



4.1.4 Potential Development Site Impact

The proposed development area is focussed in the western portion of the site, primarily within identified low ecological constraint areas, to reduce the potential for adverse impacts on biodiversity values.

The establishment of APZs for this option would involve the modification and/or removal of 4,380m² of the high ecological constraint area. This area comprises the eastern edge of BGHF EEC and represents 18% of the extent of the community on the site. Establishment of the APZ is likely to involve the removal of some canopy trees as well as the long-term maintenance of understorey and groundcover vegetation. Whilst some canopy trees and clumps of understorey plants (up to 25% of the area of the APZ) will be retained, the remaining area would be pruned and groundcovers slashed to reduce fire hazard. As such, the BGHF community would persist within the APZ but be maintained permanently in a largely modified condition.

The remainder of the high and moderate constraint areas (20,250m²; 82%), including 1700m² of Turpentine Ironbark Forest EEC would be retained (Table 4-1).

The removal and modification of this area of BGHF vegetation is likely to constitute a significant effect pursuant to s.5A of EP&A Act and that an appropriate compensatory biodiversity offset would need to be provided given that:

- ▶ BGHF is listed as a 'critically endangered ecological community' under the TSC Act and the EPBC Act;
- ▶ DECCW have previously indicated that any future Species Impact Statement accompanying a development application for the site would 'almost certainly' incorporate a requirement for the identification and provision of compensatory offsets; and
- ▶ Recent Land and Environment Court judgements have highlighted that even degraded remnants of BGHF, including scattered individual trees, are of conservation value and that any remnants should be afforded protection or that an appropriate offset be negotiated.

4.2 Biodiversity Offset Strategy

The removal of any EEC will require careful consideration to be given for a biodiversity offset strategy. The guiding philosophy for any potential development is to provide an overall long term improvement and security for future management of the high conservation value of the site.

A biodiversity offset strategy will need to be prepared for consideration by the Department of Climate Change & Water (DECCW). The loss of EEC and subsequent compensative rehabilitation works will seek, as far as possible, to restore similar vegetation communities as that disturbed by the development.



A number of opportunities have been identified for consideration in the development of an offset strategy for the site as follows:

- Retain the remaining BGHF EEC and TIF EEC on site and manage to improve condition and long-term viability, including the removal and control of weeds and supplementary planting to assist the establishment of native groundcovers (where appropriate);
- Rehabilitate the area of weed infested regrowth in the northeast of the site to increase the net area of EEC on site and maintain native vegetation connectivity;
- Removal of existing dwelling and associated structures on Lot 4 and rehabilitate/revegetate of areas to increase the net area of EEC on site, through time, and enhance native vegetation connectivity within the locality;
- Consideration of the open space on the northern side of Colbarra Place be incorporated in the overall EMP and for the future enhancement of the biodiversity values of the local area;
- Secure the undeveloped portion of the site for long-term conservation through appropriate rezoning (e.g. E2 Conservation Area); and
- Preparation and implementation of an Vegetation Management Plan (VMP), or equivalent, in consultation with DECCW. The VMP would stipulate the program for vegetation management and investment to improve current vegetation condition and the long-term viability of the EECs and fauna habitats on site.

Table 4-1 provides details of the proposed development option and identified offset measures. Proposed development and vegetation/fauna habitat conservation and management areas on the subject site are indicated on Figure 4-1 Potential Development Site.

Table 4-1 Potential Development Impact

Constraint Areas	Area to be removed or modified	Area to be Retained and Managed
High Constraint	4,380m ² BGHF along western fringe of community (18% of community on site)	20,250m ² BGHF (82% of community on site) 1,700m ² TIF (100% of community on site)
Medium Constraint	0 ha	2,830m ² rehabilitated to provide net increase in EEC/fauna habitats and to maintain habitat connectivity within the site
Low Constraint	7,880m ² of open grassland and weed thickets for development	5,260m ² rehabilitated/ revegetated to provide net increase in EEC/fauna habitats and to increase habitat connectivity within the site

Further consultation with DECCW will be required regarding the proposed development option and the likely significance of impacts taking into consideration the proposed offset strategy and VMP.



