

22 August 2019

Christine Gough
Acting Director, Central City (Greater Parramatta and Olympic Peninsula)
Department of Planning, Industry and Environment

By email: christine.gough@planning.nsw.gov.au

Dear Ms Gough

Planning Proposal – Local Heritage Listing of 22 Trees at No. 62 Manor Road, Hornsby

The purpose of the letter is to seek a Gateway Determination for the subject Planning Proposal pursuant to Section 3.34 of the *Environmental Planning and Assessment Act 1979*.

The Planning Proposal seeks amendments to Schedule 5 Environmental Heritage and to the Heritage Map contained within the *Hornsby Local Environmental Plan 2013* to list 22 trees located on property No. 62 Manor Road, Hornsby. The Planning Proposal was referred to the Local Planning Panel for advice in July 2019, in accordance with the *Local Planning Panels Direction – Planning Proposals*.

At its meeting on 14 August 2019, Council considered Directors Report No. PL21/19 *Planning Proposal - Local Heritage Listing of 22 Trees at 62 Manor Road, Hornsby* presenting the Planning Proposal and the advice of the Local Planning Panel, and resolved that Council:

1. *Endorse the progression of the Planning Proposal attached to Directors Report No. PL21/19 for submission to the Department of Planning, Industry and Environment for Gateway Determination to amend the Hornsby Local Environmental Plan 2013 as follows:*
 - a. *Insert a listing for 22 trees at property No. 62 Manor Road, Hornsby in Schedule 5 Environmental Heritage.*
 - b. *Amend the Heritage Map (Sheet HER_017B) to identify a heritage item on the site of No. 62 Manor Road, Hornsby.*
2. *Consider the progression of investigations of the Manor Road, Hornsby precinct for the possible creation of a Heritage Conservation Area as part of its ongoing Heritage Study.*

In accordance with Council's resolution, please find attached a Planning Proposal setting out Council's objectives and intended outcomes, justification of the proposal and the intended community consultation to be carried out. I would be pleased if you would refer the proposal for a Gateway Determination. In submitting this Planning Proposal, it is advised that Council wishes to exercise authorisation to be the local plan-making authority on the grounds that the planning proposal is consistent with the types of draft Local Environmental Plans to be routinely delegated by the Department of Planning, Industry and Environment.

A copy of Director's Report No. PL22/19 *Planning Proposal - Local Heritage Listing of 22 Trees at 62 Manor Road, Hornsby*, is also attached for your information.

Should you have further enquiries concerning this matter, please contact Council's Strategic Planner, Bethany Fryar on 9847 6733.

Yours faithfully



Katherine Vickery
Manager
Strategic Landuse Planning

TRIM Reference: F2010/00588-004

Encl.
Director's Report PL21/19
Minutes
Planning Proposal Report

5 PLANNING PROPOSAL - LOCAL HERITAGE LISTING OF 22 TREES AT 62 MANOR ROAD, HORNSBY

EXECUTIVE SUMMARY

- At its meeting on 8 May 2019, Council resolved to prepare a Planning Proposal to amend the *Hornsby Local Environmental Plan 2013 (HLEP)* to list the 22 trees on property No. 62 Manor Road, Hornsby in Schedule 5 of the *HLEP* as a landscape heritage item.
- In accordance with The Local Planning Panels Direction, a planning proposal must be referred to the Local Planning Panel (LPP) for their advice before Council considers whether or not to forward it to the Minister or Greater Sydney Commission.
- The Planning Proposal was referred to the LPP on 10 July 2019 and a briefing was held on 31 July 2019.
- The advice from the LPP is that:
 - It supports the preparation of a Planning Proposal to protect 22 trees located on property No. 62 Manor Road, Hornsby as a local heritage item (landscape) by listing the site in Schedule 5 of the Hornsby Local Environmental Plan 2013.
 - Reference should be made to the implementation of Planning Priorities 16, 17 and 19 within the North District Plan 2018 in the Planning Proposal to emphasise the protection and enhancement of biodiversity that would be achieved.

