



23 June 2023

Ms Alison Burton
A/Executive Director Metro Central and North
Planning and Land Use Strategy

Dear Ms Burton

PP-2022-4306, Byles Creek Planning Proposal – Response to Gateway Determination

Thank you for your letter and the Department's Gateway determination dated 18 May 2023 for the Byles Creek Planning Proposal (Department Ref No. PP-2022-4306).

The Gateway determination stipulates several conditions to be addressed prior to the public exhibition of the Planning Proposal. The purpose of this letter is to provide responses to the Gateway determination conditions, as follows:

- 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 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.**

As requested, Part 3 – Justification of Strategic Merit and Site-specific Merit of the Planning Proposal has been amended to consider alternative methods of achieving the Proposal's objective.

The objective of the Proposal (outlined in Part 1 – Objectives and Intended Outcomes) is to minimise the impacts of residential development and to protect the environmental, social and aesthetic qualities of the Byles Creek Study Area. The Study Area comprises the Byles Creek corridor (RE1 Public Recreation) and surrounding low density dwellings (R2 Low Density Residential). The objective of the Proposal is supported by four intended outcomes (also outlined in Part 1).

The Proposal's objective and intended outcomes would not be achieved with the continued application of existing DCP controls, and only the fourth-listed intended outcome could be achieved by the proposed riparian corridor controls. The reasons for this conclusion are provided below.

Existing DCP controls

Prior to the gazettal of the *Hornsby Local Environmental Plan 2013* (Hornsby LEP), development within the Study Area was informed by the preceding *Hornsby Shire Local Environmental Plan 1994* and the Byles Creek Development Control Plan. The Byles Creek DCP provided site-specific development controls with the aim to maintain the high environmental quality, aesthetic and heritage value of the Byles Creek corridor.

With the gazettal of the Hornsby LEP and the accompanying Hornsby Development Control Plan 2103 (Hornsby DCP) in October 2013, the site-specific provisions of the Byles Creek DCP were removed with the environmental controls of the Hornsby DCP applying more broadly across the Hornsby local government area (LGA). This Planning Proposal seeks to strengthen planning controls, given the high environmental quality, aesthetic and heritage values of the Byles Creek Corridor.

The Department's assessment report (page 14) states that there may be several alternative mechanisms that could improve environmental outcomes within the Byles Creek corridor such as:

- Applying conditions of consent, applying covenants on land, negotiating Voluntary Planning Agreements, and
- Applying enforcement and regulation to unauthorised development activities.

The alternative mechanisms require cooperation and ongoing collaboration between Council and applicants/property owners to be successful. If agreements cannot be made, these mechanisms can open opportunities for legal action by involved parties. This approach results in significant angst for the community and uncertainty for proponents and developers.

Council's time, monetary and staff resources are not unlimited and relying on these alternative options would result in undue strain on Council's ability to fulfil its obligations in other areas, such as meeting target DA assessment timeframes.

As an example of Council's current enforcement and regulatory efforts, officers have had to investigate 295 service requests related to non-compliance with development consent, unauthorised environmental activities, or unauthorised tree removal within or adjoining the Study Area since 2014.

Riparian corridor controls

Application of the proposed riparian corridor LEP controls alone will not offer sufficient protection of the biodiversity values found within the Study Area and therefore, would not meet the objectives of the Planning Proposal. The additional local provision would only apply to development within mapped riparian corridor buffers. The buffers only extend 10, 20 or 30 metres from the banks of watercourses within the Study Area, depending on the watercourse's classification against the Strahler stream order system. AEC's Economic Implications Analysis (page 14) identifies that the proposed riparian buffers would overlap 28 residential properties within the south-eastern portion

of the Study Area. However, the extent of significant vegetation within the Study Area extends well beyond the Byles Creek corridor and these 28 residential properties. Figure 3.2 of AEC's Analysis (reproduced below) identifies the limitation of the application area, demonstrating that the buffer would not cover the bulk of the properties considered by the Planning Study. As such, this control alone would not achieve the Planning Proposal's objective.



Rezoning of residential land

The value of the Byles Creek Study Area is not limited to its watercourses and the vegetation that would be captured within the riparian corridor buffers. The Study Area has strong connectivity to Lane Cove National Park and the intention of the Planning Proposal is to address tree and vegetation loss and fragmentation of remnant bushland located on private properties which adjoin and surround the Byles Creek corridor.

