



13 December 2022

Stephen Barry  
Planning Director  
Office of the Independent Planning Commission NSW

Via email: [REDACTED]

Dear Mr Barry

**Request for Gateway determination review (GR-2022-26)**  
**Response to request for information**

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The purpose of this letter is to provide a response to the questions taken on notice during the Independent Planning Commission (Commission) meeting on 5 December 2022 concerning Council's Vegetation Mapping Planning Proposal. A response to the questions, confirmed in writing by the Commission on 7 December 2022, is outlined below.

**1. How does the Planning Proposal align with the State Environmental Planning Policy (Housing) 2021 with respect to the definition of environmentally sensitive land?**

The Housing SEPP Schedule 3 lists environmentally sensitive land as being:

- Land shown cross-hatched on the Bush Fire Evacuation Risk Map.
- Land identified as coastal wetlands and littoral rainforests area within the meaning of State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2.
- Land identified as coastal vulnerability area within the meaning of State Environmental Planning Policy (Resilience and Hazards) 2021, Chapter 2.
- Land declared as an area of outstanding biodiversity value under the Biodiversity Conservation Act 2016, section 3.1.
- Land identified on the Map within the meaning of the Biodiversity Conservation Regulation 2017, section 7.3.
- Land identified in another environmental planning instrument as follows—
  - (a) land to which the Standard Instrument, clause 5.22 applies in relation to seniors housing specified as sensitive and hazardous development,
  - (b) open space,
  - (c) natural wetland.

None of the above relate to Council's Vegetation Planning Proposal.

However, Chapter 3, Part 1, Division 3 of the Housing SEPP outlines development for the purpose of secondary dwellings that is complying development and excludes land that is an environmentally sensitive area within the meaning of the Codes SEPP. Consistent with Council's current application of the Terrestrial Biodiversity LEP layer, this means that both the current and future mapping would exclude the application of complying development for secondary dwellings under the Housing SEPP within mapped areas.

## **2. What (if any) vegetation condition assessment was undertaken as part of Council's 2017 vegetation mapping?**

Detailed condition assessment has not been undertaken within each mapped polygon. However, the mapping methodology undertaken has captured patches of vegetation with dominant native canopy and understorey species only. Patches that are dominated by exotic species have been excluded from the mapped native vegetation communities.

Aerial imagery was used to generate the vegetation maps and identify significant patches of vegetation. Further analysis of the imagery and ground truthing of representative patches then noted the dominant canopy and understorey species which determined the vegetation class for a given patch. This methodology is consistent with the definition of determining bushland contained in SEPP 19 – Bushland in urban areas.

Patches of vegetation that did not contain any native species, or very few, were not mapped. Patches with dominant non-native canopy and understorey species were noted as 'Remnant vegetation – to be checked' which is a consistent approach to methodology of the Sydney Metropolitan Vegetation Mapping (OEH 2015) which classed this as 'Urban/Native Exotic'. This vegetation class has not been included in Council's native vegetation mapping.

With regard to patches where there was minor disturbance from surrounding urban development, the NSW Scientific Committee recognises that these patches of vegetation play an important role for threatened communities, namely in the conservation of Blue Gum High Forest and Sydney Turpentine Ironbark Forest (specifically noting as such in their final determination of these threatened ecological communities). The inclusion of the vegetation patches that contains some exotic species (but not dominant) within the native vegetation communities of Hornsby Shire is consistent with the view of the committee and the value that they play in conserving local biodiversity.

The typical condition assessment methodologies required to verify the condition of vegetation communities are those that are generally consistent with the Biodiversity Assessment Method, under the Biodiversity Offset Scheme. To undertake a condition assessment of all mapped polygons consistent with this methodology would require significant resourcing and would not add value for the purpose of recognising the extent of significant vegetation within Hornsby Shire.

## **3. Has any additional validation of Council's 2017 vegetation mapping been undertaken?**

No additional validation has been undertaken, apart from the total 21% of the vegetation patches which have been ground truthed. This provides significant confidence in the extent and composition of the vegetation communities that are represented within the vegetation mapping layers. Further, confidence in the maps is evidenced through its utilisation to inform the Bush Fire Prone mapping which is endorsed by the NSW RFS Commissioner.

