

## DETAILED RESPONSE TO REZONING REVIEW ASSESSMENT CRITERIA *Melia Court and Glen Road, Castle Hill (5/2024/PLP)*

### 1. THE SITE

The subject site is referred to by the proponent as 1020 Melia Court, Castle Hill and comprises three separate torrens title lots under single ownership (Lot 1020 in DP 876671, Lot 1021 in DP 876671 and Lot 2 in DP 576773). It is triangular in shape and has a cumulative site area of approximately 45,024m<sup>2</sup>. It has frontages to both Glen Road and Melia Court, with vehicular access currently only available from Glen Road. The immediate site context is depicted in Figure 1 below.



**Figure 1**  
Aerial view of subject site (outlined in yellow) and surrounds

The site is currently vacant and includes grassed areas and vegetation, in particular Blue Gum High Forest which is listed as a Critically Endangered Ecological Community. The site features a steep topography, sloping from north to south with a change in elevation of approximately 60m across the site. The site is zoned C4 Environmental Living and is identified on the Landslide Risk Map under The Hills Local Environmental Plan (LEP) 2019. It is currently subject to a maximum building height of 9m (2-3 storeys) and is not subject to any maximum floor space ratio controls.

The site is surrounded by Rogans Hill Reservoir and environmental land to the west, low density residential areas to the north and environmental living areas to the east. It is located approximately 1.5km and 1.7km walking distance from Cherrybrook and Castle Hill Metro Stations, respectively.

### 2. DESCRIPTION OF PLANNING PROPOSAL

The planning proposal seeks to facilitate a mix of medium and high density residential development comprising:

- Six residential buildings, with heights ranging from three to six storeys, containing 147 apartments;
- 38 terraces (ranging between two and three storeys);
- A publicly accessible park, nature corridors and nature reserve; and
- A central loop road.

To achieve this outcome, the planning proposal seeks to amend The Hills LEP to:

- Rezone the subject site from C4 Environmental Living to R3 Medium Density Residential, R4 High Density Residential, C2 Environmental Conservation and RE1 Public Recreation; and
- Increase the height of building controls from a maximum of 9m to a maximum of 10m to 22m across the site.

A comparison between the outcomes envisaged under the strategic planning framework, The Hills LEP 2019 and the planning proposal is provided in the following table.

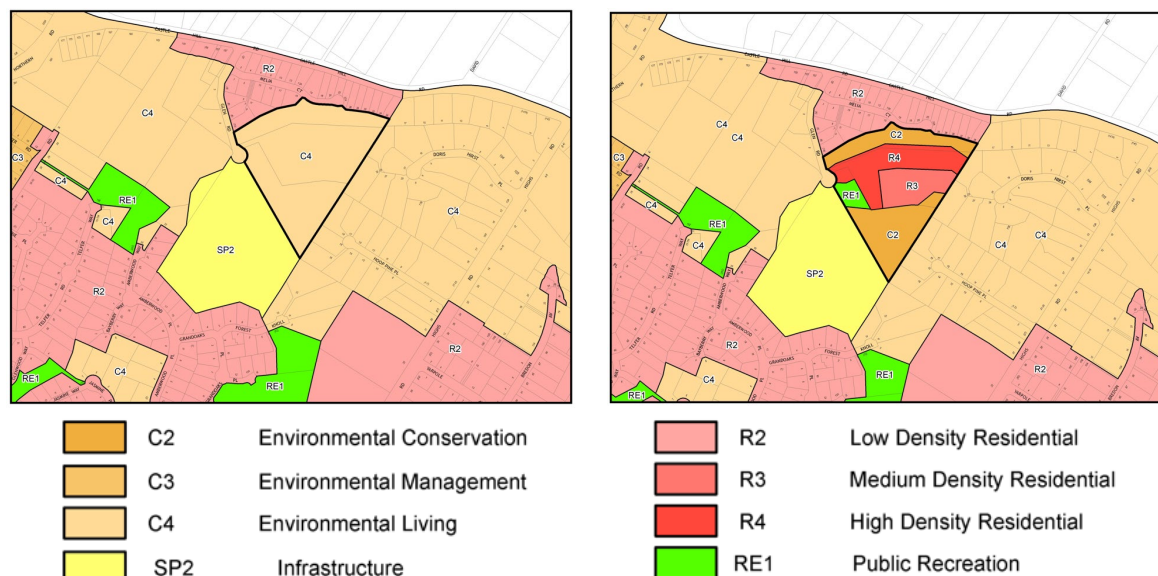
| Planning Control          | LEP 2019                  | Strategic Policies <sup>1</sup> | Planning Proposal  |
|---------------------------|---------------------------|---------------------------------|--|
| <b>Land Zone</b>          | C4 Environmental Living   | No change                       | C2 Environmental Conservation<br>R3 Medium Density Residential<br>R4 High Density Residential<br>RE1 Public Recreation |
| <b>Height of Building</b> | 9m (2 storeys)            | No change                       | 10m-22m (3-6 storeys)  |
| <b>Minimum Lot Size</b>   | 2,000m <sup>2</sup>       | No change                       | No change  |
| <b>Floor Space Ratio</b>  | N/A                       | No change                       | No change  |
| <b>Residential yield</b>  | 22 dwellings <sup>2</sup> | No change                       | 185 dwellings  |

**Notes:**  
<sup>1</sup> While considered as part of the broader investigation areas surrounding Castle Hill and Cherrybrook Metro Station, the site is outside of the area identified as suitable for change under the Local Strategic Planning Statement, Housing Strategy, NWRL Corridor Strategy (2013), The Hills Corridor Strategy (2015), Cherrybrook Place Strategy and Castle Hill Precinct Plan (recently adopted by Council on 11 June 2024).  
<sup>2</sup> Subdivision application (DA No. 1089/2006/ZA) approved 8 August 2006 and physically commenced before 8 August 2011.

**Table 1**

Comparison between planning proposal and outcomes envisaged under the planning framework

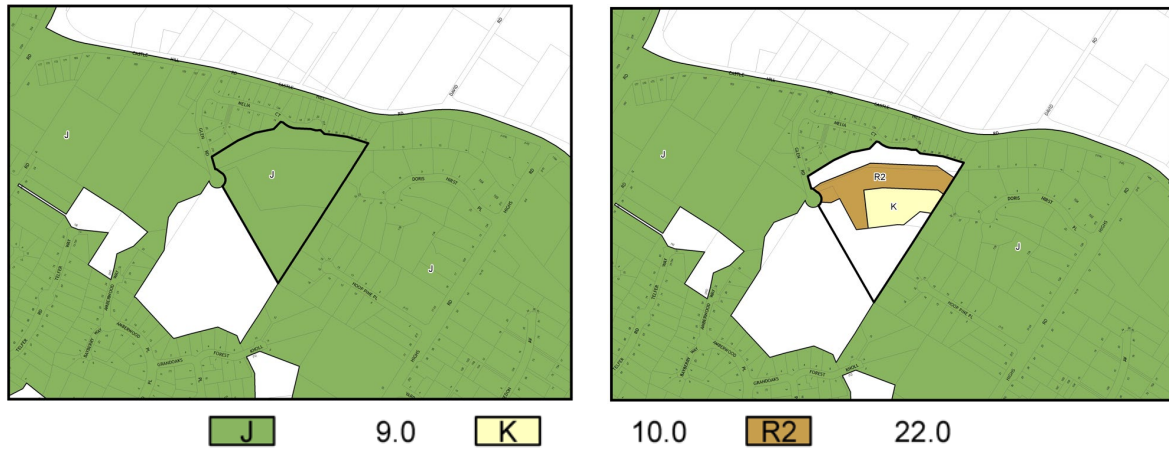
The proposed LEP map amendments are shown in the following figures.



**Figure 2**

Existing (left) and proposed (right) land use zone maps





**Figure 3**  
Existing (left) and proposed (right) maximum height of building maps

Extracts of the development concepts submitted by the Proponent in support of the proposal are provided in the following figures.



**Figure 4**  
Aerial view of the site



**Figure 5**  
Proposed Master Plan

The planning proposal is accompanied by a letter of offer to enter into a Planning Agreement dated 16 February 2024. The letter of offer includes preliminary details of infrastructure items the developer intends to deliver in association with the development. While the Proponent has not included an estimated value of the offer in the letter of offer, it notes it would include:

- The delivery of a future public park around 2,000m<sup>2</sup> in size that features play equipment, landscaping and areas for passive recreation. The letter indicates the Proponent's intent for the ownership to be transferred to Council.
- 15% of the total floor area to be used as affordable rental housing for at least 15 years from the date of occupation and managed by a registered community housing provider.
- Regeneration of some of the bushland, within the proposed C2 Environmental Conservation zone in accordance with a future vegetation management plan.
- Construction of a new footpath along Glen Road through to Castle Hill Road.

Comments on the Planning Agreement offer are provided as part of the Site-Specific Merit Assessment (section 5d of this Response). In summary, the offer does not adequately address the increased demand for infrastructure that would be required to support the proposed development and does not provide tangible benefits for the community.



### 3. HISTORY

**08/08/2006**

A subdivision application (DA No. 1089/2006/ZA) was approved for the subject site. The subdivision consent, as amended, facilitates 1 community lot, 22 residential lots (742m<sup>2</sup> to 1,193m<sup>2</sup>) and a new cul-de-sac (extract below). Physical works were commenced on the subject site prior to 8 August 2011 and therefore the consent remains active for the developer to progress.



**Figure 6**  
Extract of Approved Subdivision Plan

The existing approval is considered to be a more appropriate outcome for the site, particularly in terms of balancing environmental constraints, blending in with the surrounding local character and infrastructure capacity within the locality.

**2013**

North West Rail Link Corridor Strategy was released by the State Government in 2013 to guide development along the North West Rail Link Corridor over a 20-25 year period. It includes a structure plan for each of the Station Precincts, including Castle Hill and Cherrybrook. The structure plans identify areas with potential for growth and articulates the desired development outcomes for these key growth areas.

Critically, being cognisant of the Sydney Metro North West and catchments around the Castle Hill and Cherrybrook Stations, the subject site was *not* identified for growth as part of this Strategy, noting that it generally identifies uplift in well-located areas within closer proximity and walking distance of the Metro Stations.

**11/09/2015**

Land transferred/sold to current owner.

**25/01/2018**

Modification of Development Consent 1089/2006/ZA/C was approved, subject to conditions. The modification primarily related to amending the landslide risk stabilisation methodology.

**07/10/2021**

Pre-lodgement meeting held with Council officers for a proposal to rezone the land to R3 Medium Density Residential to facilitate approximately 64 townhouses on the site.

|                   |   |
|-------------------|---|
| <b>03/11/2021</b> | Council Officer Pre-lodgement Feedback Letter provided to Proponent. Concerns were raised regarding inconsistency with surrounding development, impact on scenic and district views, site not within walking catchment of a centre, environmental constraints, access and traffic impacts, questionable benefit of proposed public park and built form outcomes. It was advised that, based on the information provided, it would be difficult for Council officers to conclude that a planning proposal to facilitate medium density development demonstrates strategic and site-specific merit. |
| <b>01/06/2023</b> | Pre-lodgement meeting held with Council officers for a Scoping Proposal for a potential planning proposal application that would seek to facilitate a residential development comprising residential flat buildings and terrace style units, facilitating 191 dwellings on the site.  |
| <b>14/06/2023</b> | Council Officer Pre-lodgement Feedback Letter provided to Proponent. The feedback identified a number of inconsistencies with the strategic framework, site-specific concerns and included preliminary views of public authorities. The letter recommended that the Proponent strongly reconsider the lodgement of a planning proposal for this site, having regard to the substantial strategic and site-specific merit issues detailed.   |
| <b>04/03/2024</b> | Planning proposal lodged with Council.  |
| <b>07/05/2024</b> | Proponent presented the planning proposal at a Councillor Briefing session.   |
| <b>15/05/2024</b> | Planning proposal reported to the Local Planning Panel for advice.  |
| <b>20/05/2024</b> | Council officers wrote to the Proponent advising of the Panel advice and inviting the Proponent to withdraw the planning proposal. The Proponent subsequently declined the opportunity to withdraw the application.   |
| <b>25/06/2024</b> | Planning Proposal considered by Council. Council resolved that the planning proposal should <i>not</i> proceed to Gateway Determination.  |
| <b>24/09/2024</b> | Formal notification of Rezoning Review request received from DPHI. A site-specific DCP was submitted as part of the material for the Rezoning Review, however this did not form part of the planning proposal material submitted to Council for consideration by the Local Planning Panel or Council in the assessment and determination of the planning proposal. An older version of the Public Benefit Offer was also provided as part of the Rezoning Review application.   |

#### **4. STRATEGIC MERIT ASSESSMENT**

- a) *Does the proposal give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans released for public comment or a place strategic for a strategic precinct including any draft place strategy:*

The planning proposal is inconsistent with the objectives and priorities of the Greater Sydney Region Plan, Central City District Plan, Section 9.1 Ministerial Directions, North West Rail Link Corridor Strategy, The Hills Corridor Strategy, Cherrybrook Station Precinct Place Strategy as these documents relate to providing for housing supply in the right locations, creating great places, protecting areas of environmental significance and balancing growth with suitable levels of infrastructure.

