



IRF23/2114

# Gateway determination report – PP-2023-1549

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Hornsby Shire Rural Lands Study

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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 Reports and plans supporting the proposal**

Relevant reports and plans
Attachment A – Planning Proposal – Rural Lands Study
Attachment B – Hornsby Shire Rural Lands Study 2022
Attachment C – Implementation Action Plan A
Attachment D – Hornsby DCP Amendments
Attachment E – Pre-gateway feedback for Hornsby RLS PP 21/06/2023
Attachment F – Policy Team response – Hornsby RLS PP Roadside Stall SI Amendment
Attachment G – Hornsby Local Planning Panel Meeting Minutes 31/05/2023
Attachment H – Hornsby Shire Rural Lands Study – Background Report 2022

# 1 Planning proposal

## 1.1 Overview

Table 2 Planning proposal details

<b>LGA</b>	Hornsby
<b>PPA</b>	Hornsby Shire Council
<b>NAME</b>	Hornsby Shire Rural Lands Study (40 Homes, 0 Jobs)
<b>NUMBER</b>	PP-2023-1549
<b>LEP TO BE AMENDED</b>	Hornsby Local Environmental Plan 2013
<b>ADDRESS</b>	Local Government Area (LGA) Wide
<b>DESCRIPTION</b>	<p>The proposal implements 5 key recommendations from Hornsby Council's <i>Rural Lands Study 2022</i>. The proposal seeks to:</p> <ol style="list-style-type: none"><li>1. support commercial agricultural operations,</li><li>2. mitigate rural-residential land-use conflicts,</li><li>3. clarify dual occupancy controls in rural areas,</li><li>4. amend the Standard Instrument definition of "roadside stalls", and</li><li>5. include access-handles in minimum lot size calculations for rural lots.</li></ol>
<b>RECEIVED</b>	20/07/2023
<b>FILE NO.</b>	IRF23/2114
<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

The objectives of the proposal require clarification. The planning proposal implements the *Hornsby Shire Rural Lands Study 2022* (RLS) recommendations, and Council states the proposal seeks to improve the economic viability of rural lands, support existing commercial agriculture, minimise land-use conflicts, and protect the rural landscape and biodiversity values.

The proposal amends the requirements of Clause 4.1 *Minimum subdivision lot size* to include access-handles in the lot size calculation in rural areas. Council states they have “*identified approximately 30-40 sites in the rural area that may be able to subdivide*” as a result of this amendment, however there is no analysis as to the potential number of lots or dwellings which could result from this. Whilst housing delivery has not been identified as an objective of the proposal; some additional housing may result from this amendment.

## 1.3 Explanation of provisions

The planning proposal clearly outlines the provisions sought by Council. **Table 3** summarises the proposed 5 amendments to the Hornsby LEP 2013:

**Table 3 Explanation of provisions**

#	Amendment	Amendment Details
1	Amend the objectives of the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and C3 Environmental Management zones	<p>The proposed objective for the RU1, RU2 and RU4 zones is: “<i>To encourage agritourism and tourist and visitor accommodation land uses that support agricultural industries and align with the rural character of the area.</i>”</p> <p>The proposed objective for the C3 zone is: “<i>To enable low impact agritourism and tourist and visitor accommodation development that is compatible with the environmental values of the zone.</i>”</p> <p>The full comparison of the existing and proposed zone objectives is at <b>Attachment A, Table 1, p. 7-8</b>.</p>
2	Include the optional Standard Instrument LEP Clause 5.16 in the Hornsby LEP	<p>The objective of Clause 5.16 is to minimise potential land use conflicts between existing and proposed development on land in rural, residential, or conservation zones.</p> <p>The inclusion of this Standard Instrument clause will require the assessment of subdivisions and/or erection of dwellings to consider avoidance of land use conflict.</p>
3	Amend the wording of Clause 6.9 <i>Dual occupancies attached on rural land in certain zones</i> to clarify existing controls for dual occupancies	<p>The amendment to Clause 6.9 clarifies the limit of gross floor area for dual occupancies (attached). This is to ensure to ensure development in rural areas maintains a rural character.</p> <p>The proposed amendment states the size of the lot on which dual occupancies (attached) are permissible. The proposed amendment also clarifies that at least one of the dual occupancy dwellings must be no more than 200 sqm.</p>

#	Amendment	Amendment Details
4	Amend the definition of “roadside stalls” within the Standard Instrument LEP	The amendment seeks to alter the Standard Instrument definition of “roadside stalls”, so roadside stalls are able to sell produce and hand-crafted goods from the local region, rather than only the property or adjoining property on which the stall is located.
5	Amend the requirements of Clause 4.1 <i>Minimum subdivision lot size</i> to include access-handles in rural areas for lot size calculation	The amendment seeks to amend Clause 4.1 “Minimum subdivision lot size” using optional Standard Instrument provision Clause 4.1(3A) to allow the area of a vehicle access handle to be included in lot size calculations on rural properties.

## 1.4 Site description and surrounding area

The proposal applies to ‘Metropolitan Rural Areas’ in the Hornsby LGA. Council has identified the rural lands in their Local Strategic Planning Statement (LSPS) in accordance with the North District Plan (**Figure 1**).

The RLS divides the Hornsby rural lands into 13 landscape areas (**Figure 2**) with shared characteristics, such as landform, vegetation, and land uses. The RLS provides recommendations for each of the thirteen landscape areas (**Attachment B p. 38-77 of 91,**) plus general recommendations (**Attachment B p. 78,**) for the rural area as a whole.