As the Planning Study explains, the rezoning of R2 Low Density Residential land within the Study Area to C4 Environmental Living applies where:

- There is an interface with the Byles Creek corridor (RE1 Public Recreation zoned land), or
- There are generally high to medium environmental and ecological values and constraints such as steep topography and bushfire affectation.

The existing R2 zone objectives in the Hornsby LEP do not call for development to consider the ecological, scientific or aesthetic values of the Study Area or be of low adverse impact to these values. The rezoning of land to C4 would rectify this shortcoming.

The Planning Study (page 63) refers to the Department's Environmental Protection Zones' Practice Note (PN09-002) which states that C4 zoning is typically applied to existing low impact residential development, may include areas already zoned for residential that have special environmental values, and where environmental impacts as a result of new development are the primary concern.

Application of the C4 zone to the Study Area is commensurate to its ecological, scientific and aesthetic values and is the most appropriate method to achieve the Planning Proposal's objective and intended outcomes.

b) *Make it clear that the additional clause 4.1 objectives would apply to all subdivision across the Hornsby LGA.*

One of the intended outcomes of the Planning Proposal (as outlined in Part 1) is to provide support for Council's assessment of future subdivision applications within the Study Area *and throughout the Hornsby LGA* by introducing clear objectives to promote regular subdivision patterns and to retain and protect natural and cultural features such as heritage items and vegetation.

Part 2 – Explanations of Provisions of the Planning Proposal has been updated with a note added to Amendment 3 to further clarify that it would apply 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.

Part 3 – Justification of Strategic and Site-specific Merit of the Planning Proposal has been updated to confirm that there are only five lots within the Study Area having potential for subdivision, as determined by AEC's Economic Implications Analysis.

AEC's Analysis (page 12) determined that there are five lots within the Study Area that have potential for subdivision. An additional 77 lots within the Study Area are considered 'unlikely to be subdivided'. The method for determining the classifications is provided in AEC's Analysis (page 22) and is reproduced below.

The classifications used include:

- Lots that are fully developed (single residential dwellings with no subdivision potential).
- Lots that have the potential to be subdivided (lots meeting the minimum lot size (600m²) and width (15m) requirements with no other physical constraints identified.
- Lots that are unlikely to be subdivided (lots meeting the minimum requirements but has identified constraints such as exclusion of accessway area, shape of lots, developable area, terrestrial biodiversity, existing improvements etc.).

The phases of grouping the residential lots in classifications were as follows:

- Stage 1: Preliminary filter based on size (lots greater than 1,200m²)
- Stage 2: Desktop aerial review, taking into account the following factors:
 - Subdivision and density patterns
 - Existing improvements and remaining developable area (excluding RE1 zoned land)
 - Access considerations etc.
- Stage 3: Environmental constraints
- Stage 4: Planning constraints

ii. Address whether a subdivision application from any of these 5 lots could be supported, given the constraints of the land. AND

iii. Address whether subdivision of these lots could be considered on merit if the environmental considerations can be addressed.

Part 3 – Justification of Strategic and Site-specific Merit of the Planning Proposal has been updated to address the potential for subdivision of the five lots identified in AEC's Analysis.

The five lots identified by AEC with potential for subdivision are Nos. 11A, 15, 49A, 53 and 79-87 Malton Road. Council's records indicate that three of the five properties, Nos. 11A, 15 and 79-87 Malton Road have had prior subdivision DAs. Only the subdivision DA for No. 79-87 Malton Road has development consent, issued by the Land and Environment Court (LEC).

If a subdivision DA were lodged for any of these properties, Council would be obligated to carry out a merit assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Council may conditionally support an application which it believes satisfies the matters for consideration outlined in Section 4.15 of the EP&A Act.

However, the onus is on the applicant to demonstrate through plans and supporting documentation that a proposal has considered and appropriately responds to these matters, including the physical constraints of a site.

Additional research has been undertaken to provide context for the constraints and considerations of Nos. 11A, 15, 49A, 53 and 79-87 Malton Road. Aerial images and commentary of the five lots are provided below.

Additionally, research and analysis has been prepared for No. 41 Malton Road, identified by AEC as 'unlikely to be subdivided' to provide evidence for the challenges of subdivision within the Study Area, generally.

Nos. 11A and 15 Malton Road, Beecroft



Comment: Nos. 11A and 15 Malton Road were subject to DA/521/2010 for subdivision of two lots into four.

