



IRF22/2956

# Gateway determination report – PP-2020-3920

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Vegetation Mapping Update

August 22



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# Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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### Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Vegetation Mapping Update – Eco Logical Australia – May 2017
Mayoral Minute – 11 December 2019

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Hornsby</b>
<b>PPA</b>	<b>Hornsby Shire Council</b>
<b>NAME</b>	<b>Vegetation Mapping Update (0 Homes, 0 Jobs</b>
<b>NUMBER</b>	<b>PP-2020-3920</b>
<b>LOCAL ENVIRONMENTAL PLAN (LEP) TO BE AMENDED</b>	<b>Hornsby LEP 2013</b>
<b>ADDRESS</b>	<b>LGA Wide</b>
<b>DESCRIPTION</b>	<b>Various</b>
<b>RECEIVED</b>	<b>10/12/2020</b>
<b>FILE NO.</b>	<b>IRF22/2281</b>
<b>POLITICAL DONATIONS</b>	<b>There are no donations or gifts to disclose and a political donation disclosure is not required</b>
<b>LOBBYIST CODE OF CONDUCT</b>	<b>There have been no meetings or communications with registered lobbyists with respect to this proposal</b>

## 1.2 Objectives of planning proposal

Hornsby Shire Council has resolved that they will update their Biodiversity Map to include identification of all vegetation communities (including local and common species), plus a 10 metre buffer.

The proposal seeks to amend the Hornsby LEP 2013 by:

- Updating Hornsby LEP 2013 Terrestrial Biodiversity Map: and
- Updating terminology within Hornsby LEP 2013 and LEP Clause 6.4 'Terrestrial Biodiversity'

The above actions aim to protect land that Council has identified as having high biodiversity value.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Hornsby LEP 2013 to:

- Amend the Terrestrial Biodiversity map to include all locally significant and common vegetation communities, as well as a 10m buffer.
- Define 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'.

The amended vegetation mapping information, including details of locally significant and common vegetation, was provided by an independent study and report undertaken by Eco Logical Australia in May 2017 (**Attachment B**).

## 1.4 Site description and surrounding area

The Proposal applies to the entire local government area (LGA) (see **Figure 1** and **Figure 2**). Hornsby Council proposes to rename areas identified as “Terrestrial Biodiversity” and “Biodiversity” to “Environmentally Sensitive Land” (ESL). The new mapped areas are proposed to comprise the areas identified by the 2017 Eco Logical Report ‘Hornsby Vegetation Mapping Update 2017’ (ELA Report) plus a 10-metre-wide buffer.



**Figure 1: Hornsby LGA (outlined in red)**

Eco Logical prepared an LGA map of the Native Vegetation extent for Hornsby Shire (**Figure 2**), which forms the basis of the Hornsby LEP 2013 mapping changes.

