



IRF23/119

## Gateway determination report – PP-2022-4306

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Byles Creek, Hornsby

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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 Documents supporting the proposal**

Relevant documents, reports and plans
Attachment E – Byles Creek Planning Study
Attachment F – Proposed Amendments to Hornsby DCP
Attachment G – Byles Creek Planning Study Economic Implications Analysis
Attachment H – Local Planning Panel Minutes
Attachment I – Council Report
Attachment J – Land Use and Environmental Constraints Assessment
Attachment K – Consultation Outcomes Report
Attachment L – Additional Information, Council response to DPE 17.01.23
Attachment M – Additional Information, Council response R2 to E4_C4 examples 14.02.23

# 1 Planning proposal

## 1.1 Overview

**Table 2 Planning proposal details**

<b>LGA</b>	<b>Hornsby</b>
<b>PPA</b>	Hornsby Shire Council (Council)
<b>NAME</b>	Byles Creek
<b>NUMBER</b>	PP-2022-4306
<b>LOCAL ENVIRONMENTAL PLAN (LEP) TO BE AMENDED</b>	Hornsby LEP 2013 (the LEP)
<b>ADDRESS AND DESCRIPTION</b>	<p>The planning proposal concerns the land that comprises the “Byles Creek Study Area” (the Study Area) (<b>Figure 1 below</b>). This land comprises 433 lots, including approximately 400 dwellings.</p> <p>The Byles Creek planning proposal is at <b>Attachment A</b>. The Gateway determination and letter to Council have been included at <b>Attachments B and C</b>. A full table identifying the lots in the Study Area, including Lot and DP numbers, is at <b>Attachment D</b>.</p> <p>The land is generally 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.</p>
<b>RECEIVED</b>	19/12/2022
<b>FILE NO.</b>	IRF23/61
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1.2 Objectives of planning proposal

Council has stated that the objectives of the planning proposal are as follows:

- To give Council greater regulatory control over future developments that may impact on the environmental values of the Byles Creek Study Area (the Study Area) (**Figure 1**).
- To limit subdivision potential of residential zoned land within the Study Area which may apply development pressure on the retention and protection of native vegetation within the Study Area.
- To provide support for Council’s assessment of future subdivision applications within the Study Area and throughout the Hornsby LGA (local government area) by introducing clear objectives

to promote regular subdivision patterns and to retain and protect natural and cultural features such as heritage items and vegetation.

- To facilitate the protection and maintenance of ecological habitat accommodated by the Byles Creek waterway and associated riparian corridor within the Study Area.

The Department notes Council's main objective with the planning proposal is to preserve the existing character and environmental qualities that exist within and close to the Byles Creek corridor. This objective is generally supported by the Department subject to appropriate evidence being provided to support the outcome. As discussed throughout this report, further information is required to:

- Justify the extent of the Study Area for the purposes of this planning proposal.
- Justify the necessity of all proposed amendments to the LEP for achieving the intended outcomes of the planning proposal.

## 1.3 Explanation of provisions

The planning proposal seeks to amend the Hornsby LEP 2013 per the changes below:

**Table 3 Current and proposed controls**

Control	Current	Proposed
Zone	R2 Low Density Residential	E4 (now 'C4' after the environment zones were renamed as conservation zones) Environmental Living
	RE1 Public Recreation	Unchanged
Minimum lot size	600 sqm or none identified.	40ha. Where no minimum lot size is identified this will be unchanged.

Control	Current	Proposed
Minimum lot size (Clause 4.1) objectives	<p>1. The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> <li>a) To provide for the subdivision of land at a density that is appropriate for the site constraints, development potential, and infrastructure capacity of the land.</li> <li>b) To ensure that lots are of a sufficient size to accommodate development.</li> </ul>	<p>1. To objectives of this clause are as follows:</p> <ul style="list-style-type: none"> <li>a) To provide for the subdivision of land at a density that is appropriate for the site constraints, development potential, and infrastructure capacity of the land.</li> <li>b) To ensure that lots are of a sufficient size to accommodate development consistent with relevant development controls.</li> <li>c) 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.</li> <li>d) 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.</li> </ul> <p>Note: These objectives will apply to all subdivision across the Hornsby LGA, not just the Study Area.</p>
Riparian land	None.	The riparian land local provision and associated mapping will apply to the Study Area ( <b>see Figure 8</b> ).
Number of dwellings	<p>433 allotments.</p> <p>Approximately 400 dwellings.</p>	None.

As discussed throughout this report, some concerns are raised with the justification provided for some of the proposed amendments to the LEP. Further information is required to demonstrate:

- the appropriateness of rezoning land from R2 Low Density Residential to C4 Environmental Living to achieve the intended outcomes.
- the appropriateness of increasing the minimum lot size.

This is discussed throughout this report and Gateway conditions are recommended.

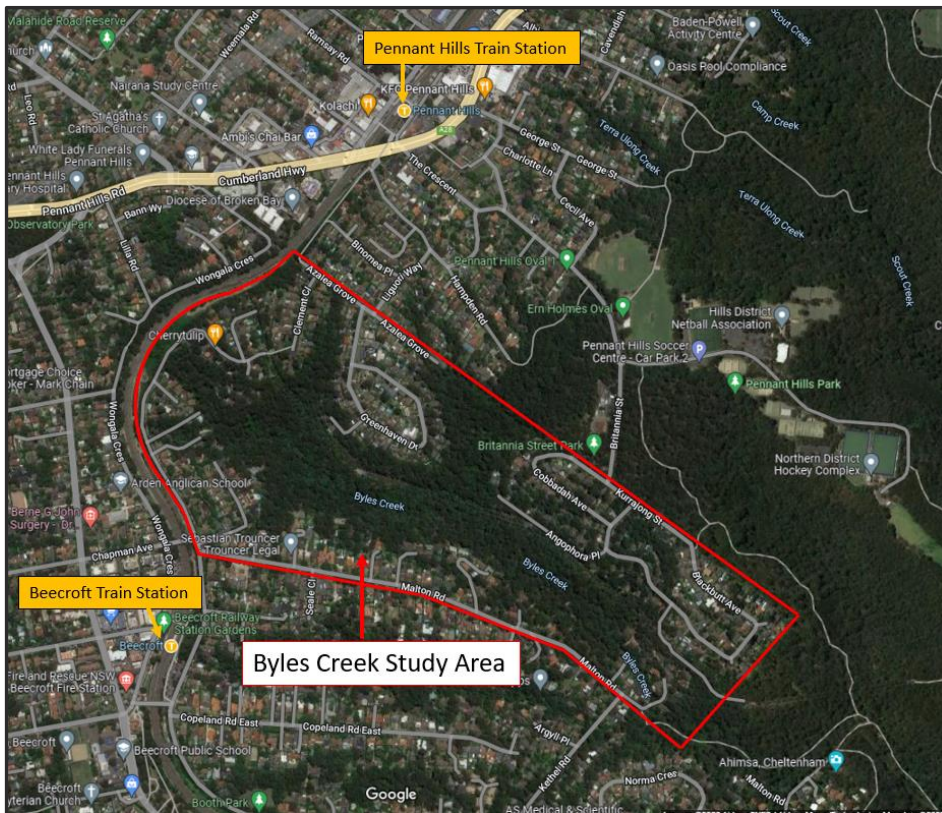
## 1.4 Site description and surrounding area

The Byles Creek Study Area (Study Area) is located between Beecroft Train station to the south (approximately 500m) and Pennant Hills train station to the north (approximately 1km) (**Figure 1 below**). The Study Area covers 657,924sqm and 433 allotments. These sites are zoned R2 Low Density Residential, RE1 Public Recreation or a combination of these two zones. There are approximately 400 residential dwellings in the Study Area; mostly one and two storey detached dwellings (**Figures 3-5**).

The Study Area 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. The Study Area appears to have been arbitrarily defined and mapped by the location of the roadways and train line.

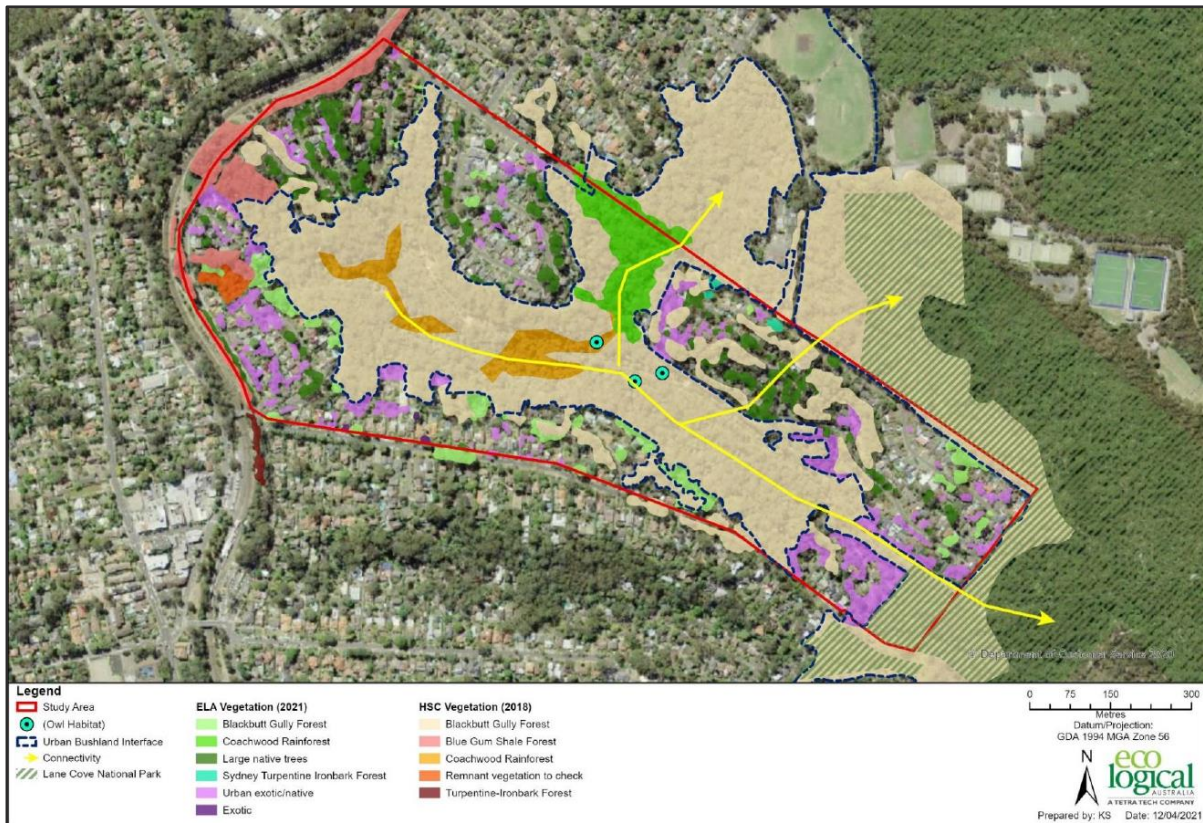
The Byles Creek Land Use and Environmental Constraints Assessment (**Attachment J**), identifies that the Study Area contains Blue Gum Shale Forest, Blackbutt Gully Forest and Coachwood Rainforest Land Use and Environmental Constraints Assessment. Most of this forest is located within the Byles Creek corridor itself (**Figure 1b**), which is zoned RE1 Public Recreation, and will be unaltered by the proposal.

