

Mr Stephen Barry
Planning Director
Independent Planning Commission NSW
Suite 15.02, Level 15, 135 King Street
SYDNEY NSW 2000

Email: [REDACTED]

Dear Mr Barry

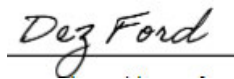
Gateway determination review (GR-2022-26) – Planning proposal to update and extend the Terrestrial Biodiversity Map and update the terminology in the corresponding Clause (6.4 Terrestrial Biodiversity) within the Hornsby Local Environmental Plan 2013

Request for Information

The Independent Planning Commission (the Commission) met with the Department of Planning and Environment (the Department) on 5 December 2022 to discuss the above Planning Proposal. The Commission has requested responses to the questions taken on notice during this meeting and these have been provided below at Attachment A.

Should you have any enquiries about this matter, I have arranged for Ms Ashley Richards, Specialist Planner, North District, at the Department to assist you. Ms Richards can be contacted on [REDACTED]

Yours sincerely



Dez Ford
A/Director, North District
Planning and Land Use Strategy

Enc: Questions taken on notice – Departmental Response
Att A - Eco Logical Australia Report - May 2017
Att B – EES response – Hornsby Council PP – Terrestrial Bio Map – 21 Dec 2020

Questions taken on notice – Departmental Response

- 1. What would be the effect of a separate map of local and common vegetation communities with buffers and linkages/corridors on complying development without a corresponding change to clause 6.4 (Terrestrial biodiversity) of the Hornsby Local Environmental Plan 2013?**

Without a corresponding change to clause 6.4 (Terrestrial biodiversity) of the Hornsby Local Environmental Plan 2013 there would be no effect on a complying development.

If clause 6.4 does not include ecologically sensitive land (ESL) in the title a separate map would have no effect on the application of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (The Codes SEPP).

A map included in the LEP must link to a corresponding clause in the LEP to include a matter of consideration at the development application stage. If there are no link the map should be included in the Development Control Plan (DCP).

- 2. Council has referenced “abuse of complying development” as one of their underlying reasons for developing this Planning Proposal. Has the Department asked Council to quantify the impacts of this “abuse”?**

The Department has not asked Council to quantify the impacts of the “abuse of complying development”. This could be explored as part of any future planning proposal that Council prepares in collaboration with the Department.

It should also be noted that if correct use of the complying development process is a concern for Council, it is not an appropriate solution to remove/nullify the process entirely.

- 3. The Department referred to the approach taken by Canada Bay Council as a potential option to address some of Hornsby Council’s objectives for this Planning Proposal. Can the Department elaborate on this option, addressing:**
 - the approach used
 - the intended effect on tree protection and complying development
 - specifying the width of any buffers and the number and maximum length of the linkages/corridors between mapped vegetation areas?

Background

The Codes SEPP identifies specific land-based exclusions on which complying development may not be carried out. One of these is if the land is identified by an Environmental Planning Instrument (such as a LEP) as being ‘Environmentally Sensitive Land’.

In September 2018 a Canada Bay housekeeping amendment (Amendment No 15, PP_2017_CANAD_006_00) was finalised by the Department. Amongst the provisions in the amendment, the term 'Terrestrial Biodiversity' was replaced with the term 'Environmentally Sensitive Land'.

The approach used

In Canada Bay at this time the land identified on Council's Terrestrial Biodiversity Map specifically referred to land containing (or within the vicinity of land containing) threatened species or endangered ecological communities.

In Canada Bay this land could *already be considered 'environmentally sensitive land'* as under Clause 1.18 of the Codes SEPP, an "environmentally sensitive area" includes "land [which is] identified as being critical habitat under the Threatened Species Conservation Act 1995..." Critical habitat under Part 3 of the Threatened Species Conservation Act 1995 No 101 includes "the whole or any part or parts of the area or areas of land comprising the habitat of an endangered species, population or ecological community..."

The September 2018 housekeeping amendment stated that the discrepancy between the terminology used in the Canada Bay LEP ('Terrestrial Biodiversity') and the Codes SEPP ('Environmentally Sensitive Land') created confusion as to whether the land identified on the LEP maps was intended to be excluded from complying development. This confusion was mitigated by replacing the term 'Terrestrial Biodiversity' with the term 'Environmentally Sensitive Land'.