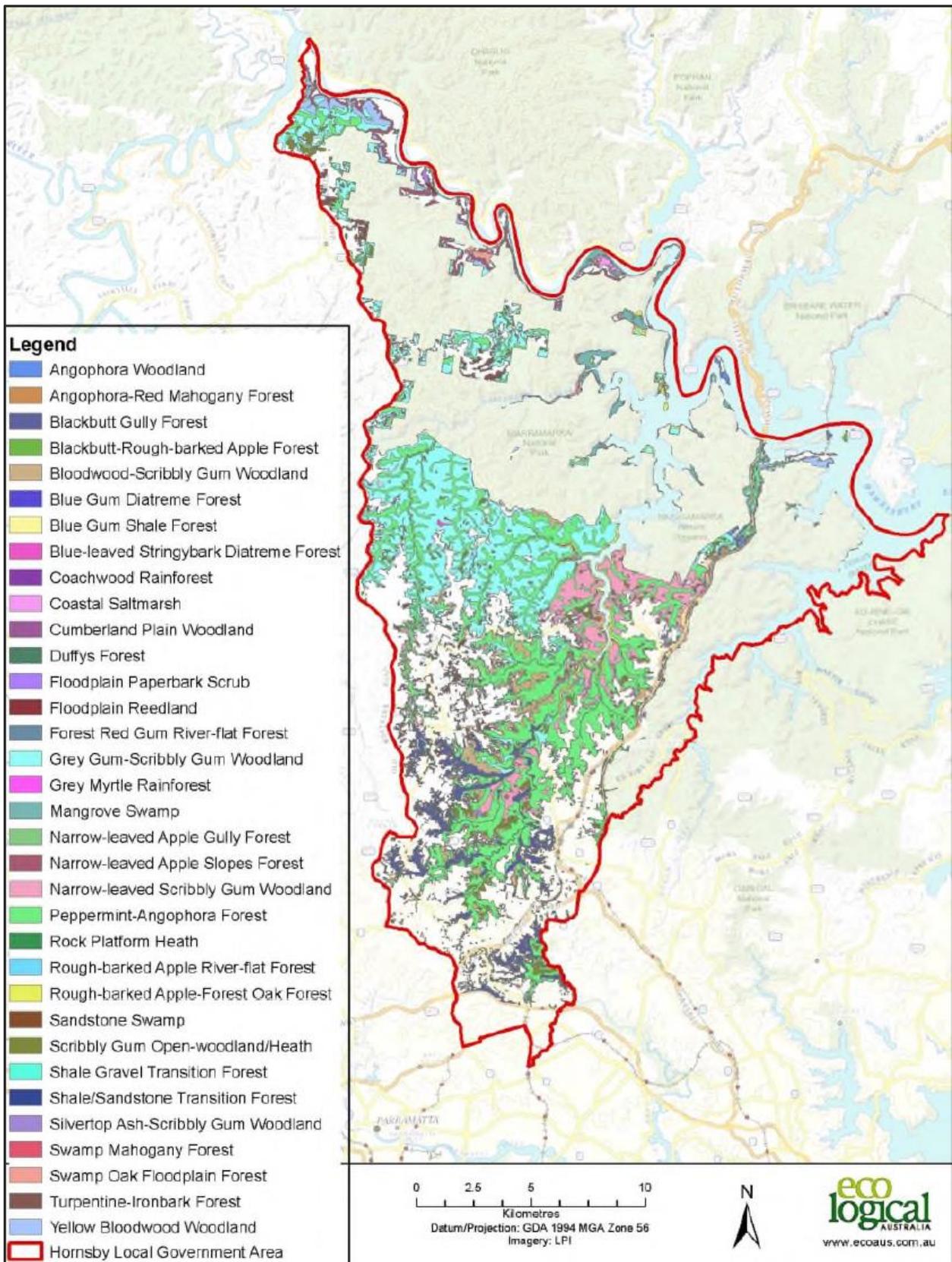
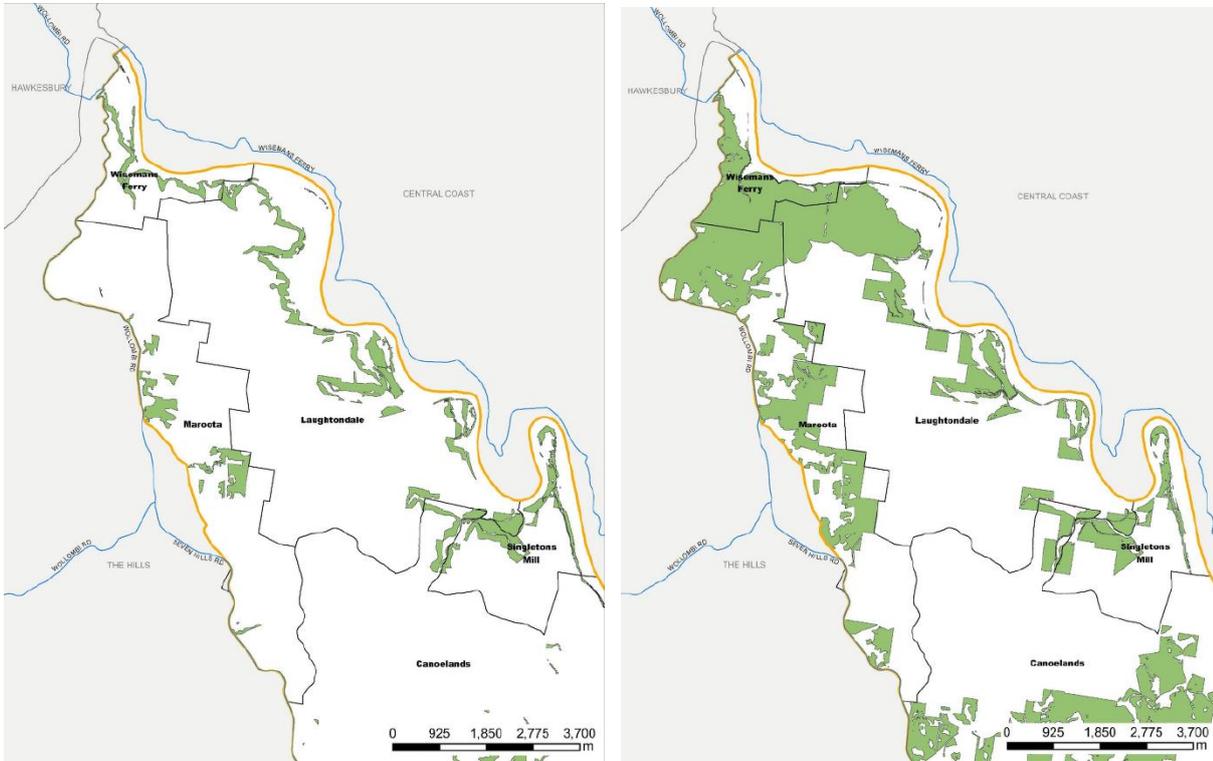


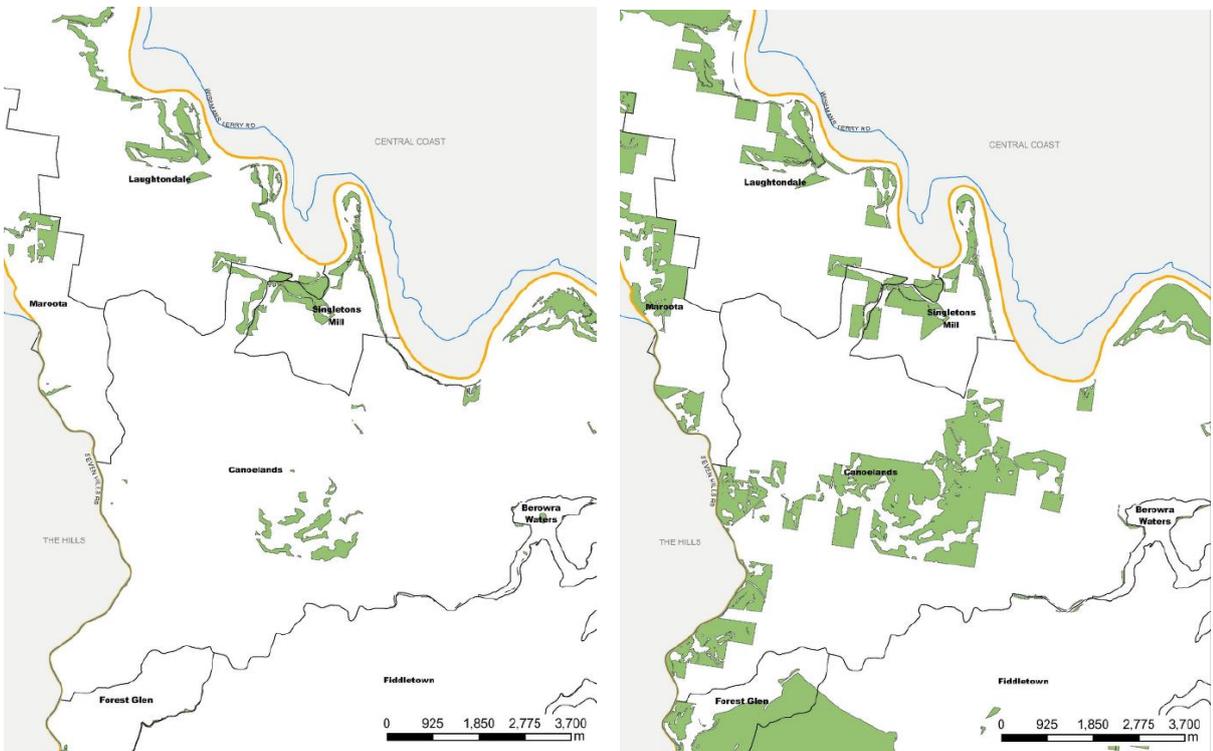
Figure 2: Hornsby Native Vegetation (source: Eco Logical 2017)

