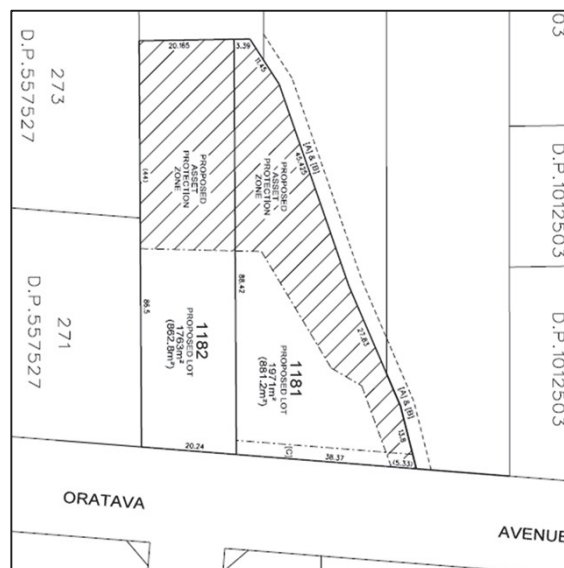


Figure 5

Southern site indicative subdivision layout

To enable this development outcome, the proposal seeks to amend LEP 2019, as it relates to the northern and southern sites only, to:

- Rezone from RU3 Forestry to R2 Low Density Residential;
- Apply a maximum building height of 9 metres; and
- Reduce the minimum lot size from 40ha to 700m².

LOCAL PLANNING PANEL MEETING 17 FEBRUARY, 2021

THE HILLS SHIRE

The proposal does not seek to amend the current controls applying to the areas within the Forest not identified as the northern and southern sites.

The proposed zoning map amendments are illustrated in Figures 6 and 7.

