



# **Hornsby Council - Terrestrial Biodiversity Map update**

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## **Gateway Review**

# Agenda

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- Opening Statement (Panel Chair)
- DPE
  - Overview of the proposal and Gateway determination
  - Position on the Gateway Application
- Other items
- Meeting Close



# Planning proposal overview

The planning proposal sought to amend the Hornsby LEP 2013 by:

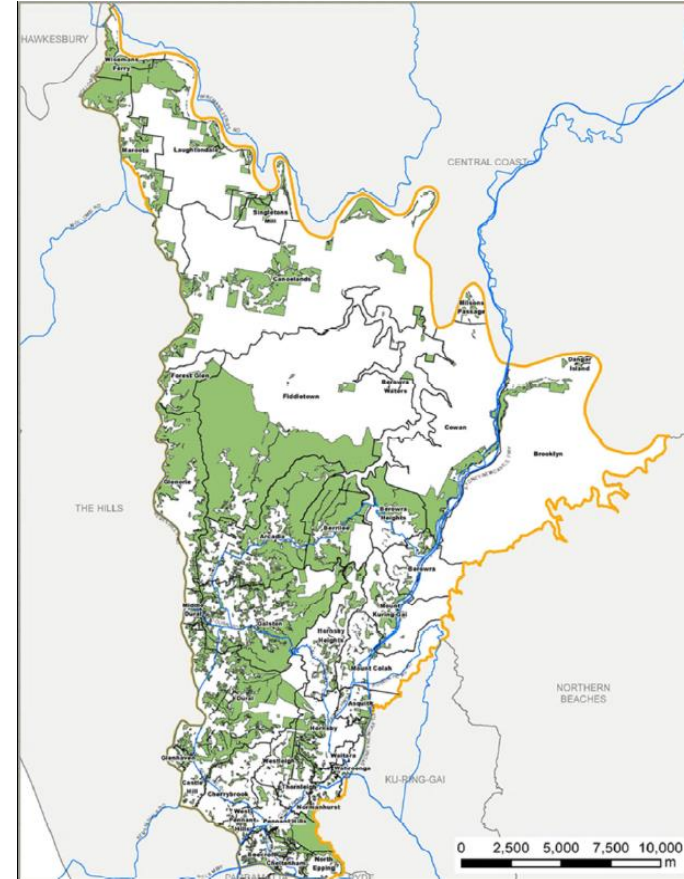
- Updating Hornsby LEP 2013 Terrestrial Biodiversity Map, and
- Updating terminology in Hornsby LEP 2013 Clause 6.4 'Terrestrial Biodiversity' by replacing the term 'Terrestrial Biodiversity' with 'Environmentally Sensitive Land'

The stated objectives of the planning proposal are to:

- Map all locally significant and common vegetation communities (in addition to the currently mapped Commonwealth, State and Regionally significant communities) as well as a 10m buffer, as Terrestrial Biodiversity.
- Define all land mapped 'Terrestrial Biodiversity' as 'Environmentally Sensitive Land'; and
- Replace all references to 'Terrestrial Biodiversity' in Hornsby LEP 2013 (including the Dictionary) with 'Environmentally Sensitive Land'.

Council aims to make clear the application of the Codes SEPP and other complying development pathways.

**Gateway determination was issued on 30 August 2022 to not proceed with the planning proposal.**



# Planning proposal – key aspects

- Existing mapping involves 1,750 properties. The mapping identifies significant tracts of land throughout the Hornsby LGA. The majority of the land proposed to be mapped is classified as common or local species, and involves a 12,150 properties. The new mapped areas are identified by the 2017 ELA Report, plus a 10-metre-wide buffer.
- Prior to the preparation of a planning proposal, Councillors were briefed by Council staff on three possible options to proceed (Attachment I).

| Map  | Significant Communities (plus 'Bushland Protection' from HSLEP 1994) | Map | No. of properties affected (approx.)  |
|--|--|-----|---|
| Current LEP Map  | National, State and Regional   | Nil | 1,750   |
| Option 1 (using existing rationale and maintain the same thresholds)   | National, State and Regional   | Nil | 4,100   |
| Option 2 (update and expand the threshold to map all communities)  | National, State, Regional, local and common species                  | 10m | 12,150  |
| Option 3 (update to map all communities but distinguish to lessen implications for local and common species) | National, State, Regional, local and common species                  | 10m | 12,150 (8,050 DCP implications) (4,100 Complying Development, LEP and DCP implications) |

# Council's Justification

- **Local and common vegetation identified in the ELA (2017) Report should be mapped, as:**
  - Council considers all vegetation to be of high significance
  - It will limit the application of the Complying Development pathways, that Council states has been abused in the past.
  - Despite the impact on Complying Development, the planning proposal seeks to enhance the protection and management of bushland by ensuring the appropriate level of consideration and assessment is undertaken for all vegetation which is a key priority for this Council.
- **Through a Mayoral Minute 11 Dec 2019. The Mayor expressed that:**
  - Council needs to act further to strengthen its protection of biodiversity and our canopy.
  - Current mapping relies upon vegetation mapping that was prepared some 10 years ago.

