

## REZONING REVIEW – Briefing Report

Date of referral	10 December 2019	
Department ref. no	RR_2019_THILL_003_00	
LGA	The Hills Shire	
LEP to be amended	The Hills Local Environmental Plan 2019	
Address	Castle Hill Road, Cherrybrook, immediately south of the Cherrybrook Metro Station	
Reason for review	<input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment	<input type="checkbox"/> Council failed to indicate support for the proposal within 90 days, or failed to submit the proposal after indicating its support
Is a disclosure statement relating to reportable political donations under s10.4 of the Act required and provided?	<input type="checkbox"/> Provided <input checked="" type="checkbox"/> Not required Comment: no donation or gift disclosure required	

## 1. SUMMARY OF THE PROPOSAL

### 1.1 Background

The rezoning review request (**Attachment A**) was submitted by Place Design Group on behalf of Toplace relating to 'Cherrybrook Central,' numerous parcels south of Castle Hill Road and Cherrybrook Metro Station, between Highs Road and Franklin Road, Cherrybrook.

The planning proposal seeks to amend The Hills Local Environmental Plan 2019 to facilitate high density residential development on the site.

The proposal (**Attachment C1-C12**) submitted for the rezoning review is the same proposal that was considered by Council on 22 October 2019 (**Attachment G**). On 21 August 2019 the Local Planning Panel decided not to support the planning proposal to proceed to Gateway (**Attachment F**).

The request has been submitted as The Hill Shire Council resolved not to support the proposed amendments to proceed to Gateway at Council's meeting of 22 October 2019 (**Attachment G**).

The reasons given in both cases were:

- the proposal does not give effect to the Central City District Plan and The Hills Local Strategic Planning Statement (assured on 4 March 2020), particularly in relation to liveability priorities;
- the proposed built form and density outcomes are inconsistent with the strategic planning framework, particularly under the North West Rail Link Corridor Strategy;
- the proposal would result in overdevelopment of the site which is incompatible with the current and desired future character as the built form has excessive bulk, building lengths, heights, visual impacts, amenity impacts and overshadowing; and
- the proposal precedes the completion of detailed and holistic precinct planning and infrastructure analysis for the Cherrybrook Metro Station Precinct and does not adequately consider the capacity of the local and regional road network to support cumulative growth within the Cherrybrook Precinct. The proposal has not resolved issues relating to the funding and provision of local and regional infrastructure.

### **1.2 Locality and context**

The subject land is situated in Cherrybrook, approximately 12km north of Parramatta CBD. Cherrybrook Metro Station is north of the subject land and has connections to strategic centres such as Macquarie Park and Castle Hill. The journey from Cherrybrook Metro Station is around 45 minutes from Sydney CBD.

Cherrybrook is on a ridgeline which runs east to west and is predominantly characterised low-density residential with areas of open space and small pockets of bushland (refer to **Attachment B1** – locality map).

### **1.3 Site description**

The site consists of numerous parcels of land to the south of Castle Hill Road, between Highs Road and Franklin Road, Cherrybrook and has a site area of 183,049m<sup>2</sup> (refer to **Attachment B1** – locality map). There are two local heritage properties identified in Schedule 5 of the Hills LEP 2019 on the site. The site contains Blue Gum High Forest (BGHF), which is a critically endangered ecological community and the entire site is also identified as 'landslide risk' under The Hills LEP 2019.

### **1.4 Current planning provisions**

The current planning controls applying to the site under The Hills LEP 2019 are:

- zoned E4 Environmental Living;
- maximum height of buildings of 9m;
- minimum lot size of 2000m<sup>2</sup>;
- no identified Floor Space Ratio;
- two identified heritage properties on site; 'Glenhope' - 113 Castle Hill Road – Lot 7 DP 1012463 and 'Dunrath' – 139 Castle Hill Road – Lot 1 DP 220867; and
- the entire site is identified as being affected by geotechnical constraints on the 'Landslide Risk' map.

### **1.5 Proposed planning provisions**

The planning proposal seeks to amend the planning controls for the site under The Hills LEP 2019 as follows:

- rezone the site from E4 Environmental Living to R4 High Density Residential, R3 Medium Density Residential, RE1 Public Recreation and E2 Environmental Conservation zones (Figure 1 and **Attachment D1**);
- increase the maximum building height up to RL226m (Figures 2 and **Attachment D2**); and
- introduce a range of Floor Space Ratios controls up to 3.7:1 (Figure 3 and **Attachment D3**).

The proposal does not seek any amendments to the minimum lot size or heritage provisions for the site.

The planning proposal seeks to facilitate a medium to high density residential precinct comprising 3,084 dwellings of various typologies, ranging from 1 to 16 storeys (Figure 4), with open space, community spaces and retail.