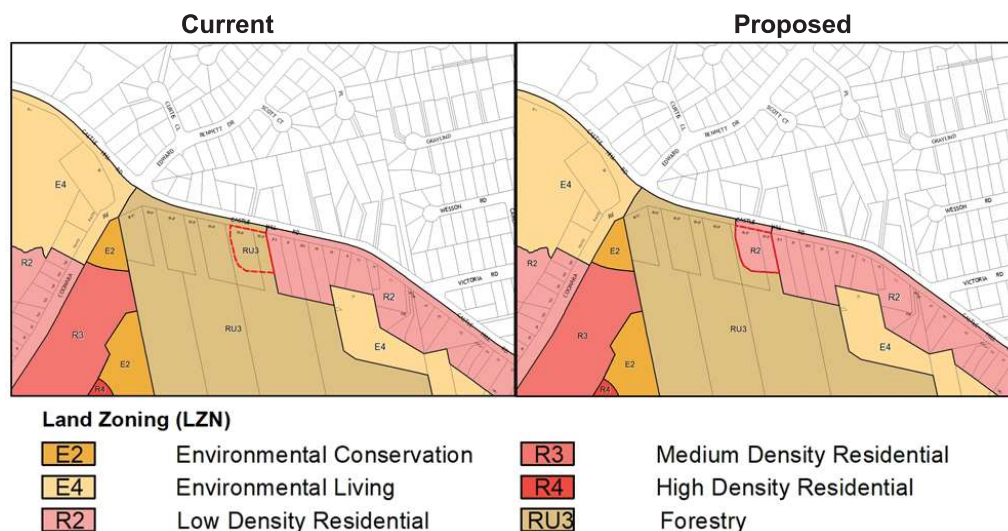


Figure 6
Northern site existing (left) and proposed (right) zone maps

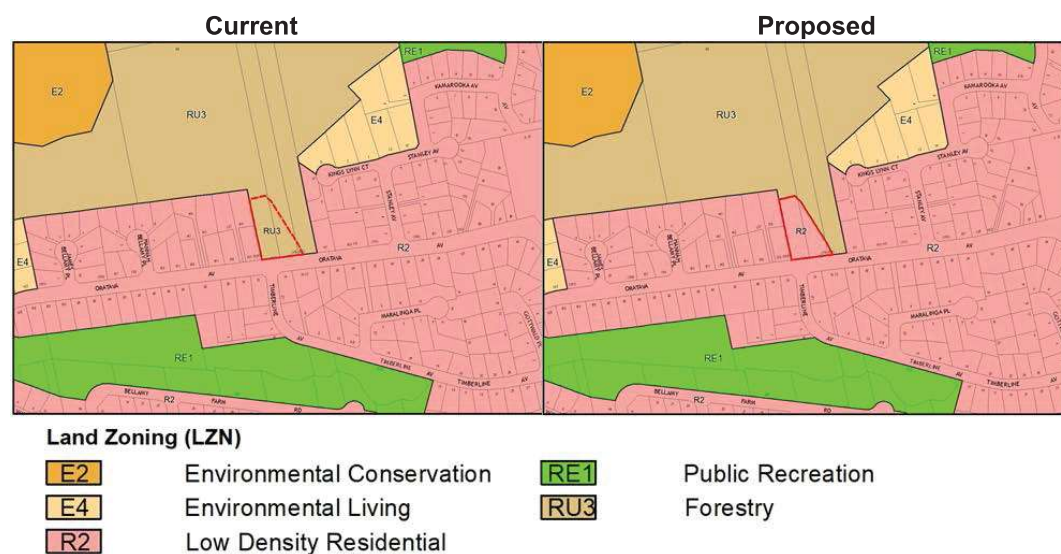


Figure 7
Southern site existing (left) and proposed (right) zone maps

It is noted that the proposal, as submitted by the Proponent, seeks to apply a minimum lot size of 700m², to be consistent with the existing minimum lot size control applying to surrounding residential properties. However, having regard to the desired development outcome and objective of the planning proposal, this report gives consideration to instead applying minimum lot size controls of 1,140m² (for the Northern site) and 1,700m² (for the Southern site) to facilitate the proposal whilst also providing more certainty of the outcome as part of future subdivision.

3. MATTERS FOR CONSIDERATION

The planning proposal requires consideration of the following matters:

- a) Strategic Context;
- b) Bushfire Risk;
- c) Ecological Impacts;
- d) Subdivision, Vehicle Access and Infrastructure; and
- e) Protection of Cumberland State Forest.

a) Strategic ContextGreater Sydney Region Plan Central City District Plan

The Greater Sydney Region Plan and Central City District Plan seek to provide liveable communities, through various directions and objectives. Those specific to this planning proposal relate to liveability and sustainability, namely the health, resilience and social connectedness of communities and the protection of urban bushland and biodiversity.

The planning proposal is considered to be generally consistent with the Region and District Plan as the proposed development outcomes seek to maintain the character of the area and will deliver four (4) residential lots on land surplus to Forestry NSW's needs (this land currently contains two previously inhabited but now vacant caretaker dwellings). The intended subdivision and clearing of the land has been sensitively designed to respond to the bushfire risk, local character and biodiversity constraints affecting both the Northern and Southern sites.

The following key objectives and planning priorities of the Regional Plan and District Plan are relevant to this proposal:

- Objective 7: Communities are healthy, resilient and socially connected;
- Objective 10: Greater housing supply;
- Objective 14: A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities;
- Objective 27 Biodiversity is protected, urban bushland and remnant vegetation is enhanced;
- Objective 30: Urban tree canopy cover is increased;
- Objective 31: Public open space is accessible, protected and enhanced;
- Priority C5: Providing housing supply, choice and affordability, with access to jobs, services and public transport;
- Priority C9: Delivering integrated land use and transport planning and a 30-minute city;
- Priority C15: Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes; and
- Priority C16: Increasing urban tree canopy cover and delivering Green Grid connections.

The proposal would enable the delivery of four new residential dwellings within an existing high quality residential environment. Existing bus services provide access to the Cherrybrook Metro Station from both sites, with the Northern site located approximately 600 metres walking distance from the station (on Castle Hill Road) and Southern site located 3.4km from the station (via Pennant Hills Road and Castle Hill Road).

Both sites are located on the periphery of Cumberland State Forest and adjoining existing low density residential dwellings. Given this, future residential properties will align with the surrounding character whilst also benefiting from the amenity and recreational facilities provided within the Forest. As the northern and southern sites are not currently accessible to

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the public, the subdivision and sale of these properties would not diminish or reduce the recreational capacity of the Forest or the ability for the community to access the land.

The proposed development would require the clearing of some remnant vegetation on the subject sites, including Blue Gum High Forest and Sydney Turpentine-Ironbark Forest. Both ecological communities are identified as Critically Endangered Ecological Communities (CEEC) under the *Biodiversity Conservation Act 2016* and are of high conservation significance. This is inconsistent with Objectives 27 and 30 and Priorities C15 and C16 of the Region Plan and District Plan which seek to increase urban tree canopy, protect and enhance biodiversity by supporting the restoration of bushland corridors and managing urban bushland and remnant vegetation.

However, as the existing two vacant caretaker dwellings are in disrepair and surplus to Forestry NSW needs, regeneration and management of these dwellings has become financially burdensome. The proposal seeks to enable the sale of this land to generate funds and resources which could be allocated to directly to managing more critical areas of the Forest, including the 10 hectares of land within the adjoining site at 55 Coonara Avenue which is intended to be dedicated to the ownership of Forestry NSW via a State Voluntary Planning Agreement. This State Voluntary Planning Agreement is currently under negotiations between the Department of Planning Industry and Environment, Forestry NSW and Mirvac. Notwithstanding the clearing of vegetation on the northern and southern sites, it is considered that on balance the proposal has the potential to facilitate greater protection and enhancement of biodiversity and management of bushland within the overall Forestry site, thus giving effect to Objective 27 and Priority C15 of Region Plan and District Plan.

The biodiversity impacts of vegetation removal are discussed in Section d) *Ecological Impacts* of this report and should a Gateway Determination be issued, further consultation with EES group would be required.

