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## Plan finalisation report – PP-2022-4306

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Byles Creek Planning Proposal

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure 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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# 1.Introduction

## 1.1. Overview

### 1.1.1. Name of draft LEP

Hornsby Shire Council Local Environmental Plan 2013 (HLEP) (Amendment No. 16).

### 1.1.2. Site description

Table 1 Site description

Site Description	The Study Area is located between Beecroft Train station to the south (approximately 500m) and Pennant Hills train station to the north (approximately 1km) ( <b>Figure 1</b> ). The Study Area covers approximately 66ha and has 433 allotments, with approximately 400 low density, single or two-storey residential dwellings.
Type	Area
Council / LGA	Hornsby Shire Council



Figure 1: Subject study area outlined in red (Source: Google Maps, 2024)

### 1.1.3. Purpose of plan

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

- to give Council greater regulatory control over future developments that may impact on the environmental values of the Byles Creek Study Area (Study Area);
- 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;
- to provide support for Council's assessment of future subdivision applications by introducing clear objectives to promote regular subdivision patterns;
- to retain and protect natural and cultural features such as heritage items and vegetation; and
- to facilitate the protection and maintenance of ecological habitat accommodated by the Byles Creek and associated riparian corridor within the Study Area.

The **Table 2** outlines the current and proposed controls for the HLEP for the Study Area (**Figure 1**).

**Table 2 Current and proposed controls**

Control	Current	Proposed
Zone	Part R2 Low Density Residential	C4 Environmental Living
	Part RE1 Public Recreation	Unchanged
Minimum lot size	600sqm or unidentified	40ha where Minimum Lot sizes apply.
Minimum lot size ( <i>Clause 4.1</i> ) objectives	<p>1. The objectives of this clause are:</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) b) To ensure that lots are of a sufficient size to accommodate development.</li> </ul>	<p>1. The objectives of this clause are:</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>

Control	Current	Proposed
		Note: These objectives will apply to all subdivision across the Hornsby LGA, not just the Study Area.
Riparian land	N/A	The riparian land local provision and associated mapping will apply to the Study Area, refer below.

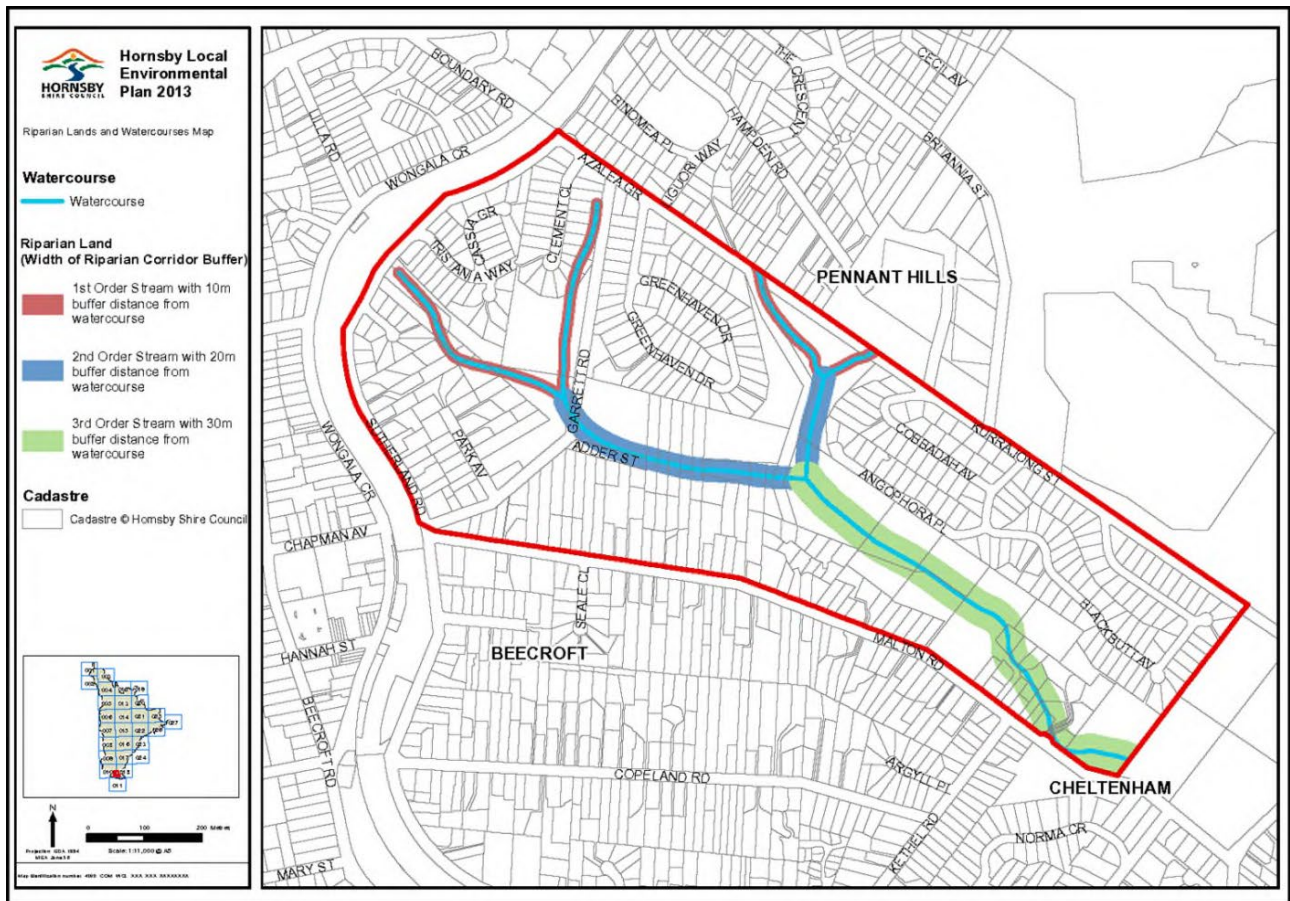
#### 1.1.4. Proposed Riparian land mapping