**Zone**

- Environmental Conservation
- High Density Residential
- Medium Density Residential
- Public Recreation

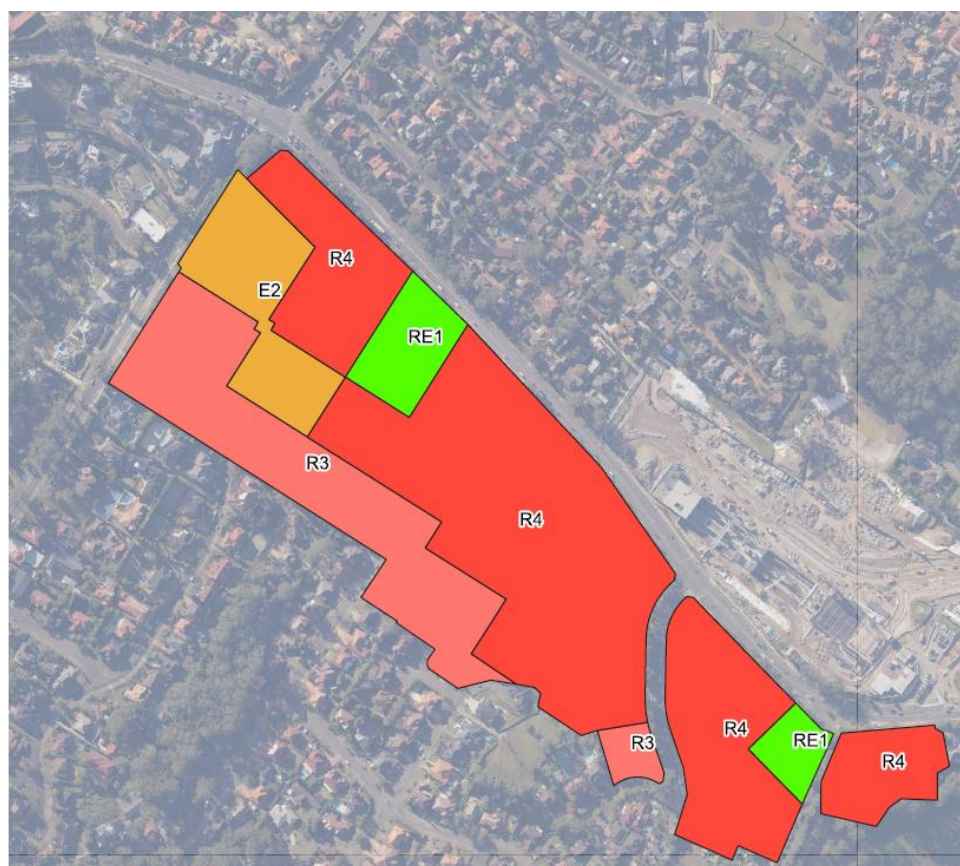


Figure 1: Proposed zoning

Maximum Building Height (RL m)

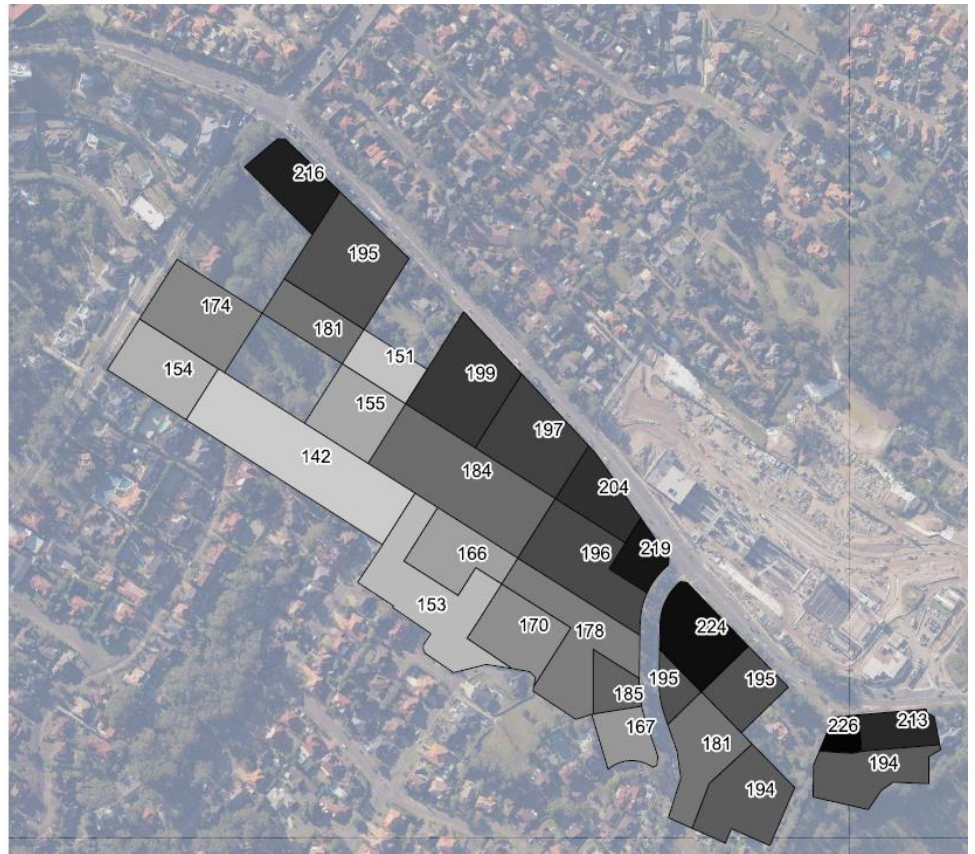
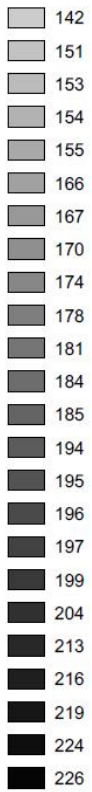