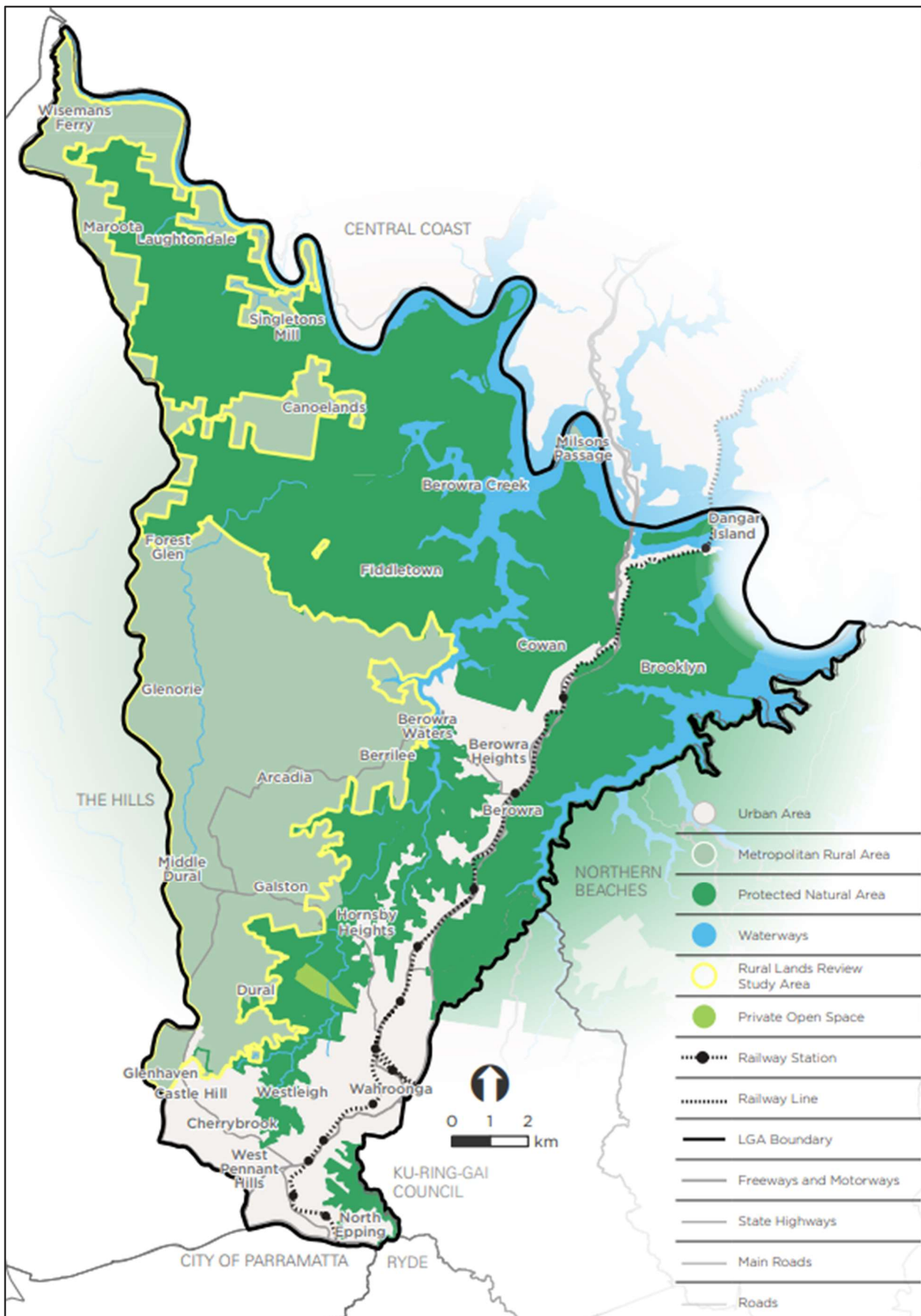
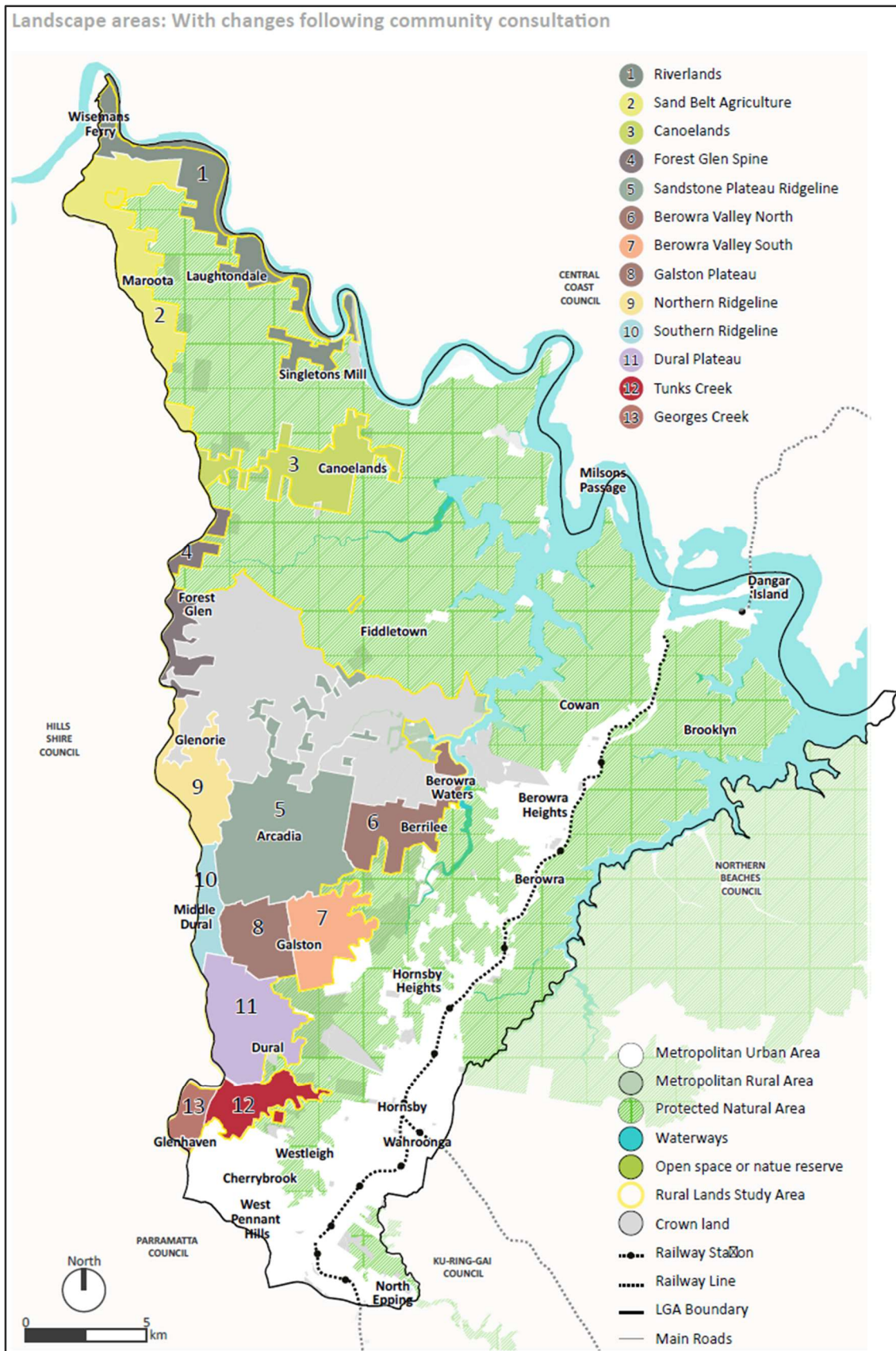


