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Byles Creek Land Acquisition Strategy Review



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1 Introduction

1.1 Commission and Purpose of Review

DFP has been commissioned by Hornsby Shire Council (Council) to undertake a review of the Byles Creek corridor and, if necessary, prepare a revised acquisition strategy to facilitate the acquisition of additional land (to that which has already been identified as land to be acquired) if it is concluded that additional land is required.

The Strategy Review (Review) includes an assessment of the environmental and social values of the Byles Creek corridor and surrounding land. If required, the revised strategy will also investigate opportunities for the acquisition of additional land within the corridor if this is determined as being necessary to protect and enhance areas identified as having particular environmental and social value.

1.2 Objectives of the Review

The objectives of this review are:

- To understand the environmental and social values of the Byles Creek corridor.
- To consider the function of the Byles Creek corridor in the overall open space network and having regard to the environmental and social values of the corridor.
- To consider funding options for the acquisition of additional land within the corridor if it is determined that this is necessary in order to protect and enhance areas identified as having particular environmental and social value.

1.3 Area to which the Review relates

The area to which this Strategy Review relates comprises approximately 22 hectares of land zoned for open space purposes along Byles Creek as well as other land immediately adjoining the land zoned for open space purposes. This includes land zoned for residential purposes but which is also identified as having Terrestrial Biodiversity value.

1.4 Methodology

In undertaking this Review, DFP has:

- Reviewed relevant background material as provided by Council, including:
 - Byles Creek Catchment Environmental Study.
 - Documentation relating to Amendment No. 24 to Hornsby LEP 1994.
 - The Open Space Land Acquisition Review.
 - Byles Creek Development Control Plan.
 - Relevant development applications.
- Considered the context of the Byles Creek corridor.
- Reviewed relevant planning controls and legislation.

This Review has been prepared by DFP based on information referred to herein and/or appended to this report including an Ecological Assessment prepared by Cumberland Ecology (**Appendix 1**).

2 Background

2.1 Byles Creek Catchment Environmental Study

At a meeting on 5 October 1994, Council resolved to prepare a Local Environmental Study for the Byles Creek Catchment.

The Byles Creek Catchment Environmental Study was prepared in October 1995 by Nexus Environmental Planning Pty Ltd. The Byles Creek Catchment Environmental Study (the Study) related to an area comprising approximately 350 hectares of publicly and privately owned land in Beecroft.

It should be noted that the area investigated as part of the Byles Creek Environmental Study is much larger than the area to which this Strategy Review relates. The Byles Creek catchment included land zoned for residential and commercial purposes (as well as land zoned for open space purposes) and extended north and west to Pennant Hills Road, west to Beecroft Road and south to Lyne Road and Cobran Road.

Therefore, for the purposes of this Review, the findings of the Byles Creek Environmental Study are noted while acknowledging there are some limitations in its application 25 years after preparation. Notwithstanding, it is noted that the Study identified that the dominant vegetation community in the area the subject of this Strategy Review was the Blackbutt Smooth-barked Apple Tall Open Forest community.

In addition, the Study mapped the areas within the Catchment that contained vegetation of conservation significance. In relation to the area to which this Strategy Review relates, the area mapped as containing vegetation of conservation significance equated to that land zoned Open Space A under Hornsby LEP 1994 – refer **Figures 1 and 2**. The area to which this Strategy Review is the area generally circled in red on **Figures 1 and 2**.

As discussed later in this Review, those areas mapped as containing vegetation of conservation significance resulted in an amendment to Hornsby Shire LEP 1994 (Amendment No. 24) in relation to an amendment to the Bushland Protection mapping to include the land mapped as containing vegetation of conservation significance. Land mapped as Bushland Protection was subject to the provisions of clause 19 of Hornsby Shire LEP 1994.

In order to inform this Review, an updated Ecological Assessment of the area to which this Review relates has been undertaken. The findings of that assessment are discussed in **Section 5** of this report. The updated Ecological Assessment is included at **Appendix 1** to this Review.

The Study considered whether additional land should be rezoned (from Residential AS) to either Open Space A or Environmental Protection B and whether the Environmental Protection B zoning or the Open Space A zoning was appropriate for the land identified as being protected.

The Study identified that the Open Space A zoning¹ which applied to the corridor area should be retained due to the high environmental quality, aesthetic and heritage value to the local community and the Shire in general.

¹ The Open Space A zoning was a land use zone under Hornsby Shire LEP 1994, which was the relevant local environmental plan applying to the land to which this Review relates immediately prior to Hornsby Local Environmental Plan 2013 coming into force.

2 Background

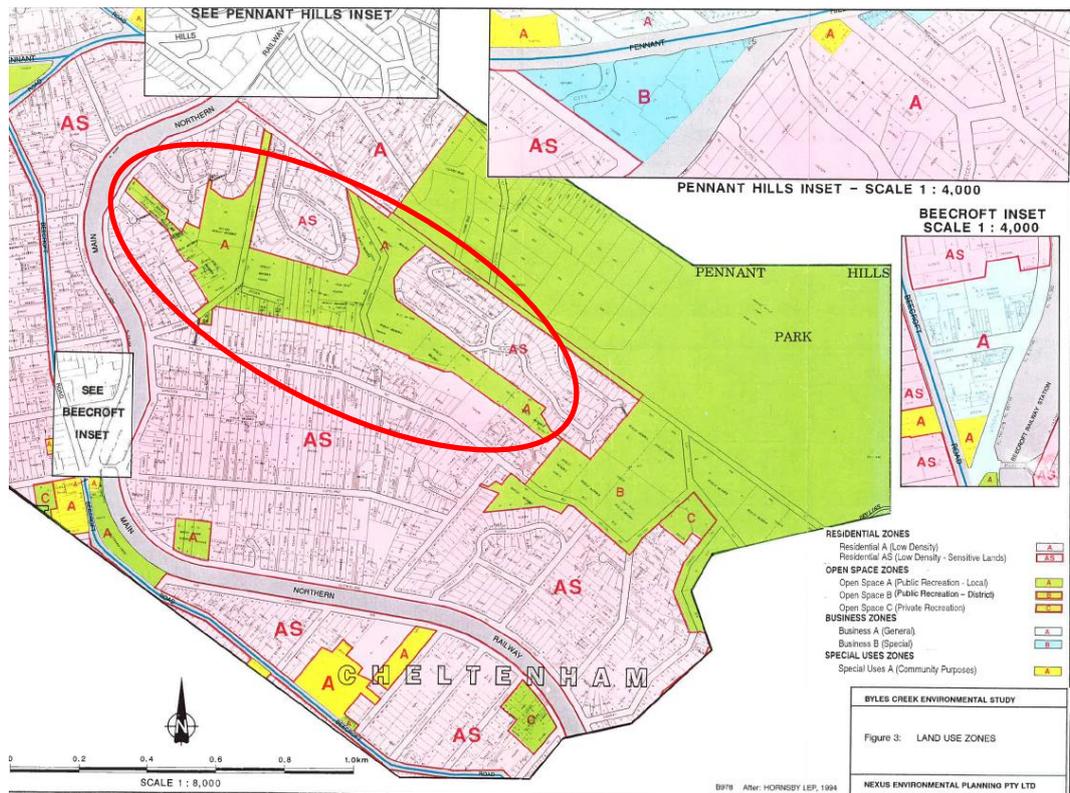


Figure 1 Extract from Byles Creek Catchment Environmental Study showing land use zonings under Hornsby Shire LEP 1994

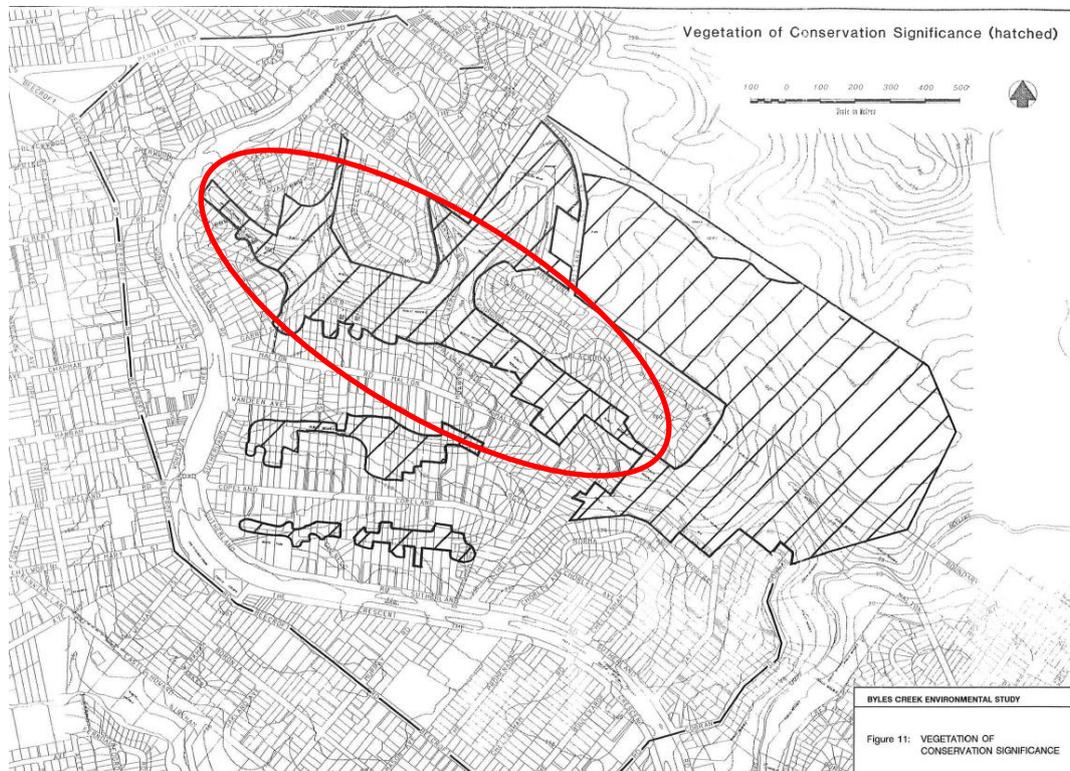


Figure 2 Extract from Byles Creek Catchment Environmental Study showing areas containing Vegetation of Conservation Significance

2 Background

The Study recommended the following:

- All existing zones as (currently) contained in Hornsby Shire Local Environmental Plan (LEP) 1994 be retained, i.e. land zoned Open Space A remain Open Space A and not be zoned Environmental Protection B.
- No additional land be rezoned to Open Space A.
- A draft LEP be prepared to amend Hornsby LEP 1994 to designate areas identified as having Vegetation Conservation Significance as “Bushland Protection” (and therefore being subject to the provisions of clause 19 of Hornsby Shire LEP 1994). The amendment to Hornsby LEP 1994 is discussed in **Section 2.2** below.
- A Plan of Management be prepared in relation to all land zoned Open Space within the catchment.²
- Establish a program for acquisition of privately owned land which is zoned Open Space A.
- Prepare detailed development guidelines for the catchment. In this regard, The Study led to the preparation of the Byles Creek development control plan (DCP) which came into force in May 1998 (refer **Section 2.4** of this Strategy Review and **Figure 3**).