Further consideration of the BGHF community on site and consultation with DEWHA to confirm that the community qualifies (or not) as the EPBC Act listed community is recommended to determine the likely requirement or otherwise for a Referral to DEWHA and offset under this Act.

4.3 Riparian Corridor

The drainage line on site would be considered a 1st order stream under the Water Management Act (WM) 2000. The WM Act requires the following riparian zones for 1st order streams:

- ▶ **1st Order Stream – Bank Stability and Water Quality** – Riparian zone minimum width of 10m from top of each bank and generally no vegetated buffer is required. Vegetation used in restoration will be of local provenance.

As such, the required corridor is not considered an additional constraint to development as it will be contained within the proposed conservation area.



5. Zoning Considerations

In determining the appropriate zoning and development control response for the site, a series of options addressing both zonings and development controls have been developed with reference to the provisions of the following key planning guidelines:

- ▀ BHLEP 2005 (as amended).
- ▀ BHDCP 2009 (in particular Section 3 Residential).
- ▀ The Standard Instrument (LEPs) Order 2006 (the Order).

The site is currently subject to the controls of the BHLEP 2005. Under the BHLEP 2005 the site is zoned Residential 2(b) and Open Space 6(a) (existing and proposed public recreation).

The current Residential 2(b) zoning area does not align with the potential development site identified in Section 4. As a result rezoning of the whole site will be required to facilitate any potential future development.

It is recommended that low density residential development is the most appropriate usage for any potential development.

5.1 Zoning Options for Developable Portion

A summary of the strategic assessment of the LEP options for the developable portion of the site, as afforded within the BHSC LEP 2005, is included in Table 5-1, below.

Table 5-1 BH LEP 2005 Zoning Considerations for Developable Portion

Zoning	Permissible Residential Types	Relevance to Potential Development Site
Residential 2 (a)	apartment buildings; attached dual occupancies; detached dual occupancies; environmentally integrated housing; exhibition villages; town-houses; villas.	Not appropriate due to zoning allowing medium to high density housing.
Residential 2 (a1)	apartment buildings; attached dual occupancies; detached dual occupancies; environmentally integrated housing; town-houses; villas.	Not appropriate due to zoning allowing medium to high density housing.
Residential 2 (a2)	attached dual occupancies; detached dual occupancies; environmentally integrated housing; town-houses; villas.	Not appropriate due to zoning allowing medium density housing.
Residential 2 (a3)	attached dual occupancies; detached dual occupancies; environmentally integrated housing; villas.	Not appropriate due to zoning allowing medium to high density housing.
Residential 2 (b)	attached dual occupancies; convenience stores; detached dual occupancies.	To be considered with regards to DCP requirements



Zoning	Permissible Residential Types	Relevance to Potential Development Site
Residential 2 (b1)	attached dual occupancies; detached dual occupancies.	To be considered with regards to DCP requirements
Residential 2 (d)	child care centres; community facilities; dwelling-houses; exhibition homes. attached dual occupancies; environmentally integrated housing.	To be considered with regards to DCP requirements
Residential 2 (e)	dwelling-houses.	To be considered with regards to DCP requirements

Within the relevant zonings that are considered appropriate under the BHLEP 2005, consideration of the objectives and relevant DCP requirements (Table 5-2) is required to determine the most appropriate zoning.

Table 5-2 BH DCP 2009 Residential Considerations for Developable Portion

Zoning	Minimum Allotment Size	Minimum Depth	Relevance to Potential Development
Residential 2 (b)	700m2	27m	To be considered with a review of the zoning objectives
Residential 2 (b1)	700m2	27m	To be considered with a review of the zoning objectives
Residential 2 (d)	2000m2 to 4000m2	50m	To be considered with a review of the zoning objectives
Residential 2 (e)	Refer to BHLEP 2005 Clause 33	N/A	Zoning reserved for geotechnical sensitive sites. No considered to be appropriate for the development site

5.1.1 Residential 2(b) Objectives

Given the character of the area is that of new homes built on average sized blocks and pockets of open space, the low-density development permitted under this zone will be suitable to the development site. Under the current Residential 2(b) zoning attached and detached dual occupancies are permitted with consent. All other forms (apartment buildings, town houses and villas) of residential development are prohibited within the Residential 2(b) zone. The low-density development derived from this zone without compromising the environment, makes it a preferred option.