Figure 1: Metropolitan Rural Areas within Hornsby LGA (source: Hornsby LSPS, 2020)





**Figure 2: Identified Landscape Areas within Hornsby LGA (source: SGS Economics and Planning, 2020)**

## 1.5 Mapping

There is no map amendment proposed. No maps are required to support the proposed amendment and Council will be writing to all affected landowners advising of the exhibition.

## 1.6 Background

The planning proposal is informed by Council's *Hornsby Shire Rural Lands Study* (RLS), a comprehensive study that reviewed the planning controls, existing character, and land use patterns in Hornsby's rural lands to provide parameters for future land use planning and set a vision for Hornsby's rural areas.

The RLS (**Attachment B**) was undertaken by SGS Economics and Planning, finalised by Council in June 2022. The proposal also responds to the state-wide planning reforms to agritourism made by the Department of Planning and Environment (the Department) in December 2022, which overlapped with and partially implemented recommendations from the RLS. This proposal gives effect to the RLS Implementation Plan actions which have not been addressed by the state-wide agritourism reforms.

Council resolved to endorse the planning proposal on 12 July 2023, and it was submitted to the Department on 20 July 2023.

The RLS's recommendations for managing Hornsby's rural lands (**p. 78, Attachment B**) and how Council have addressed these in the planning proposal are summarised in **Table 4** below.

**Table 4 RLS key recommendations**

	Issue	RLS Recommendation / Justification	Included in planning proposal?
1	Zone objectives to reflect value-adding activities for agriculture	<p><b>RLS Recommendation:</b> Update the rural zone objectives in RU1, RU2 and RU4 to add 'agritourism' opportunities which will protect the existing rural character whilst increasing the economic viability of the land through agricultural value-adding activities. The full comparison of existing and proposed zone amendments is shown at <b>Attachment A, Table 1, p. 7-8</b>.</p> <p><b>Justification:</b> Council states the above zone objectives need to be updated to support primary production, tourism, and the protection of rural character.</p> <p><b>Additional permitted uses in the C3 Environmental Management zone</b> As part of the Department's agritourism reforms new and amended terms including "<i>farm experience premises</i>" and "<i>farm gate premises</i>" were introduced.</p> <p>In response to this, although it was not a RLS recommendation, Council resolved to include the C3 Environmental Management zone as a zone in which <i>farm experience premises</i> and <i>farm gate premises</i> are permitted.</p>	Yes

	Issue	RLS Recommendation / Justification	Included in planning proposal?
2	Land-use conflict	<p><b>RLS Recommendation:</b> Include the optional Standard Instrument Clause 5.16 into the Hornsby LEP.</p> <p>The purpose of this clause is to minimise potential land use conflict between the existing and proposed development. The addition requested by Council will require development assessments to consider mitigation and avoidance of land use conflicts.</p> <p><b>Justification:</b> The RLS recommends that residential development in rural areas should be sited so it does not interfere with established land uses.</p>	Yes
3	Clarify dual occupancy controls	<p><b>RLS Recommendation:</b> Amend Clause 6.9 to clarify the permissibility of Dual Occupancies (attached) in the RU1, RU2 and RU4 zones.</p> <p><b>Justification:</b> The current wording of the clause may be misinterpreted as prohibiting development where both dwellings are greater than 200m<sup>2</sup>. This may result in the underutilisation of rural zones.</p> <p>The wording of the clause is to be revised to clarify that one of the dual occupancy dwellings must be no more than 200 sqm.</p>	Yes
4	Standard Instrument definition for “roadside stalls”	<p><b>RLS Recommendation:</b> Amend the requirements for roadside stalls under the Standard Instrument so roadside stalls are able to sell produce or locally made items produced on site and from the local rural area.</p> <p><b>Justification:</b> The amendment seeks to recognise and protect productive agricultural land, limiting further fragmentation of land. Council argues that this can be achieved by exploring opportunities for rural businesses to value add with activities that are ancillary to, and support, agricultural production.</p> <p>Council’s RLS argues that “roadside stalls” are an opportunity to support the ongoing viability of the agricultural industry. The current definition restricts the sale of items to only those which are produced on site, and by directly adjacent landowners.</p>	<p>Yes.</p> <p>Department comment: This amendment is not appropriate to be considered as part of a local amendment and should be removed from planning proposal. This matter will be considered as part of a broader state-wide policy review of the Standard Instrument.</p>

