



Rukshan de Silva
Acting Director, Local Planning (Metro Central, West and South)
Local Planning and Council Support
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PARRAMATTA NSW 2150

Subject: CPHR Advice – Gateway Consultation - 87-97 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills (Cumberland State Forest) rezoning proposal (PP-2023-2300)

Dear Rukshan,

Thank you for your referral of the Planning Proposal to amend the land use zone and supporting development standards for part lots located at 89-97 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills (PP-2023-2300) to the NSW Department of Climate Change, Energy, the Environment and Water - Biodiversity and Conservation as required under section 3.34(2)(d) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Please note that on 20 January 2025 the Biodiversity Conservation and Science (BCS) Group of DCEEW became the Conservation Programs, Heritage and Regulation (CPHR) Group.

It is understood that the Planning Proposal is seeking amendments to *The Hills Local Environmental Plan 2019* (The Hills LEP 2019) to rezone the subject site:

- from RU3 Forestry to R2 Low Density Residential
- apply a height limit of 9 m
- amend the minimum lot size from 40 ha to 1,140 m² (Northern site) and 1,700 m² (Southern site)
- amend the heritage map to remove the application of an archaeological heritage area from the areas proposed to be rezoned and
- make corresponding amendments to Schedule 5 Environmental Heritage Part 3 Archaeological Heritage to update the property description for local archaeological item A26 'Cumberland State Forest, Bellamy Quarry and Sawpit' to exclude the land to be rezoned.

CPHR (then Environment, Energy and Science Group) provided pre-gateway comments to the Planning Proposal on 26 September 2019 (see DOC19/746238 at Attachment B). It is noted that parts of CPHR's pre-gateway advice have been addressed, including conducting a powerful owl survey in winter and increasing the minimum lot size from the previously proposed 700 m².

CPHR has reviewed the *Planning Proposal* (Mecone, 26 July 2024) and supporting studies and provides detailed advice at Attachment A. In summary, CPHR recommends:

- Further measures are required to avoid and minimise impacts on Blue Gum High Forest and Sydney Turpentine Ironbark Forest. Both vegetation communities are listed as critically endangered ecological communities (CEECs) and as Serious and Irreversible Impact (SAII) entities under the *Biodiversity Conservation Act 2016* (BC Act) and mapped on the [Biodiversity Values Map](#). CPHR recommends the lot sizes and associated asset protection zones be reduced to avoid and minimise impacts on the CEECs.
- A preliminary flood assessment be undertaken to identify whether the subject site is impacted by flooding up to and including the Probable Maximum Flood.

Special consultation procedures concerning threatened species

In accordance with Section 3.25 of the EP&A Act, if a relevant authority forms the opinion that critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be adversely affected by the proposal, consultation with CPHR is required. The consultation request should explain why the opinion has been formed that the proposal will have impacts on critical habitat or threatened species, populations or ecological communities, or their habitats.

If you have any queries please contact Liz Peterson, Senior Conservation Planning Officer via elizabeth.peterson@environment.nsw.gov.au.

Yours sincerely



17/03/2025

Susan Harrison
Senior Team Leader Planning
Greater Sydney Branch
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Attachment A: CPHR Advice - Gateway Consultation - 87-97 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills (Cumberland State Forest) rezoning proposal (PP-2023-2300)

Documents Reviewed

- *Gateway determination* report PP-2023-2300 (DPHI, July 2024)
- *Planning Proposal* (Mecone, 26 July 2024)
- *Vegetation Management Plan* (Travers Bushfire & Ecology, 24 May 2024)
- *Tree Assessment Report* (CIVICA, 25 March 2024)
- *Biodiversity Development Assessment Report* (Travers Bushfire & Ecology, 24 May 2024) (BDAR)
- *Strategic Bushfire Study* (Black Ash, 21 November 2024).

Biodiversity

Impacts to Threatened Ecological Communities (TECs)

The subject sites contain remnant vegetation and habitats of high conservation significance including Blue Gum High Forest (BGHF) (Plant Community Type (PCT) 3136) and Sydney Turpentine-Ironbark Forest (STIF) (PCT 3262). Both vegetation communities are listed as critically endangered ecological communities (CEECs) and are listed as Serious and Irreversible Impact (SAII) entities under the *Biodiversity Conservation Act 2016* (BC Act).