The Land Use and Environmental Constraints Assessment states that vegetation within the Byles Creek corridor contains suitable habitat for 30 threatened flora species “*within 5km radius of the Study Area*” (**Attachment J**). The Byles Creek Planning Study (**Attachment E**) identifies that there are “*several records of threatened fauna species within or near the Study Area*”. The studies supporting the planning proposal do not specifically identify the presence of significant vegetation or fauna within the residential land near Byles Creek, the land which is proposed to be rezoned, but rather that there is a possibility that this land may contain these.



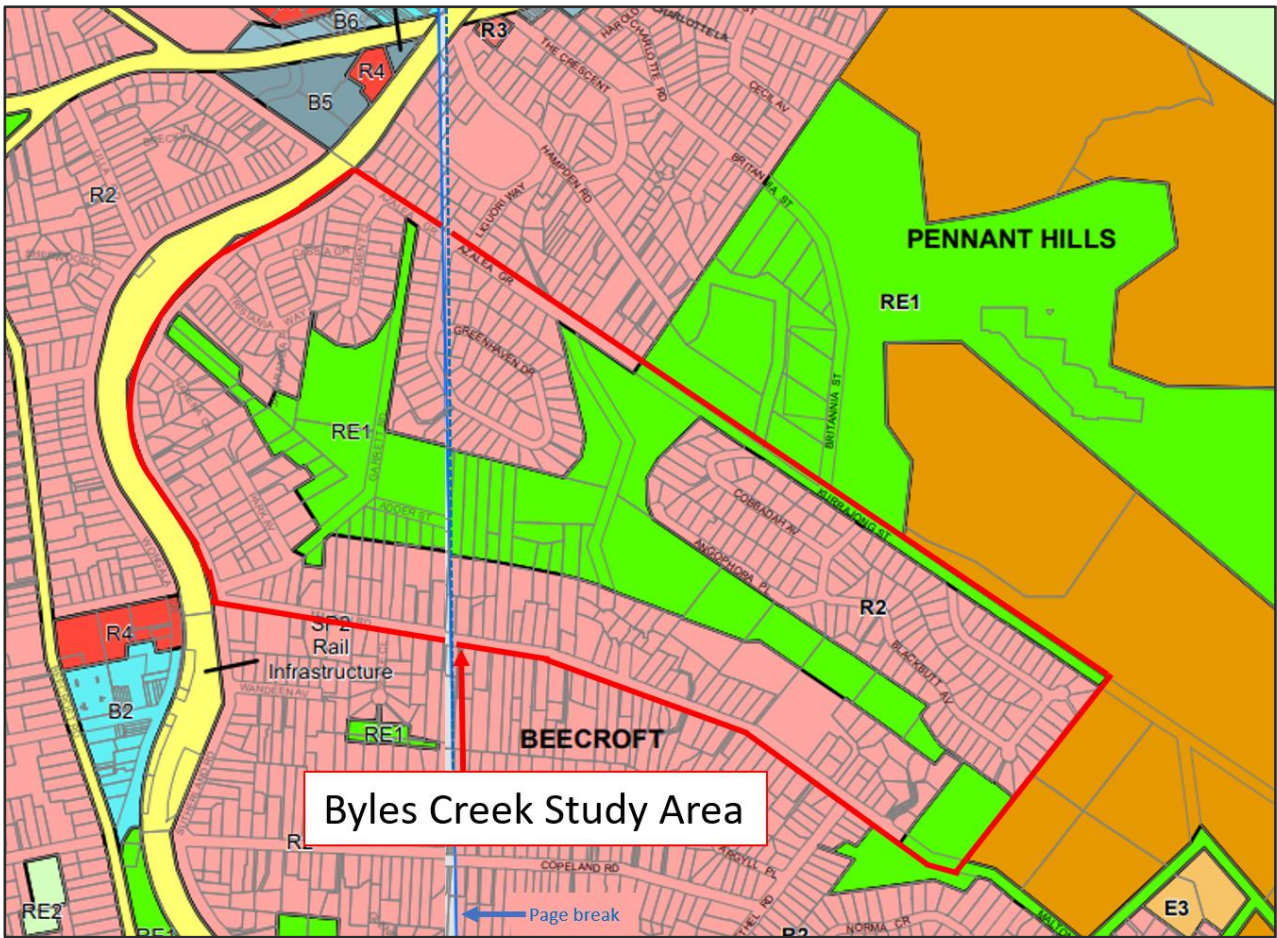
**Figure 1a. Site Context - The Byles Creek Study Area (Source: Google Maps, 2023)**





**Figure 1b. Vegetation Communities (Source: Land Use and Environmental Constraints Assessment, 2021)**





**Figure 2. Map of the Byles Creek Study Area, showing land zone (Source: Hornsby LEP; Land Zoning Map LZN\_010 and LZN\_018)**



**Figure 3. Dwellings context – 32 Azalea Grove looking south (Source: Google Maps, 2023)**





Figure 4. Dwellings context – 3 Blackbutt Ave looking south (Source: Google Maps, 2023)



Figure 5. Dwellings context – 47 Malton Road looking east (Source: Google Maps, 2023)

## 1.5 Mapping

The planning proposal includes mapping showing the proposed changes to the Hornsby LEP 2013 maps (**Attachment A**), which are suitable for community consultation.