5.1.2 Residential 2(b1) Objectives

The objectives are:

- (a) *to create residential areas of predominantly single dwelling, low-density character and to maintain that character, and*
- (b) *to permit the subdivision of land into residential lots of a minimum area of 700m², and*
- (c) *to allow people to carry out a reasonable range of activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours, and*
- (d) *to allow a range of developments, ancillary to residential uses, that:*
 - (i) *are visually integrated with development carried out on the land and in the surrounding area, and*
 - (ii) *serve the needs of the surrounding population without conflicting with the residential intent of the zone, and*
 - (iii) *do not place excessive demand on services.*

Given that the character of the area is that of new homes built on average sized blocks and pockets of open space, the low-density development permitted under this zone will be suitable to the development site. The consideration of this zoning while meeting the objectives is not appropriate as it would not be consistent with the surrounding zoning of 2(b) already current in the area which can achieve the same objective for low-density residential dwellings.

5.1.3 Residential 2(d) Objectives

The objectives are:

- (a) *to provide for the residential development of land within the zone having particular regard to the special environmental development constraints of that land, and*
- (b) *to provide for the preservation of the vegetative, landscape, drainage, scenic and environmental qualities of the land within the zone by minimising the impact of development on the natural environment.*

This zone requires a minimum allotment size of 2,000m² to 4,000m², which would limit the potential yield for the development site. The objectives of this zoning reflect the intention of the overall development site which is to preserve "the vegetative, landscape, drainage, scenic and environmental qualities of the land" but the intention would be to locate the high conservation significance assets under the non developable portion lot to be managed by THSC, therefore it is not considered to be appropriate for the developable portion of the site.

5.2 Zoning Options for Non-Developable Portion

The findings of the ecology assessment indicate that the majority of the site has high conservation value. Notwithstanding that the site is not required for open space or recreation purposes, the only suitable existing zoning option under the BHLEP 2005 for the undevelopable portion of the site is the Public Open Space 6a zone. There is no appropriate environmental protection zone currently in the BHLEP 2005.



5.2.1 Public Open Space 6(a) (existing and proposed public recreation) Zone

The Open Space 6(a) (existing and proposed public recreation) zoning of the land has the following objectives:

- (a) *to ensure there is provision of adequate open space areas to meet the existing and future needs of residents and to provide opportunities to enhance the environmental quality and heritage character of the Baulkham Hills local government area, and*
- (b) *to identify land that is now owned, or proposed to be owned, by the Council and to provide for the acquisition or dedication of that land for open space or public recreational purposes, and*
- (c) *to identify land that is owned by the Crown and is under the care, control and management of the Council as public open space, and*
- (d) *to protect, preserve and enhance areas of urban bushland and fauna habitat corridors that are considered valuable in terms of their natural heritage significance and recreational, educational, aesthetic and scientific value, and*
- (e) *to provide opportunities for formal and informal recreation and tourist facilities development on publicly owned land for use by the community.*

As the current LEP does not have an environmental protection zone in the BHLEP 2005 it is recommended that consideration be given to the creation of a new environmental protection zone and apply this to the undevelopable portion of the site or consider incorporating the rezoning of the site as part of the Standard LEP Instrument development due to be completed by 2011.

5.2.2 New Environmental Protection Zone

An alternative to the 6(a) zone would be to create a new environmental protection zone under BHLEP 2005 and apply this to the undevelopable portion of the site. However this is not considered prudent, given that Council is required to prepare a new comprehensive LEP in accordance with the Standard Instrument. It is considered more appropriate to apply the 6(a) zone in the interim if required, or apply an appropriate environmental protection zone in the new comprehensive LEP (see Section 5.3).

