

# PLANNING PROPOSAL

Bytes Creek

June 2023



# **CONTENTS**

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**INTRODUCTION**

**BACKGROUND**

**PART 1 - OBJECTIVES AND INTENDED OUTCOMES**

**PART 2 - EXPLANATION OF PROVISIONS**

**PART 3 – JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT**

**Section A - Need for the planning proposal**

**Section B - Relationship to strategic planning framework**

**Section C - Environmental, social and economic impact**

**Section D - State and Commonwealth Interests**

**PART 4 - MAPS**

**PART 5 - COMMUNITY CONSULTATION**

**PART 6 – PROJECT TIMELINE**

**ATTACHMENTS**

**Attachment 1 – Byles Creek Planning Study**

**Attachment 2 – Byles Creek Land Use and Environmental Constraints Assessment**

**Attachment 3 – Byles Creek Planning Study – Economic Implications Analysis**

**Attachment 4 – Byles Creek Planning Study – Consultation Outcomes Report**

**Attachment 5 – Proposed Amendments to the Hornsby Development Control Plan 2013**

# INTRODUCTION

This planning proposal seeks to give effect to four recommendations made within the Byles Creek Planning Study which was endorsed by Hornsby Shire Council (Council) on 11 May 2022.

The *Byles Creek Planning Study* (the Planning Study) applies to the Byles Creek Study Area (the Study Area) which comprises the Byles Creek corridor (RE1 Public Recreation) and surrounding low density dwellings (R2 Low Density Residential). The Study Area is bounded by Azalea Grove and Kurrajong Street to the north, Lane Cove National Park to the east, Malton Road to the south and Sutherland Road to the west. The Planning Study is included at **Attachment 1**.

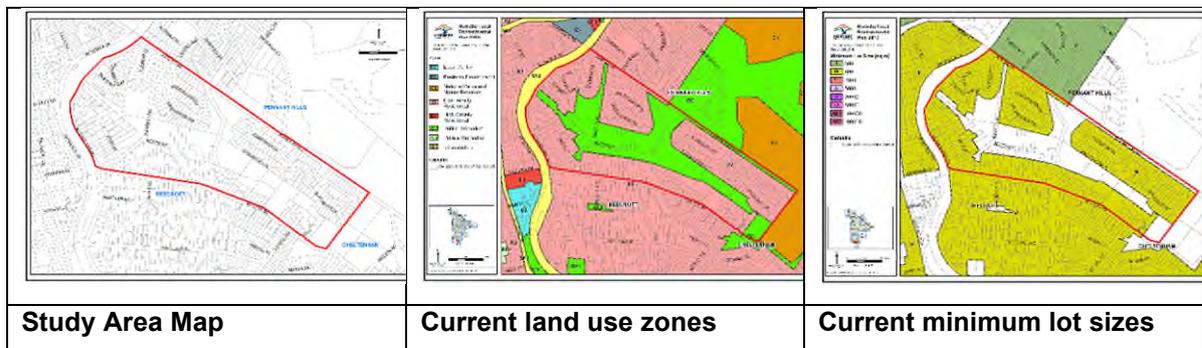


Figure 1: The Byles Creek Study Area

This planning proposal has been prepared in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the Department of Planning and Environment publication, *NSW Local Environmental Plan Making Guideline* (September 2022).

On 18 May 2023, the Department issued a Gateway Determination stipulating several conditions to be addressed prior to public exhibition. This planning proposal has been amended to meet the requirements of the Gateway Determination.

## BACKGROUND

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

With the gazettal of the HLEP and accompanying Hornsby Development Control Plan 2013 (HDCP) in October 2013, the site-specific provisions of the Byles Creek DCP were removed with the environmental controls of the HDCP applying more broadly to all land in the Hornsby local government area (LGA).

In June 2019, Council endorsed a review of the *Byles Creek Catchment Land Acquisition Strategy*, the *Byles Creek Catchment Land Acquisition Strategy Review*. The Review assessed the environmental and social values of the Byles Creek corridor in order to evaluate the strategic approach towards land acquisition within the Byles Creek catchment.

The review concluded that an extension of existing RE1 Public Recreation zones over private properties adjoining the Byles Creek corridor would not be necessary to maintain and preserve the ecological values of the corridor. The ecological values of the R2 Low Density Residential land adjoining the RE1 Public Recreation land mapped as having terrestrial biodiversity values could maintain its zoning and these values. Further, it concluded that there was no requirement to increase the extent of publicly accessible land along the corridor.

In August 2020, Council resolved to discuss the preparation of a planning study to review the planning controls for residential properties adjoining the RE1 Public Recreation land within the Byles Creek corridor.

In December 2020, Council endorsed the preparation of the *Byles Creek Planning Study* (the Planning Study). The purpose of the Planning Study was to review the suitability of existing planning controls for residential properties adjoining RE1 Public Recreation land within the Byles Creek corridor focusing on the protection and maintenance of environmental values. The Planning Study was completed in July 2021.

In May 2022, Council endorsed the Planning Study and a plan to implement its recommendations. The recommendations are to:

1. Rezone land within the study area currently zoned R2 Low Density Residential to C4 Environmental Living.
2. Increase the minimum subdivision lot size for land proposed to be zoned C4 Environmental Living to 40ha.

3. Strengthen the objectives of Clause 4.1 'Minimum subdivision lot size' of the HLEP to protect and enhance existing bushland and significant native vegetation.
4. Insert a 'Riparian Land' clause under Part 6 'Additional local provisions' of the HLEP and provide supporting riparian corridor mapping.
5. Increase community engagement programs targeting the Study Area.

The first four recommendations require amendment of the HLEP and are the subject of this planning proposal. The final recommendation to undertake community engagement programs are not within the scope of this planning proposal. Amendments to existing controls within the HDCP which relate to environmental protection will be progressed separately of this planning proposal.

# PART 1 - OBJECTIVES AND INTENDED OUTCOMES

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## **Objective**

The Study Area is subject to continued loss of canopy trees and understorey vegetation, increased stormwater runoff, erosion, weed invasion and habitat loss as a result of development. This is despite existing biodiversity, tree preservation and other environmental planning controls in the HDCP.

The objective of this planning proposal is to minimise the impacts of residential development and to protect the environmental, social and aesthetic qualities of the Study Area. This will be achieved by strengthening Council's planning controls. The recommendations of the Planning Study inform the intended outcomes below:

## **Intended Outcomes**

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

## PART 2 - EXPLANATION OF PROVISIONS

This planning proposal incorporates four amendments to the HLEP intended to enhance and protect the values of the Study Area:

- Amendment 1: Rezone residential land within the Study Area
- Amendment 2: Increase minimum subdivision lot size of residential land in Study Area
- Amendment 3: Strengthen Clause 4.1 objectives
- Amendment 4: Introduce riparian land local provision and mapping

### Amendment 1: Rezone residential land within the Study Area

All land currently zoned R2 Low Density Residential within the Study Area would be rezoned to C4 Environmental Living.

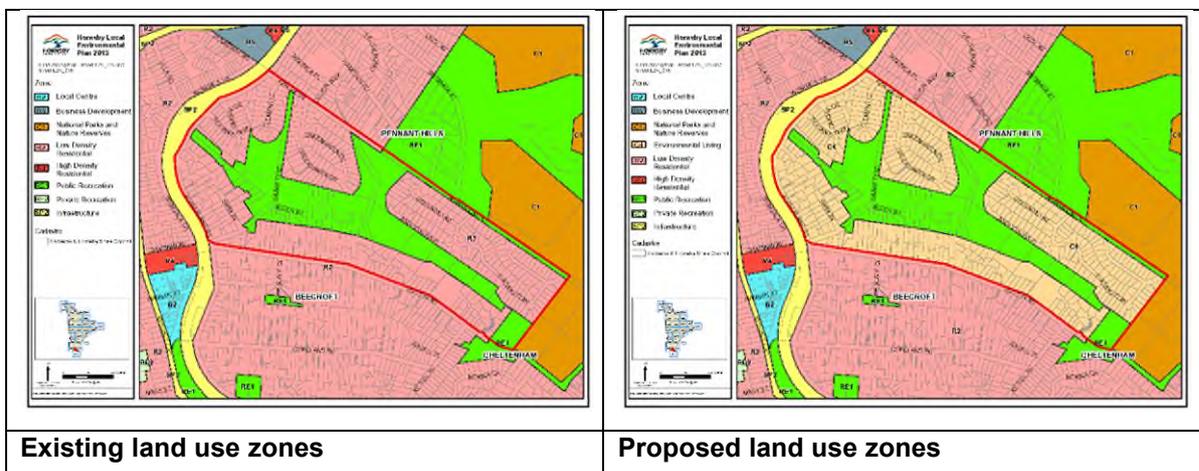


Figure 2: Rezoning of residential land

### Amendment 2: Increase minimum subdivision lot size of residential land in Study Area

All residential land to be zoned C4 Environmental Living would also be subject to an increased minimum subdivision lot size of 40ha.

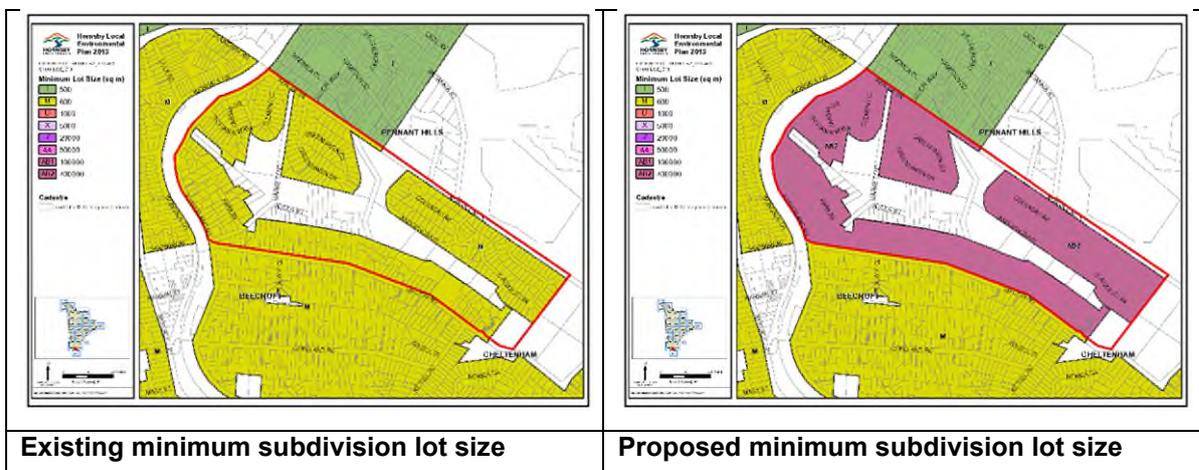


Figure 3: Increased minimum subdivision lot size

### **Amendment 3: Strengthen Clause 4.1 objectives**

Amend the wording of Clause 4.1 'Minimum subdivision lot size' objectives within the HLEP to protect and enhance existing bushland and significant native vegetation. Potential wording for the amended Clause 4.1 objectives is presented below, based on existing objectives implemented by other Sydney metropolitan councils identified in the Planning Study.