## 1.5 Mapping

The existing terrestrial biodiversity maps are shown beside the proposed terrestrial biodiversity maps (which include locally significant and common vegetation communities) in **Figures 3 to 9** below.



**Figure 3: Existing and proposed terrestrial biodiversity mapping (Hornsby LGA Northern Tip)**



**Figure 4: Existing and proposed terrestrial biodiversity mapping (Central Northern Area)**



Figure 5: Existing and proposed terrestrial biodiversity mapping (North Western Area)

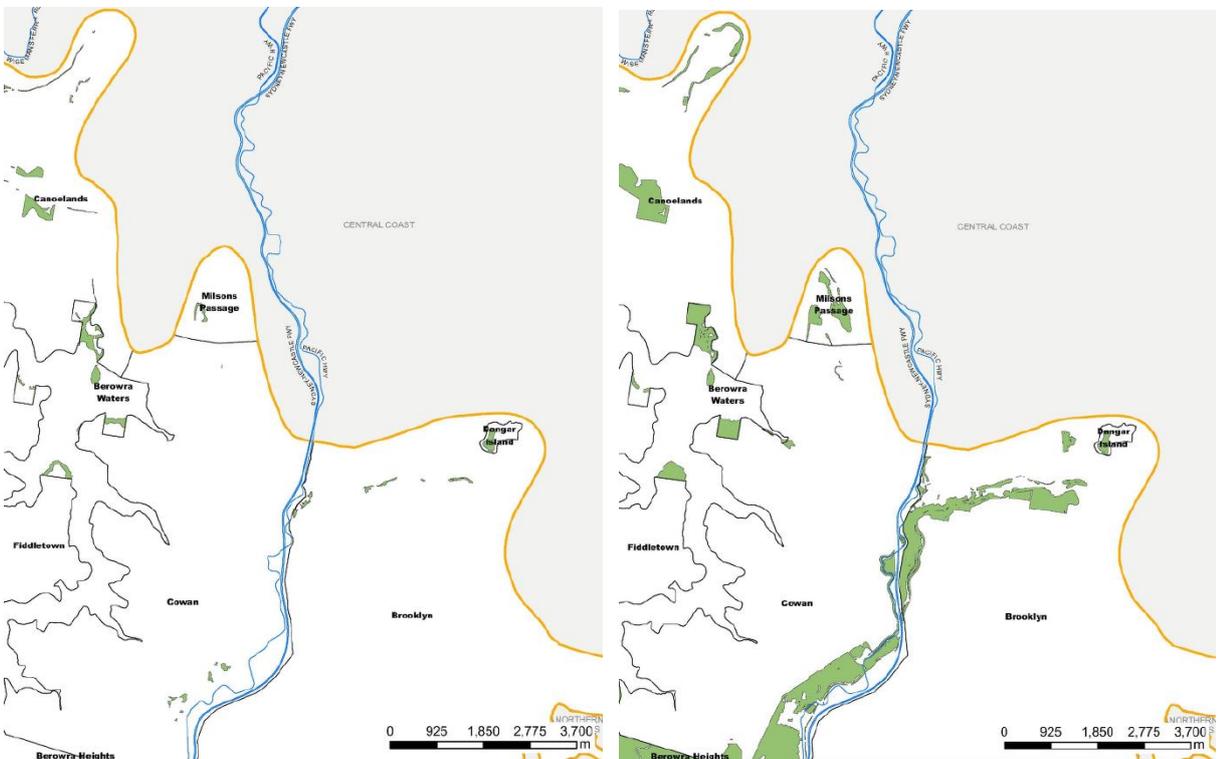


Figure 6: Existing and proposed terrestrial biodiversity mapping (North Eastern Area)