The Byles Creek Environmental Study was considered by Council at a meeting held on 1 November 1995. At that meeting, Council also resolved to adopt the recommendations of the Study as set out above.

Following completion of the Sensitive Lands Study by Council, additional investigations in relation to the Byles Creek Environmental Study were undertaken. Those additional investigations concluded that the recommendations of Study were still relevant and did not need to be revised as a result of the Sensitive Lands Study.

Relevant to this Review, it is noted that the land use zonings that applied to the land to which this review relates under Hornsby Shire LEP 1994 were transferred to the current Hornsby LEP 2013.

2.2 Amendment No. 24 to Hornsby Shire LEP 1994

Pursuant to the recommendations of the Byles Creek Environmental Study, Council prepared a draft amendment to Hornsby Shire LEP 1994, Amendment No. 24.

The draft LEP proposed the application of clause 19 – Bushland Protection of Hornsby Shire LEP 1994 over land identified in the Byles Creek Environmental Study as containing Vegetation of Conservation Significance.

Clause 19 of Hornsby Shire LEP 1994, states the following:

19 Bushland protection

Objective of Provision

To protect significant flora and fauna habitats.

Bushland protection

- (1) *A person shall not carry out development on land designated “bushland protection” on the map without the consent of the Council.*
- (2) *For the purpose of removal of doubt, development on any such land includes:*
 - (a) *the erection of a fence or any other structure at all on the land, and*
 - (b) *the removal of soil or rock from the land, and*

² The Byles Creek corridor is managed under 4 separate reserves as part of the Generic Plan of Management for Community Land and Crown Reserves for Planning District Two.

2 Background

- (c) *the deposit of soil, rock or any other matter on the land, and*
- (d) *the destruction or removal of any tree or other vegetation on the land.*

At a meeting on 18 September 1996, Council resolved to prepare the draft LEP amendment to introduce Bushland Protection provisions to the identified land and refer the draft LEP to the (then) NSW Department of Urban Affairs and Planning for the necessary certification to place the draft LEP amendment on public exhibition.

The draft LEP amendment, including relevant mapping, was placed on public exhibition from 24 January 1997 until 21 March 1997. A number of submissions were received in response to the exhibition.

The outcomes of the public exhibition, including a summary of submissions, was reported to a Council meeting on 21 May 1997.

Relevant to this Review are the following comments in the report to the Council meeting (Report No. PLN147/97):

The rezoning of land from Residential to Open Space would provide improved protection of bushland areas by restricting development potential. However, this action would increase the area of land that would be subject to acquisition and not recognise that some residential lands within the Byles Creek catchment have development potential and may be developed consistent with the objectives of the bushland protection provision.

The proposed strategy of providing a bushland protection overlay for lands containing vegetation of conservation significance would serve to maintain underlying development potential of lands while recognising the constraints to the development of land. The bushland protection overlay would also result in more rigorous assessment of development proposals...

Also relevant to this Review, are the following comments made in the report in relation to 65D Malton Road, Beecroft:

In undertaking the ground truthing of properties in Malton Road, Council officers have identified land containing vegetation of conservation significance that was not recognised in the Byles Creek Environmental Study or by Land and Environment Planning in the 1994 study 'Fauna Corridors and Vegetation Links in Hornsby Shire'. The draft LEP identifies only a portion of 65D Malton Road, Beecroft as containing vegetation of conservation significance. Ground truthing of the site identifies the entire parcel as containing vegetation of conservation significance. Accordingly, the mapping should be amended to include all of 65D Malton Road as containing vegetation of conservation significance.

As a consequence, the bushland protection overlay mapping was amended and the draft LEP amendment was re-exhibited.

On 1 October 1997, Council considered a report on the re-exhibition of the Byles Creek draft LEP and resolved to defer the matter so that clarification could be sought regarding the status of blue gum high forest vegetation and Gang Gang cockatoos in the Byles Creek catchment.

In response to Council's resolution, AES Environmental Consultancy was engaged to undertake further investigations in relation to the status of blue gum high forest vegetation and Gang Gang cockatoos in the Byles Creek catchment.

On 17 December 1997, Council considered a report (PLN438/97) regarding the re-exhibition of the draft LEP and the additional investigations in relation to the blue gum high forest vegetation and Gang Gang cockatoos. The findings of AES Environmental Consultancy are summarised in the report as follows:

2 Background

Blue Gum High Forest

Many large mature blue gums also remain on private land in the more elevated parts of the Byles Creek catchment. These stands of blue gums cannot be considered as part of the high forest community as the understorey has been removed and replaced by gardens. However, these trees do contribute to the viability of the community as they are a source of genetic material (pollen and fruit). They are also potential habitat for the threatened Swift Parrot (a winter migrant from Tasmania). Strict policing of Council's Tree Preservation Order is necessary to maintain these trees.

In this regard, the report noted that the draft Byles Creek DCP requires that where possible and practical significant trees should be retained and incorporated into landscape schemes. Where this is not possible, the draft DCP requires two advanced plans of the same species should be planted.

Gang Gang Cockatoo

Although it is not the only population in the Sydney Basin Region,..., the local population of this species is disjunct from other larger populations in the Blue Mountains and Southern Highlands. Furthermore, its habitat has been reduced and fragmented by a number of developments including the construction of the M2 Motorway.. Despite these factors, it appears that the local population of Gang Gang Cockatoo is not in imminent danger of extinction as the bulk of its habitat is conserved in Lane Cover National Park and Pennant Hills Park...

The report noted that the environmental protection element of the draft Byles Creek DCP requires that a detailed flora and fauna assessment be submitted with a development application on land zoned for open space or adjoining land zoned for open space purposes.

The investigations undertaken by AES were reviewed by P & J Smith Ecological Consultants and Land and Environmental Planning. Both consultants concurred with the findings of AES.

At the meeting on 17 December 1997, Council resolved to adopt the amended LEP which introduced Bushland Protection provisions over land identified as containing vegetation of conservation significance in the Byles Creek corridor.

Amendment No. 24 to Hornsby Shire LEP 1994 was subsequently published in the Government Gazette on 1 May 1998.

2.3 Open Space Land Acquisition Review 2006

A confidential review of open space zoned land in private ownership was prepared by Council in 2006. The purpose of that review was to evaluate all lands zoned Open Space A (and therefore reserved for acquisition) in private ownership to ensure that only land that will meet community needs for open space, or that preserves the environmental quality of the Hornsby area, was zoned for acquisition accordingly.

The review led to 29 parcels of land throughout the Shire being identified as no longer being required for public purposes due to zoning anomalies or constraints associated with access, isolation and size.

However, the Open Space zoning of all of the properties zoned Open Space A within Byles Creek was retained due to the high environmental quality, aesthetic and heritage values of the land to the local community and the Shire in general.

2.4 Byles Creek Development Control Plan

The Byles Creek DCP came into force on 19 May 1998. The DCP was informed by the Byles Creek Environmental Study and provided measures to protect the natural and built environment by providing guidelines for development in the Byles Creek Catchment.

2 Background

As previously noted, the boundary of the Byles Creek Catchment encompassed lands beyond the land zoned for open space purposes. **Figure 3** below is an extract of the Byles Creek DCP showing the boundary of the catchment. The area to which this Strategy Review generally relates is circled in red.

The Byles Creek DCP included development controls relating to setbacks, soil and water management based on the characteristics of the soil type, environmental protection, fencing, bushfire management, treatments relating to development on land with an interface with an urban watercourse and controls to ensure development was compatible with the land capability and sensitivity, particularly in relation to topography, drainage and soil dispersibility.

Hornsby Development Control Plan 2013 (Hornsby DCP 2013) was adopted by Council on 19 December 2012 and came into effect on 11 October 2013. Hornsby DCP 2013 applies to all land within the Hornsby Local Government Area, including land to which the Byles Creek DCP applied.

For the purposes of this Strategy Review it is understood that the Byles Creek DCP is no longer in force and Hornsby DCP 2013 is the relevant reference document in relation to development controls on land to which this Strategy Review relates.

The area identified as 'Bushland Protection' in **Figure 4** includes land beyond that zoned RE1 Public Recreation under Hornsby LEP 2013 (or land zoned Open Space A under the previous Hornsby Shire LEP 1994). The 'Bushland Protection' area does not exactly equate to the areas mapped as having Terrestrial Biodiversity Value under Hornsby LEP 2013 – refer **Figure 10**.

The differences between the two maps is due to the criteria used for each mapping exercise. **Bushland protection** included specific areas identified for the protection of flora and fauna whereas the **Terrestrial Biodiversity Map** was determined by vegetation community and their relative conservation significance which did not permit the inclusion of areas not listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the (now repealed) *Threatened Species Conservation Act, 1995* (TSC Act) or areas of regional significance.