Section 9.1 Ministerial Directions

- Direction 1.2 - Rural Lands

The objective of this direction is to protect the agricultural production value of rural land. It requires that planning proposals not rezone land from a rural to an urban zone, nor introduce provisions that will increase the permissible density of land within a rural zone. It is noted that a planning proposal can proceed if inconsistent with this direction if the inconsistency is of minor significance. Given that there are no agricultural activities being undertaken on the site, it is located in a low density residential area and the proposal only relates to small portions of the site that are already occupied by dwellings, the inconsistency with this direction is considered to be of minor significance.

- Direction 2.3 – Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The entire Cumberland State Forest site is identified in LEP 2019 as archaeological item “Cumberland State Forest, Bellamy Quarry and Sawpit”. The archaeological areas of significance are not located within or immediately adjacent to the areas of land proposed to be rezoned. The proposed development outcomes will not impact on the heritage significance of the site.

- Direction 3.1 - Residential Zones

The objectives of this direction are to encourage a variety and choice of housing types, make efficient use of infrastructure and minimise the impact of residential development on the environment and resource lands. The subject site is located adjoining existing low density

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residential areas, with access to appropriate services and infrastructure. The proposal seeks to make more efficient use of land by transitioning land surplus to Forestry NSW needs to provide housing, consistent with the character of the locality and in turn, generate funds which can be directed to protection and management of more critical areas of the Forest.

- Direction 4.4 – Planning for Bushfire Protection

The objectives of this direction are to protect life, property and the environment from bushfire hazards, by discouraging the establishment of incompatible land uses in bushfire prone areas and to encourage sound management of bush fire prone areas. The Proponent has provided a bushfire assessment outlining how the proposed development can comply with Planning for Bushfire Protection. The concept subdivision plans include generous Asset Protection Zones at the rear of the sites and adjacent to the source of bushfire risk. Formal consultation with the Rural Fire Service would be required should the proposal receive a Gateway Determination.

State Environmental Planning Policies

- State Environmental Planning Policy No 19 – Bushland in Urban Areas (SEPP 19)

Objectives of SEPP 19 are to ensure the protection and preservation of bushland within urban areas because of its value to the community as part of the natural heritage, its aesthetic values, and its value as a recreational, education and scientific resource. Whilst both the Northern and Southern sites do contain vegetation, the proposed development outcomes would result in the retention of 99.2% (19.94ha) of the Forest's Blue Gum High Forest and 98.3% (17.49ha) of Turpentine Ironbark Forest. Currently both sites are inaccessible to the public and contain vacant and dilapidated caretaker dwellings. The proposal would make efficient use of land by transitioning land surplus to Forestry NSW needs to residential, consistent with the character of the locality.

- State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)

SEPP 55 requires that the potential for land contamination is considered at the planning proposal stage. The Proponent's planning proposal report articulates that both the Northern and Southern sites are not known to be contaminated and have been historically used for residential purposes (caretakers' dwellings). The report ultimately recommends that the site is suitable for the proposed rezoning to R2 Low Density Residential. Notwithstanding, the preparation of a Contamination Report would be required to accompany any future development application for both sites.

The Hills Local Strategic Planning Statement

Council's *Local Strategic Planning Statement: Hills Future 2036* (LSPS) outlines the Shire's 20-year vision for land use planning, population, housing, economic growth and environmental management. Accompanying the LSPS are key strategies that outline guiding principles, of which the draft *Housing Strategy* and *Environment Strategy* are of relevance to the proposal.

The proposed development would allow for the delivery of four residential lots which are consistent with the established low density environment and local character adjoining the site. This supports Planning Priority 7 which seeks the facilitation of housing in the right locations.

Council's supporting *Environment Strategy* identifies the need to protect natural assets and ensure the biodiversity of the Shire is preserved. The Proponent's Biodiversity Development Assessment Report (BDAR) outlines that both rezoning sites are located where there are existing dwellings and where vegetation is already disturbed, cleared and modified. At this

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stage, the proposal's resulting impacts on biodiversity are considered minor and manageable based on the information provided in the BDAR. Impacts on biodiversity values are further discussed in Section *d) Ecological Impacts* of this report.

b) Bushfire Risk

The Proponent's supporting Bushfire Protection Assessment Report (BPAR) (prepared by Travers Bushfire and Ecology) has been prepared in accordance with Planning for *Bushfire Protection 2018*. The BPAR recognises potential bushfire risk to both the Northern and Southern sites.

Adjoining Wet Sclerophyll Forest vegetation and remnant forest south and west of Castle Hill Road serve as fuel load and pose bushfire risk to the Northern site. For the Southern site, North-Coast Wet Sclerophyll Forest fronting Oratava Avenue, Northern Hinterland Wet Sclerophyll Forest located to the north east and some remnant forest to the east pose bushfire risk to the site (see Figures 8 and 9).

Bushfire risk for the Northern site is considered low as the 'Calgaroo Picnic Area', the main public access road and surrounding managed lands serve as fire breaks between remnant vegetation and further bushfire prone vegetation.