##### **Greater Sydney Region Plan and Central City District Plan**

The following objectives of the Greater Sydney Region Plan and Planning Priorities of the Central City District Plan are relevant to the subject proposal:

- Objective 6 – Services and infrastructure meet communities' changing needs
- Planning Priority C3 – Providing services and social infrastructure to meet people's changing needs

The District Plan notes that growth increases demand on existing services and infrastructure. While the Proponent has submitted a proposed letter of offer to enter into a Planning Agreement, the planning proposal is inconsistent with this objective as the proposed offer does not provide any tangible public benefits and fails to provide an appropriate infrastructure solution to cater for the proposed uplift. This is discussed in further detail in Section 5 of this Response.

- Objective 7 – Communities are healthy, resilient and socially connected
- Planning Priority C4 – Fostering healthy, creative, culturally rich and socially connected communities

The District Plan articulates the characteristics of places with high concentrations of social connectors which include access to high frequency public transport, walkable town centres, high provision of social infrastructure (such as community and neighbourhood hubs, sports fields, clubs) and access to education and learning. Noting the planning proposal is outside the walkable catchment of Metro Stations and seeks to provide high density residential development outside of a defined local or strategic centre or walkable catchment from these services and facilities, it is unlikely to enhance physical activity and social connection.

- Objective 10 – Greater housing supply
- Objective 11 – Housing is more diverse and affordable
- Planning Priority C5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport

While the planning proposal broadly contributes to the supply of housing, Council is well on track to meet and exceed the housing targets set out in the District Plan for The Hills Shire, with future growth anticipated in Station Precincts and Release Areas that are better located to be serviced by amenities and public transport. Regarding new 5-year targets set by Government in June 2024, the Hills target of 23,300 new homes is predominately made up of a planned growth component that represents homes already in the pipeline for delivery. The Hills has enough land zoned and ready for an additional 50,400 homes to be delivered with more than 17,000 homes with development consent, which have not yet been completed. The target also includes a projected growth component based on NSW Government planning reforms for diverse and well-located homes. The subject site does not meet the criteria for these recently exhibited Government reforms, noting its distance from a transport hub or Metro stations.

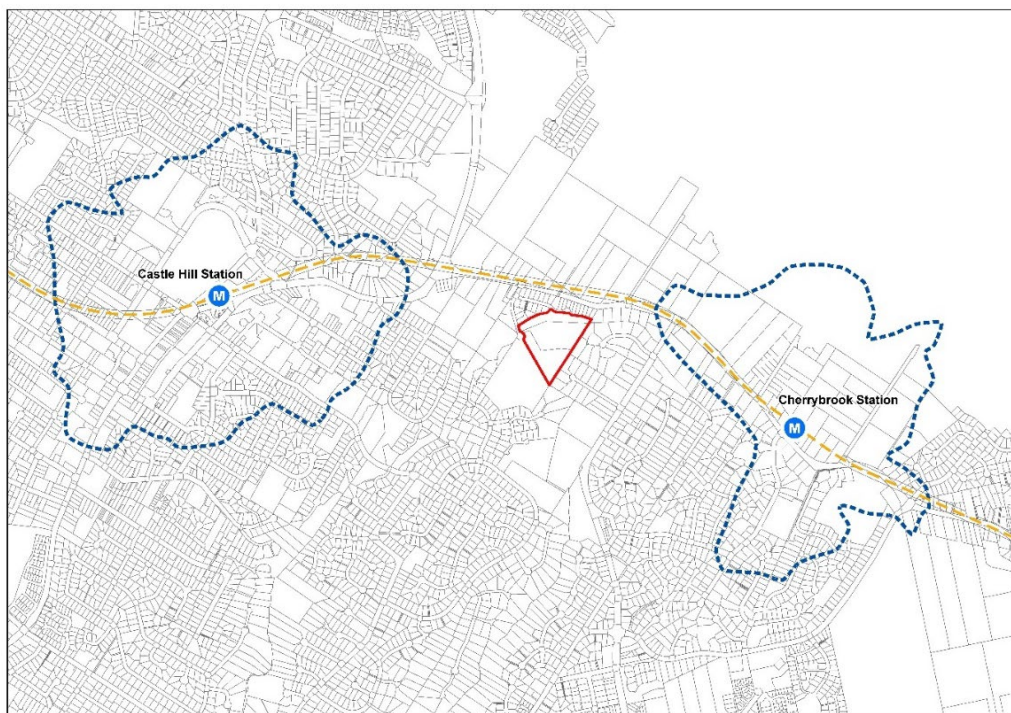
The Region Plan also acknowledges that more intensive urban renewal is not suitable in instances where sites are challenged by topographic or other characteristics. Given the location of the site, the surrounding local character and the significant constraints impacting development of the land, this area is not considered to be the right location for more dense forms of housing as proposed.

The Region Plan sets locational criteria for urban renewal investigation opportunities. However, the planning proposal is inconsistent with the criteria, primarily due to its distance from the stations of the Sydney Metro Northwest. Generally, the walkable catchment correlates with how far the average person could walk in 10 minutes and how far someone will be willing to walk between their origin or destination and a transport node (with a focus on land that is within 800 metres of a transport node).

The Proponent's planning proposal material identifies the subject site as being within 800m – 1000m walking distance of a Metro Station, however this is incorrect. The subject site is located well outside the 800m walking catchment, being around 1.5km walking distance from Cherrybrook Metro Station and 1.7km walking distance from Castle Hill Metro Station. This is nearly a 20-minute walk that is exacerbated by steep topography and limited connectivity at this distance from the station.

Critically, the feedback received from Transport for NSW as part of the scoping process identified that the site is **not** within an easy walking distance (e.g. 800m walking catchment) of a Metro Station.

The location of the site outside of the walkable catchments of both Cherrybrook and Castle Hill Stations is shown in Figure 7 below.



**Figure 7**  
800m Walkability Catchments from Nearby Metro Stations  
(Subject site outlined in red, 800m walkability catchments shown as dashed blue line)

The planning proposal does not align with objectives for supply of housing in the right locations. The proposal does not respond to any new infrastructure, changing circumstances or changing population or demographic trends. The supply of housing in this location at the density and built form proposed, is not warranted, noting the areas already identified as suitable for residential uplift in proximity to centres and transport infrastructure and the prevailing environmental issues at the subject location.

- Objective 27 – Biodiversity is protected, urban bushland and remnant vegetation is enhanced
- Objective 28 – Scenic and cultural landscapes are protected
- Planning Priority C15 – Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes

The proposal is inconsistent with these objectives as it does not seek to adequately protect and enhance areas of critically endangered Blue Gum High Forest. This is further discussed in Section 5 of this Response.

- Objective 31 – Public open space is accessible, protected and enhanced
- Planning Priority C17 – Delivering high quality open space

While the planning proposal includes an open space area, the functionality and usability of the proposed public open space is questioned, given its size, location and the type of vegetation present on the site. This proposed open space area would primarily service this individual development, noting the site is not easily accessible for surrounding any surrounding residential catchment and would essentially be an isolated pocket of high density development separate from any centralised public transport nodes or services.

### Section 9.1 Ministerial Directions

The following Section 9.1 Directions are relevant to the subject planning proposal:

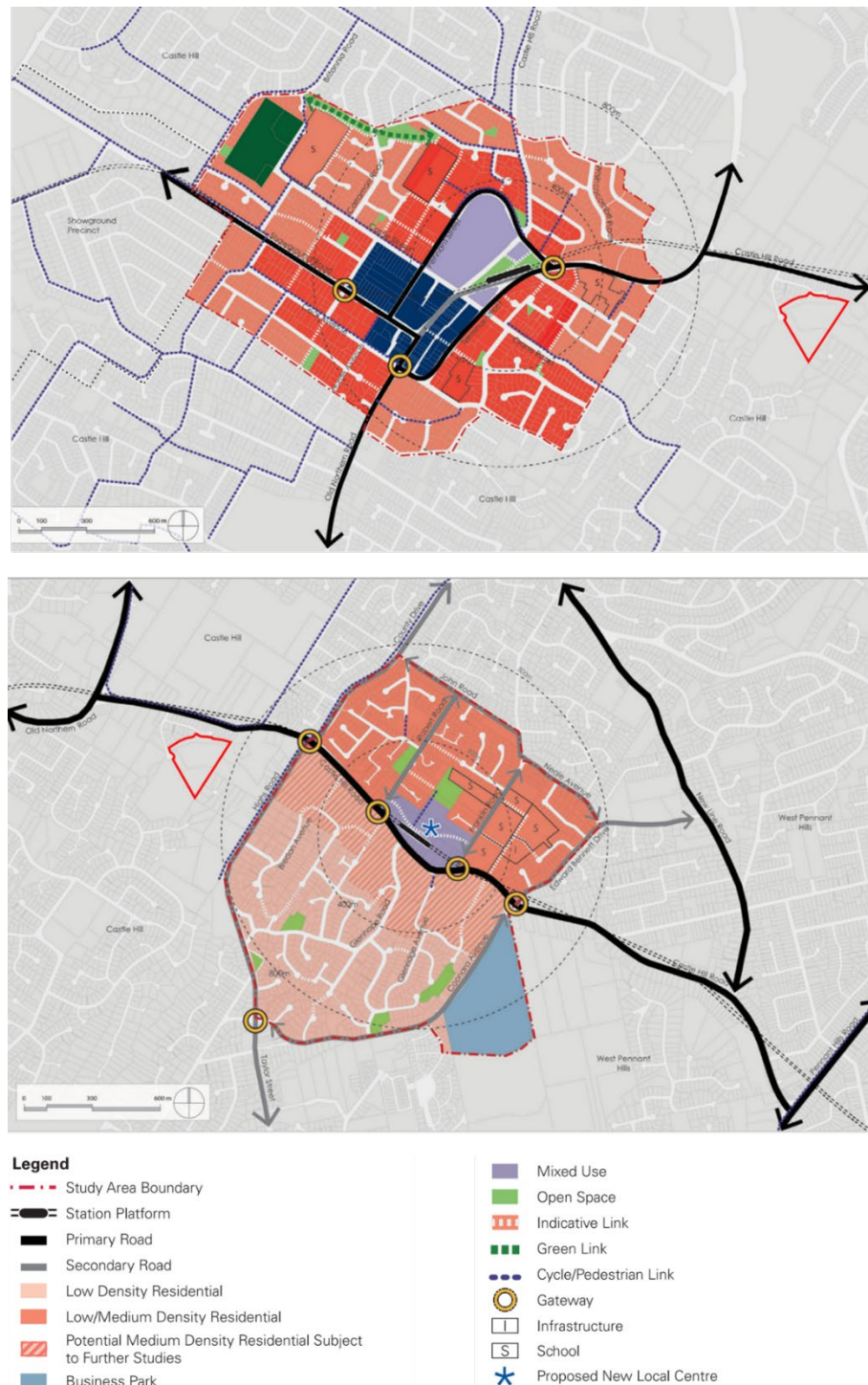
- *1.16 North West Rail Link Corridor Strategy*

Direction 1.16 promotes transit-oriented development and requires planning proposals within the Sydney Metro North West Corridor to give effect to the objectives, growth projections and proposed future character for each Precinct as set out in the NWRL Corridor Strategy.



