**Planning and Assessment** [IRF20/4489](file:///C%3A%5CUsers%5CColeT%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CYT5G2KIK%5C545032)

Plan finalisation report

**Local government area**: Hornsby

1. **Name of draft LEP**

Hornsby Local Environmental Plan 2013 (Amendment No 11).

1. **SITE Description**

The Planning Proposal **(Attachment A)** is a housekeeping amendment that applies to various sites within the Hornsby LGA, and are summarised as follows:

Sites involving the rezoning of land:

* 105 Peter Close, Hornsby Heights
* 5 Arcadia Road, Galston
* Coba Point, Berowra Creek (Lot 1 DP 727931)

Site involving an Additional Permitted Use:

* 344 Galston Road, Galston

The properties affected by the 38 Schedule 5 Heritage amendments as detailed in **Attachment C1**.

The properties affected by the height of building amendment as detailed in **Attachment C2**.

1. **Purpose of Plan**

The draft LEP seeks to:

* Resolve 38 errors and/or anomalies identified in Schedule 5 Environmental Heritage of the LEP;
* Rezone two (2) sites to reflect the historical and existing use of each site;
	+ 1-5 Peter Close, Hornsby Heights – Rezone land from B1 Neighbourhood Centre to R2 Low Density Residential;
	+ 5 Arcadia Road, Galston – Rezone land from B1 Neighbourhood Centre to R2 Low Density Residential;
* Rezone the land at Coba Point, Berowra Creek (Lot 1 DP 727931) from E4 Environmental Living to E1 National Parks and Nature Reserves, in response to a notice from the National Parks and Wildlife Service that this land is now an extension to the Marramarra National Park;
* Amend Schedule 1 – Additional permitted use, to include ‘restaurants and cafes’ as additional permitted uses to the land at 344 Galston Road, Galston of that will reflect the current and longstanding use at the site;
* Extend the application of Clause 6.8 – Design Excellence to also include attached dwellings, multi-dwelling housing, shop-top housing and residential flat buildings regardless of height; and
* Reduce the height of building control for all land with a maximum building height of 17.5m, to a maximum height of 16.5m to provide better architectural outcomes for five storey developments by removing the ability to develop ‘mezzanine’ levels that are top-heavy in nature and with lower floor-to-ceiling heights.

This Planning Proposal has been prepared and submitted to align with Hornsby Shire Council’s Local Strategic Planning Statement (LSPS) and the LSPS Review Program in collaboration with the Greater Sydney Commission (GSC) and the Department.

1. **State Electorate and Local Member**

The sites fall within the Hornsby state electorate. Matt Kean MP is the State Member.

The sites fall within the Berowra federal electorate. Julian Leeser MP is the Federal Member.

To the regional planning team’s knowledge, neither MP has made any written representations regarding the proposal.

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal.

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

1. **GATEWAY DETERMINATION**

The Gateway Determination issued on 17 February 2020 **(Attachment B)** determined that the proposal should proceed subject to conditions.

1. **PUBLIC EXHIBITION**

In accordance with the Gateway Determination, the proposal was publicly exhibited by Council from 11 March to 10 April 2020. Seven (7) submissions were received from the community during the statutory exhibition, with a total of 26 submissions throughout both the statutory exhibition and preliminary exhibition (the latter exhibition period was prior to being sent to the Department for a Gateway determination). Council’s report on the submissions can be found at **Attachment C4**

Submissions

In addition to the submissions that resulted in two (2) proposed heritage amendments being removed from the proposal (details in Section 8, below), the statutory exhibition period identified concerns around:

*The validity of Council’s response to Ministerial Direction 2.3 – Heritage Conservation*

A submission raised concern that Council’s response to Ministerial Direction 2.3 Heritage Conservation was invalid as the proposed amendment to the Heritage Map for Item No. 492 Lisgar Gardens would sever the relationship between the Lisgar Gardens and the Florence Cotton Park. The proposal is, however, consistent with the objective of Direction 2.3 as it involves the identification of heritage significance and conservation of the site’s natural and cultural values.

*Lack of heritage mapping*

A submission raised concerns regarding the lack of heritage mapping for the proposed corrections of heritage anomalies being insufficient for consideration of assessment; however, these maps were provided prior to public exhibition for community review. Additionally, of the 40 anomalies to be corrected within Schedule 5 of the HLEP 2013, only 10 of these entail amendments to the Heritage Maps while the remaining 30 anomalies do not require amendments to the Heritage Maps

*A full review of Barker College heritage items*

A full review of heritage listings on the Barker College is unnecessary as the proposal does not involve any addition or deletion of heritage items. A full review of heritage items within the Hornsby LGA will, however, be considered under Council’s Comprehensive Heritage Review.