Figure 2: Proposed maximum height of buildings RL

Maximum Floor Space Ratio (n:1)

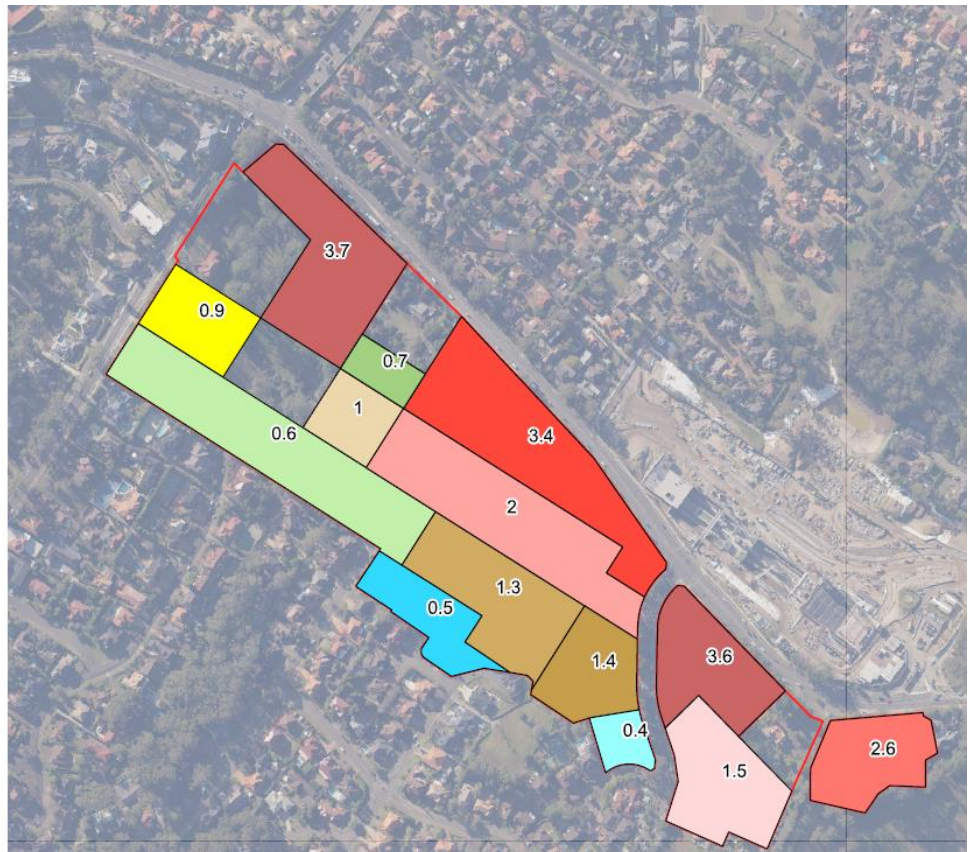
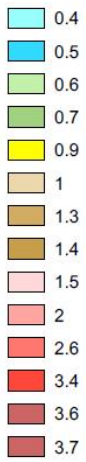
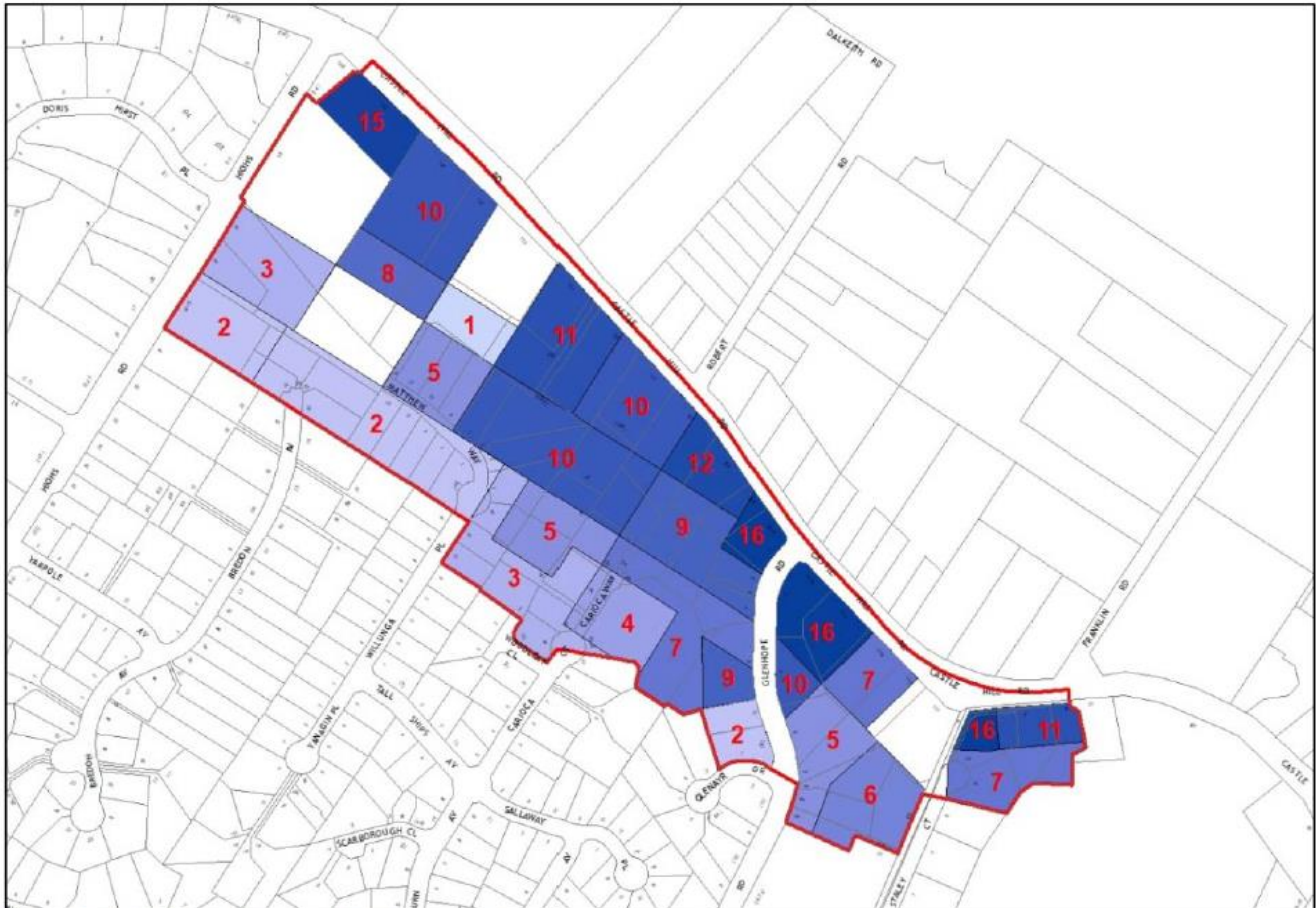