<b>Existing Clause 4.1 objectives</b>	<b>Potential Clause 4.1 objectives</b>
<p>1. <i>The objectives of this clause are as follows –</i></p> <ul style="list-style-type: none"><li>a. <i>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,</i></li><li>b. <i>To ensure that lots are of a sufficient size to accommodate development.</i></li></ul>	<p>1. <i>To objectives of this clause are as follows –</i></p> <ul style="list-style-type: none"><li>a. <i>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,</i></li><li>b. <i>To ensure that lots are of a sufficient size to accommodate development consistent with relevant development controls,</i></li><li>c. <i>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,</i></li><li>d. <i>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.</i></li></ul>

**Note:** The amended Clause 4.1 objectives would apply to all land within the Hornsby LGA and must be considered by all development applications proposing subdivision.

#### **Amendment 4: Introduce riparian land local provision and mapping**

Insert a new clause for riparian land under HLEP Part 6 'Additional local provisions' and provide supporting riparian corridor mapping for the Study Area. The Planning Study provides the following example clause

1. *The objectives of this clause are to protect and maintain the following:*
  - a. *Water quality within waterways, and*
  - b. *Native flora and fauna and their habitats, and*
  - c. *Ecological processes within waterways and riparian land, and*
  - d. *Scenic and cultural values of waterways and riparian lands.*
2. *This clause applies to land identified as 'Riparian Land' on the Riparian Lands Map.*
3. *In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider:*
  - a. *Whether the development is likely to have an adverse impact on the following:*
    - i. *The surface and groundwater characteristics of the land, including water quality, water flows and salinity,*
    - ii. *Native flora and fauna, including migratory species and the provision and quality of their habitats,*
    - iii. *Impact on indigenous trees and other vegetation, including opportunities for additional planting,*
    - iv. *Public access to, and use of, any public waterway and its foreshores, and*
  - b. *Any future rehabilitation or re-creation of the waterway and riparian areas, and*
  - c. *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development, and*
  - d. *Whether or not the development is likely to increase water extraction from the watercourse, and*
  - e. *Opportunity for the rehabilitation of existing piped or channelised waterways to a near natural state.*
4. *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
  - a. *Is consistent with the objectives of this clause, and*
  - b. *Is designed, sited and will be managed to avoid any potential adverse environmental impacts, and*
  - c. *If a potential adverse environmental impact cannot be avoided – the development will be managed to mitigate that impact.*

The above wording is consistent with Standard Instrument model clause provisions and other Council LEPs.

The local provision will be supported by riparian corridor mapping which illustrates variable width buffers for vegetated riparian zones (VRZ) dependent on the classification of the waterway in accordance with the Strahler stream order system.

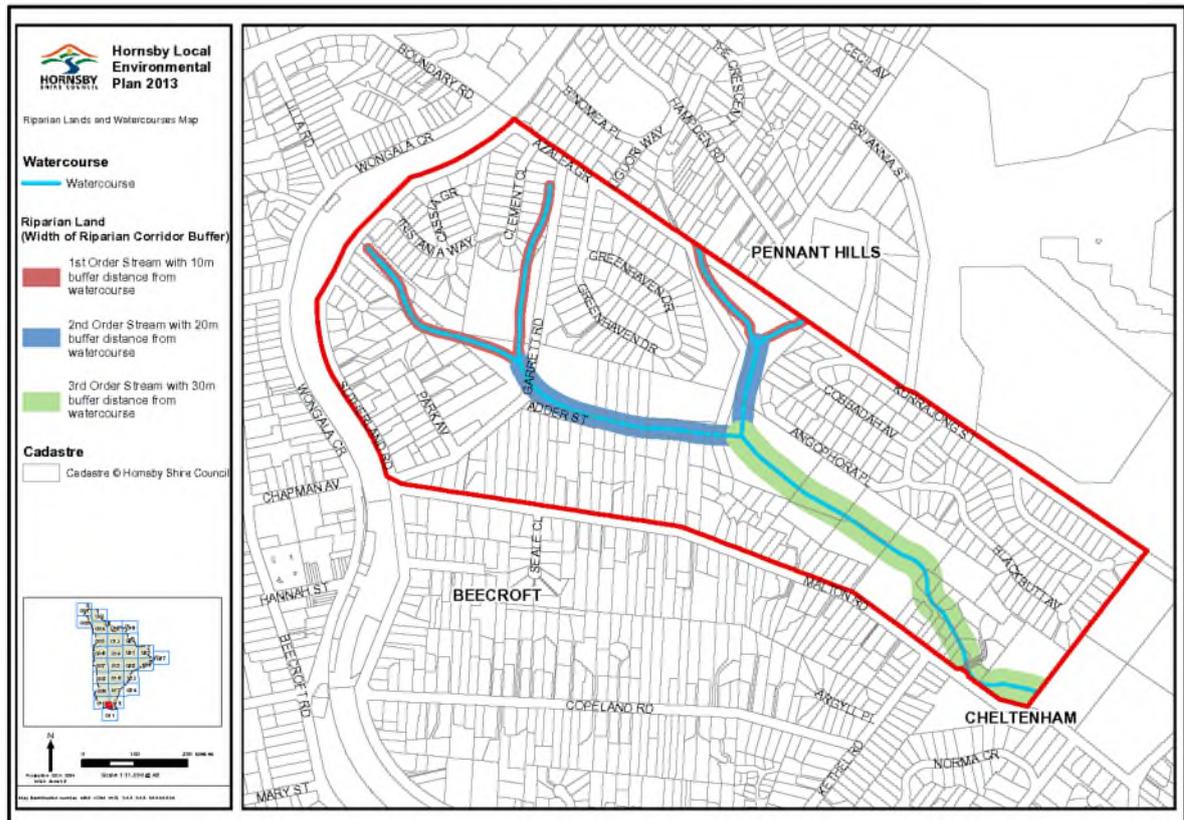


Figure 4: Riparian corridor mapping

The riparian land local provision and associated mapping is limited to within the Study Area to focus the scope of this planning proposal. Riparian corridor mapping for the entire Hornsby LGA would require further investigation.

# **PART 3 – JUSTIFICATION OF STRATEGIC AND SITE-SPECIFIC MERIT**

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## **Strategic Merit**

### **Section A - Need for the planning proposal**

**1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?**

YES – Strategic Study

The intent of this planning proposal is to give effect to the recommendations made within the Planning Study prepared by Elton Consulting, dated 20 July 2021, and endorsed by Hornsby Council on 11 May 2022.

The purpose of the Planning Study was to review the suitability of planning controls in maintaining the environmental qualities of residential lands adjoining the open space zoned lands within the Byles Creek corridor.

The Study found the Byles Creek corridor to be environmentally significant due to the unique environmental, social and aesthetic values of the area. With an aim to enhance and protect the environmental values of Byles Creek on residential zoned land, the Study presents five recommendations for Council's local planning framework of which four are the subject of this planning proposal.

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

YES

Two of the objectives of the Planning Study were to identify opportunities that would minimise the impact of residential development on the Byles Creek corridor and to provide recommendations for improvements to Hornsby Shire's planning controls to protect the environmental, social and aesthetic qualities of the corridor.

To fulfil these objectives, the Planning Study undertook an analysis of the existing local planning framework comprising relevant clauses of the HLEP and sections of the HDCP. The Study concludes that the environmental sections of the HDCP and associated provisions are sufficiently robust with respect to achieving the integrity, functionality and preserving the environmental, ecological and scenic values of the Byles Creek corridor.

However, the Study considers it unlikely that any revised HDCP controls would support a significant improvement on the current issues arising from new development in the Byles

Creek corridor. The recommendations of the Study instead focus on implementation of new land use zoning initiatives within the framework of the current HLEP.

The four recommendations involve the amendment of HLEP land use zoning and minimum lot size maps, minimum lot size (Clause 4.1) objectives and the introduction of an additional LEP local provision and associated mapping for riparian corridors. These amendments best achieve the objective and intended outcomes of the proposal.

Alternatives to achieving the objects or intended outcomes were considered by Council. However, it was determined that alternatives such as continued application of existing DCP controls would not meet the objective, and only the fourth-listed intended outcome could be achieved by introduction of the proposed riparian corridor controls alone.

The reasons for this conclusion are provided below.

#### Existing DCP controls

Prior to the gazettal of the HLEP, development within the Study Area was informed by the preceding HSLEP 1994 and the Byles Creek DCP. The Byles Creek DCP provided site-specific development controls with the aim to maintain the high environmental quality, aesthetic and heritage value of the Byles Creek corridor.

With the gazettal of the HLEP and the accompanying HDCP in October 2013, the site-specific provisions of the Byles Creek DCP were removed with the environmental controls of the HDCP applying more broadly across the Hornsby LGA. This planning proposal seeks to strengthen planning controls, given the high environmental quality, aesthetic and heritage values of the Byles Creek corridor.

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

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

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

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

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

### Riparian corridor controls

Application of the proposed riparian corridor LEP controls alone would not offer sufficient protection of the biodiversity values found within the Study Area and therefore, would not meet the objectives of the planning proposal. The additional local provision would only apply to development within mapped riparian corridor buffers. The buffers only extend 10, 20 or 30 metres from the banks of watercourses within the Study Area, depending on the watercourse's classification against the Strahler stream order system. AEC's Economic Implications Analysis (page 14) identifies that the proposed riparian buffers would overlap 28 residential properties within the south-eastern portion of the Study Area. However, the extent of significant vegetation within the Study Area extends well beyond the Byles Creek corridor and these 28 residential properties. Figure 3.2 of AEC's Analysis (reproduced below) identifies the limitation of the application area, demonstrating that the buffer would not cover the bulk of the properties considered by the Planning Study. As such, this control alone would not achieve the Planning Proposal's objective.