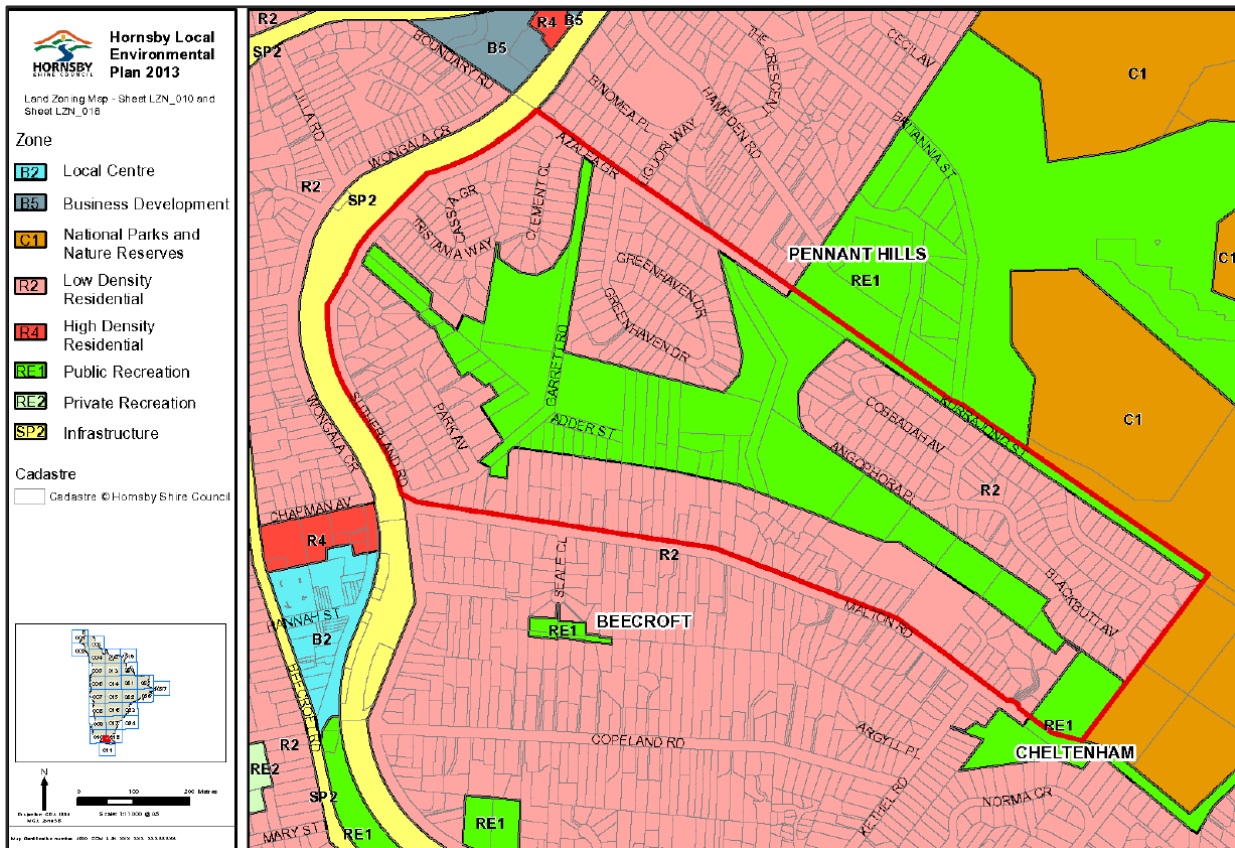


Figure 6a- Current zoning map

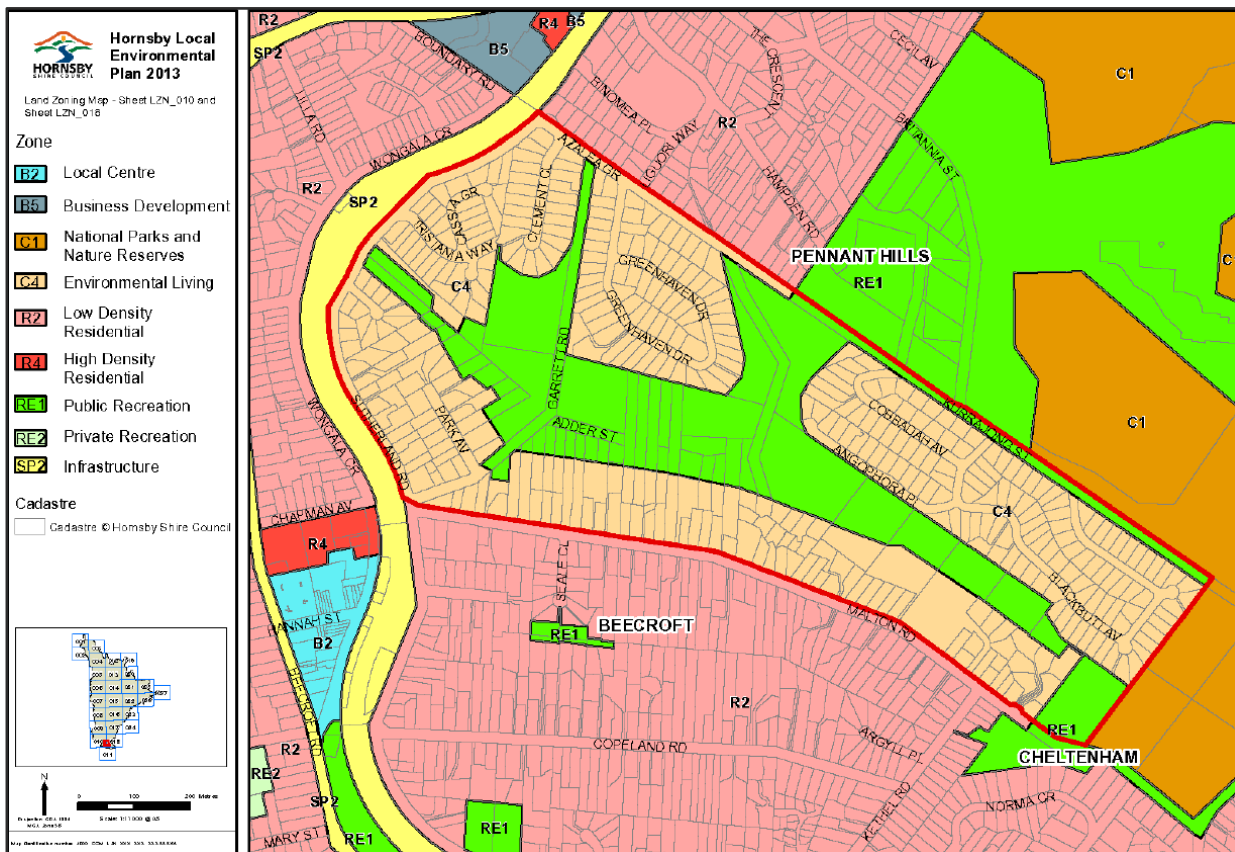


Figure 6b- Proposed zoning map



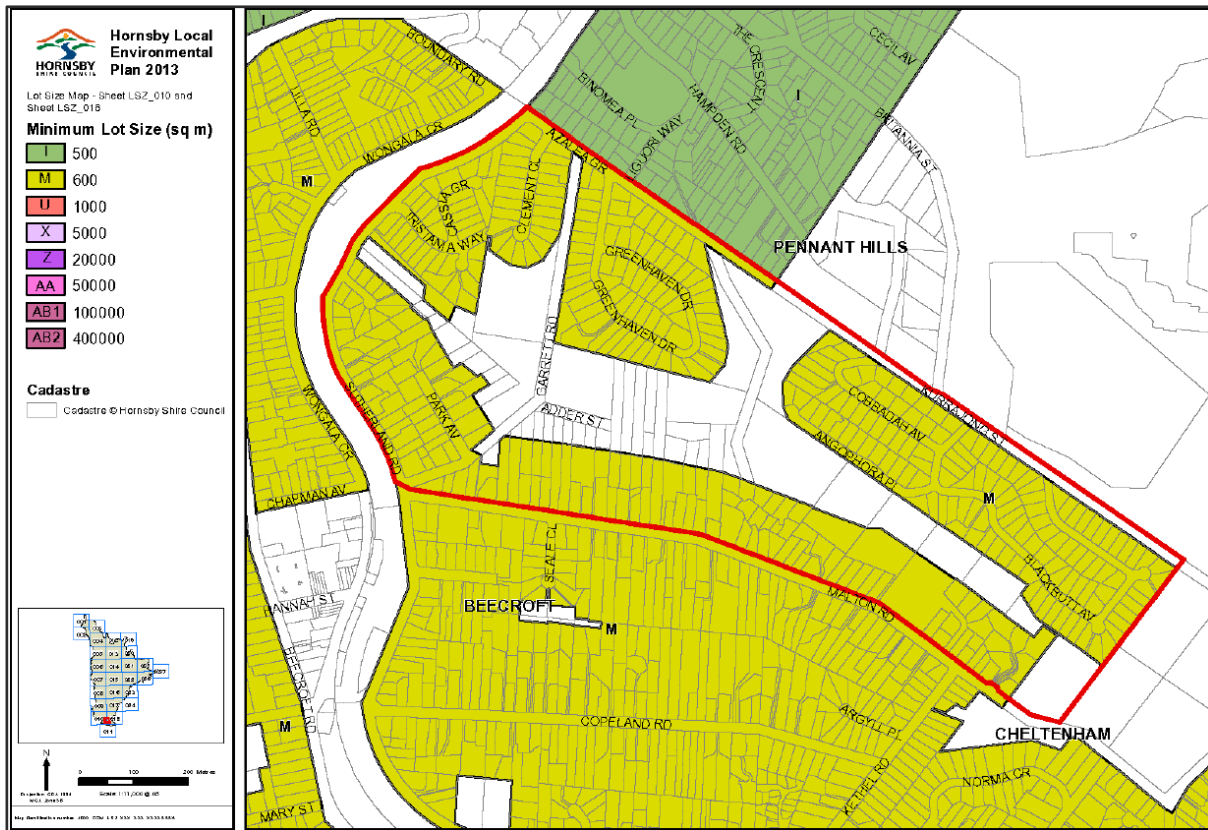


Figure 7a- Current minimum lot size map

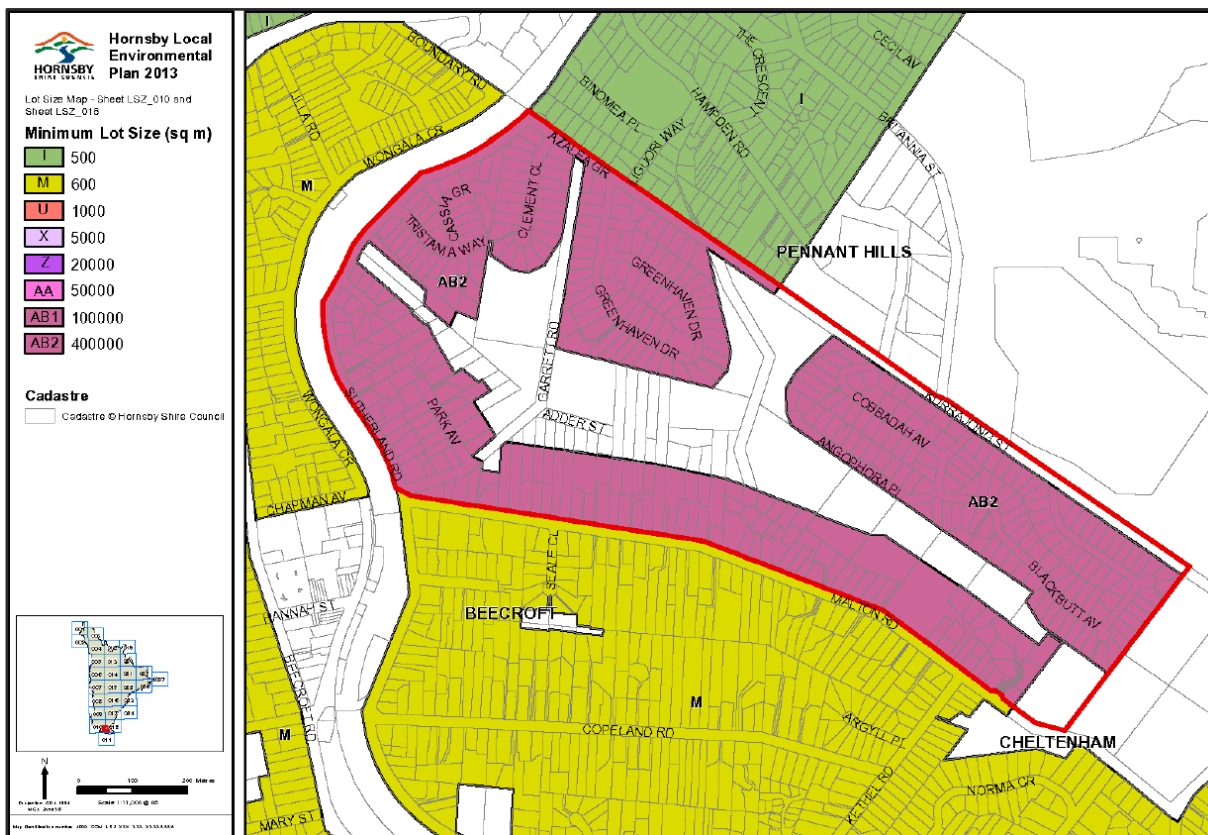


Figure 7b- Proposed minimum lot size map

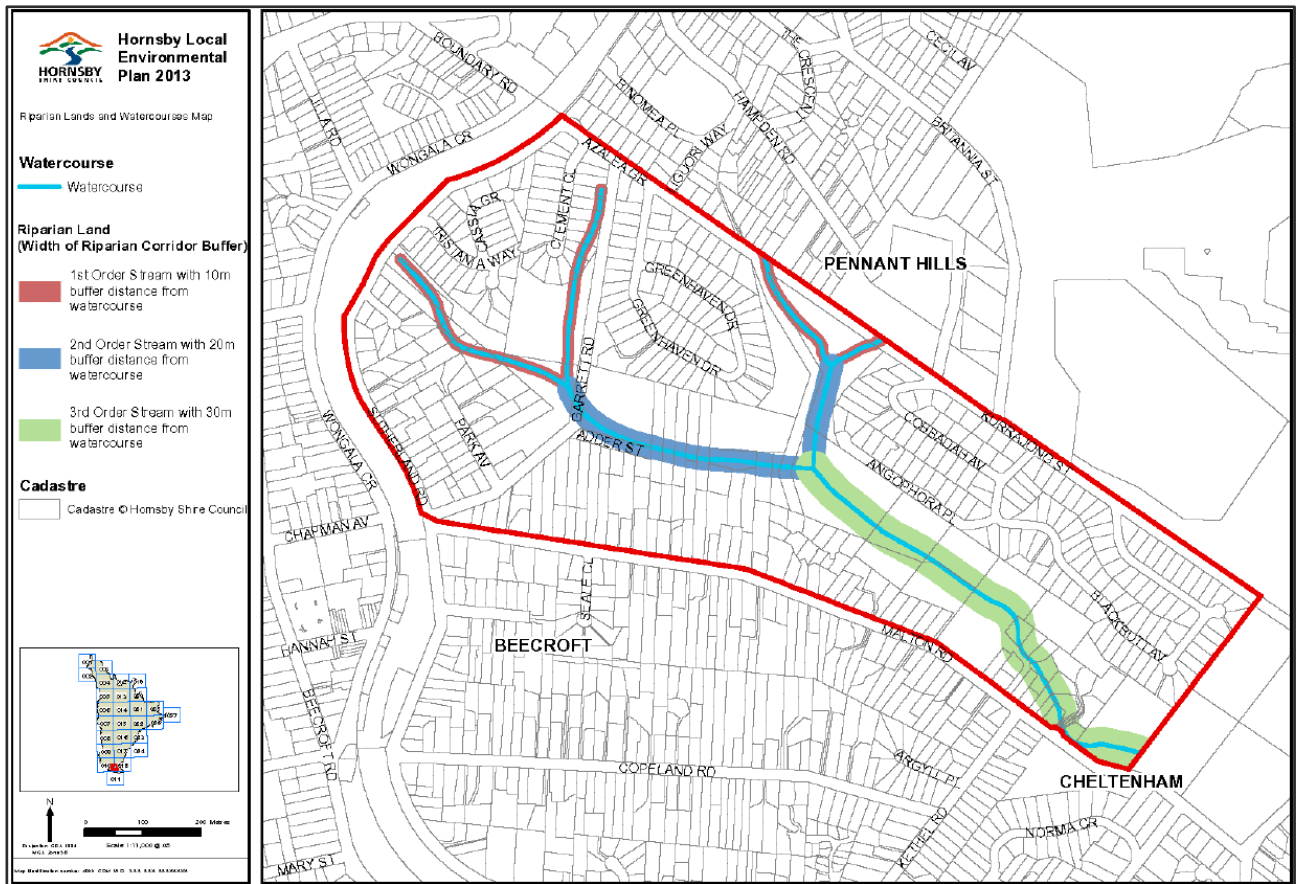


Figure 8- Proposed riparian lands and watercourses map

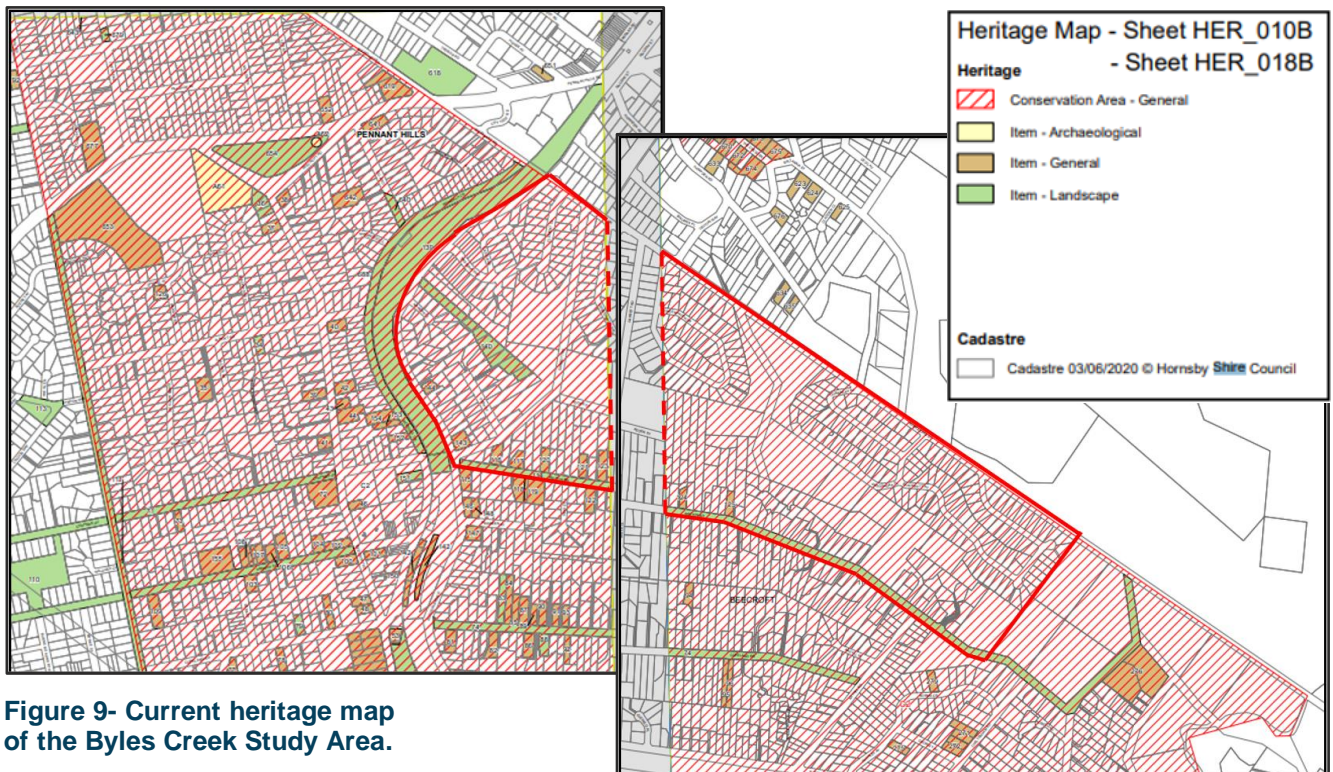


Figure 9- Current heritage map of the Byles Creek Study Area.

The Study Area is in the Beecroft-Cheltenham heritage conservation area. (Source: Hornsby LEP; Heritage Map, HER\_10B and HER\_18B)



## 1.6 Background

The planning proposal outlines that the Byles Creek corridor has been subject to a number of studies and reviews over previous years. This includes:

### Byles Creek Corridor Environmental Study 1995

In 1995 the Byles Creek Corridor Environmental Study investigated approximately 350 hectares of publicly and privately-owned land and recommended that the existing zones (in Hornsby LEP 1994) be retained. Land that was zoned *Open Space A* was recommended to remain *Open Space A*, and not be zoned *Environmental Protection B*. No additional land was recommended to be rezoned to *Open Space A*.

It was recommended that the Hornsby LEP 1994 be amended to designate areas identified as having Vegetation Conservation Significance as “Bushland Protection” and associated additional protections. It was also recommended that a program for acquisition of privately-owned land which is zoned *Open Space A* be established. On 1 November 1995, Council resolved to adopt the recommendations and the Byles Creek Corridor Environmental Study led to the preparation of the Byles Creek Development Control Plan which came into force in May 1998.

### Byles Creek Development Control Plan 1998

The Byles Creek Development Control Plan (DCP) was prepared in May 1998. This featured numerous site-specific development controls. These included environmental protections, requirements for flora and fauna assessment reports on land zoned, or adjoining land zoned, open space, and retention of natural watercourses. The provisions were generally incorporated into the current Hornsby DCP 2013 and applied more broadly across Hornsby.

### Open Space Review 2006

The 2006 Open Space Review evaluated all lands in Hornsby Shire in private ownership which were zoned *Open Space A*. The 2006 Open Space Review recommended the retention of the open space zoning for Byles Creek due to the high environmental, social, aesthetic and heritage values expressed by the community. It was acknowledged acquisition of privately-owned lots may be required.

### Hornsby Development Control Plan 2013

The Hornsby Development Control Plan 2013 came into effect in October 2013. This resulted in the site-specific provisions initially developed for Byles Creek being applied more broadly across the LGA.

### Byles Creek Land Acquisition Strategy Review 2020

In August 2020, the Byles Creek Land Acquisition Strategy Review assessed land acquisition within the Byles Creek catchment. The review concluded that the current extent of the RE1 zoning was appropriate, and no additional land was required to be acquired by Council to protect the biodiversity values and ecosystem functionality of the corridor. The current RE1 zoning was considered sufficient in terms of satisfying the objectives and terrestrial biodiversity provisions.

However, Council resolved to progress the *Byles Creek Planning Study 2021*, a review of the suitability of the planning controls for residential properties adjoining open space zoned land within the Byles Creek corridor with regard to protection and maintenance of the environmental values.

### Byles Creek Planning Study 2021

In December 2020, Council endorsed the preparation of the Byles Creek Planning Study (**Attachment E**) that supports this planning proposal. The Study found the Byles Creek corridor to

be environmentally significant due to the unique environmental, social, and aesthetic values of the area. The Study recommended:

