



**New South Wales Government**  
**Independent Planning Commission**

**TRANSCRIPT OF PROCEEDINGS**

RE: Hornsby Local Environmental Plan 2013 Terrestrial Biodiversity Map  
(PP-2020-3920) Gateway Review Request

**COUNCIL MEETING AGENDA**

COMMISSION PANEL: TERRY BAILEY (Chair)

OFFICE OF THE IPC: STEPHEN BARRY

DPE: ALISON McLAREN  
BRENDAN METCALFE  
MICHAEL CIVIDIN

LOCATION: VIA VIDEO CONFERENCE

DATE: 9.00AM, MONDAY, 5 DECEMBER 2022

**TRANSCRIBED AND RECORDED BY APT TRANSCRIPTIONS**

MR BAILEY: Before we begin, I would like to acknowledge that I'm speaking to you from the land of the Muwinina people on the Nipaluna Lutruwita, Hobart in Tasmania and I acknowledge the traditional owners of all the country from which we virtually meet today and pay respects to their Elders past and present. Welcome to the meeting today to discuss the Gateway Review Request for the Planning Proposal to update and extend the Terrestrial Biodiversity Map and update the terminology in the corresponding clause within the Hornsby Local Environmental Plan 2013.

10 My name is Terry Bailey and I'm the Chair of this Commission panel. We're also joined by Stephen Barry from the Office of the Independent Planning Commission. In the interests of openness and transparency and to ensure that the full capture of information today's meeting is being recorded and a complete transcript will be produced and made available on the Commission's website. This meeting is one of the Commission's consideration of this matter and will form one of several sources of information upon which the Commission will base its advice.

20 It is important for the Commission to ask questions of the attendees and to clarify issues whenever it is considered appropriate. If you're asked a question and not in a position to answer, please feel free to take the question on notice and provide additional information in writing which we will then put onto our website. I request that all members here today introduce themselves before speaking for the first time and for all members to ensure that they do not speak over the top of each other to ensure the accuracy of the transcript. We'll now begin. As we begin I'd like to invite the department to put forward its position on the gateway application.

MR CIVIDIN: Yeah. So Michael Cividin of the North District working as a Senior Planner under Brendan Metcalfe. Okay. Can you guys - I haven't even done that. Do you want me to start? Have you got the PowerPoint slides, Terry?

30 MR BAILEY: Yes. So the slide deck that was sent through? Yes, I've got it in front of me.

40 MR CIVIDIN: Okay. No problem. So, yep, this is the Hornsby Council Terrestrial Biodiversity Map Update and you've just gone through your opening statement so we're just going to go through an overview, Terry. Do you have an idea of what's going on with this proposal or do you want us to give you a brief overview? I have about three slides that I can go through if you want with the overview and, you know, a couple of key aspects and then council's justification but this is all contained in the report so it's up to you if you want us to go through and give you a bit more information if you need it.

MR BAILEY: Well, let's just refer back. I've read all the documentation, Michael, but it's open to you to present what you think would be valuable in terms of the session today.

MR CIVIDIN: Yep, no problem. So we'll just go straight to the department's recommendation and we've recommended that their planning proposal should not proceed and the gateway determination should remain unchanged. We've, I guess, explained to council that we are willing to work with them on a future proposal that may be supported which is outlined in our original gateway report. This includes  
10 discussions with our housing policy team which we've been liaising with since early on when the proposal was submitted and forms a lot of the conditions that we've used to, I guess, explain that we're not proceeding with the proposal and some of those ways that we can work with council is the use of a separate clause and supplementary map that identifies the local and common communities which we - I guess, we have a policy implication there that we're not - that we have concerns with that hasn't been properly addressed throughout the proposal.