The Planning Proposal (PP) impacts 0.55 ha of native vegetation, including 0.16 ha of BGHF and 0.29 ha of STIF.

Planning controls

Given the high conservation values of the CEECs on the subject sites, further consideration should be given to a land use zone and development layout that avoids impacts to the CEECs. CPHR remains concerned that proposed subdivision intensification and minimum lot size will adversely impact on the biodiversity values due to the clearing of vegetation for building sites and requirements for associated infrastructure and asset protection zones (APZs).

The impacts on native vegetation because of the PP is inconsistent with the following:

- Objective 27 of the [Greater Sydney Region Plan A Metropolis of Three Cities](#) that 'Biodiversity is protected, urban bushland and remnant vegetation is enhanced'.
- Planning Priority C15 of the [Our Greater Sydney 2056 Central City District Plan](#) which is 'Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes'.
- [Direction 3.7 of Section 9.1 Ministerial Directions](#) - Public Bushland.
- Section 6.2 (d) of the BC Act (avoid and minimise impacts).
- Aims of Chapter 2 of the *State Environmental Planning Policy Biodiversity and Conservation 2021* (B&C SEPP) 'to protect the biodiversity values of trees and other vegetation in non-rural areas of the State'.
- Priority 17 of the [Hills Future 2036 - Local Strategic Planning Statement](#) to 'Protect areas of high environmental value and significance'.

Lot size and Asset Protection Zone (APZ)

The subdivision for the northern site proposes to create two lots with total areas of 1,145sqm and 2,177sqm and non-constrained areas of that is non-APZ areas, of 857.2sqm and 958.4sqm. For the southern site, the proposal is for two lots with total areas of 1,971sqm and 1,763 and non-constrained areas of 862.8sqm and 881.2sqm.

CPHR seeks clarification on whether the lot sizes can be reduced to protect additional areas of CEECs occurring at the two sites (as mapped in Figures 2-1 and 2-2 of the BDAR) by implementing a 'performance-based assessment' of the required APZs. Consideration should be

given to, for example, reducing the dwelling size and modifying building designs to minimise the extent of the required APZs and meet the requirements of the *Planning for Bushfire Protection* (NSW Rural Fire Service, 2019). Any reduction in lot size and APZs should be guided by an appropriately qualified bushfire consultant.

Minimising the impact on CEECs aligns with the obligations to avoid and minimize impacts as outlined in Sections 6.2, 6.12, and 7.16 of the BC Act, as well as Section 7 of the [Biodiversity Assessment Method \(2020\)](#) (BAM). Reducing lot sizes and associated APZs will also help mitigate impacts on the habitat of the threatened Dural Land Snail, which is known to occur at the subject sites.

BDAR

Additional measures to reduce the impact on the 0.16 ha of BGHF and 0.29 ha of STIF should be investigated, as outlined in the request for lot size and APZ reductions above. As outlined above, both vegetation communities are critically endangered and listed as SAIL entities under the BC Act.

CPHR emphasises that, under the BC Act and the BAM, impacts must be genuinely avoided and minimized before considering offsets to compensate for any residual impacts.

Furthermore, CPHR highlights that SAIL entities are those most at risk of extinction. Section 7.16 of the BC Act stipulates that for local Development Applications (DAs), "the consent authority must refuse to grant consent if it is of the opinion that the proposed development is likely to have a serious and irreversible impact on biodiversity values."

Therefore, there is a risk that the decision maker may determine that a SAIL has been triggered when a future DA is submitted, which could lead to the refusal of the application. This is particularly so if it has not been demonstrated that all reasonable measures have been taken to avoid or minimise impacts on SAIL entities.

CPHR expects that the Arboricultural Impact Assessment (AIA), as requested (see below), will further assist in demonstrating how impacts can be minimized.

Arborist report

The tree report provided (CIVICA, 25 March 2024) is a general risk assessment of trees that is not specific to the subject sites nor directly related to the PP. CPHR requests that an Arboricultural Impact Assessment (AIA) and Tree Protection Plan (TPP) be submitted as part of the PP, consistent with the recommendation made by The Hills Local Planning Panel on 18 February 2021.

