



BUSINESS PAPER

GENERAL MEETING

**Wednesday 14 December 2022
at 6:30PM**



TABLE OF CONTENTS

AGENDA AND SUMMARY OF RECOMMENDATIONS

RESCISSION MOTIONS

MAYORAL MINUTES

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

GENERAL BUSINESS

Office of the General Manager

- Item 1 GM33/22 Code of Conduct Complaints - Annual Report 1
- Item 2 GM38/22 Housekeeping Amendments - Community Engagement Plan 4

Corporate Support Division

- Item 3 CS96/22 Investments and Borrowings for 2022/23 - Status for Period
Ending 31 October 2022..... 9
- Item 4 CS99/22 Classification of Public Land at Gloria Close, Mount Colah 12
- Item 5 CS105/22 Amendment of the Order of Business at Council Meetings -
February 2023 to September 2023..... 15

Community and Environment Division

- Item 6 CE20/22 Draft Healthy Ageing Hornsby Strategy 18
- Item 7 CE21/22 Membership of the Arts & Cultural Advisory Group 24
- Item 8 CE19/22 Mark Taylor Oval Indoor Cricket Centre Lease 27
- Item 9 CE22/22 Community Event Grants Program 34

Planning and Compliance Division

- Item 10 PC24/22 Planning Proposal - Byles Creek..... 38
- Item 11 PC25/22 Agritourism Planning Reforms..... 52

Infrastructure and Major Projects Division

- Item 12 IM6/22 Review of Policies and Codes - Infrastructure and Major Projects 61

CONFIDENTIAL ITEMS

- Item 13 CS100/22 Renewal of Lease of Operational Land, Dangar Island
- Item 14 CS101/22 Proposed Co-Location of Telecommunication Facilities at
Normanhurst.
- Item 15 CS102/22 Further Report - Land and Property Matter

Item 16 GM40/22 Review of Council's Organisation Structure

PUBLIC FORUM – NON AGENDA ITEMS

QUESTIONS WITH NOTICE

MAYOR'S NOTES

Item 17 MN11/22 Mayor's Notes 01 November 2022 to 30 November 2022 65

NOTICES OF MOTION

Item 18 NOM5/22 Buy Recycled 67

SUPPLEMENTARY AGENDA

MATTERS OF URGENCY

10 PLANNING PROPOSAL - BYLES CREEK

EXECUTIVE SUMMARY

- In May 2022, Council endorsed the Byles Creek Planning Study (Planning Study) and its recommendations to amend controls in the *Hornsby Local Environmental Plan 2013* (HLEP) to protect and maintain the environmental, social and aesthetic qualities of the Byles Creek Study Area (Study Area).
- The Study Area is located north-east of Beecroft train station, bound by Azalea Grove and Kurrajong Street to the north, Lane Cove National Park to the east, Malton Road to the south and Sutherland Road to the west. It comprises the RE1 Public Recreation zoned land within the Byles Creek corridor and the adjoining R2 Low Density Residential zoned land.
- This report presents a Council-initiated Planning Proposal to rezone the R2 Low Density Residential land to C4 Environmental living, increase the minimum lot size of the residential land from 600m² to 40ha, amend the objectives of HLEP Clause 4.1 'Minimum subdivision lot size' and introduce an additional 'Riparian Lands' local provision with supporting mapping. Associated amendments to the Hornsby Development Control Plan 2013 are also recommended.
- The changes to planning controls would assist minimise the impact of residential development and protect the environmental, social and aesthetic qualities of the Byles Creek corridor, as recommended by the Planning Study.
- The Planning Proposal is consistent with applicable objectives and priorities of NSW State Strategic plans, Section 9.1 Ministerial Directions and Council strategic land use plans.

RECOMMENDATION

THAT:

1. Council endorse progression of the Byles Creek Planning Proposal attached to Director's Report No. PC24/22 for submission to the Department and Planning and Environment for a Gateway Determination.
2. The Planning Proposal be publicly exhibited in accordance with the Gateway Determination and consultation strategy identified in this report.
3. Council endorse the amendments to the Hornsby Development Control Plan 2013 attached to Director's Report No. PC24/22 for exhibition concurrently with the Planning Proposal.
4. Following exhibition, a report on submissions be presented to Council for its consideration.