Discussing - we've discussed the options with council but council laws have been, I guess, taken the hold of and they've decided on going one way but there were two  
20 other options that were presented to council and we're open to discussing those a lot further and hopefully getting to the point where we can have a proposal that may be supported and another way that we've offered, I guess, help and guidance to council is the use of local and common communities where we can establish links to, and buffers or more significant vegetation. So using those local and common communities, not just as a broad scale approach but using them to establish those links and buffers.

As I said before, we've communicated with council informally and formally so that began pretty early on in the process in mid-2021 that sort of outlined our rationale and why we aren't supporting that. Council have pretty much instead stood by their  
30 elected officials and not really taken on board our guidance and help that was there and requested that this be formalised in a letter with a request to withdraw. In addition to just the letter they wanted a bit more clarity on what we expect as a proposal, what may be supported which we've also given that guidance pretty early on as well and that - so then a letter was sent to council and 2nd of March, 2022, it formally requested there to withdraw and then gave them those revised proposal approaches including that new map and new ways that we can include local and common communities but not in the way that, I guess, removes the application of complying development in a number of ways. That included liaising with our policy team and again going back to those links that we really want to explore a bit further.

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It's important to note that, I guess, we've been pretty consistent with our concerns as well as the policy aspects. The current vegetation mapping affects around about 1,750 properties, whereas this new map is more akin to about 12,100. So there is a massive impact there and we've had concerns about the economic impact and the impact on council's ability to look at DAs and, I guess, the time implications on just getting those assessed. So without having that economic feasibility study done by council we have pretty significant concerns in that area as well.

10 Something that we wanted to highlight that has been missed a little bit because the proposal was prepared prior to the new housing SEPP was council's intention to remove the Application of Complying Development through the code SEPP; however, they didn't identify what they wanted to do under the housing SEPP and as has been implemented there is now a definition of environmentally-sensitive land and, I guess, we're trying to figure out, and it hasn't been identified, where council would put this new local and common communities or the map in general and whether or not they intend to turn off complying development under the housing SEPP.

20 We've had a look at all these definitions and, I guess, the dot points here that are on the slide they're for the definition of environmentally-sensitive land and we don't believe that any of the mapping would be okay in one of those definitions that just can't fall within any of those. To be outstanding biodiversity you'd have to look at again Federal - like the Commonwealth, the regional and the State values, not the local and common communities that they're trying to push through.

30 So these are in the report but I can quickly go through them. We don't support the local and common communities that are being implemented into the mapping and then, therefore, are a part of that clause 6.4 Terrestrial Biodiversity. It's never been the intent of that clause to include local and common communities. It's not supported by the economic analysis and are concerned about that, including, you know, the 12,000 properties that it would - that it propose to affect when we haven't got anything to understand the financial implications of that.

It will have an affect on the code SEPP as complying development. It's sort of unknown as to how many properties that would affect but imagine it would be 12,000 so many of those would be affected by their code SEPP being turned off and that will just undermine what we're trying to do here as part of the, you know, state agency trying to implement that code SEPP.

40 It's sort of similar to that first one but number 4 is basically saying we don't support the broad inclusion of locally significant and common vegetation communities under clause 6.4. The grouping of these communities is sort of in congruence of what we try

to do in that clause which is to have significant value or biodiversity value through the Commonwealth, State or regionally significant land.

10 Something that I've highlighted earlier but it's part of our gateway determination reason was there are other ways and methods that council could protect trees, not just through clause 6.4, this can be through the expansion of council's tree preservation order under its DCP, could be a separate map. We've been to our legal team and discussed and tried to, I guess, guide ourselves and through council on a new map and how we're going to have local provisions in that map but it just hasn't - we haven't had that conversation with council, they've stuck to their guns and what their elected officials are wanting. And again we've gone back to the North District plan. So we haven't specified a specific priority of objective but generally we'd expect appropriate mapping to be consistent with the North District plan were we can't see that as part of this one.