The proposal seeks to insert a new clause for riparian land under the LEP Part 6, 'Additional local provisions', consistent with Standard Instrument model clause provisions and other Council LEPs. These provisions include:

- clauses applying to land identified as 'Riparian Land' on the Riparian Lands Map (**Figure 2**)
- protection of water quality within waterways, native flora and fauna, ecological processes within waterways and riparian lands, scenic and cultural values of waterways and riparian lands
- consent authorities are to consider: surface and groundwater characteristics of land, native flora and fauna and the provision and quality of their habitats, impact on indigenous trees and other vegetation, and public access to, and use of any public waterway
- future rehabilitation of riparian areas, measures to avoid or mitigate development impact, assess likelihood of development to increase water extraction from the watercourse; and
- development consent must not be granted unless it is: consistent with the above objectives, designed to avoid potential adverse environmental impacts, if adverse environmental impacts cannot be avoided, development will be managed to mitigate impacts.

The proposal also provides supporting riparian corridor mapping for the Study Area (**Figure 2**), refer below. Note this mapping has since been updated following feedback from the Department's GIS team and Council, refer to Part 5.





**Figure 2: Proposed Riparian Corridor Mapping (Source: Hornsby Shire Council, 2023)**

### 1.1.5. State electorate and local member

The site falls within the state electorates of Epping where the Hon Dominic Perrottet MP is the State Member and Wahroonga where the Hon Alister Henskens MP is the State Member.

The site falls within the Berowra federal electorate. Julian Leeser MP is the Federal Member.

To the team's knowledge, no MPs have made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 2. Gateway determination

The Gateway determination issued on 18 May 2023 (**Attachment A**) determined that the proposal should proceed subject to conditions. As a condition of the Gateway determination the updated planning proposal (**Attachment B**) was returned on 23 June 2023 prior to the commencement of the public exhibition for endorsement by the Department. Council included a letter specifically addressing all of the conditions (**Attachment C**).

The Department acknowledged that all Gateway conditions had either been met (**Attachment D**) or were addressed. For condition 1(g) in relation to Ministerial Direction 6.1 Residential Zones, the Department noted that the direction would remain unresolved to allow for consideration of submissions, and that consistency with the direction would be addressed in the finalisation report.

Gateway condition 1(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.’

## 3. Public exhibition and post-exhibition changes

The proposal was publicly exhibited by Council from 18 August to 15 September 2023. Council resolved on 8 November 2023 to forward the planning proposal as exhibited to the Department for finalisation in accordance with Council Officers’ report (**Attachment E** and **F**).

### 3.1. Submissions during exhibition

A total of 28 community submissions were received, comprising 16 in support (57% of the total), one neutral and 11 objecting to the proposal (39%). See **Table 3**.

A total of four agency submissions were received. See **Table 4**.

#### 3.1.1 Submissions supporting the proposal

The key reasons stated in the 16 submissions supporting the planning proposal are:

- protection and conservation of vegetation in the Study Area
- protection for the Byles Creek corridor from deterioration due to inappropriate and damaging development; and
- allowing more appropriate development within the Study Area.

#### 3.1.2 Submissions objecting to and/or raising issues about the proposal

The key reasons stated in the 11 submissions objecting to the proposal are summarised in **Table 3**. Council’s full response to submissions is at **Attachment E**.

**Table 3 Summary of Key Issues**

Issue raised / Submissions (%)	Council response and Department assessment of adequacy of response
<p><i>Impacts on property values and development potential. (8 submissions – 29%)</i></p> <p>Several submissions raise concerns that the proposal will impact the development potential of private properties in the study area, resulting in adverse impacts on property values.</p>	<p><u>Council Response:</u></p> <p>Based on the findings of the Economic Implications Analysis provided as an appendix to the proposal, Council has determined that the proposed increase of minimum lot size accurately reflects the physical constraints and biodiversity values of the Study Area.</p> <p>Council has identified 5 lots out of 433 that have ‘subdivision potential’. Excluding the 5 lots from the proposed amendments would erode this consistency and undermine the proposal’s objective to minimise the impacts of residential development on the values present in the Study Area.</p> <p><u>Department Response:</u></p> <p>Residential uses will continue to be permissible in the C4 zone. Rezoning the land from R2 Low Density Residential to C4 Environmental living could impact on the development potential of some lots. Currently a minimum lot size of 600m<sup>2</sup> applies in the R2 zone. Council proposes that a minimum lot size of 40ha apply in the</p>