Figure 3: Proposed FSR



**Height of Buildings (Storeys )**

<b>STOREYS</b>	1	3	5	7	9	11	15
	2	4	6	8	10	12	16

Figure 4: Indicative height of buildings in storeys

## **2. INFORMATION ASSESSMENT**

*Does the proposal seek to amend a zone or planning control that is less than five years old?*

No. The land use zones applicable to the site at the time of lodgement were part of The Hills Local Environmental Plan 2012 (now known as The Hills Local Environmental Plan 2019).

### **2.1 Strategic merit test**

*Consistency with the relevant regional plan outside the Greater Sydney region, district plan within the Greater Sydney region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment.*

*Proponents will not be able to depend on a draft regional, district or corridor/precinct plan when the Minister for Planning and Public Spaces or the Department of Planning, Industry and Environment has announced that such a plan will be updated before being able to be relied on.*

#### **2.1.1 Central City District Plan**

The Central City District Plan was released on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the District while improving its social, economic and environmental assets. The proponent states the proposal is consistent with the plan (**Attachments A, C1-C12 and D1-D4**) and Council states there are inconsistencies in the planning proposal under the District Plan (**Attachments E1-E2**) in relation to key priorities as follows:

### Planning Priority 1 Planning for a City supported by infrastructure

Proponent: The proposal would realise the potential benefit of the North West Metro and increased traffic at the site resulting from the proposal will be ameliorated through an additional lane to Castle Hill Road, a left turn slip lane on the east approach to Castle Hill Road and an increase in the length of the left turn short lane on the Highs Road southern approach.

Council: The proposal precedes the completion of detailed and holistic precinct planning and infrastructure analysis for the Cherrybrook Station Precinct and would facilitate yields in excess of what has been anticipated through the current strategic planning framework guiding future development within the Precinct.

The proposal does not adequately consider the capacity of the local and regional road network to support cumulative growth within the Cherrybrook Precinct and has not adequately resolved issues relating to the funding and provision of local and regional infrastructure (including social infrastructure) required to support the additional residential development proposed.

### Planning Priority 3 Providing services and social infrastructure to meet people's changing needs and Planning Priority 17 Delivering high quality open spaces

Proponent: The proposal's Community Facility and Open Space Needs Study outlines to the provision of a child care centre, indoor fitness facility, multi-purpose community centre and semi-private community facilities and 400-space commuter car park to support the residential growth on site. The proponent includes a proposed pedestrian subway linking the site to the station but has not offered to fully fund the design, construction or any acquisition that might be required to implement this. 23% of the site would be reserved for public open space including a park, rehabilitated green ways and a riparian zone.

Council: The provision of social infrastructure is insufficient, particularly as the majority of the proposed open space is either:

- ecologically constrained land;
- heritage items;
- pedestrian through-site links (which is not a useable open space);
- areas of road verge; or
- land not controlled by the proponent.

Further, the proposal will generate the need for 1.6 active playing fields under Council's Recreation Strategy which identifies a benchmark provision for high density locations of 1 playing field per 4,000 people / 2,000 dwellings. Council notes the proposal does not accommodate the required active playing fields within the site and further the proponent has not adequately demonstrated how the demand for additional playing fields can be addressed.

### Planning Priority 5 Providing housing supply, choice and affordability, with access to jobs and services

Proponent: The proposal would add diversity to the housing stock with 3,084 dwellings which will support ageing populations, those downsizing, and smaller households. All dwellings will be within 800m of Cherrybrook Metro, with higher density typology closer to the station to optimise walkability.

