

10 PLANNING PROPOSAL - VEGETATION MAPPING UPDATE

EXECUTIVE SUMMARY

- The *Hornsby Local Environmental Plan 2013 (HLEP 2013)* includes a Terrestrial Biodiversity Map and a corresponding Clause (6.4 Terrestrial Biodiversity) that details matters for consideration when assessing a development application on land within the mapped area.
- In 2017, Council engaged Ecological Australia to update the vegetation mapping (previously undertaken by Smith and Smith 2008) referred to as the ELA Vegetation Map 2017.
- At its meeting on 11 December 2019, Council resolved to prepare a Planning Proposal to replace the current Terrestrial Biodiversity Map within the *HLEP 2013* with an updated vegetation map.
- At its meeting on 12 August 2020, Council resolved that the updated *HLEP 2013* Terrestrial Biodiversity Map should identify all vegetation communities (National, State, Regional and local) plus a 10m buffer. The planning proposal has been prepared in accordance with Council's resolution.
- On 30 September 2020, the Local Planning Panel reviewed and provided advice on the Planning Proposal in accordance with the Local Planning Panels Direction. The Local Planning Panel acknowledges that the Planning Proposal is an appropriate mechanism to implement Council's policy intent to protect all vegetation communities in Hornsby Shire.

RECOMMENDATION

THAT:

1. Council endorse the progression of the Planning Proposal attached to Director's Report PC21/20 to update and expand the Terrestrial Biodiversity Map within the *Hornsby Local Environmental Plan 2013* for submission to the Department and Planning, Industry and Environment for a Gateway Determination.
2. The Planning Proposal be publicly exhibited in accordance with the Gateway Determination and consultation strategy identified in this report.
3. Council endorse the amendments to the Hornsby Development Control Plan attached to Director's Report No. PC21/20 for exhibition concurrently with the Planning Proposal.
4. Following exhibition, a report on submissions be presented to Council for its consideration.

PURPOSE

The purpose of this Report is to present a Council initiated Planning Proposal to update and expand the Terrestrial Biodiversity Map within the *HLEP 2013* along with associated amendments to the Hornsby Development Control Plan (HDCP) to allow residents to undertake some exempt tree and vegetation work within the mapped area.

BACKGROUND

The *HLEP 2013* includes a Terrestrial Biodiversity Map and a corresponding Clause (6.4 Terrestrial Biodiversity) that details matters for consideration when assessing a development application on land within the mapped area. The current Terrestrial Biodiversity Map identifies National, State and Regionally significant vegetation communities based on Smith and Smith Vegetation Communities of Hornsby Shire Mapping (2008 Update) plus 'Bushland Protection' land previously recognised under the *Hornsby Shire Local Environmental Plan 1994 (HSLEP 1994)*.

In 2017, Council engaged Ecological Australia to update the vegetation mapping, referred to as the ELA Vegetation Map 2017. On 27 November 2019, the vegetation map updates were presented to Councillors at an informal workshop. Discussion included options to update the *HLEP 2013* Terrestrial Biodiversity Map to include additional vegetation communities.

At its meeting on 11 December 2019, Council considered Mayoral Minute No. MM13/19 concerning opportunities to strengthen protection of biodiversity and tree canopy and resolved that:

1. *Council prepare a Planning Proposal to replace the current Terrestrial Biodiversity Map within the Hornsby Local Environmental Plan 2013 with a new Map using updated vegetation mapping prepared on behalf of Council by Eco Logical Australia with the inclusion of 10 metre buffers.*
2. *Council consult the Hornsby Local Planning Panel in the preparation of the Planning Proposal and the comments of the Panel be addressed in the report to Council presenting the Proposal.*
3. *When the Planning Proposal is submitted to the Department of Planning, Industry and Environment, Council request the matter be expedited to ensure practical effect is given to the updated vegetation mapping in consideration of all development applications, tree and vegetation permits, and development processes.*
4. *Until such time as the Planning Proposal has been gazetted, all development applications involving tree removal within the area shown on the updated vegetation map be assessed comprehensively in accordance with the tree preservation controls within the Hornsby Development Control Plan.*
5. *Whilst the Planning Proposal is being prepared, Council undertake a communication exercise to seek broad feedback that can be incorporated/considered when Council considers adopting the formal Planning Proposal.*

In accordance with Council's resolution, preparation of a Planning Proposal commenced. However, in drafting the Planning Proposal and preparing a consultation strategy to seek community feedback, it became apparent that there are several options for incorporating the Hornsby Vegetation Map 2017 into the *HLEP 2013* Terrestrial Biodiversity Map with differing implications for each option.