The site is not identified as being suitable for development uplift within the Strategy. Rather, consistent with the principles of transit oriented development, it identifies land in closer proximity to stations (within the walkable catchment from each station) as more suitable areas for medium and high density development to occur.

The planning proposal is contrary to the TOD principles and objectives of the North West Rail Link Corridor Strategy, Castle Hill Structure Plan and Cherrybrook Structure Plan and is therefore inconsistent with this Ministerial Direction.



**Figure 8**  
Structure Plan – North West Rail Link Corridor Strategy – Castle Hill (above) and Cherrybrook (below)  
Site Outlined in Red

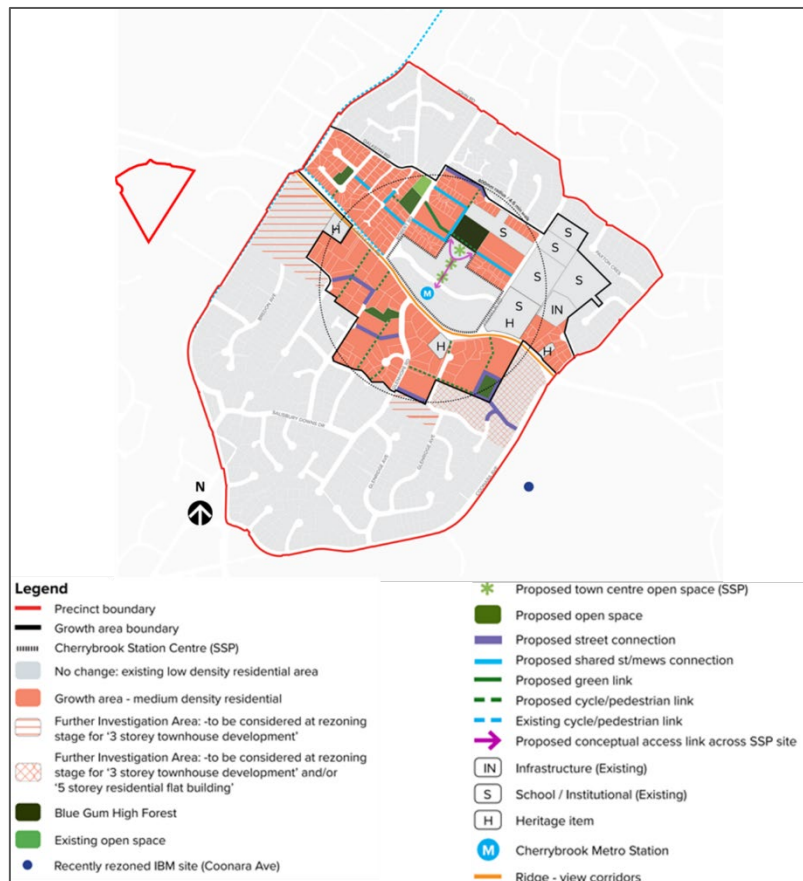
▪ *Direction 1.22 Implementation of the Cherrybrook Station Place Strategy*

The objectives of this direction are to facilitate development within the Cherrybrook Station Precinct that is consistent with the Cherrybrook Station Precinct Place Strategy. It also seeks to actively support the consistent delivery of objectives in the District Plan and Greater Sydney Region Plan.

The site is located outside the Cherrybrook Station Precinct, as defined by the Place Strategy, which generally aligns with the 800-metre walkable catchment from the station. The Strategy identifies land within the 400-metre walkable catchment as suitable for medium density.

The Cherrybrook Place Strategy was finalised in December 2022 and again reiterated a clear precinct boundary for uplift in the catchment surrounding the Cherrybrook Station. The Government did not identify this site for inclusion within the Precinct or as suitable for any development outcome other than the outcomes already permitted under the current planning controls. For the avoidance of doubt, this December 2022 Strategy finalised by Government was cognisant of the Sydney Metro Northwest and Cherrybrook Station and did *not* identify this site as suitable for uplift in response to that circumstance.

The planning proposal is inconsistent with the Place Strategy and therefore is inconsistent with this Ministerial Direction, which requires planning authorities to give effect to the outcome in the Place Strategy and facilitate higher density development in closer proximity to the station.



**Figure 9**  
Structure Plan – Cherrybrook Place Strategy (Subject Site Outlined in Red)

It is noted that more recently, the State Government has commenced the implementation of the Place Strategy recommendations and further investigations through a state-led rezoning process. While the details regarding the state-led rezoning process have not been made available, it is anticipated that the areas of rezoning by Government will remain generally consistent with the Place Strategy, continued to be focused on land with is within the walkable catchment of the Station and is free of significant constraints, consistent with TOD planning principles.

- *Direction 3.1 Conservation Zones*

The objective of this direction is to protect and conserve environmentally sensitive areas. It also states that a planning proposal must not reduce the environmental protection standards that apply to land identified for environment conservation purposes in a LEP (including by modifying development standards that apply to the land).

The current C4 Environmental Living zone aims to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values, to ensure residential development does not have an adverse effect on those values. The only residential development permitted in this zone are dwelling houses and attached dual occupancies. Multi dwelling housing and residential flat buildings are prohibited.

In the context of Castle Hill Road, which is located on a prominent ridgeline, the C4 Environmental Living zone is an appropriate response that recognises the scenic views, topography, vegetation and land affected by geotechnical constraints. The land zoning, larger minimum lot size requirements and other associated development controls (such as maximum site coverage) all seek to reduce the scale of permissible development in this particular area. The zone and controls perform an important function in maintaining the integrity of the scenic and environmental characteristics and Council's Housing Strategy indicates the commitment to continuing this approach.

The proposed introduction of the R3 Medium Density Residential and R4 High Density Residential zones will diminish the protection offered by the C4 Environmental Living zone. The Proponent's consultant reports and Council's internal mapping indicate that there are critically endangered ecological community areas on the site, that would be removed as a result of the Proposal. The planning proposal seeks to apply a C2 Environmental Conservation zone to some portions of the site. Whilst this zone offers a higher level of protection to smaller portions of the site, it is a highly restrictive zone that is generally only applied where public ownership is intended. Furthermore, application of this zone to a small portion of the site would not offset the overall detrimental impact of permitting medium and high density housing across the remainder of the site.

The site is heavily constrained by various environmental factors, including steep topography, landslide risk and the presence of Blue Gum High Forest, which is listed as a Critically Endangered Ecological Community under the federal *Environment Protection and Biodiversity Conservation Act 1999* and an Endangered Ecological Community under the *NSW Biodiversity Conservation Act 2016*.

It is acknowledged that the historic (partially commenced) subdivision consent applicable to the site allows for 22 residential lots (DA1089/2006/ZA). However, this original consent was granted nearly 20 years ago and was assessed and determined against the legislative framework that was in force at that time. Since this time, the legislative framework has become more robust, particularly with the introduction of the *Biodiversity Conservation Act 2016*. The current legislation requires detailed consideration of entities at risk of serious and irreversible impact and where a proposal is likely to have such impacts on biodiversity values, consent is not able to be granted at the development application stage. The existence of an existing consent does not negate the need for, or prejudice the outcomes of, a full and proper assessment of the currently proposed outcome against the current and in force framework that applies at this time.

A critically endangered ecological community (Blue Gum High Forest) is present on the subject site and the planning proposal seeks to remove a significant area of the critically endangered ecological community, which is an entity at risk of serious and irreversible impact. It is extremely unlikely that the environmental issues which underpin the C4 Environmental Living zoning and associated controls in this location, can be suitably resolved. Therefore, the planning proposal is considered to be inconsistent with this Ministerial Direction.

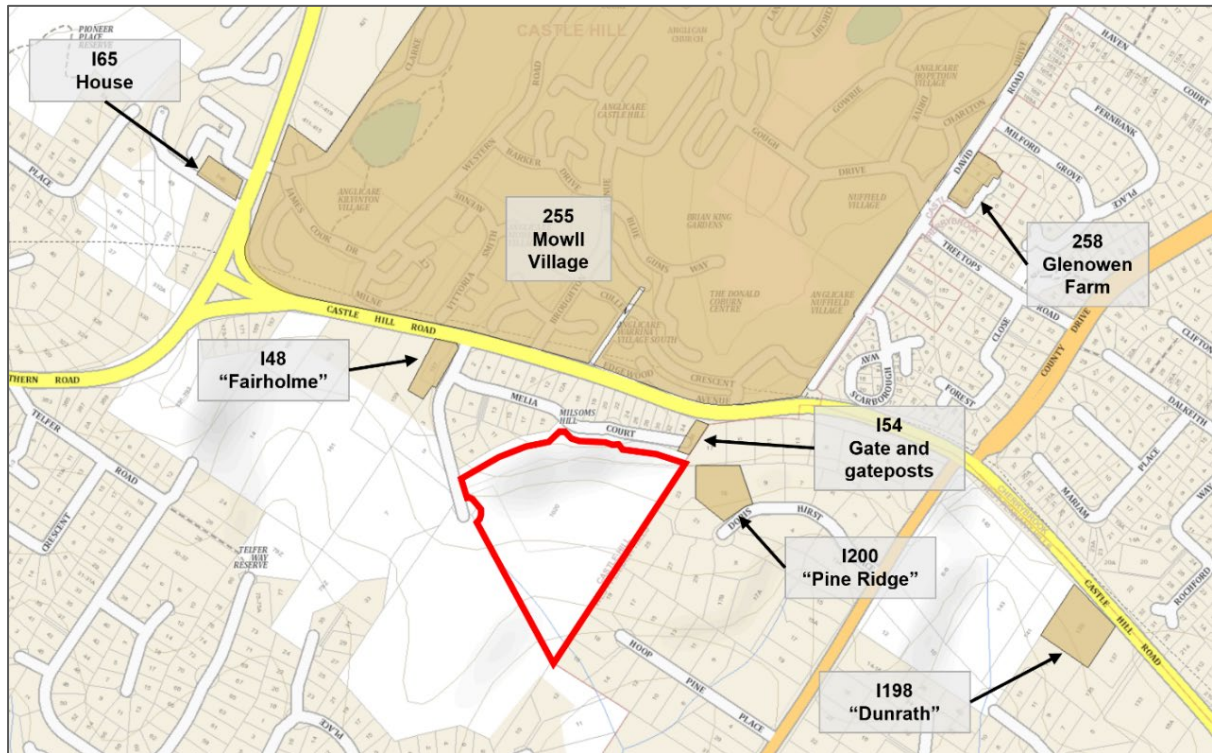
- *Direction 3.2 Heritage Conservation*

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. A planning proposal must contain provisions that facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of



environmental heritage significance to an area. Any Aboriginal areas, objects, places or landscapes must also be conserved.

The subject site is located within the vicinity of several heritage items listed under The Hills LEP 2019 and the *Hornsby Local Environmental Plan 2013*, as shown in Figure 10. The Proponent has submitted a Heritage Impact Statement prepared by Weir Phillips Heritage and Planning (dated January 2024) to assess the potential impacts of the proposal on the nearby heritage items. It also includes a detailed list of heritage items. The heritage items consist of single storey residences, a gate and gate posts and a retirement village.