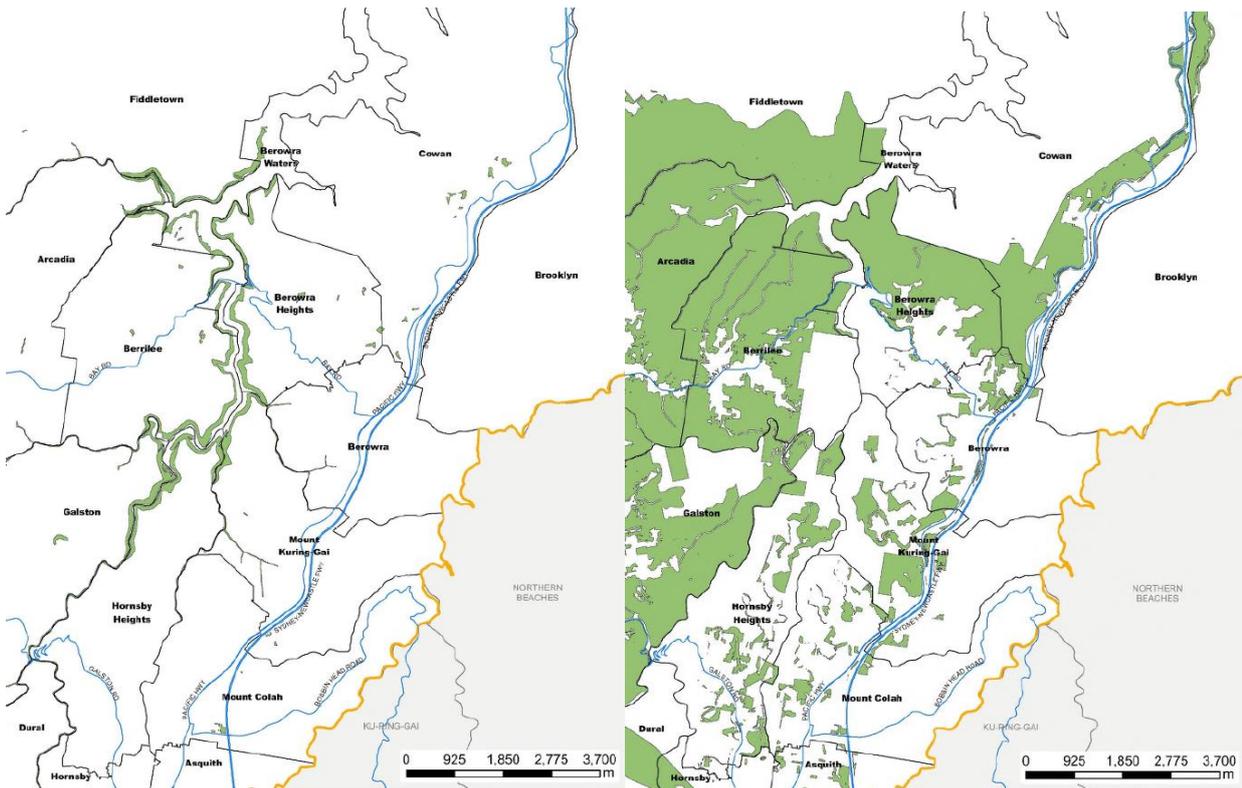


Figure 7: Existing and proposed terrestrial biodiversity mapping (Mid Eastern Area)