2 Background

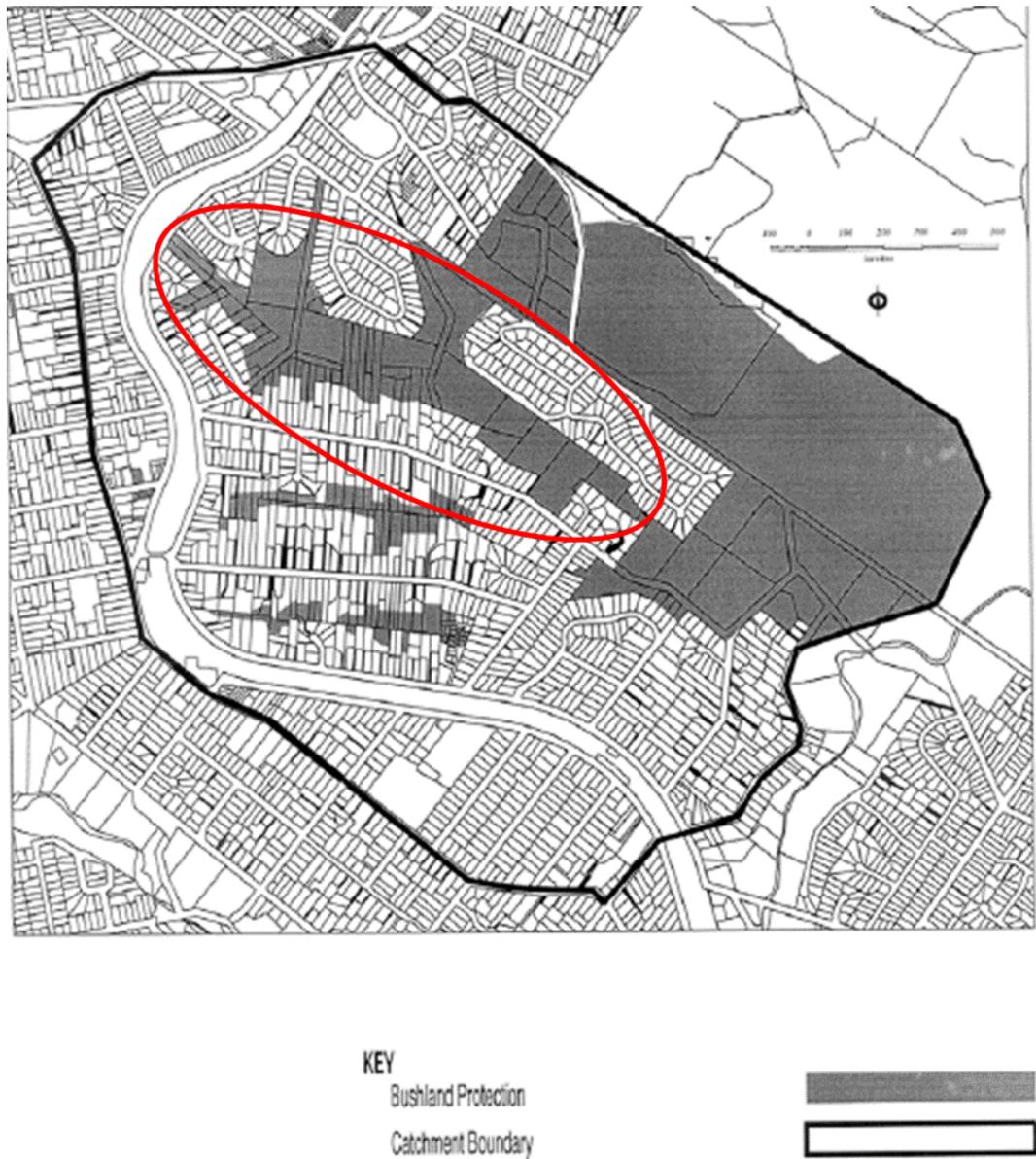


Figure 3 Extract from Byles Creek DCP showing boundary of Byles Creek catchment

2 Background

2.5 Resolution of Council – 10 October 2018

Council, at its Ordinary Meeting on 10th October 2018 considered Notice of Motion NOM28/18 Byles Creek Land Acquisition Strategy. At that meeting, Council resolved to prepare a report detailing the resources required to undertake a review of the Byles Creek Land Acquisition Strategy and, at a General Meeting on 12 June 2019, Council resolved to review the Byles Creek Catchment Land Acquisition Strategy as part of the broader review of Council's Local Environmental Plan.

This Strategy is an outcome of Council's resolution of 12 June 2019.

2.6 Relevant Development Applications

There have been a number of development applications on land immediately adjoining the RE1 zoned land within the Byles Creek corridor. A number of ecological assessments of DAs in areas immediately surrounding the study area were consulted, however, the assessments relating to the following DAs were considered of most relevance to this Review. These applications all raised issues relating to land acquisition and each DA was also accompanied by an ecological assessment.

- DA/1344/2017 for a new dwelling, driveway and swimming pool at 65D Malton Road, Beecroft. This DA was refused at a meeting of the Hornsby Local Planning Panel on 24 May 2018.
- DA/920/2015 for a dwelling at 77 Malton Road, Beecroft. The DA was approved by Council on 8 June 2016 and the dwelling has been constructed.
- DA/94/2013 for a 6 lot subdivision at 79-87 Malton Road, Beecroft.

This DA was refused by Council but ultimately approved by NSW Land and Environment Court following a s34 conciliation conference.

The consent issued by the Court was a deferred commencement consent. The deferred commencement conditions related to the preparation of an integrated vegetation and bushfire management plan and a fauna management plan. These conditions have been satisfied and works in accordance with the approved development are currently underway.

The approved DA includes the dedication of land zoned RE1 (adjoining the creek corridor) as well as some land zoned R2 Low Density Residential to Council as a condition of consent. The condition also requires the provision of an access to the dedicated land from Malton Road.

The ecological assessments accompanying each of these DAs have been reviewed by Cumberland Ecology as part of their updated ecological assessment of the Byles Creek corridor land.

In April 2019, a pre DA meeting was held in relation to the subdivision of 67 Malton Road (currently two allotments) into three allotments and the construction of an access way servicing 65D Malton Road. The pre DA notes prepared by Council require the DA to be accompanied by a biodiversity assessment and bushfire assessment as well as an arborist report and stormwater management plan which addresses the water quality targets as set out in Hornsby DCP 2013. No development approvals have been issued in relation to this land.

The ecological assessments undertaken as part of these DAs considered a range of factors including the ecological values of the corridor, the community interest in retaining the corridor, and appropriate planning controls that should be applied in relation to future development on the land to which the DAs related. These controls included setbacks, amenity considerations, and controls relating to bush fire protection, ecology, tree management, and stormwater management.

These ecological assessments have been considered in the preparation of this Strategy.

3 Byles Creek Corridor Context

3.1 Description of Corridor Land

Byles Creek extends from Sutherland Road (approximately midway between Narena Close and Tristania Way) west to its connection with Devlins Creek near the northern end of Cobram Road (at co-ordinates -33.7°S and 151.08°E). There are also two south flowing tributaries which commence generally in the location of Clement Close and Azalea Grove, Pennant Hills. These tributary watercourses connect into that section of Byles Creek to the north of Malton Road between Park Avenue and Timbertop Way.

The overall length of Byles Creek from its western extent (at Sutherland Road) to its confluence with Devlins Creek (excluding the northern tributary watercourses) is approximately 2.6km.

That part of Byles Creek the subject of this Strategy Review extends from Sutherland Road (in the west) to 103 Malton Road, Beecroft. **Figure 4** is a plan showing the general location of the Byles Creek corridor the subject of this Strategy Review – circled in red.

Figure 5 is an aerial photograph of the same area.