PURPOSE

The purpose of this report is to present a Council-initiated Planning Proposal to implement the recommendations of the endorsed Byles Creek Planning Study.

BACKGROUND

In December 2020, Council endorsed preparation of the Byles Creek Planning Study. The purpose of the Planning Study was to review the suitability of existing planning controls for R2 Low Density Residential zoned land adjoining the RE1 Public Recreation zoned land within the Byles Creek corridor, focusing on the protection and maintenance of environmental values.

The RE1 Public Recreation land and R2 Low Density Residential land is collectively named the Byles Creek Study Area (the Study Area) and is bounded by Azalea Grove and Kurrajong Street to the north, Lane Cove National Park to the east, Malton Road to the south and Sutherland Road to the west.

A draft Planning Study was completed in July 2021. At its August 2021 meeting, Council resolved to publicly exhibit the draft Study. The exhibition took place from 1 September 2021 to 1 November 2021 and 168 submissions were received. Submissions were generally supportive of the draft Study and its recommendations.

At its meeting on 11 May 2022, Council endorsed the Planning Study and recommendations which include:

1. Rezone land within the Study Area currently zoned R2 Low Density Residential to C4 Environmental Living.
2. Increase the minimum subdivision lot size for land proposed to be zoned C4 Environmental Living to 40ha.
3. Strengthen the objectives of Clause 4.1 'Minimum subdivision lot size' of the HLEP to protect and enhance existing bushland and significant native vegetation.
4. Insert a 'Riparian Land' clause under Part 6 'Additional local provisions' of the HLEP and provide supporting riparian corridor mapping.
5. Increase community engagement programs targeting the Study Area.

The first four recommendations require amendment of the HLEP and are the subject of this report. The community engagement programs for the Study Area will be investigated and instigated separately.

This report presents a Planning Proposal and draft supporting amendments to existing environmental controls within the Hornsby Development Control Plan 2013 (HDCP).

DISCUSSION

1. The Site

The Study Area is located north-east of Beecroft train station. It is bound by Azalea Grove and Kurrajong Street to the north, Lane Cove National Park to the east, Malton Road to the south and Sutherland Road to the west. It covers 657,924m² over 433 allotments which are zoned R2 Low Density Residential, RE1 Public Recreation or a combination of the two. Existing residential development within the Study Area is generally characterised by one or two storey detached dwellings.

The Planning Study identifies that the Study Area possesses significant biodiversity values. It contains critically endangered Blue Gum High Forest, regionally significant Coachwood Rainforest, locally significant Blackbutt Gully Forest and other threatened flora. It is habitat for threatened fauna including the Powerful Owl, Gang-gang Cockatoo, Red-crowned Toadlet, Little Bent-winged Bat and microbats.

Physical characteristics of the Study Area include steep terrain that slopes down towards the Byles Creek watercourse and its tributaries and existing vegetation which contributes to its bush fire prone nature. The Study Area is also located within the Beecroft – Cheltenham Heritage Conservation Area (HCA) and contains several locally significant heritage items.

2. The Planning Proposal

The Planning Proposal would implement the recommendations of the Planning Study, which apply to the R2 Low Density Residential zoned land within the Study Area. It is proposed to amend the HLEP as follows:

1. Rezone land within the Study Area currently zoned R2 Low Density Residential to C4 Environmental Living.
2. Increase the minimum subdivision lot size for land proposed to be zoned C4 Environmental Living to 40ha.
3. Amend the objectives of Clause 4.1 'Minimum subdivision lot size' of the HLEP to protect and enhance existing bushland and significant native vegetation.
4. Insert a 'Riparian Land' clause under Part 6 'Additional local provisions' of the HLEP and provide supporting riparian corridor mapping.

Supporting documents attached to the Planning Proposal include:

- Attachment 1: Byles Creek Planning Study
- Attachment 2: Byles Creek Land Use and Environmental Constraints Assessment
- Attachment 3: Byles Creek Planning Study – Economic Implications Analysis
- Attachment 4: Byles Creek Planning Study – Consultation Outcomes Report

3. Strategic and Statutory Context

Relevant policies and legislation are discussed below.