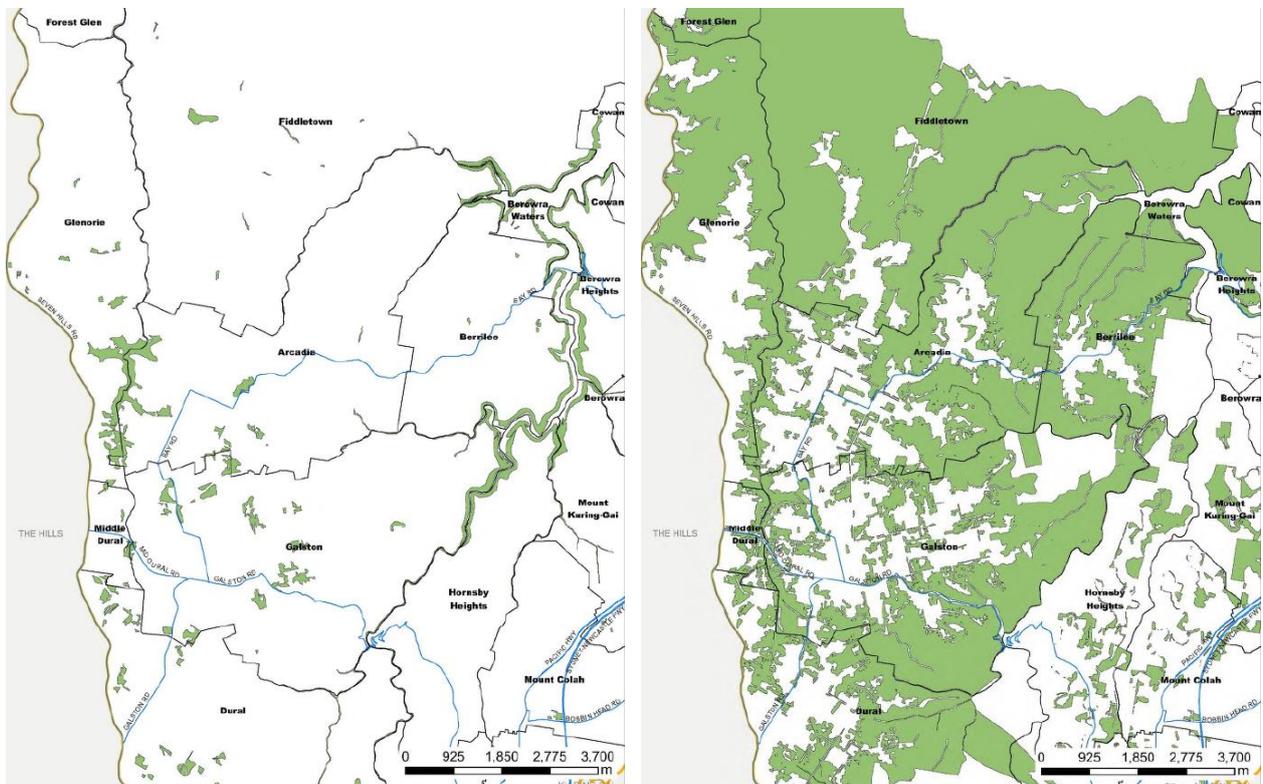
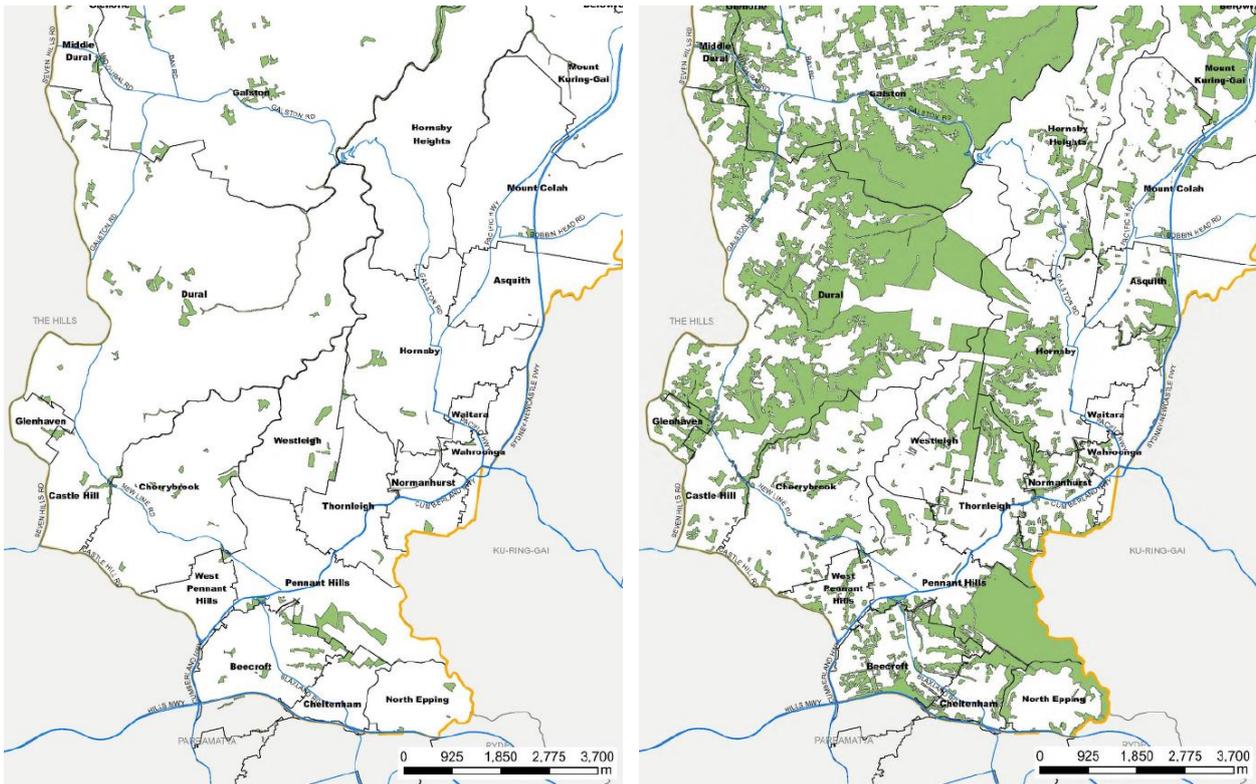


Figure 8: Existing and proposed terrestrial biodiversity mapping (Mid Western Area)



**Figure 9: Existing and proposed terrestrial biodiversity mapping (Southern Area)**

## 1.6 Background

The proposal originated from a Council endorsed Mayoral Minute (from Hon. Philip Ruddock AO) (**Attachment D**). The Mayoral Minute was to highlight and protect Council’s tree canopy, update the vegetation mapping in accordance with the ELA Report, and to include a 10m buffer.

Council staff presented several vegetation-mapping options for Council to consider on 12 August 2020 (**Attachment E**). These are outlined in **Table 3** below. These options included:

1. Not mapping local and common communities.
2. Mapping local and common communities, expanding the threshold to identify all communities; or,
3. Mapping local and common communities, but distinguishing National, State, Regional, and local/common species from one another in the mapping. A broader range of development was proposed to be permitted in areas mapped for local/common vegetation, than where national, state, and regional communities were identified.

**Table 3: Options presented to Council 12 August 2020.**

Map	Significant Communities (plus ‘Bushland Protection’ from <i>HSLEP 1994</i> )	Map	No. of properties affected (approx.)	Base Vegetation Map
Current LEP Map	<i>National, State and Regional</i>	Nil	1,750	<i>Smith and Smith 2008</i>
<b>Option 1</b> (using existing rationale and maintain the same thresholds)	National, State and Regional	Nil	4,100	ELA 2017

Map	Significant Communities (plus 'Bushland Protection' from <i>HSLEP 1994</i> )	Map	No. of properties affected (approx.)	Base Vegetation Map
<b>Option 2</b> (update and expand the threshold to map all communities)	National, State, Regional, local and common species	10m	12,150	ELA 2017
<b>Option 3</b> (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)	ELA 2017

Council resolved to proceed with Option 2; to map local and common vegetation communities without differentiating between those of national, state, and regional significance. Council's Report and Resolution to request a Gateway determination are attached at **Attachment F1** and **Attachment F2**.

## 2 Need for the planning proposal

The previous mapping of vegetation in Hornsby was completed in 2008. Hornsby Council have stated that updated vegetation mapping was undertaken to inform conservation measures and support ecologically sustainable development in the area.