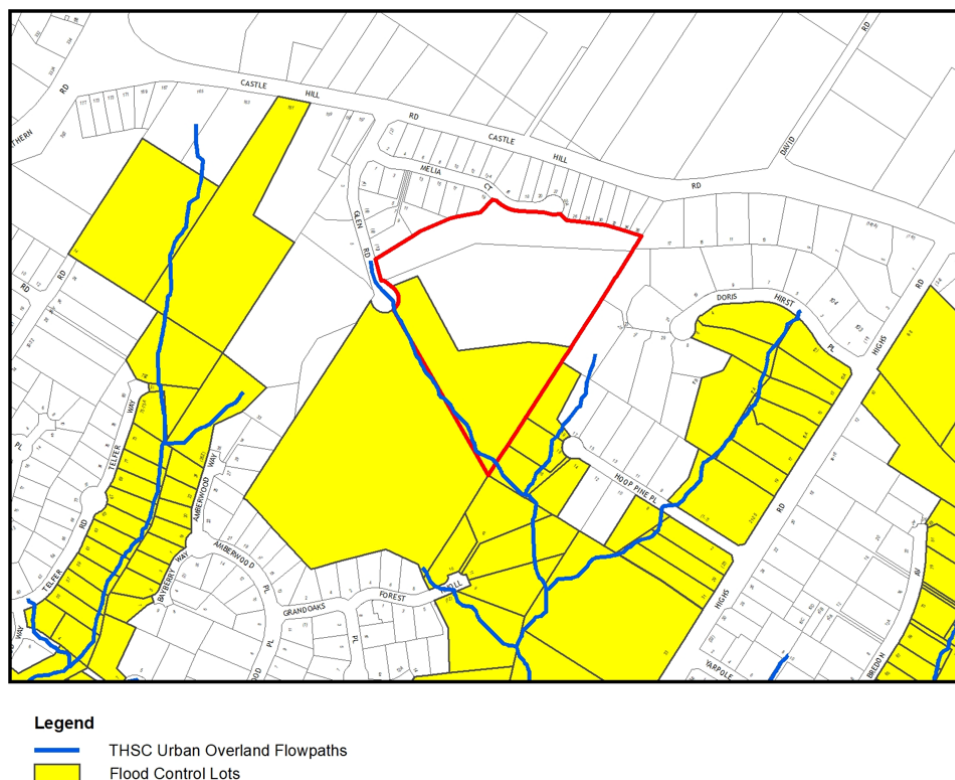
**Figure 10**  
Location of Nearby Heritage Items

The Proponent's Heritage Impact Statement concludes that the proposed works will not impact on the fabric of any of the nearby heritage items or block existing significant view corridors to or from them. It notes the proposal will be concealed within the immediate setting of all the items, except for the outbuildings once part of the Pine Ridge Homestead. It also notes that these outbuildings are not visible from the public domain and do not rely on the character of their setting to explain their significance. The proposal is considered consistent with this direction.

- **Direction 4.1 Flooding**

The purpose of this Direction is to ensure that planning proposals are consistent with the Government's flood related policies. It also seeks to ensure that planning proposals that apply to flood prone land are commensurate with flood behaviour and consider potential flood impacts both on and off the subject land. The Direction applies to all planning proposals that seek to create, alter or remove a zone or provision affecting flood prone land.

The Proponent's Planning Proposal report indicates that the land is not identified as being flood affected on Council mapping for the purpose of Clause 5.21 *Flood Planning* of The Hills LEP 2019. Whilst Clause 5.21 of the LEP does not include mapping of the flood planning area, based on a preliminary review, various flood affectations have been identified on (and surrounding) the subject site. It is located within the Excelsior Creek Catchment, with a tributary and overland flow path traversing the western boundary (towards the southern end of the site). The southern portion of the subject site is identified as land that is subject to flood related development controls under The Hills Development Control Plan (DCP) 2012. A map showing some of the high-level flood affectations is shown in Figure 11.



**Figure 11**  
High Level Flood Affections

In recognition of the flooding and stormwater constraints of the site, a Flood Impact and Risk Assessment (prepared by Northrop dated 19 November 2023) was submitted with the proposal. The proposal is also supported by a Stormwater Management Strategy as set out in the Proponent's Civil Engineering Assessment (prepared by Northrop dated 31 January 2024).

The Flood Impact and Risk Assessment indicates that several drainage easements run through the northern part of the site from Melia Court and a water supply easement runs through the middle of the site. It identifies that flooding is limited to within the drainage gully to the west of the site and that the site is marginally affected by local overland flow from Glen Road and the upstream Melia Court. It is indicated that the proposed development generally complies with the Ministerial Direction. Council officers have not been able to confirm the veracity of the flood modelling outcome at this stage and should the proposal proceed to Gateway Determination a revised report would be required that provides further details of the modelling for further assessment of the site and the engineering response in its entirety.

Based on the information submitted, Council officers are not yet satisfied that potential flood risks have been overcome or that the associated stormwater management strategy is satisfactory. This may be able to be resolved subject to additional work by the Proponent, however this has not been requested at this time given the range of fundamental issues with the proposal which have led to the conclusion that the proposal should not proceed to Gateway Determination.

#### ▪ *Direction 4.4 Remediation of Contaminated Land*

This direction seeks to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities. The Proponent submitted a Preliminary Site Investigation prepared by Tetra Tech Coffey Pty Ltd (dated 17 November 2023) to identify potential contamination issues which may pose a constraint to site development and to determine whether additional site investigation or assessment would be required to support the development assessment process.

While it did not identify significant indications of contamination, it did identify potential contamination risks that would need to be resolved. Should the proposal proceed, further investigations would be required to demonstrate that contamination risks can be suitably addressed.

- *Direction 5.1 Integrated Land Use and Transport*

This Direction aims to improve access to housing, jobs and services by walking, cycling and public transport. It also seeks to reduce travel demand and dependence on cars, support the efficient viable operation of public transport services and provide for the efficient movement of freight.

Contrary to the Proponent's submissions, the subject site is located well outside the 800m walking catchment, being around 1.5km walking distance from Cherrybrook Metro Station and 1.7km walking distance from Castle Hill Metro Station. This is nearly a 20-minute walk that is exacerbated by steep topography and limited connectivity at this distance from the station. Critically, the feedback received from Transport for NSW as part of the scoping process identified that the site is **not** within an easy walking distance (e.g. 800m walking catchment) of a Metro Station. The Local Planning Panel, Council officers and the elected Council concluded similarly.

The Planning Proposal is inconsistent with the objectives of this Direction as the site is not within the walking catchments of the Metro Stations (either Cherrybrook or Castle Hill) and as such will likely increase dependence on cars, noting that the area is not well serviced by the Sydney Metro Northwest.

- *Direction 6.1 Residential Zones*

The objectives of this direction are to encourage a variety and choice of housing types, make efficient use of infrastructure and prevent the reduction of permissible residential density on land. Under the current provisions, the C4 Environmental Living zoning and minimum lot size control of 2,000m<sup>2</sup> would allow for limited development to occur, with the existing subdivision consent that the land benefits from likely representing the maximum yields that could be reasonably be accommodated on the subject site.

The subject site has not been identified in any of the numerous Council or Government strategic plans as an area for additional residential development, principally due to the significant environmental constraints on the site and its distant location outside of the walkable catchment of both Castle Hill and Cherrybrook Metro Stations. The existing controls are considered appropriate and no additional uplift is warranted.

b) *Does the proposal demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan;*

The planning proposal is inconsistent with the objectives and priorities of Council's Local Strategic Planning Statement, The Hills Corridor Strategy and Castle Hill Precinct Plan, as these documents relate to providing for housing supply in the right locations, creating great places, protecting areas of environmental significance and balancing growth with suitable levels of infrastructure.

### **Local Strategic Planning Statement**

Council's Local Strategic Planning Statement: Hills Future 2036 (LSPS) outlines the 20-year vision for land use planning, population, housing, economic growth and environmental management for The Hills Shire. Accompanying the LSPS are key strategies that provide more detailed guidance on the planning priorities, of which the Housing Strategy and Environment Strategy are of relevance to the proposal. It is noted that Council's Housing Strategy was approved by the Department on 6 July 2021.

Council's LSPS seeks to provide housing in the right locations, close to transport and to protect biodiversity and scenic landscapes. It envisages the majority of future residential uplift will occur in Station Precincts and Release Areas. The LSPS articulates there is sufficient land zoned or identified for future uplift to meet the Shire's housing targets to 2036 and beyond, with there already being zoned capacity for approximately 50,000 additional dwellings within The Hills Shire and a further 10,000 strategically identified additional dwellings that Council is working towards unlocking as part of detailed precinct planning processes. Council is also on track to meet and exceed its housing targets, with more than 22,600 dwellings being approved since 2016 (as at June 2023) and nearly 15,600 dwellings completed in this same period (as at June 2023). As such, there is limited justification for providing



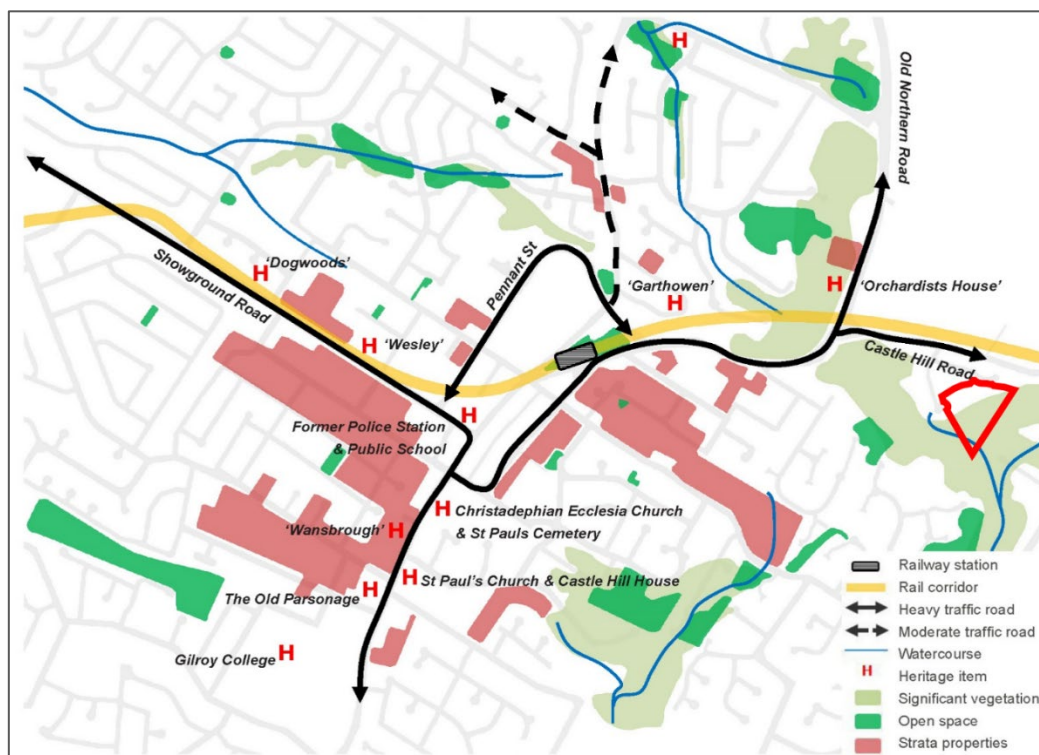
additional housing outside of areas already identified as being suitable for uplift, where recent infrastructure investment can be readily capitalised on to enable transit oriented development outcomes.

The site is not located within the walkable catchment of either the Castle Hill or Cherrybrook Metro Stations. The proposal seeks to provide medium and high density residential development on a site that is identified as containing critically endangered ecological communities, in a location that has not been planned to accommodate this level of uplift and in an area which has been specifically identified for low-impact residential only to protect and maintain the environmental, aesthetic and scenic qualities of the locality. Given this, the planning proposal does not demonstrate consistency with the vision and priorities articulated within Council's LSPS and supporting strategies.