*Rezoning of No.5 Arcadia Road, Galston*

The rezoning of No. 5 Arcadia Road, Galston from B1 Neighbourhood Centre to R2 Low Density Residential is to correct an anomaly and reflect the multi-dwelling residential use on the site. It is important to note that multi-dwelling housing on other R2 zoned land is prohibited

*Height of building amendment*

Submissions raised concerns regarding the reduction in maximum height of buildings from 17.7 metres to 16.5 metres. However, the proposed maximum height will still provide the opportunity for construction of 5-storey apartment buildings and does not affect FSR controls. This amendment is to give effect to the Hornsby Development Control Plan (HDCP) 2013 so that ‘top heavy’ mezzanine levels are not permitted within 5-storey developments.

*Design Excellence*

A submission from the Property Council of Australia raised concern over the Clause 6.8 Design Excellence amendment and the lack of new housing supply in accordance with the North District Plan and Hornsby LSPS. The amendment to Clause 6.8 Design Excellence is to introduce more aesthetically pleasing developments of higher standards. In terms of housing supply, Council is on track to meet its short-term targets, so the rezoning of additional land is not required. In addition, medium - long term housing targets and potential areas for rezoning are currently being considered through Councils preparation of their Local Housing Strategy.

1. **ADVICE FROM PUBLIC AUTHORITIES**

Council was required to consult with:

* NSW Rural Fire Service
* NSW Heritage
* Government Architects Office
* NSW Parks and Wildlife Services

## Council also liaised with the Department’s Environment, Energy and Science Group (EES) for comment on the amendment to Marramarra National Park.

The above agencies generally supported the proposal, with all responses contained at **Attachment C3**. Council also received a letter of support from the Environment, Energy and Science Group under DPIE. Certificate of Titles have been obtained from Heritage NSW to confirm all property descriptions for the Schedule 5 amendments, in accordance with the Gateway Determination.

1. **POST-EXHIBITION CHANGES**

Post-exhibition changes are noted below:

***Heritage Item No. 492 – Lisgar Gardens (23 Lisgar Road, Hornsby) – Deleted from proposal***

Submissions raised concern about the proposed amendment to remove Florence Cotton Park from the address and map for Heritage Item No. 492 - Lisgar Gardens, as it could allow a mountain bike trail and/or 10/50 clearing on Critically Endangered Ecological Communities and other significant trees.

Post-Exhibition Change

Council has amended the proposal to delete the proposed changes to the heritage map and property description and supports the Heritage Advisory Committee that advised to consider this property through Council’s Comprehensive Heritage Review at a later date.

Department comment

The post-exhibition amendment is supported, is minor, and no further public exhibition is necessary.

***Heritage Item No. 495 – Mount Wilga (2A Manor Road, Hornsby) – Deleted from proposal***

Submissions raised concern about the proposed amendment to correct the listing to reflect the current Lot and DP as it does not address the reference in the inventory sheet to the grounds which surround the mansion, and as 10/50 clearing on Critically Endangered Ecological Communities and other significant trees may be allowed if the *HLEP* Heritage Maps are amended.

Council comment

Council’s submissions report **(Attachment C4)** states that the site has been subdivided twice (2011 and 2014) with support from the NSW Heritage Office, and a further approval for subdivision. The current lot description is that of the 2011 subdivision and is now historic. Council’s Heritage Advisory Committee is divided over this amendment and has advised Council to remove it from the current LEP amendment in favour of it being considered as part of the Comprehensive Heritage Review. Council has acted on the advice of the Heritage Advisory Committee.

Department comment

The post-exhibition amendment is supported, and no further public exhibition is necessary.

***Savings Provision***

A savings provision was requested by Council staff during the finalisation of the LEP and forms part of the final LEP **(Attachment LEP)** and is to be inserted into Section 1.8A of Hornsby LEP 2013.

Department comment

The Department considers this a reasonable and minor request, that allows for the continued assessment of development applications that had been made but not finally determined prior to this amendment.

1. **ASSESSMENT**

The Planning Proposal seeks to promote high architectural standards and urban design for all residential flat buildings and townhouses, correct zoning and minor heritage anomalies, and amend land zoning to reflect the extension of Marramarra National Park. The Planning Proposal is also linked to Council’s ongoing LEP Review Program, with the submission and finalisation of this amendment a major milestone in the program. As this is a Housekeeping amendment, the proposal contains various amendments to the LEP, which are set out below:

Heritage Anomalies

The Planning proposal appropriately corrects anomalies and aims to more accurately identify heritage items in the LGA.

Rezonings

Amendments to land zoning are minor in nature for land in Hornsby Heights and Galston and are to more accurately reflect current residential uses in business zoned land that both have development consent from 1998.The other rezoning is for Coba Point, Berowra and is in response to a notice from NSW National Parks and Wildlife advising of an expansion of Marramarra National Park up to Coba Point.

Additional Permitted Use

The additional permitted use of a ‘restaurant or café’ will permit a longstanding use of the site. It also recognises that the impacts of the current and ongoing use is known and has demonstrated compatibility with the surrounding residential properties.

