

**MINUTES of the duly convened Ordinary Meeting of The Hills Shire Council held in the Council Chambers on 23 July 2024**

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**MEETING ABSENT**

Clr F De Masi

Clr A Hay OAM

**ITEM 2                                      PLANNING PROPOSAL – WEST GABLES (1/2024/PLP)**

A MOTION WAS MOVED BY COUNCILLOR BLUE AND SECONDED BY COUNCILLOR BRAZIER THAT the Recommendation contained in the report be adopted.

THE MOTION WAS PUT AND CARRIED.

**314. RESOLUTION**

1. The planning proposal proceed to Gateway Determination.
2. Council officers engage in discussions with the Proponent, Department of Planning, Housing and Infrastructure and the Department of Climate Change, Energy, the Environment and Water (DCCEEW) with respect to the Proponent's application to DCCEEW for Biodiversity Certification of the subject land and DCCEEW's views on public open space and conservation outcomes on the same land, as outlined in their letter dated 23 May 2024. Any finalisation of the proposal would be contingent on the Proponent obtaining Biodiversity Certification for the planning proposal area. Council's position is that it will not accept the dedication of land which is identified as "avoided land" or zoning of these areas as RE1 Public Recreation.
3. As part of the Gateway Assessment process, Council officers engage in discussions with the Department of Planning, Housing and Infrastructure with respect to the likely need for Gateway conditions which:
  - a. Require amendments to the documentation prior to public exhibition, to respond to any conditions of the Gateway Determination and reflect the most current version of the planning proposal, noting that a number of amendments which were made to the planning proposal during the assessment phase are not accurately reflected across all application documentation.
  - b. Remove the proposed satisfactory arrangements clause. Council's position is that such a clause is unlikely to be accepted at the legal drafting stage of the process or have legal effect with respect to *local* infrastructure provision. Finalisation of the proposal with respect to any or all of the subject land will be entirely contingent on an appropriate infrastructure mechanism being in place for that land, at that time, not the use of satisfactory arrangement provisions;
  - c. Identify the need for the Proponent to obtain Biodiversity Certification of the planning proposal area by way of an application through DCCEEW, prior to any finalisation of the planning proposal;
  - d. Review the proposed zoning of public open space areas and "avoided land", in consultation with DCCEEW. Council's position is that the use of the C2 Environmental Conservation zone is only supported in instances where the land will *not* be dedicated to Council and where a mechanism is in place to ensure that no acquisition liability is created for Council. Council will not accept the dedication of "avoided land" or the zoning of this land as RE1 Public Recreation.

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4. Prior to public exhibition of the planning proposal, Council consider a further report regarding:
  - a. Draft amendments to The Hills DCP 2012 that reflect the updated planning proposal and any conditions of the Gateway Determination, with draft amendments to be exhibited concurrently with the planning proposal; and
  - b. Appropriate infrastructure contributions mechanism/s which relate to *all* land subject to the planning proposal and *all* local infrastructure required to support the development and provide adequate certainty that the necessary local infrastructure will be provided at no cost to Council or the community.

*Being a planning matter, the Mayor called for a division to record the votes on this matter*

**VOTING FOR THE MOTION**

Mayor Dr P Gangemi  
Clr M Blue  
Clr M Hodges MP  
Clr V Ellis  
Clr J Brazier  
Clr R Boneham  
Clr J Cox  
Clr Dr M Kasby  
Clr Dr B Burton  
Clr R Tracey

**VOTING AGAINST THE MOTION**

Clr R Jethi

**MEETING ABSENT**

Clr F De Masi  
Clr A Hay OAM

**CALL OF THE AGENDA**

A MOTION WAS MOVED BY COUNCILLOR COX AND SECONDED BY COUNCILLOR JETHI THAT items 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 be moved by exception and the recommendations contained therein be adopted.

THE MOTION WAS PUT AND CARRIED.

**315. RESOLUTION**

Items 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 be moved by exception and the recommendations contained therein be adopted.

ITEM 2                      PLANNING PROPOSAL – WEST GABLES (1/2024/PLP)

THEME:                      SHAPING GROWTH

MEETING DATE:        23 JULY 2024

                                    COUNCIL MEETING

GROUP:                    SHIRE STRATEGY

                                    SENIOR TOWN PLANNER

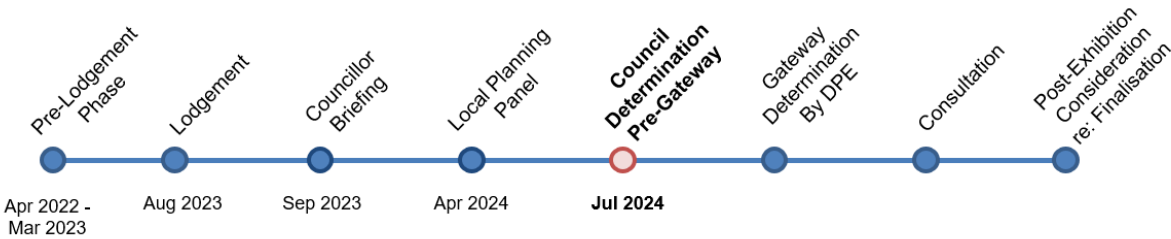
AUTHOR:                   DRAGANA STRBAC

RESPONSIBLE            MANAGER – FORWARD PLANNING

OFFICER:                  NICHOLAS CARLTON

PURPOSE

This report relates to the planning proposal submitted by Stockland Development Pty Ltd and Allam Homes for the remaining areas of rural land located between the Box Hill Precinct and Gables Precinct, along Old Pitt Town Road, Boundary Road and Cataract Road, Gables. The application is being reported to Council for a decision on whether to forward the planning proposal to the Department of Planning, Housing and Infrastructure for Gateway Determination.



Planning Proposal Status and Timeline  
Note: A more detailed history of the proposal is provided as Attachment 5

RECOMMENDATION

1. The planning proposal proceed to Gateway Determination.
2. Council officers engage in discussions with the Proponent, Department of Planning, Housing and Infrastructure and the Department of Climate Change, Energy, the Environment and Water (DCCEEW) with respect to the Proponent’s application to DCCEEW for Biodiversity Certification of the subject land and DCCEEW’s views on public open space and conservation outcomes on the same land, as outlined in their letter dated 23 May 2024. Any finalisation of the proposal would be contingent on the Proponent obtaining Biodiversity Certification for the planning proposal area. Council’s position is that it will not accept the dedication of land which is identified as “avoided land” or zoning of these areas as RE1 Public Recreation.

3. As part of the Gateway Assessment process, Council officers engage in discussions with the Department of Planning, Housing and Infrastructure with respect to the likely need for Gateway conditions which:
  - a. Require amendments to the documentation prior to public exhibition, to respond to any conditions of the Gateway Determination and reflect the most current version of the planning proposal, noting that a number of amendments which were made to the planning proposal during the assessment phase are not accurately reflected across all application documentation.
  - b. Remove the proposed satisfactory arrangements clause. Council's position is that such a clause is unlikely to be accepted at the legal drafting stage of the process or have legal effect with respect to *local* infrastructure provision. Finalisation of the proposal with respect to any or all of the subject land will be entirely contingent on an appropriate infrastructure mechanism being in place for that land, at that time, not the use of satisfactory arrangement provisions;
  - c. Identify the need for the Proponent to obtain Biodiversity Certification of the planning proposal area by way of an application through DCCEEW, prior to any finalisation of the planning proposal;
  - d. Review the proposed zoning of public open space areas and "avoided land", in consultation with DCCEEW. Council's position is that the use of the C2 Environmental Conservation zone is only supported in instances where the land will *not* be dedicated to Council and where a mechanism is in place to ensure that no acquisition liability is created for Council. Council will not accept the dedication of "avoided land" or the zoning of this land as RE1 Public Recreation.
4. Prior to public exhibition of the planning proposal, Council consider a further report regarding:
  - a. Draft amendments to The Hills DCP 2012 that reflect the updated planning proposal and any conditions of the Gateway Determination, with draft amendments to be exhibited concurrently with the planning proposal; and
  - b. Appropriate infrastructure contributions mechanism/s which relate to *all* land subject to the planning proposal and *all* local infrastructure required to support the development and provide adequate certainty that the necessary local infrastructure will be provided at no cost to Council or the community.

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## IMPACTS

### Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates. The planning proposal is supported by letters of offer to enter into Voluntary Planning Agreements (VPAs) which seek to deliver infrastructure and pay contributions toward the demand for new and upgraded infrastructure generated by the proposal. The Proponent has valued their offers at approximately \$66,978,354 in total.

The letters of offer and infrastructure solution are discussed further in this report. It is noted that matters relating to infrastructure contributions and an appropriate and holistic mechanism for the rezoning area have not yet been fully resolved. If Council resolves to proceed to Gateway Determination, further negotiations and a subsequent report to Council will be required in order



to ensure an appropriate and adequate mechanism is in place to deliver all of the infrastructure required to support the planning proposal.

**Strategic Plan - Hills Future**

The planning proposal, if supported, would contribute additional opportunities for housing within the Shire, consistent with Council’s objectives relating to planning for and delivering new housing.

**LINK TO HILLS SHIRE PLAN**

**Strategy:**

5.1 The Shire’s natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.

**Outcomes:**

5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity

**LEGISLATIVE CONTEXT**

The legislative framework for Planning Proposals which amend Council’s Local Environmental Plan is established within Part 3, Division 3.4 of the Environmental Planning and Assessment Act 1979 (Clauses 3.31 to 3.37). This report seeks a decision of Council as to whether or not to prepare and submit a planning proposal to DPHI for Gateway Determination in accordance with Sections 3.33 and 3.34 of the Act.

**PROPONENT**

Stockland Development Pty Ltd  
Allam Homes

**OWNERS**

Mr J Sultana  
Mr G Zlomislic & Mrs M Zlomislic  
Southern Cross Care (NSW & ACT) Limited  
AW Bidco 4 Pty Limited (Stockland Development Pty Ltd)

Mrs C Galdes  
Mr D Regoli  
Mr T Els & Mrs A M Els  
Mr A Durant

**POLITICAL DONATIONS**

None disclosed.

**EXECUTIVE SUMMARY**

The planning proposal seeks to amend LEP 2019 to facilitate expansion of the existing Gables Precinct and facilitate additional urban development comprising approximately 1,260 low and medium density dwellings, open space areas and riparian corridors. It would rezone the remaining rural areas located between the Gables Precinct and Box Hill Precinct and would regularise and complete the urban development footprint in this locality, as foreshadowed in Council’s local strategic planning policies.

The planning proposal is consistent with the principles and priorities articulated in the applicable strategic planning framework. The area is the *only* area of rural land within the Shire that is specifically identified in Council’s Local Strategic Planning Statement as appropriate for urban

release, on account of it being an isolated pocket of remaining rural land wedged between two urban release areas. It is a reasonable location for low and medium density housing given the close proximity to the Gables Town Centre and the ability to expand the relevant services and infrastructure network in the Gables. The development will be supported by a new local road network and walking and cycle paths that will integrate with the Gables and surrounding transport networks.

Council officer assessment and the advice of the Local Planning Panel both concluded that the proposal generally satisfies the strategic and site-specific merit tests. However, two critical issues remain that must be overcome in order for the planning proposal to ultimately be appropriate and suitable for finalisation – *biodiversity certification* and *infrastructure contributions*. Both of these issues are unable to be resolved at this current time and point in the process, without further input and consultation with the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW) and Transport for NSW as part of the Gateway process.

1. *Biodiversity Certification and Open Space*

The Proponent intends to obtain Biodiversity Certification of the area through an application to the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW). Biodiversity Certification is a streamlined biodiversity assessment process for a Precinct or larger area of land which results in certain areas being certified for vegetation clearing and development, in recognition of other measures and requirements that will offset the impacts of this (such as the purchase of offset credits and/or identification of areas that have particularly high biodiversity values as “avoided land” to be protected and maintained in perpetuity).

The Proponent’s material identifies the intention to identify certain areas of land within the precinct as “avoided land”, where the vegetation would need to be protected and maintained in perpetuity. This is proposed as a measure that would allow for other areas in the precinct to receive Biodiversity Certification and therefore be cleared and developed. The Proponent proposes that these “avoided land” areas would be co-located as part of proposed open space areas and dedicated to Council. The Proponent submits that the necessary biodiversity outcomes and public open space outcomes can both be achieved on this land together.

Council officers raised significant concerns to the Proponent with this approach, on the basis that the restrictions applied to ‘avoided land’ as a condition of Biodiversity Certification would likely inhibit the proper use of this land for recreation purposes, restrict the level of embellishment with local park facilities like playground equipment, paths, seating and shade structures and prevent unfettered access to this land by the community for recreation. This approach would also create an ongoing maintenance and financial burden to Council and the community associated with maintaining this land in accordance with the requirements of any Biodiversity Certification Order.