Accordingly, on 4 March 2020, a Councillor workshop was held to discuss the various options and implications. At the workshop, a range of views were expressed by Councillors and it was generally agreed that a report should be presented to Council to confirm the scope of the Planning Proposal.

At its meeting on 12 August 2020, Council considered a Director's Report No. PL5/20 outlining three options to update the Terrestrial Biodiversity Map within the HLEP 2013 and resolved that:

1. *Council adopt Option 2 as outlined in Directors Report No. PL5/20 as the basis for the preparation of a Planning Proposal to update the Terrestrial Biodiversity Map within the Hornsby Local Environmental Plan 2013.*
2. *The report presenting the Planning Proposal to Council be discussed at a Councillor workshop and address appropriate amendments to the Tree and Vegetation Preservation element of the Hornsby Development Control Plan (DCP) to allow residents to undertake exempt tree work as described in the DCP within mapped areas.*
3. *Council undertake community consultation after Gateway Determination to seek public comment on the Planning Proposal as part of the Plan-making process.*
4. *Council consult the Hornsby Local Planning Panel in the preparation of the Planning Proposal and the comments of the Panel be addressed in a report to Council presenting the Proposal.*

Option 2 involves the identification of all vegetation communities on the *HLEP 2013* Terrestrial Biodiversity Map (National, State, Regional and local) plus a 10m buffer. The attached Planning Proposal has been prepared in accordance with the option endorsed by Council.

Also, in accordance with Council's resolution, on 23 September 2020, a Councillor workshop was held to discuss the Planning Proposal and appropriate amendments to the HDCP to allow residents to undertake exempt tree and vegetation work within the mapped area.

DISCUSSION

This report presents the Vegetation Mapping Planning Proposal for endorsement by Council to seek a Gateway Determination to enable formal community consultation. It also presents associated amendments to the HDCP, to be exhibited concurrently with the Planning Proposal, after a Gateway Determination is received.

1. Planning Proposal

The Planning Proposal involves the identification of all vegetation communities on the *HLEP 2013* Terrestrial Biodiversity Map (National, State, Regional and local) plus a 10m buffer. The proposed amendments are detailed below.

Mapping

Currently, the Terrestrial Biodiversity Map within the *HLEP 2013* identifies vegetation of National, State and Regional significance plus approximately 50 ha of 'Bushland Protection' land previously recognised under the *HSLEP 1994*, identified through past localised precinct planning studies in the 1990's. Mapping comprises 3 Critically Endangered Ecological Communities (CEECs), 10 Endangered Ecological Communities (EECs) listed under State and Federal legislation and 11 regionally significant vegetation communities.

Due to changes in vegetation patterns and updates to State and Federal legislation and community classifications since the Smith and Smith 2008 mapping, the *HLEP 2013* Terrestrial Biodiversity Map requires updating in accordance with the ELA Vegetation Report 2017. Remnants of Cumberland Plain Woodland vegetation community have been identified which is a CEEC and Angophora Woodlands has been upgraded from local to regionally significant. The ELA 2017 mapping also applies a broader vegetation definition and has consequently captured more vegetation, as it accounts for remnant vegetation without a native understorey, particularly in the urban and rural residential boundaries with bushland (known as relic occurrences).

Further, Council has resolved that the updated mapping include the identification of all vegetation communities (adding 9 local or common communities) plus a 10m buffer. The current and proposed mapping is set out in Part 4 of the attached Planning Proposal.

Terminology

Clause 6.4 of the *HLEP 2013* details matters that must be addressed when assessing a development application on land within the area mapped on the Terrestrial Biodiversity Map. The terminology of both Clause 6.4 and the HLEP Map refers to “terrestrial biodiversity” in accordance with model provisions and drafting advice from the Department of Planning at the time the *HLEP 2013* was being prepared.

It is proposed that the terminology be replaced with “environmentally sensitive land” to avoid any uncertainty concerning the application of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*. The Codes SEPP identifies specific land-based exclusions under ‘Clause 1.19 – Land on which complying development may not be carried out’. One such exclusion is environmentally sensitive land identified in an environmental planning instrument.

To provide consistency with the terminology in the SEPP, the planning proposal seeks to amend the map title to “Environmentally Sensitive Land”, change all references to “Biodiversity” on each map to “Environmentally Sensitive Land” and replace all references to “Terrestrial Biodiversity” in Clause 6.4 and the Dictionary with “Environmentally Sensitive Land”.