1. Rezoning the land within the study area from R2 Low Density Residential to C4 Environmental Living.
2. Amending the minimum subdivision lot size for the land identified above from 600 sqm to 40 ha.
3. Amending the Clause 4.1 '*Minimum subdivision lot size*' objectives. The additional objectives ensure that consideration is given to bushfire constraints and the protection of natural features.
4. Inserting a new riparian corridor local provision into the Hornsby LEP. This would include riparian corridor mapping.
5. Increasing community awareness programs that target the study area.

The first four recommendations of the Study are the subject of this planning proposal. Council has noted that community engagement programs answering the fifth recommendation will be investigated by Council separately.

#### Vegetation Mapping Planning Proposal 2022

On 30 August 2022 the Department determined under Ministerial delegation that a planning proposal to include local and common vegetation in the Terrestrial Biodiversity Map and define the entirety of this land as *Environmentally Sensitive Land* should not proceed. On 21 December 2022 the Independent Planning Commission issued its advice for the Gateway review lodged by Council (GR-2022-26), which supported the Department's decision.

As a result of these processes, the Department is considering the development of a Planning Circular or Practice Note that clearly sets out a position on how councils should use Terrestrial Biodiversity and Environmentally Sensitive Land maps. This has not yet been completed.

The Department has committed to working with Council to investigate alternative ways to reduce tree loss in the Hornsby shire, including supporting a new planning proposal that updates existing significant vegetation to accurately identify federal, state, and regionally significant vegetation in the terrestrial biodiversity map. This planning proposal has not yet been submitted to the Department, and it is noted it would also assist the protection of the ecological values in the Byles Creek corridor.

## 2 Need for the planning proposal

***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 planning proposal intends to give effect to the recommendations provided in the Byles Creek Planning Study which was endorsed by Council on 11 May 2022. The Study has not been previously provided to the Department for endorsement, nor is Council seeking its endorsement now.

As the planning proposal is based on the recommendations of a Study not previously endorsed by the Department, consultation with relevant public agencies is required. The intended outcome of this consultation is to verify the robustness of the environmental investigations undertaken by Council and to confirm the appropriateness of the proposed amendments to the LEP.

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

The planning proposal states that the Study included two objectives to identify opportunities that would minimise the impact of residential development on the Byles Creek corridor and to provide



recommendations for improvements for Hornsby Shire's planning controls to protect the environmental, social, and aesthetic qualities of the corridor.

The Study concludes that the environmental sections of the Hornsby DCP are sufficiently robust with respect to achieving the integrity, functionality and preserving the environmental, ecological, and scenic values of the Byles Creek corridor and that any revised DCP controls are unlikely to support a significant improvement on the current issues arising from new development in the Byles Creek corridor.

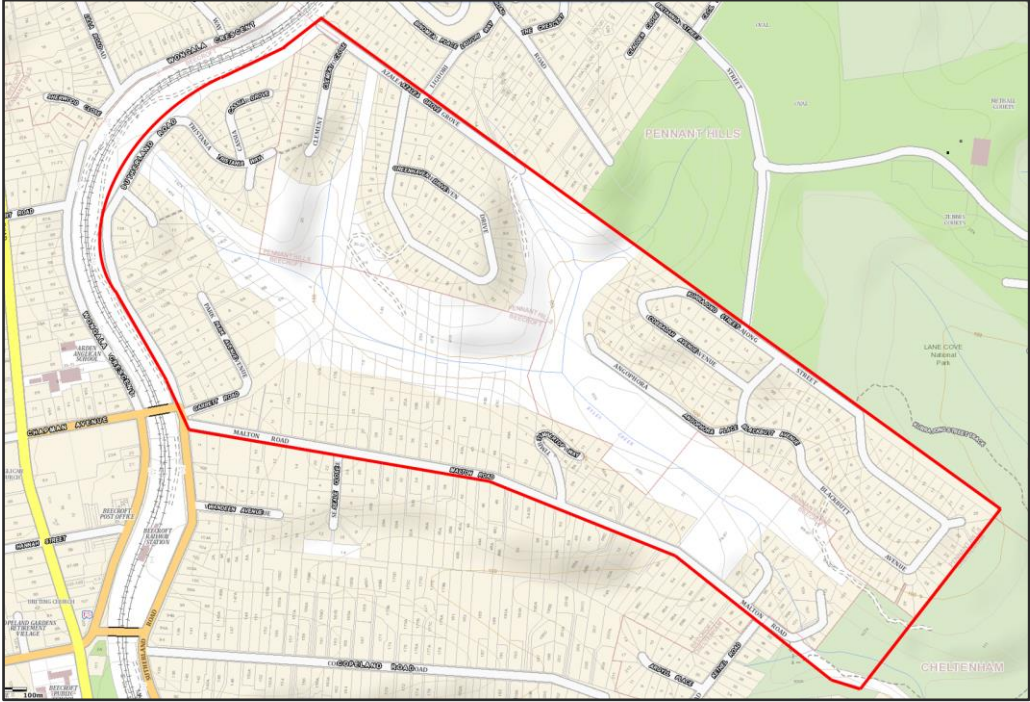
The recommendations of the Study focus on implementation of new land use zoning initiatives within the LEP as described in this planning proposal. The Study provides options for consideration and notes that in addition to changes to the local planning framework, there are several options through other mechanisms that will improve environmental outcomes within the Byles Creek corridor.