DCCEEW also provided feedback to the Proponent on this matter which aligned with the advice of Council officers. DCCEEW raised serious concerns in response to the Proponent’s intention to use “avoided land” for the purpose of public open space and appear to expect more strict protection of the vegetation on ‘avoided land’, which is inconsistent with the approach of co-locating open space and ‘avoided land’.

Despite the concerns which have been raised by Council officers and DCCEEW, the Proponent has retained this element of their proposal and has since indicated an intention to provide financial support to Council associated with the ongoing

maintenance of the 'avoided land' in perpetuity. However, there is insufficient details or supporting material to provide any clear understanding of what specific financial contributions are being offered and whether this would be sufficient to fully cover the management and maintenance costs associated with the land in perpetuity. Further, this does not adequately address the impact of this approach on the recreational capacity of the land for the community. Council officers remain of the view that Council should not accept the dedication of land identified as "avoided land" or the zoning of "avoided land" as RE1 Public Recreation under the circumstances currently put forward.

DCCEEW have now advised that they will not undertake any further review of the matter, unless the planning proposal receives the necessary approvals to progress to Gateway Determination and a formal Biodiversity Certification Application is submitted by the Proponent. This position of DCCEEW, along with the Proponent's reluctance to make further changes to the proposal, means that Council officers are unable to progress the negotiations on this matter further at this time.

There is a need for further engagement between the Proponent, Council and DCCEEW to potentially resolve this issue, however this can only occur if the proposal progresses to Gateway Determination. Accordingly, this report recommends that if the planning proposal progresses to Gateway Determination, Council officers should engage in further discussions with the Proponent, DCCEEW and the Department of Planning, Housing and Infrastructure with respect to the Proponent's formal Biodiversity Certification Application (to be lodged by the Proponent separately to the planning proposal, if the planning proposal proceeds to Gateway Determination). In these discussions, Council officers should enforce the following parameters of Council:

- a) Council will not accept dedication, ownership or ongoing liability to maintain any land identified as 'avoided' or 'retained' in terms of Biodiversity Certification;
- b) All land proposed to be zoned RE1 Public Recreation for future public open space and dedication to (or acquisition by) Council must be Biodiversity Certified and capable of being utilised to its full capacity for recreational purposes for the community;
- c) Council will only support the application of the C2 Environmental Conservation zone to areas identified as 'avoided' or 'retained' in terms of Biodiversity Certification where associated mechanisms are in place to ensure no acquisition liability is created for Council;
- d) An alternative solution is required, in consultation with DCCEEW, for the Proponent to obtain Biodiversity Certification for the Precinct without reliance on the dedication of "avoided land" to Council or conflict between biodiversity and recreational outcomes on land identified for public open space. This should be resolved as part of the Gateway Assessment process and Gateway conditions included to reflect the outcomes of this;
- e) While it is appropriate for the planning proposal to proceed to Gateway Determination, the ultimate progression of the planning proposal to finalisation can only occur if Biodiversity Certification is obtained from DCCEEW by the Proponent.

## 2. Infrastructure Contributions

The premise of this area being identified for potential urban release under Council's LSPS was that one single rezoning application deals with the entire land area holistically, including a satisfactory and holistic local infrastructure solution.

While the Proponent has submitted letters of offer to enter into VPAs to address some of the infrastructure demand generated by the proposal, the VPAs do not cover the entirety of the land area to which the planning proposal applies, nor do they result in the funding or delivery of all infrastructure necessary to support the planning proposal. Council officers have repeatedly raised this fundamental concern with the Proponent throughout the assessment period, as did the Local Planning Panel. It is considered that this matter can likely be resolved, however at the time of reporting this application to Council an adequate solution has not yet been established. It is evident that the Proponents of the application do not own (or control) the entire area to which the application relates and not all landowners have provided consent for a VPA offer to be made in relation to their landholdings.

This is problematic, as it would require Council to prepare and implement a Contributions Plan with respect to a small area of the Precinct and portion of the infrastructure required, creating a significant amount of financial risk, liability and uncertainty for Council and the community associated with the rezoning.

It is therefore recommended that infrastructure contributions be the subject of a further report to Council, if the Council is supportive of progressing with the planning proposal. It is likely that the solution to this issue will be one of the following:

- Ideally, further negotiations with the Proponent (and all remaining landowners) to ensure VPAs can be negotiated and in place with respect to *all* land subject to the Proposal and *all* local infrastructure required to support the development, at no cost to Council; or
- As a 'fall-back' option, deferral of the planning proposal at the finalisation stage with respect to any land within the Precinct where an appropriate infrastructure solution is not in place. This would mean that there is a clear planning outcome for the land, however the potential to develop the land would not be "switched-on" until such time as an infrastructure contributions mechanism is in place.

Ultimately, a satisfactory infrastructure solution and mechanism would need to be established and able to be put in place concurrent with any finalisation of the planning proposal with respect to any or all of the land.

While it would be preferable for these two outstanding matters to be fully resolved at the time of Council considering the planning proposal, it is considered acceptable to allow for the planning proposal to progress to the next step, where these matters can potentially be resolved through further work, negotiations and public agency input during the Gateway Assessment process. If a Gateway Determination is received, a subsequent report to Council would be required which further resolves these issues, prior to the planning proposal being placed on public exhibition.

The Proponent has submitted draft amendments to the existing Part D Section 17 – Box Hill North of Council's Development Control Plan, to extend the application to the subject site and guide development outcomes similarly to the adjoining Gables Precinct. It includes controls relating to lot dimensions and setbacks for lots, building envelope controls and dwelling controls for each lot size range. It also includes guidance with respect to the new road network and

indicative layout plan for the subject area. It is recommended that the draft DCP be reported to Council in the future for consideration, alongside the infrastructure contributions solution, as there may be some further changes to the DCP in response to the resolution of the above issues, public agency input as part of the Gateway Assessment process and any conditions of the Gateway Determination.

It is the view of Council officers that the planning proposal demonstrates adequate strategic and site-specific merit to warrant progression to Gateway Determination, noting that the ultimate progression of the planning proposal to finalisation would be entirely contingent on the resolution of outstanding issues relating to biodiversity certification and proposed open space as well as infrastructure contributions, as detailed within this report. It is recommended that if a Gateway Determination is received, these matters will need to be further resolved and ultimately the subject of further reporting to Council prior to public exhibition of the planning proposal.

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## **1. THE SITE**

The proposal applies to 16 parcels of land with a total combined area of approximately 78 hectares. The land is partially in the ownership of the Proponent group and partially in individual private ownership. The subject site is the entire remaining area of land zoned RU6 Transition located between the urban release areas of Box Hill Growth Centre Precinct and the Box Hill North (Gables) Precinct, with the exception of one parcel of land that contains the Box Hill Zone substation and is owned by Endeavour Energy.

The site is surrounded by low and medium density residential development to the north, east and south and larger lot rural development to the west (within Hawkesbury Local Government Area). The subject site and the surrounding context are shown outlined in Figure 1 below.

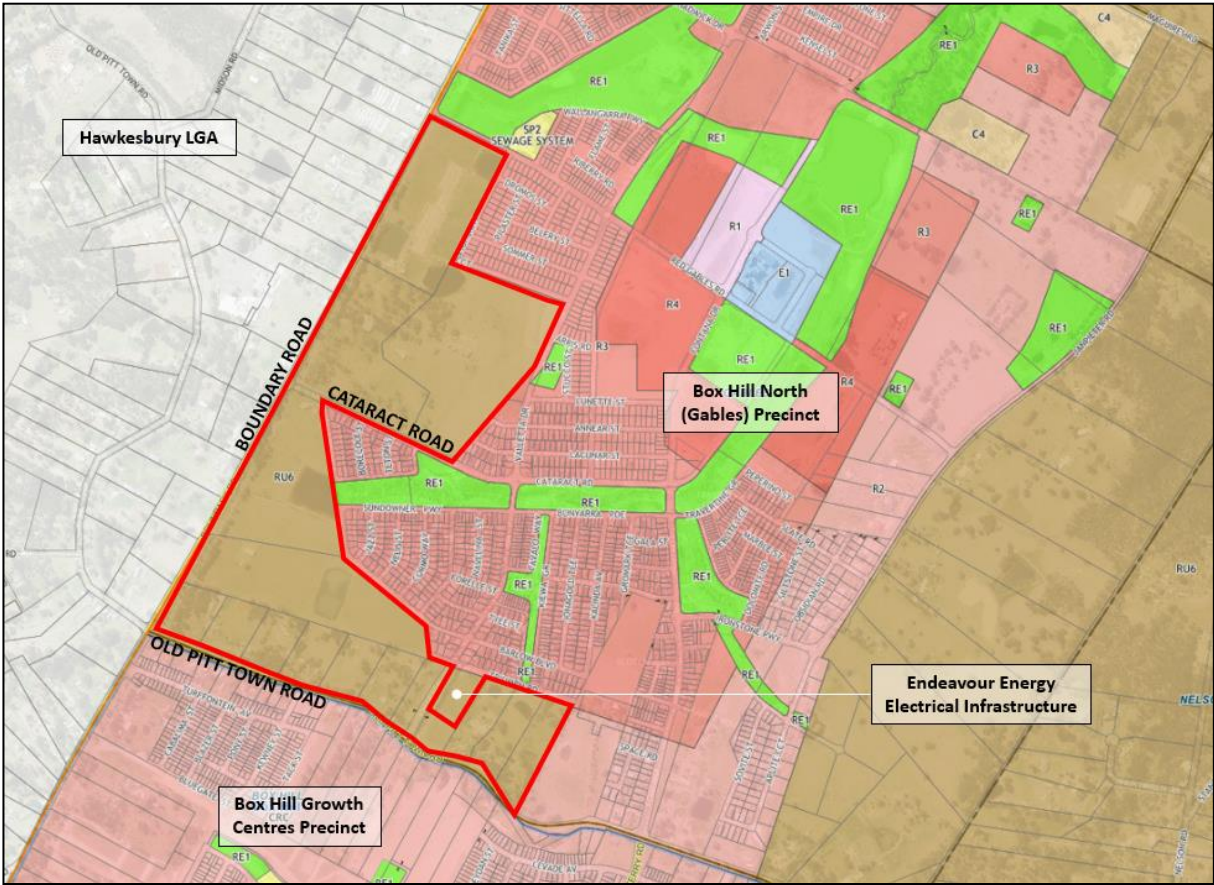


Figure 1  
Aerial view of subject site (outlined in red) and surrounding locality

2. DESCRIPTION OF PLANNING PROPOSAL

The proposal seeks to expand the Gables Precinct and complete the urban development footprint in this locality, by facilitating residential development comprising approximately 1,260 low and medium density dwellings, open space areas and riparian corridors. A range of varied lot sizes are proposed from 240m<sup>2</sup> to in excess of 700m<sup>2</sup>.

The proposal was originally lodged on 14 August 2023 however following feedback from Council (between December 2023 and April 2024) and feedback from the Local Planning Panel (in April 2024) it was since amended by the Proponent in May and June 2024 to its current form.

A comparison between the current planning controls, the proposal considered by the LPP and the current planning proposal is shown in the table below.

LEP Control	Current LEP Controls	Previous Proposal (Considered by LPP)	Amended Planning Proposal (June 2024)
Land Zone	RU6 Transition	R2 Low Density Residential R3 Medium Density Residential RE1 Public Recreation	R2 Low Density Residential R3 Medium Density Residential RE1 Public Recreation C2 Environmental Conservation
Height of Building	10m	10m	10m
Min. Lot Size	2 ha	450m <sup>2</sup> and 700m <sup>2</sup>	450m <sup>2</sup> and 700m <sup>2</sup>

<b>Floor Space Ratio</b>	N/A	N/A	N/A
<b>Local Provision</b>	N/A	1,260 Dwelling Cap  Min. Lot Size of 225m <sup>2</sup> (through amendments to Cl.4.1B for small lot / integrated housing).  Min. Lot Size of 300m <sup>2</sup> with submission of a Building Envelope Plan.	1,260 Dwelling Cap  Minimum Lot Size of 300m <sup>2</sup> with submission of a Building Envelope Plan.
<b>Satisfactory Arrangements Clause</b>	N/A	Development consent must not be granted unless the consent authority is satisfied a contributions plan or planning agreement applies to the land.	Development consent must not be granted unless the consent authority is satisfied a contributions plan or planning agreement applies to the land.

**Table 1**

Existing and proposed development controls under LEP 2019

The key changes in the amended proposal submitted by the Proponent are the removal of proposed lot sizes of down to 225m<sup>2</sup> and the identification of some areas as C2 Environmental Conservation (generally areas the Proponent intends to nominate as “avoided land” for the purpose of Biodiversity Certification, as discussed further in Section 4 of this report).