The AIA and TPP must comply with Australian Standard 4970-2009 and should include an assessment of trees located within the proposed APZs. They should specify the proposed tree removal and retention, along with any tree pruning requirements necessary to implement the APZs. The AIA must aim to minimise impacts on medium and high-value trees, as well as trees that are representative of TECs, to the greatest extent possible, in line with the obligation to avoid and minimize impacts (s 6.2 and 6.12 of the BC Act and Section 7 of the BAM).

Buffers

The PP has not addressed previous comments regarding buffers. CPHR's view remains that an assessment should be provided as part of the PP to determine the requirement for buffers to mitigate impacts and reiterates that consideration should be given to the provision of buffers between the area of biodiversity value and other land uses. The size of the buffer will vary depending on the nature or activity being undertaken and the level of management control required to prevent or minimise adverse impacts such as edge effects for example weed invasion, increased soil nutrients, changes to surface runoff, increased spill-over from noise, activity and lighting effects on the adjacent natural habitat.

Vegetation Management Plan

The Vegetation Management Plan (VMP) details actions and responsibilities for a maximum of five years. This temporary timeframe is not considered appropriate given the presence of CEECs and the direct and indirect impacts that are expected to result from the proposed development, which includes edge effect (i.e. weed invasion) and ongoing APZ management.

CPHR recommends that the mapped CEECs on-site be managed and protected in perpetuity. The PP should include a clear pathway for how the CEEC areas within the subject sites will be adequately managed and protected over the long term.

Landscape Plan

The Hills Local Planning Panel recommendation made on 18 February 2021 includes the request for a landscape plan to be provided as part of the PP exhibition. No landscape plan has been provided.

CPHR requests that a landscape plan is prepared by a suitably qualified Landscape Architect or Landscape Designer to support the PP. The following is to be considered in the plan:

- Maximisation of viable retention of significant trees and existing tree canopy as part of the design. Refer also to the comments above in relation to requirement for an AIA, TPP and APZ requirements.
- Identify existing trees or vegetation nominated for retention/removal and identify existing canopy coverage to be retained.
- Provide a plant schedule with suitable species of trees, shrubs and ground covers; indicating planting locations, species type (botanic/common name) mature dimensions, plant numbers (annotated on the plan) and the size of the containers at planting.
- Species selection should be made up predominantly of local native species descriptive of the plant communities identified in the BDAR and be in line with APZ requirements.

Flooding

CPHR notes the *Planning Proposal* (Meccone, 2024) states 'the site is not identified as flood prone land' and has not undertaken a flood assessment to support the planning proposal.

CPHR does not currently have any existing information relating to flood affectation of the proposed rezoning at 87-97 Castle Hill Road and 121-131 Oratava Avenue. CPHR recommends that the proponent undertakes a preliminary flood assessment for this proposal. The preliminary flood assessment would identify whether the sites are impacted by flooding up to and including the PMF. The preliminary flood assessment is required to provide definitive advice on this project to ensure that it is consistent with the [2023 NSW Floodplain Risk Management Manual](#) and the requirements of Section 9.1 Direction 4.1 Flood Prone Land.

The aim of this assessment is to define the flood behaviour where there are gaps in available information. Please refer to the [Flood Risk Impact and Risk Assessment \(LU01\)](#) guideline.

If the preliminary flood assessment shows the sites are impacted by flooding, then the flood assessment should include:

- An understanding of the flood behaviour and potential impacts of the proposed development on flooding and the existing community.
- A check for key flood characteristics, including conveyance, hazard, flood storage, and flood levels at a location based on a series of floods.
- Consideration of the potential for changes in flow as part of the development.
- Preliminary information on key flood characteristics at critical locations.
- Identification of the potential for any significant adverse impacts to the existing community because of the proposed development.

End of Submission



Our ref: DOC19/746238
Senders ref: 13/2019/PLP

Ms Megan Munari
Principal Coordinator Forward Planning
The Hills Shire Council
PO Box 7064
NORWEST NSW 2153

Dear Ms Munari

Subject: EES comments on Planning Proposal – Cumberland State Forest, 87-97 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills – Pre-Gateway

Thank you for your letter requesting pre-gateway comments from the former Office of Environment and Heritage (OEH) on the planning proposal which seeks to facilitate four residential lots.