5.3 Recommended Zoning under the Standard Instrument

As part of the State government's Planning Reform initiatives, Councils are required to commence a review of their comprehensive LEPs with a view to bring their provisions into line with those prescribed by the Standard Instrument (LEPs) Order 2006 (the Order). The objective of this LEP review program is to simplify and standardise LEPs throughout the State to ensure a common legibility from council to council. The BHLEP 2005 will need to be reviewed in line with the Order, as part of a mandatory requirement of all councils across the State. Council intends to have this completed by mid 2011.

Taking the above into consideration, it is therefore necessary to consider the Standard Instrument zoning to be derived from the viable development options discussed in the previous section. The following is a discussion on the intended purpose of the applicable zoning of land as set out under the Standard Instrument (Practice Note 06-002, DoP).



Table 5-3 sets out the possible zoning conversions for this development to be taken into the format prescribed by the Order. The summary was compiled based upon the existing provisions of BHLEP 2005 zonings and determining the 'best fit' in their translation to the new format, providing guidance as to the approach Council may wish to take upon commencement of this review.

Table 5-3 Conversion of BHLEP 2005 zonings to Standard Instrument zonings

Zoning and Development Control Options	Conversion of BHLEP 2005 zones to Standard Template Zones
Residential Zones	
Residential 2(b)	R2 – Low Density Residential
Open Space Zones	
Open Space 6(a) (Existing and Proposed Public Recreation)	E2 – Environmental Conservation

5.3.1 Residential 2 (b) zoning to be converted to R2 – Low Density Development Zone

This zone would apply to the developable portion of the site.

The R2 Low Density Residential zone is generally intended for land where a low density residential outcome is desired and restricting medium and to high density development.

The objectives of the R2- Low density Residential Zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

This is the most appropriate "fit" under the Standard Instrument as it allows a low density housing and which will be sympathetic to the high conservation land and will maintain the character of the surrounds developments.

5.3.2 Open Space 6(a) (Existing and Proposed Public Recreation) to Zone E2 - Environmental Conservation

The objectives of this zone are:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

Under this zone environmental protection works must be included as either "Permitted without consent" or "Permitted with consent".

The objectives of this zone are conducive to the high conservation areas of the site. As such, this is the most appropriate conversion to a conservation zone under the Standard Instrument.



This zoning allows for the adequate protection and ensures the on going management of the high conservation area. Applying this zone to the conservation area will also provide DECCW with the conservation security they require.

5.4 Summary of Recommended Zoning

The current zoning under the BHLEP 2005 and the future zoning under the Standard Instrument, with their respective objectives and intended general purpose, have been discussed above. These zones are believed to be an appropriate response to the subject site and its locality. The most appropriate zone for the subject site is the Residential 2(b) for the developable portion and Open Space 6(a) (existing and proposed public recreation) zoning for the undevelopable portion. Once this is converted to the Standard Instrument zones, the "best fit" options are for R2 Low Density Residential zone for residential development and Zone E2 - Environmental Conservation Zone.

5.5 Zoning Boundary

The potential development footprint shown in Figure 4-1 illustrates the development area and the associated APZ. The zoning boundaries will be influence by the requirements of DECCW and RFS giving consideration to the future conservation management and APZs requirements.

Bushfire protection measures require that APZs be contained within the development and are not permitted on adjoining lands unless exceptional circumstances apply and the lands are to be maintained to APZ standards.

The off set strategy recommends the preparation and implementation of an VMP in consultation with DECCW. The VMP would stipulate the program for vegetation rehabilitation and management, including investment, to improve current vegetation condition and the long-term viability of the EECs and fauna habitats on site. In this regard, implementation of the VMP would be the responsibility of THSC. As some EEC will be retained within the APZ's, DECCW may require that the area dedicated for APZ be retained under the VMP and not within the development lots.

As the RFS and DECCW requirements are conflicting, negotiations with the relevant parties will be required to determine an appropriate outcome.

There are three (3) options that can be considered for the zoning boundary location between the developable portion and non-developable portion of the site:

Zoning Option 1 – The development lots be created no less than 700m² with the minimum depth of 27m. The Open space or conservation zone will include the APZ requirements for the protection of the development lot.

Zoning Option 2 – The development lots be created to include the area required for the APZ. This creates lots with a minimum depth of 57.5m and restriction on title for the development lots to maintain the APZ's.