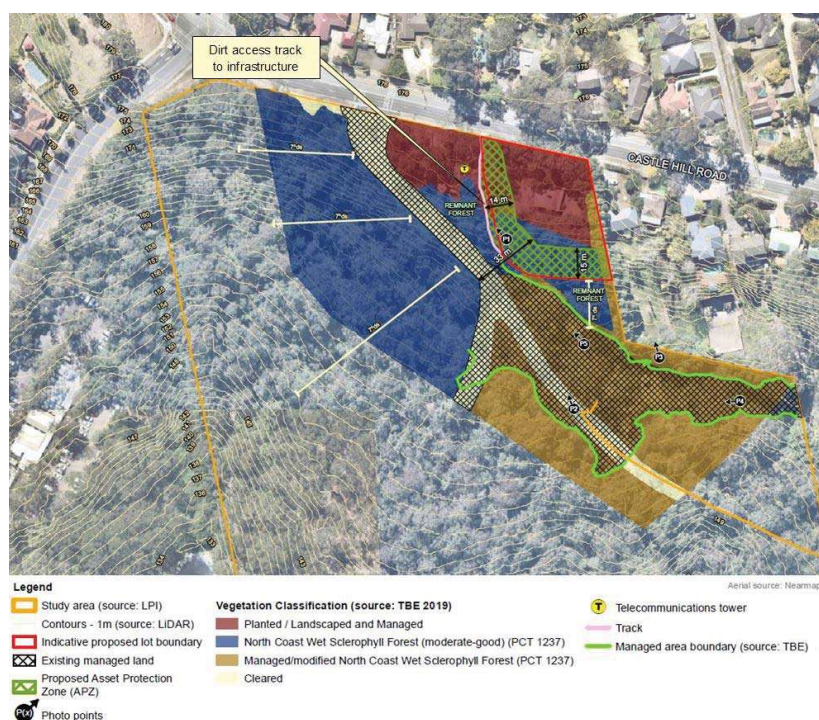


Figure 8
Proposed Asset Protection Zone at the Northern Site

At the Southern site, remnant forest within the vicinity of Oratava Avenue is currently being maintained for bushfire protection as presently occurring for the adjoining residential sites.



Figure 9
Proposed Asset Protection Zone at the Southern Site

Notwithstanding the above, the BPAR recommends the enforcement of Bushfire Protection Measures including the provision of an Asset Protection Zone (APZ) for both sites to minimise potential bushfire risks. This involves the facilitation of defensible space to separate hazardous vegetation from the subject buildings. Such measures would require further consideration as part of any future Development Application.

It is considered that bushfire risks for both sites are moderate and acceptable subject to the implementation of recommended bushfire protection and mitigation measures identified in the BPAR as part of any future development application. Should the proposal proceed to Gateway Determination, it would be required that a landscape plan be submitted as part of a Vegetation Management Plan to specify the intended removal and retention of trees within both sites and to more clearly communicate the implementation of the identified APZs. It is anticipated that any Gateway Determination would require that the matter be referred to both the Energy, Environment and Sciences Group and the NSW Rural Fire Service (RFS) for comment.

c) Ecological Impacts

The supporting Biodiversity Assessment Report (BAR), prepared by Travers Bushfire and Ecology (2019), contains findings of the biodiversity assessment undertaken for the Northern and Southern study sites (as shown in Figure 10).



Figure 10
Biodiversity Study Areas (identified in red)

Pre-gateway consultation was undertaken with Environment, Energy and Science (EES) and comments received on 26 September 2019 raised a number of matters regarding the proposal's potential impact on biodiversity (provided as Attachment 7 of this report). On 16 September 2020, the Proponent provided a response to the concerns raised by EES in the form of a letter and a Biodiversity Development Assessment Report (BDAR).

- Flora

The BDAR identifies two threatened ecological communities within the study area:

- The rear portion of Northern site contains vegetation identified as Blue Gum High Forest (in moderate-good and managed-derived condition) whilst the front portion is landscaped.
- The Southern site is identified as containing Blue Gum High Forest, as well as Sydney Turpentine Ironbark Forest (in managed-derived condition) and planted native vegetation.

Both Blue Gum High Forest and Sydney Turpentine Ironbark Forest are listed as critically endangered ecological communities under the NSW Government *Biodiversity Conservation Act 2016* (BC Act) and as threatened ecological communities under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Two threatened flora species were also recorded within the development footprint including *Eucalyptus scoparia* (planted) and *Syzygium paniculatum* (planted). The general distribution of vegetation species within the Cumberland State Forest is shown in Figure 11.