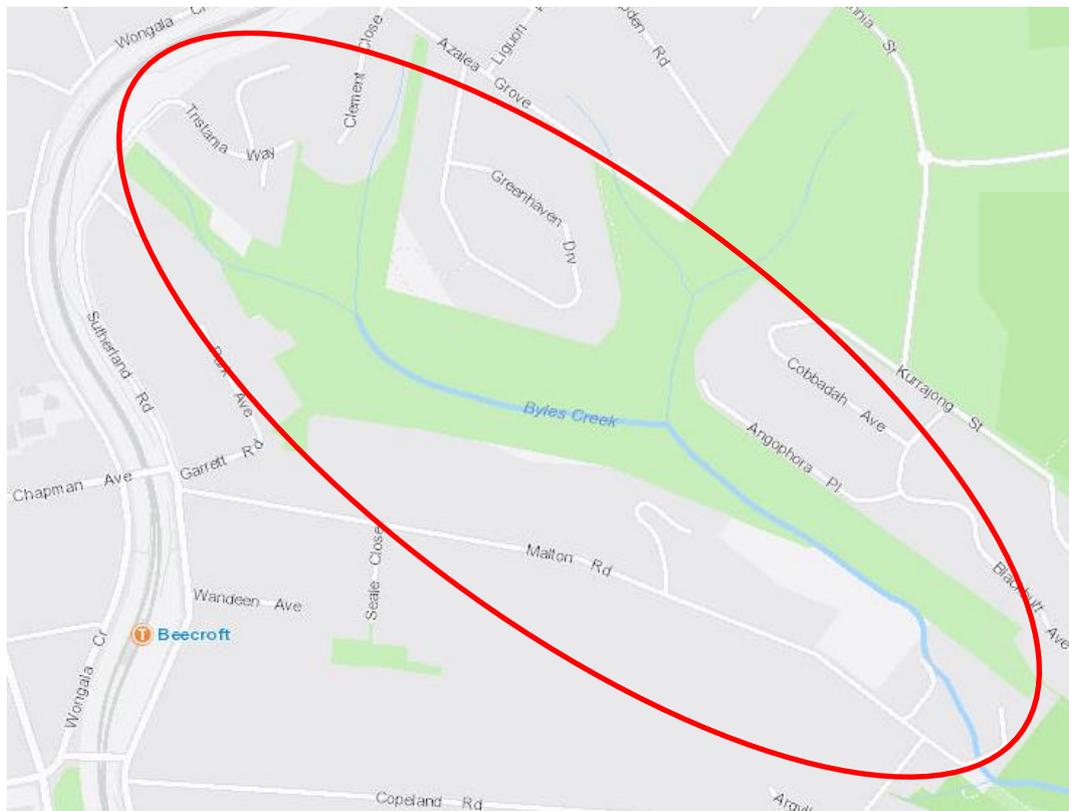


Figure 4 Site Location

3 Byles Creek Corridor Context

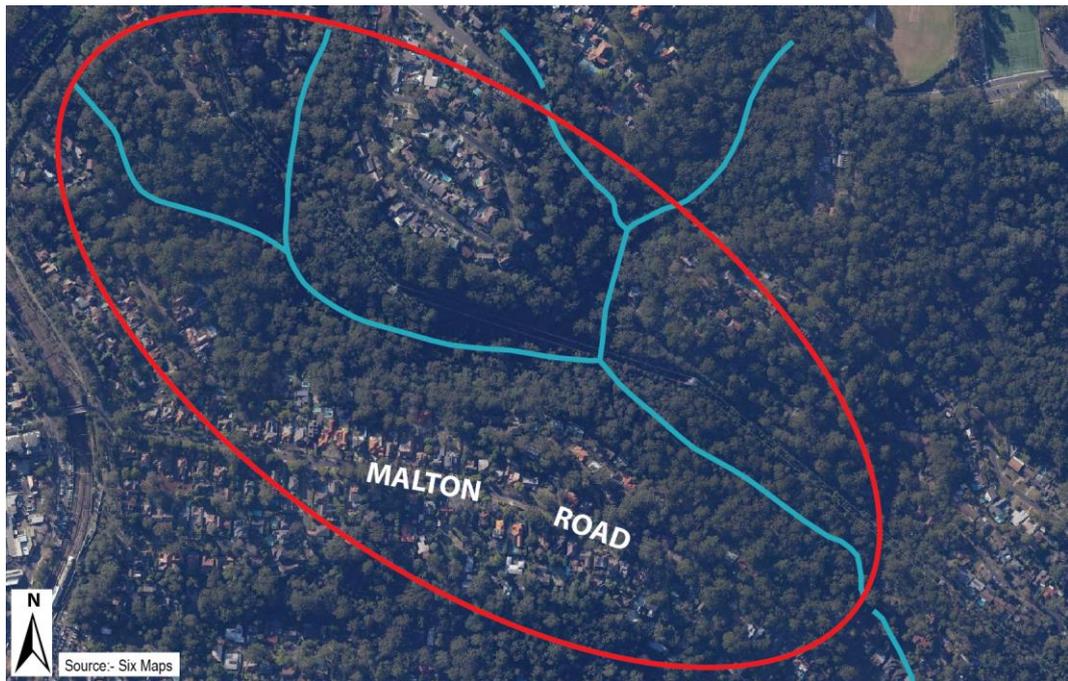


Figure 5 Aerial Photograph of land to which this Strategy Review relates. The alignment of Byles Creek is shown in blue

Land within the Byles Creek corridor the subject of this Strategy Review includes the RE1 zoned land, as well as residentially zoned land immediately adjacent to the RE1 zoned land.

The RE1 zoned land, is the land shaded in the two green tones in **Figure 6** and includes Council owned land, Crown land and some land still in private ownership. **Figure 6** is an extract of a land ownership map of the corridor. Land coloured light green is land that is owned by Council. Land coloured bright green is either Crown land or privately owned land.

This plan is also included at **Appendix 2** to this report.



Figure 6 Extract of land ownership map of Byles Creek corridor (Source: Hornsby Shire Council)³

The land that currently comprises the existing Byles Creek corridor (being that land zoned RE1 under Hornsby LEP 2013) includes those properties detailed in **Table 1**.

³ The property outlined in red in Figure 6 is for map identification purposes only. It is of no relevance to this Strategy Review.

3 Byles Creek Corridor Context

The properties in red text are those which are either Crown land or privately owned properties. Where only part of the property is located within the corridor, this is denoted as (part) in **Table 1**.

Table 1 Details of Properties within the Byles Creek Corridor		
Address	Lot/DP	Ownership
142 Sutherland Road, Beecroft	34/229831	Private (part)
142X Sutherland Road, Beecroft	33/229831	Council
140X Sutherland Road, Beecroft	15/237044	Council
130X Sutherland Road, Beecroft	204/806307	Council
140X Sutherland Road, Beecroft	3/530227	Council
140X Sutherland Road, Beecroft	14/562351	Council
140X Sutherland Road, Beecroft	6/229639	Council
10X Park Avenue, Beecroft	80/1150971	Council
8B Park Avenue, Beecroft	3/540850	Council Not all of Lot 3 is zoned RE1. The battle axe handle is zoned R2
6X Park Avenue, Beecroft	23/614741	Council
4 Park Avenue, Beecroft	3/17876	Private (part)
142 Sutherland Road, Beecroft	34/229831	Private (part)
2 Park Avenue, Beecroft	Y/421498	Private (part)
20 Tristania Way, Pennant Hills	25/261485	Council
Road Reserve (Garrett Road)	-	Crown
8 Garrett Road, Beecroft	40/596659	Council
11A Malton Road, Beecroft	5/4551	Private (part)
15 Malton Road, Beecroft	6/4551	Private (part)
17A Malton Road, Beecroft	7/4551	Private (part)
17A Malton Road, Beecroft	1/115475	Private
17A Malton Road, Beecroft	8/4551	Private (part)
17B Malton Road, Beecroft	9/4551	Private (part)
23 Malton Road, Beecroft	A/360633	Private (part)
1X Adder Street Beecroft	700/1124042	Council
1X Adder Street Beecroft	3/628007	Council
27A Malton Road, Beecroft	2/868018	Private (part)
31 Malton Road, Beecroft	112/1083093	Private (part)
14X Garrett Road, Beecroft	3/593755	Council
Road Reserve (Adder Street)	-	Private/Crown
14X Garrett Road, Beecroft	1/134742	Council
14X Garrett Road, Beecroft	702/1124042	Council
35B Malton Road, Beecroft	107/775899	Private (part)
37X Malton Road, Beecroft	704/1124042	Council
35D Malton Road, Beecroft	105/775899	Private (part)
41 Malton Road, Beecroft	1/171774	Private
41 Malton Road, Beecroft	5/7933	Private (part)
43B Malton Road, Beecroft	5/716031	Private (part)
43C Malton Road, Beecroft	601/793873	Private (part)
43X Malton Road, Beecroft	706/1124042	Council
43X Malton Road, Beecroft	3/705724	Council
43X Malton Road, Beecroft	708/1124042	Council

3 Byles Creek Corridor Context

Table 1 Details of Properties within the Byles Creek Corridor

Address	Lot/DP	Ownership
43X Malton Road, Beecroft	698/650162	Council
43X Malton Road, Beecroft	52/235561	Council Not all of Lot 52 is zoned RE1. The battle axe handle is zoned R2
Road Reserve (unnamed)	-	Crown
43X Malton Road, Beecroft	142/236067	Council
43X Malton Road, Beecroft	4/789069	Council
43X Malton Road, Beecroft	3/703067	Council
43X Malton Road, Beecroft	1/883724	Council
79-87 Malton Road, Beecroft	2/847605	Private (part) ^{NOTE 1}
89-97 Malton Road, Beecroft	27/735002	Council
99-105 Malton Road, Beecroft	4/601847	Council

Notes

1. The land zoned RE1 Public Recreation under Hornsby LEP 2013 together with some land zoned R2 Low Density Residential on this property is required to be dedicated to Council as part of DA/94/2013

Evident in **Table 1** and the plan at **Figure 6** and **Appendix 2** is that the majority of RE1 zoned land is in Council ownership.

3.2 Surrounding Development

Land immediately adjoining the open space corridor (being the land zoned RE1 Public Recreation under Hornsby LEP 2013) is developed primarily for the purposes of low density residential purposes. Development generally comprises single or two storey detached dwellings.

4 Statutory Planning Framework

4.1 Environmental Planning and Assessment Act 1979

The Environmental Planning and Assessment Act 1979 (EP&A Act) introduced provisions in relation to land acquisition for public purposes. Prior to the EP&A Act councils were not required by law to purchase reserved land.

The EP&A Act requires councils to include acquisition provisions within relevant environmental planning instruments, including local environmental plans. Specifically, section 3.15 of the EP&A Act states the following:

- 3.15 *Owner-initiated acquisition of land reserved for public purposes*
- (1) *An environmental planning instrument that reserves land for use exclusively for a purpose referred to in section 3.14(1)(c) must specify an authority of the State that will be the relevant authority to acquire the land if the land is required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991.*

Section 3.14(c) of the EP&A Act includes land for used for the purposes of open space.

4.2 Land Acquisition (Just Terms Compensation) Act 1991

The *Land Acquisition (Just Terms Compensation) Act 1991* (the Land Acquisition Act) sets out the process for acquiring land in NSW.

The Land Acquisition Act directs acquiring authorities to negotiate with landowners for at least six months to acquire land by agreement. If agreement cannot be reached through negotiation, compulsory acquisition of the land to be acquired land can be approved. The NSW Valuer General will then determine the amount of compensation to be paid by the acquiring authority for the land.

If a landowner initiates the land acquisition, pursuant to section 23 of the Land Acquisition Act, the landowner is required to demonstrate that they will suffer hardship if there is a delay in the authority (in this case Council) acquiring the land.

4.3 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) commenced 25 August 2017 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the State.

Part 3 of the Vegetation SEPP states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCP) prescribes works to trees that can be undertaken with or without consent.

4.4 State Environmental Planning Policy No. 19 – Bushland in Urban Areas

State Environmental Planning Policy No. 19 – Bushland in Urban Areas (SEPP 19) was introduced in 1986 to protect and preserve remnant urban bushland in Sydney in response to concerns about clearing and the increasing impacts from disturbance, recreational use and urban development. The SEPP provides a mechanism for the development of plans of management consistent with the SEPP's aims and objectives and regulating activities that could disturb relevant bushland.

SEPP 19 extends beyond the protection of environmental values of bushland. It identifies the need to protect the aesthetic and community values as well as the recreational, educational and scientific values of this resource. It focuses on the protection and management of bushland found on public open space and includes the minimisation of impacts as a result of development on land adjoining urban bushland.

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4.5 Draft State Environmental Planning Policy (Environment)

The draft Environment SEPP seeks to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property, by consolidating the following seven existing SEPPs:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
- State Environmental Planning Policy No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.

The Explanation of Intended Effect for the draft Environment SEPP was exhibited for public comment from 31 October 2017 until the 31 January 2018.

