



THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL
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27 February 2025

Planning Panels Secretariat
Locked Bag 5022
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Via email: ayva.hamed@dpie.nsw.gov.au

Our Ref: 13/2019/PLP
Your Ref: PP-2023-2300

Dear Sir/Madam,

**PLANNING PROPOSAL SUBMISSION –
89-97 CASTLE HILL ROAD AND 121-131 ORATAVA AVENUE, WEST PENNANT HILLS**

Thank you for the opportunity to comment on the planning proposal at 89-97 Castle Hill Road and 121-131 Oratava Avenue, West Pennant Hills (Part Lot 6 & Part Lot 7, DP11133 and Part Lots 15, 16 and 17 of DP 11133). Given the timeframe for submissions, there has not been sufficient opportunity for this submission to be considered by the elected Council. Accordingly, while this submission does align with the assessment completed when the planning proposal was initially considered by Council, it is an officer-level submission and has not been endorsed by the elected Council.

National Park Nomination

Of particular relevance, following the lodgement of the planning proposal in 2019, Council submitted a recommendation to State Government that the Cumberland State Forest be nominated as a national park. During the assessment of the planning proposal, Council maintained correspondence with State Government on this matter, with the most recent correspondence received from the former Minister for Energy and Environment, Matt Kean MP (dated 15 March 2021). At the time, it was advised the nomination had been referred to the responsible Minister and that the National Parks and Wildlife Service (NPWS) had been requested to carry out a detailed assessment of the area.

To date, Council has not received correspondence confirming the outcome of this nomination. As part of the associated Rezoning Review process, Council officers specifically requested that the Department assist and investigate the outcomes of this nomination process, as this would have implications for the assessment of the planning proposal. However, from a review of the exhibition material, it appears that no progress has been made and the matter remains unresolved.

Local Planning Panel

On 18 February 2021, The Hills Local Planning Panel considered the proposal and provided the following advice to Council:

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*

Council Resolution

Following receipt of the Local Planning Panel Advice, Council considered a report on the planning proposal at the 13 April 2021 Ordinary Meeting and resolved as follows:

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

The outcome of the national park nomination would have enabled Council (and State Government) to make a more informed decision on whether the planning proposal is appropriate, on the basis that Forestry NSW (the landowner) may reconsider the future outcome for the planning proposal sites should the nomination be successful, including the potential for the sites to be protected from rezoning and made accessible for public use. To date, Council has not received any further correspondence from State Government regarding the national park nomination following Council's consideration of the planning proposal and the associated Rezoning Review.

Given the status of the national park nomination remains unknown, it is considered premature for the planning proposal to progress to finalisation and it is recommended that any proposal for the land not be finalised until the State Government issues a determination on the national park nomination. Council's resolution to hold the application in abeyance until this matter is concluded should be given effect.

Technical Matters

Notwithstanding the above, a review of the exhibited material has been undertaken, and should the planning proposal progress to finalisation, the following comments are provided to the Panel for consideration:

- The proposed reduction to the minimum lot size standard to 1,140m² for the Northern site and 1,700m² for the Southern site is considered appropriate for the following reasons:

- The proposed minimum lot sizes and resulting frontages are impacted by the required APZ (for both the Northern and Southern sites), the existing telecommunications tower and adjoining access way for the Northern site. Having regard to these environmental constraints, both lots would facilitate a developable area that is consistent with adjoining residential development.
 - The resulting lot size for both sites will maintain the existing character established by adjoining low density residential development, which generally comprise lot sizes ranging from 930m² to 1,000m² (excluding required APZs for both sites).
 - The minimum lot size restriction will limit the development yield to two residential dwellings/lots on both the Northern and Southern sites, as reflected in the planning proposal.
- The Planning Proposal Report should address the inconsistencies with minimum frontage requirements in Part B Section 2 of The Hills DCP 2012, as they relate to the Northern site, and at a minimum, justify how the inconsistencies meet the objectives of this requirement. An extract of Section 2.13.1 of the Part B Section 2 of the DCP is provided in Figure 1.