Council: The proposal is inconsistent with this Priority as it seeks to enable yields more than what has been anticipated through the strategic framework guiding redevelopment within the Precinct. Accordingly, there is substantial uncertainty as to whether the proposed population can be sufficiently serviced.

## Planning Priority 6 Creating and renewing great places and local centres and respecting the District's Heritage

Proponent: The proposal would provide for the various needs of the community and the heritage properties 'Dunrath' and 'Glenhope' will be retained and made publicly accessible for various uses.

Council: The design outcomes contain excessive size, density and bulk, overshadowing, solar access issues and insufficient setbacks as well as impact of the visual amenity of heritage properties. Concern is also raised that the proposal seeks to rezone the heritage items as RE1 Public Recreation. This would create a liability for Council to acquire, maintain and manage these heritage items. This would create an unreasonable burden on Council and the community and it is considered more appropriate that the heritage items be retained in private ownership and zoned consistent with the adjoining sites.

## Planning Priority 13 Protecting and improving the health and enjoyment of the District's waterways

Proponent: The proponent ensures that sensitive urban design principles will be implemented to protect the health of the several minor tributaries which start within the site, part of the Parramatta River catchment (Figure 5).



Figure 5: Proposed Water Detention and Filtration

Council: It is acknowledged that the future development will need to manage stormwater discharge on-site to ensure that downstream properties are not affected, given the scale of development, a Stormwater Management Plan and Water Sensitive Urban Design Strategy needs to be prepared in support of any planning proposal and this has not been done. Stormwater management has not been adequately considered in the documentation submitted in support of the proposal. A major piped drainage system runs along the topographical depression between Matthew Way and Bredon Avenue and all properties downhill are identified as flood control lots (properties subject to flood related development controls (Figure 6).



Figure 6: Flood Lot Controls

Planning Priority 15 Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes and Planning Priority 16 Increasing urban tree canopy cover and delivering Green Grid connections

Proponent: The supporting Preliminary Biodiversity Assessment identifies the critically endangered Blue Gum High Forest (BGHF) areas identified on the site is fragmented and in poor condition, lacking mid and understorey. The proposal would maintain around 40% of the BGHF area and enhance canopy cover through road planting, urban parklands and wildlife corridors.

Council: The proposal has not been designed to sufficiently minimise impacts to Blue Gum High Forest (Critically Endangered Ecological Community) within the site. Two of the areas marked for retention of native vegetation do not contain existing stands of BGHF (Figure 7). The biodiversity assessment has also not considered the potential for the proposal to have a Serious and Irreversible Impact (SAIL) on the BGHF on the site under the NSW Biodiversity Conservation Act 2016 (BC Act) which lists BGHF listed as a candidate ecological community that meets the SAIL principles and criteria.