The land to which this Strategy Review relates is identified as Urban Bushland in the mapping accompanying the draft Environment SEPP.

SEPP 19 currently states that *"a reference in this policy (i.e. SEPP 19) to bushland zoned or reserved for public open space purposes is a reference to bushland within an area or zone identified by an instrument as open space (other than for private recreation)"*.

SEPP 19 contains no other definition of 'land zoned or reserved for public open space'.

Prior to the introduction of the Standard Instrument, many local environmental plans contained a 'Public Open Space Zone'. Since the introduction of Standard Instrument – Principal Local Environmental Plan, this reference is no longer relevant and there is no alternative zone that adequately captures the same type of land.

The NSW Department of Planning, Industry and Environment received feedback from councils that land formerly captured by SEPP 19 as 'land zoned or reserved for public open space' is not consistent with terms in the Local Government Act 1993, such as 'community land.'

Therefore, the draft Environment SEPP proposes to introduce a new term, 'public bushland'⁴ which will replace the reference to land zoned or reserved for public open space. The term will cover land that is:

1. Zoned under the Standard Instrument zones excluding RU1, RU2, RU3, RU4, and RU5 zoned land, and
2. Owned or managed by council or a public authority, or reserved for acquisition for open space or environmental conservation by council or a public authority, and
3. Has vegetation which meets the definition of bushland.

The Environment SEPP has not yet come into force and therefore SEPP 19 is still a relevant environmental planning instrument (EPI) to consider in relation to any development within and adjoining the Byles Creek corridor.

4.6 Hornsby Local Environmental Plan 2013

Hornsby LEP 2013 is the relevant local EPI to be considered in relation to the Byles Creek corridor land.

⁴ It is proposed that this definition will also list other zones included in specific (non-Standard) environmental planning instruments that perform a similar role to the Standard Instrument zones captured by this definition.

4 Statutory Planning Framework

As illustrated in **Figure 7**, the majority of land along the existing Byles Creek corridor is zoned RE1 Public Recreation. Hornsby LEP 2013 adopted the same land use zone boundaries as Hornsby LEP 1994. Therefore, the RE1 zoned land is a direct ‘transfer’ of the Open Space A zoning under Hornsby LEP 1994.

The objectives of the RE1 zone are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect and maintain areas of bushland that have ecological value.

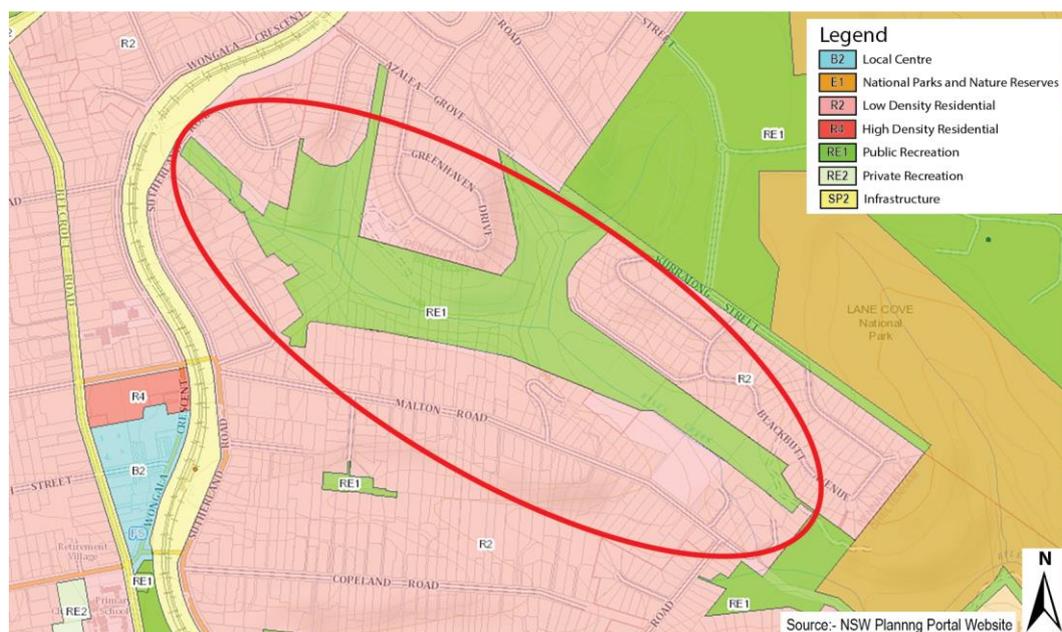


Figure 7 Extract from land use zoning map accompanying Hornsby LEP 2013

Only limited land uses are permitted with consent on land zoned RE1 under Hornsby LEP 2013. Permissible uses are limited to:

- Aquaculture;
- Building identification signs;
- Business identification signs;
- Camping grounds;
- Car parks;
- Caravan parks;
- Cemeteries;
- Centre-based child care facilities;
- Community facilities;
- Emergency services facilities;
- Environmental facilities;
- Flood mitigation works;
- Kiosks;

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- Public administration buildings;
- Recreation areas;
- Recreation facilities (indoor);
- Recreation facilities (major);
- Recreation facilities (outdoor);
- Respite day care centres;
- Roads; and
- Water reticulation systems

All other development (with the exception of Environmental Protection Works (which are permitted without consent on RE1 zoned land) is prohibited.

The area is predominantly surrounded by R2 Low Density Residential land, as well as other areas of RE1 Public Recreation. An extensive area of E1 National Parks and Nature Reserves, comprising Lane Cove National Park is located to the east of the corridor area.

The Byles Creek corridor and surrounding land is also located within the Beecroft-Cheltenham Heritage Conservation Area. **Clause 5.10** of Hornsby LEP 2013 relates to heritage conservation. **Figure 9** is an extract from the heritage map accompanying Hornsby LEP 2013. The red hatching is the heritage conservation area.

The objectives of the clause are:

- to conserve the environmental heritage of Hornsby,*
- to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- to conserve archaeological sites,*
- to conserve Aboriginal objects and Aboriginal places of heritage significance.*

An archaeological assessment has not been undertaken as part of this Strategy Review.

There are a number of heritage items located along Malton Road. These are notated in brown on the heritage map extract at **Figure 8**. These appear to reflect Non Indigenous heritage.

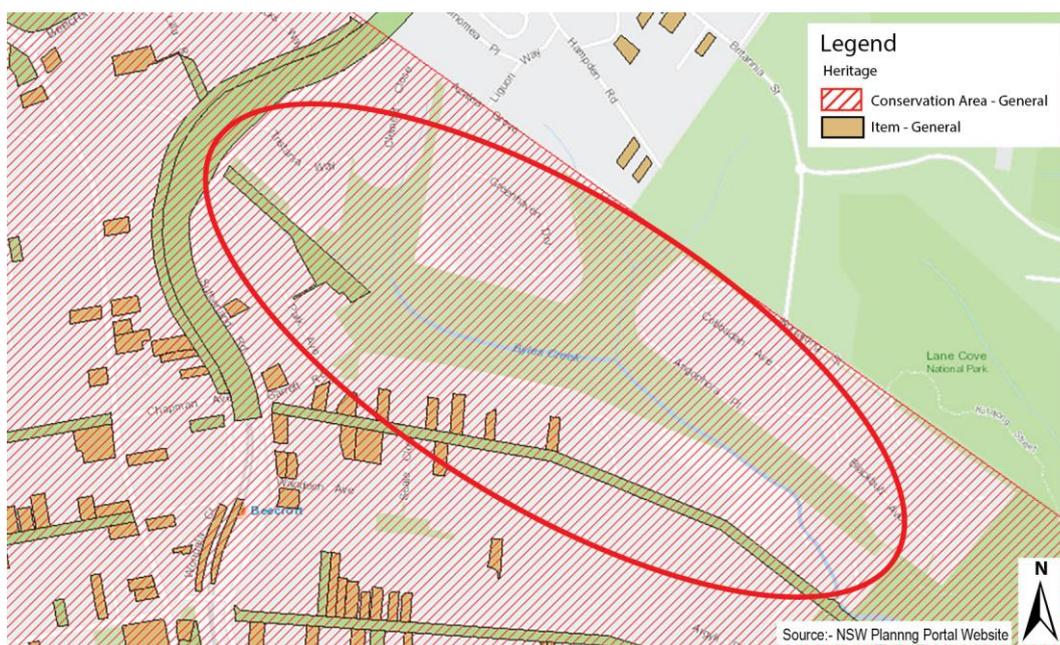


Figure 8 Extract from heritage map accompanying Hornsby LEP 2013

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Clause 5.1 of Hornsby LEP 2013 relates to acquisition of land reserved for public purposes and identifies the relevant acquisition authority.

In the case of land zoned RE1 Public Recreation and marked 'Local Open Space', the relevant acquisition authority is Council. Specifically, clause 5.1 states the following:

- (1) *The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991 (the owner-initiated acquisition provisions).*

Note.

If the landholder will suffer hardship if there is any delay in the land being acquired by the relevant authority, section 23 of the Land Acquisition (Just Terms Compensation) Act 1991 requires the authority to acquire the land.

- (2) *The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the Land Reservation Acquisition Map (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).*

Type of land shown on Map	Authority of the State
Zone RE1 Public Recreation and marked "Local open space"	Council
Zone RE1 Public Recreation and marked "Regional open space"	The corporation constituted under section 8 of the Act

The Land Acquisition Reservation map indicates that the RE1 zoned land along the corridor that is not in Council ownership or not Crown land is 'Local open space'. In accordance with clause 5.1 the acquisition authority is Council.

Figure 9 is an extract from Hornsby LEP 2013 identifying the land within the Byles Creek corridor (in yellow), which is subject to acquisition by Council.

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Figure 9 Extract from Land Reservation Acquisition map accompanying Hornsby LEP 2013

Clause 6.4 of the LEP relates to areas identified as Terrestrial Biodiversity areas. The objectives of clause 6.4 of Hornsby LEP 2013 are:

- (a) protecting native fauna and flora, and
- (b) protecting the ecological processes necessary for their continued existence, and
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.

Figure 10 is an extract from the terrestrial biodiversity map accompanying Hornsby LEP 2013.