	Issue	RLS Recommendation / Justification	Included in planning proposal?
5	Minimum lot size calculations for rural lots	<p><b>RLS Recommendation:</b> Amend the requirements of Clause 4.1 to allow the area of a vehicle access handle to be included in lot size calculations on rural properties.</p> <p><b>Justification:</b> Council states that access handles should be included in lot size calculation as this <i>“would not compromise rural landscape character.”</i></p> <p>Additional justification should be provided addressing why Council wishes to make this change. Council has identified that the change would affect <i>“approximately 30-40 sites in the rural area”</i>, enabling some additional subdivision, however Council has not made it clear if additional subdivision is their reason behind making this amendment.</p>	<p>Yes.</p> <p>Department comment: Further justification will be requested as part of the Gateway Determination. Further detail is provided below in Table 4.</p>
6	Viability of secondary dwellings	<p><b>RLS Recommendation:</b> Amend Clause 5.5 which restricts secondary dwelling size to whichever is the greater, either 33% of the total floor area of the principal dwelling or 120 sqm.</p> <p>The amendment would permit secondary dwellings in rural areas up to a specific maximum size in sqm, regardless of the size of the principal dwelling.</p> <p><b>Justification:</b> Council argues that the amendment will limit secondary dwellings in rural areas to a reasonable size to protect the rural landscape character.</p>	<p>No.</p> <p>Council comment: The proposal relates to Implementation Plan A (<b>Attachment C</b>). The proposed secondary dwelling amendment is not included as part of this implementation plan but may form part of a subsequent proposal.</p>

## 2 Need for the planning proposal

### ***Is the planning proposal a result of a local strategic planning statement, or Department approved local housing strategy, employment strategy or strategic study or report?***

The proposal implements the short-term recommendations of the Hornsby RLS, which Council resolved to finalise on 8 June 2022. The RLS outlines a contemporary approach to managing the challenges faced by rural lands and communities in Hornsby. These challenges include:

- The encroachment of residential development and ‘rural lifestyle’ uses on land historically used for agricultural purposes, making agricultural uses less viable.
- Land value appreciation and land fragmentation caused by encroaching residential uses.
- Land-use conflicts between agricultural land-uses and new residential development.
- Increasing environmental constraints in rural areas, such as bushfire and flood risk and the effects of climate change.

The proposal implements an amendment which alters the minimum lot size calculation for rural lots by including lot access-handles in this. This amendment effectively makes the subdivision of rural lots easier, which is contrary to the other amendments and the stated purpose of the planning



proposal, as stated above. It is a condition of the Gateway that Council address this discrepancy in the *'Need for the planning proposal'* section of their proposal.

The proposal also delivers priorities and actions from Council's Local Strategic Planning Statement (LSPS). LSPS Priority SP8 is to *maintain and enhance the environmental, economic, and scenic values of the Metropolitan Rural Areas of Hornsby* and contains action SA11 which is to finalise the Hornsby Rural Lands Study. The proposal is consistent with these as it seeks to implement the RLS and enhance the economic value of Hornsby's rural areas.

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

Council states that it believes a planning proposal is the best method of implementing the recommendations of the RLS. LEP amendments provide certainty for the community and commercial agricultural operators as to the future of Hornsby's rural areas.

Council intends to support the planning proposal with complementary amendments to Hornsby's Development Control Plan (DCP) 2013. These amendments include new prescriptive measures to DCP sections 'Landscaping', 'Design Details', and 'Rural Subdivision', with a new desired outcome included in 'Rehabilitation'. The amendments to the Hornsby DCP will be exhibited with the planning proposal and are outlined at **Attachment D**. It is noted that DCP amendments concerning the definition of "roadside stalls" should be removed, for the reasons outlined below.

Standard Instrument definition of "roadside stalls"

The Department supports the objectives of the proposal and Council's intention to support the viability of rural lands, minimise land-use conflicts, and protect landscapes and biodiversity. On 20 June 2023 the Department's Regional team met with Council to discuss the draft planning proposal. The Department followed this meeting with written advice (**Attachment E, dated 21 June 2023**) stating whether each of the amendments were supported from a policy perspective and suggesting a planning pathway for each.

The Department advised Council that any change to the Standard Instrument definition of "roadside stalls" could not be supported as a local amendment as this change would need to be considered from a broader, state-wide policy lens. Council was advised that should this change be included as part of Council's planning proposal the Department would condition any Gateway determination that this amendment be removed.

The Standard Instrument policy team followed this meeting with written advice (**Attachment F, dated 4 August 2023**) confirming this position.

Access handles and lot size calculation

Council was also advised regarding rural land access handles and lot size calculations that this proposed amendment needed to be well-supported with evidence of the properties affected, and justification as to why another mechanism, such as clause 4.6, was not suitable to be used. The planning proposal as submitted has included further explanation and justification.

Amendments, mechanisms, and Department feedback summarised

The amendments and mechanisms which Council has proposed, and the Department's feedback of 21 June 2023, is summarised in **Table 5**.