RECOMMENDATION

THAT Council endorse the progression of the Planning Proposal attached to Directors Report No. PL21/19 for submission to the Department and Planning, Industry and Environment for Gateway Determination to amend the Hornsby Local Environmental Plan 2013 as follows:

- a) Insert a listing for 22 trees at property No. 62 Manor Road, Hornsby in Schedule 5 Environmental Heritage.
- b) Amend the Heritage Map (Sheet HER_017B) to identify a heritage item on the site of No. 62 Manor Road, Hornsby.

PURPOSE

The purpose of this Report is to present a Council initiated Planning Proposal for the heritage listing of 22 trees at property No. 62 Manor Road, Hornsby and to present the advice from the Local Planning Panel as required by Ministerial Directions.

BACKGROUND

Property No. 62 Manor Road, Hornsby (Lot 3 DP 524288) is the subject of a current development application (DA/151/2018) for the demolition of two dwellings and subdivision of the subject land. On 8 May 2018, the applicant lodged an appeal against the deemed refusal of the DA. The hearing for the development application is listed for 16 to 18 December 2019.

At its meeting on 14 November 2018, Council considered a Mayoral Minute and resolved to place an Interim Heritage Order (IHO) on the site, to enable full and proper evaluation of the heritage significance of the trees and gardens and to prevent harm to the site in the interim. Council considered that the site may have potential heritage significance based on the inventory sheet for the adjacent listing of street trees in Manor Road (Item No. 494), prepared as part of the 2008 assessment of Council's heritage listed landscape items.

The purpose of the IHO was to provide Council six months to engage a suitably qualified consultant to undertake further investigations into the historical significance of the trees on the site and determine whether to proceed with a heritage listing.

The property owner lodged an Appeal in the NSW Land and Environment Court against the gazettal of the IHO. The appeal was listed for hearing on 16 and 17 September 2019 but has since been discontinued, as the IHO has now been revoked (see further discussion below).

A Landscape Heritage Assessment was undertaken by Time Heritage Landscapes, in association with Richard Lamb and Associates, and submitted to Council on 18 April 2019. The heritage assessment identified 22 trees on the property with an age of over 100 years (some likely to be over 200 years in age). These trees are deemed to fulfil criterion (f) of the NSW State Heritage Criteria, possessing uncommon, rare or endangered aspects of NSW's cultural or natural history and are therefore considered worthy of heritage listing.

At its meeting on 8 May 2019, Council considered Director's Report No. PL/13/19 regarding the findings of the Landscape Heritage Assessment and resolved that:

1. *Council resolve to prepare a draft local environmental plan to list the trees on property No. 62 Manor Road, Hornsby identified in the Landscape Heritage Assessment attached to Director's Report No. PL13/19 as a local heritage item (landscape) in Schedule 5 of the Hornsby Local Environmental Plan 2013.*
2. *A planning proposal be prepared to progress the above draft local environmental plan and the planning proposal be submitted to the Hornsby Local Planning Panel for advice.*
3. *A further report outlining the advice from the Hornsby Local Planning Panel be presented to Council for consideration prior to submission of the planning proposal to the Department of Planning and Environment for a Gateway Determination.*
4. *The property owner be advised of Council's decision.*

At the same meeting, Council considered a separate confidential report which provided an update on the status of the IHO appeal and associated legal advice. Council consequently resolved to revoke the IHO placed on property No. 62 Manor Road, Hornsby and that protection of the 22 trees identified with heritage significance be sought through the planning proposal.

The Government Gazette revoking the IHO was published on 17 May 2019.

In accordance with Council's resolution, a Planning Proposal has been prepared and was referred to the Hornsby LPP for advice.

DISCUSSION

This report presents the advice of the LPP concerning the Planning Proposal (attached), which seeks to:

- Insert a listing for the 22 trees, identified in figure 1, in Part 1 Heritage Items of Schedule 5 Environmental Heritage.
- Amend the Heritage Map (Sheet HER_017B) to identify a heritage item on the site of No. 62 Manor Road, Hornsby.