Figure 10 Extract from Terrestrial Biodiversity map accompanying Hornsby LEP 2013

4 Statutory Planning Framework

The area of the Byles Creek corridor zoned RE1 does not exactly correspond with the areas mapped as having terrestrial biodiversity value. As can be seen in **Figure 11**, there are areas mapped as having terrestrial biodiversity value which extend beyond the areas mapped as RE1 and subject to acquisition. The terrestrial biodiversity 'layer' also sits below the RE1 zoned land. The differences in the mapping layers have occurred because the Terrestrial Biodiversity Map has applied vegetation polygons. These polygons essentially relate to canopy cover. The Terrestrial Biodiversity map aligns with the Bushland Protection layer in (now repealed) Hornsby LEP 1994.

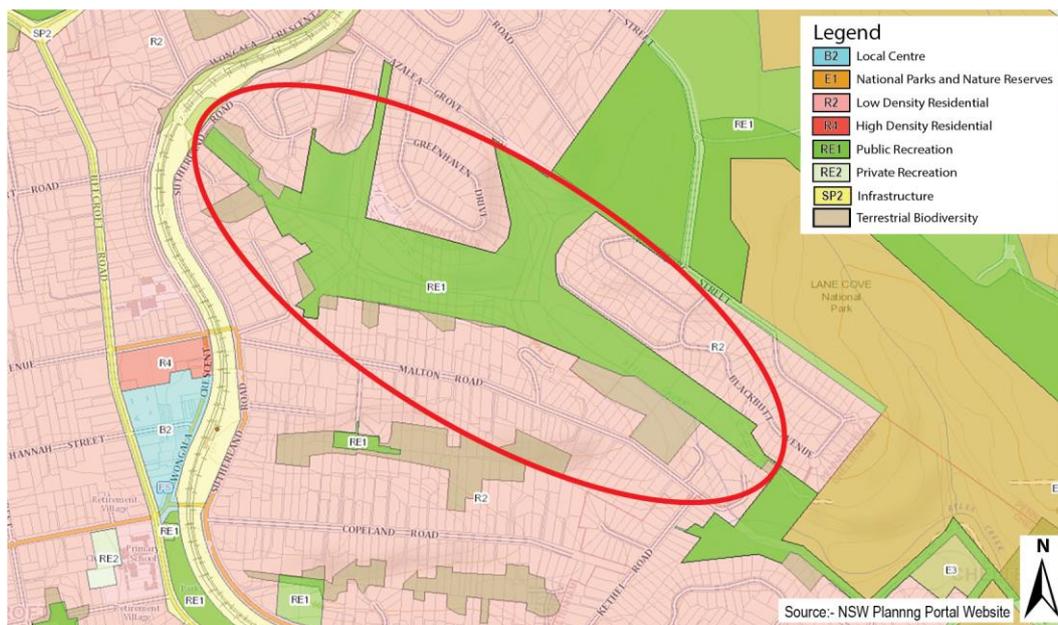


Figure 11 Overlay of zoning plan with terrestrial biodiversity map

4.7 Hornsby Development Control Plan

There are no specific controls in Hornsby DCP 2013 that relate to land zoned for open space purposes.

Part 1 – General of the DCP provides general controls for the protection of the environment and applies to all forms of development. Part 1C.1 relates to the Natural Environment.

Section 1C.1.1 of Part 1 relates to biodiversity. This section applies to land with biodiversity value, including land affected by the Hornsby LEP provisions. We have taken the reference to 'land affected by the Hornsby LEP provisions' to include land identified as having Terrestrial Biodiversity value on the Terrestrial Biodiversity map accompanying Hornsby LEP 2013 – refer **Figure 10**.

The DCP desired outcomes with respect to biodiversity are:

- a. *Development that provides for the conservation of biodiversity including threatened species and populations, endangered ecological communities, remnant indigenous trees, regionally and locally significant terrestrial and aquatic vegetation.*
- b. *Development that maintains habitat for native wildlife and wildlife corridors to provide for the movement of fauna species.*

The biodiversity values of the corridor land and surrounding land are discussed in **Section 5** of this Strategy Review.

4 Statutory Planning Framework

4.8 Hornsby Local Strategic Planning Statement

Council has prepared a Local Strategic Planning Statement (LSPS) (dated March 2020) for the Hornsby LGA.

The LSPS identifies that the Hornsby Shire contains “*a diverse array of landscapes with significant conservation values and hosts a range of endemic flora, fauna and invertebrates – many of which are threatened. The Shire has over 1,000 native plant species and 388 native animal species.*”

The LSPS acknowledges that the protection of biodiversity has significant environmental, social and economic benefits.

Therefore, one of the outcomes of the LSPS will be a review of the current Biodiversity Conservation Management Plan. This will be updated to reflect any changes in vegetation cover, environmental policy and legislation. The aim of the updated Biodiversity Conservation Management Plan will be to have in place a long term plan that will provide clear strategic direction for future land use to achieve the following outcomes:

- Protect and conserve ecological values;
- Restore disturbed ecosystems; and
- Enhance ecological value and function.

4.9 Hornsby Shire Section 94 Development Contributions Plan 2014-2024

The Hornsby Shire Council Section 94 Development Contributions Plan 2014 - 2024 (Hornsby s94 Contributions Plan) enables Council or an accredited certifier to levy contributions⁵ from development for the provision of community infrastructure that is required to meet the demands of that development. Local open space is community infrastructure for which contributions can be levied.

The works schedule to the 2014 – 2024 s94 Contributions Plan identified that bush walking tracks in Byles Creek corridor would be extended and upgraded by 2020. This work has been completed. There are no works relating the Byles Creek corridor in the current version of the s7.11 or s7.12 Contributions Plans which were considered by Council at a meeting on 8 July 2020.

⁵ As a result of recent amendments to the EP&A Act, contributions are now levied pursuant to section 7.11 of the Act (previously s94 of the Act).

5 Ecological Assessment

5.1 Introduction

Cumberland Ecology was engaged to provide an assessment of the ecological characteristics and values of the study area to inform the Strategy Review. A copy of the Cumberland Ecology ecological assessment is included at **Appendix 1**. The land that is subject to the ecological assessment is shown in **Figure 7** and **Appendix 2** to this report. The ecological assessment refers to this area as the 'study area'. The land shown in bright green in **Figure 7** is collectively referred to in the ecological assessment as the 'subject land' in the Cumberland Ecology ecological assessment.

Specifically, the Cumberland Ecology ecological assessment:

- Describes the methods used in the assessment;
- Summarises the findings of a desktop assessment and site inspection;
- Provides discussion on:
 - Whether the extent of the current corridor as reflected by the existing RE1 zoning is appropriate; and
 - Whether the ecological values and characteristics of the corridor have conservation significance; and
 - Whether there are opportunities for restoration of the corridor and the scope of work that might be entailed to increase the ecological value of land along the corridor, if warranted.

As part of the ecological assessment, Cumberland Ecology undertook a review of ecological literature relevant to the corridor including:

- Vegetation mapping reports and data:
- Smith and Smith (2008): native Vegetation Communities of Hornsby Shire – 2008 Update;
- OEH (2016): The Native Vegetation of the Sydney Metropolitan Area;
- Eco Logical Australia (2017): Hornsby Vegetation Map Update 2017.
- Ecological assessments associated with relevant development applications (DAs):
 - ACS Environmental (2017): Biodiversity Impact Assessment for Proposed Development of Lot 2 in DP 703067 at No. 65D Malton Road, Beecroft;
 - GIS Environmental Consultants (2018): Flora & Fauna Assessment Report for a Section 8.2 Review of DA Determination for a New Dwelling at 65D Malton Road, Beecroft;
 - ACS Environmental (2015): Biodiversity Impact Assessment for Proposed Development of Lot 2 (DP 883724) No. 77 Malton Road, Beecroft;
 - Smith (2016): Ecological Assessment of Proposed Residential Development at 77 Malton Road, Beecroft;
 - Smith (2015): Ecological Assessment of Proposed Subdivision at 79-87 Malton Road, Beecroft; and

Cumberland Ecology also undertook a diurnal site inspection to verify existing vegetation mapping and assess habitats within the corridor. Cumberland Ecology notes that there were a number of limitations in relation to the site inspection, including, terrain constraints and presence of private properties. As a result, not all areas of the study area were subject to the site inspection. Observations were therefore made from adjoining land at some locations.

5 Ecological Assessment

5.2 Vegetation Communities

Cumberland Ecology found that the majority of the study area comprises intact native forest vegetation. There was evidence of weed invasions generally adjacent to residential dwellings, informal access tracks and drainage lines and sewerage infrastructure was observed at a number of locations on the southern side of Byles Creek, along with a small section of wall along the creek. In addition, a powerline easement traverses the northern boundary of the corridor.

Four main vegetation communities were observed in the Byles Creek corridor area. Details of these communities, together with an estimate of the area of the corridor occupied by these communities, are included in **Table 2**.

Table 2 Vegetation Communities within Byles Creek corridor

Vegetation Community	BC Act Status	EPBC Act Status	Study Area (ha)	Approximate area in private ownership
Coastal Enriched Sandstone Moist Forest	-	-	20.45	6.31
Coastal Enriched Sandstone Dry Forest	-	-	0.20	-
Blue Gum High Forest	CEEC	CEEC	0.79	-
Urban Exotic/Native	-	-	0.07	0.06
Total			21.52	6.37

Source: Table 2 in Cumberland Ecology Ecological Assessment, January 2020
CEEC – Critically Endangered Ecological Community

Coastal Enriched Sandstone Moist Forest is the most represented vegetation community within the corridor. This community is associated with Blackbutt Gully Forest and is a locally significant community within the Hornsby LGA.

The Coastal Enriched Sandstone Dry Forest occurs at the eastern extent of the study area. There is none of this community located on privately owned land within the corridor.

The Blue Gum High Forest is a critically endangered ecological community (CEEC). This community occurs at the western extent of the study area, with none occurring within the privately owned land.

Urban Exotic Native vegetation typically comprises a suite of planted native and exotic species which are not consistent with any naturally occurring native vegetation community. A small area of this community occurs in the south west of the corridor, with none occurring within the privately owned land.