Please note, OEH responsibilities and functions have been transferred to the Environment, Energy and Science Group (EES) in the Department of Planning, Industry and Environment.

EES has reviewed the Planning Proposal and provides its recommendation and comments at Attachment A.

If you have any questions about this advice, please do not hesitate to contact Janne Grose, Senior Conservation Planning Officer via email janne.grose@environment.nsw.gov.au or 02 8837 6017.

Yours sincerely

S. Harrison 26/09/19

Susan Harrison

**Senior Team Leader Planning
Greater Sydney Branch
Environment, Energy and Science**

Attachment A - EES comments on Planning Proposal – Cumberland State Forest, 87-97 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills – Pre-Gateway

The Environment, Energy and Science group (EES) has reviewed the following documentation:

- Planning Proposal Report (PPR) prepared by Mecone - 9 May 2019
- Biodiversity Assessment Report (BAR) – May 2019
- Bushfire Protection Assessment (BPA) – May 2019

and provides the following comments.

It is noted that the intent of the planning proposal for land at 87-97 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills is to enable the divestment of surplus Forestry land and to facilitate low density residential development that is consistent with surrounding development. The planning proposal indicates that the proposed rezoning of the land for residential development is not the result of a strategic report or study. Instead, it is due to the Forestry Corporation identifying the site as surplus to its needs.

In order to achieve this intent, the planning proposal seeks to amend The Hills Local Environmental Plan (LEP) by:

- rezoning the land from RU3 Forestry to R2 Low Density Residential
- applying a height limit of 9 metres to the land and
- amending the land's minimum lot size from 40ha to 700sqm.

Biodiversity

The subject sites contain remnant vegetation and habitats of high conservation significance including Blue Gum High Forest (BGHF) and Sydney Turpentine-Ironbark Forest (STIF) which are now both listed as a critically endangered ecological communities (CEEC) under the *Biodiversity Conservation Act 2016*. As outlined in the BAR, within the study area there is habitat for threatened species including Little Lorikeet, Gang-gang Cockatoo, Powerful Owl, Grey-headed Flying-fox and Greater Broad-nosed Bat and *Eucalyptus scoparia* (planted specimen). Regarding the Powerful Owl, it is noted that the BAR recommends that additional winter surveys are undertaken (page 23).

Impacts on biodiversity values

The planning proposal seeks to rezone the subject sites to permit residential development with a minimum lot size of 700sqm. Indicative subdivision layouts for both sites are depicted in figures 13 and 14. For the northern site, the plans show two lots with total areas of 1,145m² and 2,177m² and for the southern site (Oratava Avenue), the plans show two lots with total areas of 1,971m² and 1,763m². The planning proposal indicates that the rezoning of land and subdivision layout will result in direct impacts to 0.136 ha of BGHF and 0.344 ha of STIF.

On a specific matter, the BAR states “*significant habitat trees were initially identified within the northern and southern detailed investigation areas during January 2018 survey*” (page 41). EES notes Figure 2 in the BAR does not show any significant habitat trees in the southern investigation area (page 24) and that section 4.3.1 of the BAR states “no significant or notable habitat trees have been recorded within or proximate to the southern investigation area” (page 49). Further information is required to clarify this inconsistency.

Planning controls

Given the high conservation values of the critically endangered ecological communities on the subject sites it is considered that much greater considerations should be given to a land use zone and development layout that avoids impacts to the CEECs. EES is concerned that proposed subdivision intensification and minimum lot size reduction will adversely impact on the biodiversity values due to the clearing of vegetation for building sites, infrastructure and asset protection zones. Furthermore, under the proposed 700m² minimum lot size there is potential for a higher number of lots to be created than the proposed 2 lots per site which would result in a greater level of impact to the CEEC vegetation.