# Department's recommendation

- The **planning proposal should not proceed.**
- The **Gateway determination should remain unchanged.**
- Council should **be further encouraged to work with the Department** on a future proposal that may be supported as outlined in our Gateway report.
- This will include **discussions with DPE's Housing Policy team** through the North District on:
  - The use of a separate clause and supplementary map that identifies local and common communities
  - Discussing the options Council staff presented to Councillors in 2019
  - Use local and common communities to establish links to and buffers of more significant vegetation (Commonwealth, State or Regional)

## Communications with Council

- **Informal communications with Council in mid-2021 to inform of the Department's rationale to not support. Council requested that this be in a letter with a request to withdraw and provide clarity on what is expected with a revised proposal**
- **Letter to Council sent 2 March 2022 – Requesting them to withdraw the planning proposal.**
- **A revised proposal should explore alternative approaches such as a new clause and supplementary map for local and common communities**
- **Encouraged Council to liaise with the Department's Housing Policy team**
- **The Department could support a proposal that used local or common communities that established links to more significant vegetation**
- **The Department has been consistent in its communication with Council and has offered support to progress a new proposal**

# Definition of Environmentally Sensitive Land under the Housing SEPP 2021

- *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.*



# Gateway determination reasons subject to this review

1

The Department does not support the broad inclusion of locally significant and common vegetation communities in the context of Clause 6.4 Terrestrial biodiversity LEP map. The Department does not support the grouping of such communities with other communities containing more significant conservation value; unless demonstrably linking and enhancing areas of Commonwealth, State or Regionally significant tracts of vegetation.

2

The Planning Proposal is not supported by a suitable economic analysis to allow Council and the public to fully understand the impacts on homeowners and local businesses. It is noted that the expansion of vegetation communities proposed to be mapped will affect over 12,000 properties.

3

The Planning Proposal will have a significant effect on the application of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, as well as complying development pathways within State Environmental Planning Policy (Housing) 2021. The weakening of this development pathway is not fully justified in light of the vegetation communities to be mapped.

4

The Department does not support the broad inclusion of locally significant and common vegetation communities in the context of Clause 6.4 Terrestrial biodiversity LEP map. The Department does not support the grouping of such communities with other communities containing more significant conservation value; unless demonstrably linking and enhancing areas of Commonwealth, State or Regionally significant tracts of vegetation.