5.3 Flora Species

Cumberland Ecology found that the flora species recorded within the Byles Creek area were predominantly native. Native flora species recorded within the area are highly indicative of the native vegetation communities occurring within the study area.

Some threatened flora species were recorded in the locality of the study area, however, according to BioNet Atlas (EES 2019) there are no records of threatened flora species within the study area.

A small number of exotic species were recorded within the study area during the Cumberland Ecology site inspection. These species typically occurred at the periphery of the study area, adjacent to residential dwellings, along informal access tracks and along the drainage lines.

5 Ecological Assessment

5.4 Fauna Species

Cumberland Ecology noted that the study area contains extensive areas of intact forest vegetation. As a result, the habitat features are numerous and provide potential foraging, shelter and breeding opportunities for a suite of fauna species. Cumberland Ecology identified the following key habitat features within the study area:

- Riparian environments suitable for fauna species dependent on these habitats such as amphibians and reptiles;
- Terrestrial habitat features such as ground and shrub layer vegetation, leaf litter, coarse woody debris and rocky outcrops suitable as shelter for small terrestrial fauna species;
- Hollow-bearing trees and stags suitable as shelter and breeding habitat for a range of hollow-dependent fauna; and
- Blossom-producing trees and shrubs suitable as forage for a range of nectarivores.

A number of threatened fauna species have been recorded within the locality of the study area including the Red-crowned toadlet, Gang gang cockatoos and powerful owls. A number of other threatened fauna species have been recorded in the habitats immediately adjacent to the study area, including Square-tailed Kite and Large Bent-winged Bat.

In addition, there was evidence of a number of exotic fauna species including the common black rat, European red fox and feral cats.

5.5 Ecological Assessment

Cumberland Ecology observed that wildlife corridors are generally areas of habitat that connect reserves or blocks of disjunct habitat. They allow wildlife to disperse and provide for gene flow between populations or subpopulations.

Cumberland Ecology notes that the forest vegetation within the study area is directly connected to Lane Cove National Park, which covers an extensive area of land to the east. Whilst the study area is not directly connected to a reserve system to the west, there are links to scattered habitat within Pennant Hills that provide 'stepping stone' habitat between Cumberland State Forest to the west and Berowra Valley National Park to the north west. On a local-scale, Cumberland Ecology found that the corridor area provides a movement corridor along a drainage line, Byles Creek. The contiguous vegetation along Byles Creek also facilitates seed dispersal and pollination.

In this regard, Cumberland Ecology concluded that acquisition of the remaining privately-owned land by Council will further strengthen the value of the corridor. Acquisition of these remaining lands will ensure ongoing protection and management of the biodiversity values provided by the corridor and assist in protecting a local bushland reserve that has connectivity to the regionally significant conservation land within Lane Cove National Park.

In terms of biodiversity values, Cumberland Ecology identified the following key features of the corridor:

- *“Presence of a small area of Blue Gum High Forest. This vegetation community is listed as a CEEC under both the BC Act and EPBC Act.*
- *Presence of threatened fauna species and associated habitat. Four threatened fauna species have been recorded within the study area, including the Red-crowned Toadlet, Gang-gang Cockatoo, Powerful Owl and Grey-headed Flying-fox. The habitats within the study area also provide suitable habitat for a range of species known to occur within the locality of the study area, including the Square-tailed Kite and Large Bentwing-bat.*
- *Connectivity to the national park reserve system. The study area connects to Lane Cove National Park via other intact native vegetation to the east. In addition to this*

5 Ecological Assessment

connection, the vegetation and associated habitat connects to stepping stone habitat which in turn provides movement corridors to Cumberland State Forest in the west and Berowra Valley National Park to the north west.”

In addition to these key biodiversity values, Cumberland Ecology also noted that the corridor also contains the following values:

- *Intact native vegetation, the majority of which has been identified as being locally significant within the Hornsby LGA.*
- *Presence of a range of fauna habitat features, including riparian environments, rocky outcropping, fallen logs, hollow-bearing trees and blossom-producing trees and shrubs.*
- *Presence of land within riparian corridor widths recommended in the Guidelines for riparian corridors on waterfront land (DPI 2012), which specifies 10 m, 20 m and 30 m vegetated riparian zones either side of first, second and third order streams, respectively. The creek line appears to generally be in good condition with undegraded banks and only limited pollution. Temporary pools of water appear to persist along the corridor.*

5.6 Ecological Recommendations

Notwithstanding these key biodiversity values, Cumberland Ecology concluded that the current extent of land zoned RE1 Public Recreation within the corridor is appropriate due to the biodiversity values present and current integrity and functionality of the corridor.

However, Cumberland Ecology also identified opportunities to restore the corridor, including the creek and adjoining riparian land. These restoration opportunities include:

- Weed management, particularly adjacent to dwellings, and along access tracks and drainage lines.
- Feral animal management undertaken in consultation with the Greater Sydney Local Land Service to ensure a coordinated approach.
- Rubbish removal including the installation of stormwater pollutant traps.
- Signage. Community awareness of biodiversity values can be increased through the installation of signage at access points within the study area. This can include signage relating to the presence of a restoration area, signage relating to the habitat of particular threatened species (e.g. the Powerful Owl), or signage to outline fines relating to illegal rubbish dumping.
- Installation of nest boxes. Although a number of hollow-bearing trees occur throughout the study area, installation of nest boxes would create additional nesting habitat for a range of native fauna.
- Fire management. A long term strategy for management of native vegetation within the study area could include the use of fire management. Given the location of the corridor within an urban environment, there may be a need to undertake hazard reduction burning, which could be undertaken in a manner to also provide an ecological benefit.

Cumberland Ecology also noted that the corridor is currently being informally used for recreational activity, as evidenced by the presence of an informal access track and that continuation of such activity could be assisted by the implementation of management actions.

6 Strategy Review

6.1 Assessment of Environmental and Social Values

That part of the Byles Creek corridor the subject of this Strategy Review has environmental and social attributes which have intrinsic values to the whole of the Hornsby Shire.

6.1.1 Environmental Values

From an environmental perspective, the corridor has a direct connection with the Lane Cove National Park to the east and, whilst not directly connected to the open space to the west, there is 'stepping stone' scattered habitat that provides links to the Cumberland State Forest (to the west) and Berowra Valley National Park (to the north west).

Therefore, the land along Byles Creek plays an important role as a wildlife corridor and the contiguous vegetation within the corridor facilitates seek dispersal and pollination.

Retaining the corridor and the extent of the RE1 zone and adjoining mapped terrestrial biodiversity land will aid in protecting and enhancing this important local bushland reserve which has connectivity to the regionally significant conservation area within Lane Cove National Park. This is also consistent with Council's Biodiversity Conservation Strategy, 2006.

In addition to its function as a wildlife corridor, other key environmental and ecological attributes of the Byles Creek corridor are:

- It provides habitat for a small area of Blue Gum High Forest, a critically endangered ecological community;
- It provides habitat for threatened fauna species;
- It contains intact, locally significant native vegetation;
- It includes a range of fauna habitat features; and
- The creek line is generally in good condition with only limited pollution.

Maintenance of the existing RE1 zoned land is consistent with Council's vision in relation to biodiversity as detailed in the LSPS and will achieve the outcomes envisaged by the Biodiversity Conservation Management Plan review.

6.1.2 Social Values

For a social value perspective, there is evidence of recreation activity along the corridor, including informal walking trails. Relevantly, in relation to walking trails near Malton Road, Council is developing a masterplan for walking trails within the Shire, including the Byles Creek area.

In relation to DA/94/2013, being the DA for the subdivision of 79-87 Malton Road, Beecroft into 6 allotments, a condition of consent requires the rear allotment (Lot 6) to dedicated to Council. There is a walking trail is located within the land required to be dedicated to Council.

There is also an existing informal walking track along Byles Creek which traverses private property at No. 77 Malton Road, options for formalising public access across this property. 77 Malton Road appears to be the only 'missing' link in the provision of a contiguous walking track along Byles Creek. Use of this land by the public currently constitutes trespassing. Whilst the opportunity to formalise access was previously rejected by the then owner of this property, there is the potential to renegotiate with the current owner if/when plans for a formal walking track along Byles Creek are formulated. The option of locating a walking track on the opposite side of the creek could also be considered. This will be explored as an option as part of any walking trail strategy for the corridor.

We are not aware of any current proposals to provide a formal walking track along Byles Creek, however, as recommended in the Cumberland Ecology Ecological Assessment, opportunities to develop a walking trail master plan for the corridor should be explored.

6 Strategy Review

6.1.3 Heritage Values

The Byles Creek corridor is located within the Beecroft Cheltenham Heritage Conservation Area.

In 2004, Godden Mackay Logan (GML) prepared the Beecroft/Cheltenham Heritage Conservation Area Review for Hornsby Council.

That review identified that the Byles Creek corridor is located within the Beecroft East Precinct which was part of a wider precinct known as the Field of Mars Common. The Beecroft East Precinct was subdivided in June 1891 – refer **Figure 12**. The location of the Byles Creek corridor within the Beecroft East Precinct is circled in red in **Figure 12**.