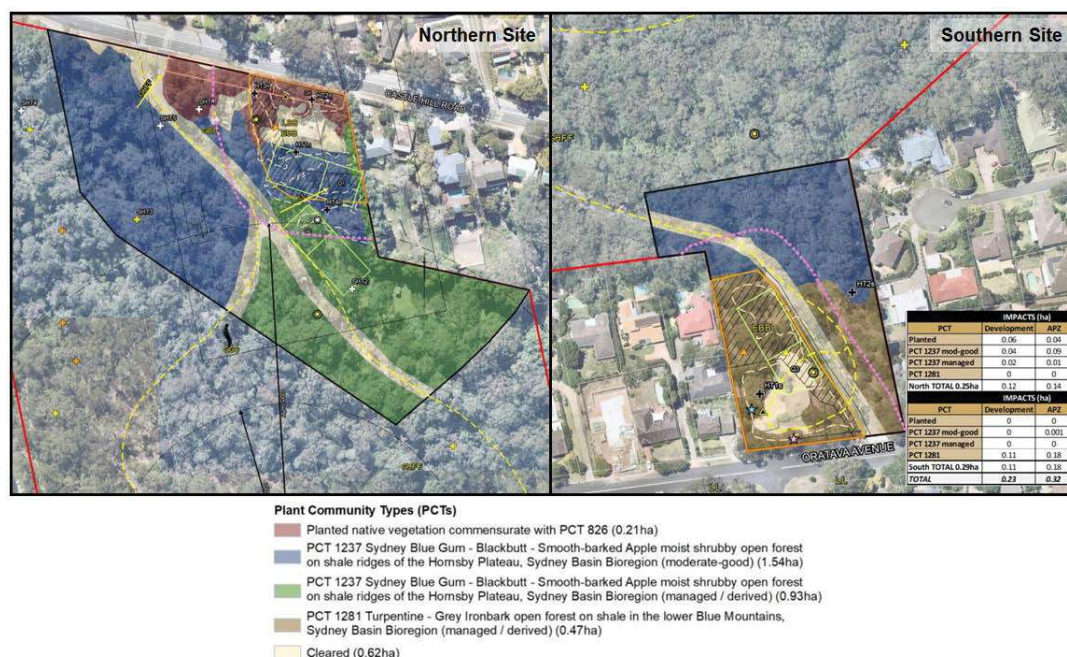


Figure 11

Vegetation communities within Cumberland State Forest and subject sites

The proposed rezoning would result in the following direct impacts on the site's biodiversity:

- Removal of 0.16ha of Blue Gum High Forest;
- Removal of 0.29ha of Sydney Turpentine Ironbark Forest;
- Removal of 0.10ha of derived native vegetation;
- Small loss of seasonal foraging habitat, particularly for the recorded Gang-gang Cockatoo (seeding trees), Little Lorikeet and Grey-headed Flying-fox (flowering trees); and
- Loss of four small (0–10 cm) and one medium (10–30 cm) sized hollows.

Potential indirect impacts resulting from the proposed development outcomes include the following:

- Edge effects such as weed incursions and nuisance landscaping species for adjacent remnant bushland;
- Spill-over from noise, scent and lighting into the adjacent quality natural habitat areas;
- Increased presence of pets and resultant impacts on native wildlife, increased soil nutrients from changes to runoff that may promote weed plumes; and
- Concentrated stormwater runoff from solid surfaces and resulting increased flows and possible erosion.

Both sites are identified on the Biodiversity Values Map and therefore the Biodiversity Offset Scheme would be triggered. The BDAR identifies the following loss of biodiversity would require offsetting (in accordance with the Biodiversity Assessment Method Calculator):

- 0.1 ha of Flooded Gum - Brush Box Moist Forest;
- 0.2 ha of Blue Gum High Forest; and
- 0.3 ha of Sydney Turpentine Ironbark Forest.

The BDAR also states that the reduction in extent of both Blue Gum High Forest and Sydney Turpentine Ironbark Forest may constitute a significant impact on matters of national environmental significance and may require detailed assessment in accordance with the EPBC Act. Should the planning proposal proceed to Gateway Determination, it is anticipated that further consultation with EES will confirm the need for further assessment.

Pre-gateway comments provided by EES articulate that as a result of the recommended APZs, there would be no planned buffer areas between the area of biodiversity value and other land uses. As such, EES recommended that consideration be given for the provision of buffers between the area of biodiversity value and other land uses to mitigate potential indirect impacts. In response to EES's concern, the BDAR includes a recommendation to provide a 20 metre buffer surrounding the subject site to act as an interface weed control zone.

EES also raises concern that the proposed minimum lot size of 700m² has potential for a greater number of lots to be created than the proposed two lots per site. Consequently, there is potential for a greater level of impact on CEEC vegetation. The Proponent's letter to Council articulates that the subdivision layout takes into account the required APZ and that there is not opportunity for additional lots once the area required for APZs is factored in. Further, in addition to being subject to the proposed minimum lot size control, compliance with The Hills DCP 2012 minimum lot frontage width controls would also be required.

Notwithstanding the environmental constraints which effectively limit the subdivision of both sites to two lots, it is considered that increasing the proposed minimum lot size controls would assist in ensuring the level of impact on CEEC vegetation remains minimal as articulated in the BDAR, whilst also providing certainty of the proposed development outcome for four (4) residential lots. This is further discussed in *Section e) Subdivision and Vehicle Access* of this report.

The BDAR concludes that the impacts on native vegetation will be minor and acceptable subject to implementation of the recommendations identified in the BDAR. Should the planning proposal be issued a Gateway Determination, further consultation would be required with EES and the Proponent would be required to prepare a Vegetation Management Plan (VMP) to address the potential vegetation impacts (including edge effects) and identify any opportunities to retain trees, particularly as vegetation at the rear of the Northern site is considered moderate-good condition.