20 I can quickly go over the housing policy comments. Again it's not typically mapped and, you know, we want to see trees or vegetation of significant biodiversity value that requires that additional assessment before developments are approved, not just your local and common communities. We also think that, or housing policy have said that we can better capture these local and common trees in the tree register at council. We've also, I guess, communicated to council that Sutherland and Canada Bay have separate maps so there is a precedent on using a separate map for ESL rather than replacing the model biodiversity clause which is not consistent with policy comment. So they don't support replacing that model clause 6.4.

30 Again it comes back to the common tree species, housing policy does not want to see local and common communities grouped with other elements that would have a higher conservation value. Housing policy is provided with - have provided us with information regarding CDC, so there were 466 CDCs in the 2018/19 financial year which would be - which a lot of them would be removed as part of this exercise and proposal but it's just unknown, council hasn't really explored that concern that we've given them.

40 Again and the last one here from housing policy, the increase in the number of applications needing to be assessed by council. It was noted very briefly by council that there would be increases to the number of applications that have to be assessed because complying development has been removed. However, there's no real explanation of that impact, it's just a sort of informal suggestion that, yes, it would be delayed and there will be more human resources needed and additional staff for council.

The department's assessment consideration. So we've received advice from our housing policy team. Another consideration was that we don't typically map local and common communities. If supported, this proposal would set a precedent that would undermine complying development and code SEPP and possibly the housing SEPP (not transcribable) (9.16.13) where it's unknown how they're looking to use that or remove that.

10 We also want to highlight that we've given them opportunities to speak with us and try and find a way that we can move forward in a more balanced way rather than the broad scale approach that they have which includes that map, a separate map and the other ways that we've sort of given them guidance is their DCP and other council initiatives that they have at a local level like Greening Our Shire. So, I guess, in summary we recommend that the gateway not proceed and the determination that we gave earlier this year remains unchanged. That's pretty much it, Terry.

MR BAILEY: Thanks, Michael. I just did want to explore a couple of areas in discussion and if I go back just to a couple - into a couple of spots. Can I ask a fundamental question.

20 MR CIVIDIN: Yes.

MR BAILEY: On broad scale vegetation retention beyond biodiversity where broad scale vegetation retention might have benefits consistent with climate change amenity or a series of other aspects and when I read the advice and I think I'm particularly pointing to the letter from March the 2nd - bear with me while I check the absolute date - March - yes, from the 2nd of March this year. Noting the potential particularly in that letter to use, in part, a tree preservation order, if to the extent which council wants to pursue broad scale vegetation retention for a range of factors that might be beyond biodiversity what are the practical instruments that you would see could be  
30 utilised to do that?

MR CIVIDIN: So, sorry, just to clarify, you're saying beyond biodiversity how would they protect vegetation that they see - - -

MR BAILEY: So this is where you're moving into the - so the triggers that are set to a level, if you're looking at national, regional - national, state, regional level vegetation retention they're often tied to a series of other empirical measurements whether that's an EPBC listing or a state listing or recognition through there but in the common sense and local sense if you wanted to do broad scale vegetation retention or  
40 beyond those biodiversity triggers that might be triggered through other statutory frameworks to address amenity, to address climate change, to address a series of other

things what might be the best available - what are the instruments pathways the department would recommend to deliver that at a principal level?

10 MR METCALFE: Hi, Terry, it's Brendan Metcalfe, I'm the Director for the North Districts. What we've said is we would like to explore these options with council and we've said that there could be a local map for the LEP and a clause but that clause would really need to have some work to do and there's no point in having a map that doesn't have any affect. So we need to work through that with council to understand exactly what it is they would like to achieve to potentially elevate a map into the LEP and that's our position at the moment.

We've said we'll work with council, we're happy to work with policy to look at elevating the status of their locally significant vegetation but we don't want to change the definition around environmentally-sensitive land, we don't want to set that precedent for other council to be able to turn off the complying development pathway. So at this stage we don't have a firm position on the mechanisms that we would use other than as we identified, council's significant tree register but we can explore these things with council, we've been willing to do that.