Figure 5: Properties affected by riparian corridor buffers

### Rezoning of residential land

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

As the Planning Study (page 12) explains, the rezoning of R2 Low Density Residential land within the Study Area to C4 Environmental Living applies where:

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

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

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

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

### Alternative minimum lot size

Choosing an alternative lot size that is larger than 600m<sup>2</sup> but less than 40ha would be difficult to rationalise, because it would have no strategic basis. The proposed increased minimum subdivision lot size for residential land within the Study Area from 600m<sup>2</sup> to 40ha is appropriate and consistent based on Council's existing planning regime.

The Planning Study (page 82) indicates that the current minimum lot size of 600m<sup>2</sup> is not conducive to meeting the C4 zone objectives to enhance and protect the special environmental characteristics of the Study Area. Furthermore, the proposed 40ha lot size ensures consistency with application of the clause to other C4 zoned land within the Hornsby LGA.

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

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



Dangar Island C4 land use zone map



Dangar Island 40ha lot size map

Figure 6: Dangar Island land use and lot size maps

Although, the residential lots on Dangar Island range from 569m<sup>2</sup> to 1,404m<sup>2</sup> in size, the minimum subdivision lot size is 40ha. This minimum subdivision lot size has been applied to ensure that the character of Dangar Island, described in the HDCP as a unique bushland island settlement predominantly residential in use, remains.

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

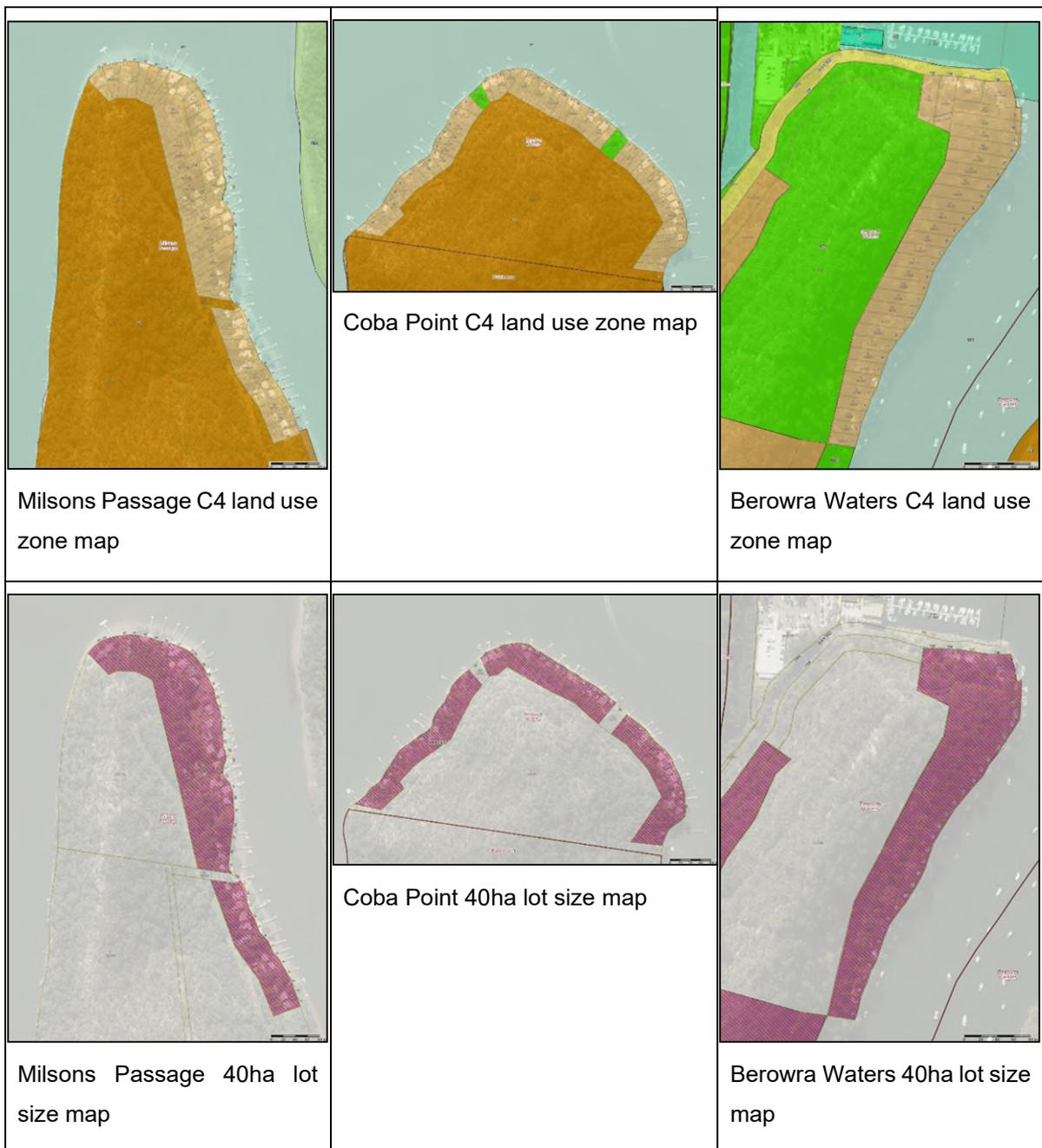


Figure 7: C4 zoning and 40ha lot size maps for other areas of Hornsby Shire

## Section B - Relationship to strategic planning framework

### 3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?

YES

The following table provides justification for the planning proposal against relevant aspects of the Greater Sydney Regional Plan and the North District Plan.

Relevant GSRP Objective and NDP Priority	Justification
<p><b>GSRP Objective 25:</b> The coast and waterways are protected and healthier</p> <p><b>NDP Priority N15:</b> Protecting and improving the health and enjoyment of Sydney Harbour and the District's waterways</p>	<p>Consistent</p> <p>The planning proposal seeks to amend the HLEP and introduce a riparian corridor local provision with associated mapping. The provision would require all future development applications located wholly or partially within the buffer areas to consider environmental impacts to water quality and flora and fauna among other elements.</p> <p>The provision requires Council to be satisfied with the matters for consideration prior to issuing development consent.</p>
<p><b>GSRP Objective 27:</b> Biodiversity is protected, urban bushland and remnant vegetation is enhanced</p> <p><b>NDP Priority N16:</b> Protecting and enhancing bushland and biodiversity</p>	<p>Consistent</p> <p>The Study Area is recognised as holding significant biodiversity values including being host to Blue Gum High Forest, Coachwood Rainforest and Blackbutt Gully Forest. It is habitat for threatened fauna including the Powerful Owl, Gang-Gang Cockatoo, Red-crowned Toadlet, Little Bent-winged Bat and microbats.</p> <p>The planning proposal seeks to allow for continuing low-impact residential</p>

	development while placing focus on the impacts of development towards the ecological, scientific and aesthetic values of the Study Area and compatibility with its existing character.
<p><b>GSRP Objective 28:</b> Scenic and cultural landscapes are protected</p> <p><b>NDP Priority N17:</b> Protecting and enhancing scenic and cultural landscapes</p>	<p>Consistent</p> <p>The Study Area has unique scenic qualities arising from natural features such as Byles Creek, steep topography and vegetated ridgelines accentuating the dense bushland interlaced with riparian vegetation and waterways. The Study Area also falls within Council's Beecroft – Cheltenham heritage conservation area (HCA) and is host to several heritage-listed properties and trees which contribute to the visual character of the area.</p> <p>The planning proposal would preserve the existing natural and cultural qualities of the Study Area by managing the scale of future developments through the amendment of planning controls. The amendments will introduce greater focus towards environmental impacts when considering the merits of future development applications within the Study Area.</p>

**4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?**

YES

The following table provides justification for the planning proposal against relevant aspects of the Hornsby Local Strategic Planning Statement and other endorsed local strategies.

Local Strategies	Justification
<p data-bbox="240 259 815 338"><b>Hornsby Local Strategic Planning Statement</b></p> <p data-bbox="240 412 815 495"><b>Priority SP1:</b> Improving the overall health of our natural environment and ecosystem</p> <p data-bbox="240 562 815 689"><b>Priority SP2:</b> Protecting and increasing the extent and quality of natural areas in Hornsby Shire</p> <p data-bbox="240 763 815 943"><b>Priority SP3:</b> Protecting and improving the health of catchments and waterways and deliver well planned and designed local water infrastructure solutions</p> <p data-bbox="240 1016 815 1144"><b>Priority SP5:</b> Embedding biodiversity conservation principles throughout local planning policies</p>	<p data-bbox="837 259 981 288">Consistent</p> <p data-bbox="837 360 1412 741">The Study Area is host to the Byles Creek watercourse several ecological communities such as Blue Gum High Forest, Coachwood Rainforest and Blackbutt Gully Forest. It also represents a vegetation corridor linking with Lane Cove National Park and is an area of significant biodiversity values.</p> <p data-bbox="837 815 1412 1447">The planning proposal intends to protect the existing environmental values of the Byles Creek corridor and Study Area by managing the impacts of future residential development. Through four amendments to the HLEP, the planning proposal seeks to prohibit future subdivision which minimises the need for tree removal on private land. It would bring to attention the need for future residential development to be of low environmental impact and the need to consider a development's impact on the health and quality of Byles Creek.</p>
<p data-bbox="240 1471 740 1500"><b>Hornsby Community Strategic Plan</b></p> <p data-bbox="240 1574 815 1657"><b>Goal G4.1:</b> A natural environment that is healthy, diverse, connected and valued</p> <p data-bbox="240 1724 815 1852"><b>Goal G4.2:</b> Waterways are healthy and biodiverse, and the Shire's urban areas are water sensitive</p>	<p data-bbox="837 1471 981 1500">Consistent</p> <p data-bbox="837 1574 1412 1852">The planning proposal aims to protect and conserve ecological values, protect and enhance tree canopy cover and protect waterways and catchments from pollution and erosion through amendment of planning controls.</p>
<p data-bbox="240 1879 815 1962"><b>Hornsby Biodiversity Conservation Strategy</b></p>	<p data-bbox="837 1879 981 1908">Consistent</p> <p data-bbox="837 1980 1412 2058">The planning proposal aims to protect and conserve the ecological value of the Study</p>