The two lots have a combined area of 5,438m² and are subject to a northwards slope towards the rear of the site averaging 7% before increasing to 33% at halfway. No. 11A features a single storey dwelling house while No. 15 has a single storey dwelling house and a swimming pool.

Significant trees are located on both sites identified as being of Blue Gum Shale Forest and Blackbutt Gully Forest vegetation communities. At the time of assessment, the NSW RFS identified the bushland adjoining the properties as being a 'significant and continuous' fire hazard¹.

The application was withdrawn by the applicant on 24 November 2010 because of unresolved negotiations with the NSW RFS regarding bush fire hazard. No further subdivision DAs have since been lodged for either lot.

Proposed development within the Study Area must consider remnant bushland located within the Byles Creek corridor and adjoining residential land as a source of biodiversity and aesthetic values but also a

¹ https://hscenquiry.hornsby.nsw.gov.au/Temp/14_C0008Q01_BYEKGWES.TIF.091613.pdf

bushfire hazard which is an inherent conflict. There is a significant challenge in establishing acceptable bushfire asset protection zones for new lots without also incurring a substantial loss of biodiversity value through the removal of mature trees and vegetation.

No. 49A Malton Road, Beecroft



Comment: No. 49A Malton Road is a battle-axe lot, 2,605m² in area featuring a two storey dwelling house and a swimming pool. It is mapped as being host to Blackbutt Gully Forest and the rear of the property is mapped as being an area of terrestrial biodiversity. The site is subject to an average 26% slope towards the rear.

Subdivision of this lot in a battle-axe pattern would require whole or partial demolition of the existing dwelling house and swimming pool, substantial earthworks due to slope, construction of additional hardstand area for an accessway, vegetation removal for building clearance and APZ establishment and a bushfire safety authority from the NSW RFS.

The significant expense associated with demolition of a well-maintained dwelling and ancillary development, combined with the obstacles associated with development on steeply sloping land and vegetation removal would likely make subdivision of this property extremely difficult due to environmental impacts.

No. 53 Malton Road, Becroft



Comment: No. 53 Malton Road is an irregular lot, 2,662m² in area with a lot width at the street frontage of approximately 30 metres. It features a single storey dwelling house and a swimming pool. It is mapped as being host to Blackbutt Gully Forest. The site is subject to an average 18% slope towards the rear.

Subdivision of this lot in either a bisecting or battle-axe pattern would require whole or partial demolition of the existing dwelling house and swimming pool, substantial earthworks due to slope, vegetation removal for building clearance and APZ establishment and a bushfire safety authority from the NSW RFS.

As with No. 49A Malton Road, the expense and environmental impacts associated with site preparatory works would make subdivision of this property extremely difficult.

No. 79-87 Malton Road, Beecroft



Comment: No. 79-87 Malton Road is an irregular battle-axe lot, 1.966ha in area and is currently vacant. The lot is subject to DA/94/2013 for the subdivision of one lot into six. The application was refused on 7 October 2015 on the grounds that the application contained insufficient information to determine the full extent of the biodiversity impacts to the site.

It was later approved by the LEC on 6 July 2016 after reaching a section 34 mediation for deferred commencement subject to the submission of an integrated vegetation and bushfire management plan (IBVMP) and the dedication of 1.033ha of land to Council to serve as a bushland reserve to offset the impact of the proposed subdivision on biodiversity values. Although Council has since received the IBVMP, records do not show that the applicant has physically commenced subdivision works and the consent is due to lapse on 6 July 2023.

Furthermore, illegal clearing of bushland was found to have occurred on site with Council pursuing legal action against the property owner culminating in a LEC judgement, *Hornsby Shire Council v Henlong Property Group Pty Ltd (No 2)* [2019] NSWLEC 17².

The defendant pleaded guilty to an environmental offence having felled seven large live native trees and some smaller trees and shrubs on the property without first having satisfied the deferred commencement conditions of the development consent.

No. 41 Malton Road, Becroft



Comment: No. 41 Malton Road has been identified by AEC as a property that is ‘unlikely to be subdivided’.

The site is 2,554m² in area with a lot width of approximately 20 metres. It features a single storey dwelling house that spans the width of the lot. The rear half of the property is vegetated and mapped as being host to Blackbutt Gully Forest. The rear of the property is also mapped as being an area of terrestrial biodiversity. The site is subject to an average 25% slope towards the rear.