With respect to minimum lot sizes, the proposal aims to allow for a varied range of lot size outcomes within three categories:

- ‘*Smaller Residential Lots*’ between 240m<sup>2</sup> and 300m<sup>2</sup> – facilitated through the existing small lot housing pathway available under Clause 4.1B of the LEP;
- ‘*Standard Residential Lots*’ between 300m<sup>2</sup> and 700m<sup>2</sup> – a new local provision is proposed that requires a building envelope plan to be submitted for lots between 300m<sup>2</sup> and 450m<sup>2</sup>. Standard residential subdivision could occur in accordance with the mapped minimum lot size for lots over 450m<sup>2</sup>; and
- ‘*Low Density Residential Lots*’ >700m<sup>2</sup> – facilitated through standard residential subdivision in accordance with the mapped minimum lot size.

These lot size arrangements are generally reflective of the outcomes and planning controls applicable within the existing Gables Precinct, except for the lot sizes ranging from 300m<sup>2</sup> to 450m<sup>2</sup>. Currently lots in this size range would only be able to be approved under Clause 4.1B where both the subdivision and dwelling design are approved concurrently. The Proponent is seeking to adjust this marginally through a new local provision that allows for these lot sizes to be approved concurrent with a “building envelope plan”, rather than a full detailed dwelling design. This is intended to allow for greater flexibility for the subsequent purchaser of the lot to adjust and customise the dwelling design, within the parameters of the approved building envelope plan.

The proposed LEP map amendments are shown below.



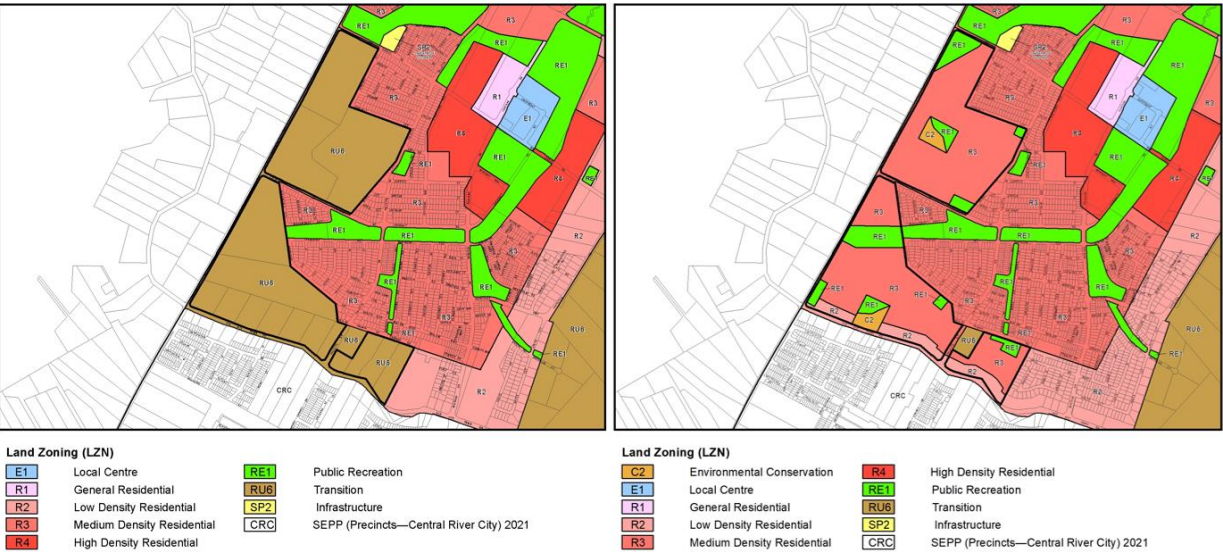


Figure 2  
Existing (left) and proposed (right) land zone map

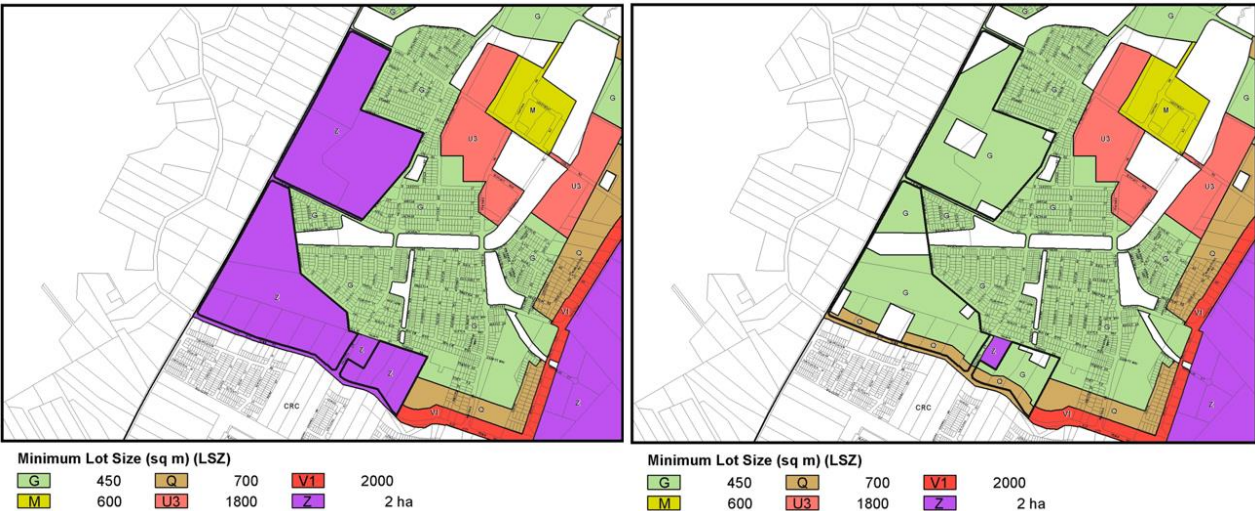


Figure 3  
Existing (left) and proposed (right) minimum lot size map

Development Control Plan

The Proponent has submitted draft amendments to the Hills Development Control Plan 2012 Part D Section 17 – Box Hill North intended to guide development outcomes on the subject site and ensure that the intended built form and desired future character are achieved, consistent with the outcomes currently present in the Gables. Generally, it is proposed that development of the subject site would rely primarily on the existing set of controls within this section of the DCP which currently apply to the Gables Precinct. However, some site-specific controls and adjustments are necessary to reflect the proposed Indicative Layout Plan and design controls for different housing typologies. Further commentary on the draft DCP and the most appropriate approach to implementing new site-specific controls is contained later in this report.

Voluntary Planning Agreement

The planning proposal is accompanied by an infrastructure schedule and letters of offer to enter into VPAs. The letters of offer include preliminary details of infrastructure and public benefits the developers intend to deliver in association with the development. However, as the Proponents (Stockland and Allam) are not the owners of *all* land to which the proposal relates,

TO STRIVE FOR BETTER THINGS



the letters of offer do not relate to *all* land subject to the proposal or address *all* of the infrastructure items necessary to service the development.

To resolve this issue, the Proponent has suggested that the planning proposal include a satisfactory arrangements clause, which prevents the granting of development consent on land until such time as the consent authority is satisfied that an appropriate infrastructure solution (being a Contributions Plan or VPA) is in place. Council officers are of the view that this approach is unlikely to be enforceable or a satisfactory resolution of the unresolved infrastructure issues, as discussed further within Section 4 of this report.

### 3. LOCAL PLANNING PANEL

On 17 April 2024, the planning proposal was presented to the Local Planning Panel (LPP) for advice. A copy of the Council Officer's Assessment Report and Meeting Minutes are provided as Attachments 1 and 2 of this report, respectively.

The Panel issued the following advice with respect to the subject planning proposal:

1. *The Panel advises that the site has a lot of potential to deliver additional housing, however this should not be in the absence of appropriate mechanisms to ensure the infrastructure to support future residents will be efficiently provided.*
2. *The planning proposal is capable of demonstrating adequate strategic and site-specific merit to warrant progression to Gateway Determination, subject to the following matters being resolved to Council's satisfaction:*
  - a) *Achievement of minimum lot sizes of less than 300m<sup>2</sup> should continue to be managed under the existing provisions within Clause 4.1B of The Hills Local Environmental Plan, which allow for a minimum lot size of 240m<sup>2</sup> (rather than 225m<sup>2</sup> as requested by the Proponent), consistent with other areas of The Shire and adjoining Gables development.*
  - b) *Land intended to be dedicated to Council for open space must not contain any proposed 'avoided areas' (for the purpose of Biodiversity Certification).*
  - c) *The Proponent's application for Biodiversity Certification should be updated to account for 1 b) above and then lodged and progressed to DCCEEW. The Proponent will need to obtain Biodiversity Certification of the land, prior to the finalisation of any rezoning.*
  - d) *If 'avoided areas' are retained on the site, the Bushfire Strategic Study needs to address the bushfire hazard presented by more dense vegetation formations.*
  - e) *The proposed site-specific clause should be revised to give greater certainty with respect to how the total yield of 1,260 dwellings will be achieved across the various lot size ranges proposed. This should be resolved prior to the planning proposal being reported to Council for determination.*
  - f) *The draft site-specific Development Control Plan prepared by the Proponent, which amends the existing Part D Section 17 of the Hills DCP – Box Hill North Precinct to incorporate the subject land be amended by Council officers to Council's satisfaction*

*and as outlined in Council Officer’s report and reported to Council concurrent with the planning proposal.*

- g) Establishment of a mechanism that secures adequate and proportionate contributions from future development of the subject land to address the demand for new local infrastructure arising from the proposal. This should be resolved prior to the planning proposal being reported to Council for determination.*
  - h) The additional information submitted on 5 April 2024 includes an approach that has not been utilised in other locations for local infrastructure and relies on an amendment to the Environmental Planning and Assessment Regulation 2021, which is outside of Council’s control. More work is required to establish an appropriate mechanism for infrastructure delivery as what has been proposed does not give Council sufficient certainty or reasonable belief that the infrastructure mechanism will be in place at the time a rezoning occurs.*
  - i) An updated SIDRA analysis should be prepared as part of any public agency consultation with TfNSW, should a Gateway Determination be issued for the proposal.*
- 3. The Panel advises that the lack of school infrastructure in the locality is a critical issue. The Panel’s support for the progression of the planning proposal is contingent upon certainty that this infrastructure will be delivered. This is a key issue for this locality, that currently has a high public profile and needs to be addressed in order for additional housing to be supported.*

The Panel agreed with Council officer’s recommendation that the planning proposal should proceed to Gateway Determination having regard to the strategic merit and the capacity to demonstrate site-specific merit, subject to the submission of further information and amendments to the planning proposal to address concerns relating to minimum lot sizes (of down to 225m<sup>2</sup>), rear-laneways, passive open space provision, biodiversity management, infrastructure delivery and certainty of development outcomes.

It is noted that in response to the LPP advice, the Proponent amended their proposal and submitted revised information and an amended proposal to Council in May and June 2024. The Proponent’s amendments generally address the issues raised by the LPP with respect to minimum lot sizes, removal of rear-laneway dwelling types and certainty of development outcomes. However, the biodiversity management and open space and infrastructure delivery remain unresolved.

**4. MATTERS FOR CONSIDERATION**

A summary and discussion of the key technical matters that should be considered by Council in determining whether or not the planning proposal should proceed to Gateway Determination is provided in the table below.

The full technical assessment of the proposal, as reported to the LPP in April 2024, is contained within Attachment 1. It is noted that the proposal has been revised by the Proponent since this time, in response to the LPP’s advice and Council officer feedback. Accordingly, the table below also includes discussion on the particular elements of the proposal which have been revised since the matter was considered by the LPP.

**A. Strategic Merit**

As detailed within the Council Officer Assessment Report to the Local Planning Panel (Attachment 1), the planning proposal is generally consistent with the principles and priorities articulated in the relevant strategic planning framework and demonstrates strategic merit.

The subject land is identified within the Region and District Plans as being within the Metropolitan Rural Area (MRA), with the boundary running along Old Pitt Town Road (along the south of the subject site). However, this is the result of mapping inaccuracies by the Greater Cities Commission in this particular location, which failed to recognise the Box Hill North (Gables) Precinct urban release area (which is also to the north of Old Pitt Town Road and is similarly shown as being within the Metropolitan Rural Area). Council recognised this mapping anomaly and sought to rectify this in its own identification of the Metropolitan Rural Area boundary within its Local Strategic Planning Statement (LSPS), which was subsequently endorsed by the Greater Cities Commission. While the Greater Sydney Region Plan and Central City District Plan seek to protect land within the Metropolitan Rural Area (MRA) from residential development and prevent its conversion to more intensified urban land uses, this is not relevant in this instance giving the incorrect identification of the MRA by the Greater Cities Commission in this particular locality.

Council's LSPS and Council's adopted Housing Strategy (which is a supporting strategy of the LSPS) acknowledge that there is merit in considering urban development on the subject site, which is identified as the *only* area of rural zoned land within the entire Shire which has potential for urban development and additional housing within the strategic framework, primarily on account of its location, wedged between two urban growth precincts.