20 MR BAILEY: And I'm probably interested in getting a deeper sense of that Sutherland/Canada Bay mapping and what was the intent of those maps?

MR METCALFE: Well, Terry, the Sutherland approach is no longer being used by the department. The expansive approach that was rolled out in Sutherland hasn't been applied elsewhere but what we have done in Canada Bay is map locally significant vegetation around matters of State and Commonwealth vegetation and that gives it a buffer. What we've also done is allowed corridors of locally significant vegetation to be mapped to connect State or Commonwealth significant vegetation.

30 MR BAILEY: So just coming back on that. Just again wanting to understand - so accepting the attention of those is around buffers in corridors where it's nationally and State significant I heard?

MR METCALFE: Correct.

MR BAILEY: So the broader question that there's no currently an example of a broader application of vegetation retention beyond biodiversity in any of the planning  
- - -

40 MR METCALFE: That's something we'll take on - - -

MR BAILEY: - - - (not transcribable) (9.22.12) that you're referring to?

MR METCALFE: Sorry, Terry. That's something we would need to take on notice to come back to you on. We can have a look at that for you but not to my knowledge.

MR BAILEY: It would be good, Brendan, to get that understanding and it's particularly in the construct that - of two levels, amenity but also in a climate sense in terms of heat management, green space associated with and looking at that, yes, what's the context beyond a very - the definitional pieces that sit in the biodiversity context. That would be helpful if you could thanks, Brendan.

MR METCALFE: Happy to take that on notice, Terry.

MR BAILEY: I just want to touch into another area, Michael, that you talked to as well and just to draw out a little bit, and there's a little bit more in the PowerPoint presentation that came through on Friday and I think the number that you just referred to was 466 CDCs. So the little bit in your review documents is noting that there, you know, 12,150 properties that would be impacted which is up from the 1750 and you might just expand on this a little bit but it did clarify a little bit but in your reasoning you note the planning proposal would have a significant effect on the application to State Environmental Planning Policy, Exempting Complying Development Codes 2008 as well as Complying Development Pathways within the State Environmental Planning Policy Housing 2021 and I note you mentioned that it's not considered for 2021 because this application didn't take this into account but the weakening of this development pathway is not fully justified in light of the vegetation communities to be mapped.

I'm a little bit interested in exploring again in that context of other aspects not just biodiversity, why things wouldn't be justified in light of vegetation communities to be mapped, so just to contextualise there and then I also did want to understand where you draw that line on what you consider significant effect and how you actually determine what a significant effect would be in terms of the application of the SEPP as it relates to CDCs. So we might just start with the weakening of this development pathway is not fully justified in light of the vegetation communities to be mapped.

MR METCALFE: So, Terry, the code SEPP that's been established by the State did consider the types of vegetation in the communities that should be excluded from the application of the code SEPP.

MR BAILEY: Yes.



MR METCALFE: And if we are pivoting and changing our point of view that local species such as the regular gumtree are going to knock out all forms of complying development pathways that's what we would be saying is a significant impact because what we're talking about here is one particular council who would like to take up this approach but if this proposal went forward it could have significant policy implications for other councils who would like to follow suit. So it's not just that it's being mapped, it's that it's being - council would like to change the definition of what is considered environmentally sensitive land. Now, local species of trees I would not consider to be environmentally-sensitive land. Whilst they may contribute to the reduction of greenhouse gas emissions and carbon sequestration that's a different approach to what council's asking us to consider here which is to classify land as environmentally-sensitive land.

MR BAILEY: That opens up the question of council's intended path. My reading of council's intended path is around the climate aspect as well as amenity. How would they go about addressing that?