Issue raised / Submissions (%)	Council response and Department assessment of adequacy of response
	<p>C4 zone. The Department notes that Council has identified that there are only 5 lots within the Study Area which have potential for subdivision. The Byles Creek Planning Study (<b>Attachment G</b>) states that these lots have environmental constraints. However, the Department recommends that any development application on these lots be assessed on a merit basis. A summary of the 5 lots is provided in <b>Attachment H</b>.</p> <p>The impact of the Government's low to mid-rise development reforms may increase the development potential of some of the study area, with dual occupancy and semi-detached dwellings now permissible in the Study Area. This could increase the number of lots that will contribute to additional housing in Sydney.</p> <p>The Department has made recommendations concerning the proposed increase to the minimum lot size and the rezoning of the land in <b>Section 4</b>.</p>
<p><i>Alternate minimum subdivision lot size. (4 submissions – 14%)</i></p> <p>Submissions suggested that the proposed 40ha minimum lot size for the study area could be reduced while still allowing for the protection of the environment, including a suggested alternative lot size of 3ha.</p>	<p><u>Council Response:</u></p> <p>Council cites existing examples of C4 Environmental Living zones within the LGA that have been exclusively used with 40ha minimum lot sizes. The intent of the minimum lot size is to preserve the unique biodiversity values of the Study Area. Council states a lot size larger than 600m<sup>2</sup> but less than 40ha would be inconsistent with existing C4 lots in Hornsby Shire.</p> <p><u>Department Response:</u></p> <p>The Department believes the 40ha minimum lot size is excessive and not sufficiently justified, and that existing C4 land elsewhere in the LGA (eg Berowra Waters, Milsons Passage and Dangar Island) is not equivalent or comparable to the Byles Creek situation. As a result, the Department is recommending the removal of this proposed change as part of the finalisation.</p> <p>This issue is discussed further in <b>Section 4</b>.</p>
<p><i>Adjustment to Study Area boundaries. (4 submissions – 14%)</i></p> <p>A number of submissions suggest a revised Study Area boundary due to distance from the Byles Creek corridor, existing site conditions and lost development potential.</p>	<p><u>Council Response:</u></p> <p>The extent of the Study area was endorsed by Council due to the following reasons: an interface with the Byles Creek corridor, high to medium ecological value and land constraints, Malton Road, Sutherland Road, Azalea Grove, Kurrajong Street and Land Cove National Park. No changes to the proposal are recommended.</p> <p><u>Department Response:</u></p> <p>The broad application of the Study Area, as well as the lack of interface of some properties with land considered as highly ecologically valuable in the Byles Creek corridor is a concern shared by the Department.</p> <p>This issue is discussed further in <b>Section 4</b>.</p>

Issue raised / Submissions (%)	Council response and Department assessment of adequacy of response
<p><i>Changes to the Planning Proposal and Development Control Plan (DCP) (2 submissions – 7%)</i></p> <p>An alternative C2 zoning was recommended by one submission and another proposed DCP controls to restrict glass used to reduce bird collisions.</p>	<p><u>Council Response:</u></p> <p>No changes are proposed to the planning proposal in response to these recommendations.</p> <p><u>Department Response:</u></p> <p>Noted, no further response required. The DCP is Council's document. Any changes to the DCP are not in the scope of the planning proposal.</p>

### 3.1.3 Other issues raised

Other matters of concern raised by submissions included:

- the planning proposal is a misuse of resources as it does not benefit Hornsby rate payers; and
- the proposal may impact insurance premiums.

## 3.2. Advice from agencies

In accordance with the Gateway determination, Council was required to consult with various public agencies. Their responses are summarised in **Table 4**.

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

**Table 4 Advice from public agencies**

Agency	Advice raised	Council response
<i>NSW Environment and Heritage Group (EHG)</i>	EHG noted strong support for the proposal, and recommended council consider a split zoning of C4 and C2 land for lots containing significant biodiversity values.	<p>No changes are proposed to the planning proposal in response to this advice.</p> <p><u>Department response</u></p> <p>Split zones are impractical and unnecessary in this case. The Department notes EHG's comments.</p>
<i>NSW National Parks and Wildlife Service</i>	<p>Notes that two properties, 100X and 107X Malton Road, Cheltenham are part of the Lane Cove National Park and should be zoned C1 National Parks and Nature reserves, rather than the current RE1 Public Recreation zone.</p> <p>The proposed 40ha minimum lot size is more commonly seen in rural areas rather than the suburbs of Sydney, and it would not be</p>	<p>The suggestion concerning the rezoning of the two properties will be considered as part of a future housekeeping amendment to the Hornsby LEP.</p> <p><u>Department response</u></p> <p>The zoning of the two Malton Rd properties will be a matter for Council to consider.</p> <p>The Department notes National Parks' other comments.</p>

Agency	Advice raised	Council response
	<p>consistent with the existing character of the Study Area.</p> <p>NPWS supports the proposed new minimum subdivision lot size objectives.</p> <p>NPWS supports the proposed new riparian land provisions and mapping.</p>	
<i>NSW Rural Fire Service</i>	No specific objections raised to the proposed amendments.	N/A
<i>Sydney Trains</i>	No objections raised, comments relate to considerations for any DA impacting rail land.	<p>N/A</p> <p><u>Department response</u></p> <p>The Department notes Sydney Train's comments.</p>

### 3.3. Post-exhibition changes

There are no post-exhibition changes proposed by Council. Council resolved to endorse the planning proposal at its meeting of 8 November 2023 as exhibited and submit it to the Department for finalisation.

#### 3.3.1. The Department's recommended post-exhibition changes

Following the review of the planning proposal as submitted by Council for finalisation, the Department recommends changes to the proposal as summarised below.

The Department's recommended changes are:

- remove the proposed rezoning to C4 Environmental Living and retain the R2 Low Density Residential zone; and
- remove the proposed increase to the minimum lot size to 40ha and retain the existing minimum lot size of 600m<sup>2</sup>.

These changes are recommended as the Department does not support the proposed amendments to the Study Area because:

- the proposal is contrary to government housing policy
- the Government's low to mid-rise housing policy now applies in the Study Area with dual occupancy and semi-detached dwellings are permissible. See section 4.1.3 for further discussion on the low and mid-rise housing policy.
- the rezoning to C4 Environmental Living and increasing the minimum lot size will diminish the development potential and variety of potential land-uses of the land
- the minimum subdivision lot size of 40ha is inconsistent with existing lot sizes and incompatible with the established low-density residential character of the area; and
- biodiversity values can be managed adequately through local provisions in the LEP, including the proposed amendments to subdivision objectives and the inclusion of riparian corridor planning objectives and mapping.

It is considered that the post-exhibition changes are justified and reasonable because these changes:

- align with State policies and strategies, including;
  - both the Greater Sydney Region Plan and North District Plan
  - Section 9.1 Ministerial directions – including Direction 6.1 Residential Zones
- are a response to comments provided by the community; and
- will still enable Council to consider applications in the area with further subdivision objectives and riparian controls.