Comments on the proposed amendments to the LEP are summarised below which is expanded on further throughout this report.

**Table 4 Department comments on proposed amendments**

Proposed amendment	Department comment				
Rezoning of land	<p>The Department notes Council's intent in rezoning land is to have greater regulatory control over future development, and to generally limit further development around Byles Creek.</p> <p>The Byles Creek corridor is primarily zoned RE1 Public Recreation, and the surrounding land is low density residential with limited potential for further development. Council proposes to alter the zone within the Study Area from R2 Low Density Residential to C4 Environmental Living.</p> <p>The Department agrees the C4 zone objectives, set out below with the R2 zone objectives, could be appropriate for some of the land within the Study Area. However, this may not be the best planning approach to achieve additional environmental protection. The land around Byles Creek is characterised by low density residential uses, for which the R2 Low Density Residential zone has previously been deemed appropriate.</p> <p><b>Table 4a Zone objectives</b></p> <table> <tr> <th>Zone R2 Low Density Residential</th><th>Zone C4 Environmental Living</th></tr> <tr> <td> <ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a low-density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul> </td><td> <ul style="list-style-type: none"> <li>To provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.</li> <li>To ensure that residential development does not have an adverse effect on those values.</li> <li>To permit development that is compatible with the character, infrastructure capacity and access limitations of the area.</li> </ul> </td></tr> </table>	Zone R2 Low Density Residential	Zone C4 Environmental Living	<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a low-density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	<ul style="list-style-type: none"> <li>To provide for low-impact residential development in areas with special ecological, scientific, or aesthetic values.</li> <li>To ensure that residential development does not have an adverse effect on those values.</li> <li>To permit development that is compatible with the character, infrastructure capacity and access limitations of the area.</li> </ul>
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Proposed amendment	Department comment				
	<p><b>Table 4b Permitted with consent land uses</b></p> <table border="1"> <thead> <tr> <th data-bbox="347 412 847 461">Zone R2 Low Density Residential</th><th data-bbox="855 412 1355 461">Zone C4 Environmental Living</th></tr> </thead> <tbody> <tr> <td data-bbox="347 472 847 831">           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         </td><td data-bbox="855 472 1355 640">           Building identification signs; Business identification signs; Dwelling houses; Flood mitigation works; Group homes; Home-based childcare; Oyster aquaculture; Pond-based aquaculture; Roads; Tank-based aquaculture; Tourist and visitor accommodation; Water reticulation systems         </td></tr> </tbody> </table> <p>Land uses which are permitted in the R2 Low Density Residential zone but prohibited in the C4 Environmental Living zone (<b>see Table 4b above</b>) are unlikely to be developed in the Study Area as they are restricted by lot-size requirements for development, environmental constraints, and traffic impact considerations. In addition, the Byles Creek Planning Study Economic Implications Analysis (<b>Attachment I</b>) prepared in support of this proposal points out that these uses would not ordinarily attract more value to the land and are thus unlikely to be developed for this reason also.</p> <p>In addition to the above considerations, a number of properties included in the Study Area do not adjoin the waterway (<b>Figure 8</b>). Whilst properties in the Study Area are likely to drain to the Byles Creek catchment the protection of this land may be more effectively captured by the proposed riparian corridor buffer.</p> <p>It is unclear whether Council has considered alternative methods of achieving the objective to management development in the Study Area or whether a suitable outcome could be achieved without the rezoning of land. It is recommended that Council consider alternative approaches to rezoning because this may allow the same level of environmental consideration without removing the development options from land without a direct interface with Byles Creek.</p> <p>As noted above, the Study provides options, not direction, and notes that in addition to changes to the local planning framework, there are several options through other mechanisms that will improve environmental outcomes within the Byles Creek corridor. These include applying conditions of consent, negotiating Voluntary Planning Agreements, and applying enforcement and regulation to unauthorised development activities.</p> <p>Further information is required to demonstrate that a rezoning of land is necessary to achieve the outcomes of the planning proposal.</p>	Zone R2 Low Density Residential	Zone C4 Environmental Living	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	Building identification signs; Business identification signs; Dwelling houses; Flood mitigation works; Group homes; Home-based childcare; Oyster aquaculture; Pond-based aquaculture; Roads; Tank-based aquaculture; Tourist and visitor accommodation; Water reticulation systems
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Minimum lot size	<p>The current minimum lot size for the area is 600sqm with a prevailing lot pattern generally ranging from approximately 1000sqm to 3000sqm. The prevailing lot pattern is illustrated below at <b>Figure 10</b>. The lots in the Study Area are irregularly shaped and a large number are accessed by battle axe handles, making access a consideration of any further subdivision.</p>				

Proposed amendment	Department comment
	 <p><b>Figure 10- Study Area lot (Source: SIX Maps)</b></p> <p>Council proposes to increase the minimum lot size to 40ha. The Department acknowledges Council's concerns that any additional subdivision could result in tree removal to accommodate future dwellings, services, and bushfire APZs, but the Department considers that a 40ha minimum lot size is not consistent with the predominant pattern, size, and configuration of existing lots in the locality, which is one of Council's proposed Clause 4.1 objectives.</p> <p>The Department notes that the Byles Creek Planning Study states that there are only 5 lots within the Study Area which can be subdivided if the existing 600sqm minimum lot size remains unchanged. This is not likely to significantly impact the existing low-density residential character of the Study Area. The Department considers that any subdivision of these lots could be considered on a merit basis if the environmental considerations can be addressed.</p> <p>The proposal should be updated to:</p> <ul style="list-style-type: none"> <li>justify why the entire study area should have an increased minimum lot size,</li> <li>explain why a smaller lot size cannot be applied given the 40ha lots are not at all characteristic of the surrounding area</li> <li>propose an amended minimum lot size for only the 5 lots where subdivision is possible.</li> </ul> <p>Council should also provide data on previous successful subdivisions in the Study Area which have led to land clearing to support the greater lot size.</p>
Amend the Clause 4.1 Minimum subdivision	The Department supports the proposed changes to the objectives of clause 4.1 Minimum subdivision lot size, which will apply to all subdivision across the Hornsby LGA, not just the Study Area, as these will encourage future development applications to consider the

Proposed amendment	Department comment										
lot size objectives	<p>natural features of sites, the site constraints, demonstrate that sites are of sufficient size to protect vegetation and amenity, and are able to comply with development controls.</p> <p>The Department is satisfied that these additional objectives will result in land subdivisions maintaining a consistency with the surrounding lot pattern, size, and configuration across the LGA. In addition, the proposed objectives require applications to consider the effect of subdivision on any existing natural and cultural features.</p> <p>The proposed minimum lot size objectives have been reproduced below:</p> <p><b>Table 5 Current and proposed Clause 4.1 objectives</b></p> <table border="1"> <thead> <tr> <th>Existing Clause 4.1 objectives</th><th>Proposed Clause 4.1 objectives</th></tr> </thead> <tbody> <tr> <td>1. The objectives of this clause are as follows: a. To provide for the subdivision of land at a density that is appropriate for the site constraints, development potential, and infrastructure capacity of the land.</td><td>1. To objectives of this clause are as follows: a. To provide for the subdivision of land at a density that is appropriate for the site constraints, development potential, and infrastructure capacity of the land.</td></tr> <tr> <td>b. To ensure that lots are of a sufficient size to accommodate development.</td><td>b. To ensure that lots are of a sufficient size to accommodate development consistent with relevant development controls.</td></tr> <tr> <td></td><td>c. 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.</td></tr> <tr> <td></td><td>d. 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.</td></tr> </tbody> </table>	Existing Clause 4.1 objectives	Proposed Clause 4.1 objectives	1. The objectives of this clause are as follows: a. To provide for the subdivision of land at a density that is appropriate for the site constraints, development potential, and infrastructure capacity of the land.	1. To objectives of this clause are as follows: a. To provide for the subdivision of land at a density that is appropriate for the site constraints, development potential, and infrastructure capacity of the land.	b. To ensure that lots are of a sufficient size to accommodate development.	b. To ensure that lots are of a sufficient size to accommodate development consistent with relevant development controls.		c. 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.		d. 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.
Existing Clause 4.1 objectives	Proposed Clause 4.1 objectives										
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	c. 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.										
	d. 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.										
Introduce a riparian corridor local provision	<p>The Department supports the addition of Council's new riparian corridor local provision with the view that this provision will meet Council's objectives for this planning proposal by requiring consideration of environmental outcomes on private land. This provision will ensure development has consideration of the environmental impacts of any subdivision or development on the Byles Creek waterway.</p> <p>The Study notes that there are records of threatened flora and fauna species (the Powerful Owl, Gang-Gang Cockatoo, Red-crowned Toadlet, Little Bent-winged Bat and microbats) "<i>within or in close proximity to the study area.</i>" The Study does not make it clear whether these sightings were recorded within the Byles Creek corridor RE1 Public Recreation land (which is proposed to remain unchanged), within a "<i>5 km radius</i>", or within the study area land currently used for residential purposes.</p> <p>The Ecological constraints map (<b>Figure 11</b>) of the Study Area provided by the Land Use and Environmental Constraints Assessment (<b>Attachment J</b>) indicates that the presence of threatened flora and fauna is not uniform across the R2 zoned land in the Study Area.</p> <p>The Study also notes that where residential properties are near the water, the creek is fringed by predominantly exotic species. The Department considers that the addition of a riparian corridor local provision is preferable to altering the land zoning as this will form a</p>										



Proposed amendment	Department comment
	<p>targeted transition zone between the land and the waterway. As stated by The Study, the riparian corridor will:</p> <ul style="list-style-type: none"> <li>• protect water quality by trapping sediment, nutrients, and other contaminants</li> <li>• provide diversity of habitat for terrestrial, riparian, and aquatic plants and animals</li> <li>• provide connectivity between wildlife habitats</li> <li>• convey flooding and control the direction of flood flows</li> <li>• provide a buffer and interface between developments and Byles Creek.</li> </ul> <p>It is also noted that in June 2019 Council endorsed a review of the Byles Creek Catchment Land Acquisition Strategy which concluded that an extension of the Byles Creek RE1 Public Recreation zone over private properties adjoining the Byles Creek waterway would not be necessary to maintain and preserve the ecological values of the corridor. The introduction of a riparian clause would allow Council greater regulatory control over developments that may impact the environmental and ecological values of the land, without altering the land zone.</p> <div data-bbox="347 855 1401 1594"> <p><b>Constraints</b></p> <p><b>Legend</b></p> <p>Study Area</p> <p>Constraints</p> <p>High</p> <p>Medium</p> <p>Low</p> <p>0 75 150 300 metres</p> <p>Datum/Projection: GDA 1994 MGA Zone 56</p> <p>eco logical AUSTRALIA</p> <p>Prepared by: KS Date: 30/04/2021</p> </div>

**Figure 11- Ecological constraints within the study area, illustrating that these are not uniform across land currently zoned R2 Low Density Residential. (Source: Land Use and Environmental Constraints Assessment, Attachment J, Eco Logical Australia, 2021)**

## 3 Strategic assessment

### 3.1 Regional Plan

The following table provides an assessment of the planning proposal against relevant aspects of the Greater Sydney Regional Plan.