As per the Proponent's Biodiversity Development Assessment Report, an arboriculture impact assessment of all trees potentially impacted by the proposed development layout would also need to be undertaken. It would be required that a landscape plan also be submitted as part of the VMP to identify the precise removal and retention of trees within both sites to communicate impacts on native vegetation and specify the implementation of APZs. Any future Development Application will need to address the matters outlined in the VMP as part of the final BDAR.

- Fauna

The BDAR identifies seven threatened fauna species (as listed in the *Biodiversity Conservation Act*) located within the development footprint. Whilst the Cumberland State Forest is a core breeding habitat for Powerful Owls and other threatened bird and bat species, the BDAR articulates that neither the Northern nor Southern sites contain any likely breeding or important habitat for the abovementioned species.

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Pre-gateway comments provided by EES raised concern with the potential impacts of removal of vegetation for the identified building sites, infrastructure and APZs and the potential threat to two hollow-bearing trees located 75m from the Northern site which are potential breeding habitats for the Powerful Owl. Concern was also raised with respect to the potential for the proposal to impact on the Powerful Owl through loss and fragmentation of habitat and loss of prey species. Following receipt of pre-gateway comments from EES, the Proponent undertook additional winter surveys to identify whether the hollow-bearing trees are occupied nesting sites.

Findings of the winter survey as recorded in the Biodiversity Development Assessment Report (2020) identify that the current nest and male winter roost are both located more than 200 metres from the proposed rezoning areas. It concludes that based on the proposed footprint, the proposal does not impose any direct impacts on species habitat and is unlikely to have a significant impact on threatened ecological communities, threatened flora or fauna species. At this stage, it is considered that subject to the recommendations identified in the BDAR, the development outcomes of the planning proposal would result in minor and manageable ecological impacts.

Notwithstanding the above, it is considered that the BDAR's ecological surveying and assessment have not entirely and adequately addressed the Biodiversity Assessment Method and relevant legislation. Accordingly, should the planning proposal proceed to Gateway Determination, the following matters would need to be addressed prior to public exhibition:

- Further clarification is required to demonstrate that sufficient number of surveys have been undertaken to refute that the significant habitat tree located approximately 75m to the west of the northern site is not a nesting tree;
- Further investigation is required to identify whether or not hollow bearing trees recorded in the northern and southern study areas are potential nest trees;
- The BDAR is to appropriately apply Steps 1 and 2 of Section 6.4 of the Biodiversity Assessment Method 2020 to justify the exclusion of certain ecosystem species; and
- Address omission of certain details in the BDAR (subject to discussions with Council officers) to accurately identify biodiversity values on the subject site.

d) Subdivision, Vehicle Access and Infrastructure

In seeking to permit residential subdivision of the subject sites, the proposed development controls reflect those which apply to the adjoining and established low density area within the locality. Namely it is noted that the adjoining low density area is also subject to a minimum lot size control of 700m². Notwithstanding this control, the prevailing and established subdivision pattern has resulted in larger lot sizes within this location, of up to 1,770m² along Castle Hill Road and 1,635m² along Oratava Avenue.

From a numerical perspective only, the proposed minimum lot size control of 700m² would permit up to four (4) lots on each of the site. However, preliminary concept subdivision plans submitted with the planning proposal indicate the intention for each subject site to accommodate only two lots, with sizes ranging between 1,145m² and 2,177m².

These larger lot sizes will be necessary at this location in order to comply with the relevant DCP controls (in particular site frontage widths) and importantly, to accommodate the necessary bushfire Asset Protection Zones *within* the boundary of each individual lot (and thereby *not* be reliant on any Asset Protection Zone within the adjoining Forest land). Accordingly, it is highly unlikely that future subdivision would be capable of achieving the proposed minimum lot size outcome of 700m².

Notwithstanding this, it is considered more appropriate minimum lot size standards of 1,140m² for the Northern site and 1,700m² for the Southern site be applied. Application of these increased minimum lot sizes would still facilitate the achievement of the development outcomes sought through the planning proposal, whilst providing greater certainty that the future subdivision of both sites will be more effectively limited to two (2) lots.

Further discussion on each of the sites is provided below.

- Northern Site

It is recognised that the proposed minimum lot size of 700m² would theoretically enable the subdivision of more than the two lots proposed for the Northern site. However, under Part B Section 2 of The Hills DCP 2012, the minimum frontage for a subdivision is 27 metres on a classified road (such as Castle Hill Road). As the total frontage of the Northern Site is 65.9 metres, this control would effectively limit the achievable yield on the northern site to two lots, thus, reflecting the indicative subdivision plans.

It is noted that the subdivision plans indicate that within the Northern site, proposed Lot 671 would have a frontage width of 20.11 metres and proposed Lot 672 would have a frontage width of 45.8 metres. Accordingly, while the proposed subdivision layout does not comply with the control, it does not seek to breach the control in such a way as to allow for three lot frontages at this location. Should Council support the planning proposal, consideration of variation to this control would be necessary as part of any future development application process having regard to the controls and objectives within the DCP.