**Table 5 Amendment Mechanisms**

	<b>Amendment</b>	<b>Mechanism proposed</b>	<b>Department feedback</b>
1.	Amend the objectives of the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and C3 Environmental Management zones.	<ul style="list-style-type: none"> <li>Amend the following zones objectives to reflect the intent of the zones supporting value adding activities for agriculture               <ul style="list-style-type: none"> <li>RU1 Primary Production,</li> <li>RU2 Rural Landscape,</li> <li>RU4 Primary Production Small Lots or</li> <li>C3 Environmental Management.</li> </ul> </li> </ul>	The Department supports the objectives of the proposed amendment, as it seeks to ensure the economic viability of agricultural uses of rural lands.
2.	Include the optional Standard Instrument LEP Clause 5.16 in the Hornsby LEP.	<ul style="list-style-type: none"> <li>Include optional SI Clause in Hornsby LEP Clause 5.16, requiring development assessments to consider the avoidance of land use conflict, achieving the intent of the Hornsby RLS recommendation.</li> </ul>	There is an existing optional clause in the standard instrument LEP. Council's approach complies with the directions in the standard instrument LEP order. The amendment complies with the objectives of the Hornsby RLS, seeking to mitigate the impact of rural-residential land-use conflicts.
3.	Amend the wording of Clause 6.9 to clarify existing controls for dual occupancies.	<ul style="list-style-type: none"> <li>Existing LEP Clause 6.9 (3) to be divided into separate Subclause 4 – clarifying the wording to minimise misinterpretation resulting in underutilisation of rural zones.</li> </ul>	The proposed amendment is to a local clause clarifying development standards that may lower the viability of constructing dual occupancies. The Department is supportive of the amendment, as it will bolster the utilisation of rural zones for dual occupancies, via an existing clause of the LEP.
4.	Amend the standard definition of "roadside stalls" within the Standard Instrument LEP.	<ul style="list-style-type: none"> <li>As an additional local provision in Part 6 of the Hornsby LEP,</li> <li>or alternatively</li> <li>A revision to the Standard Instrument definition (which will not form part of this proposal)</li> </ul>	<p>Council's suggested change to the Standard Instrument "roadside stalls" definition needs to be considered in a broader state-wide policy lens. This matter is not suitable to be addressed as part of a council-initiated planning proposal and should not be amended via local provision. As such this amendment should be removed from the proposal before public exhibition.</p> <p>The Department will investigate the matter as part of any future policy work for Agritourism/Standard Instrument LEP review.</p>

	Amendment	Mechanism proposed	Department feedback
5.	Amend the requirements of Clause 4.1 to include access-handles in rural areas for lot size calculation.	<ul style="list-style-type: none"> <li>An amendment is proposed to the application of Clause 4.1(3A) to exclude any land zoned: <ul style="list-style-type: none"> <li>RU1 Primary Production,</li> <li>RU2 Rural Landscape,</li> <li>RU4 Primary Production Small Lots or</li> <li>C3 Environmental Management.</li> </ul> </li> </ul>	<p>The Standard Instrument Clause 4.1 allows an exception to the minimum subdivision lot size in certain circumstances which is possible under Clause 4.1(3A).</p> <p>Any amendment outside what is allowable under the above Standard Instrument exception would need to be considered within a broader policy discussion.</p> <p>This objective of this amendment appears contrary to the other recommendations of the RLS, which focus on preserving rural land uses and minimising rural-residential land-use conflicts. It is requested that Council provide additional context and justification for this amendment before exhibition. This should address the reasoning driving this change, how many additional subdivisions/dwellings may result from this amendment, and how this will not result in a loss of viable rural land.</p>

## 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 5 Regional Plan assessment**

Regional Plan Objectives	Justification
<b>Objective 10.</b> Greater housing supply	<p>The proposal may result in housing delivery in Hornsby's rural zones. The proposed amendment to Clause 6.9 seeks to clarify controls for dual occupancies, ensuring there is no underutilisation of potential housing in rural zones.</p> <p>The amendment to Clause 4.1 may result in <i>"approximately 30-40 sites in the rural area that may be able to subdivide"</i>. Council has provided no analysis regarding the potential number of lots or dwellings which could result from this.</p> <p>As part of the Gateway determination Council is required to provide an assessment of the proposal against Objective 10 of the Greater Sydney Region Plan, addressing housing delivery.</p>
<b>Objective 28.</b> Scenic and cultural landscapes are protected	<p>The proposal supports traditional agricultural enterprise in Hornsby's rural areas and protects scenic cultural landscapes within these rural areas by considering the impacts of land use conflicts.</p>

Regional Plan Objectives	Justification
<b>Objective 29.</b> Environmental, social and economic values in rural areas are protected and enhanced	The proposal supports the economic viability of Hornsby's rural areas by allowing commercial farming to diversify their income. The proposal will allow agritourism and tourist and visitor accommodation land uses that align with the rural characteristics of the area. The 13 unique landscape areas investigated as part of the RLS promote a place-based approach to rural land management which will protect the social and environmental values of rural lands.
<b>Objective 39.</b> A collaborative approach to city planning	Regional and district plans inform the preparation and endorsement of local strategic planning statements and assessment of planning proposals. This proposal is underpinned by Hornsby's LSPS and RLS. The RLS aims to manage the environmental, social, and economic values of Hornsby's rural areas and maximise the productive use of this land.

## 3.2 District Plan

The Hornsby LGA is situated within the Metropolitan North District. The Greater Cities Commission (formerly the Greater Sydney Commission) released the North 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. Table 6 below provides an assessment of the planning proposal against relevant directions and actions:

**Table 6 District Plan assessment**

District Plan Priorities	Justification
<b>Planning Priority N5 –</b> Providing housing supply, choice, and affordability, with access to jobs, services, and public transport	The proposal may result in greater housing delivery in Council's rural zones. It clarifies controls for dual occupancies, ensuring they can maximise potential housing supply. Additionally, the amendments may result in further subdivisions, affecting " <i>approximately 30-40 sites in the rural area</i> " by including 'access handles' in minimum lot size calculations.  As part of the Gateway determination Council is required to provide an assessment of the proposal against Planning Priority N5 of the North District Plan, addressing housing supply, choice, and affordability.
<b>Planning Priority N13 –</b> Supporting growth of targeted industry sectors	The proposal seeks to promote low impact agritourism opportunities which can help the agricultural industry diversify their income, increasing viability.  The proposal also protects commercial activity from land use conflicts arising from non-productive rural-residential encroachment. This is via the introduction of Clause 5.16 in the Hornsby LEP, which requires land use conflicts to be considered at development application stage.
<b>Planning Priority N17 -</b> Protecting and enhancing scenic and cultural landscapes	The proposal protects scenic rural character by supporting rural area's commercial viability. The proposal also protects scenic and cultural landscapes by amending the zone objectives to reinforce the sense of place in Hornsby's rural areas.