**Table 6 Regional Plan assessment**

Regional Plan Directions for Greater Sydney	Department Assessment
<p><b>4. Housing the city</b></p> <p><i>Objective 10. Greater housing supply</i></p> <p><i>Objective 11. Housing is more diverse and affordable</i></p>	<p>The planning proposal reduces the development potential of the land in the Study Area, which is inconsistent with this objective.</p> <p>The planning proposal states there are 5 lots within the Study Area which can be subdivided if the minimum lot size remains unchanged. Council should amend the proposal to address whether a subdivision application from any of these 5 lots could be supported, given the constraints of the land. The Department considers that any subdivision of these lots should be considered on merit if the environmental considerations can be addressed.</p> <p>The proposal should be updated to justify why the entire study area should have an increased minimum lot size, why 40 ha is appropriate or alternatively, to propose an amended minimum lot size for only the 5 lots where subdivision is possible.</p>
<p><b>1. A city of great places</b></p> <p><i>Objective 13. Environmental heritage is conserved and enhanced</i></p>	<p>The proposal recognises the local characteristics of the Byles Creek corridor and seeks to protect those characteristics through amendments to Clause 4.1 Minimum subdivision lot size and an additional riparian land local provision. The Department generally supports Council's intention to preserve the existing character and environmental qualities of the Byles Creek corridor.</p>
<p><b>8. A city in its landscape</b></p> <p><i>Objective 25. The coast and waterways are protected and healthier</i></p> <p><i>Objective 27. Biodiversity is protected, urban bushland and remnant vegetation is enhanced</i></p> <p><i>Objective 28. Scenic and cultural landscapes are protected</i></p>	<p>The proposal aims to protect and enhance the existing character of the Byles Creek corridor and the Study Area and is consistent with these objectives.</p>

## 3.2 District Plan

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

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

**Table 7 District Plan assessment**

North District Plan Priorities	Department Assessment
<b>N3:</b> Providing services and social infrastructure to meet people's changing needs	<p>While the Department supports Council's intent to protect the Byles Creek corridor, Council has not considered alternative methods of achieving the objective to manage development in the Study Area or whether suitable outcome can be achieved without the rezoning of land. The proposed rezoning reduces the development potential of the land. This is inconsistent with Liveability Planning Priority N3, which recognises that as people and communities age, their needs alter. Reducing development capability reduces the ability of this land to meet people's changing needs.</p> <p>Some properties facing Malton Road do not appear to have any interface with the Byles Creek corridor and it is unclear why these properties are included for rezoning.</p>
<b>N5:</b> Providing housing supply, choice, and affordability, with access to jobs, services and public transport	<p>Liveability Planning Priority N5, "Providing housing supply, choice and affordability with access to jobs, services and public transport", focuses on the importance of increasing housing availability and making housing more diverse and affordable.</p> <p>While the Department supports the proposal's intention to protect the Byles Creek corridor, Council has not considered alternative methods of achieving the objective or whether a suitable outcome can be achieved without the rezoning of land.</p> <p>The proposed riparian land clause will meet Council's objective for this planning proposal by requiring consideration of environmental outcomes on private land. This provision will ensure development has consideration of the environmental impacts of any subdivision or development on the Byles Creek waterway.</p> <p>A preliminary audit of the Study Area by the Study supporting the proposal found that 5 lots had subdivision potential. The proposed amendments to the minimum lot size would effectively prohibit subdivision throughout the entire study area for the sake of these 5 lots. Council should amend the proposal to confirm the number of lots in the Study Area with subdivision potential and justify why the entire study area should have an increased minimum lot size. It is recommended that the proposal be updated prior to exhibition.</p>

<b>N15:</b> Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways	The planning proposal seeks to amend Hornsby LEP by introducing a riparian corridor map and associated local provision to ensure adequate consideration has been given to the impacts of future development on the water quality, flora and fauna, and environmental qualities that exist within the Byles Creek corridor.
<b>N16:</b> Protecting and enhancing bushland and biodiversity	The planning proposal aims to allow low impact residential development to continue in the Byles Creek corridor area in a way that focuses on the impact development may have on ecological values.
<b>N17:</b> Protecting and enhancing scenic and cultural landscapes	The planning proposal recognises the unique scenic qualities within and around the Byles Creek waterway and aims to preserve those qualities.

### 3.3 Local plans and endorsed strategies

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 the table below:

**Table 8 Local strategic planning assessment**

Local Strategies	Department Assessment
Local Strategic Planning Statement	The Hornsby Local Strategic Planning Statement 2020 (LSPS) sets out a 20-year vision for land use in Hornsby. The proposal is consistent with the LSPS as it intends to preserve the existing biodiversity values within the Study Area through better management of residential development. Council has identified that the proposal is consistent as it will also protect and improve the health of the Byles Creek catchment and waterway. The Department is generally satisfied the proposal is in keeping with the Hornsby LSPS but has concerns regarding the mechanism for implementing updates to the Hornsby LEP, as discussed throughout this proposal.



Hornsby Housing Strategy 2020	<p>Council provided further information on 17 January 2023 containing an assessment of the proposal against the objectives of the Hornsby Housing Strategy. Council states the proposal aims to minimise the environmental impact of residential development in the Study Area and maintain its existing character. Council identifies that this is consistent with the following objectives of the Hornsby Housing Strategy:</p> <ol style="list-style-type: none"> <li>1. Objective 2 – Ensure new housing development minimises environment impact and promotes ecologically sustainable development; and</li> <li>2. Objective 3 – Protect sensitive areas from development and ensure new housing does not detract or erode an area's local character.</li> </ol> <p>The aim of the planning proposal to respond to these objectives is supported. However, it is noted that the Housing Strategy also prioritises the delivery of future housing supply in locations that are close to transport and local services and that the Byles Creek Study Area is located approximately 500m from Beecroft Train station, and approximately 1km from Pennant Hills train station.</p> <p>There is currently a lack of information to demonstrate the planning proposal in its current form is the most appropriate method to respond to these objectives. The proposal should be updated to address the impact on the delivery of housing in Hornsby and clarify consistency with the Hornsby Housing Strategy 2020. Gateway conditions are recommended to address this.</p>
Hornsby Biodiversity Conservation Strategy (HBSC)	<p>Hornsby Biodiversity Conservation Strategy aims to protect and conserve ecological values within Hornsby. The proposal is consistent with the aims of this strategy as it proposes amendments to Hornsby LEP that will provide further protection and consideration of the environmental qualities that exist within the Study Area.</p> <p>However, Council has not considered alternative methods of achieving their objective or whether a suitable outcome can be achieved without the rezoning of land.</p>
Hornsby Community Strategic Plan	<p>Council's Community Strategic Plan (CSP) details goals around the protection of waterways and natural environments that are connected and valued. The proposal aims to protect and conserve the ecological values within the Study Area.</p> <p>The Department supports the intention to protect the environmental and ecological values of the Byles Creek corridor, however some components of the proposal require further consideration, and amendments should be made to the proposal before public exhibition.</p>

Hornsby Council Development Control Plan (Hornsby DCP)	<p>The Study undertook an analysis of the existing local planning framework including the Hornsby DCP. The Study concludes that the environmental sections of the Hornsby DCP are sufficiently robust with respect to preserving the environmental, ecological, and scenic values of the Byles Creek corridor. The Study also suggested that changes to provisions should be focused on Hornsby LEP to improve the environmental considerations.</p> <p>Proposed amendments to the Hornsby DCP (<b>Attachment F</b>) provide provisions for watercourses and will be exhibited with the planning proposal. The amendments comprise measures to promote the protection of the environment, specifically that watercourses such as creeks and rivers are retained, enhanced, and rehabilitated. The intent of this amendment is to ensure the DCP is consistent with Hornsby LEP.</p> <p>The proposal notes that additional amendments to existing DCP controls relating to environmental protection will be progressed separately to this planning proposal.</p>
Hornsby Urban Forest Strategy	<p>The Hornsby Urban Forest Strategy aims to maintain and improve Hornsby Shire's bushland character and protect, secure, and create habitat.</p> <p>The Department supports the intention to protect the environmental and ecological values of the Byles Creek corridor, however some components of the proposal are not supported for the reasons previously outlined, and amendments should be made to the proposal before public exhibition.</p>

### 3.4 Local Planning Panel recommendation

The Local Planning Panel (the Panel) as briefed on the proposal 26 October 2022, and comments are attached at **Attachment H**.

The Panel generally supported the proposal and noted that an amendment to Hornsby LEP is an appropriate mechanism to implement some of the recommendations of the Study.

The Panel's other comments are summarised below:

1. The proposed rezoning from R2 to C4 and associated minimum lot size amendments would ensure development is sympathetic to local character and the environmental constraints of the land.
2. Despite the above, the Panel questioned the necessity for the minimum subdivision lot size to be increased to 40ha considering the residential nature of the area (more closely aligned to the existing 600sqm lot sizes).
3. The Panel noted that residents have sufficient time to prepare and lodge a subdivision application to be assessed by Council under the current planning controls.
4. The proposed additional minimum subdivision lot size objectives clarify Council's expectations regarding subdivision and would facilitate the assessment of subdivision applications where a contravention of the principal development standard is proposed.

#### Department comment:

The Department notes the comments from the Panel and also that Council has not considered whether a suitable outcome can be achieved without the rezoning of land. As discussed previously, the Department considers that alternative methods of preserving biodiversity within the Study Area should be considered. This is because an alternative approach may allow the same level of environmental consideration in a more targeted way, without removing the possibility of development from land without a direct interface with Byles Creek.

The Department agrees with the Panel's assessment of the proposed increased minimum lot size and recommends that Council either justify or reconsider the increase to 40ha.