5

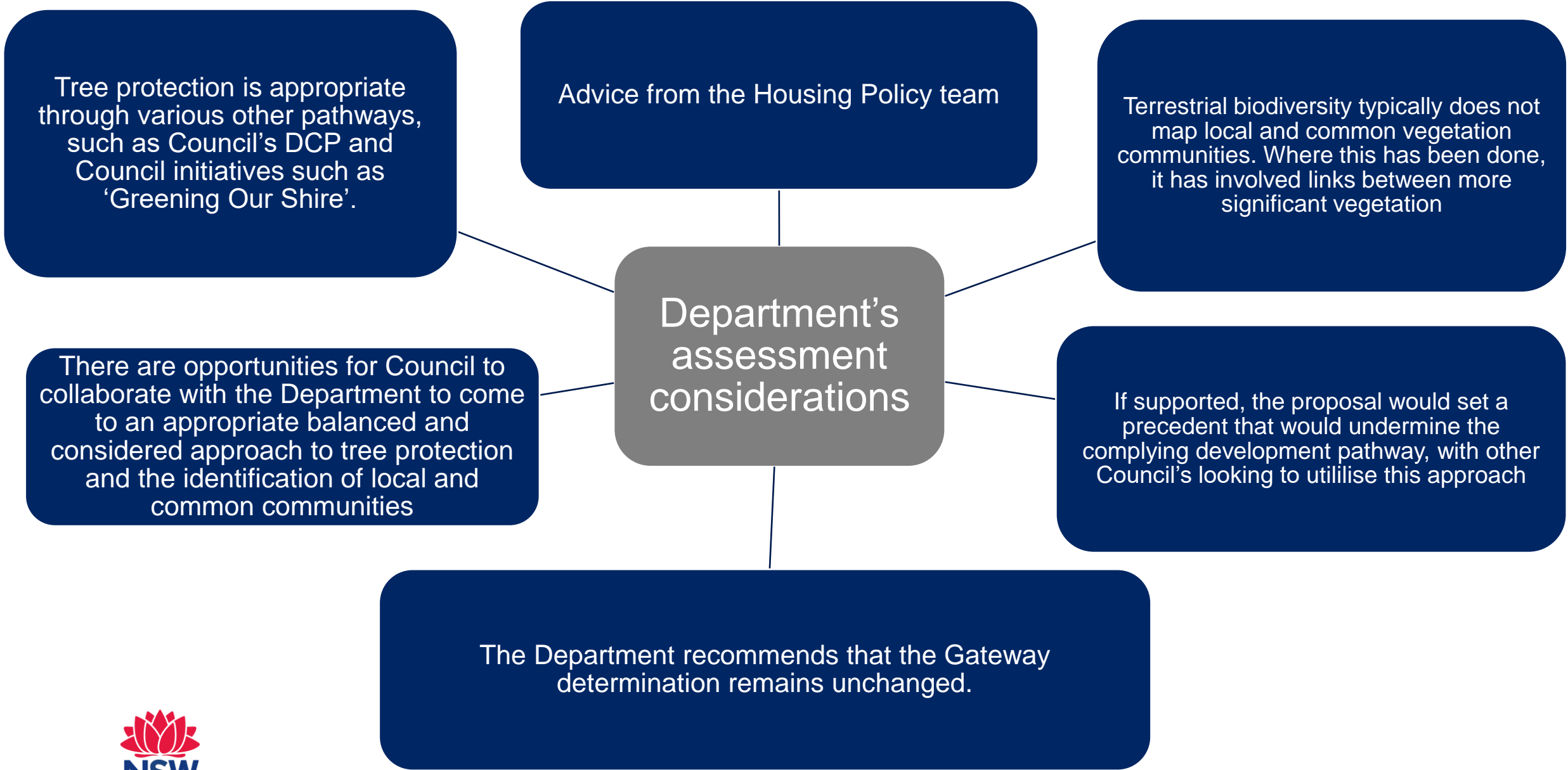
Council's intention to enhance tree protection throughout its Local Government Area should be sought through other methods without expanding vegetation communities typically mapped under Clause 6.4 – Terrestrial biodiversity of Hornsby LEP 2013. This could be through an expansion of Council's existing Tree Preservation Order within Council's Development Control Plan.

6

Considering the unsupported mapping criteria explained above, and the lack of sound justification, the Planning Proposal does not give effect to the North District Plan in accordance with Section 3.8 of the Environmental Planning and Assessment Act 1979.

# Planning proposal – Housing Policy comments

- Environmentally sensitive land has typically only included significant species that require additional assessment before developments are approved, not all vegetation.
- Locally significant trees can already be captured in the council's significant tree register.
- Policy would not support locally significant and common tree species being grouped with other elements that would have a higher conservation value i.e. terrestrial biodiversity.
- Sutherland and Canada Bay councils have mapped ESL in separate maps and clauses, rather than replacing the model Biodiversity clause.
- In the 2018-19 financial year, 466 CDCs were issued for the Hornsby Council area. There could be a considerable financial impost on a large number of homeowners and businesses if they are unable to access the complying development approval pathway for any future works, due to increases in approval time, uncertain or additional design or development requirements.
- There would also be a significant increase in the number of applications needing to be assessed by council, which would impact time and human resources, and may require additional staff.



Tree protection is appropriate through various other pathways, such as Council's DCP and Council initiatives such as 'Greening Our Shire'.

Advice from the Housing Policy team

Terrestrial biodiversity typically does not map local and common vegetation communities. Where this has been done, it has involved links between more significant vegetation

Department's assessment considerations

There are opportunities for Council to collaborate with the Department to come to an appropriate balanced and considered approach to tree protection and the identification of local and common communities

If supported, the proposal would set a precedent that would undermine the complying development pathway, with other Council's looking to utilise this approach

The Department recommends that the Gateway determination remains unchanged.



**Alison McLaren**

Executive Director, Metro Central and North

**Brendan Metcalfe**

Director, Metro North

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[alison.mclaren@planning.nsw.gov.au](mailto:alison.mclaren@planning.nsw.gov.au)

[brendan.metcalfe@planning.nsw.gov.au](mailto:brendan.metcalfe@planning.nsw.gov.au)

Department of Planning and Environment