The intended effect on tree protection and complying development

The Biodiversity Framework underpinning the proposal identified threatened and migratory species, as well as critical, significant, and supporting habitats. The intended effect on tree protection was to:

- *Improve vegetation within critical habitat/ priority areas that are considered to have opportunities for connectivity... [and]*
- *[Achieve a] measurable increase in habitat coverage within and adjacent to identified priority corridors*

In Canada Bay the land that had been mapped as 'Terrestrial Biodiversity' was land that included or was near endangered species habitat. This land was already *'environmentally sensitive land'* under the Codes SEPP definition.

The mapped areas were already excluded from complying development under the Codes SEPP and the primary purpose of this amendment was to remove confusion and the discrepancy between the wording used in the LEP and the Codes SEPP.

Specify the width of any buffers and the number and maximum length of the linkages/corridors between mapped vegetation areas

A buffer zone of approximately 25m width was applied to Council, Crown and private land that contains critical habitat when identifying new ESL. No linkages/corridors between mapped vegetation areas were implemented.

- 4. The Department also referred to the approach taken by Sutherland Council as a potential option to address some of Hornsby Council's objectives for this Planning Proposal but noted that the Department no longer supported this approach. Can the Department elaborate on this option and the reason why it is no longer supported?**

"Environmentally Sensitive Land" (ESL) relates to four local provisions in the Sutherland LEP. These are:

- 6.5 Environmentally sensitive land—terrestrial biodiversity
- 6.6 Environmentally sensitive land—groundwater vulnerability
- 6.7 Environmentally sensitive land—riparian land and watercourses, and

- 6.8 Environmentally sensitive land—environmental and scenic qualities of natural landforms

These layers were created with the application of the Sutherland Shire Standard Instrument LEP 2015. The Department supported these clauses at that time as it was argued that Sutherland Shire had expanses of natural bushland and waterways which contribute significantly to its character. It was argued the ESL provisions would provide opportunity to give greater statutory weight to environmental considerations across the Sutherland Shire. It was considered appropriate that the consent authority would need to consider the impacts of proposed developments on the wider environment in the Sutherland Shire context.

A January 2015 Department audit of the local barriers to the take-up of the Codes SEPP in Sutherland confirmed that Council maintains data on land identified as being in an ecologically sensitive area in consultation with relevant agencies. At the time the Sutherland Standard Instrument LEP was prepared it was decided that there were significant and unique environmental considerations within the Sutherland LGA which would benefit from additional statutory weight.

5. Does the Department specifically require that this type of vegetation mapping is validated, and if so, what is the minimum threshold, as a percentage, for validation?

Validation of a map is about having a degree of confidence that the representation (the map) reflects the evidence on the ground. The degree of confidence required is highly dependent on the intentions and perspective of the map producer and that of the map user. It is noted that access to private property can make it difficult to achieve validation of sites. The process of public exhibition and the public responses to the mapping may allow the opportunity to increase the level of map validation.

Advice from Environment and Heritage Group (EHG) (Attachment B) points out that in this instance the level of confidence required is relatively high as property level decisions are required by Council and landholder. EHG also noted that it is not possible to ground truth all the vegetation across the local government area and that it is appropriate at the development application stage for ground-truthing to occur to accurately describe the vegetation present and survey for species and ecological communities.

EHG has recommended that contemporary best practice for validation outcomes for fine scale mapping is 80% and above. To date, approximately 21% of the proposal's map has been validated by current and previous authors. Eco Logical Australia completed a vegetation map update for Hornsby Shire Council in 2017 (Attachment A). 214 areas were validated by Eco Logical Australia in the development of this report. Eco Logical notes that in the preparation of their report, polygons from previously surveyed or previously validated vegetation areas were used (referenced in the Attachment A report). As part of the 2017 report Eco Logical assigned these areas a confidence rating. Confidence was rated highest where the polygon was surveyed or previously validated. Eco Logical also noted that 28 sites could not be surveyed without accessing private land.