Greater Sydney Region Plan – A Metropolis of Three Cities and North District Plan

The Greater Sydney Region Plan - A Metropolis of Three Cities (Regional 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 (District Plan) is a guide for implementing the Regional 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 would give effect to the sustainability objectives and actions of the State and local strategic planning framework by bringing consideration of environmental values to the forefront when managing future residential development in the Study Area.

Under the Regional Plan, Objective 25 seeks to ensure that “*the coast and waterways are protected and healthier*”. In the District Plan, under *Planning Priority N15: Protecting and improving the health and enjoyment of Sydney Harbour and the district’s waterways*, the following action is relevant to the proposal:

Action 62: Protect environmentally sensitive areas of waterways and the coastal environment areas.

The Planning Proposal would amend the HLEP to introduce a riparian corridor local provision with associated mapping. The provision would require environmental impacts to water quality and flora and fauna to be considered in the evaluation of development applications located wholly or partially within the buffer areas. The provision would require the consent authority to be satisfied with the matters for consideration prior to issuing development consent.

Regional Plan Objective 27 seeks to ensure that “*biodiversity is protected, urban bushland and remnant vegetation is enhanced*”. In the District Plan, under *NDP Priority N16: Protecting and enhancing bushland and biodiversity*, the following action is relevant to the proposal:

NDP Action 66: Protect and enhance biodiversity by:

- a) *Supporting landscape-scale biodiversity conservation and the restoration of bushland corridors.*
- b) *Managing urban bushland and remnant vegetation as green infrastructure.*
- c) *Managing urban development and urban bushland to reduce edge-effect impacts.*

The Byles Creek Land Use and Environmental Constraints Assessment recognises the Study Area as holding significant biodiversity values including containing Blue Gum High Forest, Coachwood Rainforest and Blackbutt Gully Forest. It is also habitat for threatened fauna including the Powerful Owl, Gang-gang Cockatoo, Red-crowned Toadlet, Little Bent-winged Bat and microbats.

The HLEP amendments proposed as part of the Planning Proposal seek to allow continuing low-impact residential development while placing focus on minimising impacts of development on the ecological, scientific and aesthetic values of the Study Area.

Regional Plan Objective 28 seeks to ensure that “*scenic and cultural landscapes are protected*”. In the District Plan, under *NDP Priority N17: Protecting and enhancing scenic and cultural landscapes* the following action is relevant to the proposal:

NDP Action 67: Identify and protect scenic and cultural landscapes.

The Study Area has unique scenic qualities arising from natural features such as Byles Creek, steep topography and vegetated ridgelines accentuating the dense bushland interlaced with riparian vegetation and waterways. The Study Area is also within the Beecroft – Cheltenham HCA and contains several heritage-listed properties and trees which contribute to the visual character.

The Planning Proposal would assist preserve the natural and cultural qualities of the Study Area by managing the scale of future development. The amendments would introduce greater focus on environmental impacts when considering the merits of development applications within the Study Area.

Section 9.1 Local Planning Directions

Section 9.1 of the EP&A Act allows the Minister for Planning (the Minister) to provide direction to Council concerning the preparation of draft local environmental plans. The directions considered for the Planning Proposal commenced on 1 March 2022.

The Planning Proposal has been considered against the following directions relevant to the proposal:

Direction 1.1 Implementation of Regional Plans

The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans (e.g. the Greater Sydney Region Plan). The direction requires a planning proposal to be consistent with a Regional Plan released by the Minister.

The Planning Proposal would manage development potential of private properties within the Study Area by minimising opportunities for further subdivision and requiring that development proposals be designed and located to preserve the environmental, social and aesthetic qualities of the Byles Creek corridor. Accordingly, the Planning Proposal is generally consistent with the sustainability priorities of the North District Plan as demonstrated in Part 3 of this report.