### The Hills Corridor Strategy

The Hills Corridor Strategy was adopted by Council in November 2015 and articulates Council's vision for future growth for Station Precincts within The Hills Shire. The site is not identified as being suitable for development uplift within this Strategy. Land in closer proximity to stations (within the walkable catchment from each station) has been identified as more suitable areas for high density development to occur.

The subject sites are not identified on the opportunities map for either Castle Hill or Cherrybrook, as they were not considered to be opportunities as suitable for development uplift. However, they were considered as part of the broader study area considered by the strategy and are shown on the constraints mapping completed for the broader locality, as shown below. This mapping indicates the subject site features significant vegetation and a watercourse. The Strategy states that any future development on private land, in close proximity to this vegetation will need to be guided by a flora and fauna assessment and will need to avoid, mitigate and/or offset impacts to any threatened entities found on sites.



**Figure 12**  
Constraints – The Hills Corridor Strategy – Castle Hill

### Castle Hill Precinct Plan

In mid-2023, Council exhibited a Draft Precinct Plan for the Castle Hill Strategic Centre. It sets a 20-year vision for Castle Hill that builds on the high-level outcomes envisaged within previous strategic planning documents and draws on a range of technical studies. The Plan articulates how the strategic objectives and outcomes for Castle Hill will be implemented over the next 20 years, drilling down into

finer grain, site specific detail to inform future development and potential changes to planning controls and the infrastructure contributions framework.

The site is not identified as being suitable for development uplift within this Plan, nor is it identified within the Strategic Centre. Land in closer proximity to the station (within the walkable catchment from the station) has been identified as a more suitable area for medium and high density development to occur. Areas towards the periphery of the strategic centre are expected to remain unchanged or develop under the existing controls, especially those areas subject to significant constraints (such as geotechnical matters and critically endangered vegetation).

The Precinct Plan was adopted by Council at its meeting on 11 June 2024.

Accordingly, it would be incorrect to suggest that the outcomes identified for the land have not responded to the provision of the Sydney Metro Northwest. Rather, the outcomes have been carefully considered as part of multiple strategic planning processes (by both Government and Council) which sought to enact change in proximity to Castle Hill and Cherrybrook Metro Stations in response to the circumstances and each time the current planning framework was identified as the appropriate settings for this land.

c) *Does the proposal respond to a change in circumstances that has not been recognised by the existing planning framework:*

The proposal does not respond to any new infrastructure, changing circumstances or changing population or demographic trends. As noted above, the Proponent's assertions that the outcomes identified for the land have not been considered in light of the provision and opening of the Sydney Metro Northwest are incorrect and this should not be accepted as a basis for strategic merit for the proposal.

Rather, the outcomes on this land have been very carefully considered as part of at least 6\* different strategic planning processes (by Government and Council) between 2013 and 2024. Each time, it has been determined that the current planning framework was the appropriate settings for this land.

*\* Note: Strategic Planning Processes and Strategies that have considered potential outcomes on this land and concluded that the current planning framework is the appropriate settings included: North West Rail Link Corridor Strategy (Government), The Hills Corridor Strategy (Council), Housing Strategy (Council with Government Approval), Local Strategic Planning Statement (Council with Government Approval), Cherrybrook Place Strategy (Government), Castle Hill Precinct Plan (Council).*

It is acknowledged that there is a housing crisis across NSW and it is understood the NSW Government is committed to boosting housing supply to meet the ambitious requirements of the Housing Accord and Council intends to continue to work constructively with the Government to unlock more housing within The Hills Shire. The Hills Shire Council is committed to effectively and appropriately planning for the unprecedented level of growth that is occurring.

Under the current policy framework, including current Government reforms and priorities, high-density infill development opportunities are to be focused in well-located areas, within the walkable catchment immediately surrounding transport hubs (such as Metro Stations) or well serviced centres with a range of amenities and services, in accordance with the principles of transit-oriented development. This transit-oriented approach is also reflected in local planning policies.

In this regard, the subject site has been previously considered as part of broader investigations areas associated with precinct planning processes following the announcement and delivery of the Sydney Metro Northwest (in particular around the Castle Hill and Cherrybrook Metro Stations). As part of these processes, it was determined that the current controls are appropriate for the site and it would not be suitable for any development uplift at this location, particularly given the environmental constraints, distance from the Metro Stations and distance from essential services (such as schools, local shopping centres). This land was not 'excluded' from the investigations which were completed. Rather, it was investigated, considered and deemed unsuitable for uplift by both State Government and Council in the relevant strategies, with local strategies considered as recently as June 2024.

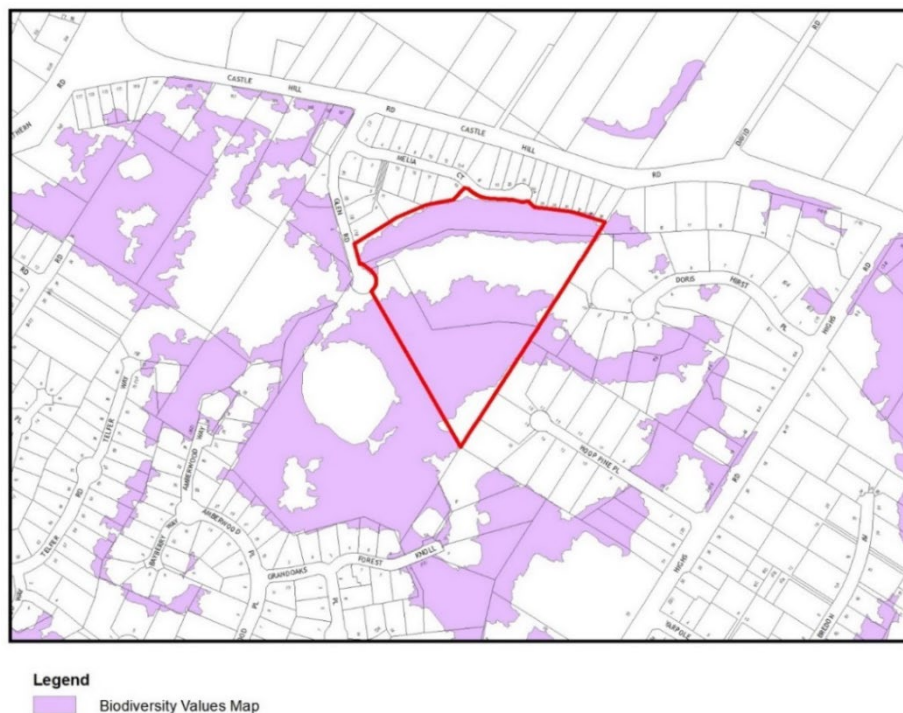
The supply of housing in this location at the density and built form proposed is not warranted, noting the significant areas which are already identified as suitable for residential uplift in closer proximity to centres and transport infrastructure and without the significant environmental issues that are present on the subject site.

## 5. SITE SPECIFIC MERIT ASSESSMENT

### a) the natural environment (including known significant environmental values, resources or hazards)

#### **Biodiversity**

The *Biodiversity Conservation Act 2016* includes mandatory requirements for biodiversity assessment and reporting and requires proponents to demonstrate appropriate and sufficient steps have been taken to avoid and minimise impacts to areas identified and mapped as containing biodiversity values. The subject site is mapped on the State Government's sensitive biodiversity values map, as shown in Figure 13 below.



**Figure 13**  
Sensitive Biodiversity Values Map

The Proponent has submitted a Biodiversity Development Assessment Report (BDAR) which identifies that approximately 2.5 hectares of Blue Gum High Forest (an entity that is at risk of serious and irreversible impacts) is present on the site, primarily on the southern portion. Two threatened species of fauna, the Powerful Owl and Grey-Headed Flying-Fox, were detected (vocalisations) during surveys of the subject land. While the Dural Land Snail was not detected on site, it has been previously recorded in the locality and as such, it is assumed that it is present as a precautionary measure.

The location and design of the proposed development has not been adequately informed by the biodiversity values. Further, the extent of earthworks and the asset protection zone has not been accurately considered as part of the assessment and are expected to result in additional impacts not quantified or reflected in the material submitted.

The historic (commenced) subdivision consent which allows for 22 residential lots was considered against the legislative framework that was in force at that time. Since this time, biodiversity assessment requirements have become more robust, particularly with the implementation of the *Biodiversity Conservation Act 2016*. The current legislation requires detailed consideration of entities at risk of



serious and irreversible impact and where a proposal is determined to have such impacts, the relevant decision-maker is prevented from granting planning approval for the proposed development.

Importantly, any new development application would be assessed in full under the current requirements, irrespective of the previous subdivision consent or the extent of clearing which it may allow. New development under the current legislation would need to demonstrate appropriate and sufficient steps have been taken to firstly avoid and then secondly minimise impacts to areas identified and mapped as containing biodiversity values. It is expected that impacts on biodiversity values are avoided by restricting the location of development, including asset protection zones, to areas that are lacking biodiversity values and areas clear of native vegetation.

The development as proposed is considered highly likely to result in serious and irreversible impacts to the Blue Gum High Forest. A lower scale and density development with a smaller footprint and reduced need for vegetation clearing and cut and fill would be a more appropriate response, similar to the outcomes within the surrounding area.

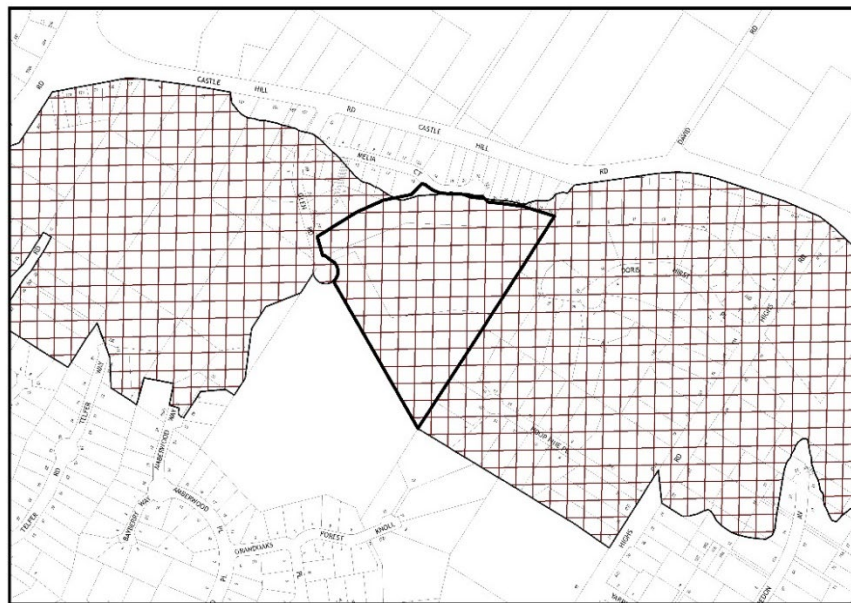
### **Tree Removal**

The Proponent has submitted an Arboricultural Impact Assessment Report which indicates that the subject site is partially cleared and there are thicker sections of bushland towards the northern and southern ends. It also indicates the native bushland around the clearing is mapped as Blue Gum High Forest.

In summary, the Proponent's Arboricultural Impact Assessment Report recommends the removal of at least 209 trees. Of these trees, 72 are of high retention value (including 69 Sydney Blue Gum Trees). The Proponent's material estimates that this impact is relatively similar to that which has already been approved under the current Development Approval (as amended). However, as detailed above, it is not certain that this same extent of clearing and development would be approved under the current biodiversity legislation. Furthermore, it is likely that additional trees beyond this will require removal as the Proponent's report has not fully considered the impacts of the proposed earthworks or asset protection zones in their entirety with respect to tree removal. Factoring in the removal of these additional trees, it is likely that the planning proposal would result in more environmental impacts compared to the original subdivision approval (as amended). This is further discussed in Section 5(c) of the Council Officer Assessment Report to the Local Planning Panel.