District Plan Priorities	Justification
Planning Priority N18 – Better managing rural areas	The Hornsby RLS provides a place-based approach to rural lands planning, with the goal of facilitating economic resilience. These financial benefits are not at the detriment of the environment or rural scenic character, as the proposed amendments consider land use conflict limit in rural areas.
<b>Planning Priority N23 –</b> Preparing local strategic planning statements informed by local strategic planning	The finalisation of the RLS was required by Strategic Action 11 of the Hornsby LSPS. The proposal gives effect to the recommendations of the RLS.

### 3.3 Local

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 7 Local strategic planning assessment**

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>Key Priority No.7 of the LSPS seeks to “<i>protect and enhance the environmental value and economic productivity of the Metropolitan Rural Lands in [Hornsby] Shire.</i>” The proposal meets this priority by increasing the economic viability of agricultural lands and mitigating future rural-residential land-use conflicts.</p> <p>Priority SP8 and Strategic Action 11 of the LSPS requires finalisation of the RLS. This proposal meets this priority by implementing the RLS recommendations.</p>
Hornsby Rural Lands Study (RLS)	<p>The proposal gives effect to the short-term recommendations made by the Hornsby RLS. The RLS outlines the following vision for rural areas within Hornsby Shire and includes:</p> <ul style="list-style-type: none"> <li>• Strategies to promote the retention of Hornsby’s rural areas as a key part of Hornsby and the Greater Sydney Region;</li> <li>• Analysis and consideration of drivers of change in agricultural and rural areas;</li> <li>• A future vision for Hornsby’s rural areas;</li> <li>• Principles for better managing rural areas in Hornsby Shire; and</li> <li>• Recommendations for changes to planning controls to implement the findings of the Hornsby RLS.</li> </ul> <p>The proposal is generally consistent with the Council’s RLS.</p> <p>It is noted that although it was not a RLS recommendation, Council resolved to also include <i>farm experience premises</i> and <i>farm gate premises</i> as permitted in the C3 Environmental Management zone. This was a result of the Department’s agritourism reforms which introduced the new terms.</p>

Local Strategies	Justification
Local Housing Strategy (LHS)	The proposal seeks to include 'vehicular access' handles in minimum lot size calculations for properties in rural areas. This amendment will enable subdivision of additional rural lots and may result in some additional housing.

### 3.4 Local planning panel (LPP) recommendation

At its meeting of 31 May 2023, the LPP was generally supportive of the proposed amendments and supported the progression of the proposal to Gateway.

The LPP made two comments on the proposal (**Attachment G**) regarding the proposed zone objectives and the roadside stall definition.

The Panel considered that the use of the word “accommodation” in the proposed zone objectives (for the RU1, RU2, RU4 and C3 zones) may be misinterpreted as including other types of accommodation such as hotels or resorts. It was recommended the proposed objectives should be reworded to include the words “...agritourism and tourist and visitor accommodation land uses” (the Panel’s proposed amended words are underlined). This suggested change was included in the planning proposal and is supported by the Department.

The Panel also noted that any change to the roadside stall definition would need to be made in conjunction with the Department. The Panel commented that a roadside stall definition should be tightened “*to ensure that roadside stalls don’t become quasi “shops” with items from unrelated areas or regions*” (**Attachment G**). The Department agrees with this advice and notes that this change has been conditioned to be removed from the planning proposal.

### 3.5 Section 9.1 Ministerial Directions

The planning proposal needs to be updated to address the following section 9.1 Ministerial Directions:

- 4.1 Flooding. The proposal applies to land affected by flooding, which is not addressed by the planning proposal.
- 6.1 Residential Zones. The proposal may facilitate increased dwelling numbers, and the ability of the proposal to provide future housing which utilises existing infrastructure and minimises the impact of the development on the environment should also be addressed.
- 9.1 Rural Zones. The proposal may increase residential density on rural lands (by including access-handles in the rural land lot size calculation) and this amendment needs to be further justified in this context.

The relevant section 9.1 Directions are outlined below:

**Table 8 9.1 Ministerial Direction assessment**

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Yes	The proposal is generally consistent with the objectives of the Greater Sydney Region Plan and the North District Plan.

3.1 Conservation Zones	Yes	<p>The proposal does not seek to intensify development in the C3 Environmental Management zone.</p> <p>The proposed objective for the C3 zone is: <i>“To enable low impact agritourism and tourist and visitor accommodation development that is compatible with the environmental values of the zone.”</i></p> <p>This amendment will allow complementary land uses in the area whilst also facilitating the protection and conservation of environmentally sensitive areas.</p>
3.2 Heritage Conservation	Yes	<p>The proposal protects and conserves environmentally sensitive areas as the proposed amendments will not detrimentally impact any heritage items, places, or areas. The proposed amendments do not reduce the conservation standards that apply to the land.</p>
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 bushland.</p> <p>The proposal will not impact on public bushland, nor will it reduce the environmental protections for bushland.</p>
3.10 Water Catchment Protection	Yes	<p>The proposal applies to land within the Hawkesbury River catchment. The proposed amendments will have a negligible impact on water quality, habitats, groundwater, and other natural processes associated with the relevant catchment.</p>
4.1 Flooding	Not addressed by the planning proposal	<p>The objectives of this Direction are to be consistent with government flood policies and ensure that proposed changes respond to flood risk appropriately.</p> <p>The proposal has not addressed Direction 4.1 Flooding as part of the planning proposal's assessment.</p> <p>The proposed amendments should not facilitate subdivision and new dwellings in floodways and high hazard areas or detrimentally affect flood prone land or worsen any potential flood impacts.</p> <p>A Gateway condition has been included for this Direction to be addressed prior to exhibition.</p>