Inconsistency with the minimum frontage controls are not limited to the proposed subdivision plan, with adjoining properties having frontage widths of as little as 21 metres. As such, the indicative subdivision plan would not be out of character with the prevailing lot pattern and character in the adjoining locality. Further, it is considered that the proposed subdivision and resulting frontage widths will provide adequate access, open space and a sufficient building platform that is sympathetic to the existing streetscape.

The proposed lot sizes and resulting frontages are also contingent on the required APZ and confinement by the existing telecommunications tower and Cumberland Forest Way adjacent the site's east (see Figure 12). In consideration of these environmental constraints, both lots respectively facilitate 857m² and 958m² of developable area, which are not dissimilar to adjoining properties that accommodate developable areas ranging from 930m² to 1,000m².

Whilst it is reasonably justified that the site would be effectively limited to a two (2) lot subdivision (given the environmental constraints and DCP controls), it is recommended that a minimum lot size of 1,140m² be applied. This would alleviate any doubt that any future subdivision of the land could exceed two (2) lots, without compromising the development outcomes sought under this planning proposal.



Figure 12

Aerial view of the Northern Site and existing environmental constraints

Proposed vehicle access arrangements for the Northern site are direct vehicle access from Castle Hill Road (which is classified as State road) into the proposed future lots. Given this, Roads and Maritime Services would be the concurrent authority to issue approval of the subdivision in the future.

The Proponent's traffic consultant has indicated that the proposed access points are appropriate given they already exist, the future traffic generation would be minimal as the future lots will facilitate detached dwellings only and the visibility along Castle Hill Road is acceptable. Additionally, there are existing crossovers on the Castle Hill Road frontage. Plans for detailed vehicular access arrangements would need to be developed as part of any future Development Application applying to the subject sites. Should the proposal receive a Gateway determination, consultation with Roads and Maritime Services will be required with respects to both access and the proposed subdivision.

▪ Southern Site

It is recognised that the proposed minimum lot size of 700m² would theoretically enable the subdivision of more than the two lots proposed for the Southern site. Under Part B Section 2 of The Hills DCP 2012, the minimum frontage width for subdivision fronting Oratava Avenue is 18 metres. As the total frontage of the Southern site is 58.61 metres, this control, in isolation, would potentially allow for an achievable yield on the Southern site of three lots.

However, having regard to the existing environmental constraints and in particular, the need for Asset Protection Zones, it is unlikely that three lots could be achieved on this site. In this respect, the Proponent's planning proposal report articulates that the proposed development outcome and the intent of the proposed subdivision is to remain consistent with the local character and existing minimum lot size of the surrounding low density residential properties. The proposed lot sizes will be comparable to the surrounding residential properties, the majority of which are well in excess of the mapped minimum lot size control of 700m². While it is likely that a future development application would reflect the indicative subdivision plans submitted as part of this planning proposal, it is recommended that a minimum lot size of 1,700m² should be applied to the Southern site to provide greater certainty that the subdivision will be limited to a maximum of two (2) lots.

The Planning Proposal identifies that access to the southern sites could be achieved via direct access from Oratava Avenue, or via Bryant Road (being the southern entry point to the Cumberland State Forrest off Oratava Avenue, adjoining the southern site) and a right of carriageway. Whilst the proposal's preference for a 3 metre wide right of carriageway may be acceptable, the DCP's required minimum 4 metre wide driveway for a dwelling would need to be complied with.

Any future subdivision of the Northern and Southern site would be subject to assessment against the development controls under The Hills Development Control Plan 2012 – Part B Section 2.

Infrastructure

In comparison to the two (2) existing dwellings on the sites, the proposed development outcome would result in the delivery of up to four (4) residential dwellings. The additional two (2) dwellings resulting from the proposal would be located in an existing low density residential environment that is serviced by existing public infrastructure. The Traffic study concludes that given the scale of uplift, the proposal will result in extremely low additional traffic for Castle Hill Road and Oratava Avenue. As such, the proposed development does not require additional traffic infrastructure be provided to service the minimal proposed uplift. The achievement of two (2) additional dwellings is also unlikely to have a material impact on the existing open space network within the locality, especially noting the large lot size and opportunity for private open space within each new lot. In this particular instance, it is considered reasonable for the additional yield (2 dwellings) sought through the proposal to be levied contributions under the existing Section 7.12 Contribution Plan.

e) Protection of Cumberland State Forest

Cumberland State Forest is Australia's only metropolitan state forest. It contains 40 hectares of native forest. The original privately-owned land was cleared in 1908. In 1938, management of the land was taken over by the then NSW Forestry Commission and the land was dedicated as a State forest in 1939. Cumberland State Forest is a unique asset to the Hills Shire and broader community and it is important to ensure that any changes to planning controls will not put the Forest at risk.

While the proposal would result in small areas of land being excised from the Cumberland State Forest and the loss of some vegetation, there is a case that on balance, the proposal represents an acceptable outcome. In particular, it is noted that the sites are at the periphery of the forest, are not publicly accessible and currently contain vacant and dilapidated caretaker dwellings. There is merit to the justification for the proposal submitted by NSW Forestry Corporation, in that divestment of these surplus sites would reduce the associated cost burden and generate proceeds which could be focussed on the protection and management of other areas of the Cumberland State Forest which are publicly accessible and contain more critical and high quality vegetation (including an additional 10ha of land to be dedicated by Mirvac to Forestry NSW from the adjoining site at 55 Coonara Avenue and incorporated in the Cumberland State Forest).