<p><b>Strategy 1:</b> Protect and conserve ecological values</p>	<p>Area by amending local planning controls to minimise tree removal on private land associated with subdivision, promoting future residential development with a low environmental impact and to ensure that developments do not have unreasonable adverse impacts to the health and quality of Byles Creek.</p>
<p><b>Hornsby Urban Forest Strategy</b></p> <p><b>Objective:</b> Maintain and improve Hornsby Shire’s unique character</p> <p><b>Objective:</b> Protect, secure and create habitat</p>	<p>Consistent</p> <p>The planning proposal seeks to amend the HLEP to rezone all R2 Low Density Residential land within the Study Area to C4 Environmental Living and the increase minimum lot sizes from 600m<sup>2</sup> to 40ha.</p> <p>Future development in the Study Area will need to consider its impact on the ecological, scientific or aesthetic values of the area and satisfy the objectives of the C4 Environmental Living zone.</p> <p>The larger minimum lot size will protect and conserve existing vegetation located on private land within the Study Area by preventing subdivision. It assists in minimising the need for vegetation removal to accommodate new dwellings, services and bushfire asset protection zones (APZ).</p>
<p><b>Hornsby Housing Strategy 2020</b></p> <p><b>Objective 2:</b> Ensure new housing development minimises environment impact and promotes ecologically sustainable development</p>	<p>Consistent</p> <p>The Study Area is an area of unique environmental, social and aesthetic values. These characteristics are described thoroughly in the Planning Study.</p> <p>The planning proposal aims to minimise the environmental impact of residential</p>

<p><b>Objective 3:</b> Protect sensitive areas from development, and ensure new housing does not detract or erode an area's local character</p> <p><b>Objective 5:</b> Promote sustainable locations for housing growth close to transport, which support the role of centres, have adequate infrastructure and maximise opportunities through collaboration.</p>	<p>development on the Study Area and to maintain its existing character. This would be achieved by prohibiting future subdivision and limiting significant tree removal on private land.</p> <p>The Housing Strategy 2020 prioritises the delivery of future housing supply in locations that are close to transport and local services. These locations including existing housing precincts, the Hornsby Town Centre and the Cherrybrook Station precinct. The majority of existing housing precincts are located in proximity to the train stations at Mount Colah, Asquith, Hornsby, Waitara, Normanhurst, Thornleigh, Pennant Hills and Beecroft. There is an additional housing precinct in West Pennant Hills adjoining Pennant Hills Road.</p> <p>The 6.5ha that comprises the Study Area is not recognised as a housing precinct and the progression of the planning proposal would not affect Council's fulfilment of housing targets.</p> <p>The focus of the Housing Strategy 2020 is the provision of new housing in high density format centralised in the Hornsby Town Centre. Council is progressing the draft Hornsby Town Centre Masterplan which opens the opportunity to provide up to 4,500 new homes.</p> <p>Council is also conducting investigations into existing medium density housing precincts and developing a strategy to</p>
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encourage future medium density residential development. The State-led Cherrybrook Station precinct will also provide the opportunity for additional medium to high density residential development to satisfy Council's future housing targets.

Housing in the Study Area is characterised by low density residential development of predominantly one and two storey dwelling houses in a landscaped setting. While the Department's assessment report notes that some properties within the Study Area are located within 200m of Beecroft train station, their connectivity to Lane Cove National Park, the slope of the land and the remnant vegetation located within and surrounding the Byles Creek corridor is not conducive to large scale redevelopment due to the possible loss of biodiversity values and exposure of residents to bushfire risk.

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

Although the Planning Proposal would effectively prohibit further subdivision of land within the Study Area if finalised, the Planning Study (page 83) and its supporting documents demonstrate that the residential land within the Study Area has minimal capacity to support increased residential density and Council would not be looking to

	<p>achieve housing supply in such a constrained area of high biodiversity value.</p> <p>Council's obligation to meet the State Government's housing targets can be satisfied in other areas of the Hornsby LGA. The planning proposal does not undermine Council's Housing Strategy or the provision of new housing. Rather, it clarifies the development expectations and desired character of the Study Area. It may also lead to a decrease in unsuccessful DAs and a better use of Council's resources to focus housing growth in more appropriate areas of the LGA.</p>
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**5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?**

YES

Applicable State and regional planning studies and strategies are discussed above.

## 6. Is the planning proposal consistent with applicable SEPPs?

The following table addresses the planning proposal's consistency with relevant SEPPs.

SEPP	Consistency Comment
<p><b>State Environmental Planning Policy (Biodiversity and Conservation) 2021</b></p>	
<p>Chapter 2 Vegetation in non-rural areas            Clause 2.1 Aims of Chapter            (a) To protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and            (b) To preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.</p>	<p>Consistent</p> <p>The planning proposal seeks to amend the HLEP to preserve the existing natural and cultural qualities of the Byles Creek Study Area by modifying planning controls to limit the scale of future developments and opportunity for subdivision.</p>
<p>Chapter 6 Water catchments            Part 6.2 Development in regulated catchments</p>	<p>Consistent</p> <p>The planning proposal seeks to amend the HLEP to preserve the existing natural and cultural qualities of the Study Area which comprises public and private land adjoining Byles Creek and its tributaries. Existing planning controls applying to the residential land would be modified to limit the scale of future developments and subdivision, additional provisions relating to the protection of riparian areas from future development would be introduced.</p>
<p><b>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</b></p>	
<p>Part 1 General            Clause 1.3 Aims of Policy            (c) Identifying, in the complying development codes, types of complying development that may be carried out in accordance with a complying</p>	<p>Consistent</p> <p>Rezoning of residential land from R2 Low Density Residential to C4 Environmental Living will prevent Housing Code complying development from being undertaken. The</p>

<p>development certificate as defined in the Act</p> <p>Part 3 Housing Code</p> <p>Clause 3.1 Development that is complying development under this code</p> <p>(1) The following development is complying development under this code—</p> <p>(a) the erection of a new 1 or 2 storey dwelling house and any attached development,</p> <p>(b) the alteration of, or an addition to, a 1 or 2 storey dwelling house (including any addition that results in a 2 storey dwelling house) and any attached development,</p> <p>(c) the erection of detached development and the alteration of, or an addition to, any detached development.</p>	<p>Housing Code only permits complying development on lots zoned R1, R2, R3, R4 and RU5.</p> <p>Notwithstanding, the Planning Study identifies that opportunity to undertake complying development upon the residential properties within the Study Area is already limited due to the following reasons:</p> <ol style="list-style-type: none"> <li>1. The Byles Creek corridor is predominantly mapped as Vegetation Category 1, the highest bushfire prone land category and corresponds to the highest bushfire risk. Complying development is not permitted on land with a BAL 40 or BAL FZ rating.</li> <li>2. The Study Area is located within the Beecroft – Cheltenham HCA as identified in Schedule 5 of the HLEP. Most forms of complying development are not permitted on land within an HCA.</li> </ol> <p>Given that opportunities to construct dwelling houses as complying development were already limited within the Study Area due to natural constraints, it is considered that the planning proposal does not represent a significant change.</p>
<p><b>State Environmental Planning Policy (Housing) 2021</b></p>	
<p>Chapter 2 Development for affordable housing</p> <p>Part 2 Development for affordable housing</p>	<p>The planning proposal’s introduction of the C4 Environmental Living zone to the Study Area would result in the prohibition of boarding houses.</p>

	<p>AEC's Analysis (page 10) identifies that boarding houses are not currently present within the Study Area due to its physical and environmental characteristics. It also determined that it is unlikely that such development would proceed given the land size and other demand drivers required.</p> <p>As such, the planning proposal does not represent a significant change related to the housing type.</p>
<p>Chapter 3 Diverse housing Part 1 Secondary dwellings</p>	<p>The planning proposal's introduction of the C4 Environmental Living zone to the Study Area would result in the prohibition of secondary dwellings.</p> <p>Existing opportunities to undertake development of secondary dwellings within the Study Area through the complying development or DA pathways are limited because of the following:</p> <ol style="list-style-type: none"> <li>1. The Byles Creek corridor is predominantly mapped as Vegetation Category 1 bush fire prone land under the <i>Hornsby Shire Council Bush Fire Prone Land Map 2021</i>. This type of land is classified as the highest risk for bush fire, with the highest combustibility and likely of forming fully developed fires (<i>Guide for Bush Fire Prone Land Mapping 2015</i>). PBP 2019 does not permit secondary dwellings on properties subject to an attack level rating higher than BAL 29, requiring APZs (e.g. tree removal) to meet that threshold. Given the bush fire risk and biodiversity of the Study Area, this would limit the ability for many</li> </ol>

	<p>residential properties from gaining development consent for secondary dwellings without prohibitive clearing.</p> <p>2. The Study Area is located within the Beecroft – Cheltenham HCA as identified in Schedule 5 of the HLEP. The Housing SEPP prohibits the development of secondary dwellings as complying development in an HCA.</p> <p>Due to these constraints, secondary dwellings would be unlikely to be developed in the Study Area. Consequently, the planning proposal does not represent a significant change.</p>
<p>Chapter 3 Diverse housing Part 2 Group homes</p>	<p>The planning proposal's introduction of the C4 Environmental Living zone to the Study Area would not impact the existing permissibility for group homes within the Study Area.</p> <p>Existing opportunities for group home developments to be undertaken is limited because the Housing SEPP prohibits development of group homes as complying development in an HCA or on bush fire prone land. Notwithstanding, the Housing SEPP allows a group home development to be considered via a DA pathway.</p>
<p>Chapter 3 Diverse housing Part 5 Housing for seniors and people with a disability</p>	<p>Seniors living is currently prohibited within the Study Area under the current moratorium on seniors living within Heritage Conservation Areas (the Study Area is within the Beecroft – Cheltenham HCA). Seniors housing developments are not currently present within the Study Area.</p>

	<p>The planning proposal's introduction of the C4 Environmental Living zone to the Study Area would continue to prohibit seniors housing, should the moratorium be ended. Seniors housing would be unlikely to be developed within the Study Area due to economic, physical and environmental characteristics severely limiting opportunities for consolidation. As such, the planning proposal does not represent a significant change.</p>
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**7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?**

YES

The following table addresses the planning proposal's consistency with relevant Section 9.1 Directions.