Zoning Option 3 – The development lots are created as a hybrid between option 1 and 2.

The advantages and disadvantages of each option are considered in Table 5-4 Zoning Boundary Options.



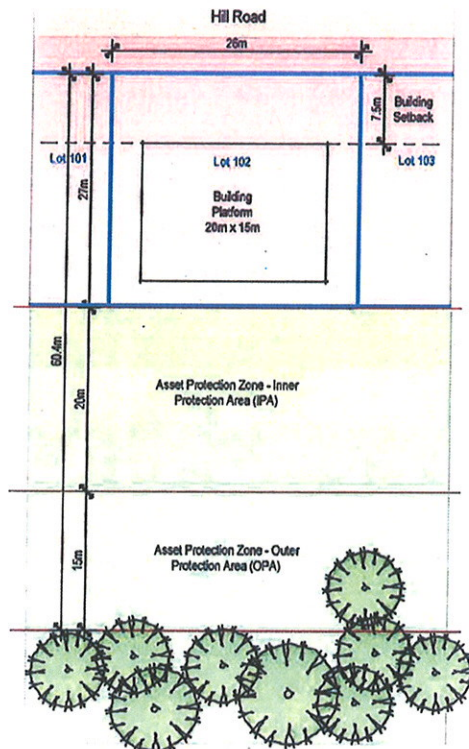
Table 5-4 Zoning Boundary Options

Zoning Option	Advantages	Disadvantages
Zoning Option 1	Residential lots are unencumbered by any restrictions THSC will be able to manage the High conservation vegetation and surrounding vegetation Fire access track could be provided in the non-developable portion of the site	Minimum depth for lots Does not allow for RFS requirements for APZs to be contained within the development site.
Zoning Option 2	Residential lots size much greater than the minimum requirement Complies with RFS requirements for APZ to be contained within the development site	Residential lots may contain remanent High conservation vegetation that is permitted within the APZ guidelines Fire access track can not be provided in the non developable portion of the site with out further removal of ECC
Zoning Option 3	Residential lot sizes are of a generous size consistent with the surround neighbourhood Provides for a useable passive open space for the residential lots Fire access track could be provided in the non developable portion of the site	Does not allow for RFS requirements for APZs to be contained within the development site.

5.5.1 Recommendation for Zoning Boundary

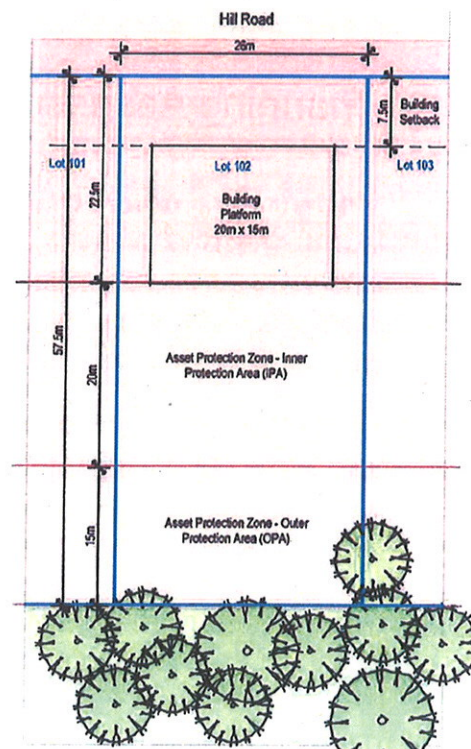
It is recommended that Option 3 be considered for the potential development arrangement and be discussed with DECCW and RFS in the first instance. The option creates a joint responsibility between the residential lot and THSC. The Inner protection zone will not be allowed to contain any signification vegetation and could be used by the residential lot as private open space.

There is no guarantee that this will be accepted by DECCW, RFS or DoP and discussion with the relevant authorities should be entered into prior to any applications been submitted to the DoP.