Direction 3.1 Conservation Zones

The objective of this direction is to protect and conserve environmentally sensitive areas. The direction requires planning proposals to include provisions that facilitate the protection and conservation of environmentally sensitive areas. Planning proposals that apply to land within a conservation zone or land otherwise identified for environment conservation/protection purposes must not reduce the conservation standards that apply to the land.

As discussed above, the Study Area includes a range of flora and fauna that is suitable for a conservation zone and the requisite conservation measures.

The Planning Proposal would continue to allow low impact residential development associated with the C4 Environmental Living zone, typical of existing development. High impact activities would be prohibited, such as future subdivision which may require significant tree removal to accommodate new dwellings, services and bushfire asset protection zones (APZ).

The amendments sought by the Planning Proposal would facilitate the protection of the environmental qualities of the Byles Creek corridor and is therefore, consistent with this direction.

Direction 3.2 Heritage Conservation

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. The Study Area is located within the Beecroft – Cheltenham HCA as identified in Schedule 5 of the HLEP.

The Planning Proposal does not propose to amend heritage related LEP provisions or schedules. The Planning Proposal would facilitate the retention of vegetation, residential density and building typology within the Study Area. The Proposal would complement the current heritage provisions of the LEP by seeking to maintain the character of the Study Area. Accordingly, the Planning Proposal is consistent with this direction.

Direction 4.3 Planning for Bushfire Protection

The objectives of this direction are to protect life property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas and encourage sound management of bush fire prone areas.

The direction requires consultation with the Commissioner of the NSW Rural Fire Service following receipt of a Gateway Determination, having regard to *Planning for Bushfire Protection 2019* (PBP 2019), and for controls to be compatible with bush fire prevention outcomes.

The Study Area is bush fire prone land and is predominantly mapped as Vegetation Category 1, considered by the RFS to be the highest risk for bush fire. New development on residential allotments within 100 metres of Vegetation Category 1 would be subject to high bush fire attack level (BAL) ratings.

The Planning Proposal does not propose to amend any bush fire related LEP provisions. The Proposal would manage residential density by prohibiting future subdivision. This would serve to limit the number of new dwelling houses and other sensitive land uses that would be exposed to bush fire risk. Therefore, the Planning Proposal is consistent with this direction.

Direction 6.1 Residential Zones

The objectives of this direction are to encourage a variety of housing types for existing and future housing needs, make efficient use of accessible infrastructure and services and minimise the impact of residential development on the environment and resource lands.

The direction requires that planning proposals broaden the choice of the housing market, make more efficient use of infrastructure and services, reduce land consumption for housing and be of good design. Planning proposals are to be for land that is or can be adequately serviced and not reduce residential density.

The Planning Study notes that the majority of private land within the Study Area has already been subdivided with the few remaining lots with sufficient area to theoretically being capable of subdivision subject to environmental constraints such as steep land, vegetation and bush fire risk. The existing site constraints limit the potential for further subdivision.

As such, the rezoning of R2 Low Density Residential land to C4 Environmental Living and the increase of minimum lot size from 600m² to 40ha would reflect the constrained development potential of the land and not reduce the development potential of private properties.

On balance, the Planning Proposal is consistent with this direction.

Hornsby Local Strategic Planning Statement

The Hornsby Local Strategic Planning Statement (LSPS), endorsed by Council in February 2020, 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.

Relevant priorities in the LSPS include:

- Priority SP1: Improving the overall health of our natural environment and ecosystem.
- Priority SP2: Protecting and increasing the extent and quality of natural areas in Hornsby Shire.
- Priority SP3: Protecting and improving the health of catchments and waterways and deliver well planned and designed local water infrastructure solutions.
- Priority SP5: Embedding biodiversity conservation principles throughout local planning policies.

The Planning Study identifies that the Study Area contains the Byles Creek watercourse and several ecological communities. It also represents a vegetation corridor linking with Lane Cove National Park and is an area of significant biodiversity values.

The Planning Proposal would facilitate protection of the existing environmental values of the Byles Creek corridor and Study Area by managing the impacts of future residential development. Through four amendments to the HLEP, the Planning Proposal seeks to prohibit future subdivision which minimises the need for tree removal on private land. Future residential development would be required to be of low environmental impact.