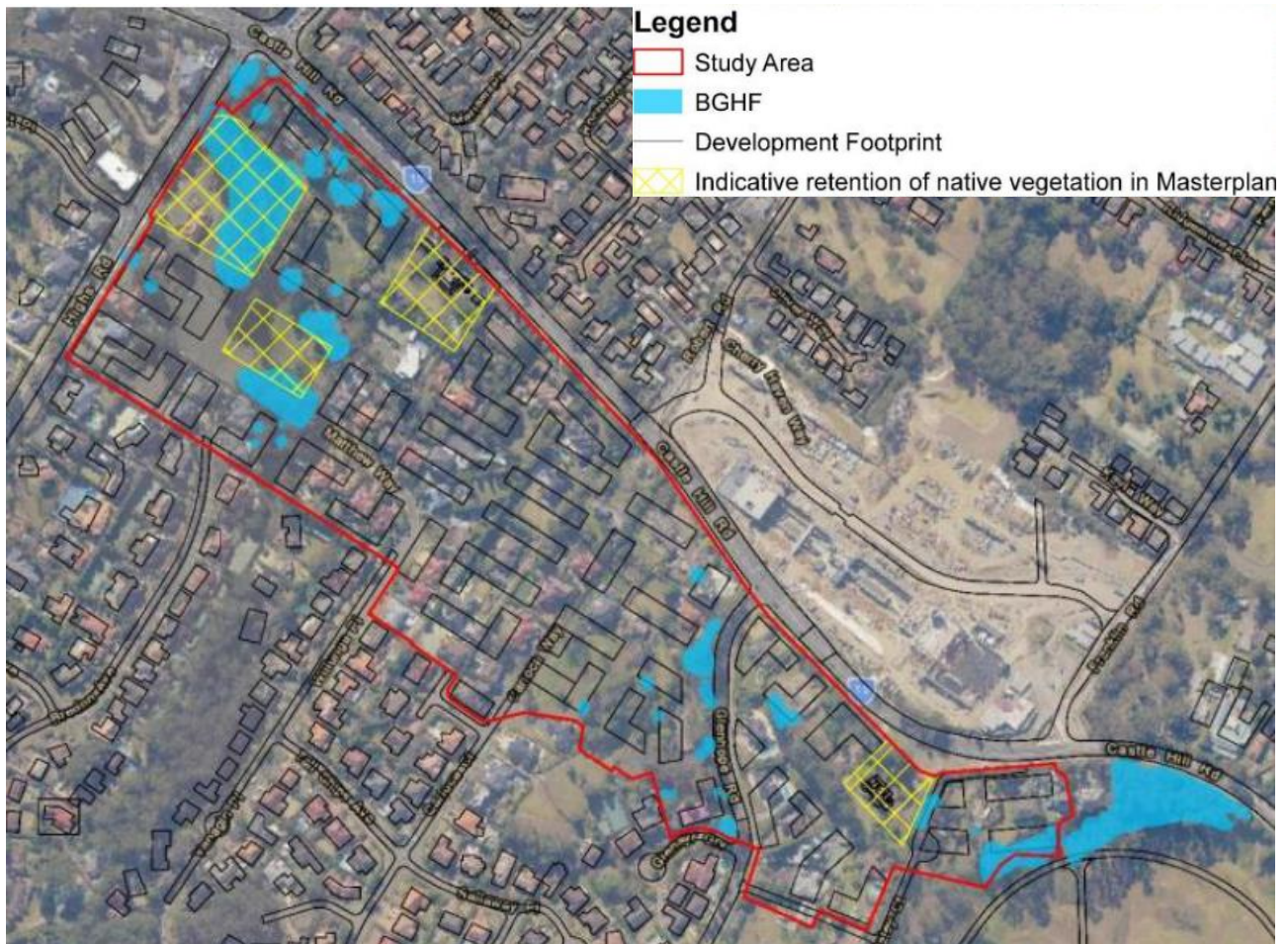


Figure 7: Extent of Blue Gum High Forest

Planning Priority 20 Adapting to the impacts of urban and natural hazards and climate change

Proponent: Significant engineering solutions are proposed to address landslip hazards. The supporting geotechnical study (**Attachment C8**) details measures to mitigate risks at the site.

Council: Should any proposal for this land proceed, the proposal (including geotechnical assessment) would need to be reviewed by Council's Geotechnical Review Panel, prior to public exhibition.

**2.1.3 North West Rail Link Corridor Strategy (2013)**

The Department finalised the North West Rail Link Corridor Strategy in 2013 which identified high-level vision and structure plans for each of the North West Rail stations.

The Structure Plan for Cherrybrook anticipates capacity for an additional 3,200 dwellings by 2036. The Structure Plan (Figure 8) indicates that that a high density mixed use centre would be focused on the Metro Station north of Castle Hill Road and that medium density residential of 3-6 storeys could to be accommodated south of Castle Hill Road subject to further investigations and studies.

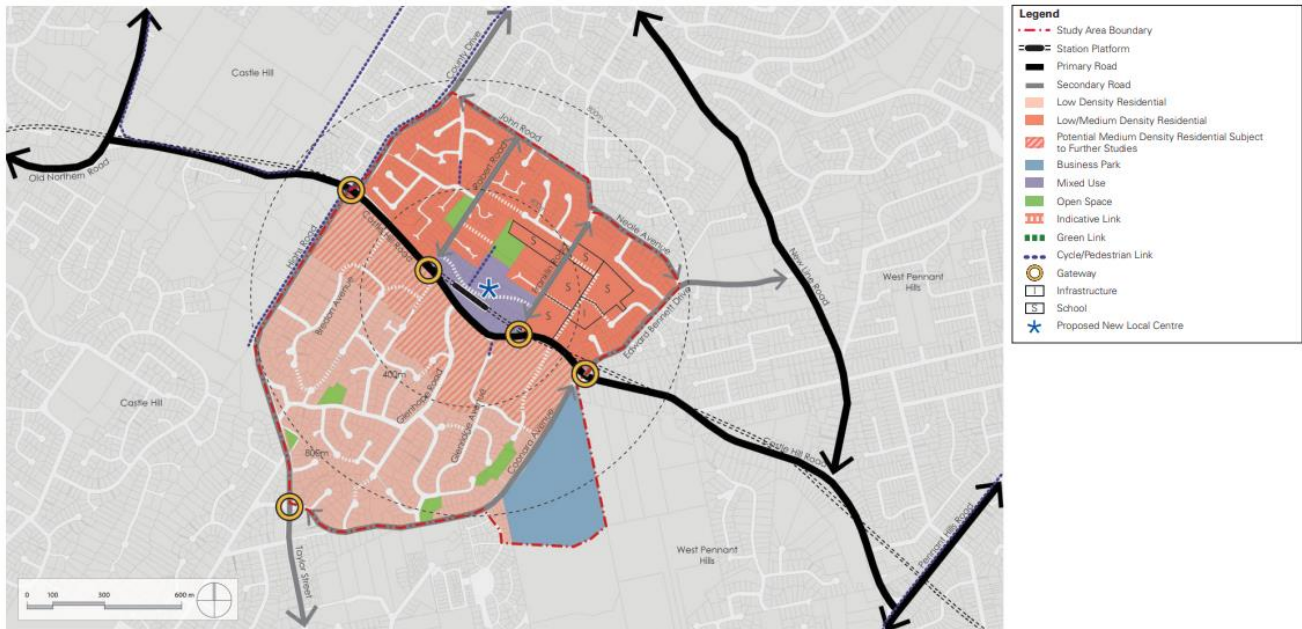


Figure 8: Cherrybrook Precinct – North West Rail Link Corridor proposed zoning

The proponent's material states the proposal is consistent with the priorities of the North West Rail Link Strategy, in particular the Cherrybrook Station Structure Plan which has a vision to 'transform the Cherrybrook Study Area' and 'increase residential densities within walking distance of the station.'