### **Geotechnical and Landslide Risk**

Under Clause 7.6 – Landslide Risk of LEP 2019, the site is identified and mapped as susceptible to landslide risk, as shown in Figure 14. This clause seeks to limit development to the commensurate underlying geotechnical conditions and to restrict development on unsuitable land. An initial Geotechnical Assessment Report and a Structural Report were submitted with the proposal.



**Landslide Risk (LRI)**  
 Landslide Risk (LRI)

**Figure 14**

Landslide Risk Map – LEP 2019 (subject site outlined in black)

The current development consent that facilitates 22 residential lots on the subject site (1089/2006/ZA/C) proposed stabilisation of the site by a “big dig” methodology which involves construction of retaining walls around the boundaries of the site and removal and replacement of landslide material in the central part of the site.

The Proponent’s report indicates that the future cost of landslide mitigation measures was found to be uneconomical for conventional low density residential housing development. It notes that the ground conditions across the site comprise a deep soil creep landslide over shale bedrock and landslip issues arise when excess groundwater enters the soil underlying the development after prolonged periods of rainfall.

The Proponent’s reports identify various landslide management and construction strategies as part of the current planning proposal. It concludes that the proposed development is considered feasible from a geotechnical perspective, noting that appropriate additional site investigation, design assessments and construction monitoring normally associated with this type of development would need to be carried out. The initial assessments have not included a comprehensive assessment of the site in its entirety, rather the inferred preliminary geotechnical model and recommendations are based on limited subsurface investigations at discrete locations and notes that additional detailed investigations and monitoring would be required.

Overall, the Proponent’s report is fairly high level in nature and does not include any discussion on how the vegetation constraints will be addressed and managed in conjunction with the geotechnical works that would also be required to facilitate this scale of development. Notwithstanding the Proponent’s comments around the costs of geotechnical stabilisation, this does not warrant the approval of a scale and extent of development that is inconsistent with the prevailing environmental and low density character of the surrounding area. The Proponent’s report has not demonstrated that the proposal is acceptable from a geotechnical risk perspective.

It is not recommended that the planning proposal proceed given the fundamental strategic merit issues and the range of site specific matters. However, if the proposal was to proceed in any form, it is critical that further investigations be required to properly assess the suitability of the site for this scale of proposed development, including a full risk assessment of potential landslip events. It is also recommended that Council would need to engage an expert consultant (from Council’s Geotechnical Review Panel) to undertake an independent peer review of the Proponent’s reports and assessments and advise Council directly on the implications and risks of developing on the land, as it relates to

topography, potential instability and erosion. This would then likely have further flow on impacts on vegetation on the site. As noted above, given the range of other fundamental issues with the proposal which have led to the conclusion that the proposal should not proceed, this additional work has not been undertaken at this time. This is further discussed in Section 5(c) of the Council Officer Assessment Report to the Local Planning Panel.

### **Stormwater Management**

The proposal is supported by a Stormwater Management Strategy as set out in the Proponent's Civil Engineering Assessment. Part of the strategy proposes a swale running from east to west sitting at the northern boundary of the site to service upstream flows. However, concern is raised that runoff from the north-eastern corner of the site will likely bypass the swale behind the shoring wall. Once flows hit the shoring wall, they can potentially end up as concentrated flows that may potentially end up in the adjoining site at 23 Doris Hirst Place.

A number of additional concerns are raised with the proposed onsite detention (OSD) and structural measures including the location of OSD tanks and the proposed connections, noting the site's steep topography and the presence of significant trees. It is considered that the planning proposal has not adequately addressed stormwater management. This is further discussed in Section 5(c) of the Council Officer Assessment Report to the Local Planning Panel.

#### ***b) the built environment, social and economic conditions***

### **Suitability of the Proposed Density and Visual Impact**

#### ***Proposed Density***

The locality is characterised by low (to very low) density residential developments and environmental living. The site and surrounds form an important 'environmental spine' along Castle Hill Road, noting that Castle Hill Road is located on a prominent ridgeline. These features led to the application of an environmental living zone to this area to preserve views, vegetation and land affected by geotechnical constraints.

The proposed development seeks to deliver a medium to high density development (around 88 dwellings per hectare) that does not align with the well-established local character. This scale of development is inconsistent with the surrounding character of the area and the objectives of the C4 Environmental Living Zone. It is more consistent with higher density development that is typically considered to be appropriate in the 800m walkable catchment of Metro Station Precincts. This is further discussed in Section 5(a) of the Council Officer Assessment Report to the Local Planning Panel.

#### ***Visual Impact***

The Proponent has submitted a Visual Impact Assessment prepared by Audax Urban, which concluded the following:

- Some of the views were found to have nil or negligible view impacts – including View 1 (end of the cul-de-sac at Doris Hirst Place), View 2a (panoramic view from Melia Court) View 2b (framed view from Melia Court) and View 5 (within the site near the eastern boundary).
- View 4 was found to be fully within the site and the report concluded it has no aesthetic and scenic qualities visible from the locality.
- The proposed development was found to have a high level of visibility when viewed from Glen Road (View 3), but claimed the visual catchment is limited and the built form will be well screened by the proposed vegetation.

With respect to the view from Glen Road, it is questioned how the proposed development would be appropriately screened when viewed from Glen Road noting the substantial amount of vegetation proposed to be removed. The accuracy of the view assessment from Melia Court is also questioned, particularly given the view assessment is undertaken from the opposite side of Melia Court (furthest away from the proposed development), which would likely understate the extent of the visual impacts. It remains the view of Council officers that the proposal will significantly impact the scenic landscape of this locality, particularly when viewed from Glen Road and Melia Court.



## **Appropriateness of Proposed Planning Mechanisms**

### ***Land Zone***

The planning proposal seeks to rezone the site from C4 Environmental Living to C2 Environmental Conservation, R3 Medium Density Residential, R4 High Density Residential and RE1 Public Recreation.

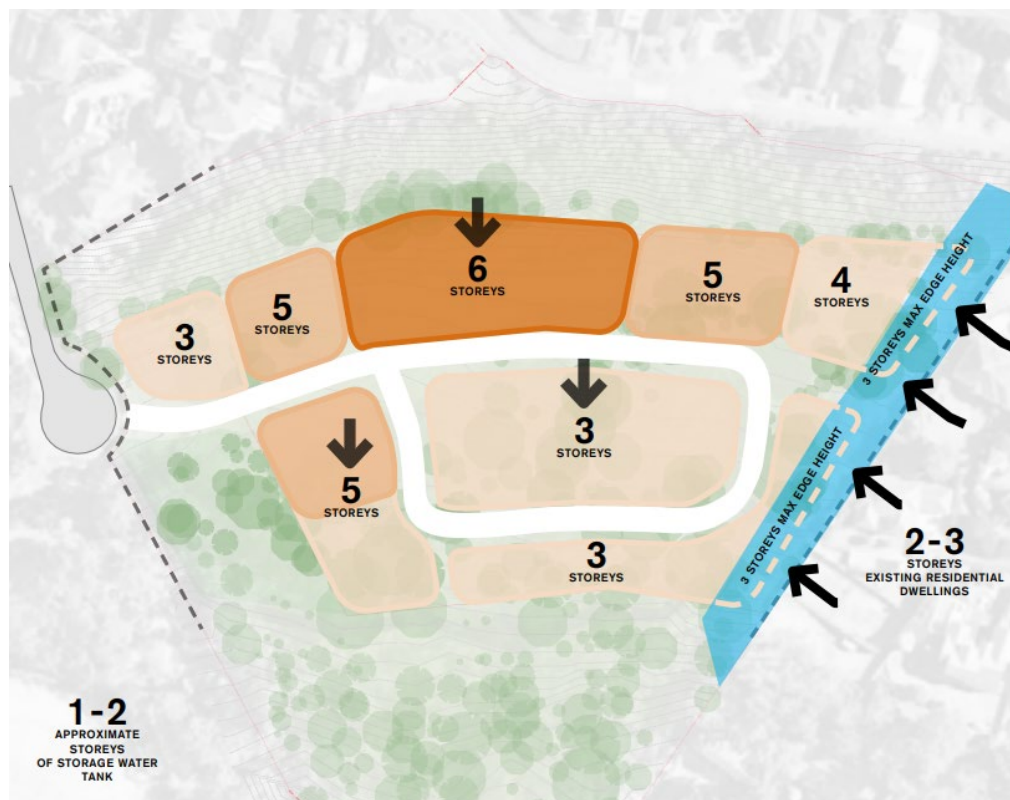
The C4 Environmental Living zone (existing zoning) has typically been used within The Hills Shire to retain natural drainage channels, protect vegetation, scenic views, topographical features and to reduce the risk of geotechnical hazards. Its application is most effective when applied to a large contiguous area. Approving the planning proposal in its current form poses a potential risk of setting a precedent for applications seeking a similar outcome, which could in turn compromise the integrity of the continuous C4 Environmental Living zoned land in this locality and further impact biodiversity values.

The proposed R3 Medium Density Residential and R4 High Density Residential zoning is not supported as it would allow for a significant overdevelopment of the site in a manner which does not align with the character or objectives for development within this locality and which is not appropriate having regard to the site specific constraints applicable to the land.

The proposed RE1 Public Recreation and C2 Environmental Conservation zones are not supported, as these may trigger an acquisition liability for Council. Irrespective of the acquisition liability risks, the areas proposed for these zones are not suitable for public recreation in any case due to the size, location and environmental characteristics. Should the Proponent proceed with the existing consent for the land, a Vegetation Management Plan (VMP) and a Section 88B restriction are required to protect significant vegetation on the site.

### ***Height of Building Control***

The proposal seeks to increase the maximum height of building controls varying between 10m and 22m to facilitate a built form outcome ranging from three to six storeys, as shown in Figure 15 below. The proposed height of buildings is inconsistent with the character and objectives for development within the locality, noting the low density residential and environmentally sensitive nature of the area.



**Figure 15**  
Indicative Built Form Outcomes  
(Source: Proponent's Urban Design Report, DKO)

### ***Maximum Floor Space Ratio Control***

No FSR controls are currently applicable to the subject site and the proposal, as submitted, does not seek to apply any FSR controls. In the absence of such controls, Council has no real certainty or control over the future density or scale on this site, or the number of dwellings that could ultimately be delivered. The proposed planning controls would not give certainty that the outcome within the Proponent's development concepts would not be exceeded on the land. This is not appropriate and should the proposal proceed in any form, an FSR control would be required.

### ***Housing Mix and Diversity***

The Proponent has not indicated if they seek to apply Council's housing diversity clause, which requires at least 30% of new apartments to be suitable for families. Should the proposal proceed, it is expected it would need to be amended to achieve consistency with this clause for the apartment component of the proposed development.

### ***Development Control Plan***

Should the proposal proceed, a site-specific DCP would be required to deal with future development outcomes on the site to ensure that the intended built form outcome that supports the planning proposal is delivered. It is anticipated that at a minimum, development controls would relate to matters such as streetscape, character, setbacks, access to the site, vegetation management, waste management, parking and the preservation of vegetated setbacks.