Accordingly, the Planning Proposal is consistent with the sustainable priorities of the LSPS.

Hornsby Biodiversity Conservation Strategy

The Hornsby Biodiversity Conservation Strategy, endorsed by Council in March 2021, sets out a 20 year vision to ensure that biodiversity in Hornsby Shire is well managed, resilient and adaptable to land use change, identifying recommendations, tools and priorities to be integrated into Council operations. Objectives of the Biodiversity Conservation Strategy that are of relevance to the Planning Proposal include the need to:

Conserve, management and enhance biodiversity upon both public and private lands within the LGA' and 'ensure environmental planning instruments and processes provide a strategic approach to achieving biodiversity conservation outcomes.

The Planning Proposal aims to protect and conserve the ecological values present within the Study Area by amending local planning controls to minimise tree removal on private land associated with subdivision, promote future residential development with a low environmental impact and ensure that development does not have unreasonable adverse impacts on the health and quality of Byles Creek.

This is consistent with the objectives, strategies and actions of the Biodiversity Conservation Strategy.

Hornsby Urban Forest Strategy

The Hornsby Urban Forest Strategy, endorsed by Council in March 2021, seeks to provide guidance on the future care and management of Hornsby Shire's urban forest, balancing a need to protect and restore the tree canopy with reasonable expectations for development. To achieve this, the Urban Forest Strategy sets out a number of objectives including the need to '*maintain and improve Hornsby Shire's unique character*' and '*protect, secure and create habitat.*'

The Planning Proposal is consistent with the objectives and targets of the Urban Forest Strategy as the proposed HLEP amendments would reduce the need for extensive tree removal on private property within the Study Area.

Hornsby Local Environmental Plan 2013

Changing the zoning of R2 Low Density Residential zoned land to C4 Environmental Living would result in a change of zone objectives and the permissibility of land uses. The objectives of the R2 and C4 zones are:

R2 zone objectives	C4 zone objectives
- To provide for the housing needs of the community within a low density residential environment. - To enable other land uses that provide	- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. - To ensure that residential development

<i>facilities or services to meet the day to day needs of residents.</i>	<i>does not have an adverse effect on those values.</i> <i>To permit development that is compatible with the character, infrastructure capacity and access limitations of the area.</i>
--	--

Given the findings and recommendations of the Planning Study, the C4 zone objectives are aligned with the significant biodiversity values of the Byles Creek area and the type of low-impact residential development appropriate for the area.

The land uses permitted with consent of the R2 and C4 zones are:

R2 uses permitted with consent	C4 uses permitted with consent
<i>Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Exhibition homes; Flood mitigation works; Group homes; Home-based child care; Home businesses; Information and education facilities; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Public administration buildings; Recreation areas; Recreation facilities (outdoor); Respite day care centres; Roads; Tank-based aquaculture; Tourist and visitor accommodation; Veterinary hospitals; Water reticulation systems</i>	<i>Building identification signs; Business identification signs; Dwelling houses; Flood mitigation works; Group homes; Home-based child care; Oyster aquaculture; Pond-based aquaculture; Roads; Tank-based aquaculture; Tourist and visitor accommodation; Water reticulation systems</i>

The proposed change in zoning would prohibit inappropriate uses with the potential to impact on the environmental qualities of the area such as child care centres, educational establishments, information and education facilities, places of public workshop and veterinary hospitals.

Along with the increase to the minimum lot size for the proposed C4 Environmental Living zoned land from 600m² to 40 hectares, it is proposed that the objectives of Clause 4.1 'Minimum subdivision lot size' be amended to assist protect and enhance existing bushland and significant native vegetation. The following is potential wording for amended Clause 4.1 objectives based on existing objectives implemented by other Sydney metropolitan councils identified in the Planning Study:

Existing Clause 4.1 objectives	Potential Clause 4.1 objectives
1. <i>The objectives of this clause are as follows:</i> a. <i>To provide for the subdivision of land at a density that is appropriate for the site constraints, development</i>	1. <i>To objectives of this clause are as follows:</i> a. <i>To provide for the subdivision of land at a density that is appropriate for the site constraints, development potential and infrastructure capacity of the</i>