Focus Area	Consistency Comment
<b>Focus Area 1: Planning Systems</b>	
Direction 1.1 Implementation of Regional Plans	<p>Consistent</p> <p>The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in the Regional Plans. The direction requires a planning proposal to be consistent with a Regional Plan released by the Minister.</p> <p>The planning proposal would manage development potential for private properties within the Study Area by minimising the impact of residential development on the environmental, social and aesthetic qualities of the Byles Creek corridor.</p>

	It is generally consistent with the objectives and priorities of the Greater Sydney Region Plan and North District Plan as demonstrated in Part 3 Section B of this planning proposal.
Direction 1.3 Approval and Referral Requirements	The planning proposal does not include any concurrence, consultation or referral provisions to a Minister or a Public Authority.
<b>Focus Area 3: Biodiversity and Conservation</b>	
Direction 3.1 Conservation Zones	<p>Consistent</p> <p>The objective of this direction is to protect and conserve environmentally sensitive areas.</p> <p>The planning proposal will facilitate greater management for future development of the residential properties within the Study Area and ensure that the environmental and aesthetic qualities of the Byles Creek corridor are protected from residential impacts.</p> <p>The rezoning of all R2 Low Density Residential land within the Study Area to C4 Environmental Living land will ensure that any redevelopment of affected land will need to consider the impacts of a proposal on the recognised ecological, scientific and aesthetic values of the Byles Creek corridor.</p> <p>The increase of minimum subdivision lot size from 600m<sup>2</sup> to 40ha will align the rezoned areas of the Study Area with existing C4 Environmental Living zones within the Hornsby LGA. This amendment will prohibit future subdivision of existing</p>

	residential properties ensuring that existing bushland within and adjoining the Byles Creek corridor is not subject to removal arising from increased residential density.
Direction 3.2 Heritage Conservation	<p>Consistent</p> <p>The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The Study Area is located wholly within the Beecroft – Cheltenham HCA as identified in Schedule 5 of the HLEP.</p> <p>The planning proposal does not propose to amend any heritage related LEP provisions or schedules. No impacts to the HCA or heritage items within the Study Area are intended. The proposal aims to protect and maintain the existing environmental, social and aesthetic qualities of the Study Area by amending local planning controls to manage future residential development. The planning proposal will facilitate the retention of vegetation, residential density and building typology within the Study Area.</p>
<b>Focus Area 4: Resilience and Hazards</b>	
Direction 4.3 Planning for Bushfire Protection	<p>Consistent</p> <p>The objectives of this direction are to protect life property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas and encourage sound management of bush fire prone areas.</p>

	<p>The direction requires consultation with the Commissioner of the NSW Rural Fire Service following receipt of a Gateway Determination, having regard to Planning for Bushfire Protection 2019 (PBP 2019), and for controls to be compatible with bush fire prevention outcomes.</p> <p>The Study Area is bush fire prone land because the Byles Creek corridor is predominantly mapped as Vegetation Category 1, considered by the RFS to be the highest risk for bush fire. New development on residential allotments within 100m of Vegetation Category 1 would be subject to high bush fire attack level (BAL) ratings.</p> <p>The planning proposal does not propose to amend any bush fire related LEP provisions. It does not propose any amendments that would disregard the PBP 2019 or encourage inappropriate development. The proposal intends to manage residential density within the Study Area by prohibiting future subdivision. This would serve to limit the number of new dwelling houses and other sensitive land uses that would be exposed to bush fire risk.</p>
<b>Focus Area 6: Housing</b>	
Direction 6.1 Residential Zones	<p>Consistent</p> <p>The objectives of this direction are to:</p> <p>a) <i>Encourage a variety and choice of housing types to provide for existing and future housing needs,</i></p>

- b) *Make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
- c) *Minimise the impact of residential development on the environment and resource lands.*

This direction applies because the planning proposal affects land within an existing residential zone.

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

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

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

The Planning Study, its supporting documentation and this planning proposal empirically demonstrate that the Study Area possesses significant biodiversity values

and should be further protected from adverse development impacts.

The Planning Study and AEC's Economic Implications Analysis demonstrate that the development potential of the residential properties within the Study Area is highly constrained and significantly limited. The existing character of the Study Area is informed by the physical constraints of the locality and the current built form of one and two storey dwelling houses in a bushland setting is unlikely to change. The future housing needs for Hornsby Shire can be comfortably accommodated in other areas of the LGA.

This proposal does not set a precedent for the rezoning of other R2 zoned land near riparian corridors. The primary purpose of the planning proposal is not to reduce housing choice or efficient use of infrastructure and services, but to protect the biodiversity values of the Byles Creek corridor. This planning proposal is focused on the Study Area and has been supported by in-depth environmental analysis over several years, including the most recent report prepared in support of the proposal. If Council were to find that such action was necessary for other areas within the Hornsby LGA, it would be required to submit further planning proposals supported by evidence for the Department's consideration and approval. Such planning proposals would need to demonstrate both strategic and site-specific merit, taking into

	consideration the specific local context, including quantifying and justifying impacts, as this planning proposal has done.
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## **Matters for Consideration – Site Specific Merit**

### **Section C – environmental, social and economic impact**

#### **8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?**

The planning proposal seeks to increase protection for the environmental qualities of the Byles Creek corridor.

As identified in the Byles Creek Land Use and Environmental Constraints Assessment, a supporting document for the Planning Study, the Study Area is host to three vegetation communities including Blue Gum Shale Forest, Blackbutt Gully Forest and Coachwood Rainforest. The vegetation within the Byles Creek corridor also contains suitable habitat for 30 threatened flora species within 5km radius of the Study Area. There are several rare or threatened bird species including the Glossy Black and the Gang Gang Cockatoo that utilise habitat and feed on trees which occur across the private and public lands within the Study Area. Other rare or endangered birds that may be present in the area include Powerful Owls which need wide habitats and tall, hollow-bearing trees.

The Byles Creek Land Use and Environmental Constraints Assessment is included at **Attachment 2**.

The rezoning of R2 Low Density Residential land to C4 Environmental Living is justified because the C4 zone is reserved for land with special environmental or scenic values and accommodates low impact residential development. The zone would give Council greater regulatory control over future developments that will or may impact on the environmental values of the land.

The increase to minimum subdivision lot size for residential development from 600m<sup>2</sup> to 40ha is justified because it will maintain consistency with minimum subdivision lot size applied to existing C4 Environmental Living land across the Hornsby LGA, such as at Dangar Island. The amended minimum subdivision lot size would limit subdivision potential for land within the Study Area. This is a positive outcome with respect to biodiversity and tree preservation because subdivision often requires vegetation removal to accommodate dwellings, services and bush fire APZs.

Retaining the existing minimum subdivision lot size of 600m<sup>2</sup> is not conducive to meeting the objectives of the C4 Environmental Living zone to provide for low impact residential development with special ecological, scientific or aesthetic values and to ensure that residential development does not have an adverse effect on these values.

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

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

Regarding DA/93/2013, although Council has not received evidence suggesting physical commencement of the subdivision, Council has been party to prosecution proceedings related to illegal clearing of bushland on the site undertaken by the developer, Hornsby Shire Council v Henlong Property Group Pty Ltd (No 2) [2019] NSWLEC 17<sup>1</sup>.

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

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

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

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

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

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<sup>1</sup> [https://www.hornsby.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/135944/LEC-outcome.pdf](https://www.hornsby.nsw.gov.au/__data/assets/pdf_file/0008/135944/LEC-outcome.pdf)

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

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

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

**9. Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?**

There are no expected adverse environmental effects as a result of the planning proposal. The planning proposal would allow for stronger planning controls to provide appropriate environmental protection measures and prevent detrimental impacts to the Byles Creek corridor arising from residential development.

The Planning Study's recommendation for the strengthening of Clause 4.1 objectives is an opportunity to ensure that future subdivision applications must consider and demonstrate adequate consideration of site constraints and natural or cultural features. The potential wording presented for additional Clause 4.1 objectives will also require future applications to consider existing subdivision patterns within a locality and demonstrate that a proposed subdivision will be consistent with what is existing and will satisfy the vision for development in certain precincts in the Hornsby LGA. This will facilitate regular subdivision patterns across the LGA and provide an additional matter for consideration when an applicant requests to contravene the minimum lot size development standard.

The introduction of a local provision and associated mapping is recommended by the Planning Study because it is less constraining than zoning prohibitions but provides an indicator of further consideration in the HLEP.

A riparian land local provision and overlay map does not change the permissibility of uses on affected land, does not result in any additional restrictions on development and does

not trigger the need for a development application. Its purpose is to serve as an identifier for the specific issue that exists on the land.

The intent of the riparian land local provision is to facilitate the protection and maintenance of ecological habitat accommodated by waterways and associated riparian corridors. It introduces additional matters for consideration in the assessment of future development applications relating to possible environmental impacts to a waterway, enhancement of riparian vegetation and supporting corridor linkages.

The supporting mapping defines the extent to which future development will need to account for the matters of consideration of the riparian land local provision assisting both Council and proponents in managing expectations for development in affected areas.

It must be noted that several metropolitan councils, such as Ku-ring-gai, Northern Beaches and Parramatta, incorporate a riparian land local provision and mapping in their LEPs. These riparian land local provisions have also been prepared from the model clause.

Envisioned positive environmental outcomes arising from these amendments include minimising the impact of residential development on the environment without impacting on the permissible density of development and retaining a variety and choice of housing types.

It introduces a more rigorous assessment where there are significant environmental values, as identified through mapping, or other values such as biodiversity. The new Riparian Land clause and mapping will foster a consistent approach to protection, management and enhancement of the waterway and supporting habitat within the Study Area.

Draft amendments to existing HDCP provisions for watercourses will be exhibited with the planning proposal. The amendments comprise an additional prescriptive measure for residential developments proposed within the Study Area which references the HLEP mapping. The intent of this amendment is to ensure that the HDCP is consistent with the HLEP.