2. Development Control Plan Amendments

In accordance with Council’s resolution, a workshop was held to discuss appropriate amendments to the HDCP to allow residents to undertake exempt tree work within the proposed mapped area. At the workshop, it was generally agreed that the appropriate approach for DCP amendments would be to ensure that some exempt tree work could be carried out within the proposed mapped area, such as the removal of trees less than 3m in height and the removal of dead or dying trees and vegetation. In accordance with the discussion at the workshop, three parts of the DCP are proposed to be updated as outlined below and in the attachment to this report.

Part 1B.6.1 Tree Preservation

Currently, for land mapped on the Terrestrial Biodiversity Map, the exempt tree works listed under part 1B.6.1 (d) of the HDCP do not apply (see Part 1B.6.1 (e)) which has implications including that:

- The removal of species listed under the *NSW Biosecurity Act 2015* require consent.
- All tree works require a tree permit including removal of dead trees, pruning of a tree by less than 10%, removal of trees under 3 metres, removal or pruning of a tree where the trunk of the tree is within 3 metres of an approved building, and removal of trees that pose a threat to life or property.
- The removal or pruning of trees on Council owned or managed land by Council is not permitted, unless appropriate approval has been obtained.

In recognition of the extended coverage of the mapping, Councillors generally agreed that some of the above exempt tree work should be allowed to be carried out within the proposed mapped area. Accordingly, the following amendments are recommended:

- Delete reference to the Terrestrial Biodiversity Map under Part 1B.6.1 (e) to allow certain tree works without consent in the mapped area.

- Add a statement within Part 1B.6.1 (d) to clarify that the removal or pruning of a tree within 3 metres of an approved building cannot be carried out as exempt tree works on mapped land.
- Update the references to the 'Terrestrial Biodiversity Map' to 'Environmentally Sensitive Land Map'.

Part 1B.6.2 Vegetation Preservation

Currently, for land mapped on the Terrestrial Biodiversity Map, exemptions for vegetation clearing (excluding trees) as per table 1B.6.2 (a) do not apply to land within 50 metres of, and including, mapped land. Exemptions include vegetation clearing once every 5 years of up to 30m² in rural areas and 10m² in residential, business and industrial zones.

In recognition of the extended coverage of the mapping, Councillors generally agreed that some of the exempt vegetation work should be allowed to be carried out within the proposed mapped area. Accordingly, the following amendments are recommended:

- Delete reference to the Terrestrial Biodiversity Map under Part 1B.6.2 (e) to allow certain vegetation works without consent in the mapped area.
- Add a statement within Part 1B.6.2 (d) Exempt Vegetation Work to clarify that the specified vegetation clearing every 5 years cannot be undertaken on land mapped as Environmentally Sensitive Land.
- Update the references to the 'Terrestrial Biodiversity Map' to 'Environmentally Sensitive Land Map'.
- Update the notes section to reference current legislative requirements.

Part 1C.1.1 Biodiversity

Currently, the provisions listed under Part 1C.1.1 Biodiversity of the HDCP apply to land identified on the Terrestrial Biodiversity Map. In accordance with Council's resolution, these controls would continue to apply to the proposed mapped area. However, to complement the proposed updates to the vegetation mapping, the following amendments are recommended:

- Add a provision that a flora and fauna assessment may not be required where a preliminary assessment has been submitted by a suitably qualified consultant demonstrating that vegetation in the mapped area will not be affected.
- Add a provision beneath Table 1C.1.1(a) Buffer Zones to Vegetation Types to note that the required buffers should be discounted where a buffer has been provided on the mapping.
- Update the references to the 'Terrestrial Biodiversity Map' to 'Environmentally Sensitive Land Map'.
- Update outdated references from the Threatened Species Conservation Act 1995 to the Biodiversity Conservation Act 2016.
- Update the vegetation studies referred to within the notes section to include the Vegetation Map Update Report prepared by Ecological Australia (2017).

STRATEGIC AND STATUTORY CONTEXT

This report considers the merit of the planning proposal in relation to State and local planning policies and legislation regarding the potential impacts of the proposal. The relevant policy and legislation are discussed below.

Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

A Metropolis of Three Cities – the Greater Sydney Region Plan has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The *North District Plan* is a guide for implementing *A Metropolis of Three Cities - the Greater Sydney Region Plan* at a District level and is a bridge between regional and local planning.

The plans set strategies and actions for accommodating Sydney's future population growth and identifies key targets such as *dwelling* numbers, infrastructure planning, liability, sustainability and productivity.