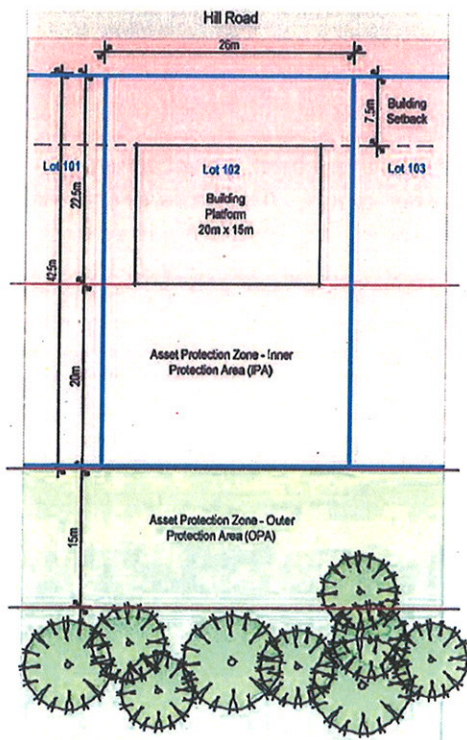
Zoning Option 1

Typical Residential Allotment 700m² (min)



Zoning Option 2

Typical Residential Allotment 1495m² approx



Zoning Option 3

Typical Residential Allotment 1105m² approx

Legend

- Zoning - 2 (b) - Residential or R2 - Low Density Residential
- Zoning - 6 (a) - Open Space or E2 - Environmental Conservation
- Asset Protection Zones

Figure 5-1 Zoning Boundary Options



6. Planning Assessment

6.1 Planning Framework Overview

The *Environmental Planning and Assessment Act 1979* (EP&A Act) sets the legislative framework for the preparation and assessment of local environment plans (LEPs). The relevant provisions of the EP&A Act, as they relate to land rezoning through LEPs, are summarised in this section.

6.1.1 Local Environmental Plans

An LEP is the principal legal instrument for controlling development and guiding planning decisions made by Council, to facilitate new development that is compatible and appropriate with the preferred role and character of an area.

LEPs commonly control and guide proposed development using land use zones and development standards. Land use zones establish, for each zone, the types of land uses that are permitted (with or without consent) or prohibited. Development standards generally control a certain aspect of development, such as lot dimensions, building height or floor space ratio.

A LEP applying to a particular area (generally the whole, or major part of, a local government area) is referred to as a "principal" LEP. The process for making a principal LEP and for amending a principal LEP is the same. The Department of Planning has therefore determined to name an LEP that amends a principal LEP, as an "amending" LEP.

In this instance, an amending LEP is necessary in order for a rezoning of the study site to occur. The relevant process and provisions are discussed further below.

6.2 LEP Creation Process (or Gateway Process)

With a decision made by Council to amend its principal LEP for this project, it must adhere to the current LEP creation process, also known as the "gateway" process. The Gateway Process requires a Planning Proposal to be prepared in the first instance and formally considered by the Responsible Planning Authority, the Department of Planning and then the LEP Review Panel, at which stage a decision is made as whether to proceed further with the LEP. The steps in the process are illustrated in Figure 6-1 LEP Creation Process– LEP Creation Process.

The key steps in the Gateway process are summarised as follows:

- ▶ The first step in creating a new LEP (in this case an amending LEP), is the preparation of a planning proposal. A planning proposal must include matters set out in Section 6.3.
- ▶ A gateway determination is then issued by the Minister for Planning (or delegate), which specifies whether a planning proposal is to proceed, and if so, in what circumstances. The gateway determination is designed to be a "checkpoint" for planning proposals before significant resources are committed to carrying out technical studies and investigations.



- ▶ Once a determination to proceed is recommended, the determination will indicate the following:
 - Whether the planning proposal should proceed (with or without variation);
 - Whether the planning proposal should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal);
 - The community consultation required before consideration is given to the making of the proposed instrument (the community consultation requirements);
 - Any consultation required with State or Commonwealth Public Authorities;
 - Whether a public hearing is to be held into the matter by the Planning Assessment Commission or other specified person or body;
 - The times within which the various stages of the procedure for the making of the proposed LEP are to be completed; and
 - Whether the function of making the LEP is to be exercised by the Minister for Planning or delegated to the RPA.