The draft HDCP amendments are at **Attachment 5**.

#### **10. Has the planning proposal adequately addressed any social and economic effects?**

The planning proposal seeks to implement the recommendations of the Byles Creek Planning Study. The recommendations of the Planning Study are supported by two reports, the Byles Creek Land Use and Environmental Constraints Assessment and the Byles Creek Planning Study – Economic Implications Analysis.

The Byles Creek Planning Study – Economic Implications Analysis is included at **Attachment 3**.

These reports have determined that the social and economic effects of the recommendations are minor and acceptable.

The rezoning of R2 Low Density Residential land to C4 Environmental Living within the Study Area will change the land uses which will be permissible on private land.

The Economic Analysis conducted by AEC determines that the majority of land uses permitted in an R2 zone and prohibited in a C4 zone are unlikely to be developed within the Study Area. Uses such as boarding houses, childcare centres and exhibition homes may be found within a residential neighbourhood context. These uses are not currently observed within the Study Area and given the characteristics of the Study Area along with land size and other demand drivers, would be unlikely to proceed.

Non-residential land uses permitted in R2 zones, such as educational establishments, respite day care centres and veterinary hospitals, are not currently observed in the Study Area and would be unlikely to be developed due to associated land requirements, parking and traffic impacts.

Based on the findings of the Economic Analysis, the Planning Study concludes that the common 'highest and best use' between R2 Low Density Residential and C4 Environmental Living zoned land within the Study Area, being low density housing, would be similar. Accordingly, it is not anticipated that there will be any significant economic implication associated with the rezoning.

The increase of minimum lot size from 600m<sup>2</sup> to 40ha would effectively prevent future residential subdivision within the Study Area.

The Economic Analysis identified a number of lots within the Study Area with the minimum size required for subdivision (greater than 1,200m<sup>2</sup>). While these lots could theoretically be subdivided, there are several practical matters that would prevent a subdivision. These include accessways, irregular lot shapes and on-site physical constraints.

The Economic Analysis (page 12) determined that there are five lots of the total 433 allotments within the Study Area that have subdivision potential. Consequently, it is considered that the economic impact of the minimum lot size increase to the Study Area is minimal when considered as a whole.

Along with the five potential lots in the AEC Analysis, an additional 77 lots within the Study Area are considered 'unlikely to be subdivided'. The method for determining the classifications is provided in AEC's Analysis (page 22) and is reproduced below.

The classifications used include:

- Lots that are fully developed (single residential dwellings with no subdivision potential).
- Lots that have the potential to be subdivided (lots meeting the minimum lot size (600m<sup>2</sup>) and width (15m) requirements with no other physical constraints identified.
- Lots that are unlikely to be subdivided (lots meeting the minimum requirements but have identified constraints such as exclusion of accessway area, shape of lots, developable area, terrestrial biodiversity, existing improvements etc.).

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

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

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

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

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

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

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

**Nos. 11A and 15 Malton Road, Beecroft**



Figure 8: Aerial image of Nos. 11A and 15 Malton Road, Beecroft

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

The two lots have a combined area of 5,438m<sup>2</sup> and are subject to a northwards slope towards the rear of the site averaging 7% before increasing to 33% at halfway. No. 11A features a single storey dwelling house while No. 15 has a single storey dwelling house and a swimming pool.

Significant trees are located on both sites identified as being of Blue Gum Shale Forest and Blackbutt Gully Forest vegetation communities. At the time of assessment, the RFS identified the bushland adjoining the properties as being a 'significant and continuous' fire hazard<sup>2</sup>.

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

Proposed development within the Study Area must consider remnant bushland located within the Byles Creek corridor and adjoining residential land as a source of biodiversity and aesthetic values but also a bushfire hazard which is an inherent conflict. There is a significant challenge in establishing acceptable bushfire APZs for new lots without also incurring a substantial loss of biodiversity value through the removal of mature trees and vegetation.

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<sup>2</sup> [https://hscenquiry.hornsby.nsw.gov.au/Temp/14\\_C0008Q01\\_BYEKGWES.TIF.091613.pdf](https://hscenquiry.hornsby.nsw.gov.au/Temp/14_C0008Q01_BYEKGWES.TIF.091613.pdf)

No. 49A Malton Road, Beecroft



Figure 9: Aerial image of No. 49A Malton Road, Beecroft

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

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

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

No. 53 Malton Road, Beecroft



Figure 10: Aerial image of No. 53 Malton Road, Beecroft

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

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

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

No. 79-87 Malton Road, Beecroft

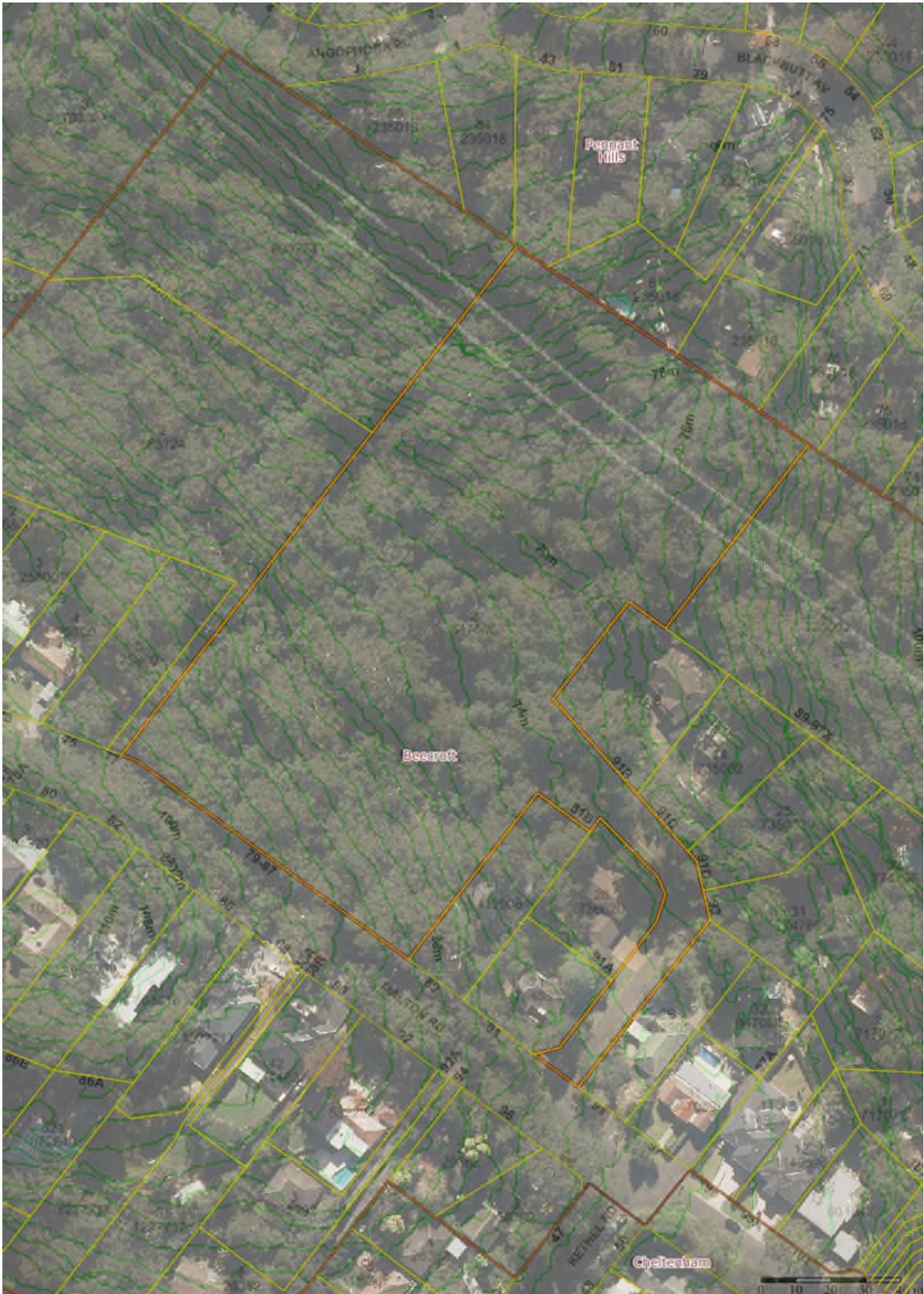


Figure 11: Aerial image of No. 79-87 Malton Road, Beecroft

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

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

Furthermore, illegal clearing of bushland was found to have occurred on site with Council pursuing legal action against the property owner culminating in a LEC judgement, *Hornsby Shire Council v Henlong Property Group Pty Ltd (No 2)* [2019] NSWLEC 17.

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

**No. 41 Malton Road, Beecroft**



Figure 12: Aerial image of No. 41 Malton Road, Beecroft

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

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

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

In October 2021, Council provided the property owner with written advice<sup>3</sup> regarding a potential Torrens title subdivision of the site. The owner was advised of the information that would be required for Council to conduct a full and proper assessment of a future subdivision DA involving the site. This included:

- A Biodiversity Assessment Report (BDAR) in accordance with the provisions of the *Biodiversity Conservation Act 2016* to address tree and vegetation clearing.
- An IBVMP to address the creation of a bushfire APZ and ongoing vegetation management.
- A geotechnical report to address subdivision works and site stability due to slope.
- An arboricultural impact assessment to address potential impacts to trees.
- A heritage impact assessment to address impacts on the Beecroft – Cheltenham HCA.
- Assessment of the application as integrated development in accordance with the provisions of the *Rural Fires Act 1997* and *water Management Act 2000*.

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

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<sup>3</sup> Council ref no. PL/85/2021.

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

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

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

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

**Gateway condition 1(g)**

*Justify the proposal's inconsistency with section 9.1 Ministerial directions objectives a) and b) of Direction 6.1 – Residential Zones. The potential for the planning proposal to set a precedent for the rezoning of other R2 zoned land near riparian corridors should also be addressed, as this would exclude Codes SEPP development and further reducing housing choice and efficient use of infrastructure and services.*

Part 3 Section B Question 7 of the planning proposal has been amended to address consistency with Direction 6.1 – Residential Zones of the section 9.1 Ministerial directions.

