

20 May 2024

Our ref: 24SYD7782

Stockland and Allam Homes
C/o Adrian Villella
Urbis

Dear Adrian

West Gables Planning Proposal – biodiversity - response to Local Planning Panel

Eco Logical Australia (ELA) is assisting the proponent group respond to biodiversity matters raised by the Local Planning Panel in their letter dated 26 April 2024.

The Local Planning Panel reviewed the Planning Proposal and have advised – in summary - that:

- Land intended to be dedicated to Council for open space must not contain any proposed ‘avoided areas’;
- Following rectification of the above, it would be necessary to revise the necessary ecosystem and species credits; and
- Amendments are to be made to the planning proposal material, including the preparation and submission of an application for Biodiversity Certification to DCCEEW. Biodiversity Certification of the land will need to be obtained prior to the finalisation of any rezoning.

The Local Planning Panel letter states that the above position relates to the cost burden on Council to manage the ‘avoided’ lands; that the material supplied does not demonstrate that biodiversity can be conserved in accordance with the BC Act; and uncertainty that Council will be able to embellish the open space to provide the infrastructure typically required (paths, playground, shelter, seating, rubbish bins, drinking water, taps, signage, kick-around space and landscaping).

This letter provides some policy context to the above and then provides responses to the issues and clarifies the proponents’ position.

The following table provides policy context for ‘avoided land’. It is the proponent groups’ contention that having ‘avoided’ vegetation in the park is consistent with biodiversity related policy and can be achieved at no cost to Council and will not compromise passive recreational use of the park.

Policy document	Guidance on what is considered ‘avoid and minimise’
BC Act	Section 1.3 contains a purpose of the Act ‘to establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity’
Biodiversity Assessment Method (BAM) 2020	Section 7.1.2 of the BAM discusses how to design a proposal to avoid and minimise direct and indirect impacts. Whilst most of the measures listed relate to the location of ancillary facilities, it states that one of the measures is ‘ <i>actions and activities that provide for rehabilitation, ecological restoration and/or ongoing maintenance of retained areas of native vegetation, threatened species, threatened ecological communities and their habitat on the subject land</i> ’.
Biodiversity Assessment Method 2020 Operational Manual – Stage 2	<p>This manual provides advice to accredited assessors on how to avoid and minimise. As with the BAM, there is significant emphasis on the process of understanding biodiversity values, considering alternative designs and methodologies to avoid and minimise impacts.</p> <p>One of the principles given for avoiding impacts is:</p> <p><i>‘Reasonable measures are supported by implementation approaches that seek to maintain the biodiversity values of avoided land; for example, consent conditions, conservation agreements or similar covenants that prevent disturbance and degradation’.</i></p> <p>In section 3.1, an example of measures to avoid and minimise impacts on biodiversity values includes:</p> <p><i>‘Mechanisms to assure biodiversity values in avoided areas are not degraded or lost (e.g. a biodiversity management plan (BMP) or vegetation management plan (VMP) required by consent conditions or a conservation agreement)’.</i></p>
Biodiversity Certification Fact Sheet 1 Avoiding and Minimising Impacts	<p>This guideline also provides advice on the process of considering avoiding and minimise. It provides priorities for what should be avoided and minimised (eg: large areas of intact vegetation; vegetation in the best condition, threatened ecological communities).</p> <p>It also states that ‘avoided land’ should be protected from future development.</p> <p><i>Ideally, biodiversity values on land that has been avoided when designing areas for development should be protected from future impacts. This is particularly the case for strategic biodiversity certification applications that can take advantage of a broader range of conservation measures. There will be some instances when the conservation measures available are not compatible with a parcel of land. If conservation measures are not applied to avoided land, it will default to ‘retained’ land and will be subject to normal assessment and approval procedures under the Environmental Planning and Assessment Act 1979. The Minister may enter into a Biodiversity Certification Agreement with a landowner to require the person to take actions to improve, or prevent damage to, biodiversity.</i></p>
Biodiversity Conservation SEPP (2021).	Part 13.3 ‘Development controls – avoided land’ has objectives for conservation and specific considerations for DAs and infrastructure on ‘avoided land’. We note that this section of the SEPP does not apply to West Gables, but is included here as demonstration that avoided land does not necessarily need to have conservation agreements.