The subject site is considered a reasonable location for low and medium density housing. The urban development of the site is a logical expansion of the existing Gables Precinct to complete the urban development footprint in this locality, consistent with Council's LSPS and Housing Strategy. It will facilitate the delivery of a new local road network and walking and cycle paths that will service local traffic and integrate with Gables and surrounding transport networks. It will improve amenity by reserving land for public parks and recreation areas.

Council's Housing Strategy identifies the need for any rezoning of this land to be considered as part of a master-planned approach, which relates to the entirety of this area as one single application and proposal. The planning proposal broadly satisfied this criteria as it has been lodged as a single application which seeks to amend the planning framework for the entire area and demonstrates how the future development would occur in a holistic manner.

However, this same level of coordination and resolution has not yet been achieved with respect to infrastructure solutions and mechanisms. While Letters of Offer to enter into VPAs with Council have been submitted with respect areas owned by Stockland and Allam, this is not the case for the remaining landowners within the Precinct and at this stage, it is evident that the Proponent group is not able to put forward a holistic infrastructure solution or contributions mechanism which deals with all land in the Precinct and all infrastructure required to support the proposed development. To resolve this, the Proponent group suggests a combination of VPAs for some land, a future contributions plan for areas not subject to a VPA and a satisfactory arrangements clause relating to local infrastructure. As discussed further within this report, this proposed infrastructure solution is not considered to be satisfactory and the lack of a holistic solution in this regard would be one of two major impediments still to be overcome for the proposal to be suitable to ultimately progress to finalisation (along with issues relating to Biodiversity Certification).

Notwithstanding, the proposal otherwise demonstrates strong strategic merit to warrant progression to the next step in the process, being Gateway Determination, during which time there will be opportunity to engage in further discussions and negotiations with the Proponent and remaining landowners to ensure a holistic infrastructure solution for the subject site can be established. Ultimately, if this matter is unable to be resolved and a satisfactory infrastructure mechanism put in place, then the rezoning would be unable to progress to the point of finalisation.

**B. LEP Mechanisms**Minimum Lot Size

The planning proposal would amend the LEP minimum lot size mapping to apply minimum lot sizes of 700m<sup>2</sup> for land proposed to be zoned R2 Low Density Residential and 450m<sup>2</sup> for land proposed to be zoned R3 Medium Density Residential. This generally reflects the minimum lot size controls applicable to these same zones within the adjoining Gables Precinct.

It is noted that the existing Clause 4.1B within Council's LEP allows for minimum lot sizes within the R3 Medium Density Residential zone to be smaller than shown on the minimum lot size map, and down to 240m<sup>2</sup>, where development consent is granted for the subdivision and construction of the dwelling concurrently. The Proponent had originally sought to allow for even smaller lot sizes (down to 225m<sup>2</sup>) however this element of the proposal was removed in response to feedback from Council officers and the LPP. The existing Clause 4.1B within Council's LEP would therefore continue to apply. This is considered to be a suitable outcome that will be consistent with the framework and character of the adjoining Gables Precinct and other areas of the Shire from an amenity and streetscape perspective, whilst delivering a diverse medium density housing option.

The proposal would allow for marginally greater flexibility for the delivery of lot sizes ranging from 300m<sup>2</sup> and 450m<sup>2</sup>, through a new provision which requires the consent authority to be satisfied that each lot can contain a building envelope and would not result in more than 4 contiguous lots in a row with the same frontage width. To facilitate this, the planning proposal seeks to include a new site-specific local provision (under Part 7 of the LEP) that would enable approval of a "building envelope plan" concurrently with the subdivision, rather than a specific dwelling design (as is currently the case under Clause 4.1B). This would provide some flexibility in terms of the future dwelling design by each purchaser of a lot, within the parameters of the defined envelope.

This approach is considered acceptable in order to provide flexibility in the dwelling outcomes for the developer and purchaser, whilst also providing Council and the consent authority with certainty that lots between 300m<sup>2</sup> and 450m<sup>2</sup> can reasonably accommodate a dwelling, without the need for a concurrent subdivision and dwelling approval.

Dwelling Cap

The proposal includes a total dwelling cap of 1,260 dwellings in the site-specific clause for the entirety of the subject site ("West Gables"). The total yield of 1,260 is considered to be an appropriate outcome, having regard to the outcomes depicted in the Indicative Layout Plan and consideration of the serviceability of development and necessary infrastructure upgrades discussed in the Infrastructure Demand and Voluntary Planning Agreement section of this table.

Council officers had previously raised concern around flexibility in application of the control and the possibility that the actual outcomes on the ground would not match the dwelling cap. In response to this, the Proponent is proposing to include a mapped breakdown of the yield and additional contribution requirements (should the dwelling cap be exceeded) to be specified in the Voluntary Planning Agreements. This is considered appropriate to provide greater certainty with respect to the final development yield and ensure that development rolls out throughout the Precinct commensurate with servicing and infrastructure planning limitations and expected built form outcomes.

**C. Water Quality and Flooding**

The Proponent has submitted a Flood Management Study as part of their supporting material. It concludes that the proposed development will not produce any significant increases in flood levels over the properties upstream or downstream in the 1% Annual Exceedance Probability (AEP) and 39.35% AEP flood events, subject to the implementation of the following localised works to address runoff and water quality:

- Removal of existing farm dams and establishment of riparian corridor where existing online dams are located;
- Detention basins for each of the seven catchments to manage increased stormwater runoff in the post development case; and

- Water quality controls including bio-retention and proprietary devices for each of the seven catchments.

The Strategy proposes the following stormwater management measures:

- One (1) online storage infrastructure provided within the proposed riparian corridor;
- Five (5) offline detention basins;
- Six (6) water quality basins; and
- Ten (10) gross pollutant traps.

In March 2024, the Proponent submitted an additional information package, which includes a Flood Modelling Assessment for Council’s preliminary consideration and assessment.

The proposal has demonstrated that flooding impacts will be able to be mitigated throughout the site as part of future development, to a satisfactory extent for this stage of the planning process (planning proposal). The creek line and riparian corridor have been identified as RE1 Public Recreation, along with additional open space for water management infrastructure and local parks. This follows the same land use management approach as applied in the existing Gables area and there is sufficient land within the West Gables site to appropriately manage flooding and build in detention infrastructure as needed.

There is adequate certainty that all stormwater and flooding matters will be capable of resolution as part of the future detailed design of the development.

**D. Ecology**

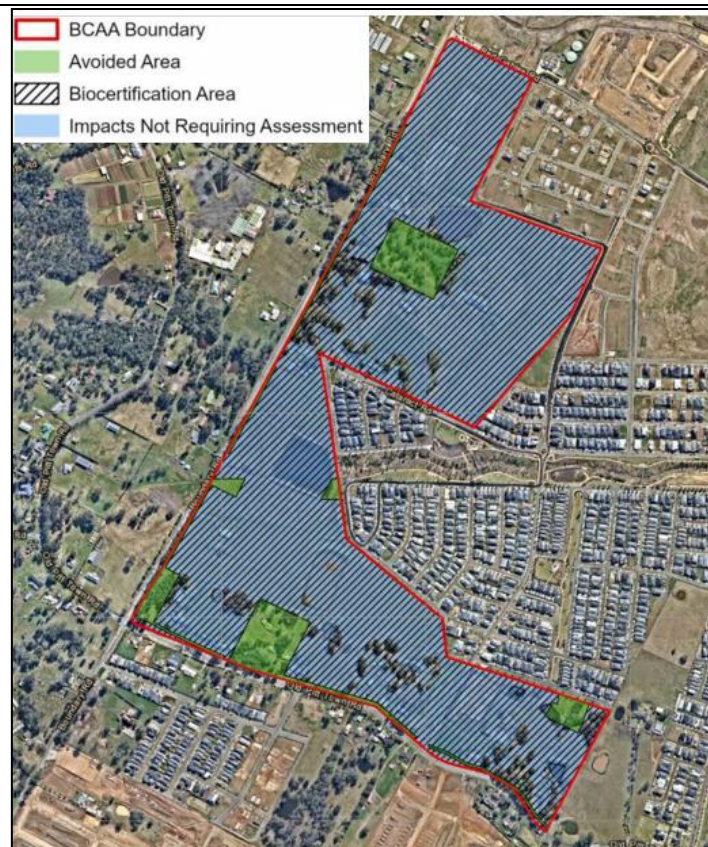
A Biodiversity Certification Assessment Report (BCAR) (prepared by Ecological Australia Pty and dated December 2022) was submitted with the original planning proposal. The BCAR findings indicate the presence of scattered remnant and regrowth vegetation within the identified Biodiversity Certification Assessment Area (BCAA) including Cumberland Plain Woodland and Shale Sandstone Transition Forest which are listed as Critically Endangered Ecological Communities.

The Proponent is intending to undertake Biodiversity Certification of the land in association with the planning proposal, by lodging an application for Biodiversity Certification with the Department of Climate Change, Energy, the Environment and Water (DCCEEW).

Based on the Proponent’s BCAR, the Serious and Irreversible Impact (SII) Assessment, for Cumberland Plain Woodland, has identified that 0.41ha of Cumberland Plain Woodland would be directly impacted and that 0.74ha of Cumberland Plain Woodland would be avoided. For Shale Sandstone Transition Forest, it identifies that 6.27ha of Shale Sandstone Transition Forest would be directly impacted and 3.14ha of Shale Sandstone Transition Forest would be avoided.

The directly impacted areas are shown as hatched (without blue colouring and where trees are visible in the aerial image) within the Figure below and the impacts in these areas are intended to be addressed by the Proponent through the Biodiversity Certification process. Areas that are shown as hatched (with blue colouring) were not found to have any biodiversity value.



**Figure 4**

Identification of avoided areas, Biodiversity Certification areas and areas not requiring assessment

The BCAR documentation of Stage 2 of the Biodiversity Assessment Method (BAM) proposed that the areas of high biodiversity value be zoned as RE1 Public Recreation to ensure retention, including amendments to the proposal in the design phase to increase the size of a park to retain more vegetation. These are referred to as “avoided areas” or “avoided land” for the purpose of Biodiversity Certification. A comparison between the proposed ‘avoided areas’/‘avoided land’ and future public open space in the original proposal is provided below.

**Figure 5**

Avoided areas correlate with passive open space land proposed to be zoned RE1 (original proposal)

The intention was for the 'avoided land' to be dedicated to Council for use as open space. However, it is uncertain as to whether the community would be able to fully utilise the 'avoided land' for open space as land with vegetation would need to be protected in accordance with any future biodiversity certification order that applies to the land.

It is also not appropriate for Council to take on the management and maintenance burden associated with the ownership of 'avoided land', in order to facilitate the Proponent's urban development outcomes. It would place an unreasonable cost and maintenance burden on Council, and the broader community, in perpetuity. Council does not have the resources to take on vegetation retention areas associated with new development. By comparison, other release areas in the locality (including the existing Gables development) do not require Council to take ownership of any retained vegetation and instead, they seek alternatives to preserving vegetation such as in community title lots or purchasing additional biodiversity credits offsite.

In response to these concerns raised by Council officers, the Proponent submitted additional information which proposed a split zoning for the northern and southern parks, being a combination of C2 Environmental Conservation and RE1 Public Recreation, as shown in the figures below.



**Figure 6**  
Northern Park (left) and Southern Park (right) - Proposed uses  
(dark green – biodiversity conservation and light green – recreation)

The Proponent has identified that the RE1 Public Recreation land would be biodiversity certified and therefore suitable for works, embellishment and if needed, removal of some vegetation to deliver appropriate open space and recreation facilities. The C2 zoned land is proposed to sit alongside the RE1 land and would contain the 'avoided areas'. The Proponent has not stated the intent in terms of biodiversity certification for other land proposed to be zoned RE1 and identified in the current BCAR as 'avoided land'. As demonstrated in these images submitted by the Proponent, the recreational capacity of these spaces for use by the community would be limited by the identified 'avoided land' although it is not clear exactly what those limitations are at this stage.

The Proponent has not yet provided a revised BCAR that supports the reduced area of 'avoided land' or identifies any additional credits required to be retired to facilitate this outcome. This will be required should the planning proposal progress to Gateway Determination.

Concurrent with submitting this information to Council, the Proponent submitted their proposal to the Department of Climate Change, Energy, the Environment and Water (DCCEEW) for preliminary consultation. DCCEEW provided the following comments:

*The Biodiversity, Conservation and Science Group of the DCCEEW does not support the proposed use of avoided land for recreation purposes including but not limited to BBQ/picnic areas, basketball courts and kick-around areas, which would be inconsistent with the retention of biodiversity values. Furthermore, BCS understands that The Hills Shire Council does not support the approach of avoided land being dedicated to Council when that land is intended to meet the recreation needs of the future development. At its meeting of 17 April 2024, the Hills Shire Council*

*Local Planning Panel determined in part that “Land intended to be dedicated to Council for open space must not contain any proposed ‘avoided areas’ (for the purpose of Biodiversity Certification).”*

DCCEEW’s comments align with and reinforce Council officer’s feedback on the proposed approach, which raised significant concern with areas of land identified as ‘avoided land’ being dedicated to Council and identified for the purpose of public open space.