The Department's concern that the planning proposal would set a precedent for the rezoning of other R2 zoned land near riparian corridors is unfounded. The primary purpose of the planning proposal is not to limit the application of the Codes SEPP but to protect the biodiversity values of the Byles Creek corridor. This planning proposal is focused on the Study Area and has been supported by in-depth environmental analysis over several years, including the most recent report prepared in support of the proposal.

If Council were to find that such action was necessary for other areas of the Hornsby LGA, it would be required to submit further planning proposals supported by evidence for the Department's consideration and approval. Such planning proposals would need to

demonstrate both strategic and site-specific merit, taking into consideration the specific local context, including quantifying and justifying impacts, as this planning proposal has done.

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

## **Section D – Infrastructure (Local, State and Commonwealth)**

### **11. Is there adequate public infrastructure for the planning proposal?**

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

## **Section E – State and Commonwealth Interests**

### **12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?**

At the time of authorship, no formal consultation has been carried out with State and/or Commonwealth Public Authorities. Notwithstanding, consultation will be carried out in accordance with the requirements of a Gateway Determination.

## **PART 4 - MAPS**

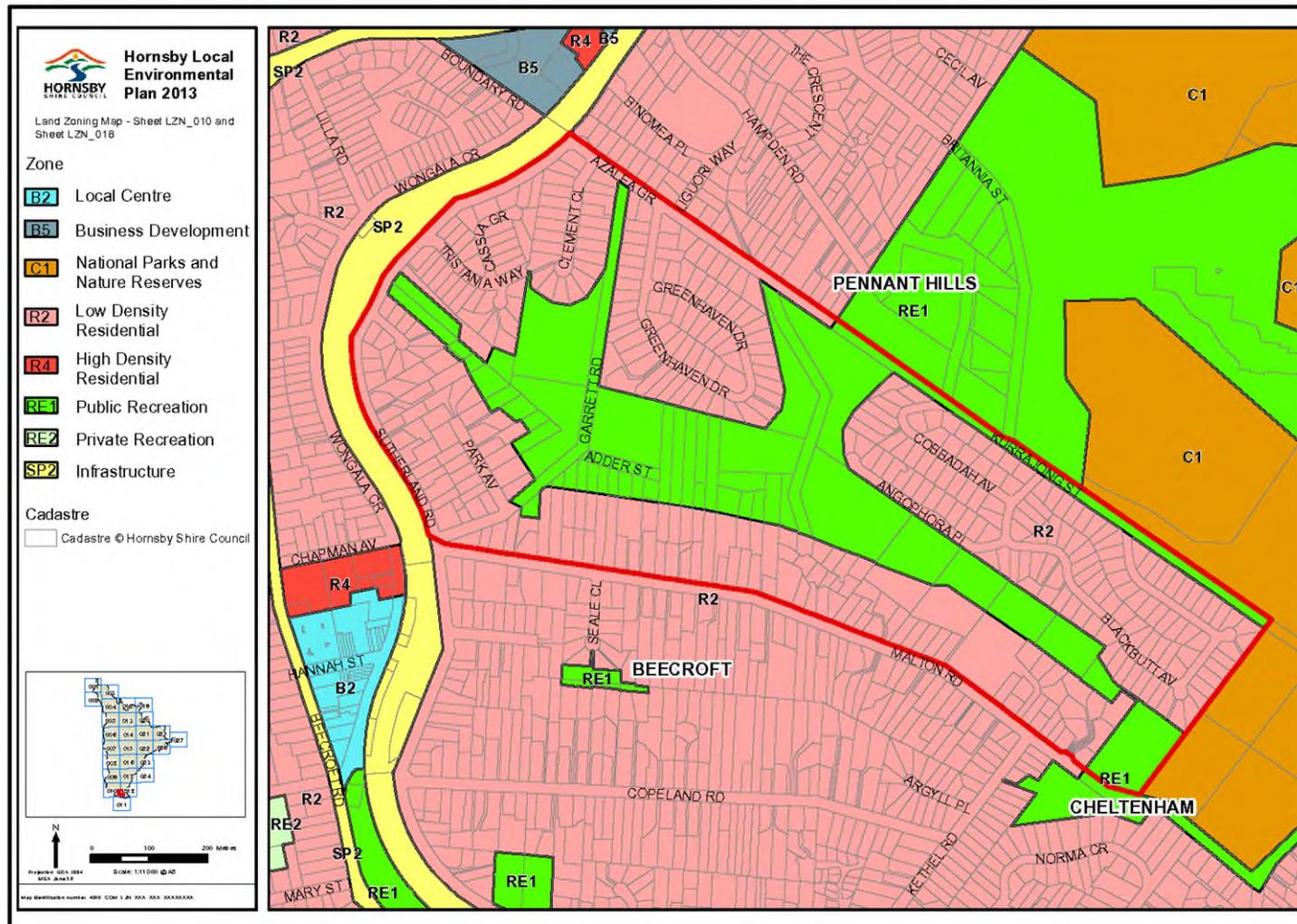
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## Location Map



The Byles Creek Study Area is illustrated with a solid red line.

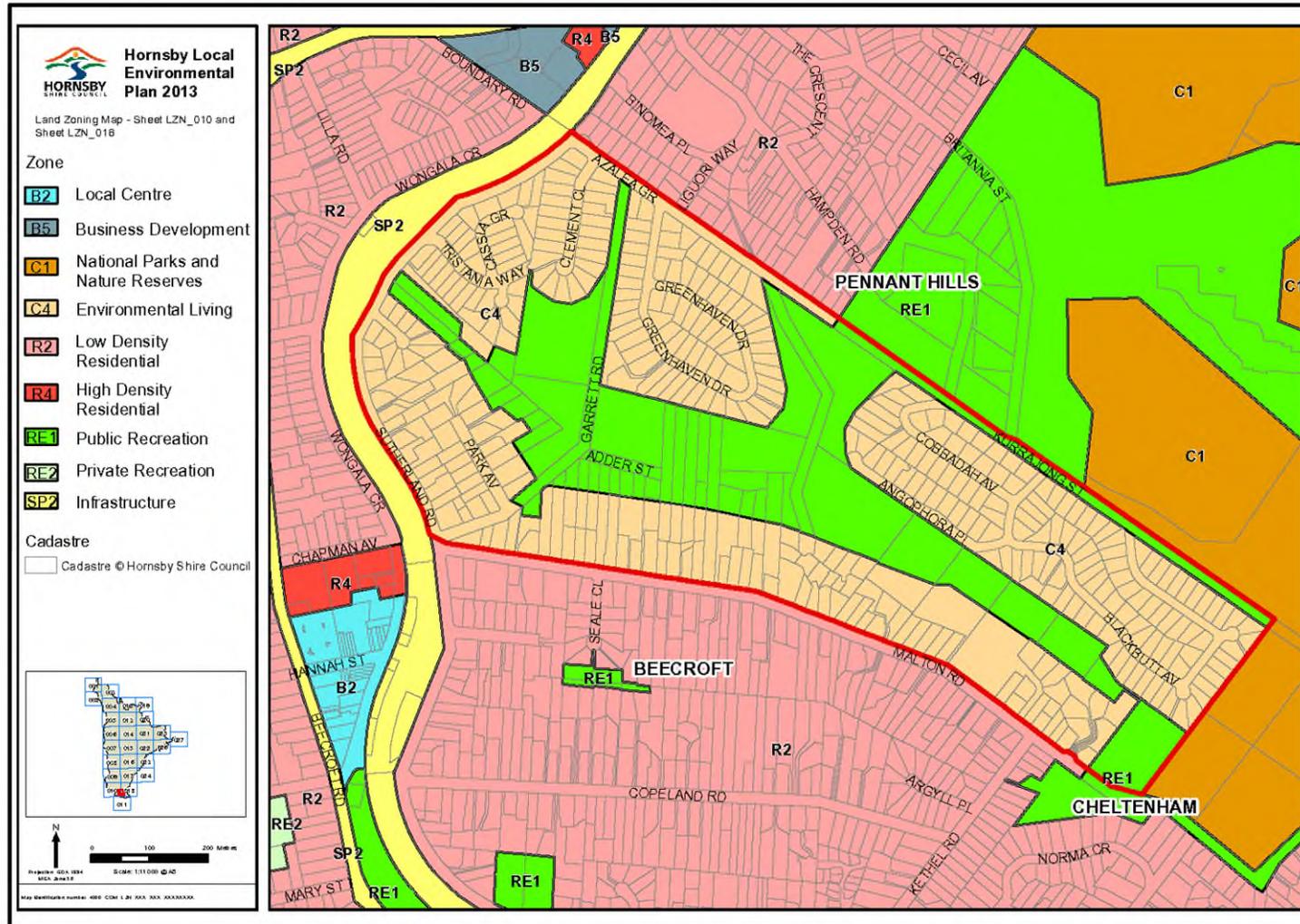
## Existing Land Use Zones



The Byles Creek Study Area is illustrated with a solid red line.