4.2 Coastal Management	Yes	<p>While the proposal encompasses land located within the Coastal Use Area, there will be no reduction in environmental or land use planning protection for those areas.</p> <p>This is also discussed under Part 3.6, <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>.</p>
4.3 Planning for Bushfire Protection	Yes	<p>The proposal does not intensify the use of, rezone, or add additional permissible uses for bushfire prone land. The proposed amendments will not increase risk associated with bushfire. The proposal will be referred to the NSW Rural Fire Service.</p>
4.4 Remediation of Contaminated Land	Yes	<p>Rural areas within Hornsby include agricultural and horticultural activities which may result in land contamination. The proposed amendments do not change the use of agricultural land.</p> <p>Any change of land use would have land contamination assessed as part of the development application process.</p>
4.5 Acid Sulfate Soils	Yes	<p>This direction's objective is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. The proposal does not intensify development on any land Acid Sulfate Soil land.</p>
6.1 Residential Zones	Not addressed by the planning proposal	<p>The objective of the Direction is to encourage housing variety, use existing infrastructure efficiently and minimise the impact on the environment.</p> <p>The proposed amendment to include access-handles in rural areas for lot size calculation may facilitate additional subdivision of land, and a potential increase in dwelling provision. As new homes are possible, the potential change should be assessed against Direction 6.1.</p> <p>A Gateway condition has been included for this Direction to be addressed prior to exhibition.</p>

9.1 Rural Zones	Further justification to be provided	<p>The objective of this direction is to protect the agricultural production value of rural land.</p> <p>To be consistent with this direction a planning proposal must not contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).</p> <p>The proposal is partially consistent with the Direction as it seeks to allow complementary land-uses (agritourism and tourist and visitor accommodation) which will support the agricultural industries, without changing the rural character of the area.</p> <p>The proposal also includes an amendment which includes access-handles in the lot size calculation for rural blocks.</p> <p>This amendment needs to be further justified as it will likely result in an increased residential density on the land.</p> <p>A Gateway condition has been included for this Direction to be addressed prior to exhibition.</p>
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### 3.6 State environmental planning policies (SEPPs)

The planning proposal is generally consistent with the relevant SEPPs. Further justification needs to be provided for the following SEPPs, which do not discuss the effects of the amendment to LEP Clause 4.1, which includes vehicle access-handles in the lot size calculation for rural areas. This amendment will increase the ability of lands to subdivide, resulting in an additional dwelling provision. The planning proposal should include discussion of this amendment in relation to the following:

- SEPP (Biodiversity and Conservation) 2021 - Part 2.5, Chapter 4
- SEPP (Primary Production) 2021 – Chapter 2
- SEPP (Resilience and Hazards) 2021 – Regarding development in the ‘coastal environmental area’ and the ‘coastal use area’,

**Table 9 Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021	<p>The SEPP aims to reserve, conserve and manage NSW's natural environment and heritage.</p> <p>Part 2.5 Clearing of Native Vegetation on primary production land.</p> <p>Chapter 4 Koala habitat protection 2021.</p>	Yes	The proposal has addressed consistency with this SEPP and the matters it addresses can be further considered at development application stage.
SEPP (Exempt and Complying Development Codes) 2008	This Policy aims to provide streamlined assessment processes for development that complies with specified development standards.	Yes	<p>The proposed amendments are generally consistent with the SEPP, the Department's agritourism reforms, and support diversification of commercial farming incomes.</p> <p>As noted previously, the proposed amendment to the definition of "roadside stalls" is not appropriate to be considered as part of a local amendment. This amendment, and references to this amendment, should be removed from the planning proposal. This matter will be considered as part of a broader state-wide policy review of the Standard Instrument at a later time.</p>
State Environmental Planning Policy (Housing) 2021	This policy focuses on delivering a sufficient supply of safe, diverse, and affordable housing.	Yes	<p>The proposal seeks to include 'vehicular access' handles in minimum lot size calculations for properties in rural areas. This amendment will facilitate some additional subdivision. Council has identified that "<i>approximately 30-40 sites</i>" in the rural area may be able to subdivide if access handles are included in the lot size calculation.</p> <p>The subdivision resulting from this amendment will result in additional housing, which is consistent with this policy, providing development of diverse housing types which provides residents with a reasonable level of amenity.</p>

SEPP (Primary Production) 2021	Protecting and supporting agricultural lands and opportunities for primary production.	Yes	The proposal has addressed consistency with this SEPP and the matters it addresses can be further considered at development application stage.
SEPP (Resilience and Hazards) 2021	This SEPP aims to manage risks and build resilience in the face of hazards.  Chapter 2 Coastal management	Yes	The proposal has addressed consistency with this SEPP and the matters it addresses can be further considered at development application stage.

## 4 Site-specific assessment

### 4.1 Environmental

Due to the broad application of the proposal, land mapped as containing biodiversity values, endangered ecological communities, and threatened species habitat is identified. The RLS focused on a place-based approach to rural lands planning, dividing the rural lands of Hornsby Shire into 13 landscape areas with shared characteristics, including landforms, vegetation, and land uses. This approach was taken to protect the ecological values of Hornsby's rural areas, and this is also reflected by this proposal.

The proposal seeks to support commercial agricultural operations, mitigate land-use conflicts, clarify controls relating to dual occupancies in rural areas, amend the Standard Instrument definition of "roadside stalls", and include rural lot access-handles in the lot size calculation. As noted previously, the proposed amendment to the definition of "roadside stalls" is not appropriate to be considered as part of a local amendment and should be removed from this proposal.