Based on the above:

- planning stages should consider biodiversity values,
- biodiversity impacts should be avoided and minimised where possible

- VMPs and conditions of consent are acceptable measures to demonstrate that biodiversity values are avoided. Whilst Biodiversity Stewardship Agreements are one option for managing 'avoided areas', they are not a requirement.
- If vegetation can't be avoided, biodiversity certification can also classify the vegetation as retained

The proponent group proposes an approach that is consistent with the above guidelines as well as address Councils concerns regarding financial burden and ability of parks to provide for the recreational uses. The approach is:

1. Site selection for the parks based on mapping of biodiversity values and the identification of areas with higher conservation value such as larger patches of vegetation.
2. The parks will be of sufficient size, design and management to provide for both biodiversity and recreational (passive open space) objectives.
3. The recreational objectives will be achieved by:
 - a. Identifying an open space area that is sufficient for playground, shelter, seating, rubbish bins, drinking water, taps, signage, kick-around space and landscaping.
 - b. Providing a bushland area where Cumberland Shale Sandstone Ironbark Forest is restored. This area provides for bird watching and connecting to nature as a recreational alternative to the above kick-about space. The path would be of permeable material (eg: crush gravel) and be micro-sited to avoid tree removal. Path users could be kept on track by low fencing such as bollard and cable barrier.
 - c. Biodiversity certification of the above areas so that Council would not be constrained by vegetation management, although tree retention for shade purposes may be beneficial.
4. The conservation objectives will be achieved by:
 - a. Retention of trees in the remainder of the park and rehabilitation in accordance with a Vegetation Management Plan. The plan would have a two year implementation period and a three year maintenance period. The VMP is to be prepared in consultation with Council and to be implemented by the proponent group.
 - b. Showing these areas as avoided land or retained land in the Biodiversity Certification.
 - c. Providing aa source of ongoing funding for vegetation management beyond the 5 year VMP.
5. The parks are to be zoned C2 Environment Conservation. The above uses are permissible in the C2 zone. If Council prefers that the parks be split zoned into C2 and RE1, this can be supported by the proponent group.

The attached figures provide an indicative arrangement for the parks, with the pale green areas proposed for the recreation component and the darker green areas being the focus of avoidance and rehabilitation. These are preliminary sketches only and could be adjusted based on consultation with Council.

In ELAs opinion, the parks can deliver protection of the Cumberland Shale Sandstone Ironbark Forest over the long term whilst also providing recreational opportunities that do not compromise those

values. The proponent group considered the use of Biodiversity Stewardship Agreements to secure management actions for the parks, however BSA's are not a suitable mechanism for this scale of conservation and ELA is not aware of any BSAs for conservation areas of this size.

The proponent group do not propose biodiversity certification on the C2 portions of the park as this:

- 1) Reduces the biodiversity protection of the vegetation
- 2) The proponent group had an initial meeting with DCCEEW at which they said they would be unlikely to support biodiversity certification of the parks.
- 3) Has a financial cost to the proponent group that is unnecessary since the vegetation is not proposed to be removed.

Similar outcomes have been provided by the proponent group at Marsh Road Silverdale .

On the final point from the LPP (that biodiversity certification needs to be finalised prior to rezoning), the proponent group intend to progress biodiversity certification concurrently with the Planning Proposal. If the rezoning were not to proceed, there is no reason to pursue biodiversity certification. A legal agreement would be proposed to ensure that the land is biodiversity certified prior to the lodgement of a Development Application.

The above proposal is consistent with the policy context for 'avoided land' and addresses Councils concerns regarding financial burden and ability to provide necessary recreation infrastructure.

Regards,



David Bonjer
Principal Planner

Northern Park

Design



Option 1: C2 zone over entire park



Option 2: C2 zoning over the south-western half and RE1 over the north-eastern half



Southern Park

Design



Option 1: C2 zone over entire park



Option 2: C2 zoning over the south and RE1 over the north