The proponent states the Structure Plan's comment that the site only has potential for medium density residential is 'based upon misapprehension of the constraints imposed by load road connectivity and landslip hazard'. The proponent asserts the site's landslip risk (Figure 9) does not prevent higher densities as engineering effectively mitigate the impact (**Attachment C8**). Further, the proponent states that the slope and inadequately connected road network could be resolved with effective design and engineering initiatives.

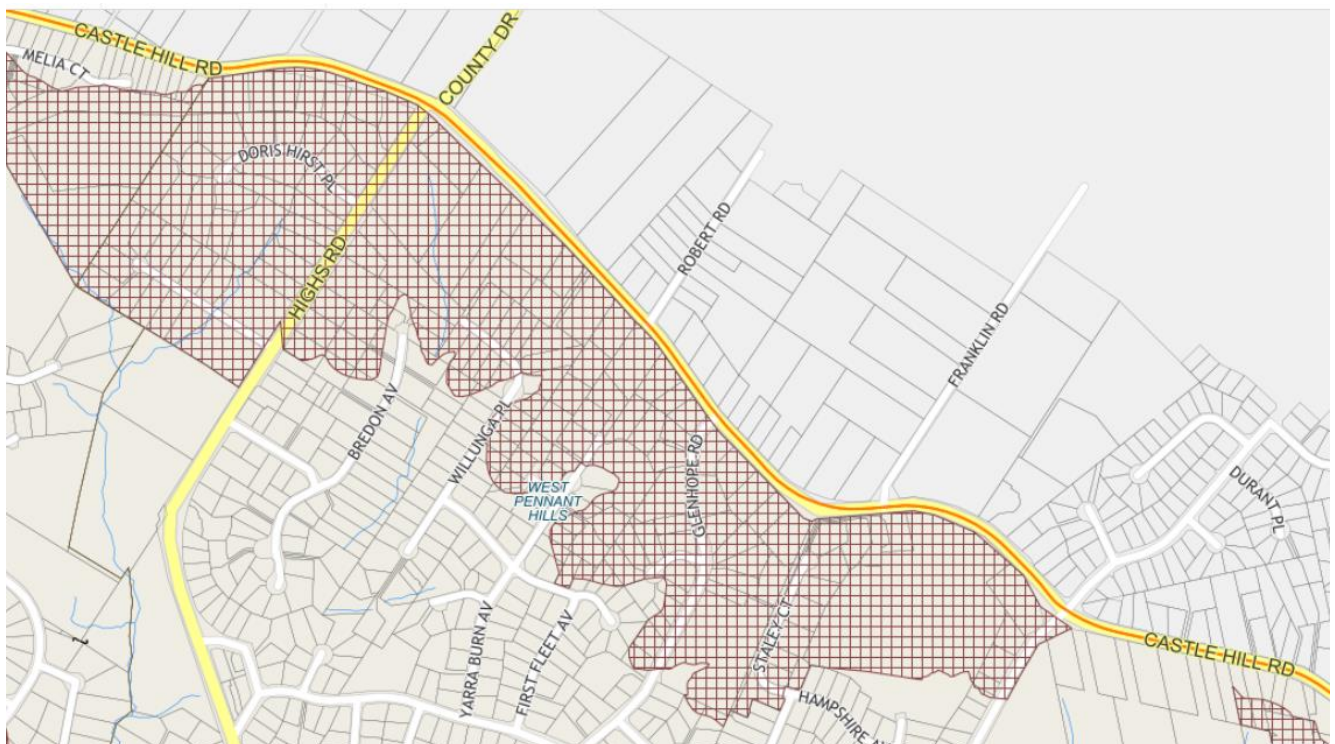


Figure 9: Extract from The Hills LEP 2019 Landslip Risk map (Landslide Risk hatched)

Council (**Attachments E1-E2**) states the proposal is inconsistent with the Strategy (and Section 9.1 Ministerial Direction 5.9 North West Rail Link Corridor Strategy) as it seeks yield and building height which is approximately 4 times higher than the Strategy anticipates. The Structure Plan anticipates a total of 3,200 additional dwellings by 2036. The planning proposal would provide 3,086 dwellings – taking up the majority of the precinct’s forecast residential yield. Further, Council notes there are also urban design and topographic reasons for minimising height in the area which are independent of geotechnical risks.

### **2.1.3 The Hills Local Strategic Planning Statement (2019)**

The Hills Local Strategic Planning Statement is the local strategic guide which aims to give effect to the Central City District Plan. It was endorsed by Council in October 2019 and the Greater Sydney Commission has issued final assurance. The proponent does not provide an assessment under the LSPS.

The relevant Priorities discussed by Council are:

- Priority 6: Plan for new housing to support Greater Sydney’s growing population
- Priority 9: Renew and create great places
- Priority 10: Provide social infrastructure and retail services to meet residents’ needs
- Priority 15: Provide new and upgraded passive and active open spaces

Council states the proposed height, bulk and density are excessive and inconsistent with the above LSPS priorities as it seeks to enable yields which are well in excess of what has been anticipated through the strategic framework guiding redevelopment within the Precinct (Table 1). The population target for Cherrybrook in the LSPS is 400 dwellings by 2036. Accordingly, there is substantial uncertainty as to whether the proposed population could be serviced with enough local and regional infrastructure.