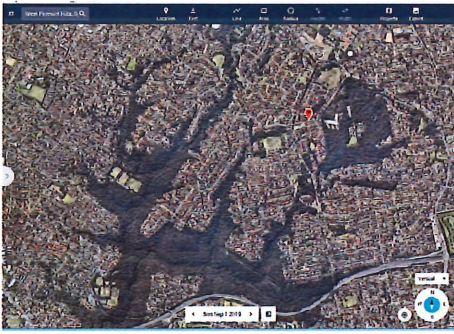
Consideration should also be given to the provisions of buffers between the area of biodiversity value and other land uses. The size of the buffer will vary depending on the nature or activity being undertaken and the level of management control required to prevent or minimise adverse impacts such as edge effects (ie weed invasion), increased soil nutrients, changes to surface runoff, increased spill-over from noise, activity and lighting effects on the adjacent natural habitat (see section 5.2, page 55 of BAR). The Planning Proposal as presented provides no buffer areas because of the requirement for asset protection zones (APZs) which will involve a level of clearing further impacting the biodiversity values of the subject sites. An assessment should be provided as part of the planning proposal to assess the requirement for buffers to mitigate impacts, particularly as the rear portion of the northern site is identified as BGHF and it is in moderate to good condition (page 26 of PPR) and the topography of the northern site falls towards the rear (page 8) so vegetation downslope of residential development and APZ will potentially be impacted by edge effects caused by nutrient runoff, weed invasion etc without the provision of an adequate buffer.

The planning proposal report notes that despite the site containing important vegetation it is neither zoned nor identified for environmental protection purposes in The Hills LEP (Table 6, page 21). As the BAR indicates the proposed development will impact on areas of sensitive biodiversity values (see page 43 of BAR), it is recommended the LEP is amended to recognise the biodiversity values of the Cumberland State Forest (CSF) which includes the two sites that are proposed to be rezoned. It may be timely to consider converting the zoning of the CSF from RU3 to E2 so the primary use of the land is environmental conservation and the zoning of remnant vegetation on site is consistent with the proposed E2 zoning of the bushland reserve on the adjoining site at 55 Coonara Avenue and the existing zoning of remnant vegetation in the nearby reserve to the south west of the site (see maps below).

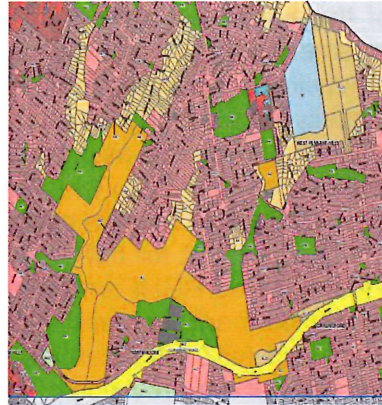
Regarding the Powerful Owl, the BAR states that the breeding pair that is known from the locality 'are well conditioned to the local urban surrounds' (page 23). However, EES considers that the proposal is likely to increase the threatening processes on this vulnerable species, including loss and fragmentation of habitat, loss of prey species, loss of hollow-bearing trees, hazard reduction, road kills and predation of fledglings by foxes, dogs and cats, all of which are known threats for this species (see <https://www.environment.nsw.gov.au/threatenedSpeciesApp/profile.aspx?id=10562>).

The BAR notes that two large hollow-bearing trees identified during survey in the northern study area are both located beyond 75m from the proposed rezoning for development (page 23). It should be noted:

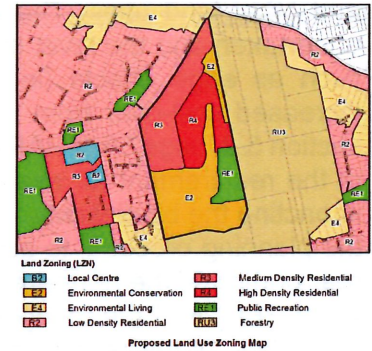
- to assist this species, the OEH Threatened Species Profile for the Powerful Owl, recommends retention of at least a 200m buffer of native vegetation around known nest sites
- the *Land Manager Guidelines for Powerful Owl Conservation in Urban Sydney* (Bain 2014) recommends buffer zones of 100m around nest sites and 50m around roost sites.



Nearmap – 1 Sep 2019 showing remnant vegetation at the site and the surrounding locality



Land Zoning map from The Hills LEP 2012 – LZN 024 - showing existing RU3 zoning of the site and E2 zoning of remnant native vegetation in proximity to the site



Proposed E2 zoning for the adjoining Planning Proposal at 55 Coonara Avenue