### 3.5 Section 9.1 Ministerial Directions


The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

**Table 9 9.1 Ministerial Direction assessment**

Directions	Consistent / Not Applicable	Department Assessment – Reasons for Consistency or Inconsistency
Direction 1.1 – Implementation of Regional Plans	Yes	<p>The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions, and actions contained in Regional Plans.</p> <p>The proposal is generally consistent with this direction with the exception of the Liveability priority under the North District Plan, specifically planning priority N3 and planning priority N5, as it reduces the development potential of the land thereby reducing options for residents to use their property.</p> <p>The Department considers that alternative methods of preserving the existing biodiversity values within the Study Area, without the rezoning of land, should be considered as:</p> <ol style="list-style-type: none"> <li>1. Council is seeking additional environmental protections via an additional riparian corridor local provision.</li> <li>2. The riparian corridor local provision gives Council additional environmental protections, in a more targeted way than rezoning.</li> <li>3. The land around Byles Creek is, and will continue to be, used for low density residential uses, for which R2 is appropriate.</li> <li>4. The study area is already excluded from the complying development pathway due to its location in a Heritage Conservation Area and it being identified as bush fire prone land (BAL-40 - BAL-FZ).</li> <li>5. The land uses which are prohibited by a C4 Environmental Living zone are unlikely to be developed within the Study Area regardless, as these uses are restricted by the land size requirements for development, environmental considerations and hazards, and traffic impact considerations.</li> </ol>

Directions	Consistent / Not Applicable	Department Assessment – Reasons for Consistency or Inconsistency
Direction 3.1 – Conservation Zone	Yes	<p>This direction requires planning proposals to include provisions that facilitate protection and conservation of environmentally sensitive areas.</p> <p>Council has stated that the Study Area includes a range of flora and fauna that makes the land suitable for a conservation zone and conservation measures. The proposal is consistent with this direction in its consideration of measures which may be employed to enhance environmental protection.</p> <p>The Study (Elton Consulting, 2021) justifies its recommendation for a C4 Environmental Living conservation zone saying that the majority of lots within the Study Area have an interface with the Byles Creek core corridor, have high to medium environmental and ecological values, and constraints such as steep topography and bushfire affectation. The Study also states that the study area was defined based on the location of roadways:</p> <p><i>The Study Area is readily defined where it is bounded by Malton Road, Sutherland Road, Azalea Grove, Kurrajong Street, and Lane Cove National Park.</i></p> <p>The Study Area has been arbitrarily defined for ease of mapping and includes many land parcels which are separated from the RE1 land by roads. The Byles Creek core corridor is currently zoned RE1 Public Recreation, and this zone will not be altered.</p> <p>Council has not considered alternative methods of preserving the existing biodiversity values within the Study Area, or whether a suitable outcome can be achieved without the rezoning of land. Council is also seeking additional environmental protections via an additional riparian corridor local provision which may provide more targeted protection than the proposed land rezoning.</p>
Direction 3.2 – Heritage Conservation	Yes	<p>The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The Study Area is located within the Beecroft-Cheltenham heritage conservation area (<b>Figure 9</b>). The Planning Proposal does not propose to amend any heritage related LEP provisions.</p>

Directions	Consistent / Not Applicable	Department Assessment – Reasons for Consistency or Inconsistency
3.7 Public Bushland	Yes	<p>The objective of this direction is to protect bushland in urban areas, including rehabilitated areas, and ensure the ecological viability of the bushland, by:</p> <ul style="list-style-type: none"> <li>a) preserving: <ul style="list-style-type: none"> <li>i. biodiversity and habitat corridors,</li> <li>ii. links between public bushland and other nearby bushland,</li> <li>iii. bushland as a natural stabiliser of the soil surface,</li> <li>iv. existing hydrological landforms, processes, and functions, including natural drainage lines, watercourses, wetlands, and foreshores,</li> <li>v. the recreational, educational, scientific, aesthetic, environmental, ecological, and cultural values, and potential of the land, and</li> </ul> </li> <li>b) mitigating disturbance caused by development,</li> <li>c) giving priority to retaining public bushland.</li> </ul> <p>The proposal is consistent with this direction as it will not negatively impact the public bushland identified in the RE1 Public Recreation zone.</p>
4.1 Flooding	Yes	<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> <li>a) ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and</li> <li>b) ensure that the provisions of an LEP that apply to flood prone land are commensurate with flood behaviour and includes consideration of the potential flood impacts both on and off the subject land.</li> </ul> <p>The proposal is consistent with this direction as it will not increase development in an area that is adjacent to the Byles Creek watercourse. The proposal does not identify flooding hazard as a concern for this land.</p>

Directions	Consistent / Not Applicable	Department Assessment – Reasons for Consistency or Inconsistency
Direction 4.3 – Planning for Bushfire Protection	Yes	<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> <li>a) protect life, property, and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and</li> <li>b) encourage sound management of bush fire prone areas.</li> </ul> <p>The Study Area is identified as bush fire prone land (<b>Figure 13</b>) and is partly mapped as Vegetation Category 1 throughout the existing Byles Creek corridor, with the majority of the residential zoned land identified as vegetation buffer. The NSW Rural Fire Service (RFS) require new development on residential allotments within 100 metres of Vegetation Category 1 to comply with high bush fire attack level (BAL) ratings (BAL-40 - BAL-FZ).</p> <p>The proposal is consistent with this direction as it does not propose new development in the Study Area and increase the bushfire risk. It is recommended that Council liaise with the NSW Rural Fire Service as part of the exhibition period. This is a condition on the Gateway determination.</p>  <p><b>Figure 13: Bushfire prone land map (source: Byles Creek Planning Study)</b></p>

Directions	Consistent / Not Applicable	Department Assessment – Reasons for Consistency or Inconsistency
Direction 6.1 Residential Zones	No	<p>The objectives of this direction are to:</p> <ul style="list-style-type: none"> <li>a) encourage a variety and choice of housing types to provide for existing and future housing needs,</li> <li>b) make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and</li> <li>c) minimise the impact of residential development on the environment and resource lands.</li> </ul> <p>By increasing the minimum lot size to 40ha the planning proposal removes the opportunity for subdivision and provision of further housing on this land being inconsistent with objective a) and b) above.</p> <p>The Study notes that a preliminary audit undertaken to inform the study indicated that only a small proportion of lots within the Study Area have subdivision potential, specifically 5 lots. This is despite the minimum lot size being 600sqm and the average lot size being between 1,000 and 3,000 sqm. Further information should be provided regarding lot sizes in the Study Area and the conclusion that only 5 lots can potentially be subdivided.</p> <p>The residential zoned land in the Study Area is not able to develop using the pathway under <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> (the Codes SEPP), as this land falls within a heritage conservation area. However, the planning proposal may set a precedent for the rezoning of other R2 zoned land near a riparian corridor, that would then exclude Codes SEPP development, further reducing housing choice and efficient use of infrastructure and services. This should be addressed in the planning proposal.</p>



### 3.6 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

**Table 10 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Department Assessment – Reasons for Consistency or Inconsistency
State Environmental Planning Policy (Biodiversity and Conservation) 2021	<b>Chapter 2 Vegetation in non-rural areas</b>  Clause 2.1 Aims of Chapter  (a) To protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and  (b) To preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.	Yes	The proposal is consistent with this chapter as it aims to preserve existing trees and minimise the impacts of development on the ecological values of the Byles Creek waterway.
Housing 2021	Objective 2: Ensure new housing development minimises environment impact and promotes ecologically sustainable development	Yes	The planning proposal is consistent with this SEPP as it would increase environmental protections in the Study Area.



SEPPs	Requirement	Consistent/ Not Applicable	Department Assessment – Reasons for Consistency or Inconsistency
	Objective 3: Protect sensitive areas from development, and ensure new housing does not detract or erode an area's local character	Yes	<p>The proposal is consistent with this objective as it aims to protect sensitive areas from development through a local clause and strengthening the minimum lot size objectives.</p> <p>The Department considers the existing character as low density residential within a bushland setting. As such, the Department considers the existing R2 low density residential zone and minimum lot size are in keeping with this existing character. The proposed additional local provision will facilitate the protection and maintenance of ecological habitat in the Byles Creek waterway and associated riparian corridor.</p> <p>Further justification for the proposed minimum lot size amendment is required, as stated previously.</p>
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	<p>Part 3 Housing Code</p> <p>Clause 3.1 Development that is complying development under this code</p> <p>(1) The following development is complying development under this code—</p> <p>(a) the erection of a new 1 or 2 storey dwelling house and any attached development,</p> <p>(b) the alteration of, or an addition to, a 1 or 2 storey dwelling house (including any addition that results in a 2 storey dwelling house) and any attached development,</p> <p>(c) the erection of detached development and the alteration of, or</p>	Partially inconsistent.	<p>The residential zoned land in the Study Area is restricted from using the pathway under <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> (the Codes SEPP), as this land falls within the Beecroft-Cheltenham heritage conservation area.</p> <p>In addition to this, the Study has identified that the Study Area is bush fire prone land, with the majority of the residential land classified as vegetation buffer.</p> <p>Complying development, except for landscaping, fences, garden sheds, and swimming pools, may not be carried out on land in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ).</p> <p>Whilst the planning proposal does not alter development potential under the Codes SEPP due to the land being in a heritage conservation area, it may set a precedent for the consideration of similar zones across the LGA or state near riparian land. Should council intend to apply a similar approach elsewhere, it</p>

SEPPs	Requirement	Consistent/ Not Applicable	Department Assessment – Reasons for Consistency or Inconsistency
	an addition to, any detached development.		should be done in a comprehensive manner and not site by site so the potential impact on Code development can be assessed.

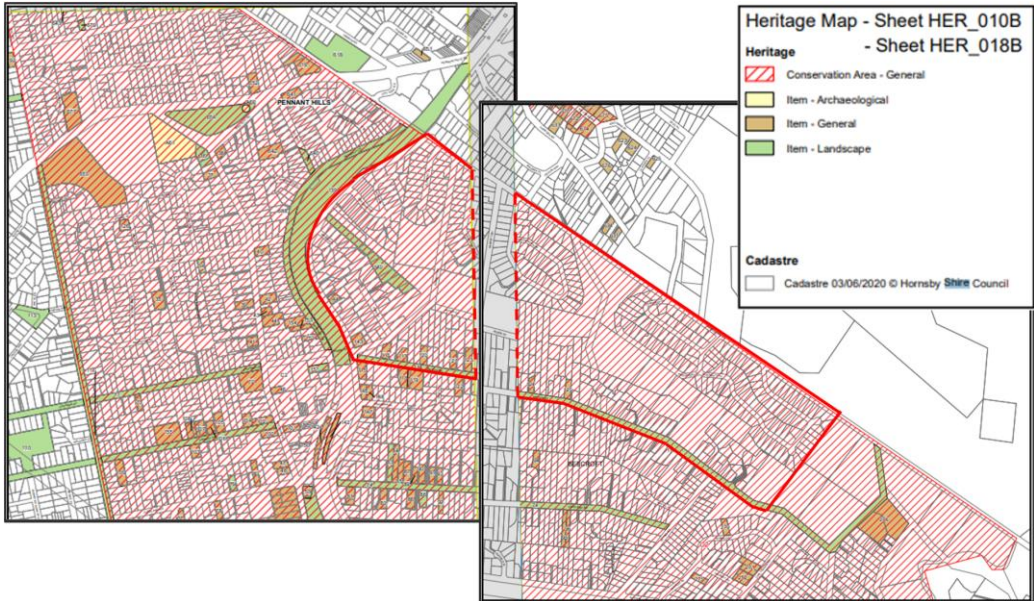
## 4 Site-specific assessment

### 4.1 Environmental

The following table provides an assessment of the potential environmental impacts associated with the proposal.