The Department considers that the post-exhibition changes do not necessitate re-exhibition. These changes are unlikely to significantly alter the original intent of the planning proposal, which aims to minimise the impact of residential development and protect the unique environmental values of the Study Area.

## 4. Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination prior to exhibition and the subsequent planning proposal process. It has also been subject to public consultation and engagement.

The following assesses the proposal against Council's Local Strategic Planning Statement, Regional and District Plans, relevant Section 9.1 Directions and SEPPs and describes any potential key impacts associated with the proposal.

As outlined in the Gateway determination report (**Attachment I**), the planning proposal as submitted to the Department for finalisation:

- remains consistent with Hornsby Shire Council's Local Strategic Planning Statement as it seeks to preserve the Study Area's biodiversity values through identification of riparian lands.
- remains inconsistent with aspects of the regional and district plans relating to housing delivery. The objectives of these plans are to deliver diverse, affordable housing supply with equitable access to services. The changes proposed will result in a reduction in development capability of residential land in close proximity to two heavy rail stations at Beecroft and Pennant Hills
- remains inconsistent with Ministerial Direction 6.1 Residential Zones. In particular the Direction requires proposals to make more efficient use of existing infrastructure and services [Direction 6.1 (1)(b)]. By reducing the opportunities for residential development close to rail stations Council's proposed plan is inconsistent with the Direction. The Department is not satisfied that the amended information provided in the exhibited planning proposal has sufficiently addressed the objectives of Ministerial Direction 6.1 Residential Zones; and
- raises concern that the Byles Creek proposal may set a precedent for the consideration of similar site-specific re-zonings reducing development capacity across the Hornsby LGA near riparian land.

The Department considers that the existing Environmental Planning Instruments (EPI), including LEP overlays related to biodiversity protection, heritage conservation, bushfire risk, and Council's DCP, already provide sufficient ecological protection for the Study Area. The proposed riparian land provisions will enhance consideration of biodiversity values.

The Department's analysis of Council's examples of C4 zoned areas finds that they are not directly comparable to the Study Area. The provided examples of Berowra Waters, Milsons Passage and Dangar Island are uniquely remote communities, inaccessible via private vehicle and densely occupied by high value vegetation. For these reasons, an identical approach to rezoning and minimum lot sizes for the Study Area is considered inappropriate (**Attachment J**).

Council justifies its planning proposal as a means to prevent environmental degradation. Much of the environmental degradation cited by the Council results from compliance breaches during development, non-compliance with development consent conditions, and the illegal removal of high-value vegetation. Non-compliance issues alone are not a valid reason to utilise the conservation zone framework to restrict residential development opportunities by rezoning land and effectively prohibiting subdivision by applying a 40ha control that cannot be achieved.

**Tables 5 and 6** identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters, these are addressed in Section 4.1.

**Table 5 Summary of strategic assessment**

	Consistent with Gateway determination report assessment
Regional Plan	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1 <b>Note:</b> The planning proposal remains inconsistent with objectives 10 Greater housing supply and 11 Housing supply is more diverse and affordable of the Greater Sydney Region Plan.
District Plan	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, refer to section 4.1 <b>Note:</b> The planning proposal is inconsistent with planning priorities N3 Providing services and social infrastructure to meet people's changing needs and N5 Providing housing supply, choice, and affordability, with access to jobs, services and public transport of the North District Plan.
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, refer to section 4.1 <b>Note:</b> The planning proposal remains inconsistent with Direction 6.1 Residential Zones.
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1

**Table 6 Summary of site-specific assessment**

Site-specific assessment	Consistent with Gateway determination report assessment
Social and economic impacts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1



## 4.1. Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended amendments to the planning proposal to make it suitable for finalisation.

### 4.1.1. Section 9.1 Ministerial Direction – 6.1 Residential Zones

The planning proposal was updated to address the consistency with Section 9.1 Ministerial Directions prior to exhibition by Council in accordance with the Gateway conditions.

Where these conditions may not have been adequately addressed or justified at Gateway or exhibition, they are reassessed at finalisation before the making of the plan.

Gateway condition (1)(g) required that the inconsistency with Direction 6.1 Residential zones be justified and for Council to explore alternative approaches for ecological preservation within the Study Area apart from rezoning the land.

The Department's comprehensive analysis of this Direction is in **Attachment K**.

Council provided analysis to justify the inconsistency of the planning proposal with this Direction. However, in the letter to Council (**Attachment D**), the Department considered that the consistency with this Direction remained unresolved, to be reassessed at finalisation with consideration of submissions received during the public exhibition.

In addition, the Department provided recommendations for alternative mechanisms for environmental protection and the management of development in the Study Area, which are outlined in the Gateway determination report (**Attachment I**) including:

- applying conditions of consent
- negotiating Voluntary Planning Agreements (VPA); and
- enforcing compliance and regulation to unauthorised development.

### Council comment

Council states that the proposal is consistent with Ministerial Direction 6.1 Residential Zones as it:

- retains provisions to enable a variety and choice of housing types permissible in both C4 and R2 zones
- does not impede on the permissible density of land or delivery of new housing near existing infrastructure and services
- minimises the impact of residential development on the environment, and
- is supported by the Byles Creek Planning Study.

Council does not agree with the Department's concerns about setting a precedent and believes that the housing needs can be met in other areas of the Hornsby LGA.

Council's key issues with the subdivision of lots in the Study Area are:

- the presence of threatened and endangered species
- the necessity of vegetation clearing to accommodate a building footprint
- the steep topography of the land; and
- a 'significant and continuous' bushfire hazard.