The proposal is required to update vegetation mapping in Hornsby. The ELA Report (**Attachment B**) identifies both additional vegetation from regrowth, and vegetation resulting from updates to State and Federal legislation and classifications since the 2008 mapping. Remnants of Cumberland Plain Woodland vegetation community have been identified, and the Angophora Woodlands has been upgraded from locally to regionally significant.

As well as mapping updates to National, State and Regional vegetation, the 2017 mapping has mapped local and common vegetation, capturing significantly more vegetation. This expanded identification of vegetation applied by Council is not in line with State or Federal legislation, but the result of a mayoral minute and an assumed position that all vegetation is significant.

Additionally, Council has resolved that mapping should include identification of all vegetation communities plus a 10-metre buffer.

### 2.1 Is the planning proposal a result of an assured local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?

The proposal is the result of the 2017 ELA Report (**Attachment B**). This proposal is consistent with Council's *draft Biodiversity Conservation Strategy 2020* which was developed to guide Council and the community to conserve and manage Hornsby's biodiversity. The strategy offers a range of actions that sit alongside several other key strategies prepared in support of the Hornsby Local Strategic Planning Statement.

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

In addition to mapping locally significant and common vegetation communities, the proposal seeks to replace the term ‘Terrestrial Biodiversity’ with the term ‘Environmentally Sensitive Land’. This change would exclude application of the complying development approval pathway under State Environmental Planning Policy (SEPP) (Exempt and Complying Development Codes) 2008 to land in a considerable amount of the local government area (LGA), effectively ‘switching off’ complying development for all mapped properties.

The Department supports the broader intention of the planning proposal, which is to enhance tree protection in the LGA, and suggests that Council undertake alternative forms of tree protection. Other policy and strategies may be employed without expanding the threshold to identify all vegetation under Terrestrial Biodiversity within Hornsby LEP 2013.

Council’s Tree Preservation Order and landscape provisions in Council’s development control plan assist in vegetation protection. Tree canopy loss is also addressed through Council’s existing initiatives such as ‘Greening our shire’ which to date has planted 28,900 trees.

The Department would support an update to existing significant vegetation to accurately identify:

1. Commonwealth significant vegetation:
  - Critically Endangered Ecological Communities (CEEC)
  - Endangered Ecological Communities (EEC)
2. State significant vegetation:
  - Critically Endangered Ecological Communities (CEEC)
  - Endangered Ecological Communities (EEC); and
3. Regionally significant vegetation:
  - Sydney Region

If Council wishes to identify locally significant and common vegetation communities within its Local Environmental Plan, a planning proposal that introduces a new map layer may be an option, however further thought must first be given to what this map will trigger, for example, to be subject to a requirement that there needs to be an additional study, or consideration of the consent authority, or something else. If the map is to identify the presence of local vegetation only, this should be included in Council’s DCP.

## 3 Strategic assessment

### 3.1 North District Plan

The Greater Sydney Commission released the North District Plan on 18 March 2018 which contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

Council has identified that the planning proposal is consistent with the following District Plan Priorities:

- N16 – Protecting and enhancing bushland and biodiversity
- N17 – Protecting and enhancing scenic and cultural landscapes
- N19 – Increasing urban tree canopy cover and delivering Green Grid connections

Council has stated that the proposal recognises and protects the biodiversity values of native vegetation within the LGA.

#### Department Assessment

The Department supports the accurate identification of Commonwealth, State and Regional significant vegetation, however, does not support the inclusion of locally significant and common communities on the Terrestrial Biodiversity map. The proposal has not justified the inclusion of local and common vegetation communities and it is noted that these are not typically mapped in the Standard Instrument LEP.

Considering the unsupported mapping criteria and lack of justification, the proposal does not give effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. It is recommended that the proposal does not proceed.

## 3.2 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in **Table 4** below:

**Table 4 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement	<p>Council has identified that the proposal is consistent with the following priorities of its LSPS:</p> <ul style="list-style-type: none"> <li>• Sustainable Priority 1. Improving the overall health of our natural environment and ecosystem.</li> <li>• Sustainable Priority 2. Protecting and increasing the extent and quality of natural areas.</li> <li>• Sustainable Priority 5. Embedding biodiversity conservation principles throughout local planning policies.</li> </ul>
Hornsby Community Strategic Plan	<p>Council has identified that the proposal is consistent with its HCSP, and specifically aligns with the following focus areas:</p> <ul style="list-style-type: none"> <li>• FA6 Valuing green spaces and landscapes</li> <li>• FA8 Adapting to a changing environment</li> </ul>

### Department Assessment

The Department notes that although the intention of the planning proposal is to protect biodiversity and improve the overall health of the natural environment, the proposal is unsuitable in its current form as discussed throughout this report.

The Department does not support the listing of local and common vegetation communities within 'Terrestrial Biodiversity' mapping. There may be instances where local and/or common communities have been identified on a map as a buffer to significant vegetation, however this proposal does not utilise this approach and aims to list all local and common communities without distinguishing their biodiversity value. The proposal is recommended to not proceed.

## 3.3 Local planning panel (LPP) recommendation

The Hornsby Local Planning Panel (the Panel) commented on this proposal 30 September 2020 (**Attachment G**). The Panel generally agreed with Council's approach and acknowledged Council's intent to protect and manage the vegetation throughout the LGA, as well as to provide an appropriate level of consideration for development of land with vegetation.

The Panel also noted that public exhibition would be critical due to the proposals LGA-wide context.