² https://www.hornsby.nsw.gov.au/__data/assets/pdf_file/0008/135944/LEC-outcome.pdf

Subdivision of this lot in a battle-axe pattern would require whole or partial demolition of the existing dwelling house, substantial earthworks due to slope, introduction of additional hardstand area for an accessway, vegetation removal for building clearance and APZ establishment and a bushfire safety authority from the NSW RFS.

In October 2021, Council provided the property owner with written advice³ regarding a potential Torrens title subdivision of the site. The owner was advised of the information that would be required for Council to conduct a full and proper assessment of a future subdivision DA involving the site. This included:

- A Biodiversity Assessment Report (BDAR) in accordance with the provisions of the *Biodiversity Conservation Act 2016* to address tree and vegetation clearing.
- An IBVMP to address the creation of a bushfire APZ and ongoing vegetation management.
- A Geotechnical Report to address subdivision works and site stability due to slope.
- An Arboricultural Impact Assessment to address potential impacts to trees.
- A Heritage Impact Assessment to address impacts on the heritage conservation area.
- Assessment of the DA as integrated development in accordance with the provisions of the *Rural Fires Act 1997* and *water Management Act 2000*.

To date, a subdivision DA has not been received by Council for its assessment.

As evidenced by past DA activity at Nos. 11A, 15 and 79-87 Malton Road and lot descriptions of Nos. 41, 49A and 53, the potential for subdivision of lots within the Study Area is heavily reliant on the applicant's ability to demonstrate that the physical constraints of the lots have been considered and appropriately responded to. Even if approval was granted for subdivision, there is no guarantee that an applicant can feasibly carry out and complete the necessary subdivision works.

iv. Provide data on approved subdivision in the Study Area which have led to land clearing.

Part 3 – Justification of Strategic and Site-specific Merit of the Planning Proposal has been updated to provide data on approved subdivisions that have led to land clearing.

Council's electronic records indicate that since 1995, 11 applications for subdivision have been lodged within the Study Area. Only two subdivision applications have been approved, DA/281/1997 for a historical property at No. 67 Malton Road and DA/93/2013 at No. 79-87 Malton Road.

Deferred development consent was issued for DA/281/1997, Torrens title subdivision of one lot into two, on the condition that one lot was dedicated to Council as a public reserve. Council's records indicate that the development consent lapsed before physical commencement.

Regarding DA/93/2013, although Council has not received evidence suggesting physical commencement of the subdivision, Council has been party to prosecution proceedings related

³ Council ref no. PL/85/2021.

to illegal clearing of bushland on the site undertaken by the developer, *Hornsby Shire Council v Henlong Property Group Pty Ltd (No 2)* [2019] NSWLEC 17.

The defendant pleaded guilty to an environmental offence against section 125 (now Section 9.50) of the EP&A Act having felled seven large live native trees and some smaller trees and shrubs on the property without first having satisfied the deferred commencement conditions of the development consent.

This matter has been a contributing factor in Council's decision to prepare the Planning Study and this Planning Proposal. Significant time and staff resources were committed to this matter. As mentioned above, the proposed LEP amendments are sought so that an expectation for low impact residential development can be established and to prevent further subdivision of land within the Study Area which contributes to vegetation removal to accommodate dwellings, services and bushfire asset protection zones.

Of the nine remaining applications, two were refused, two rejected, three withdrawn and two cancelled. These unsuccessful applications represent instances where Council's assessment has determined a proposal to be inappropriate development, to be inadequately supported by quality information, or has been withdrawn by an applicant after partial assessment.

For context, applicants may withdraw a DA at any time after lodgement but most commonly occurs when Council has conducted a preliminary assessment of the application and has found it to require additional information which the applicant cannot provide in a reasonable timeframe. Cancelled applications are those where an applicant has failed to pay DA fees.

Reasons for the refusal, rejection or withdrawal of the unsuccessful applications include:

- The NSW RFS not granting a bush fire safety authority due to inadequate responses to bush fire hazards.
- Removal of Blackbutt Gully Forest to achieve appropriate asset protection zones would result in significant environmental impacts.
- Unsatisfactory, inconsistent or conflicting information regarding bushfire hazards, environmental impacts and engineering works.

The clear difference in the number of approvals granted in comparison to unsuccessful applications indicates that the Study Area is not an area suitable to accommodate residential growth via subdivision.