Further Council has stated that:

- the vast majority of the Study Area is unable to be subdivided or developed any further. The implementation of the riparian corridor buffer alone, without the rezoning or minimum lot size amendment would not be sufficient. Remnant bushland located on private properties

which adjoin and surround the Byles Creek corridor also require protection from tree and vegetation loss

- in its response (**Attachment C**) to the Gateway determination, Council outlines that they have received 295 requests regarding non-compliances or unauthorised vegetation removal which officers have been required to investigate in or adjacent to the study area since 2014. Continually enforcing compliance matters within the Study Area impacts on DA assessment timeframes
- a minimum lot size that is larger than 600m<sup>2</sup> but less than 40ha would be difficult to rationalise, as it would have no strategic basis; and
- the amendment to the wording of Clause 4.1, 'Minimum subdivision lot size' objectives in part 6 of the HLEP will provide additional protection to vegetation, and include consideration of site constraints, infrastructure capacity, lot size, existing subdivision pattern and natural and cultural features.

### Department comment and assessment

The Government's intention is to support and encourage residential development across the state where appropriate, particularly in close proximity to public transport nodes. However, the results of the proposed rezoning and minimum lot size controls contradict these goals.

Rather than a merit assessment of a development's impact on vegetation on a site-by-site basis, the proposal will impose a blanket, restrictive zoning coupled with an increased minimum lot size, extinguishing any future potential for development over a broad area.

The Department's assessment encompasses an examination of whether the application of existing LEP and DCP controls for bushfire protection, water quality and biodiversity protection, in conjunction with the proposed Riparian Corridor controls, could effectively fulfill the intended goals of the planning proposal.

The Department analysis (**Attachment J**) of Council's examples of C4 zonings and combined 40ha minimum lot size currently in the Hornsby LGA concludes that these C4 examples differ significantly from the Study Area. These residential communities are too remote to use as comparable examples in terms of accessibility, population density, proximity to local centres and public transport infrastructure. The Study Area is densely populated and near the local centres of Beecroft and Pennant Hills with high levels of public transport service.

An Economic Implications Analysis (EIA) (**Attachment L**) commissioned by Council supports the planning proposal. The Department notes that the EIA states that the economic impact on individual landowners is out of the scope the analysis.

The report relies on 'generic' land value samples of C4 zoned land from other LGAs as existing C4 land within the Hornsby LGA was not considered to be comparable with cited examples, to enable an assessment of any perceived loss in market value between the R2 and C4 zones.

The proposal contains four key components:

#### 1. *Rezone the land from R2 Low Density Residential to C4 Environmental Living*

The rezoning of the land is not consistent with Direction 6.1 Residential Zones.

The Department **does not support** the rezoning of the subject land. Rezoning residential land within the Study Area from R2 Low Density Residential to C4 Environmental Living would be overly restrictive in terms of development. **Table 7** lists in red text the land uses that are currently permitted with consent in the R2 zone that would be prohibited if a C4 zone applied to the Byles Creek study area.

The proposed C4 rezoning has not been targeted on lots which have a direct interface with the Byles Creek riparian corridor and captures dwellings that lack high biodiversity values. The land with high ecological constraints (**Figure 3**) does not generally extend into the sections of

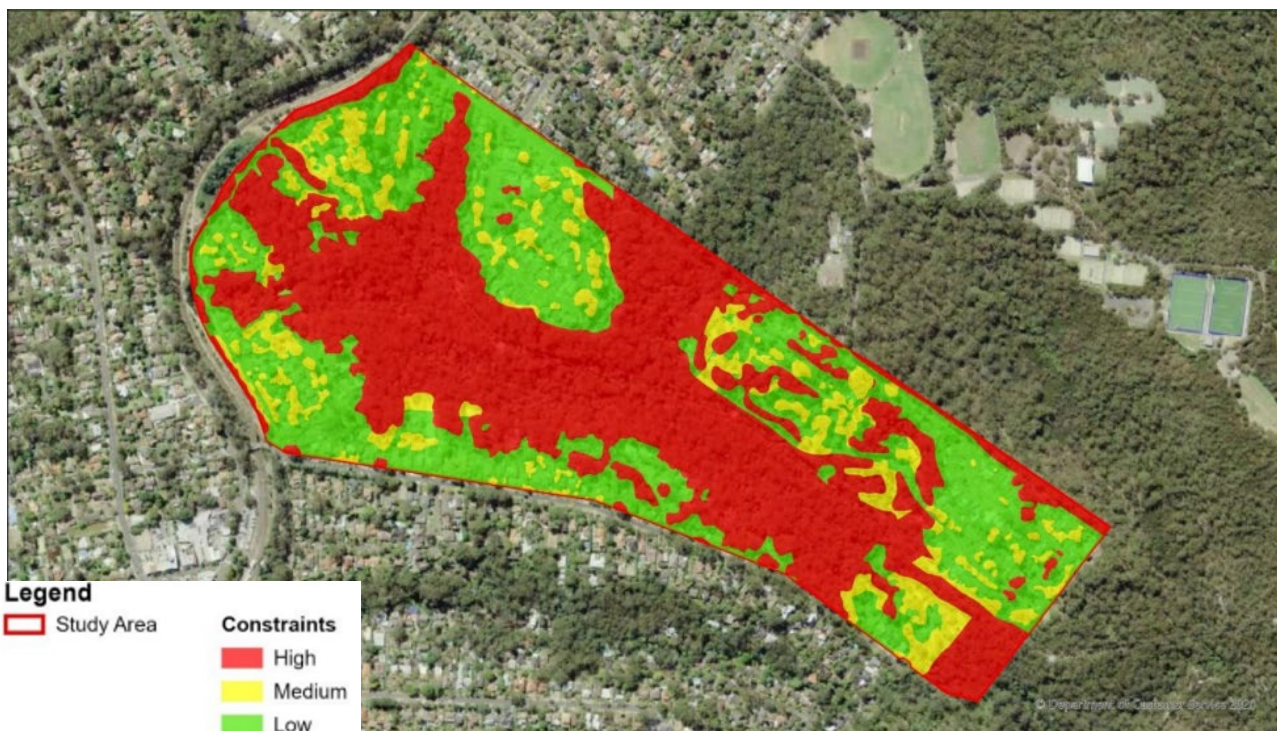
the Study Area currently mapped as R2 Low Density Residential. This high ecological constraint land is mostly contained within the existing RE1 Public Recreation zoning.