The mapping approach employed in 2017 built on previous mapping methodologies (Smith and Smith, 2008) but utilised updated technology and resources. The Smith & Smith mapping, and hence the methodology, was adopted by the DPE for the current version of the Terrestrial Biodiversity map. This has been further acknowledged during the recent (2022) east coast plant community type mapping project undertaken by DPE. They have used the Smith & Smith mapping, as contained in the NSW vegetation information system (now SEED portal), in their assessment of revised east coast plant community types. They preferred the Smith & Smith mapping over predicted PCTs (refer to; Roff A, Day M, Thonell J and Denholm B (2022) NSW State Vegetation Type Map: Technical Notes, NSW Department of Planning and Environment, Parramatta, Australia).

During the Smith & Smith (2008) mapping, 742 sites were visited to obtain species data. ELA (2017) visited a further 214 sites which equates to a total of 21% of the mapped area now having been ground-truthed (p.11, ELA 2017). Further, confidence in mapping accuracy and utility is demonstrated with its incorporation into the NSW RFS bush fire prone maps. The ELA vegetation was found to be compliant for this purpose and was endorsed by the NSW Fire Commissioner on 30 March 2021.

**4. Council has referenced “abuse of complying development” as one of their underlying reasons for developing this Planning Proposal. Can Council quantify the number of occurrences and impacts of this “abuse”?**

Our letter supporting the Gateway Review request stated:

*Given publicised abuses of the complying development pathway and Council's limited ability under current regulations to proactively protect biodiversity where complying development has been approved, Council believes that the clarity offered by this Planning Proposal is justified.*

This was not meant to (nor can we) quantify and categorise the number and occurrences specifically. Examples of publicised abuses referred to in our letter include the following:

- [Private certifier banned for life regarding pools](#)
- [Building certifiers banned for five years or more](#)
- [Waverly cites issues regarding complying development and related compliance issues](#)
- [2022 NSW Legislative Council inquiry into regulation of building standards](#) accepted “the view of local councils that NSW Fair Trading is ill-equipped to deal with the regulation of private certifiers and complaints against them” and documented issues related to complying development.
- [2022 Government response](#) acknowledges the need for reforming regulation of certifiers. It does not commit to an extension of reforms to Class 1 buildings (e.g. detached dwellings).

Council continues to raise issues related to complying development and we understand that the majority of councils receive a significant volume of complaints annually, identifying areas where private certifiers have failed to exercise their duties.

The media attention illustrates that there is limited resources and regulatory ability for councils to be aware of potential breaches related to complying development approvals or the related building works. Gaps in regulatory frameworks mean that councils are unable to action compliance relating to individual sites and certifiers as Fair trading is the primary regulator and the burden for lodging complaints largely lies with impacted individuals.

The system raises an inherent question of independence in the process where a proponent is paying for the services of the certifier engaged to inspect and approve building work to ensure it is in accordance with approved plans and State legislative requirements. There is real potential for a private certifier to be unduly influenced by builders or developers and this can affect their ability to make impartial decisions. When problems arise, it is common for members of the community to contact council to seek assistance to address any perceived beaches of consent.

State government has also decided to limit compliance levies related to complying development. For Hornsby Council, this change represents a projected reduction in annual revenue of over \$130,000. These funds previously supported two permanent compliance officer positions within Council. This will further limit Council's ability to respond to potential complying development issues, many of which in our Shire relate to tree removal or vegetation clearing.

I trust that the above information is of assistance and I thank you for the opportunity to present Council's case at the Commission meeting. Please let me know if you require further clarification on any of the above matters.

Yours faithfully



James Farrington  
Director, Planning and Compliance

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**Hornsby Shire Council**

ABN 20 706 996 972

296 Peats Ferry Rd, Hornsby 2077

PO Box 37, Hornsby NSW 1630

**Phone** 02 9847 6666

**Fax** 02 9847 6999

**Email** [hsc@hornsby.nsw.gov.au](mailto:hsc@hornsby.nsw.gov.au)

**Web** [hornsby.nsw.gov.au](http://hornsby.nsw.gov.au)