The planning proposal is *consistent* with the relevant objectives of *A Metropolis of Three Cities* and the actions of the *North District Plan*, by providing continued recognition and protection of the biodiversity values of the native vegetation within Hornsby Shire as outlined in Section B.Q3 of the attached Planning Proposal.

Section 9.1 Local Planning Directions

Section 9.1 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* allows the Minister for Planning and Public Spaces (the Minister) to provide direction to Council in relation to the preparation of draft local environmental plans.

The planning proposal has been considered against the following Directions relevant to the proposal:

Direction 1.1 Business and Industrial zones

The objectives of the direction are:

- (a) *Encourage employment growth in suitable locations.*
- (b) *Protect employment land in business and industrial zones.*
- (c) *Support the viability of identified centres.*

This Direction applies as the proposal affects land within existing business and industrial zones. The planning proposal will generally not reduce the potential floor space area for employment uses in business or industrial zones but rather ensure greater consideration is given to the impact future development could have on the surrounding environment.

Direction 1.2 Rural Zones

The objective of this direction is to protect the agricultural production value of rural land. The planning proposal is consistent with this direction as it does not seek to rezone rural land or contain provisions that would increase the permissible density of land within a rural zone.

Direction 2.1 Environmental Protection Zones

The objective of this direction is:

- (a) *To protect and conserve environmental sensitive areas.*

The planning proposal is consistent with this direction as it would facilitate the protection of land identified as having high biodiversity significance in accordance with the Hornsby Vegetation Mapping Report 2017 prepared by Eco Logical Australia. It is intended to continue mapping endangered ecological communities and significant vegetation listed under *NSW Threatened Species Conservation Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999* as well as adding additional local communities.

Direction 3.1 Residential Zones

The objectives of the direction are:

- (a) *To encourage a variety and choice of housing types to provide for existing and future housing needs.*
- (b) *To make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
- (c) *To minimise the impact of residential development on the environment and resource lands.*

This Direction applies to the proposal affects land within an existing residential zone. The planning proposal is consistent with this direction as it ensures that housing design and implementation takes into consideration the environmental constraints of a site and the surrounding area to maintain the protection of vegetation communities.

Direction 4.4 – Planning for Bushfire Protection

The objectives of the direction are:

- (a) *To protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land use in bushfire prone area.*
- (b) *To encourage sound management of bush fire prone areas.*

The planning proposal applies to land identified under the bushfire prone land map of Hornsby Shire as it maps areas of vegetation which is aligned with the areas of high bushfire attack levels.

The planning proposal will be forwarded to the Commissioner of the NSW Rural Fire Service for comment following receipt of a gateway determination and prior to undertaking community consultation in accordance with Section 3.34 of the *Environmental Planning and Assessment Act 1979*.

Hornsby Community Strategic Plan - Your Vision Your Future 2028

The Hornsby Community Strategic Plan 'Your Vision Your Future 2028' is a 10-year vision that identifies the main priorities and aspirations for the future of Hornsby Shire and is Council's long-term plan to deliver the best possible services for the Shire. The Planning Proposal meets a number of the Focus Areas of the Community Strategic Plan as outlined in Section B.Q4 of the Planning Proposal.

Hornsby Local Strategic Planning Statement

In March 2020, the Hornsby Local Strategic Planning Statement (LSPS) was published, which sets out a 20-year vision for land-use in Hornsby Shire, identifying the special character and community values that are to be preserved as well as how Council will manage growth and change. The Planning proposal meets a number the priorities and actions contained within the draft LSPS as outlined in Section B.Q4 of the Planning Proposal.

Draft Biodiversity Conservation Strategy 2020

The Draft Biodiversity Conservation Strategy 2020 is currently on exhibition which will guide both Council and the community to conserve and manage Hornsby LGA's biodiversity. The Strategy offers a range of recommended actions that sit alongside several other key strategies prepared in support of the Hornsby Local Strategic Planning Statement. This planning proposal is consistent with the draft Strategy to give effect to *Action 1.1.2 Implement the revised HLEP 2013 Terrestrial Biodiversity Map*.

Local Planning Panel Advice

The Local Planning Panels Direction – Planning Proposals, requires that the Local Planning Panel must give its advice on a Planning Proposal before Council considers whether to forward it to the

Minister or Greater Sydney Commission. The Planning Proposal was presented to the Local Planning Panel (LPP) at its briefing on 30 September 2020.