The HLEP contains measures to mitigate any potential impacts to riparian land in the Study Area. Existing LEP overlays, including those for biodiversity protection, heritage conservation, bushfire risk and controls within Council's DCP already provide for sufficient consideration of environmental hazards and ecological protection.

As stated by Council, environmental degradation in the Study Area is largely a result of development compliance breaches, non-compliances with development consent conditions and the illegal removal of high value vegetation.

It should be noted that rezoning of the Study Area will not alleviate Council's responsibility as the authority for monitoring development compliance. Council will continue to be obligated to enforce development consent conditions and compliance matters within the Study Area whether the land is zoned R2 or C4. The potential for illegal vegetation removal and the need for compliance officers to attend sites is a separate issue to the rezoning of land and this planning proposal.

The Department maintains that rezoning is not required to manage biodiversity protection and considers that many of the residential lots within the Study Area do not have high conservation values for example, those in Greenhaven Drive, Blackbutt Road and Garrett Road and Clement Close **Figures 4 to 7**. Many of the subject lots have little to no direct interface with Byles Creek.



**Figure 3: Ecological constraints within the study area (Source: Land Use and Environmental Constraints Assessment, Eco Logical, AEC)**





**Figure 4: The Study Area encompasses 433 low-density residential lots. The study area includes lots with no interface with areas mapped as containing biodiversity values. (Source: NSW Spatial Viewer)**



**Figure 5: Residential lots in Greenhaven Drive, Pennant Hills on the northern section of the Study Area (Source: Six Maps)**





**Figure 6: Residential lots in Blackbutt Avenue, Pennant Hills on the southern section of the Study area (Source: Six Maps)**



**Figure 7: Residential lots in Clement Close and Cassia Grove, Beecroft on the eastern section of the Study Area (Source: Six Maps)**



## 2. *Change the minimum lot size from 600m<sup>2</sup> to 40ha*

The Department **does not support** the approach of increasing the minimum lot size required for subdivision as this would result in the loss of development potential on land with minimal ecological constraints near the Pennant Hills and Beecroft local centres.

The increase to the minimum lot size is not consistent with Direction 6.1 Residential Zones, particularly as the proposed zoning and lot size changes would limit potential residential development in an area with good access to services and infrastructure and may set a precedent to sterilise development in other areas of the LGA.

Condition (1)(c) of the Gateway determination required Council to ‘further address the proposed minimum subdivision lot size of 40ha for all residential land within the Study Area.’

Parts of the Study Area have significant environmental constraints such as biodiversity values, heritage conservation, and bushfire risk. The Department considers that the rezoning to C4 Environmental Living and an increase of the minimum lot size to 40ha is excessive, given that the existing LEP and DCP controls already provide a mechanism for considering environmental hazards and biodiversity constraints within the Study Area.

The proposed Riparian corridor local provisions will enhance environmental protection of the Study Area without necessitating a 40ha minimum lot size and will provide targeted protection of land with a direct interface with the Byles Creek corridor.

The proposed 40ha lot size is effectively a prohibition of subdivision as there are no privately held lots in the study area that are capable of achieving the 40ha lot size. The 40ha does not reflect the existing lot pattern or suburban character of the study area. It is noted that the 40ha lot size would not meet Council’s proposed additional minimum lot size objective 4.1(c) that requires that ‘...lots are consistent with the predominant pattern, size and configuration of existing lots in the locality...’.

It is noted that the proposed 40ha minimum lot size would also not meet the existing minimum lot size objectives 4.1(1a & b) in HLEP that requires subdivision ‘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,’ and ‘to ensure that lots are of a sufficient size to accommodate development’.

Council’s response (**Attachment C**) to the Gateway Determination (**Attachment A**) included previous instances of subdivision and addressed the existing subdivision potential of lots in the Study Area. Since 1995, 11 applications for subdivision have been lodged within the Study Area, of these and only two have been approved. The EIA (**Attachment L**) outlines that only five of the 433 lots within the Study Area are considered to have the potential for further subdivision under the current planning controls. Given this information it could be argued that the risk posed from further subdivision is minimal, and that the 40ha minimum subdivision standard sought by Council is unnecessary (**Figure 8**).



**Figure 8: Residential lots with subdivision potential, Byles Creek Study Area (Source: AEC)**

### 3. *Revised objectives to the existing Clause 4.1 Minimum subdivision lot size*

The amendment to the objectives in clause 4.1 is consistent with Direction 6.1 Residential Zones.

The Department **supports** the proposal's objectives and intent to require consideration of additional matters such as consistency with surrounding lot patterns, sizes, and configurations, heritage and ecological values when subdivision DAs are being determined. It is noted that these objectives are proposed to apply to subdivision LGA-wide.

The proposed objectives will require development applications to consider the effect of subdivision on any existing natural and cultural features.

The Department acknowledges this may increase the level of justification needed to confirm that development will not impact on and is compatible with the surrounding environment.

This methodology is preferred over rezoning the land and sterilising development potential altogether.