MR METCALFE: Well, as I said, Terry, that's something that we need to take on notice but we have been willing to work with council on the types - on a proposal that might work for them. We just aren't in a position to say exactly what that is today. As we said, we're happy to speak to policy, we're happy to look at options but really the broad expansion of local species to be elevated into the LEP it needs council work to do and we need to understand that rationale and we also don't support local species being able to turn off the code SEPP and the housing SEPP, well, I don't think it can turn off the housing SEPP because as you've seen, the definition - - -

MR BAILEY: The definition.

MR METCALFE: - - - has been introduced by the housing SEPP, local species wouldn't be called up at all anyway. It does stick to State and Commonwealth species. So we need to consider that implication as well.

MR BAILEY: The other piece that I wanted to come back to and there are some clear comments including covered by Michael. Is the view - correct me if you think this is a wrong interpretation but the view of council's ability to administer in the event that the mapping was approved. So can I just get - seek some comments on where you draw that conclusion and how you draw that conclusion.

MR METCALFE: Sorry, Terry, could you please explain that a little bit more as to what you're seeking to get out of us?

MR BAILEY: So the query that I had is that it's - you might suggest this is not but it's certainly implied that there may be - there would be an administrative inability of council in the event that the map was approved to actually administer because of the switch-off of the CDC aspect, in particular, that there would be a significant burden. My interpretation of your submission is that there would be a significant burden associated with that and potential inability of council to deliver that. And so I just wanted to - - -

MR METCALFE: Sure.

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MR BAILEY: - - - clarification on your - how that view is formed.

MR METCALFE: Understood. So what we've done is looked at how many CDCs have been used in council's local government area and if that pathway was unavailable to homeowners who would like to take up complying development then those applications would either not come forward, so there's an economic impact to the State or, (2), would need to be submitted as a development application, the council would have to resource to process those applications for forms of development that the State considers are of a lower impact and should be processed through the complying development pathway.

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MR BAILEY: So just to clarify, the thoughts are in two parts there, (1) is that they would not come forward but (2) they would be - and it might be implied and I might be misreading but the view that there's a burden on council of too many administrative - too much administration that that wouldn't occur. So accepting the principle but what I'm trying to move - level of hypothetical, if the map was in place are there concerns about council's ability to administer in reasonable timeframes?

MR METCALFE: Yes, there is a concern that it would be a large impost on council staff to process the additional development applications.

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MR BARRY: Terry, do you mind if I ask a question?

MR BAILEY: No, you're right, Steve.

MR BARRY: Just going back to council's underlying problem which I assume is around the abuse and the complying development pathway, has council actually quantified what that abuse is in any kind of way?

MR CIVIDIN: Not through this process. I don't think we've asked for details on this. I think council's general attitude towards complying development is sort of what's on show here rather than them actually giving us specific examples.

MR BARRY: Okay. Thank you.

MR BAILEY: Just to clarify that to some extent, have you sought that information, Michael?

10 MR CIVIDIN: Not specifically because - I'd have to have a look. There were a few requests for information early on which may have sought that information. Yes, nothing in detail. So I can have a look just after this and take that one on notice, Terry, see if we have actually specifically asked that.

MR BAILEY: I'm just checking notes as we step through. This is just going back, sorry, just very briefly would be helpful in my mind going back. I'm not sure if you've got any data or stats that relate to - because I think I heard before that -  
20 Brendan, that Sutherland isn't actually applicable at a level because it's not being utilised anymore but just in that Canada Bay example, it would be helpful to know and understand those two aspects. (1), the buffer, what the buffer looked like in that context and it would also be helpful to understand, recognising very different council, very different vegetation aspects across them but it would be also helpful to understand, if I could, also the linkage numbers, some level of quantification around linkages.

What I'm wanting to understand from that is how meaningful the difference is in that map at some level between the two. So I don't know if you've got any awareness on but just any background that you could provide on what the buffer application actually led to, what the application of buffers led to in difference and what the linkage  
30 between biodiversity areas that are captured I think you'd mentioned under national and State categorisation.

MR METCALFE: Terry, that's something we'd be able to provide on notice.