The proposed rezoning to the C4 zone and increase to minimum subdivision lot size reflects the constrained development potential of the land and would provide clarity to the development expectations and desired character of the Study Area. It may also lead to a decrease in unsuccessful DAs and a better use of Council's resources to focus housing growth in more appropriate areas of Hornsby Shire.

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.

Part 3 – Justification of Strategic and Site-specific Merit of the Planning Proposal has been updated to consider the theoretical subdivision of the five lots identified in AEC's Analysis.

The AEC Analysis has identified individual lots that could theoretically be subdivided under existing controls. However, as demonstrated in Council's responses above, the reality is that the physical constraints of the land make subdivision difficult. Also noted above, Council has formally assessed several of these sites and found subdivision to be unsupportable.

Applying a 40ha minimum lot size to the rezoned land within the Study Area ensures consistency with the application of the C4 zone in other areas of the Hornsby Shire and would preserve the existing character of the Study Area. It also reinforces the fact that the Study Area is not an appropriate area to support increased residential density through subdivision.

Excluding the five lots because of their 'subdivision potential' would erode this consistency and undermine the Planning Proposal's objective to minimise the impacts of residential development on the values present in the Study Area.

vi. Propose an appropriate minimum subdivision lot size that responds to the existing character and subdivision potential of the Study Area.

Part 2 – Explanation of Provisions of the Planning Proposal proposes an increased minimum subdivision lot size for residential land within the Study Area from 600m² to 40ha which is appropriate based on Council's existing planning regime.

The Planning Study (page 82) indicates that the current minimum lot size of 600m² is not conducive to meeting the C4 zone objectives to enhance and protect the special environmental characteristics of the Study Area. Furthermore, the proposed 40ha lot size ensures consistency with application of the clause to other C4 zoned land within Hornsby Shire.

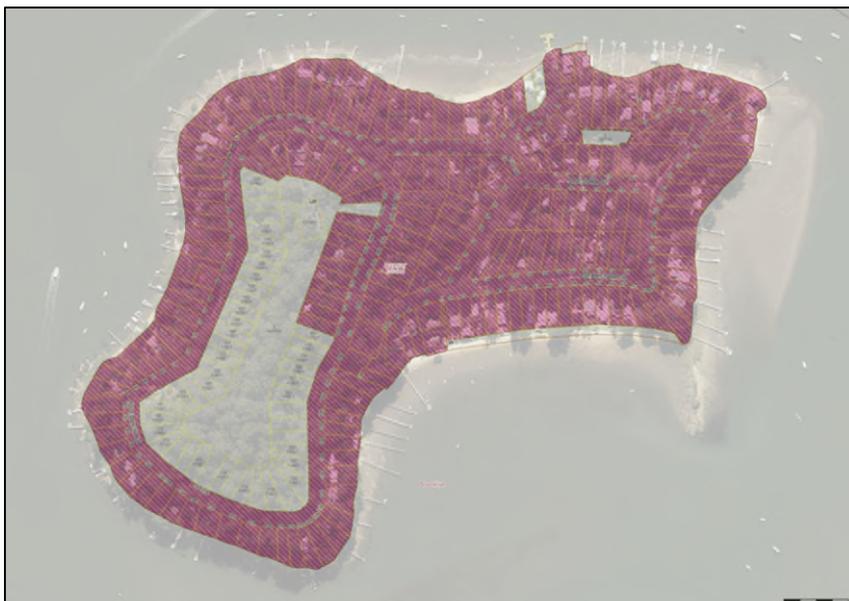
The subdivision potential of the Study Area is minimal. This has been demonstrated by AEC's Analysis identifying only five lots out of a total 433 lots as having 'potential for subdivision' and Council's commentary above about the likelihood of development consent or feasibility for each of the five lots identified.

The application of a 40ha minimum lot size to residential land within the Study Area is appropriate when considered with the rezoning to C4 Environmental Living. The Planning Study (page 83) identifies that land currently zoned C4 under the Hornsby LEP also provides a minimum lot size of 40ha, such as for Dangar Island shown below.