It is noted that the proposal adds an objective to the C3 zone which, '*Enables low impact agritourism and accommodation development that is compatible with the environmental values of the zone*'. It is not anticipated that this objective will result in any detrimental impact on the biodiversity of the area. Council has also been asked to justify any additional development which may result from the proposed amendment to Clause 4.1, which includes vehicular access handles in minimum lot size calculations for properties in rural areas.

### 4.2 Social and economic

The RLS identified that the land value of agricultural areas in Hornsby is driven by the proximity to the Sydney Metropolitan Area and the rising demand for rural lifestyle properties. The recommendations from the RLS address social and economic concerns and are addressed by the amendments in this proposal.

The proposed amendments generally seek to improve the economic viability of agricultural activity within the rural area, reduce land use conflicts, and balance natural hazards, while protecting the environment within the rural area.

#### Economic:

The proposal amends zone objectives for RU1, RU2, RU4 and C3 lots to facilitate value adding activities for agriculture, including low impact agritourism and visitor accommodation development, bolstering the economic viability of agriculture on existing rural lands.

The inclusion of standard instrument LEP clause 5.16 aims to address farm-fragmentation by requiring potential rural-residential land-use conflicts to be addressed during development applications. Reduced farm-fragmentation should assist the economic viability of existing agricultural land uses.

#### Social (community feedback):

The RLS recommendations were informed by community feedback. Concerns were recorded regarding environmental management, bushfire and pest control, waterway health, and protection of ecological communities. Community feedback also reflected strong opinions regarding subdivision, including arguments both for and against reducing the minimum lot size requirements.

The proposed amendments reflect the community feedback and the importance of protecting the unique rural area environment has been emphasised. Council needs to further address and justify their reasoning for the amendment which will include 'vehicular access' handles in minimum lot size calculations, as Council haven't addressed the intention driving this change.

## 4.3 Infrastructure

The proposed amendments will not require an additional infrastructure provision, or substantially increase the demand on existing infrastructure.

## 5 Consultation

### 5.1 Community

A community consultation period of 20 working days is to be applied. This exhibition period is considered appropriate and will form part of the Gateway determination. Council anticipates exhibition to occur in November/December 2023.

It is noted that Council has listed the public/agency exhibition date in 2024, and this should be updated to reflect the correct year (2023).

### 5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 20 working days to comment:

- NSW Department of Primary Industries
- NSW Rural Fire Service
- NSW Department of Environment and Heritage

## 6 Timeframe

The Department recommends a time frame of 10 months to ensure it is completed in line with its commitment to reduce processing times. 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. As such, from the date of the Gateway determination, the planning proposal must be:

- exhibited within 3 months; and
- reported to Council for a recommendation within 6 months.

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



## 7 Local plan-making authority

Council has not requested delegation to be the Local Plan-Making Authority (LPMA). As the planning proposal directly implements the recommendations of the Hornsby Rural Lands Study, a report conducted and endorsed by Hornsby Shire Council, the Department recommends that Council be authorised to be the LPMA for this proposal. This is subject to the planning proposal being considered consistent with applicable directions of the Minister under section 9.1 of the EP&A Act or the Secretary agreeing that any inconsistencies are justified.

## 8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- The proposal gives effect to the recommendations of the Hornsby Rural Lands Study (RLS), finalised on 8 June 2022
- The proposal addresses rural lands challenges identified by the Hornsby RLS, including
  - Encroachment of residential development and ‘rural lifestyle’ uses on land historically used for agricultural purposes,
  - Rural-residential land-use conflicts,
  - The diminishing economic viability of agricultural land, and
  - Resilience in the face of increasing environmental constraints, such as bushfire, flood risk, and the effects of climate change.

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

- Remove the proposed amendment to the definition of “roadside stalls” under the Standard Instrument LEP.
- Amend the ‘Need for the planning proposal’ section to address how the proposed amendment to Clause 4.1 Minimum subdivision lot size will not result in a loss of viable rural land given additional lots could be created and have dwellings located on them.
- Include an estimate of how many additional homes may result from the changes to clause 4.1.
- Include discussion of the proposed Clause 4.1 amendment against:
  - Objective 10 of the Greater Sydney Region Plan, addressing housing delivery,
  - Planning Priority N5 of the North District Plan, addressing housing supply, choice, and affordability.

## 9 Recommendation

The LEP should be completed on or before 30 June 2024.

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

1. Prior to community consultation, the planning proposal should be updated to:
  - Remove the proposed amendment to the definition of “roadside stalls” under the Standard Instrument LEP.
  - Amend the ‘Need for the planning proposal’ section to address how the proposed amendment to Clause 4.1 Minimum subdivision lot size will not result in a loss of viable rural land given additional lots could be created and have dwellings located on them.
  - Include an estimate of how many additional homes may result from the changes to clause 4.1.
  - Include discussion of the proposed Clause 4.1 amendment against:
    1. Objective 10 of the Greater Sydney Region Plan, addressing housing delivery,
    2. Planning Priority N5 of the North District Plan, addressing housing supply, choice, and affordability,
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 of 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 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).

Exhibition must commence within 3 months following the date of the gateway determination.

3. Consultation is required with the following public authorities and government agencies:
  - a) NSW Department of Primary Industries
  - b) NSW Rural Fire Service
  - c) NSW Department of Environment and Heritage

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 30 days to comment on the proposal.



29 August 2023

Ashley Richards

Manager, Metro North

A handwritten signature in blue ink that reads "Brendan Metcalfe". The signature is written in a cursive, flowing style.

30 August 2023

Brendan Metcalfe

Director, Metro North

Assessment officer

Matt Carpenter

Planning Officer, North District

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