

Mr Stephen Head
General Manager
Hornsby Shire Council
hsc@hornsby.nsw.gov.au

PP-2020-3920 (IRF21/2170)

Attention: Katherine Vickery

Dear Mr Head

Planning proposal PP-2020-3920 for Hornsby Local Environmental Plan 2013

I write regarding Council's request for a Gateway determination to update Hornsby Local Environmental Plan (LEP) 2013 terrestrial biodiversity mapping and amendments to terrestrial biodiversity clauses.

I would like to thank Council for the effort in preparing such a significant planning proposal based on the intention to further protect existing vegetation within the Hornsby LGA, as well as generally aligning with the Greening our City Premier's Priority.

The Department has demonstrated its support to Council for tree planting initiatives through significant funding grants such as the 'Five Million Trees (2019) and Greening our City Grant Program (2021) in addition to funding provided under the Accelerated Open Space Fund, Streets as Shared Spaces and Your High Street.

The Department has completed a review of the proposal and notes that significant amendments would be required before such a proposal could be accepted and progressed to a Gateway determination. In this regard, it is requested that Council withdraw the proposal and I encourage Council to review and address the concerns detailed in this letter and consider resubmitting a proposal that the Department is able to support through the issuing of a Gateway determination.

I confirm that in its current form the proposal is not supported, with the following matters to be addressed in a new planning proposal.

Expansion of types of vegetation communities to be mapped

The Department does not support the inclusion of locally significant and common species as part of the expansion of the terrestrial biodiversity mapping, and there is inadequate justification and analysis to provide confidence in this approach.

Environmentally Sensitive Land has historically included significant vegetation communities that require additional site specific assessment before developments are approved and does not include all types of vegetation communities.

The Department does not support locally significant or common trees being grouped with other elements of its LEP that generally have a higher conservation value, i.e. terrestrial biodiversity. Similar proposals have used this vegetation identification as a way to buffer significant vegetation. For example, a recent planning proposal made by Canady Bay Council (PP-2020-171) included a 25m buffer to critical habitat within E2 zoned land. That proposal also aimed to protect the connectivity between areas of high biodiversity values where links can occur on Council and Crown land. The current proposal does not utilise this approach, and instead proposes broadscale inclusion of local and common species in the terrestrial biodiversity mapping.

Amendments to model clauses and standard instrument definitions

The Department does not support an update to the Standard Instrument definitions as proposed by this proposal by amending the definition of 'Terrestrial Biodiversity' to 'Environmentally Sensitive Land'. The Standard Instrument was introduced to provide consistency and transparency across the State when it came to making planning decisions. ESL is typically identified as land that is ecologically or environmentally sensitive, as well as land that contains significant hazards. In this regard, the Department does not believe there is adequate justification for the inclusion of local or common tree species within Terrestrial Biodiversity mapping that would therefore prohibit complying development.

The Department encourages Council to look at alternatives to replacing a commonly used term. For instance, a potential Local Government Area (LGA) specific clause and supplementary map that identifies environmentally sensitive land. Although if Council was to explore this potential alternative, it would be important to understand the component of the current definition of ESL that Council would propose to use in this classification, as there are specific types of land or attributes applicable to land that can be captured under this definition. If Council wishes to pursue such alternatives, then further discussions with the Department would be required.

SEPP Housing (2021)

It is also noted that the recently released SEPP Housing (2021) outlines the following concerning the appropriate identification of ESL:

- *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 (Coastal Management) 2018.*
- *Land identified as coastal vulnerability area within the meaning of State Environmental Planning Policy (Coastal Management) 2018.*
- *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.

The Department would expect that any future planning proposal, would provide a comprehensive analysis of how the land to be mapped would satisfy the above criteria. If further clarity is required, I encourage Council to contact the Department's Policy Director Sandy Chappel. Ms Chappel can be contacted at 9274 6591 or sandy.chappel@planning.nsw.gov.au.

Planning and Economic impact

Council's proposal includes a significant increase in the amount of vegetation to be identified as part of the terrestrial biodiversity overlay. The Department is concerned about the lack of economic analysis of the potential impact on the residents and businesses who would lose the ability to utilise the complying development approval pathway. For instance, in the 2018-19 financial year, 466 Complying Development Certificates (CDCs) were issued for residential, commercial and subdivision developments.

Such economic analysis would allow Council and the public to more comprehensively understand the financial and time implications placed on homeowners and businesses if they are unable to utilise the complying development pathway for minor works, or works that may be undertaken within the Housing SEPP.

The proposal also contains a lack of analysis regarding the increased assessment time, potential increase in development or design requirements and the resource implications on Council to assess the likely substantial increase in development applications.

Submitting a revised proposal

The Department expects that significant changes to the proposal will result from undertaking the work required to address the above listed issues. Any changes should be clearly detailed in a resubmitted planning proposal and supporting documentation with a corresponding analysis of any resulting community, policy and economic impacts and implications and thorough justification to support the objectives of your approach. As outlined above, alternative approaches such as a specific new clause and supplementary mapping may be options to further explore in consultation with the Department.

The Department will generally not support the identification of local and common species within the Terrestrial Biodiversity mapping of Hornsby LEP, although subject to further discussion with the Department, support may potentially be provided in applying specific limited buffers and clear links between areas of significant vegetation.

Given the likely changes to the proposal and time required for Council to prepare a detailed response, the Department requests Council to withdraw the existing planning proposal. A new planning proposal could be submitted through the Planning Portal once a comprehensive response to the issues raised has been prepared.

This approach will assist in meeting the Department's objective to reduce the timeframes of planning proposals, and to only issue Gateway determinations once a timeframe for its completion is clear.

Should you have any enquiries about this matter, please contact Mr David Hazeldine, Manager Place & Infrastructure at the Department of Planning, Industry and Environment on 9860 1482.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. McDonald', is positioned above the typed name.

2 March 2022

Malcolm McDonald
Executive Director, Eastern Harbour City