Design Excellence

The proposed amendments to the design excellence clause and height of building standard are included within the planning proposal as a result of a report entitled the ‘Hornsby Shire Council Design Excellence and Residential Development Review’ (Design Excellence Review) prepared by Architects Johannsen and Associates (AJA) dated May 2018.

The report was prepared in response to concerns raised by the community regarding the built form outcomes in Councils housing precincts and identified a range of recommendations to improve built form and character. Various other recommendations have resulted in amendments to Hornsby Development Control Plan to complement LEP changes.

Reduction of height in R3 zones from 17.5m to 16.5m

Council identified that heights of buildings of 17.5m in conjunction with upper level setbacks has resulted in the ‘mezzanine’ form which is disproportionate with the overall scale of 5-storey development. The reduction in height will result in the same built form (5 storeys) but removing the mezzanine top-heavy design.

The proposal gives effect to the North District Plan through the optimisation and improvement in urban design outcomes that can be achieved through the expansion of the Design Excellence clause, as well as the reduction in the height of building that aims to reduce ‘top heavy’ apartment design.

The Department also notes Council is undergoing a comprehensive heritage review and supports the post-exhibition amendments that will now become part of that review.

**9.1 Section 9.1 Directions**

The Planning Proposal is consistent with all relevant Ministerial Directions as addressed in the Gateway Determination. A response to the relevant directions has been provided in the table below.

|  |  |
| --- | --- |
| **Direction** | **Response** |
| **4.4 Planning for Bushfire Protection** | Consistent. The proposal seeks to rezone land at Nos. 1-5 Peter Close, Hornsby Heights from B1 Neighbourhood Centre to R2 Low Density Residential, which will correct zoning anomalies to reflect the longstanding residential use on this site. Part of this site is bushfire prone; however, the NSW RFS considered the proposal and raise no concerns in relation to bushfire. |
| **6.3 Site Specific Provisions** | Consistent. The proposal seeks to allow for ‘restaurant/café’ as an additional permitted use at No. 344 Arcadia Road, Galston, which will facilitate ongoing commercial use of the site without imposing unnecessarily restrictive site-specific planning controls. |

**9.2 State environmental planning policies**

The Planning Proposal is generally consistent with or will not affect the application of any SEPPs.

**9.3 State, regional and district plans**

Hornsby is classified as a strategic centre under the North District Plan. As detailed in the table below, the Planning Proposal is consistent with the relevant planning priorities of the District Plan.

|  |  |
| --- | --- |
| **Planning Priority** | **Response** |
| **N6: Creating and renewing great places and local centres and respecting the District’s heritage** | This proposal implements this planning priority as it will assist in delivering minor updates to Schedule 5 – Heritage Conservation. It will also contribute to good design in neighbourhoods that are connected to transport and services and support active healthy and socially connected communities, as well as maintaining and renewing the local character of the area. |

1. **MAPPING**

The following maps are associated with the LEP amendment:

* Heritage Map – HER\_010B, HER\_017, HER\_022 and HER\_025A
* Land Zoning Map – LZN\_008, LZN\_016, and LZN\_021
* Additional Permitted Uses Map – APU\_008
* Floor Space Ratio Map – FSR\_008, FSR\_016 and FSR\_021
* Height of Buildings Map – HOB\_008, HOB\_010, HOB\_017, HOB\_018 and HOB\_021
* Lot Size Map – LSZ\_008, LSZ\_016 and LSZ\_021

The maps **(Attachment LEP Maps)** and Map Cover Sheet **(Attachment MCS)** have been checked by the Department’s ePlanning Team and are finalised.

1. **CONSULTATION WITH COUNCIL**

Council was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979*. Council confirmed on 28 October 2020 that it supports the draft and that the plan should be made **(Attachment D)**

1. **Parliamentary Counsel Opinion**

On 30 October 2020 Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**. The LEP can be found at **Attachment LEP.**

1. **RECOMMENDATION**

It is recommended that the Minister’s delegate as the local plan-making authority determine to make the LEP under clause 3.36(2)(a) of the Act because:

* the proposal addresses errors and anomalies within the Hornsby LEP 2013;
* it seeks to extend design excellence provision across further development categories;
* it is consistent with the intention of the accelerated LEP Review program; and
* the amendments will further align Hornsby LEP 2013 with the North District Plan.



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Attachments

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| **Attachment** | **Title** |
| A | Planning Proposal – June 2020 |
| B | Gateway Determination – February 2020 |
| C1 | Schedule 5 Heritage Amendments |
| C2 | Properties affected by HOB amendments |
| C3 | Responses from public authorities |
| C4 | Council Report and Report on Submissions |
| D | Section 3.36(1) and Council comments on draft LEP |
| PC | Parliamentary Counsel’s Opinion  |
| LEP Maps | LEP maps  |
| LEP | LEP |
| MCS | Map cover sheet |