## 3.4 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below in **Table 5**:

**Table 5: 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Business and Industrial Zones	No	<p>The proposal does not address the impacts of reducing the application of complying development. This could potentially have significant impacts on local business; it is unclear how many businesses would be affected. Given the widespread mapping, it is likely that this would encompass many businesses.</p> <p>As well as removal of the application of complying development for low-impact alterations to premises, costs would also be likely to be higher for these types of developments, however this has not been explored in appropriate detail.</p> <p>The proposal lacks a proper analysis of the likelihood of increased assessment times for Council, which will take on increased numbers of low-impact development applications. Further discussion of these issues is included at Section 4, below.</p>
1.2 Rural Zones	Yes	The planning proposal does not appear to be inconsistent with this Direction.
2.1 Environmental Protection Zones	Yes	The planning proposal does not appear to be inconsistent with this Direction.
3.1 Residential Development	No	<p>While the proposal does not introduce provisions that prohibit residential development, the proposal effectively restricts development and landowners' access to the complying development pathway.</p> <p>No economic analysis has been undertaken to accurately identify the impact this may have on residential development, and as such the proposal is inconsistent with this Direction.</p>
4.4 Planning for Bushfire Protection	Yes	The planning proposal does not appear to be inconsistent with this Direction.

## 3.5 State Environmental Planning Policies (SEPPs)

**Table 6** Contains Council's assessment against the relevant SEPPs:

**Table 6: Assessment of planning proposal against relevant SEPPs**

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP 19 – Bushland in Urban Areas	Not Applicable	This SEPP has been repealed and has been replaced by the State Environmental Planning Policy (Biodiversity & Conservation) 2021.
SEPP (Exempt and Complying Development Codes) 2008	No	<p>Council states that the proposal is consistent with this SEPP as the update to the Biodiversity mapping would preclude properties from undertaking complying development if identified on the Terrestrial Biodiversity map.</p> <p><u>Department comment</u></p> <p>The proposal is not supported as:</p> <p>The Hornsby LGA is relatively leafy and contains a fair and widespread quantity of local and common vegetation. Land which has been identified as containing Terrestrial Biodiversity is not eligible to undertake low-impact development under this Code.</p> <p>The planning proposal would list local and common vegetation communities as items of Terrestrial Biodiversity. This would effectively exclude 12,150 properties from being eligible to use this Code for low-impact development. The proposal does not contain an assessment on how this would negatively impact residents within the LGA.</p> <p>Further, Council has not considered how large of an impact this would have on the timeframes for assessing development applications. Further discussion of the impacts of ‘switching off’ complying development is in Section 4 below.</p>
State Environmental Planning Policy (Coastal Management) 2018	Yes	<p>Council states that the proposal will map vegetation communities such as Mangrove Swamp, Swamp Oak Floodplain Forest, Rough-barked Apple River-flat Forest, and Coastal Saltmarsh.</p> <p><u>Department comment</u></p> <p>The Department agrees that the identification of the above communities in terrestrial biodiversity mapping is consistent with the SEPP and encourages Council to work with the Department on a proposal to increase accurate vegetation mapping. The grouping of the abovementioned communities with local and common communities is not supported, and the proposal is not recommended to proceed.</p>

SEPPs	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Housing) 2021	Unclear	<p>Environmentally Sensitive Land (ESL) is identified in the newly gazetted SEPP (Housing) 2021 as the following:</p> <ul style="list-style-type: none"> <li>• <i>Land shown cross-hatched on the Bush Fire Evacuation Risk Map.</i></li> <li>• <i>Land identified as coastal wetlands and littoral rainforests area within the meaning of State Environmental Planning Policy (Coastal Management) 2018.</i></li> <li>• <i>Land identified as coastal vulnerability area within the meaning of State Environmental Planning Policy (Coastal Management) 2018.</i></li> <li>• <i>Land declared as an area of outstanding biodiversity value under the Biodiversity Conservation Act 2016, section 3.1.</i></li> <li>• <i>Land identified on the Map within the meaning of the Biodiversity Conservation Regulation 2017, section 7.3.</i></li> <li>• <i>Land identified in another environmental planning instrument as follows—</i> <ol style="list-style-type: none"> <li>a) <i>land to which the Standard Instrument, clause 5.22 applies in relation to seniors housing specified as sensitive and hazardous development,</i></li> <li>b) <i>open space,</i></li> <li>c) <i>natural wetland</i></li> </ol> </li> </ul> <p><u>Department comment</u></p> <p>As the proposal was prepared prior to the commencement of the Housing SEPP, it is unclear if Council intends to ‘switch off’ complying development pathways contained within the Housing SEPP. If Council wishes to prohibit complying development in mapped areas, any future proposal should have a clear indication of what criteria (from the above) is being met.</p>

## 4 Site-specific assessment

### 4.1 Environmental

#### Inappropriate listing of vegetation communities

Previous Hornsby vegetation mapping was completed in 2008, based on the ‘Smith and Smith Vegetation Communities of Hornsby Shire Mapping’ and ‘Bushland Protection’ land previously recognised under the Hornsby Shire Local Environmental Plan 1994 (Hornsby Shire LEP 1994). Hornsby Council state that updated vegetation mapping was prepared to inform conservation measures and support ecologically sustainable development in the area.

While some critically endangered and regionally significant species have expanded through the update to the vegetation mapping, locally significant (1,384ha) and common species (13,139ha) are also mapped as ‘Terrestrial Biodiversity’.

**Table 7** shows the previous vegetation mapping (Smith and Smith 2008), and the current figures from the ELA 2017 Report. **Table 8**, by comparison, shows the area covered by local and common vegetation communities.