<i>potential and infrastructure capacity of the land.</i> b. <i>To ensure that lots are of a sufficient size to accommodate development.</i>	<i>land.</i> b. <i>To ensure that lots are of a sufficient size to accommodate development consistent with relevant development controls.</i> c. <i>To ensure that resulting lots are consistent with the predominant pattern, size and configuration of existing lots in the locality, to support the amenity of adjoining properties and the desired future character of the area.</i> d. <i>To ensure that lot sizes and dimensions allow development to be sited to protect natural and cultural features including heritage items and conservation areas, vegetation, habitat and waterways.</i>
--	---

ITEM 10

The amended objectives better describe outcomes for subdivision across the Shire and are consistent with the approach to limit further subdivision within Study Area.

The Planning Proposal proposes the insertion of a 'Riparian Land' clause under Part 6 'Additional local provisions' with supporting riparian corridor mapping. The Planning Study provides the following example clause:

1. *The objectives of this clause are to protect and maintain the following:*
 - a) *Water quality within waterways.*
 - b) *Native flora and fauna and their habitats.*
 - c) *Ecological processes within waterways and riparian land.*
 - d) *Scenic and cultural values of waterways and riparian lands.*
2. *This clause applies to land identified as 'Riparian Land' on the Riparian Lands Map.*
3. *In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider:*
 - a) *Whether the development is likely to have an adverse impact on the following:*
 - i. *The surface and groundwater characteristics of the land, including water quality, water flows and salinity.*
 - ii. *Native flora and fauna, including migratory species and the provision and quality of their habitats.*

- iii. *Impact on indigenous trees and other vegetation, including opportunities for additional planting.*
 - iv. *Public access to, and use of, any public waterway and its foreshores.*
 - b) *Any future rehabilitation or re-creation of the waterway and riparian areas.*
 - c) *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
 - d) *Whether or not the development is likely to increase water extraction from the watercourse.*
 - e) *Opportunity for the rehabilitation of existing piped or channelised waterways to a near natural state.*
- 4. *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
 - a) *Is consistent with the objectives of this clause.*
 - b) *Is designed, sited, and will be managed to avoid any potential adverse environmental impacts.*
 - c) *If a potential adverse environmental impact cannot be avoided – the development will be managed to mitigate that impact.*

The above proposed wording is consistent with Standard Instrument model clause provisions and other Council LEPS.

Hornsby Development Control Plan 2013

The HDCP applies to all land within the Shire and is a comprehensive framework for the development of land. The HDCP aims to outline procedures, responsibilities, and processes consistent with Council's vision of maintaining an environment which is sustainable and liveable. Future development applications would be considered in the context of the provisions of the HDCP.

The relevant parts of the HDCP applicable to the Planning Proposal are Part 1C.1.3 Watercourses, Part 3.1 Dwelling Houses and Part 8.1 River Settlement Land. Draft HDCP amendments have been prepared to support the Planning Proposal and are attached to this report. The DCP amendments seek to align prescriptive measures with the proposed 'Riparian Land' clause and mapping. There are also minor administrative amendments proposed due to the proposed application of the C4 Environmental Living zone within the Study Area. The draft DCP amendments would be exhibited concurrently with the Planning Proposal

4. Impacts of the Proposal

The impacts of the Planning Proposal are discussed below.

Change in permissible land uses

The rezoning of all R2 Low Density Residential land to C4 Environmental Living within the Study Area would change the land uses permissible on private land.

The Economic Implications Analysis notes that the majority of land uses permitted in an R2 zone and prohibited in a C4 zone are unlikely to be developed within the Study Area. Uses such as boarding houses, childcare centres and exhibition homes may be found within a residential neighbourhood

context. These uses are not currently observed within the Study Area and given the characteristics of the Area along with land size and other demand drivers, would be unlikely to proceed.

Non-residential land uses permitted in R2 zones, such as educational establishments, respite day care centres and veterinary hospitals, are not currently observed in the Study Area and would be unlikely to be developed due to associated land requirements, parking and traffic impacts.