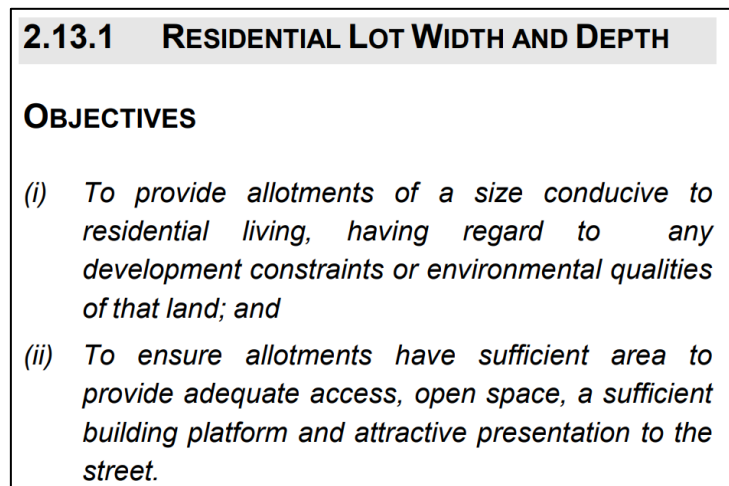


Figure 1: Part B Section 2 of The Hills DCP 2012

- The planning proposal includes removing the application of the LEP Heritage Map (Item A26) from both the Northern and southern sites. Item A26 *Bellamy Quarry and Sawpit* relates to the significance of two separate archaeological items within the Cumberland State Forest which are generally located within Lot 1 DP 914864 and Lot 1 DP 11133. The sites subject to the proposed rezoning are located approximately 130m and 320m from the nearest item and the significance of both items are confined to their immediate surrounds. As such, it is considered that both the northern and southern sites have no physical or cultural associations with both items.

Therefore, the application of clause 5.10 of the LEP for the creation and future redevelopment of both sites is unwarranted and the proposed removal of the sites from the LEP Heritage Map is considered appropriate.

- An updated Bushfire Assessment Report (Strategic Bushfire Study) has been prepared and incorporates the pre-exhibition advice received from NSW Rural Fire Service. However, a Landscape Plan indicating tree removal and APZs has not been included in the Report. This is further discussed below.

The Gateway Determination has not required the referral of the planning proposal to RFS as part of this exhibition. As such, it is presumed that the RFS has not been afforded the opportunity to further review the Bushfire Report since it has been updated. It is recommended that the exhibited material be forwarded to the RFS for their consideration.

- An Arborist Report (Tree Assessment Report) and Vegetation Management Plan have been submitted, and a Biodiversity Development Assessment Report (BDAR) has since been updated following Council's consideration of the matter and the outcome of the Rezoning Review. These documents will be reviewed by Biodiversity Conservation and Science. Their review should confirm that the requested updates to the BDAR, as per the Local Planning Panel advice, have been undertaken. The outcomes of their review should also determine the acceptability of the biodiversity impacts resulting from the proposed development, including any mitigation and management measures proposed.
- While an Arborist Report and updated Bushfire Report has been submitted, the removal of specific vegetation has not been identified in a Landscape Plan, as per the Local Planning Panel advice, including but not limited to:
 - 0.16ha of Blue Gum High Forest (PCT 3136)
 - 0.29ha Removal Sydney Turpentine Ironbark Forest (PCT 3262)
 - 0.45ha of vegetated habitat for potential seasonal foraging by recorded nectarivore threatened species

It is acknowledged that the Vegetation Management Plan identifies the removal of two hollow bearing trees within the land subject to rezoning, which the BDAR considers are not suitable for roosting or nesting.

Given the evident tension between ecology and bush fire management outcomes on the site, Biodiversity Conservation and Science and NSW Rural Fire Service should determine whether the consideration of future development outcomes facilitated by the planning proposal, as they relate to vegetation removal and APZs, can be suitably addressed at the Development Application stage.

It is requested that a copy of Council's submission be forwarded to Biodiversity Conservation and Science and NSW Rural Fire Service for their consideration.

Thank you for your consideration of Council's submission on the planning proposal. Should you have any further questions in relation to this submission, please contact Gideon Tam, Senior Town Planner on 9843 0188 or at gtam@thehills.nsw.gov.au.

Yours faithfully,



Nicholas Carlton
MANAGER – FORWARD PLANNING