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 or not to forward it to the Minister or Greater Sydney Commission.

The Planning Proposal was referred to Hornsby's LPP on 10 July 2019 and a briefing was held on 31 July 2019.

The Panel noted that:

- Council is currently preparing a Local Strategic Planning Statement (LSPS) to manage growth and change into the future in accordance with the priorities and actions under the North District Plan 2018. This process provides the opportunity for Council to undertake a strategic approach to the management of urban lands at the bushland interface.
- Council has undertaken a comprehensive review of heritage management practices in Hornsby Shire. The review recommends that a landscape heritage study be undertaken to identify landscape items of cultural and natural significance throughout the Shire and the Panel supports this strategic approach to heritage management.
- The preparation of the Planning Proposal to protect trees on property No. 62 Manor Road, Hornsby as a local heritage item is supported by an independent heritage assessment confirming the heritage significance of the trees.
- Progression of the Planning Proposal would not be inconsistent with Council's comprehensive heritage review approach.

The Panel advised that:

- It supports the preparation of a Planning Proposal to protect 22 trees located on property No. 62 Manor Road, Hornsby as a local heritage item (landscape) by listing the site in Schedule 5 of the Hornsby Local Environmental Plan 2013.
- References to the implementation of the following additional North District Plan 2018 planning priorities should be included in Part 3 of the Planning Proposal:
 - Planning Priority 16 – Protecting and enhancing bushland and biodiversity.
 - Planning Priority 17 – Protecting and enhancing scenic and cultural landscapes.
 - Planning Priority 19 – Increasing urban tree canopy cover and delivering Green Grid connections.

One Panel member did not share this view, instead forming the opinion that the planning proposal is not the appropriate mechanism to manage bushland interface and landscape heritage on this site as it pre-empts the broader strategic approach.

The Planning Proposal (attached) has been updated in accordance with the advice of the Panel to include reference to additional planning priorities.

Planning Proposal

1. Strategic and Statutory Context

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

1.1 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 heritage significance of these trees. For further detail, refer to Section B.3 of the planning proposal.

1.2 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 to provide direction to Council in relation to the preparation of draft local environmental plans.

The Local Planning Directions that Council must follow when preparing a Planning Proposal cover the following matters:

- Employment and Resources.
- Environment and Heritage.
- Housing, Infrastructure and Urban Development.
- Hazard and Risk.
- Regional planning.
- Local plan making.

The Directions that are most relevant to this Proposal include:

Direction 2.1 Environmental Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas. The site is zoned R2 Low Density Residential and RE1 Public Recreation and adjoins land zoned E1 National Parks and Nature Reserves.

The planning proposal would facilitate the protection and conservation of trees on site in accordance with the objective of this Direction, and the objectives of the zones R2, and RE1, and the adjoining national park zoned E3. Therefore, the Planning Proposal is consistent with this Direction.

Direction 2.3 Heritage Conservation

The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

The Proposal is consistent with this Direction as it would facilitate the listing of 22 trees located on property No. 62 Manor Road, Hornsby as a heritage item under Schedule 5 of the *HLEP 2013* to conserve the natural and cultural values they hold by ensuring they are protected, and their heritage significance is identified.

An assessment of the consistency of this Planning Proposal with these Local Planning Directions is provided in Appendix B of the Planning Proposal attached to this report.

1.3 Hornsby Community Strategic Plan - Your Vision Your Future 2028

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 relevant outcome indicator of the Plan that relates to the proposal is to ensure that the natural environment is well cared (indicator 2.1.b). This indicator informs outcome No. 2.1 which states that the local surroundings are protected and enhanced.

The proposal is consistent with the relevant outcome and indicator of the Hornsby Community Strategic Plan - Your Vision Your Future 2028.