The Panel acknowledged that the Planning Proposal is an appropriate mechanism to implement Council's policy intent to enhance the protection and management of vegetation by ensuring the appropriate level of consideration and assessment is undertaken for development proposals. Further, it was acknowledged that the proposed mapping has been prepared in accordance with sound advice from ecological consultants.

The Panel noted that the proposed vegetation mapping will affect a significant number of properties within the Shire and that it will be critical to engage with property owners following receipt of a Gateway Determination in progression of the Planning Proposal. The LPP advice is attached to this report.

CONSULTATION

It is expected that, in accordance with "*A guide to preparing local environmental plans*" prepared by the Department of Planning and Environment (2018) a public exhibition period of 28 days will be required by the Gateway Determination.

A consultation strategy has been prepared as part of the planning proposal for endorsement by the DPIE. Part 5 of the planning proposal contains the Consultation Strategy which at a minimum will include the following:

- Notification letters and a copy of the planning proposal will be sent to relevant public authorities outlined in the Gateway Determination.
- A public notice will be placed in relevant newspapers. The public notice will identify the purpose of the planning proposal, exhibition dates and where the proposal can be viewed.
- The planning proposal will be exhibited on the Council website under 'Have Your Say' (<https://www.hornsby.nsw.gov.au/council/noticeboard/your-say>). Council's libraries have access to the website.
- A letter will be sent to affected land owners advising them of the exhibition and how to make a submission; and
- The planning proposal will be displayed at the Council Administration Centre, 296 Peats Road, Hornsby and at Council's libraries.
- Referral to Council Advisory Committees.

It is proposed that the draft amendments to the HDCP attached to this report are exhibited concurrently with the Planning Proposal. A report outlining the outcomes of the public agency consultation and submissions received during public exhibition would be presented to Council for its consideration at the conclusion of the exhibition period.

BUDGET

There are no budgetary implications associated with this Report.

STATUTORY CONSIDERATIONS

The preparation of a Planning proposal is the first step in the process of requesting changes to a planning instrument. Should Council resolve to proceed with the Proposal to Gateway Determination, the DPIE would confirm whether any technical studies are required and relevant parts of the Planning proposal to be updated or amended prior to public exhibition.

As part of the Gateway Authorisation process, Section 2.4 of the EP&A Act allows the Minister and the Director-General to delegate functions to a Council and/or an officer or employee of a Council. When submitting a planning proposal, Council is required to identify whether it wishes to Exercise Delegation (the Authorisation). Authorisation delegates the following plan making powers to Council:

- To make and determine not to make an LEP.
- To defer inclusion of certain matters.
- To identify which matters must be considered and which stages of the plan making process must be carried out again.

At its meeting on 12 December 2012, Council resolved to formally accept the plan making delegations and delegate the plan making functions to the General Manager. Acknowledgement of Council's resolution was received from the Department of Planning and Environment on 3 March 2013.

On the grounds that the planning proposal is consistent with the types of draft LEPs to be routinely delegated by the DPI&E, it is recommended that Council exercise the Authorisation in this instance.

POLICY

The Local Planning Panels Direction – Planning Proposals requires that the Local Planning Panel give its advice on the Planning Proposal before Council considers whether to forward it to the Minister or Greater Sydney Commission. The advice of the Hornsby Local Planning Panel is presented in this report.

CONCLUSION

The Proposal seeks to update and expand the *HLEP 2013* Terrestrial Biodiversity Map and replace the term “Terrestrial Biodiversity” with “Environmentally Sensitive Land” in Clause 6.4 (and make subsequent changes to the associated maps).

The Proposal implements the ELA 2017 Vegetation Map and seeks to map vegetation communities of National, State, Regional and local significance plus a 10-metre buffer in accordance with Council's resolution. This will provide continued recognition and protection of the biodiversity values of the native vegetation within Hornsby Shire. Amendments to the HDCP are also sought in accordance with Council's resolution. The Local Planning Panel acknowledges that the Planning Proposal is an appropriate mechanism to implement Council's policy intent to protect all vegetation communities in Hornsby Shire.

Accordingly, it is recommended that Council endorse progression of the attached Planning Proposal for submission to DPIE for Gateway Determination and subsequent exhibition of the Planning Proposal and associated draft DCP amendments.

RESPONSIBLE OFFICER

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Attachments:

1. Planning Proposal - Vegetation Map Update
2. Proposed DCP Amendments - Vegetation Map Update Planning Proposal
3. Final Minutes - Hornsby Local Planning Panel - Vegetation Map Update Planning Proposal

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