

Mr Stephen Head
General Manager
Hornsby Shire Council
PO Box 37
HORNSBY NSW 1630

Via email: hsc@hornsby.nsw.gov.au

Dear Mr Head

Planning proposal PP-2020-3920 for Hornsby Local Environmental Plan 2013

I am writing in response to the planning proposal you have forwarded under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) to update the Hornsby Local Environmental Plan (LEP) 2013 terrestrial biodiversity mapping and make amendments to the application of the terrestrial biodiversity term.

I would like to thank Council for its efforts in preparing such a significant planning proposal based on the intention to further protect existing vegetation within the Hornsby local government area (LGA).

I note that a previous letter was sent to Council requesting that it withdraw the planning proposal on 2 March 2022 due to several concerns, primarily relating to:

- expansion of the type of vegetation communities to be mapped
- amendments to model clauses and standard instrument definitions
- planning and economic impacts.

The letter also requested that Council submit a revised proposal that addressed the above concerns. The Department received a response letter on 4 April 2022 that requested it reconsider its position regarding the concerns outlined and to issue a Gateway determination.

I have determined that the planning proposal should not proceed. I can confirm that the reasons for not supporting the proposal remain the same as the letter in March and are given further detail below.

1. Inappropriate listing of vegetation communities

The Department does not support the grouping of locally significant and common vegetation communities with significant federal, state, and regional vegetation, inappropriately expanding the land identified as Terrestrial Biodiversity in the Local Environmental Plan.

It is the Department's position that the proposal does not contain any justification these communities are notable in the context of Terrestrial Biodiversity of the kind typically mapped in the Standard Instrument Local Environmental Plan.

2. Planning and economic impacts

The Department is concerned about the lack of economic assessment of the impact this proposal may have on the residents and businesses looking to utilise the complying development approval pathway. Existing mapping only directly impacts 1,750 properties, whereas the proposed mapping would affect 12,150 properties.

I note that an economic analysis would allow Council and the public to more comprehensively understand the financial impact on homeowners and businesses if they are unable to utilise the complying development pathway.

The proposal also contains a lack of analysis regarding the impact of increased assessment times and increased development and design requirements on homeowners and businesses. I encourage Council to consider the resourcing impact that this planning proposal would have and give thought to how Council would address a substantial increase of development applications that would normally be processed by private certification.

3. Complying development precedent

The proposal may set a precedent for mapping of local and common communities to 'switch-off' complying development. I am concerned this precedent would have significant impacts across the State, delaying the assessment of low-impact development proposals, and undermining the intention of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

4. Local Environmental Plan model clauses

The Department does not support updating the Standard Instrument definitions as proposed by amending the definition of 'Terrestrial Biodiversity' to 'Environmentally Sensitive Land'. I agree with the Department's assessment and encourage Council to seek alternatives such as use of an additional term and inclusion of a supplementary map. This is discussed below.

5. Alternative approaches of achieving the intent of the planning proposal

Council's intention for the planning proposal, to enhance tree protection, is supported and I suggest Council explore alternative methods to achieve this. Other policy and strategies may be employed without expanding the threshold to identify all vegetation under Terrestrial Biodiversity within Hornsby Local Environmental Plan 2013.

Council's Tree Preservation Order and the landscape provisions in Council's development control plan are already assisting vegetation protection. Tree canopy loss is also addressed through Council's existing initiatives such as 'Greening our shire' which to date has planted 28,900 trees.

Options to progressing a resubmitted proposal

I understand that the Department is committed to working with Council to take a practical approach to terrestrial vegetation mapping in a new planning proposal. A proposal that updated existing significant vegetation to accurately identify federal, state, and regionally significant vegetation in the terrestrial biodiversity map would be supported.

If Council wishes to identify local and common vegetation within its Local Environmental Plan, a planning proposal that introduces a new map layer may be submitted to the Department. However, further thought must first be given to what this map will trigger, such as whether it introduces a requirement for an additional study, or consideration of the consent authority. If the map is to only identify the presence of local vegetation, this should be included in Council's Development Control Plan.

An approach of this nature will require consultation with the Department's policy team to ensure the intended proposal is suitable. You can contact Sandy Chappel, Director Housing Strategy, on 9274 6591 to discuss a proposal from a policy perspective.

Should you have any general enquiries about this matter, I have arranged for Ashley Richards, Specialist Planner, to assist you. Ms Richards can be contacted on 8289 6776.

Yours sincerely



Alison McLaren
Executive Director Metro Central and North
Planning and Land Use Strategy
Encl. Gateway Determination