Dangar Island C4 land use zone map

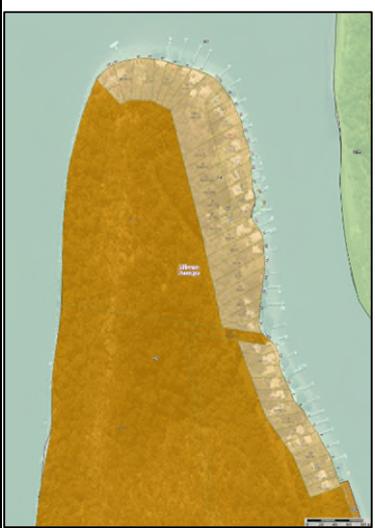
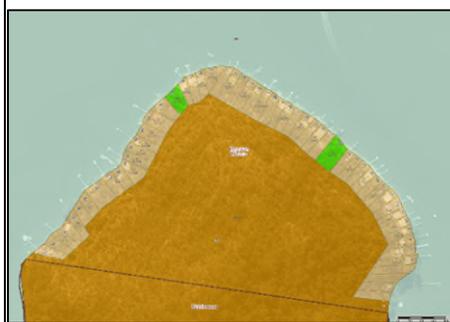
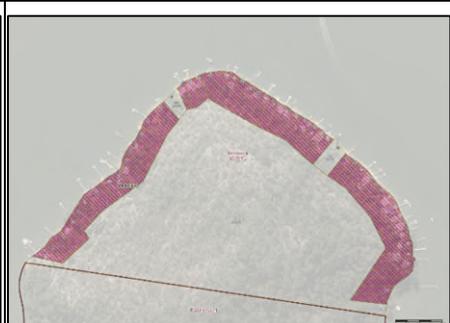
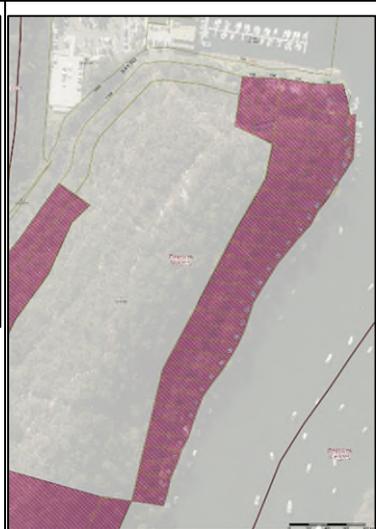


Dangar Island 40ha lot size map



Although, the residential lots on Dangar Island range from 569.1m² to 1,404m² in size, the minimum subdivision lot size is 40ha. This minimum subdivision lot size has been applied to ensure that the character of Dangar Island, described in the Hornsby DCP as a unique bushland island settlement predominantly residential in use, remains.

Other land within Hornsby Shire currently zoned C4 under the Hornsby LEP which share the special biodiversity characteristics of Byles Creek and Dangar Island, include settlements at Milsons Passage, Coba Point and Berowra Waters. These settlements are shown below with their C4 zoning and minimum 40ha lot size.

		
<p>Milsons Passage C4 land use zone map</p>	<p>Coba Point C4 land use zone map</p>	<p>Berowra Waters C4 land use zone map</p>
		
<p>Milsons Passage 40ha lot size map</p>	<p>Coba Point 40ha lot size map</p>	<p>Berowra Waters 40ha lot size map</p>
<p>Milsons Passage</p>	<p>Coba Point</p>	<p>Berowra Waters</p>

d) Address impacts on the delivery of housing in Hornsby and clarify consistency with the Hornsby Housing Strategy 2020.

Part 3 – Justification of Strategic and Site-specific Merit of the Planning Proposal has been updated to clarify that the Planning Proposal will not impact on the delivery of housing in Hornsby and is consistent with the Hornsby Housing Strategy 2020.

The focus of the Housing Strategy 2020 is the provision of new housing in high density format centralised in the Hornsby Town Centre. Council is progressing the draft Hornsby Town Centre Masterplan which opens the opportunity to provide up to 4,500 new homes.

Council is also conducting investigations into existing medium density housing precincts and developing a strategy to encourage future medium density residential development.

The State-led Cherrybrook Station precinct will also provide the opportunity for additional medium to high density residential development to satisfy Council's future housing targets.

Housing in the Study Area is characterised by low density residential development of predominantly one and two storey dwelling houses in a landscaped setting.

While the Department's assessment report notes that some properties within the Study Area are located within 200m of Beecroft train station, their connectivity to Lane Cove National Park, the slope of the land and the remnant vegetation located within and surrounding the Byles Creek corridor is not conducive to large scale redevelopment due to the possible loss of biodiversity values and exposure of residents to bushfire risk.