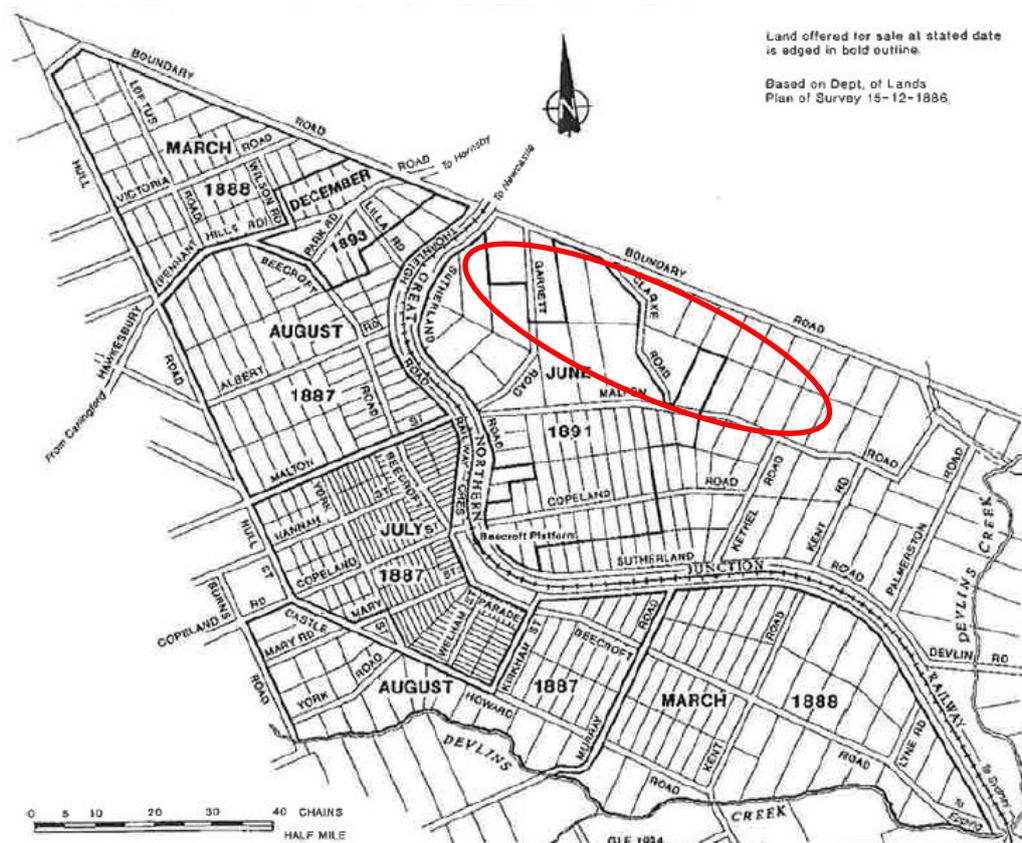


Figure 2.4 Plan showing the date of the first government sales of the Field of Mars Common and the boundaries that each land release covered.

Figure 12 Extract from GML Beecroft/Cheltenham Heritage Conservation Area Review report, January 2004

With respect to Byles Creek, GML notes that:

Between Malton, Copeland and Sutherland Roads steep gullies of Byles Creek catchment area contain vegetation communities of conservation significance. Remnants of the same communities occur along Devlins Creek.

...

Since the 1970s the re-subdivision of the long back sections of allotments, particularly along the gully lands towards Devlins Creek and Byles Creek, have absorbed much of the increasing residential densities, so that the earlier layers of residual development remain in the most obvious locations, along the street frontages.

In view of this, and having regard to the ecological values of the corridor, it is recommended that the vegetation within the corridor be retained to further enhance the landscape qualities of the conservation area.

6 Strategy Review

6.2 Extent of Corridor

Based on advice provided by Cumberland Ecology, and having regard to previous investigations undertaken by others in relation to the ecological and biodiversity values of the land zoned for open space purposes within the Byles Creek corridor, no reduction in the amount of land currently zoned RE1 Public Recreation is recommended. The current extent of the RE1 zone is considered appropriate due to the biodiversity values present and current integrity and functionality of the corridor.

Although there are areas mapped as having terrestrial biodiversity value beyond the RE1 zoned land – refer **Figure 12** – extension of the RE1 zone over these areas is not considered necessary for the following reasons:

- The purpose of the RE1 zone is to facilitate public access to the land and to enhance and maintain the natural environment. The current RE1 zoned land is appropriate for the purpose of achieving the level of public access and recreational activity that the corridor can manage (without adverse impacts on the ecological values of the corridor). The ecological values of the land adjoining the RE1 zoned land that is mapped as having terrestrial biodiversity values (and zoned R2) does not need to be zoned RE1 in order to maintain these values and there is no requirement to increase the extent of publicly accessible land along the corridor.
- Many of the properties mapped as having terrestrial biodiversity value have already been developed or have valid approvals for development including subdivision and new dwellings.
- There are several legislative layers providing a robust framework of legal provisions which will ensure the ecological values of the mapped land are maintained. These include:
 - The objectives and provisions of clause 6.4 of Hornsby LEP 2013 in relation to terrestrial biodiversity values.
 - The provisions of the *Biodiversity Conservation Act 2016*.
 - *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP).
 - *Draft State Environmental Planning Policy (Environment)*.

all of which need to be considered in relation to any new development proposals on land having terrestrial biodiversity values.

Furthermore, the development controls in Section 1.1 of Part 1 - Biodiversity of Hornsby DCP supplement the provisions of clause 6.4.

- The southern boundary of the RE1 zoned land is generally uniform and defines the publicly accessible land within corridor. Public access to the corridor is available from the west, north and east. Upon registration of the subdivision over 79-87 Malton Rad, public access to the open space zoned land will also be available from the south (i.e. Malton Road), approximately halfway along the length of that part of the corridor to which this Strategy Review relates.

7 Conclusion

The purpose of this Strategy Review is threefold:

1. To understand the function of the corridor and its relationship with adjoining land.
2. To assess whether the current extent of the Byles Creek corridor is appropriate having regard to the environmental and social values of the land.
3. To provide strategies for funding options if it is concluded that the current extent of the corridor which is zoned RE1 is assessed as being inadequate and additional land is required to be included as part of the publicly accessible corridor land.

This Strategy Review has considered the environmental, social and heritage values of land within the Byles Creek corridor having regard to background reports, previous studies and investigations undertaken by others and relevant planning controls and legislation. These investigations have been supplemented by an updated ecological assessment which has been undertaken by Cumberland Ecology. The Cumberland Ecology assessment focussed on the land zoned RE1 but has also had regard to surrounding land.

As part of their assessment, Cumberland Ecology also reviewed ecological literature relevant to the corridor and surrounding land and undertook a site inspection.

Cumberland Ecology identified a suite of biodiversity values within the corridor, including:

- Predominantly intact native vegetation, including the presence of a small area of a CEEC listed under the NSW *Biodiversity Conservation Act* and Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*;
- A range of habitat features suitable for use by native flora and fauna species;
- The presence of threatened fauna species; and
- Connectivity to conservation reserves, either directly via intact vegetation or via 'stepping stone' habitat.

Based on the ecological values of the corridor, Cumberland Ecology concluded that *the current extent of the RE1 zoning is considered appropriate due to the biodiversity values present and current integrity and functionality of the corridor.*

The objectives of the RE1 zone are:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To protect and maintain areas of bushland that have ecological value.*

The RE1 zoning is appropriate for the land within the corridor and will ensure the ecological values of the corridor are protected and enhanced, whilst still allowing for limited passive recreational activities. The RE1 zoning, in conjunction with the other provisions of Hornsby LEP 2013 relating to terrestrial biodiversity and the controls within Hornsby DCP 2013, is considered sufficiently robust with respect to achieving the integrity and functionality of the corridor and preserving the biodiversity values of the Byles Creek corridor.

It is concluded that no additional land is required to be acquired by Council in order to ensure the ecological values of the Byles Creek corridor are maintained. Therefore, this Strategy Review does not address any options with respect to funding.

Maintenance of the existing RE1 zoned land is consistent with Council's vision in relation to biodiversity as detailed in the LSPS and will achieve the outcomes envisaged by the Biodiversity Conservation Management Plan review.

7 Conclusion

Although there is land mapped as having terrestrial biodiversity values adjoining the corridor which is not zoned RE1, extension of the RE1 zone over this land is not considered necessary for the following reasons:

- The majority of the properties mapped as having terrestrial biodiversity value have already been developed or have valid approvals for development including subdivision and new dwellings.
- The objectives and provisions of clause 6.4 of Hornsby LEP 2013 will continue to operate in relation to land mapped as having terrestrial biodiversity values. The provisions of clause 6.4 are ably supported by other relevant legislation and planning policies that would need to be considered in relation to any new development proposals on land having terrestrial biodiversity values.
- The purpose of the RE1 zone is to enhance and maintain the natural environment and facilitate public access to the land. The current RE1 zoned land is appropriate for the purpose of achieving these objectives. No additional is required to be zoned RE1 in order to maintain and preserve the ecological values of the corridor.

The ecological values of the land adjoining the RE1 zoned land that is mapped as having terrestrial biodiversity values (and zoned R2) does not need to be zoned RE1 in order to maintain these values and there is no requirement to increase the extent of publicly accessible land along the corridor.

- The southern boundary of the RE1 zoned land is generally uniform and defines the publicly accessible land within corridor. Public access to the corridor is available from the west, north and east. Additional land for the purposes of public recreation is not considered necessary.

7.1 Recommendations with respect to the Byles Creek Corridor

There is evidence of informal use of the corridor as a walking trail. There is currently no formal walking track along the corridor and, due to the presence of some privately owned land within the corridor, it is not currently possible to provide a contiguous walking track.

Notwithstanding, it is recommended that priority be given to the preparation of a walking trail master plan for the corridor.

Once this is prepared, the current owners of 77 Malton Road can be approached with a view to providing a linked walking track along the length of the corridor. Options for locating the walking track on the northern side of Byles Creek should also be explored in the event that access across the privately owned land cannot be secured.

It is also recommended that the suggestions proffered by Cumberland Ecology in Section 4.3 of their report be implemented. These include:

- Weed management, particularly adjacent to dwellings, and along access tracks and drainage lines.
- Feral animal management undertaken in consultation with the Greater Sydney Local Land Service to ensure a coordinated approach.
- Rubbish removal including the installation of stormwater pollutant traps.
- Signage. Community awareness of biodiversity values can be increased through the installation of signage at access points within the study area. This can include signage relating to the presence of a restoration area, signage relating to the habitat of particular threatened species (e.g. the Powerful Owl), or signage to outline fines relating to illegal rubbish dumping.

7 Conclusion

- Installation of nest boxes. Although a number of hollow-bearing trees occur throughout the study area, installation of nest boxes would create additional nesting habitat for a range of native fauna.
- Fire management. A long term strategy for management of native vegetation within the study area could include the use of fire management. Given the location of the corridor within an urban environment, there may be a need to undertake hazard reduction burning, which could be undertaken in a manner to also provide an ecological benefit.

Based on the above conclusions there is no need to consider funding options to acquire additional land (beyond that already zoned RE1), however, it is recommended that a financial strategy be prepared in relation to zoned RE1 land within the corridor which is yet to be purchased by Council.