1.4 Hornsby Draft Local Strategic Planning Statement (LSPS)

The LSPS 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. It is anticipated that Hornsby Council's Draft Local Strategic Planning Statement (LSPS), will be publicly exhibited in August 2019. The planning proposal meets a number the priorities contained within the draft LSPS as outlined in Section B.4 of the planning proposal.

1.5 Heritage Gap Analysis and Action Plan

At its meeting on 8 May 2019, Council considered a report on the Heritage Gap Analysis and Action Plan and resolved to publicly exhibit the document. The Heritage Gap Analysis will be used to prioritise and scope a Comprehensive Heritage Study to inform amendments to current planning instruments and to assist preparation of the draft LSPS. Section 2.3.4 of this report relates to Landscape Heritage and recommended for Schedule 5 of the HLEP to be updated to allow for landscape items of cultural and natural significance on both private and public property to be protected.

The Planning Proposal is consistent with the recommendations of the Heritage Gap Analysis.

1.6 Hornsby Local Environmental Plan 2013

The planning proposal has been prepared having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

Clause 5.10 Heritage Conservation of HLEP sets out heritage conservation provisions for Hornsby Shire. The relative objectives of this clause include:

- (1)(a) to conserve the environmental heritage of Hornsby.*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.*

The proposal seeks to heritage list 22 trees within Schedule 5 of the HLEP as a heritage (landscape) item. By listing these trees as a heritage item and amending the corresponding Heritage Map, it would give statutory provisions for the continued protection and management of the item under Clause 5.10 Heritage Conservation of the HLEP.

CONSULTATION

In accordance with "A guide to preparing local environmental plans" prepared by the then Department of Planning and Environment (2018), the Planning Proposal is classified as a 'low impact proposal' therefore is required to be publicly exhibited for 14 days.

A consultation strategy relevant to the public exhibition of the draft LEP has been prepared as part of the Planning Proposal for endorsement by the DPI&E. Part 5 of the Planning Proposal contains the Consultation Strategy for public exhibition which at a minimum will include the following:

- Notification letters and a copy of the Planning Proposal will be sent to relevant public authorities (if any) outlined in the Gateway Determination.
- An advertisement will be placed in local newspapers that identify the purpose of the Planning Proposal and where the Planning Proposal can be viewed.
- The Planning Proposal will be exhibited on the Council website under On Exhibition (www.hornsby.nsw.gov.au/onexhibition). 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.
- The Planning Proposal will be displayed at the Council Administration Centre, 296 Peats Road, Hornsby and at Hornsby Library.

A report outlining the outcomes of the public agency consultation, submissions received during public exhibition and hearing would be presented to Council for its consideration at the conclusion of the exhibition period.

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 DPI&E 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.

BUDGET

There are no budgetary implications associated with this report.

POLICY

The Local Planning Panels Direction – Planning Proposals requires that the local planning panel must give its advice on the planning proposal before Council considers whether or not to forward it to the Minister or Greater Sydney Commission. The advice of the Hornsby LPP is presented in this report.

CONCLUSION

The Proposal seeks to amend Schedule 5 and the Heritage Map contained within the *HLEP* to list 22 trees located on property No. 62 Manor Road, Hornsby.

The Proposal aims to implement the recommendations of the Landscape Heritage Assessment which were considered by Council and resolved to be enforced to provide the continued recognition and protection of trees with identified heritage significance.

The Local Planning Panel has advised that it supports the progression of the planning proposal.

Accordingly, it is recommended that Council endorse the progression of the attached Planning Proposal for submission to the Department of Planning, Industry and Environment for Gateway Determination and exhibition.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager of Strategic Planning, Katherine Vickery, - who can be contacted on 9847 6744.

KATHERINE VICKERY
Manager - Strategic Landuse Planning
Planning and Compliance Division

JAMES FARRINGTON
Director - Planning and Compliance
Planning and Compliance Division

Attachments:

- 1.⇒ Planning Proposal for no. 62 Manor Road, Hornsby

File Reference: F2010/00588-004
Document Number: D07719455

schedule as outlined in point 2 below.