### 4. *New Riparian Land clause in part 6 of the HLEP and supporting map*

The Department **supports** the inclusion of a new riparian land clause in part 6 of the HLEP supported by appropriate mapping:

- this approach was recommended in Council's 2019 review of the Byles Creek Catchment Land Acquisition Strategy
- a riparian corridor local provision is a more targeted method of providing protection to the Byles Creek study area. This meets Council's objectives by ensuring the consideration of environmental outcomes on private land within a Riparian corridor that directly adjoins a watercourse. The land will be identified as 'Riparian Land' on the Riparian Lands and Watercourses Map providing statutory protection to ensure development does not have an adverse effect on:
  - surface and groundwater characteristics, including water quality, flows and salinity;
  - native flora and fauna;
  - indigenous trees and other vegetation; and
  - public access to and use of public waterways.

- numerous properties included in the Study Area do not adjoin a watercourse and increased ecological protection would be more effectively captured by the proposed riparian corridor buffer.

A map of the ecological constraints is provided in **Figure 3**. An example of the area potentially covered by the riparian map is in **Figure 9**. Maps such as these will focus on protecting the riparian corridor in a targeted manner and can safeguard significant flora and fauna without rezoning the entire Study Area.



**Figure 9: Proposed Riparian Buffer Zones, Byles Creek Study Area (Source: Ecological, AEC)**

#### 4.1.2. Consistency with the Greater Sydney Region Plan and North District Plan

As outlined in the Gateway determination report (**Attachment I**), the Department considers that the application of the proposed C4 zoning over the Study Area unnecessary. The proposed LEP amendments also raise concerns about the impact to future residential development in the study area that may lack significant conservation value.

The proposal is inconsistent with the Greater Sydney Region Plan objectives and North District Plan priorities (**Table 8**).

**Table 8. Consistency with the Greater Sydney Region Plan (GSR) and North District Plan**

Plan	Consistency	Department Assessment
<b>GSR Plan:</b> <b>Housing the city</b> <i>Objective 10. Greater housing supply</i> <i>Objective 11: Housing is more diverse and affordable</i>	No	The LEP amendments proposed will reduce the development potential of residential land within the Study area, which is inconsistent with the objective.