In addition to the protections offered under the *Biodiversity Conservation Act 2016* and *Environmental Protection and Biodiversity Conservation Act 1999*, Cumberland State Forest is further protected by the *Forestry Act 2012* (Clause 15). Land dedicated as a State Forest may only be revoked or altered by means of a proposal being tabled and passed in each House of Parliament. Following this, the Governor may publish a notice in the Gazette to revoke or alter the dedication. Should the planning proposal proceed, NSW Forestry

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Corporation would ultimately need to go through this process in order to divest the northern or southern sites.

CONCLUSION

The planning proposal sufficiently aligns with the relevant strategic planning framework and will enable the subdivision of four residential lots in a form which is consistent with the existing residential character of the adjoining area. While preliminary assessment indicates that the proposed zoning, minimum lot size and maximum building height will facilitate an appropriate transition to residential land for the Northern and Southern sites, this report identifies a number of matters relating to biodiversity, vegetation management and the subdivision plans that would need to be further addressed by the Proponent prior to public exhibition, should a Gateway Determination be issued for the proposal. Having regard to the balance between all relevant factors, it is considered appropriate for the proposal to be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination and input from relevant State Government agencies.

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 1,140m² to the Northern site and 1,700m² 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 assesses all trees 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.

ATTACHMENTS

1. Planning Proposal Report
2. Biodiversity Assessment Report
3. Bushfire Assessment Report
4. Bushfire Protection Measures
5. Subdivision Plans
6. Traffic Report
7. Pre-gateway Comments from Environment, Energy and Science Group
8. Biodiversity Development Assessment Report
9. Letter from Proponent to Council (dated 17 September 2020)

LOCAL PLANNING PANEL – THE HILLS SHIRE COUNCIL

**DETERMINATION OF THE LOCAL PLANNING PANEL ON 18 FEBRUARY 2021
– DETERMINATION MADE ELECTRONICALLY**

PRESENT:

Julie Walsh	Chair
Alf Lester	Expert
Heather Warton	Expert
Rohan Toner	Community Representative

DECLARATIONS OF INTEREST:

Nil Disclosed

COUNCIL STAFF:

The Panel were briefed by the following Council Staff on 17 February 2021:

David Reynolds	Group Manager – Shire Strategy, Transformations & Solutions
Nicholas Carlton	Manager – Forward Planning
Megan Munari	Principal Coordinator, Forward Planning
Gideon Tam	Town Planner

**ITEM 1: LOCAL PLANNING PANEL – PLANNING PROPOSAL –
CUMBERLAND STATE FOREST (13/2019/PLP)****COUNCIL OFFICER’S RECOMMENDATION:**

That the planning proposal proceed to Gateway Determination, subject to the submission of additional information prior to public exhibition.

PANEL’S ADVICE:

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 1,140m² to the Northern site and 1,700m² 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 assesses all trees 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.

VOTING:

Unanimous

ATTACHMENT 3



The Honourable Matt Kean MP
Minister for Energy and Environment

MD19/3560

The Hon David Elliott MP
Minister for Police and Emergency Services
Member for Baulkham Hills
Suite 1
25-33 Old Northern Road
BAULKHAM HILLS NSW 2153

Dr Michell Byrne
Mayor
The Hills Shire Council
3 Columbia Court
NORWEST NSW 2153

By email: baulkhamhills@parliament.nsw.gov.au
By email: mayor@thehills.nsw.gov.au

Dear Minister and Mayor

David + Michelle

Thank you for your joint letter about the Cumberland State Forest. I appreciate you bringing this matter to my attention.

I am aware of the issues facing our urban communities and the desire to both maintain and improve our existing open space.

The NSW Government is committed to maintaining a world-class national parks system to ensure the protection of our most important natural and cultural values, and to provide outstanding recreation and tourism opportunities in NSW.

I appreciate your advocacy and interest in Cumberland State Forest. As it is an existing state forest, any proposal to transfer Cumberland State Forest to a reserve category under the *National Parks and Wildlife Act 1974* (NPW Act) would require the agreement of the Deputy Premier and Minister for Regional New South Wales, Industry and Trade, as the Minister responsible for forestry.

Accordingly, I have written to the Minister responsible for forestry to seek his view on your 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.

In parallel with seeking the view of the Minister responsible for forestry, I have asked the National Parks and Wildlife Service (NPWS) to undertake a detailed assessment of the area.

The Department of Planning, Industry and Environment will continue to provide input through the normal planning process for any planning proposals that impact the state forest.

Further information about the NPWS acquisition program is available on the Environment, Energy and Science website at www.environment.nsw.gov.au.

If you have any further questions please contact Mr Richard Kingswood, Director Conservation Branch, NPWS, on 9585 6571 or at richard.kingswood@environment.nsw.gov.au.

Yours sincerely



Matt Kean MP
Minister for Energy and Environment

15.3.21