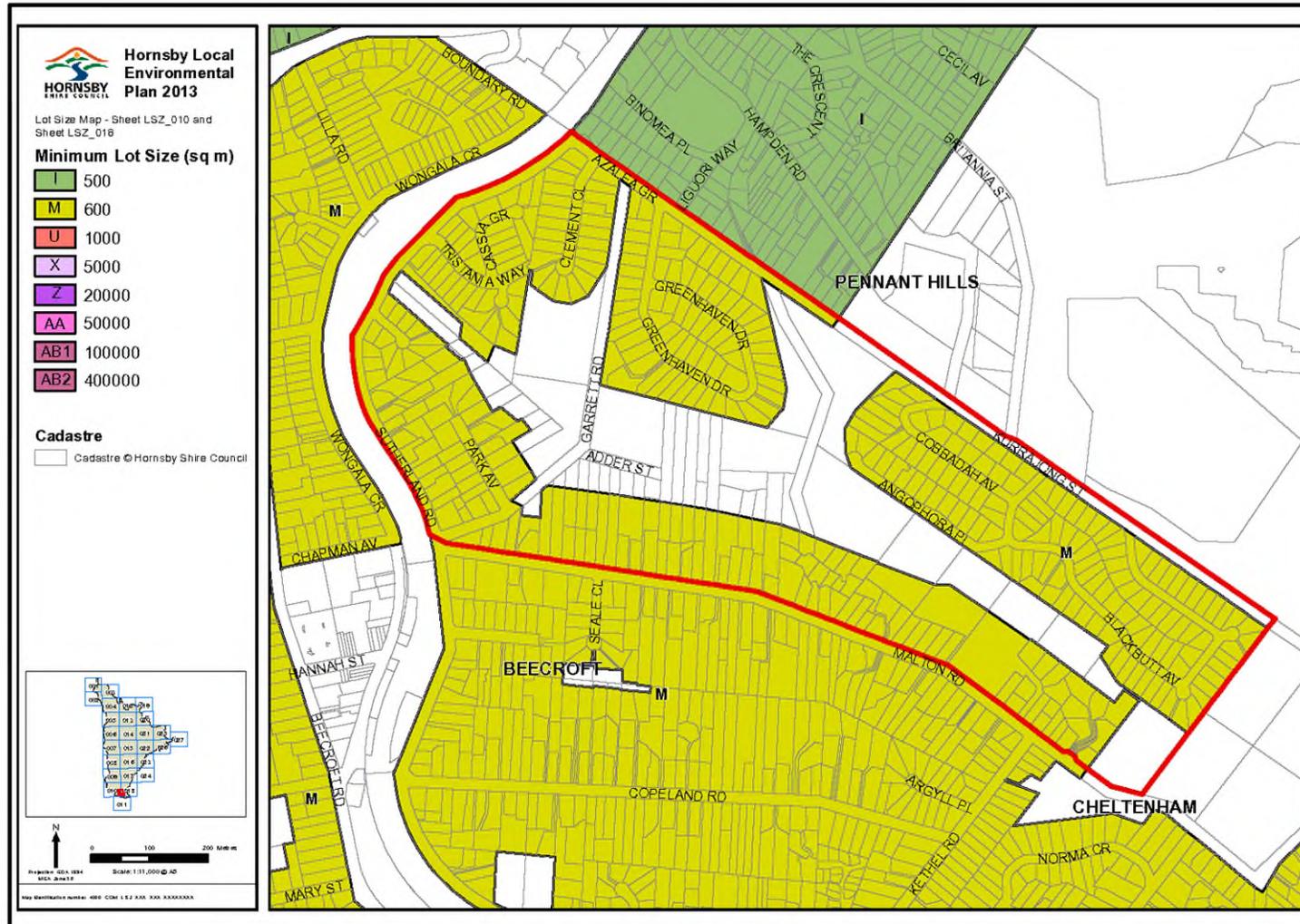
This map illustrates the extent of existing R2 Low Density Residential and RE1 Public Recreation zones within the Study Area.

## Proposed Land Use Zones



The Byles Creek Study Area is illustrated with a solid red line. All existing residential land zoned R2 Low Density Residential is proposed to become C4 Environmental Living.

## Existing Minimum Lot Size

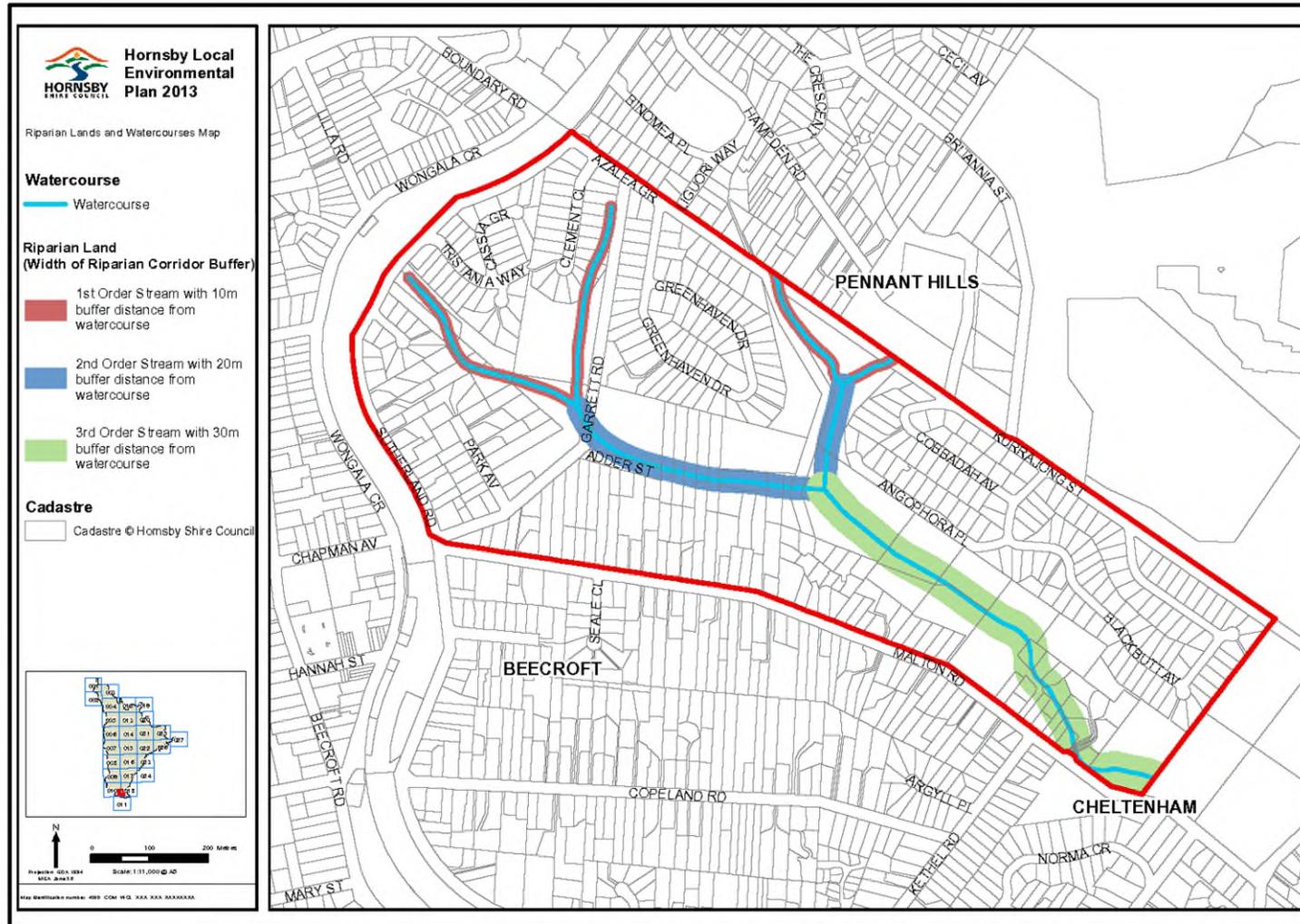


The Byles Creek Study Area is illustrated with a solid red line.

All existing residential land zoned R2 Low Density Residential is subject to a minimum subdivision lot size of 600m<sup>2</sup>.



## Proposed Riparian Corridor Mapping



The Byles Creek Study Area is illustrated with a solid red line.

Riparian corridor mapping will comprise variable width buffers for vegetated riparian zones (VRZ) dependent on the classification of the waterway in accordance with the Strahler stream order system. Within the Study Area, buffers of 10, 20 and 30 metres (each side of the watercourse) will be employed in response to the presence of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> order watercourses. The buffers have been colour coded for ease of identification

## **PART 5 - COMMUNITY CONSULTATION**

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The planning proposal will be publicly exhibited in accordance with the requirements of the Gateway Determination and Council's Community Engagement Plan 2021. Public exhibition will include:

### **Public authorities**

Notification letters and a copy of the planning proposal will be sent to public authorities identified in the Gateway Determination. Council considers the NSW National Parks and Wildlife Service and Transport for NSW – Sydney Trains to be relevant public authorities.

The Department's Gateway Determination has identified the following public authorities to be notified via the NSW Planning Portal during public exhibition:

- NSW Environment and Heritage Group
- NSW National Parks and Wildlife Service
- NSW Rural Fire Service
- Relevant transmission easement authority (Ausgrid).

### **Letters to affected property owners**

Notification letters will be sent to affected property owners advising of the exhibition of the planning proposal. This is envisioned to be, at minimum, all property owners captured within the Byles Creek Study Area and those who adjoin.

### **Advertisement in newspaper**

An advertisement will be placed in relevant newspapers, such as the Hornsby Kuring-Gai Post. The public notice will identify the purpose of the planning proposal, exhibition dates and where the proposal can be viewed.

### **Advertisement on the Council website**

The planning proposal will be exhibited on Council's 'Your Say Hornsby' webpage.

[\(https://yoursay.hornsby.nsw.gov.au/\)](https://yoursay.hornsby.nsw.gov.au/)

### **E-News**

An advertisement would be placed in Council's electronic newsletter.

### **Displays at the Council Administration Building and local libraries**

The planning proposal will be displayed at the Council Chambers, No. 296 Peats Ferry Road, Hornsby and additional copies at the Hornsby and Pennant Hills local libraries.

Following community consultation, a report summarizing the submissions will be prepared to Council for its consideration.

## PART 6 – PROJECT TIMELINE

### Indicative Project Outline - Standard Planning Proposal

Date	Week No.	Duration (Workdays)	Stage/Task
<b>Stage 1 Pre-lodgement</b>			
Jul 2022		50	Consult/discuss with DPE
<b>Stage 2 Planning Proposal</b>			
Aug/Sep 2022		95	Draft planning proposal and LPP report
Oct 2022			LPP briefing
Oct/Nov 2022			Gateway report
Nov 2022			Council resolution to refer for gateway
<b>Stage 3 Gateway Determination</b>			
Nov/Dec 2022		25	DPE gateway consideration
May 2023			Gateway determination issued
<b>Stage 4 Post Gateway</b>			
May/July 2023		50	Post-gateway and pre-exhibition
<b>Stage 5 Public Exhibition and Assessment</b>			
Sep 2023		95	Exhibition for 42 calendar days (6 weeks due to school holidays)
Oct 2023			Exhibition review and submissions report
Dec 2023			Council resolution to finalise
<b>Stage 6 Finalisation</b>			
Dec 2023		55	Submit finalisation package to DPE
<b>Stage 7 Gazettal</b>			
Prior to Mar 2024			Gazettal and notification of LEP amendment