2. The funding shortfall of \$1,000,000 to the street /park tree planting program be funded from a \$500,000 saving due to the non-introduction of the emergency services levy and general revenue funds freed up by allocating funds to relevant project as outlined in the following amended works Schedule in Section 7.12:

Street / Park Tree Planting Program	\$1,500,000
Footpath Program	\$700,000
Shareway / Cycleway Program	\$500,000
Playground Improvement	\$600,000
Playground Shade Devices	\$250,000
Off Leash Dog Facility Improvements	\$250,000
Installation of Solar Panels at Hornsby Aquatic Centre	\$300,000
Installation of Solar Panels at Community Recycling Centre	\$250,000
Bushland Reserves Infrastructure	\$800,000
Hornsby Library short-term expansion	\$2,700,000
TOTAL	\$7,850,000

3. Following the exhibition, a report on submissions be presented to Council for its consideration.

FOR: COUNCILLORS BROWNE, HUTCHENCE, MARR, MCINTOSH, NICITA, RUDDOCK,
TILBURY AND WADDELL

AGAINST: COUNCILLORS DEL GALLEGO AND HEYDE

5 PL21/19 Planning Proposal - Local Heritage Listing of 22 Trees at 62 Manor Road, Hornsby

(F2010/00588-004)

Mr David Tyrrell, of Baulkham Hills addressed Council regarding this item.

Mr Craig Burton, of Church Point addressed Council regarding this item.

Mr Peter Robinson, of Berowra addressed Council regarding this item.

Ms Jan Primrose, of Berowra addressed Council regarding this item.

Ms Lucy Bal, of Hornsby addressed Council regarding this item.

RESOLVED ON THE MOTION OF COUNCILLOR HEYDE, seconded by COUNCILLOR MCINTOSH,
THAT Council:

1. Endorse the progression of the Planning Proposal attached to Directors Report No. PL21/19

for submission to the Department of Planning, Industry and Environment for Gateway Determination to amend the Hornsby Local Environmental Plan 2013 as follows:

- a) Insert a listing for 22 trees at property No. 62 Manor Road, Hornsby in Schedule 5 Environmental Heritage.
 - b) Amend the Heritage Map (Sheet HER_017B) to identify a heritage item on the site of No. 62 Manor Road, Hornsby.
2. Consider the progression of investigations of the Manor Road, Hornsby precinct for the possible creation of a Heritage Conservation Area as part of its ongoing Heritage Study.

FOR: COUNCILLORS BROWNE, DEL GALLEG0, HEYDE, HUTCHENCE, MARR, MCINTOSH, NICITA, RUDDOCK AND TILBURY

AGAINST: COUNCILLOR WADDELL

6 PL22/19 Report on Submissions - Hornsby RSL Club Planning Proposal

(PP/1/2016)

Ms Rosie Sutcliffe, on behalf of Hornsby RSL Club addressed Council regarding this item.

RESOLVED ON THE MOTION OF COUNCILLOR TILBURY, seconded by COUNCILLOR MCINTOSH,

THAT:

1. Council receive and note correspondence from Hornsby RSL Club dated 30 May 2019 attached to Director's Report No. PL22/19 withdrawing its Planning Proposal.
2. Council not proceed with the Hornsby RSL Club Planning Proposal and associated draft DCP amendments and write to the Minister to advise of this decision made under delegation.
3. Council advise of its decision in a local newspaper within 28 days, including reasons as outlined in Director's Report No. PL22/19.
4. The Hornsby Town Centre Review Study Area be extended to include the Hornsby RSL Club land holdings at property Nos. 7-19 Ashley Street and 2-4 Webb Avenue, Hornsby identified on the map attached to Director's Report No. PL22/19.
5. The proponent and submitters be advised of Council's resolution.

FOR: COUNCILLORS BROWNE, DEL GALLEG0, HEYDE, HUTCHENCE, MARR, MCINTOSH, NICITA, RUDDOCK AND TILBURY

AGAINST: COUNCILLOR WADDELL