There are significant physical constraints to be considered for any subdivision application and, even with development consent, the feasibility of site preparatory works and completion is not guaranteed due to these constraints.

Although the Planning Proposal would effectively prohibit further subdivision of land within the Study Area if finalised, the Planning Study (page 83) and its supporting documents demonstrate that the residential land within the Study Area has minimal capacity to support increased residential density and Council would not be looking to achieve housing supply in such a constrained area of high biodiversity value.

Council's obligation to meet the State Government's housing targets can be satisfied in other areas of Hornsby Shire. The planning proposal does not undermine Council's Housing Strategy or the provision of new housing. Rather, it would provide clarity to the development expectations and desired character of the Study Area. It may also lead to a decrease in unsuccessful DAs and a better use of Council's resources to focus housing growth in more appropriate areas of Hornsby Shire.

e) Amend associated mapping, and supplementary material in accordance with 1(a), (b) and (c) above.

The Planning Proposal has been amended to address the Department's Gateway conditions 1(a), (b) and (c).

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).

As requested, Part 3 – Justification of Strategic and Site-specific Merit of the Planning Proposal has been amended to remove the statement.

It has been replaced with the following, "*The Planning Study and Economic Implications Analysis prepared to support the Study demonstrates that the development potential of the residential properties within the Study Area is highly constrained and significantly limited.*"

- 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.**

Part 3 – Justification of Strategic and Site-specific Merit of the Planning Proposal has been updated to address inconsistency with Direction 6.1 – Residential zones of the section 9.1 Ministerial directions and the perception that the Planning Proposal would set a precedent for future rezoning of residential land near riparian corridors.

The objectives of Direction 6.1 – Residential zones are to:

- a) Encourage a variety and choice of housing types to provide for existing and future housing needs,
- b) Make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services.
- c) Minimise the impact of residential development on the environment and resource lands.

Direction 6.1 permits a planning proposal to be inconsistent if the inconsistent provisions are justified by a study prepared in support of the planning proposal which considers the objective of this direction.

The Planning Study (page 81) considers the objective of this direction. The Planning Proposal:

- a) Retains provisions to enable a variety and choice of housing types permissible in the current R2 zone in the proposed C4 zone;
- b) Does not impede the new housing near existing infrastructure and services as per Council's Local Housing Strategy; and
- c) Minimises the impact of residential development on the environment.

The Planning Study, its supporting documentation and the amended Planning Proposal empirically demonstrate that the Study Area possesses significant biodiversity values and should be further protected from adverse development impacts.

The existing character of the Study Area is informed by the physical constraints of the locality and the current built form of one and two storey dwelling houses in a bushland setting is unlikely to change. The future housing needs for Hornsby Shire can be comfortably accommodated in other areas of the LGA.

The Department's concern that the Planning Proposal would set a precedent for the rezoning of other R2 zoned land near riparian corridors is unfounded. The primary purpose of the Planning Proposal is not to limit the application of the Codes SEPP but to protect the biodiversity values of the Byles Creek corridor. This Planning Proposal is focused on the Study Area and has been

supported by in-depth environmental analysis over several years, including the most recent report prepared in support of the Proposal.

If Council were to find that such action was necessary for other areas within Hornsby Shire, it would be required to submit further planning proposals supported by evidence for the Department's consideration and approval. Such planning proposals would need to demonstrate both strategic and site-specific merit, taking into consideration the specific local context, including quantifying and justifying impacts, as this Planning Proposal has done.

The Department should not refuse this planning proposal based on what may or may not happen in the future but on the merits of the planning proposal and supporting information before them.

An amended Planning Proposal accompanies this letter and has been uploaded to the NSW Planning Portal.

The Gateway Determination requires the Planning Proposal's public consultation to commence by 18 September 2023. Given that the Department required five months for its initial assessment of the Proposal, we ask for the Department's cooperation to ensure the exhibition target is met.

In order to meet the exhibition timeframe, we request that the Department consider the submitted information and provide approval for exhibition within one month from the date of this letter, 21 July 2023.

Should you have any enquiries concerning the Planning Proposal, please contact Lawrence Huang, Strategic Planner on 9847 6723. I look forward to your response.

Yours faithfully



Katherine Vickery
Manager
Strategic Land Use Planning

Attachment: Byles Creek Planning Proposal June 2023

TRIM Reference: PP/4/2022