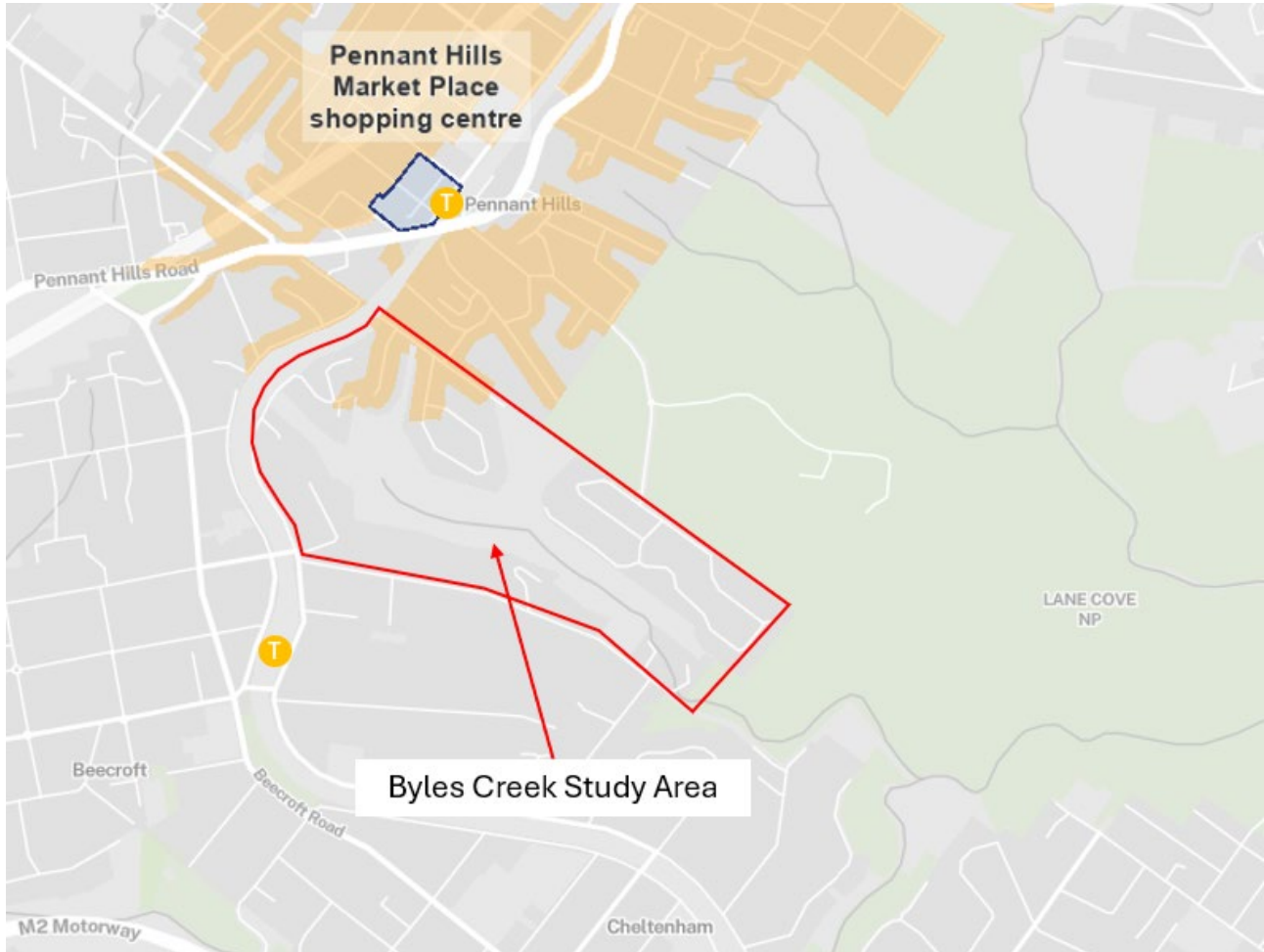


Plan	Consistency	Department Assessment
		<p>In the amended planning proposal, Council states that housing delivery can be accommodated in other parts of the LGA.</p> <p>However, restrictive zoning and prohibition of subdivision through excessive minimum lot sizes will restrict the potential delivery of further housing supply and affordability in this area that has infrastructure capacity to support development.</p>
<p><b>North District Plan:</b></p> <p><b>N3:</b> <i>Providing services and social infrastructure to meet people's changing needs.</i></p>	No	<p>The C4 zones does not permit land uses such as community facilities, educational facilities and places of worship. Restricting development opportunities prevents new people from locating close to the services and transport infrastructure at Pennant Hills and Beecroft.</p>
<p><b>N5:</b> <i>Providing housing supply, choice, and affordability, with access to jobs, services, and public transport.</i></p>		<p>The proposed rezoning and associated minimum lot size amendment would decrease the development potential of the land in the Study Area.</p> <p>The proposal will restrict future development and the delivery of housing supply, choice and affordability by restricting subdivision.</p> <p>This applies to the development potential of land adjacent to Beecroft and Pennant Hills town centres with no interface with the Byles Creek corridor (<b>Figures 5 to 7</b>).</p> <p>In accordance with the Gateway determination, Council updated their planning proposal, including detail on previous instances of subdivision and subdivision potential of lots in the Study Area.</p> <p>The Department is of the view that the additional detail provided does not provide sufficient justification to support reducing the development capacity and subsequent housing supply.</p>

#### 4.1.3. NSW Government's Low and Mid-Rise Housing Policy

The NSW Government has introduced standards through the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) to encourage more Low and Mid-Rise homes to be built. Stage 1 of the policy has been in place since 1 July 2024, allowing dual occupancies and semi-detached dwellings in the Hornsby LEP R2 low density residential zone.

The second stage of the low and mid-rise policy introduces new planning controls to allow terraces, townhouses, low and mid-rise apartments and shop-top housing within 800 metres of identified town centres and train or light rail stations. Of relevance to this planning proposal, the subject site includes land that likely falls within the Pennant Hills Marketplace shopping centre Low and Mid-Rise (LMR) Policy boundary where these changes were implemented on 28 February 2025 (**Figure 10**).



**Figure 10: Pennant Hills Market Place Shopping Centre Indicative LMR Policy Boundary (Source: Low and Mid-Rise Housing Policy Indicative Map)**

The proposed rezoning to E4 Environmental Living would significantly reduce the residential land uses currently permissible and reduce the development capacity of the site. As the LMR Policy does not apply to the E4 zone, should the planning proposal be finalised as exhibited, the application of the LMR policy would no longer apply.

The proposed changes to zone and minimum lot size are therefore inconsistent with the Government policy now in effect which supports increased housing supply in areas with access to a wide range of goods and services and public transport services.

The post-exhibition amendments proposed by the Department would enable residential development to occur in line with Government policy, whilst ensuring consideration of environmental constraints.

## 5. Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.



**Table 7 Consultation following the Department's assessment**

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Two maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> in May and June 2024.</p> <p>Council raised concerns about the draft plan and objected to the Department's removal of the proposed C4 zone and the 40ha minimum subdivision control.</p> <p>Council also suggested improvements to the draft map which have been incorporated in the final maps.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 23/01/2025, Parliamentary Counsel provided a Certificate that the draft LEP could legally be made.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

## 6. Recommendation

It is recommended that the Acting Executive Director, as delegate of the Secretary:

- Agree that the draft LEP is now consistent with section 9.1 Direction 6.1 Residential zones as the current R2 Low Density Residential zoning is to be retained, and the proposed restrictive 40ha minimum subdivision lot size has been removed from the plan.

It is recommended that the Acting Executive Director, as the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act with variation to the planning proposal as exhibited by Council as follows:

- remove the proposed rezoning of the land to C4 Environmental Living and retain the current R2 Low-Density Residential zone
- remove the proposed increase of the minimum lot size to 40ha and retain the current 600m<sup>2</sup> minimum lot size
- introduce additional objectives to clause 4.1(1) Minimum subdivision lot size to provide support for Council's assessment of future subdivision applications by introducing clear objectives to promote regular subdivision patterns (to apply across the entire local government area)
- introduce a new clause in part 6 Local Provisions providing additional considerations for development on Riparian land; and
- introduce a new map which applies the Riparian land provisions on the Byles Creek Watercourse and land directly adjoining Byles Creek watercourses.

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the *Environmental Planning and Assessment Act 1979* because:

- the draft LEP has strategic merit being consistent with North District Plan and the Hornsby Council LSPS
- the inconsistency with section 9.1 Ministerial Directions 6.1 Residential zones has been resolved
- it is consistent with all other section 9.1 Ministerial Directions and State Environmental Planning Policies
- it is consistent with the Gateway Determination; and
- there are no outstanding agency objections to the proposal.

Ashley Cook

A/Manager, Local Planning (North, East & Central Coast)



7 April 2025

Jazmin van Veen

Director, Local Planning (North, East & Central Coast)

## Attachments

Attachment	Document
A	Gateway determination - 18 May 2023
B	Byles Creek Planning Proposal – June 2023
C	Council - Gateway Response - 23 June 2023
D	DPHI - Letter to Council - Gateway Determination Conditions Response
E	Post-exhibition Council Report - 8 November 2023
F	Council Meeting Minutes 8 November 2023
G	Byles Creek Planning Study 2021
H	Department's Summary of DAs for Subdivision in the Study Area
I	Gateway determination report - May 2023
J	Department's Analysis of Council's Examples C4 Zoned Land
K	Department's Comprehensive Assessment of Direction 6.1
L	Byles Creek Planning Study Economic Implications Analysis