Noting DCCEEW’s advice, Council officers suggested that the ‘avoided land’ could be considered as adjacent to, contiguous with, or providing an outlook for the recreation land, rather than as serving any recreation or open space function. DCCEEW appear to expect more strict protection of the vegetation on ‘avoided land’, which is clearly inconsistent with the approach of co-locating open space and ‘avoided land’, however the exact nature of the vegetation protection is not yet known. Noting these likely obligations, Council officers suggested that the Proponent consider alternative arrangements for the ‘avoided land’, involving the retention of this on privately owned land, as this may be required should the restrictions on the use of this land prevent it from being used for passive recreation at all.

DCCEEW have advised that they will not undertake a review of the BCAR unless and until the planning proposal is submitted for Gateway and a formal biodiversity certification application is submitted which is consistent with the planning proposal.

Despite concerns raised by Council officers, the Proponent has maintained the position that the C2 zoned land, as well as the RE1 zoned land, would be dedicated to Council. The Proponent has indicated an intention to provide financial support to Council for managing the ‘avoided land’, however there is insufficient supporting material to provide Council with a clear understanding of what financial contributions are being offered and whether it would be sufficient to ensure management and maintenance costs associated with the land are covered in perpetuity. Therefore, Council officers are not in a position to recommend that Council accept ownership of any proposed ‘avoided land’ at this time.

There is a need for further engagement between the Proponent, Council and DCCEEW to potentially resolve this issue, however this can only occur if the proposal progresses to Gateway Determination. Accordingly, this report recommends that if the planning proposal progresses to Gateway Determination, Council officers should engage in further discussions with the Proponent, DCCEEW and the Department of Planning, Housing and Infrastructure with respect to the Proponent’s formal Biodiversity Certification Application (to be lodged by the Proponent separately to the planning proposal, if the planning proposal proceeds to Gateway Determination). In these discussions, Council officers should enforce the following parameters of Council:

- a) Council will not accept dedication, ownership or ongoing liability to maintain any land identified as ‘avoided’ or ‘retained’ in terms of Biodiversity Certification;
- b) All land proposed to be zoned RE1 Public Recreation for future public open space and dedication to (or acquisition by) Council must be Biodiversity Certified and capable of being utilised to its full capacity for recreational purposes for the community;
- c) Council will only support the application of the C2 Environmental Conservation zone to areas identified as ‘avoided’ or ‘retained’ in terms of Biodiversity Certification where associated mechanisms are in place to ensure no acquisition liability is created for Council;
- d) An alternative solution is required, in consultation with DCCEEW, for the Proponent to obtain Biodiversity Certification for the Precinct without reliance on the dedication of “avoided land” to Council or conflict between biodiversity and recreational outcomes on land identified for public open space. This should be resolved as part of the Gateway Assessment process and Gateway conditions included to reflect the outcomes of this;
- e) While it is appropriate for the planning proposal to proceed to Gateway Determination, the ultimate progression of the planning proposal to finalisation can only occur if Biodiversity Certification is obtained from DCCEEW by the Proponent.



## E. Open Space

### Passive open space

The proposal includes a network of passive open spaces, in some instances co-located with drainage land, that provides reasonable access to parks and reserves. All new homes within the development areas would be within approximately 400m to 500m walking distance of passive open space.

The land originally identified for passive open space uses amounted to 6.15Ha. If this entire amount of land was all capable of being used for passive recreation, this would be a satisfactory provision of passive open space, noting the added utility that the additional drainage land, landscape buffers, riparian corridors and infrastructure easements also contribute as well as connectivity that will be provided to access the existing and planned open space network within the adjoining Gables precinct.

However, the 6.15Ha included land intended to be used for protection of biodiversity and 'avoided land' for the purpose of Biodiversity Certification. Other Biodiversity Certification Orders in NSW impose strict limitations on how 'avoided land' is managed, including prohibiting disturbance of the land, prohibiting the removal of vegetation, fallen timber or habitat from the land and prohibiting earthworks, walking tracks, trails, driving, riding or leading animals. As discussed earlier within this report, it is possible that the identified 'avoided land' will not be compatible with any public recreation or open space outcome, noting Council's Recreation Strategy identifies that local suburban parks should contain (at a minimum) internal pathways, a playground, a playground shade structure, playground synthetic/soft fall rubber, shelter and seating, rubbish bins and collection areas, drinking water, tap, park signage, an open space kick around area and landscaping.

As discussed above, to address biodiversity matters, the amount of land intended specifically for public open space has been reduced by the Proponent, to 3.55Ha (2.6Ha of the land previously identified as RE1 zone, is now being proposed to be zoned C2 within the Proponent's amended application). This more accurately reflects the amount of "usable" public open space being proposed, following exclusion of 'avoided land' from this calculation.

While the distribution of passive open space remains appropriate, the adequacy of the overall proposed passive open space provision is contingent on being able to deliver the items required for a local suburban park in the RE1 zoned land remaining, notwithstanding the potential benefits of co-location with vegetation in proximity to the park. Therefore, having regard to the 'avoided land' areas, further investigations are needed to determine whether the passive recreation offer is appropriate to deliver passive recreation facilities in accordance with the benchmarks in the Recreation Strategy.

However, this could be resolved through the following scenarios:

- a) Biodiversity Certification of the entire planning proposal area to allow the land proposed as passive recreation to be used for this purpose, rather than as 'avoided land' (noting that Council could still retain much of the vegetation in the park design albeit with greater public access and embellishment opportunity);
- b) Undertake more detailed park designs in association with the resolution of outstanding infrastructure contributions matters to demonstrate that the land proposed as RE1 is capable of delivering all the facilities needed for local suburban park; or
- c) Identify additional land within the Precinct as RE1 Public Recreation.

Ultimately, these items are highly dependent on the input from DCCEEW regarding biodiversity certification, negotiations with respect to infrastructure contributions and potential amendments to the planning proposal arising out of this, all of which are not known at this time.

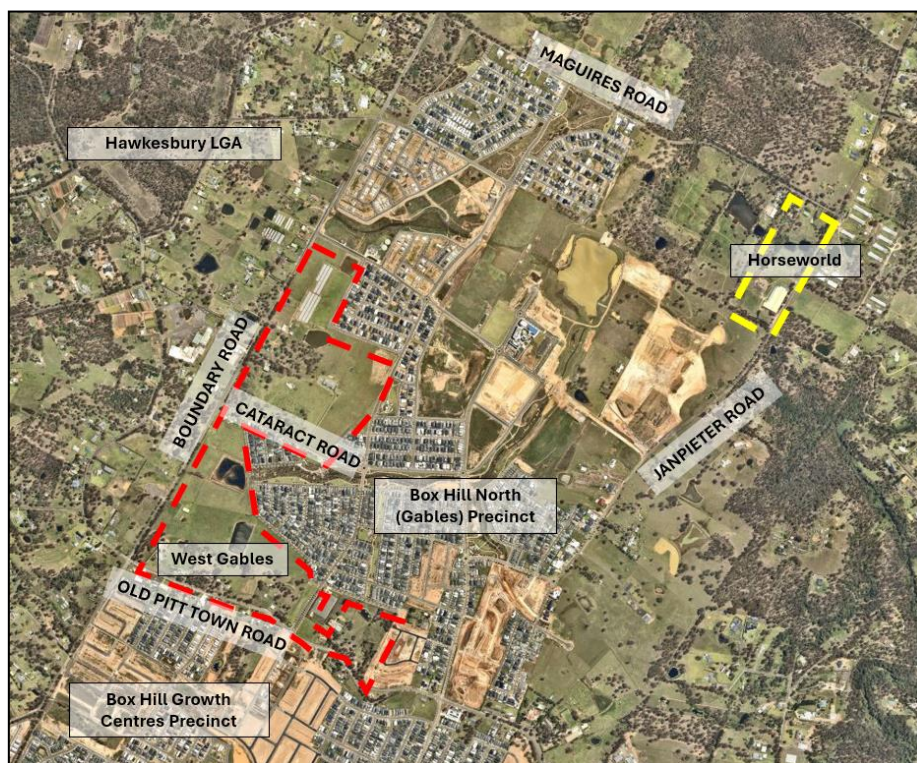
It is recommended therefore that if the planning proposal progresses to Gateway Determination, further work be completed with respect to the adequacy of passive open space provision concurrent with discussion and negotiations relating to Biodiversity Certification and Infrastructure Contributions. As

detailed within this report and recommendation, Council will need to consider a further report on these matters, at which time more information regarding passive open space outcomes will be known.

#### Active open space

The proposal does not include any on site active open space facilities. Instead, the Proponent has offered to make monetary contributions toward active open space facilities that Council will deliver. The proposed dwelling yield facilitated by the rezoning proposal would generate demand for 2 additional playing fields based on the adopted benchmarks in Council's Recreation Strategy. While it would be ideal for the development to meet the demand for active open space generated by the development within the site, via the allocation of land and capital works, this has not been proposed for the subject proposal.

The nearest site that could potentially service the West Gables development with active open space facilities is the 'Horseworld' property, located on Maguires Road and currently in Council ownership. Council is currently considering options for the use of this land, some of which include active open space facilities. However, the site requires servicing to be developed in this capacity and the embellishment of this land for recreation outcomes is currently not funded by Council or in any Contributions Plan. The location of the 'Horseworld' site in relation to West Gables is shown in the figure below.



**Figure 7**

Subject site (red) and 'Horseworld' site (yellow)

Given the proximity of this future facility to the development area (both Gables and West Gables), it may be reasonable to consider the "Horseworld" site as a logical solution to the active open space demands generated by this proposal, however this would be contingent on the Proponent group contributing sufficiently to the funding of this future facility. The Proponent group have offered to make monetary contributions within their Letters of Offer and Council officers are currently negotiating the details of this potential option with the Proponent, which will be reported to Council for separate consideration in the future, if the planning proposal progresses to Gateway Determination.

#### Pedestrian and cycle paths

The planning proposal material indicates that pedestrian and cycle paths will be delivered that will integrate with the riparian corridor, bushland and parks, to link to the broader network within Gables (including the missing link between Sundowner Parkway and Bloomsdale Circuit). These items will

facilitate active transport and connectivity between open spaces in the locality and are supported as a logical and orderly completion of the broader pedestrian and cycle network in this locality.

**F. Traffic, Transport & Parking**

Road Network

Generally, the proposed internal road layout is appropriate and will result in an acceptable outcome that facilitates orderly development and minimises impact on traffic flows within the broader regional road network. The proposal road layout integrates appropriately with the planned and existing road network within the surrounding Gables Precinct and demonstrates a logical completion to the planned road network for the urban footprint of this locality.

Traffic Generation

The Proponent has provided a Parking and Traffic Study prepared by Positive Traffic Pty Ltd. The study examines existing road network conditions (including peak hour traffic volumes and the operation of major approach roads and critical intersections) and considers the potential impact of 1,300 additional dwellings within the precinct.

The traffic study indicates that when all growth to 2036 within these Precincts is factored in for the intersection of Boundary Road and Old Pitt Town Road, the proposed rezoning of the subject land to accommodate up to 1,300 dwellings would worsen the intersection's performance in the AM peak from Level of Service C to Level of Service D. The performance of the intersection of Old Pitt Town Road and Valletta Drive in the AM peak in 2036 will be worsened from Level of Service D to Level of Service F as a result of the proposed rezoning. The proposed development would also increase wait times at the intersections of both Boundary Road / Red Gables Road and Boundary Road / Cataract Road, however the overall performance of these intersections would not be worsened from Level of Service A and B respectively in the AM peak in 2036, when all other growth in the area is factored in.

With respect to the PM peak, the planning proposal would worsen the anticipated 2036 Level of Service for the intersections of Boundary Road / Old Pitt Town Road from Level of Service C to Level of Service D. The planning proposal will not worsen the anticipated 2036 Level of Service for the Boundary Road / Red Gables Road intersection although the rezoning will result in a minor increase in wait times at this intersection. It is noted that the intersection of Boundary Road / Red Gables Road will operate at a failing Level of Service E in 2036 both with and without the proposed rezoning of West Gables. The proposed rezoning will worsen the anticipated 2036 Level of Service for the intersections of both Boundary Road / Cataract Road and Old Pitt Town Road / Valletta Drive from Level of Service B to Level of Service C.

In response to these findings, the Proponent has invested in concept designs (including concept intersection designs, signals warrant assessment and an indicative cost schedule) for further traffic upgrades in the locality which respond to the above impacts, to enable further discussions with Transport for NSW and inform the preparation of a VPA that would result in traffic upgrades that mitigate these impacts.