Table 1: Council analysis of proposal vs relevant strategic plans

	North West Rail Link Corridor Strategy	Hills Corridor Strategy	Proposal (December 2018)
<b>Height</b>	3-6 Storeys	4-8 Storeys	2-16 storeys
<b>FSR</b>	1:1-2:1	N/A	0.4:1-3.6:1
<b>Density (Incl. Proposed Roads)</b>	50dw/ha	89dw/ha	182dw/ha
<b>Additional Yield</b>	888*	1,565	3,200

**\*Note:** there is disparity between FSR assumptions and dwelling yield tables within the NWRL Corridor Strategy

**\*\*89 dwellings per hectare** is calculated in a scenario which includes roads and hence is lower than that stated in the Hills Corridor Strategy

*Discuss how the proposal addresses consistency with any endorsed local strategy.*

There are no relevant local strategies endorsed by the Department that can be relied on to establish strategic merit.

*Responding to a change in circumstances, such as investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.*

The planning proposal references the recently opened Cherrybrook Metro Station, and the site is within the 400m walking catchment of the station as a change in circumstances to support the proposed amendments. The proposal states the changes in the strategic planning framework supports the amendments.

## 2.2 Site-specific merit test

*The natural environment (including known significant environmental values, resources or hazards).*

As discussed earlier in this report, the following environmental site constraints are identified:

- the site contains areas of Blue Gum High Forest (BGHF) a critically endangered ecological community;
- the site is affected by geotechnical constraints as identified in The Hills LEP 2019 'Landslide Risk' mapping;
- the site contains two heritage items 'Dunrath' and 'Glenhope' dwelling houses within the site are both listed on the State Heritage Register; and
- the site contains flood lots, creeks, overland flow paths and stormwater pipes.

The proposal (**Attachments A and C1-C12**) states it can effectively mitigate and respond to the above constraints. However, Council states the proposal does not effectively address the site's environmental constraints (**Attachments E1-E2**)

*The existing uses, approved uses and likely future uses of land in the vicinity of the proposal.*

As discussed earlier in this report, the strategic framework anticipates the Cherrybrook Precinct would accommodate a transition in height. The relevant strategies indicate the highest density would be located in the mixed-use centre at Cherrybrook Metro and the subject site being a low to medium density residential area with a maximum of 6 to 8 storeys subject to further investigations. The proponent states this form of development fails to capitalise on the significant public investment of the Metro.

Council notes the proposal is inconsistent with the current and future character of the area, results in excessive overshadowing and has an exacerbated visual impact due to the topography. Council also notes concerns with the building length, FSR and building separation, noting possible impacts such as inadequate setbacks, a cluttered and bulky look and inadequate deep soil provision to support tree planting.

*The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.*

The proponent states required augmentation of support services can be resolved through the Gateway and development application process and any traffic impacts will be mitigated by Transport for NSW's traffic planning for the wider area and the proposal's provision of a 400-space commuter car park. Council states the proposal has not resolved issues related to the funding and provision of local and regional infrastructure required to support the development and further is unclear if the commuter car park will be exclusively for the use of commuters or is to also be visitor parking for the residential component of the proposal.

## **3. COUNCIL AND AGENCY VIEWS**

The Department advised Council of the rezoning review request on 10 December 2019. The Department received Council's comments on the proposal on 20 January 2020 (**Attachments E1-E2**) which are consistent with Council's resolution on 22 October 2019 (**Attachment G**).

Council does not support the proposal for the same reasons recommended by the independent Local Planning Panel. The planning proposal was referred to the Local Planning Panel (**Attachment F**) on 21 August 2019 which concluded that the proposal should not proceed to Gateway determination for the following reasons:

1. It is inconsistent with the Infrastructure and Liveability priorities within the Greater Sydney Region Plan, Central Plan District and Council's Draft Local Strategic Planning Statement.

2. It is inconsistent with the built form and density outcomes identified within the applicable State and Local Government strategic planning framework for the Ia, as outlined within the State Government's North West Rail Link Corridor Strategy and the Hills Corridor Strategy.
3. It would result in an overdevelopment of the site which is incompatible with the current and future character for the Cherrybrook Station Precinct and surrounding locality. The proposed built form exhibits excessive building heights and lengths, insufficient setbacks and separation, as required by the Apartment Design Guide, and would result in excessive visual and amenity impacts, including overshadowing of landscaped open space areas and the public realm; and
4. The proposal precedes the completion of detailed and holistic precinct planning and infrastructure analysis for the Cherrybrook Station Precinct and does not adequately consider the capacity of the local and regional road network to support cumulative growth within the Cherrybrook Precinct. The proposal has not resolved issues relating to the funding and provision of local and regional infrastructure required to support the additional residential development proposed.

## **ATTACHMENTS**

Attachment A – Request for Rezoning Review

Attachment B1 – Locality Map

Attachment B2 – Land Use Zoning

Attachment C1-C12 – Planning Proposal and supporting studies

Attachment D1 – Proposed zoning map

Attachment D2 – Proposed height of buildings map

Attachment D3 – Proposed FSR map

Attachment E1 - Council Response Letter

Attachment E2 – Council Response Detailed

Attachment F – Planning Panel Minutes 21 Aug 2019

Attachment G – Council Report and Minutes 22 Oct 2019

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