**Table 11 Environmental impact assessment**

Environmental Impact	Department Assessment
Critical Habitat, Threatened Species, and Ecological Communities	<p>The Study Area contains three vegetation communities including Blue Gum Shale Forest, Blackbutt Gully Forest, and Coachwood Rainforest. The Study identifies that vegetation in the Byles Creek corridor also contains suitable habitat for numerous threatened flora species which may be present.</p> <p>The study identifies that rare or endangered birds may be present “<i>within or in close proximity to the study area</i>,” these include Glossy Black Cockatoos, Gang Cockatoos, and Powerful Owls. The Study does not make it clear whether these sightings were recorded within the Byles Creek corridor RE1 Public Recreation land (which is proposed to remain unchanged), within a “<i>5 km radius</i>”, or within the study area land currently used for residential purposes.</p> <p>The Department notes Council’s intent to have greater regulatory control over future development and to limit development in general so that the existing character and environmental qualities are maintained. However, the Byles Creek corridor is predominantly zoned RE1 Public Recreation, and the surrounding land is residential</p>

Environmental Impact	Department Assessment
	<p>with limited potential for further development. As discussed previously the Department considers that Council should consider alternative methods of achieving the objective to manage development in the Study Area and whether a suitable outcome can be achieved without the rezoning of land. This is because an alternative approach may allow the same level of environmental consideration in a more targeted way, without removing the possibility of development from land without a direct interface with Byles Creek.</p>
Heritage	<p>The Study Area is within the Beecroft-Cheltenham Heritage Conservation Area, and several heritage items are also present, as shown below (<b>Figure 14</b>).</p>  <p><b>Figure 14- Heritage map of the Byles Creek Study Area, (Source: Hornsby LEP; Heritage Map, HER_10B and HER_18B)</b></p>

## 4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

**Table 12 Social and economic impact assessment**

Social and Economic Impact	Department Assessment
The rezoning of land	<p>Council has stated that the proposed rezonings will have a minor impact on the social and economic effects. The Economic Analysis conducted by AEC states this is because that the uses which are currently permitted under a R2 Low Density Residential zone and prohibited in a C4 Environmental Living zone are unlikely to be developed within the Study Area due to the land size requirements for</p>

Social and Economic Impact	Department Assessment
	<p>development, environmental considerations and hazards, and traffic impact considerations.</p> <p>As stated above, the Department considers that Council should consider alternative methods of achieving the objective to manage development in the Study Area and whether a suitable outcome can be achieved without the rezoning of land, particularly in light of those land uses that are no longer proposed to be permitted being unlikely to be developed in any case</p>
Minimum lot size increase	<p>The Economic Analysis determined that there are 5 lots of the total 433 allotments within the Study Area that have subdivision potential. Council concludes that as such the economic impact of the minimum lot size increase to the Study Area is minimal when the Study Area is considered.</p> <p>As outlined above, the Department recommends the proposal be updated to either justify why the entire study area should have an increased minimum lot size, or alternatively, to propose an amended minimum lot size for only the 5 lots where subdivision is possible.</p>

## 4.3 Infrastructure

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

It is noted that the Byles Creek corridor contains an electricity transmission line and easement that also includes TPG infrastructure. As maintenance of the transmission easement is required, it is necessary to liaise with the relevant transmission easement authority as part of the proposal exhibition. This has been recommended on the Gateway determination.

## 5 Consultation

### 5.1 Community

Council proposes a community consultation period that will be in accordance with the conditions of the Gateway determination and Council's Community Engagement Plan 2021.

The exhibition period proposed is 20 working days, and forms to the conditions of the Gateway determination.

### 5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 28 days to comment:

- NSW National Parks and Wildlife Service
- NSW Rural Fire Service
- Relevant transmission easement authority
- NSW Environment and Heritage

## 6 Timeframe

Council proposes roughly a 10 month time frame to complete the LEP.

The Department agrees and recommends a time frame of 10 months to ensure it is completed in line with its commitment to reduce processing times and allow for consideration of all Gateway determination conditions. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

## 7 Local plan-making authority

Council does not request delegation to be the Local Plan-Making Authority.

Given some components of the proposal are not supported without further justification, and amendments are required prior to exhibition, it is not recommended that the Department delegate its plan-making functions. The proposal also has the potential to set a precedent for other locations across the LGA and state. Council is therefore required to submit the proposal for finalisation within the 10-month period.

## 8 Assessment summary

The Department generally supports Council's intention to preserve the existing character and environmental qualities that exists within and close to the Byles Creek corridor. The Department supports strengthening the objectives of Clause 4.1 Minimum Subdivision lot size and the addition of a new riparian corridor local provision that focuses on lots directly fronting Byles Creek.

The planning proposal has merit and should proceed subject to conditions for the following reasons:

- The addition of the riparian corridor local provision will ensure development has consideration of the environmental impacts of any subdivision or development on the Byles Creek waterway. This will enable protection of habitat for terrestrial, riparian, and aquatic plants and animals.
- Strengthening the objectives of clause 4.1 Minimum subdivision lot size will strengthen consideration of the natural features and constraints of development and demonstrate that sites are of as sufficient size to protect vegetation and amenity prior to subdivision approval.
- The proposal will continue to allow low density residential development while minimising the impacts of development on the ecological values of the Byles Creek waterway.

### **The C4 zoning requires further justification**

The amendment to the land zoning is not supported without further justification as:

- Council has not considered alternative methods of achieving the objective to manage development in the Study Area or whether suitable outcome can be achieved without the rezoning of land.
- The Byles Creek Planning Study 2021 (the Study) that supports the planning proposal acknowledges that there is no one-correct-approach to enhancing and protecting the urban bushland environment. The Study acknowledges that altering the land zoning to E4 (C4) is not the only way that Byles Creek environmental protection can be enhanced, and that the study specifically explores determining whether an E3 (C3) Environmental Management or C4 Environmental Living zone should be applied in the context of the Study Area.



- The Study provides options, not direction, and notes that in addition to changes to the local planning framework, there are several options through other mechanisms that will improve environmental outcomes within the Byles Creek corridor. These include applying conditions of consent, applying covenants on the land, negotiating Voluntary Planning Agreements, and applying enforcement and regulation to unauthorised development activities.
- The Study is not a comprehensive environmental assessment, rather it focuses on the key factors that affect land use planning within the prescribed Byles Creek Study Area and recommends planning measures to manage the impacts. In this instance the Department considers that a change of zone may not be the most appropriate method to affect environmental protection and alternative methods should be considered.
- The Department considers that altering the zone of the residential land around Byles Creek is not the only, and may not be the best, mechanism to protect the ecological values of the land. Council should consider other mechanisms, such as the introduction of a riparian land and watercourses clause without altering the land zone. This is consistent with Council's own 2019 review of the Byles Creek Catchment Land Acquisition Strategy which acknowledged that land use zoning is not the only way to protect urban bushland and that further land acquisition of private land adjoining the Byles Creek corridor was not necessary.
- The riparian corridor local provision is a more targeted and accurate method of providing protection to Byles Creek. The proposed zone change includes land which is separated from the Byles Creek by other lots and roads, whereas the proposed riparian land map shows a buffer that identifies lots which are in direct proximity to the watercourse.
- The majority of the land uses permitted in the R2 Low Density Residential zone but prohibited in the C4 Environmental Living zone (Boarding houses; Centre-based child care facilities; Community facilities; Educational establishments; Emergency services facilities; Exhibition homes; Home businesses; Information and education facilities; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (outdoor); Respite day care centres; and Veterinary hospitals) are unlikely to be developed in the Study Area as they are restricted by lot-size requirements for development, environmental constraints, and traffic impact considerations. In addition, the Byles Creek Planning Study Economic Implications Analysis (**Attachment G**) notes that these uses would not ordinarily attract more value to the land and are thus unlikely to be developed for this reason.
- The land around Byles Creek is characterised by low density residential uses, for which the R2 Low Density Residential zone is appropriate. A number of properties included in the Study Area do not adjoin the waterway. It is unclear which properties drain to the Byles Creek catchment, and if the ecological protection of this land would be more effectively captured by the proposed riparian corridor buffer. Council should consider this as part of whether a suitable outcome can be achieved without rezoning the land.
- The Byles Creek study area is currently excluded from the complying development pathway due to its location in a Heritage Conservation Area. Additionally, the land is identified as bush fire prone land. Complying development cannot be carried out on land with a bushfire attack level 40 or flame zone rating. This means that Council already has greater regulatory control of future development as a development application is required.

**The 40ha minimum subdivision lot size is excessive given the existing subdivision pattern and does not align with the proposed new objectives for clause 4.1**

The proposal should be updated to further address the proposed increased minimum lot sizes as:

- The majority of the land in the Study Area has already been subdivided to a lot size of between 1,000sqm to 3,000sqm with the average lot size approximately 1,200sqm

**(Figure 10, above).** The lots in the Study Area are irregularly shaped and a large number are accessed by battle axe handles, making access a consideration of any further subdivision.

- A 40ha minimum lot size is not consistent with the predominant pattern, size, and configuration of existing lots in the locality, which is one of Council's proposed Clause 4.1 objectives.
- There are only 5 lots within the Study Area which can be subdivided if the existing 600 sqm minimum lot size remains unchanged, as noted in the Byles Creek Planning Study 2021. This is not likely to significantly impact the existing low-density residential character of the Study Area. The Department considers that any subdivision of these lots should be considered on a merit basis if the environmental considerations can be addressed.
- The proposal should be updated to either justify why the entire study area should have an increased minimum lot size, or alternatively, propose an amended minimum lot size for only the 5 lots where subdivision is possible. Council should also provide data on previous successful subdivisions in the Study Area which have led to land clearing.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

1. Consider alternative methods of achieving the planning proposal's objective to manage development in the Study Area without the rezoning of land and provide further justification.
2. Update the proposal to further address the proposed increased minimum lot size of 40ha for all residential land within the Study Area.

## 9 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to exhibition, Council is to update the proposal to:
  - (a) Consider alternative methods of achieving the planning proposal's objective to manage development in the Study Area without the rezoning of land. This should include consideration of whether the protection of this land would be sufficiently achieved by the proposed riparian corridor controls, and the existing DCP controls for tree and vegetation preservation, natural environment, and biodiversity.
  - (b) Make it clear that the additional clause 4.1 objectives would apply to all subdivision across the Hornsby LGA.
  - (c) Further address the proposed minimum subdivision lot size of 40ha for all residential land within the Study Area. This should:
    - i. Update the proposal to confirm the number of lots in the Study Area with subdivision potential, (the Byles Creek Planning Study references 5 lots), and how this number was determined.
    - ii. Address whether a subdivision application from any of these 5 lots could be supported, given the constraints of the land.
    - iii. Address whether subdivision of these lots could be considered on merit if the environmental considerations can be addressed.

- iv. Provide data on approved subdivisions in the Study Area which have led to land clearing.
  - v. Consider identifying individual lots that can theoretically be subdivided under existing controls, rather than altering the minimum subdivision lot size of the entire Study Area.
  - vi. Propose an appropriate minimum subdivision lot size that responds to the existing character and subdivision potential of the Study Area.
- (d) Address impacts on the delivery of housing in Hornsby and clarify consistency with the Hornsby Housing Strategy 2020.
  - (e) Amend associated mapping, and supplementary material in accordance with 1(a), (b), and (c) above.
  - (f) Update the proposal to remove statement that the proposal “does not significantly reduce the development potential of any of the residential properties within the Study Area” (p.22).
  - (g) Justify the proposal’s inconsistency with section 9.1 Ministerial direction objectives a) and b) of Direction 6.1 – Residential Zones. The potential for the planning proposal to set a precedent for the rezoning of other R2 zoned land near riparian corridors should also be addressed, as this would exclude Codes SEPP development and further reducing housing choice and efficient use of infrastructure and services.
2. The revised planning proposal is to be forwarded to the Minister for review and approval prior to exhibition.
  3. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
    - (a) the planning proposal is categorised as standard, as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021), and must be made publicly available for a minimum of 20 working days: and
    - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021).
    - (c) Exhibition should commence within **4 months** following the date of the gateway determination.
  4. Consultation is required with the following public authorities:
    - NSW Environment and Heritage Group
    - NSW National Parks and Wildlife Service
    - NSW Rural Fire Service
    - Relevant transmission easement authority

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 20 working days to comment on the proposal.



5. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. Given the nature of the proposal, Council should not be authorised to be the plan-making authority to make this plan.
7. The timeframe for completing the LEP is to be **10 months** from the date of the Gateway determination.



16 May 2023

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