In undertaking a review of the existing and draft traffic models for the surrounding precincts, some of the intersection assumptions utilised in the Proponent's traffic study have become outdated since further work has been undertaken in consultation with TfNSW. Revised SIDRA models are yet to be provided by the Proponent for these outdated intersections. However, the Proponent has advised that future modelling requirements will not be known for these intersections until such time as Transport for NSW provide further certainty on the intersection upgrade designs. Should the planning proposal progress to Gateway Determination, the Traffic Study and traffic impacts of the proposed development would need to be assessed by TfNSW, which would occur as part of the public agency consultation phase.

It is considered that the following upgrades identified below are necessary and appropriate to cater for the increased demand on the road network that will be generated by the planning proposal. While these matters have not yet been resolved in their entirety, further analysis in the form of a revised traffic study and SIDRA analysis will inform ongoing discussions with the Proponent and TfNSW:

<ul style="list-style-type: none"><li>▪ Upgrade of Fontana Drive, Terry Road and Old Pitt Town Road intersection to signals;</li><li>▪ Upgrade of Valletta Drive, Mt Carmel Road and Old Pitt Town Road intersection to signals;</li><li>▪ Widening of section of Old Pitt Town Road along West Gables Precinct boundary to achieve two lanes in each direction;</li><li>▪ Proposed new road accessing west of Old Pitt Town Road intersection;</li><li>▪ Upgrade of Boundary Road and Old Pitt Town Road intersection to signals;</li><li>▪ Widening of section of Boundary Road along West Gables Precinct boundary to achieve two lanes in each direction;</li><li>▪ Upgrade of Boundary Road and Cataract Road intersection to account for the upgrade of Boundary Road to two lanes in each direction (revised intersection layout subject to further design); and</li><li>▪ Upgrade of Boundary Road and Red Gables Road intersection to account for the upgrade of Boundary Road to two lanes in each direction (revised intersection layout subject to further design).</li></ul> <p>Further discussions would also be required as part of the planning proposal to establish a mechanism that secures an appropriate apportionment of contributions from the Proponent towards these upgrades. Notwithstanding, there is sufficient certainty that any land take required for these proposed upgrades (insofar as they relate to the Proponent's landholdings) can be appropriately accommodated within the subject site and the associated Indicative Layout Plan. Infrastructure delivery, including funding of upgrades to the road network, is further discussed in the Infrastructure Demand &amp; Voluntary Planning Agreement section of this table.</p>
<b>G. Development Control Plan</b>

<p>The Proponent has submitted draft amendments to Part D Section 17 – Box Hill North of Council's DCP, which would expand application of the DCP (which currently applies to Gables) to also include this land. It would rely on the existing controls within this DCP section however proposes to include an updated Indicative Layout Plan and Street Layout Map as well as a number of additional development controls that are specific to the West Gables proposal. These include:</p> <ul style="list-style-type: none"><li>▪ Lot dimensions and setbacks for lots at different lot sizes.</li><li>▪ DA submission requirements for a Building Envelope Plan for lots equal to or larger than 300m<sup>2</sup> and smaller than 450m<sup>2</sup>.</li><li>▪ Dwelling controls for each lot size range, generally consistent with those already applicable under the Concept DA 1397/2015/JP that applies to the Gables.</li></ul> <p>While the majority of the draft development controls are supported, there are some controls that will need to be adjusted and removed to reflect recent amendments made to the proposal by the Proponent. These changes primarily relate to removal of controls for dwellings with rear lane access as this dwelling type is no longer proposed.</p> <p>A number of further changes will likely be required to the draft DCP as a result of the Gateway Assessment and Determination process, if the proposal progresses to this point. The draft DCP may also need to be adjusted to reflect the outcomes of further consultation with DCCEEW with respect to Biodiversity Certification, which will likely influence the Indicative Layout Plan, zoning boundaries, landscaping and embellishment works and maintenance and siting of surrounding development and infrastructure. As such, it is considered appropriate for Council to consider a further report on the site specific DCP, once these details and outcomes are known and able to be incorporated into the draft DCP.</p>
<b>H. Infrastructure Demand &amp; Voluntary Planning Agreement</b>

<p><u>Infrastructure Demand</u></p> <p>The planning proposal seeks to facilitate 1,260 dwellings (approximately 4,400 people), which would generate demand for local and regional infrastructure, much of which is not currently planned or catered for within the existing infrastructure contributions framework. It is crucial that any rezoning and future</p>
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development of the land is serviced with an adequate level of local and regional infrastructure that meets the needs of local residents and workers.

The proposal would generate the need for 2 new playing fields, at least 6.2Ha of passive open space, 75% of a community centre, 13% of a library, as well as a range of traffic, transport and drainage infrastructure discussed earlier within this report.

A full list of local infrastructure items necessary to service the proposed development is provided as Attachment 6 to this report. It is the view of Council officers that this list is generally adequate to meet the demand associated with new development, pending resolution of outstanding matters relating to the conflict between “avoided land” and use of passive open space and pending further input and feedback from TfNSW with respect to traffic upgrades, which can only occur as part of the Gateway process.

Notwithstanding this, there remains a critical issue with respect to the mechanism to fund and deliver this infrastructure list as the Proponent has been unable to submit a holistic infrastructure solution that deals with all land in the Precinct and ensures the cost of all new local infrastructure is funded in association with the development.

Infrastructure Mechanism

The Proponent has submitted Letters of Offer to enter into VPAs with respect to landholdings owned and controlled by Allam Homes or Stockland (outlined in red below).



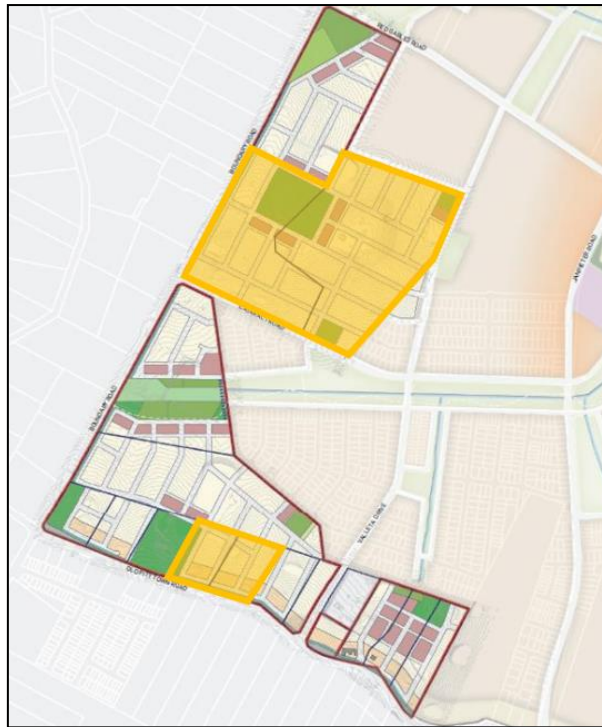
Figure 8

Land to which the Stockland VPA offer applies (outlined in red - left) and Land to which the Allam Homes VPA offer applies (outlined in red - right)

The proposed value of contributions under these VPAs appears to *generally* be proportionate to the amount of development that will occur on these specific parcels of land. The value and/or extent of contribution towards each infrastructure item offered within the respective Letters of Offer is identified in Attachment 6 also.

However, as these VPAs do not apply to the entire rezoning proposal area, they do not put in place any contributions mechanism with respect to the remaining areas (shown in yellow below), meaning

there is no certainty that adequate income will be received from development in these remaining areas or that *all* necessary infrastructure items will be delivered at no cost to Council or the community.



**Figure 9**

Land to which the VPA offers do *not* apply (shaded in yellow)

In response to this issue, the Proponent has suggested that a new Contributions Plan can be prepared with respect to the remaining areas that are not subject to a VPA (shown in yellow above). Noting the extensive time taken to prepare a new Contributions Plan, the Proponent has suggested that the rezoning could proceed to finalisation with a 'satisfactory arrangements' clause that ensures development applications for the purposes of residential subdivision can only be approved if the consent authority is satisfied that an appropriate contributions mechanism is in place over the land to which the DA applies.

It is the view of Council officers that this approach is not satisfactory, especially noting that:

- A key premise of the identification of this area as potential urban land within Council's Housing Strategy and LSPS was that the land be dealt with holistically, from a master planning perspective *and* with respect to infrastructure solutions (for example, by way of a VPA or VPAs which cover all land subject to the rezoning). It is now evident that the Proponent is not yet in the position to put forward one consolidated infrastructure solution that is agreeable to all landowners within the Precinct.
- While a contributions plan is a valid method for levying development and delivering infrastructure, this mechanism is *not* an appropriate approach in this instance. Council would be unable to prepare and adopt a Contributions Plan at the same rate as progressing a planning proposal (primarily due to the lengthy delays involved with the IPART process). There is also a high chance of IPART removing items and/or arbitrarily reducing costs to the point where infrastructure items can no longer be delivered and it would be irresponsible to progress with a rezoning without having certainty that the associated infrastructure can realistically be funded and delivered.
- Any Contributions Plan, as proposed by the Proponent, would only generate income from a very small area of land, noting the areas subject to a VPA would be exempt from the CP. This would expose Council to substantial financial risk associated with land value increases and

cost escalations, as there is only a very small amount of development that is actually going to be levied under the Plan and therefore limited ability to adjust contribution rates to reflect changing costs over time. This scenario would be highly likely to lead to end of plan shortfalls and unfunded infrastructure.

- Satisfactory arrangements clauses have not previously been utilised for local infrastructure under Council's control, but rather have been included for the purposes of regional infrastructure that is the responsibility of the State Government. In these circumstances, the NSW Planning Secretary is usually nominated as the concurrence authority, to be satisfied that appropriate infrastructure arrangements are in place, prior to approving subsequent development applications. It is highly unlikely that DPHI will support the inclusion of a satisfactory arrangements clause where Council is the specified concurrence authority. This approach again creates a risk where Council does not have a determining role in ensuring that infrastructure is sufficiently accounted for at no cost to Council.

While Council officers do not agree that the Proponent's "layered" approach to infrastructure contributions is appropriate or viable, there are other options which may be more suitable to resolve this issue:

1. Decline the VPA offers and prepare a new CP for the entire West Gables Precinct, noting that the progression of the planning proposal would need to be deferred until such time as any draft contributions plan has been prepared, exhibited, assessed by IPART, reviewed by the Minister and subsequently adopted by Council, at which point Council would have certainty of the final infrastructure list that it is able to fund and deliver and as a result, the extent of growth that can be serviced within the Precinct as a result of the rezoning. This is not the preferred approach as it would be likely to delay the ability to progress with the planning proposal for between 12-24 months, based on previous experiences with the IPART review process.
2. If the planning proposal progresses to Gateway, further discussions can occur with the Proponent and all landowners, with a view to negotiating VPAs that cover *all* land within the Precinct and the delivery of *all* necessary infrastructure. If Council indicates support for progressing with the planning proposal, contingent on resolving infrastructure issues, this may provide greater clarity to all landowners and parties with respect to the importance of properly resolving this issue. This would be the ideal/optimal outcome.
3. Amendments to the Proponent's VPA offers, to state that any funding deficit encountered by Council associated with the provision of infrastructure within the Precinct would be reimbursed to Council by the Proponent. This would then allow Council to progress with the Proponent's suggested approach, albeit with a funding "guarantee" that Council and the community would not be liable for any funding shortfalls that may result from reliance on a Contributions Plan as the mechanism for the remaining landholdings within the Precinct.
4. Council progress with assessment of the planning outcomes with respect to the whole area, however only proceed to finalisation of the planning proposal with respect to areas that have an infrastructure contributions mechanism in place at the time of finalisation. This would still ensure a master planned approach with respect to outcomes in the Precinct, however practically would only allow for the land in the Proponent's ownership to progress to finalisation (subject to further negotiations and pending Council's acceptance of the VPA offers). In contrast, finalisation of the rezoning of the other landholdings in the Precinct (or "switching on" of the land for redevelopment) would be deferred at the finalisation stage, until such time as a similarly appropriate infrastructure mechanism is in place for that land.

It may well be the case that progression of the planning proposal to Gateway Determination provides the major developers with increased confidence to progress with taking control of the remaining land parcels, or obtaining landowners consent to lodge a VPA letter of offer on their behalf, which would then increase the likelihood of being able to achieve the optimal outcome of Option 2 above, whereby VPA/s could be put in place with respect to all landholdings subject to the rezoning.

At this point in the process, there is a need to resolve a number of issues with respect to Biodiversity, Open Space and Traffic and Transport, which can only occur if the planning proposal progresses to Gateway Determination and Council officers and the Proponent can then engage directly with DCCEEW and TfNSW. The outcomes of this would refine the final infrastructure list required to support development in the Precinct. During this time, further discussions and negotiations can also occur with the Proponent and landowners to work towards achieving one of the Options above. It is appropriate for Council to allow the planning proposal to progress to Gateway Determination, during which time this further work and consultation can occur and following which a further report will be presented to Council with a view to more fully resolving the infrastructure contributions mechanism. Should this be unable to be achieved and an infrastructure mechanism is unable to be put in place that deals with all land and all infrastructure, it is unlikely that the planning proposal would be suitable to ultimately proceed to finalisation.