Based on the findings of the Economic Analysis, the Planning Study concludes that the common 'highest and best use' between R2 Low Density Residential and C4 Environmental Living zoned land, being low density housing, would be similar. Accordingly, it is not anticipated that there would be a significant economic implication associated with the rezoning.

Exempt and complying development

The rezoning of R2 Low Density Residential land to C4 Environmental Living within the Study Area would prevent complying development under *State Environmental Planning Policy (Exempt and Complying Development) 2008* (Codes SEPP). The Codes SEPP only permits residential development as complying development on lots zoned R1, R2, R3, R4 and RU5.

Notwithstanding, the Planning Study identifies that opportunity to undertake complying development on residential properties within the Study Area is already limited for the following reasons:

- The Byles Creek corridor is predominantly mapped as Vegetation Category 1, the highest bushfire prone land category and corresponds to the highest bushfire risk. Complying development is not permitted on land subject to BAL 40 or BAL Flame Zone ratings.
- The Byles Creek Study Area is located within the Beecroft – Cheltenham HCA as identified in Schedule 5 of the HLEP. Most forms of complying development are not permitted on land in an HCA.

The permissibility of exempt development within the Study Area would not be impacted by the Planning Proposal.

Increased lot sizes

The increase to minimum subdivision lot size from 600m² to 40ha would effectively prevent future residential subdivision within the Study Area.

The Economic Implications Analysis identified a number of lots within the Study with the minimum size required for subdivision (greater than 1,200m²). Although these lots could theoretically be subdivided, there are several practical matters that would prevent a subdivision. These include accessways, irregular lot shapes and on-site physical constraints.

The Economic Analysis notes that five lots of the total 433 allotments within the Study Area that have subdivision potential. Consequently, it is considered that the economic impact of the minimum lot size increase is minimal when considering the Study Area as a whole.

Retaining the existing minimum subdivision lot size of 600m² is not conducive to meeting the objectives of the C4 Environmental Living zone to provide for low impact residential development. Should even a small proportion of the lots be able to subdivide, there would be significant tree removal to accommodate future dwellings, services and bushfire APZs, with impacts to the locality.

Riparian land local provision and mapping

The introduction of a riparian land additional local provision and accompanying mapping would enable a consistent approach to the protection, management and enhancement of the Study Area. The

riparian land mapping identifies buffers to each side of Byles Creek and its tributaries with the widths corresponding to the watercourse stream order, in accordance with the Strahler classification system.

Future DAs for development located partially or wholly within these buffers would need to demonstrate the proposal satisfies the objectives and heads of consideration of the riparian land local provision. In conjunction with existing prescriptive watercourse measures in the HDCP, the additional local provision enables a more rigorous assessment to ensure that development would have a low impact on the environmental values of the Study Area.

Given that the additional clause and mapping does not change or affect the zoning of land, or the permissibility of uses, and is only applicable to proposals that require a DA, its introduction would not have a significant impact on land values.

CONSULTATION

Preliminary Consultation

In the preparation of the Planning Study, community and stakeholder consultation was undertaken from 7 May to 30 May 2021. Consultation activities, as described in the Consultation Outcomes Report attached to the Planning Proposal, sought to obtain views and feedback on the key environmental, economic, social and aesthetic attributes of the Byles Creek corridor. It also sought to identify opportunities and barriers with existing planning controls, opportunities for changes to planning controls and other mechanisms to enhance protection and management.

Key themes identified during the consultation process include:

- The most valued characteristics of Byles Creek are the native canopy trees and vegetation, the native fauna which occur in the area, its function as a biodiversity corridor and its scenic amenity.
- Impacts of residential development on Byles Creek include the loss of canopy trees, the loss of native fauna and key habitats, loss of bushland character, increased stormwater runoff and erosion.
- Reducing development opportunities on residential lands would be an appropriate way to protect and enhance the environmental values of the corridor and residents request improved enforcement of planning controls and post development approval regulation.

These themes were considered in the development of the Planning Study recommendations.