MR BAILEY: Yes.

MR METCALFE: I don't have all that material to hand.

MR BAILEY: No, no, understand that completely. That's completely  
40 understandable.

MR METCALFE: Thank you. But, yeah, we can have a look at that and we can talk to the extent of the buffer around the Commonwealth significant vegetation, the State significant vegetation, the regionally significant vegetation, the approach in terms of the distance between those areas and corridors and - - -

MR BAILEY: And particularly what - if you've got what you see as the minimum viable distance between linkage areas and what that looked like.

MR METCALFE: Yep, we can have a look at that for you but just to clarify regarding  
10 Sutherland. So Sutherland's clauses are still active in their LEP.

MR BAILEY: But not the methodology?

MR METCALFE: Correct. The approach - the department does not support that approach currently.

MR BAILEY: Yes. Yes, sorry, just - and a very good clarification so accepting Sutherland's is still active but not the methodology being applied more broadly.

20 MR METCALFE: Correct.

MR BAILEY: Yes. Just very quickly, and this is another perhaps theoretical question but it is a curiosity is my understanding of the Ecological Australia report 2017 indicates that 21 per cent of mapping has been validated and again question that you might take on - but I'm curious to know what might be a validation benchmark that would give comfort.

MR METCALFE: We did provide advice to council previously, I think, through this process on what - on the validation approach and what we thought was reasonable so  
30 we can provide that information to you too, Terry, on notice. I don't know off the top of my head.

MR BAILEY: That would be good. So there's just - there is a curiosity - there is a curiosity - - -

MR CIVIDIN: We did have that concern in terms of validated data and we did go to our former environment, energy and science group just to see what common practice is. So I do have a response, I just don't have it on me at the moment so I can get that  
40 for you.

MR BAILEY: No, that would be helpful, thank you, Michael. Just another part of consideration.

MR CIVIDIN: No problem.

MR BAILEY: Can I check in with you, Steve, to see if there's anything?

MR BARRY: No, I don't have anything additional.

10 MR BAILEY: For the purposes of this conversation I think that covers the things that I was curious to get a bit more understanding of and a bit more detail on so just to offer the opportunity to see if there's anything else you wanted to cover.

MS McLAREN: I might just - Alison McLaren, Executive Director, Metro Central and North and thank you for all your in-depth questions, Terry, that's been very useful. Just the point I'd like to make is the - and reiterate, the team worked very hard with council with offers to try to come to an arrangement that addressed their key needs and I think that does include things like looking at climate change and those impacts. Suggest that we do have serious concerns about this proposal and the overall  
20 impact and the inclusion of species that, in our view, shouldn't be included as part of this process.

MR BAILEY: Thanks, Alison. Just checking, Brendan, Michael, if there's any other comments?

MR CIVIDIN: None from me.

MR METCALFE: I'll just reiterate that that we are absolutely willing to work with council and explore a revised planning proposal. That planning proposal really does  
30 need to consider the extent of that mapping and take a practical approach that strikes a balance between providing economic opportunity for the residents of the Hornsby LGA and the protection of trees.

MR BAILEY: Thank you, Brendan. What I'll just do is thank you very much for your time and note that there are a series of questions. I think our practice will be that we'll clarify some of those and get them across as well but would ask as much as you've captured from the conversation today any of those questions to move the material across as quickly as possible because this is - it's a relatively short - as you know, gateway reviews have a relatively short period in the Commission's hands and  
40 certainly want to make sure that we meet timing on that. So be looking to set the next few days to try and get that material into the Commission so that we can give that the

consideration over the next week or so and conclude the advice but again, thank you very much for your time and appreciate the submission and the presentation that came through on Friday, it was very helpful.

MR CIVIDIN: Thanks, Terry.

MS McLAREN: Thank you.

MR METCALFE: Thank you. Nice to meet you.

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MR BAILEY: Thanks.

**MEETING CONCLUDED**