**Table 2**  
Overview of Matters for Consideration

**CONCLUSION**

The planning proposal demonstrates adequate strategic and site-specific merit to warrant progression to Gateway Determination, noting that the ultimate progression of the planning proposal to finalisation would be entirely contingent on the resolution of outstanding issues relating to biodiversity certification and proposed open space as well as infrastructure contributions, as detailed within this report. It is recommended that if a Gateway Determination is received, these matters will need to be further resolved and ultimately the subject of further reporting to Council prior to public exhibition of the planning proposal.

**ATTACHMENTS**

- 1) Council Officer Assessment Report – Local Planning Panel – 17 April 2024 (41 pages)
- 2) Local Planning Panel Minutes – 17 April 2024 (3 pages)
- 3) Council Officer Pre-lodgement Feedback Letter – 20 May 2022 (5 pages)
- 4) Advice from DCCEEW dated 23 May 2024 (2 pages)
- 5) History of the Planning Proposal (2 pages)
- 6) Infrastructure to Support Planning Proposal (1 page)



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## ITEM-2

**LOCAL PLANNING PANEL – PLANNING PROPOSAL – WEST GABLES (1/2024/PLP)**

ATTACHMENT 1

**THEME:** Shaping Growth**MEETING DATE:** 17 APRIL 2024

LOCAL PLANNING PANEL

**GROUP:** SHIRE STRATEGY**AUTHOR:** SENIOR TOWN PLANNER

DRAGANA STRBAC

**RESPONSIBLE OFFICER:** **MANAGER – FORWARD PLANNING**  
NICHOLAS CARLTON**PURPOSE**

This report presents the planning proposal for the remaining isolated areas of rural land located between the Box Hill Precinct and Gables Precinct, along Old Pitt Town Road, Boundary Road and Cataract Road, Gables (1/2024/PLP) to the Local Planning Panel (LPP) for advice, in accordance with Section 2.19 of the *Environmental Planning and Assessment Act 1979* (the Act).

The planning proposal seeks to rezone the land from RU6 Transition to part R2 Low Density Residential, R3 Medium Density Residential and RE1 Public Recreation and amend corresponding minimum lot size controls, consistent with the surrounding land. It aims to complete the urban development footprint in this locality and will facilitate a residential development outcome comprising 1,260 low and medium density dwellings, open space areas, riparian corridors and land reserved for biodiversity conservation.

**RECOMMENDATION**

1. The planning proposal is capable of demonstrating adequate strategic and site-specific merit to warrant progression to Gateway Determination, subject to the following matters being resolved to Council's satisfaction:
  - a) Achievement of minimum lot sizes of less than 300m<sup>2</sup> should continue to be managed under the existing provisions within Clause 4.1B of The Hills Local Environmental Plan, which allow for a minimum lot size of 240m<sup>2</sup> (rather than 225m<sup>2</sup> as requested by the Proponent), consistent with other areas of The Shire and adjoining Gables development.

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- b) Land intended to be dedicated to Council for open space should not contain proposed 'avoided areas' (for the purpose of Biodiversity Certification). This may increase the requirement for the purchase of ecosystem and species credits.
- c) The Proponent's application for Biodiversity Certification should be updated to account for 1 b) above and then lodged and progressed DCCEEW. The Proponent will need to obtain Biodiversity Certification of the land, prior to the finalisation of any rezoning.
- d) The proposed site-specific clause should be revised to give greater certainty with respect to how the total yield of 1,260 dwellings will be achieved across the various lot size ranges proposed. This should be resolved prior to the planning proposal being reported to Council for determination.
- e) The draft site-specific Development Control Plan prepared by the Proponent, which amends the existing Part D Section 17 of the Hills DCP – Box Hill North Precinct to incorporate the subject land be amended by Council officers to Councils satisfaction and as outlined in this report and reported to Council concurrent with the planning proposal.
- f) Establishment of a mechanism that secures adequate and proportionate contributions from future development of the subject land to address the demand for new local infrastructure arising from the proposal. This should be resolved prior to the planning proposal being reported to Council for determination.
- g) An updated SIDRA analysis should be prepared as part of any public agency consultation with TfNSW, should a Gateway Determination be issued for the proposal.

<b>Proponent</b>	Stockland Development Pty Ltd Allam Homes
<b>Owners</b>	Mr J Sultana & Mrs J Sultana Mr J Zahra & Mrs E Zahra Mr L Iemma & Mrs L Iemma Mr D Regoli Mrs P M D'Anastasi Southern Cross Care (NSW & ACT) Limited Mr T Dimech & Mr P Dimech Mrs C M Galdes & Mr G Galdes AW Bidco 4 Pty Limited Mr L Cremona & Mrs F Cremona Mr A Durant Mr P A Bonnici & Mrs A Bonnici Mr G Zlomislic & Mrs M Zlomislic Mrs T Dimech & Mr P Dimech Mr T Els & Mrs A M Els
<b>Planning Consultant &amp; Urban Designer</b>	Urbis Pty Ltd
<b>Geotechnical Consultant</b>	PSM (Pells Sullivan Meynink)

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<b>Site Investigation Consultant</b>	JBS&G Australia
<b>Traffic Consultant</b>	Positive Traffic Pty Ltd
<b>Flooding &amp; Infrastructure Servicing Consultant</b>	Enspire Solutions Pty Ltd
<b>Biodiversity &amp; Aboriginal Heritage Consultant</b>	Eco Logical Australia Pty Ltd
<b>Bushfire Consultant</b>	Blackash Bushfire Consulting Pty Ltd
<b>Infrastructure Delivery Consultant</b>	GLN Planning
<b>Site Area</b>	78 Hectares
<b>List of Relevant Strategic Planning Documents</b>	Greater Sydney Region Plan Central City District Plan Local Strategic Planning Statement and Supporting Strategies Section 9.1 Ministerial Directions
<b>Political Donations</b>	None disclosed

## 1. THE SITE

The proposal applies to a large area of approximately 78 hectares comprising 16 land parcels that are in individual private ownership. The site is the entire remaining area of RU6 Transition rural land located between the Box Hill Growth Centre Precinct and the Box Hill North (Gables) Precinct, with the exception of one parcel of land that contains the Box Hill Zone substation and is owned by Endeavour Energy.

The site is surrounded by low and medium density residential development to the north, east and south and rural development on larger lot sizes to the west (within Hawkesbury Local Government Area). The subject site and the surrounding context are shown outlined in Figure 1 below.

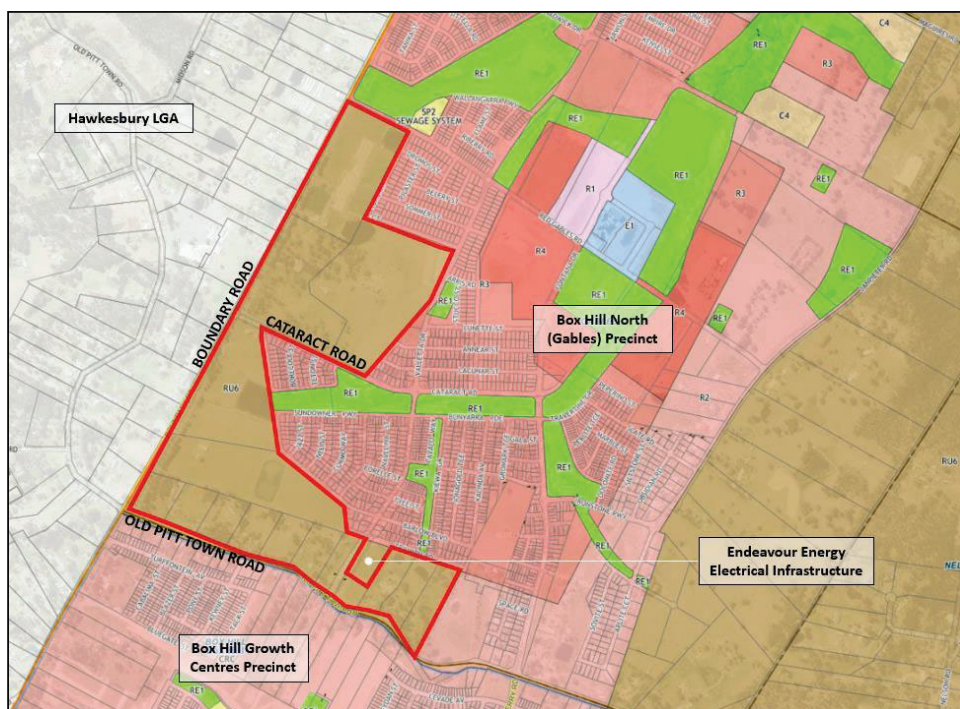


Figure 1

Aerial view of subject site (outlined in red) and surrounding locality

## 2. DESCRIPTION OF PLANNING PROPOSAL

The planning proposal was lodged on 14 August 2023. Following initial feedback from Council, an amended proposal was received on 15 March 2024. The proposal seeks to expand the Gables Precinct and facilitate residential development comprising approximately 1,260 low and medium density dwellings, open space areas and riparian corridors.

The residential lots are proposed to be delivered within 3 categories:

- 'Small Residential Lots' <300m<sup>2</sup>;
- 'Standard Residential Lots' between 300m<sup>2</sup>-700m<sup>2</sup>; and
- 'Low Density Residential Lots' >700m<sup>2</sup>.

A comparison between the existing and proposed controls under The Hills Local Environmental Plan 2019 (LEP 2019) is provided in the table below.

Planning Control	Existing	Proposed
Land Zone	RU6 Transition	R2 Low Density Residential R3 Medium Density Residential RE1 Public Recreation
Height of Building	10m	10m
Minimum Lot Size	2 ha	450m <sup>2</sup> and 700m <sup>2</sup>
Floor Space Ratio	N/A	N/A
Local Provision	N/A	Small lot minimum lot size of 225m <sup>2</sup> .

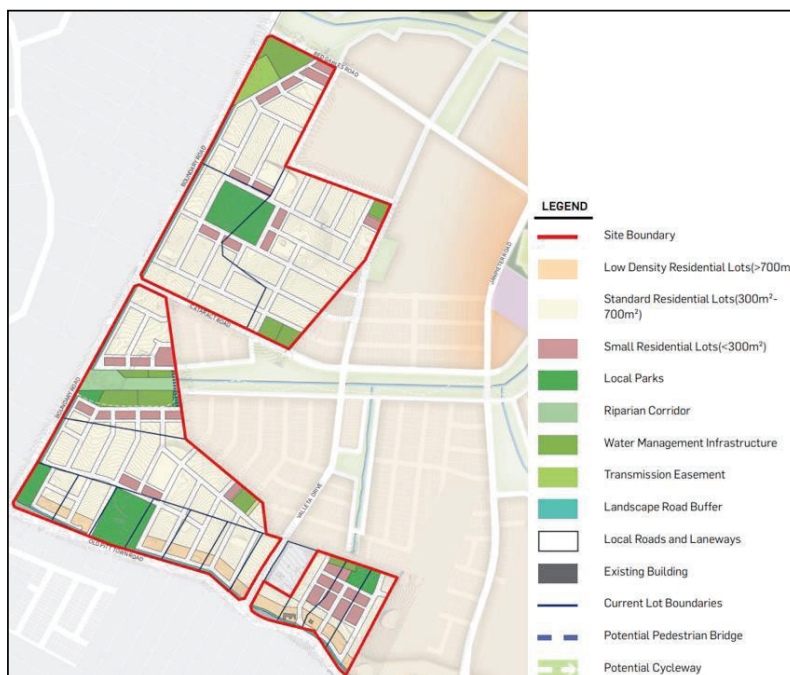
Table 1

Existing and proposed development controls under LEP 2019

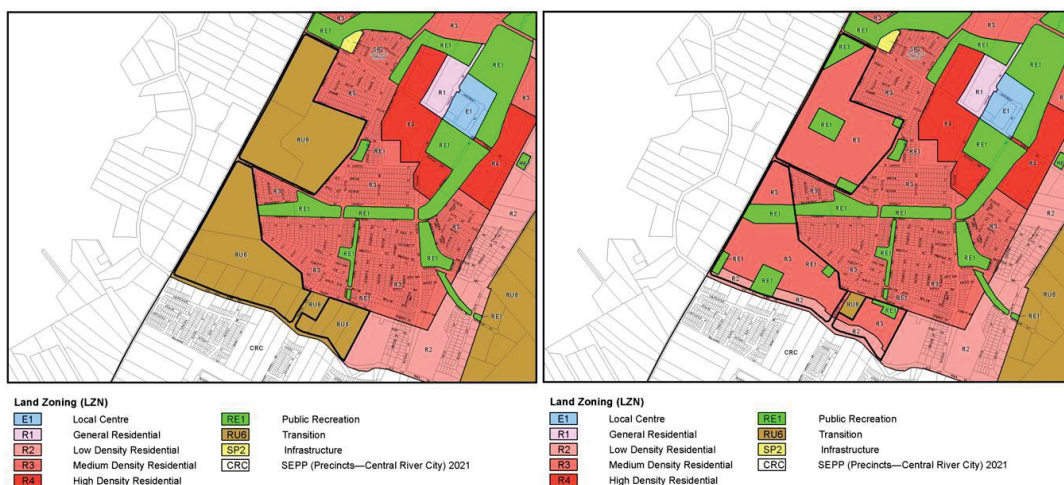
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The indicative layout plan and proposed LEP map amendments are shown below. The indicative layout plan demonstrates the future road network, location of land uses and potential distribution of the different sized residential lots (with smaller lots and some rear lane terrace housing generally proposed to be located fronting riparian corridors and local parks).