Byles Creek Planning Study Public Exhibition

The draft Byles Creek Planning Study was exhibited for a period of 60 days from 1 September 2021 to 1 November 2021. Exhibition included advertisement on Council's website, advertisement in Council's eNewsletter and on Facebook, letter and emails to people who registered for updates, and letters to property owners within the Study Area and community groups.

168 submissions were received, generally supportive of the Study and recommendations. The key issues raised by submissions included financial impacts on property values, current planning controls, and the extent of the Study Area boundary.

On 11 May 2022, Council considered Director's Report No. PC7/22, presenting submissions received and resolved to adopted the Study recommendations, leading to the preparation of the Planning Proposal.

Local Planning Panel Advice

The Planning Proposal was referred to the Hornsby Local Planning Panel for advice on 26 October 2022, as prescribed by the *Local Planning Panels Direction – Planning Proposals*. The Direction requires the Local Planning Panel to provide advice on a Planning Proposal before Council considers whether to forward it Department of Planning and Environment (DPE) for a Gateway determination.

The Panel noted that the Planning Proposal seeks to give effect to some of the recommendations of the Council-endorsed Planning Study and considered that the proposal has strategic merit. The proposed HLEP amendments would serve to allay concerns from local residents regarding development that is unsympathetic to the local character and environmental constraints of the Study Area.

The Panel advised it supports the progression of the proposal for a Gateway determination.

Planning Proposal and Development Control Plan Consultation Strategy

Should the Planning Proposal receive a Gateway determination, the consultation would follow the requirements of the determination, the *Hornsby Shire Community Engagement Plan 2021* (CEP) and the Public Exhibition requirements of the Local Environmental Plan Making Guidelines 2022.

Consultation for the Planning Proposal and accompanying HDCP amendments would include:

- Advertisements in local publications identifying the purpose of the Planning Proposal and HDCP amendments providing a weblink to where the exhibition materials can be viewed – Hornsby Kuring-Gai Post.
- Advertisement on Council's 'Your Say Hornsby' website.
- Letters to affected owners within and in proximity to the Study Area.
- Displays at Council's Administration Building, 296 Pacific Highway, Hornsby and at the Hornsby and Pennant Hills libraries.
- Consultation with public authorities identified in the Gateway determination. A copy of the Planning Proposal and relevant supporting material will be provided.

BUDGET

Costs associated with the preparation of the Planning Proposal have been covered by the restricted asset funds from the sale of No.179 Beecroft Road, Cheltenham.

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 in accordance with Section 9.1(2)(b1) of the EP&A Act. The Panel advised it supports the progression of the proposal for a Gateway determination.

CONCLUSION

This report presents a Council-initiated Planning Proposal for the Byles Creek Study Area to give effect to the recommendations of the adopted Byles Creek Planning Study. The Planning Proposal seeks to:

1. Rezone land within the Study Area currently zoned R2 Low Density Residential to C4 Environmental Living.
2. Increase the minimum subdivision lot size for land proposed to be zoned C4 Environmental Living to 40ha.

3. Amend the objectives of Clause 4.1 'Minimum subdivision lot size' of the HLEP to protect and enhance existing bushland and significant native vegetation.
4. Insert a 'Riparian Land' clause under Part 6 'Additional local provisions' of the HLEP and provide supporting riparian corridor mapping.

This report also presents draft HDCP amendments to be exhibited concurrently with the Planning Proposal.

The proposal has strategic merit due to its consistency with the *Greater Sydney Region Plan, North District Plan, Section 9.1 Ministerial Directions*, the Hornsby LSPS, the Biodiversity Conservation Strategy and the Hornsby Urban Forest Strategy. Clear community benefit has been identified to justify the proposed changes to planning controls in relation to minimising the impact of residential development on the environmental, social and aesthetic qualities of the Byles Creek corridor.

Accordingly, it is recommended that Council support the progression of the Planning Proposal for submission to DPE for Gateway Determination.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Manager of Strategic Land Use 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.  Byles Creek Planning Proposal
2.  Proposed Amendments to the Hornsby Development Control Plan 2013

File Reference: PP/4/2022
Document Number: D08513172