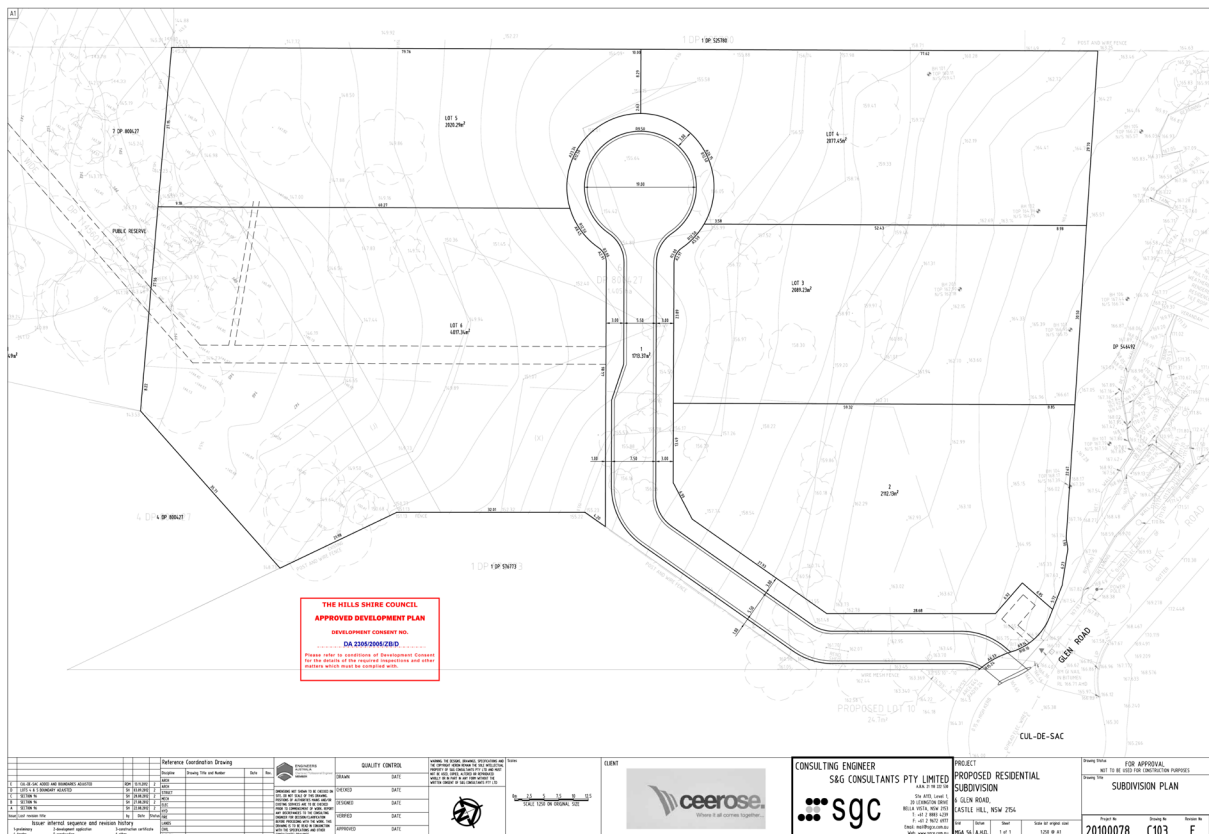
Whilst a draft Site-Specific DCP dated February 2024 has been provided as part of the material submitted by the Proponent for the Rezoning Review, this document did not form part of the planning proposal material submitted to Council for consideration by the Local Planning Panel or Council in the assessment and determination of the planning proposal. Any reference to it throughout the Proponent's rezoning review justification report should therefore be disregarded by both DPHI and the Sydney Central Planning Panel.

There are a number of concerns with the design of the proposal shown in the concept plans that would need to be amended in order to meet standard DCP requirements. In particular, the accommodation of waste collection vehicles in basements and the presentation of bins on the street with enough space for collection is not demonstrated. It is considered overall however that the fundamental issues with the proposal are beyond those which could be resolved through site specific development controls, as the overall development outcome would be out of context and inappropriate for the locality and having regard to the site specific constraints and characteristics.

### ***c) the existing uses, approved uses and likely future uses of land in the vicinity of the proposal.***

Existing development within the C4 Environmental Living zoned land in the vicinity of the subject land is predominantly single detached dwellings on lots no smaller than 2,000m<sup>2</sup>. Land zoned R2 Low Density Residential to the north of the subject site contains single detached dwellings on lots at least 700m<sup>2</sup> in size. West of the subject site at 7 Glen Road, Castle Hill, there is a current approved large lot residential subdivision. DA 2305/2005/ZB is a community title subdivision creating 1 community association lot, 6 residential lots (2,000m<sup>2</sup> to 2,193m<sup>2</sup>) and a new cul-de-sac. The application has since been modified, with the latest approved modification being DA 2305/2005/ZB/D, as shown in Figure 16.

Having regard for the environmental constraints of the locality, this application for 7 Glen Road, Castle Hill adjacent to the subject site is considered to more closely integrate with the character of development in this area and is consistent with the objectives of the existing C4 Environmental Living zone.



**Figure 16**  
 Approved Subdivision Plan for adjacent site at 7 Glen Road, Castle Hill (DA 2305/2005/ZB/D)

There is already an existing subdivision approval over the subject land at Melia Court and Glen Road. DA No. 1089/2006/ZA was originally approved in 2006 and modification to the development consent was approved in 2018 (DA No. 1089/2006/ZA/C) relating to the landslide risk stabilisation methodology for the site. The active consent facilitates 1 community lot, 22 residential lots (742m<sup>2</sup> to 1,193m<sup>2</sup>) and a new cul-de-sac.

**Comparison of Subdivision Approval and Planning Proposal**

The Proponent’s rezoning review justification indicates that the proposal will preserve a greater number of existing trees than the original development application and will strengthen the focus on maintaining the natural landscape and enhance the environmental sustainability of the project. While the presence of an existing development consent (approved at a point in time under the legislation as it applied at that time) should not prejudice a full and proper assessment of this planning proposal against the current planning framework and legislation, a comparison of the environmental outcomes has been carried out by Council officers nonetheless to scrutinise the Proponent’s statements and assist the Panel’s consideration of this matter.

|                            | <b>APPROVED SUBDIVISION<br/>1089/2006/ZA (AS AMENDED)</b>   | <b>CURRENT PLANNING<br/>PROPOSAL</b>  |
|----------------------------|---|---|
| <b>Federal Legislation</b> | <p><b>Environment Protection and Biodiversity Conservation Act 1999</b></p> <p>The EPBC Act and regulations are Australia’s main national environmental legislation. They provide a framework for protection of the Australian environment, including its biodiversity and its natural and culturally significant places.</p> | <p><b>Environment Protection and Biodiversity Conservation Act 1999</b></p> <p>The EPBC Act makes sure that Matters of National Significance are identified and potential impacts on them are carefully considered before changes in land use or new developments take place.</p> |



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|                             | <p>The EPBC Act came into force on 16 July 2000 and requires an independent review of operations every 10 years.</p> <p>The most recent 2020 review recommended major changes to the Act. The Australian Government's response was released in December 2022 and sets out the government's commitments to reform Australia's environmental laws to better protect, restore and manage our unique environment.</p>  | <p>Blue Gum High Forest is found on the site, which is listed as a Critically Endangered Ecological Community under the EPBC Act.</p>  |
| <b>State Legislation</b>    | <p><b>Threatened Species Conservation Act 1995</b></p> <p>The objective of the TSC Act was to protect threatened species, populations and ecological communities in NSW.</p> <p>Since the time of approval of the subdivision, the legislative framework has become more robust, particularly with the introduction of the BC Act. If the subdivision (as currently approved) was to be submitted today, it is unlikely that it would satisfy the relevant requirements of the BC Act which would now be applied to assessment of the development.</p> | <p><b>Biodiversity Conservation Act, 2016</b></p> <p>The current legislation requires detailed consideration of entities at risk of serious and irreversible impact and where a proposal is likely to have such impacts on biodiversity values, consent is not able to be granted at the development application stage.</p> <p>The BC Act includes mandatory requirements for biodiversity assessment and reporting and requires proponents to demonstrate appropriate and sufficient steps have been taken to avoid and then minimise impacts to areas identified and mapped as containing biodiversity values, and only when this is satisfactorily achieved should residual impacts be assessed for biodiversity offsets.</p> <p>Blue Gum High Forest is found on the site and listed as a Critically Endangered Ecological Community under the BC Act.</p> |
| <b>Land to be conserved</b> | <p><b>21,842m<sup>2</sup></b></p> <p>Retains current C4 Environmental Living zoning</p> <p>The sensitive parts of the site would be preserved and managed as community property under a single community management scheme.</p> <p>In accordance with the Development Consent for</p>  | <p><b>21,330m<sup>2</sup> *see note</b></p> <p>Proposed C2 Environmental Conservation zoning</p> <p>Managed as part of a Vegetation Management Plan and placed under an 88B restriction</p> <p>* Note: Documentation submitted by the Proponent demonstrates that the indicative C2 zoned portion of the site</p>  |

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|                                   | 1089/2006/ZA/A, Condition 28 (Final Plan of Subdivision) provides details of the Bushfire Management Plan for proposed Lot 1, as well as the Bushland Management Plan for the APZ in part Lot 1, to the south of lots 14-23.   | impedes on the APZs, therefore leaving some doubt for the treatment of this land and the integrity of the C2 zone. Further investigations may result in a decrease in the area of land to be preserved when the full impacts of geotechnical works and APZs is accounted for.  |
| <b>Bushfire Management</b>        | <p>Asset Protection Zones (APZs) are to be provided in accordance with the requirements of the NSW Rural Fire Service and as detailed in the Bushfire Assessment No. B06269-2 dated 13 March 2006 prepared by Bushfire Protection Planners Pty Ltd (Condition No. 20).</p> <p>Condition No. 29 provides details of the 88B Instrument, including the creation of a positive covenant for the APZ and fuel reduced zone, and restriction on APZ and fuel reduced zones. The restriction noted that at the commencement of building works and in perpetuity the property around the building envelopes shall be managed as follows:</p> <ul style="list-style-type: none"> <li>▪ North for 10m as an APZ; and</li> <li>▪ South for 15m as an inner protection area and 10m (minimum) as an outer protection area.</li> </ul> | <p>The Strategic Bushfire Study proposed an APZ and recommends a 25m wide Inner Protection Area and a 45m wide Outer Protection Area. The proposed APZ will encroach into neighbouring land owned by Sydney Water. This encroachment has not been considered in the BDAR as part of the Subject Land.</p> <p>The proposed APZ will impact on Blue Gum High Forest. The extent of earthworks and APZ have not been accurately considered and assessed and the full extent of impacts have not been accurately coordinated on all plans.</p>   |
| <b>Geotechnical/stabilisation</b> | <p>Geotechnical stabilisation includes:</p> <ul style="list-style-type: none"> <li>– Construction of retaining walls around the boundaries.</li> <li>– Excavation of the slide debris material across the site (depth up to 10m) and slide plane itself.</li> <li>– Installation of drainage blanket.</li> <li>– Backfilling to the required fill design levels for subdivision.</li> </ul>  | <p>Geotechnical stabilisation includes:</p> <ul style="list-style-type: none"> <li>– Installation of a permanent anchored shoring wall at the northern edge of the site.</li> <li>– Over-excavating down to the slip plane in areas where basements are proposed.</li> <li>– Installing a series of drainage channels in the soil in areas where basements are either not proposed or where the basement level is well above the slip plane.</li> <li>– All proposed structures will be designed as suspended structures supported on bored piers/ piles (or equivalent) to limit</li> </ul> |

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|                              |  | <p>surcharge loading on the ground material.</p> <p>The extent of earthworks and APZ had not been accurately considered and assessed and had not been identified accurately on all plans. The application would need to be peer reviewed through Council's Geotechnical Review Panel at the cost of the Proponent.</p>   |
| <b>Tree Removal</b>          | <p><b>Removal of 200 trees (approximately)</b></p> <p>Development footprint where the 22 residential lots are located to be cleared of all trees.</p> <p>The trees to be retained and all sensitive parts of the site are to be preserved and managed as community property under a single community title scheme to ensure a consistent degree of care and maintenance of the land.</p> <p>Tree planting would be subject to individual landscape plans for each lot, as dwellings are constructed. Noting the site coverage requirements for land in environmental zones in the Hills DCP, there would be substantial areas available for tree planting within each lot.</p> | <p><b>Removal of 209 trees</b> (including 72 High Retention Value and/or 69 Sydney Blue Gum trees)</p> <p><b>Retaining 55 trees</b> and proposing the planting of an additional 418 trees (2:1 tree offset planting). The replacement planting will need to be suitable for co-location within the development.</p>  |
| <b>Stormwater Management</b> | On-site stormwater detention system on residential lots with inter-allotment drainage  | <p>East to west swale sitting at the northern boundary of the site to service upstream flows.</p> <p>Concern is raised that runoff from the north-eastern corner of the site will likely bypass the swale behind the shoring wall. Once flows hit the shoring wall, they can potentially end up as concentrated flows that may potentially end up in the adjoining site at 23 Doris Hirst Place.</p> |

**Table 2**  
Comparison of subdivision approval and planning proposal

The low-impact residential development that can be achieved from the original subdivision is considered to be more sympathetic to the special ecological and aesthetic values on the site, consistent with the objectives of the existing Environmental Living zone. The size and siting of the lots have regard for the environmental constraints on the site, a key focus of the C4 zone, and the development outcome that can be achieved under this application is consistent with the scale of development on the surrounding land.