**Table 7: Existing mapped vegetation communities (Commonwealth, State, and Regional significant vegetation)**

Existing Terrestrial Biodiversity Map			
Status	Vegetation Significance	Smith and Smith 2008	ELA 2017
		Area (ha)	Expanded Area (ha)
Existing - Federal	Commonwealth (CEEC and EEC)	337ha	607ha
Existing - State	NSW (CEEC and EEC)	236ha	279ha
Existing - Regional	Regionally Significant (Sydney Region)	822ha	943ha
	Sub-total area	1,395	1,829

**Table 8: Proposed mapped vegetation (Locally Significant and Common)**

Vegetation update (addition of local and common species)			
Status	Vegetation Significance	Smith and Smith 2008	ELA 2017
		Area (ha)	Area (ha)
Addition to existing	Locally Significant (Hornsby Shire)	1,267ha (identified in the previous 2008 study, but not mapped)	1,384ha
Addition to existing	Common Species	12,858ha (identified in the previous 2008 study, but not mapped)	13,139ha
	Local and Common species total area	15,520ha	16,352ha
	Total Area (incl. 10-metre buffer zone)		18,221ha

The proposal involves an increase of almost 90% of tree communities mapped as Terrestrial Biodiversity, being predominately locally significant and common communities. Council has provided inadequate justification to group local and common vegetation in with what has previously been reserved for vegetation communities of high conservation value.

Environmentally Sensitive Land (ESL) has also historically included significant vegetation communities that require additional site-specific assessment before development can be approved. It is noted that ESL does not include all types of vegetation communities. The listing of local and common communities in the way proposed by Council does not align with the intention of terrestrial biodiversity mapping.

## 4.2 Social and economic

### Planning and Economic impacts

Section 1.5 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Codes SEPP) lists certain instances of land that may be considered environmentally sensitive area (or ESL). Of most relevance is 'land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or *high biodiversity significance*' [emphasis added].

Section 1.19 of the Codes SEPP lists land on which complying development may not be carried out, including clause 1(e)(iv) – environmentally sensitive land.

As the proposal seeks to change all references of 'Terrestrial Biodiversity' to 'Environmentally Sensitive Land', all land mapped as part of this proposal would be unable to be developed through the complying development approval pathway under the Codes SEPP.

Analysis of the planning and economic impacts is not provided. Current LEP Mapping affects 1750 properties throughout the LGA, and includes National, State and Regionally significant vegetation

communities as outlined in **Table 7**. The proposal involves an increase of almost 90% of tree communities mapped as Terrestrial Biodiversity, being predominately locally significant and common communities (see **Table 8**).

An economic analysis by Council would allow Council and the public to more comprehensively understand the financial impact placed on homeowners and businesses if they are unable to utilise the Codes SEPP complying development pathway.

#### Assessment timeframes

The proposal contains a lack of consideration of increased assessment times and the potential increase in development or design requirements. Council has not considered the impact this proposal would have on homeowners and businesses. Council has also not considered the resourcing impact this proposal would result in. A substantial increase of development applications, that would normally be processed by private certification, would need to be assessed by Council.

The Department sought comment from its Housing Policy staff to provide an indication of the number of Complying Development Certificates (CDCs) that were carried out within Hornsby LGA. In the 2018-19 financial year, 466 CDCs were issued for the Hornsby Council area. Alterations to how the complying development process is applied could affect all streams of development.

#### Complying development precedent

The proposal may set a precedent for mapping of local and common communities to 'switch-off' complying development. A precedent would have significant impacts across the State, delaying the assessment of low-impact development proposals. This would undermine the intention of the Exempt and Complying Development Codes SEPP.

## 4.3 Policy

The Department does not support updating Standard Instrument definitions. Council should seek alternatives to amending the term 'Terrestrial Biodiversity' as proposed. Use of an additional term and inclusion of a supplementary map may be one option for Council to consider, however further thought must first be given to what this map will trigger. If the map is to identify the presence of local vegetation only, this should be included in Council's DCP.

## 4.4 Infrastructure

The proposed amendments sought in this planning proposal will not require the provision of additional public infrastructure.

# 5 Consultation

## 5.1 Community

The proposal is recommended to not proceed, as such, no consultation details are required.

## 5.2 Agencies

The proposal is recommended to not proceed, as such, no agency consultation is required.

# 6 Timeframe

The proposal is recommended to not proceed, as such, no timeframe to complete the LEP is required

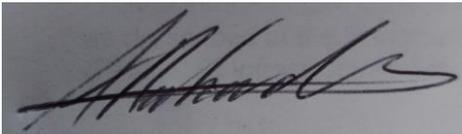
## 7 Assessment summary

Based on the assessment outlined in this report, the proposal is recommended to not proceed for the following reasons:

- The proposal seeks to group local and common vegetation communities with significant federal, state, and regional vegetation, inappropriately expanding the land identified as Terrestrial Biodiversity in the LEP.
- The proposal seeks to inaccurately define all land mapped 'Terrestrial Biodiversity' as 'Environmentally Sensitive Land'. This would also have the effect of excluding any land mapped from the application of critical State Environmental Planning Policies.
- The proposal does not include any social or economic analysis of the impact that exclusion from State Environmental Planning Policies would have on affected landowners and businesses.
- The proposal does not include adequate consideration of policy implications.
- The proposal is inconsistent with the North District Plan.

## 8 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should not proceed.



20/07/2022

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25/7/2022

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Attachment	Title
Proposal	Planning proposal – September 2020
A2	Gateway determination
B	Eco Logical Australia Report (ELA Report) – May 2017
C	Letter to Council
D	Mayoral Minute – 11 December 2019
E	Council Meeting Options – 12 August 2020
F1 and F2	Council Meeting Minutes and Report – 14 October 2020
G	Hornsby Local Planning Panel Minutes – 30 September 2020