- d) 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.

### **Planning Agreement**

As previously discussed, the Proponent has submitted a letter of offer to enter into a Planning Agreement. The offer proposes the provision of land dedication and works in the form of park embellishment, environment conservation works and footpath construction and the delivery of affordable housing units, in addition to the payment of contributions under Council's Section 7.12 Contributions Plan that applies to the subject site (1% of the cost of development).

It is critical that any future development is matched by appropriate infrastructure to serve the growing population of residents and workers, including playing fields, local parks, community facilities, drainage facilities and transport infrastructure. The proposed uplift of 185 dwellings (and approximately 370 people) will generate demand for approximately:

- 9% of a new sports field;
- 9% of a local park;
- 9% of a netball court;
- 9% of a tennis court; and
- 3% of a local community centre.

The proposed uplift sought as part of this planning proposal is significantly higher than what was expected under the existing strategic framework, noting that no uplift (beyond the current approved large lot subdivision) was identified for this site. Accordingly, it has not been planned or catered for under the applicable contributions plan, being Council's Section 7.12 Contribution Plan, which only envisaged incremental development within established urban areas. Therefore, it is not an appropriate mechanism for levying the proposed development.

The following comments are raised with respect to the proposed offer:

- Given the size, location and environmental characteristics of the land, the proposed park is not considered functional or usable. The park is smaller than the minimum criteria of 5,000m<sup>2</sup> in the Recreation Strategy, is not in a location where the Recreation Strategy identifies that additional parks are required, the land is constrained by the presence of Blue Gum High Forest, steep topography, landslide risk and a drainage gully along the western boundary. The survey plan also indicates that a sewer line runs through the proposed location of the park. This park would primarily be accessible by, and in service to, residents of this development rather than providing any public benefit for the broader community.
- With respect to the proposed affordable rental housing, noting Council has not entered into an affordable housing contributions scheme (with investigations currently underway) and does not administer any affordable housing accommodation, there is no mechanism to attribute the contribution towards affordable housing. This part of the proposal should be considered as part of any future residential component of development on the site or through a separate arrangement with an organisation which is able to provide such housing.
- The proposed environmental conservation works and footpath along Glen Road are not considered to be a public benefit as such works would likely be required by way of a condition of development consent as part of any future development application process.
- The offer does not include any consideration of the demand created by the development for active open space facilities or traffic and transport infrastructure. This is further discussed in the following sections.

The items in the Letter of Offer are considered unsuitable and therefore in terms of real value to Council, the VPA effectively provides for no more than the contributions that would already be required under Council's Section 7.12 Contributions Plan.

The offer does not adequately address the increased demand for infrastructure that would be required to support the proposed development, is substantially less than any comparable contributions plans that levy high density residential development and does not provide any tangible public benefits for the community.

While it may well be possible for the Proponent to amend the infrastructure offer to better meet the increased demand resulting from the proposed development, there would be limited utility in continued infrastructure negotiations and expending further resources by either party given that the proposal to date has not been able to demonstrate strategic or site-specific merit.

### **Traffic**

The Proponent submitted a Transport Impact Assessment which indicates that the road network near the subject site is expected to operate at a 'good' level of operation in 2023 and 2033 (both with and without the proposed development). However, the accuracy of these results is questioned and further information is required on which roads have been included within this assessment. This is discussed in further detail in Section 5(d) of the Council Officer Assessment Report to the Local Planning Panel.

Critically, the feedback received from Transport for NSW as part of the scoping process identified that the site is **not** within an easy walking distance (e.g. 800m walking catchment) of a Metro Station. Accordingly, new development on this site is likely to be more reliant on private vehicle trips, rather than active and public transport opportunities as would be the case for development within the walkable catchment of a metro station.

The proposed uplift is likely to increase traffic generation and contribute to existing traffic congestion along Castle Hill Road, in addition to the growth that is also expected to occur close to Castle Hill and Cherrybrook Metro Stations. Given the site is outside of the walkable catchment of these stations, it is expected that residential dwellings at this location would have a relatively high traffic generation given the need for residents to rely on private vehicles.

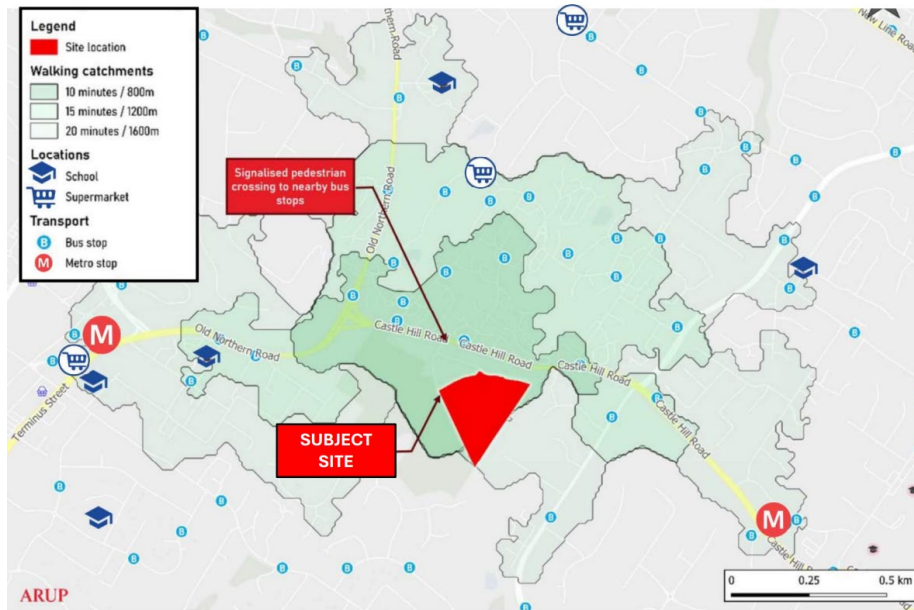
While no traffic or transport infrastructure upgrades have been identified by the Proponent (aside from parking signage), if the proposal was to proceed, intersection upgrades would be required at the Glen Road and Castle Hill Road intersection for a designated right turn lane. Additional road widening would also be required along Glen Road from Castle Hill Road to Melia Court to facilitate the increased traffic flow. Given these upgrades have not been identified in the current contributions framework (being Council's Section 7.12 Contributions Plan), it is anticipated that these upgrades would need to form part of a VPA or assessment of a future development application should the proposal proceed.

### **Parking**

Having regard to the yields proposed, the proposal will result in insufficient parking when assessed against the requirements of The Hills DCP 2012. This would require additional site work to accommodate the additional parking spaces, that would result in additional environmental impacts. There is limited rationale for allowing reduced parking provision on this site, given it is outside of the walkable catchment of the Castle Hill and Cherrybrook Metro Stations. This is discussed in further detail in Section 5(d) of the Council Officer Assessment Report to the Local Planning Panel.

### **Essential Services**

As shown in the following figure (that was prepared and submitted by the Proponent), the subject sites are not in close proximity to any essential services, such as nearest shops and schools.



**Figure 17**

Proximity to Schools, Public Transport and Supermarkets  
(Source: Proponent's Briefing Material)

Additionally, the majority of the schools that are shown within this figure are already at or over capacity and will already be required to accommodate further increases in student numbers as a result of the significant residential growth that has been strategically identified in more suitable locations.

Of relevance, recent data from Government (published in an article by the Sydney Morning Herald) indicated that schools in North West Sydney are already operating at double or triple their enrolment caps, pushing some campuses to exceed their official capacity by 1000 students. An analysis of the capacity of public schools, specifically those that are closest to the subject site, is provided in Table 3.

| School                             | 2024 Students | 2024 Cap | % Over Cap |
|------------------------------------|---------------|----------|------------|
| Oakhill Drive Public School        | 762           | 370      | 206%       |
| Castle Hill Public School          | 1013          | 624      | 162%       |
| Cherrybrook Public School          | 923           | 509      | 181%       |
| Castle Hill High School            | 1883          | 840      | 224%       |
| Cherrybrook Technology High School | 2060          | 1580     | 130%       |

**Table 3**

Planned Capacity and Enrolment Numbers for Nearby Schools  
(Source: Sydney Morning Herald)

As shown above, the enrolment numbers for nearby schools are substantially exceeding the planned capacity. It is *not* the case that this site has good access to school infrastructure with capacity to accommodate growth. Given these critical infrastructure shortfalls, it would be inappropriate to approve uplift of this scale in the proposed location, particularly noting the substantial growth already projected in other locations (such as in Release Areas and in Station Precincts). This would only further exacerbate the issues Government is currently experiencing in providing sufficient school places to service growth that is underway and strategically identified. It would also jeopardise the ability for growth



which has been planned and identified in more appropriate locations (under adopted strategic planning policies by Government and Council) to be adequately serviced.

## **6. CONCLUSION**

The planning proposal was considered by the elected Council at its Council Meeting of 25 June 2024 and it was resolved that the planning proposal *not* proceed to Gateway Determination. It was considered that the proposal does not satisfy either the strategic or site specific merit test, on the basis that:

- The planning proposal is inconsistent with the objectives and priorities of the Greater Sydney Region Plan, Central City District Plan, Section 9.1 Ministerial Directions, North West Rail Link Corridor Strategy, The Hills Corridor Strategy, Cherrybrook Station Precinct Place Strategy, Council's Local Strategic Planning Statement and Castle Hill Precinct Plan (recently adopted by Council on 11 June 2024), as these documents relate to providing for housing supply in the right locations, creating great places, protecting areas of environmental significance and balancing growth with suitable levels of infrastructure.
- The site is not identified as being suitable for development uplift within any of the relevant strategies or plans which identify locations for medium to higher density development to occur in closer proximity to Cherrybrook or Castle Hill Metro Stations (within the walkable catchment from the station). The land was considered as part of the broader investigation areas around these stations however was not deemed as an appropriate area for any uplift above what can be achieved under the current controls.
- The proposed outcome is inappropriate having regard to the environmental constraints of the site including steep topography, landslide risk, hydrological constraints and endangered ecological communities. The location, design, scale and form of the proposed development does not adequately consider or respond to the scenic or biodiversity values of the site or the current and future character of development on the surrounding land. A lower scale and density of development with a smaller footprint, reduced vegetation clearing and reduced cut and fill would more appropriately respond to the site constraints, similar to the outcomes within the surrounding area.
- The traffic and parking impacts generated by the proposed uplift have not been suitably considered or addressed.
- The proposed planning mechanisms sought to be implemented by the planning proposal would enable a broader range of potential outcomes in comparison to the intended development outcome submitted by the Proponent. The proposal would not provide certainty that the outcomes illustrated in the concept plans will be delivered.
- The proposal does not adequately address the demand for infrastructure likely to be generated by the proposal or provide any tangible public benefits.