**Figure 2**  
Indicative Layout Plan



**Figure 3**  
Existing (left) and proposed (right) land zone map





**Figure 4**  
Existing (left) and proposed (right) minimum lot size map

#### Development Control Plan

In support of the planning proposal, the Proponent has prepared draft amendments to the Hills Development Control Plan 2012 Part D Section 17 to guide development outcomes on the subject site and ensure that the intended built form and desired future character are achieved, consistent with the outcomes currently present in the Gables.

It is proposed that the redevelopment of the subject land will primarily rely on the existing set of controls within this section of the DCP which currently apply to the Gables, however a number of site-specific controls and adjustments have been proposed to reflect the proposed indicative layout plan and design controls for different housing typologies. These design controls include lot size dimensions, setbacks and building envelope plan design requirements.

Further commentary on the draft DCP and the most appropriate approach to implementing these new site-specific controls is contained within Section 4 (g) of this report.

#### Voluntary Planning Agreement

The planning proposal material includes an Infrastructure Delivery Plan, which sets out preliminary infrastructure servicing requirements for the development, a staging schedule for infrastructure roll out and identifies potential items that may be included within a planning agreement or a contributions plan. A preliminary letter of offer has not yet been submitted by the Proponent however it is understood that it is the intention of the Proponent to submit such an offer and this is currently the subject to ongoing discussions between the Proponent and Council Officers.

It would be necessary for an appropriate infrastructure mechanism (either contribution plan amendment or voluntary planning agreement) to be reported to the Council alongside the planning proposal application so that a decision can be made on both of these related matters concurrently. It is understood that the Proponent intends to pursue a Voluntary Planning Agreement, rather than a Contributions Plan amendment. Infrastructure and potential contributions mechanisms are discussed further in Section 4(i) of this report.

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**3. STRATEGIC MERIT CONSIDERATIONS**

The planning proposal has been assessed having regard to relevant strategic merit considerations as outlined in the following policies:

- a) Greater Sydney Region Plan and Central City District Plan;
- b) Hills Future 2036 - Local Strategic Planning Statement and Housing Strategy 2019; and
- c) Section 9.1 Ministerial Directions.

A discussion on the proposal's consistency with these policies is provided below.

**a) Greater Sydney Region Plan and Central City District Plan**

The following objectives of the Greater Sydney Region Plan and planning priorities of the Central City District Plan are relevant to the subject proposal:

- Objective 1 Infrastructure supports the three cities;
- Objective 2 Infrastructure aligns with forecast growth;
- Objective 10 Greater housing supply;
- Objective 11 Housing is more diverse and affordable;
- Objective 27 Biodiversity is protected, urban bushland and remnant vegetation is enhanced;
- Objective 29 Environmental, social and economic values in rural areas are protected and enhanced;
- Planning Priority C1 Planning for a city supported by infrastructure;
- Planning Priority C5 Providing housing supply, choice and affordability with access to jobs, services and public transport;
- Planning Priority C15 Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes; and
- Planning Priority C18 Better managing rural areas.

The Metropolitan Rural Area is one of four major landscape types used in the Region Plan to categorise land throughout Greater Sydney. It is described as having diverse farmland, mineral resources and distinctive towns and villages in rural and bushland settings. The MRA is recognised for its scenic and cultural landscapes that create a range of attractive visual settings. It is also recognised for its agricultural productivity, recreation and tourism locations and low scale rural residential developments.

The Greater Sydney Region Plan and Central City District Plan seek to protect land within the Metropolitan Rural Area (MRA) from residential development and prevent its conversion to more intensified urban land uses. The Plans specifically state that urban development is not consistent with these values of the MRA, and that there is sufficient land to deliver housing needs within the current urban areas of Greater Sydney.

The subject land is identified within the Region and District Plans as being within the MRA, with the boundary running along Old Pitt Town Road (along the south of the subject site). However, this is largely a result of mapping inaccuracies by the Greater Cities Commission in this particular location, which failed to recognise the Box Hill North (Gables) Precinct urban release area (which is also to the north of Old Pitt Town Road and is similarly shown as being within the Metropolitan Rural Area).

Adjustment of the Metropolitan Rural Area to account for the existing Gables urban release area to the north of the subject land, would lead to inclusion of the subject land as *within* the Urban Growth Boundary. As detailed further in Section 3 b) below, Council recognised this mapping anomaly and sought to rectify this in its own identification of the Metropolitan Rural

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Area boundary within its Local Strategic Planning Statement, which was subsequently endorsed by the Greater Cities Commission.

Importantly, the subject land parcels were *not* excluded from the rezoning of Box Hill North (Gables) Precinct due to any strategic reasons, identified values of the MRA or site-specific constraints. Rather, it is understood that this was a result of inability for the Proponent of the original rezoning to reach commercial agreements with the various landowners for these areas to form part of the owner-initiated rezoning application at that time. As a result, the subject site is a small area of rural zoned land which is wedged between two urban release areas and which was generally intended to be reconsidered for urban rezoning in due course. As such, it is considered that the inconsistency with the Region and District Plan with respect to managing the rural area and preventing the encroachment of urban development is justified in this limited and unique instance.

With respect to housing supply, the Plans identify an additional 750,000 dwellings are required between 2016-2036 to accommodate Sydney's continued strong population growth whilst ensuring housing is provided in a range of types, tenures, and price points to meet the future demand. The District Plan sets a 20-year strategic housing target of 207,500 dwellings for the Central City District. The Hills also has a 5-year housing target from 2016-2021 of 8,550 dwellings, which Council has met and exceeded and is on track to meet its 2021-2026 housing target.

The District Plan also includes housing principles that should be considered in the provision of new housing supply. These include diversity in typology, opportunities to improve amenity, contributing to local character and alignment of infrastructure. The planning proposal will facilitate varied typologies and lot sizes, including dwellings that are unique to the existing Gables Precinct. It also includes opportunities to improve amenity by reserving land for public parks and recreation areas. The proposal will result in redevelopment of an isolated area of rural land situated between two rapidly developing urban release area precincts and would therefore reflect orderly development outcomes and positively contribute to and align with the future local character of the area.

With respect to infrastructure, the Region and District Plans articulate the importance of ensuring that future growth can be accommodated by infrastructure that will meet the needs of the current and future population. The proposed development will be serviced by public transport options and public open space, with local parks and bus stops within short walking distance of dwellings within the subject site. A number of infrastructure upgrades will be required to support the proposed development, including contributions towards active open space and traffic and transport infrastructure upgrades. The proposal has the potential to be consistent with these objectives of the Plan, subject to further ongoing discussions with the Proponent with respect to their infrastructure offer.

While the proposal has not yet demonstrated that the development can be appropriately serviced by infrastructure, these discussions are ongoing and it is considered that the proposal does have the potential to be consistent with the objectives of aligning infrastructure with growth, subject to the conclusion of these discussions and resolution of issues detailed in Section 4 of this report. Council would need to be satisfied of this at the time of determining the planning proposal.

**b) Hills Future 2036 – Local Strategic Planning Statement and Housing Strategy 2019**

In contrast to the Region and District Plans, Council's adopted Local Strategic Planning Statement (LSPS) recognises the urban zoning of the Gables Precinct and as a result, adjusts the location of the Urban Growth Boundary (UGB) to run along the northern edge of the Box Hill North (Gables) Precinct. This means that under Council's LSPS, both the Gables Precinct

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and the isolated area of remaining rural land (this subject site) are shown as being *within* the urban growth area of The Shire. The subject site, whilst zoned for rural purposes, is not located within any of the identified Agricultural Cluster Zones throughout the Shire.

The Urban Growth Boundary reinforces the objectives of the Region and District Plan to limit housing supply and intensified development to within the confines of the existing urban area. In this instance, the strategy appropriately identifies the Gables precinct and the subject residual rural land as being within the boundaries of the Shire's urban area. Importantly, the Greater Cities Commission endorsed Council's LSPS, which contains this adjusted MRA boundary (in comparison to the boundary depicted in the Region and District Plans).

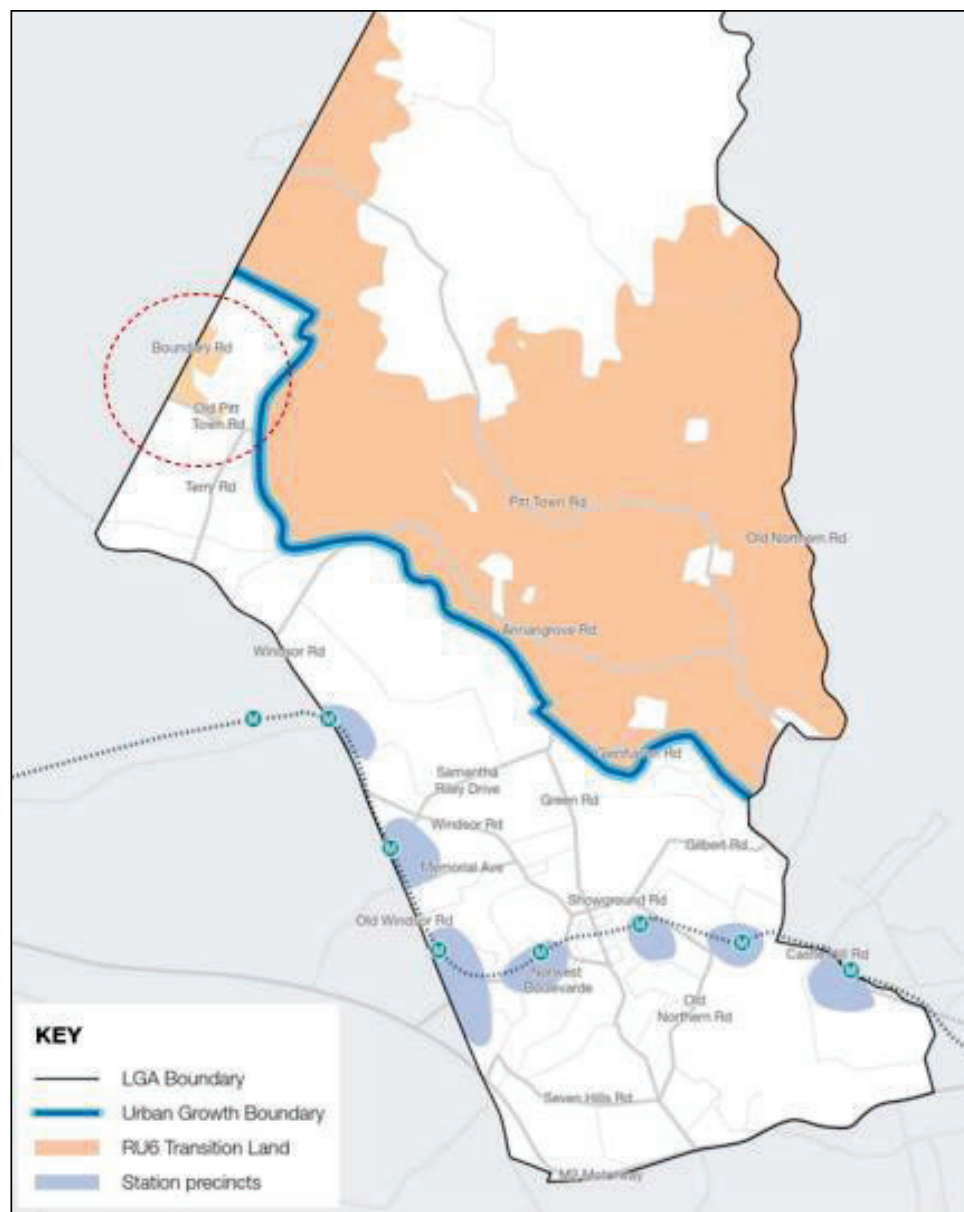


Figure 5

Urban Growth Boundary per Council's LSPS and Housing Strategy (with subject site circled red)

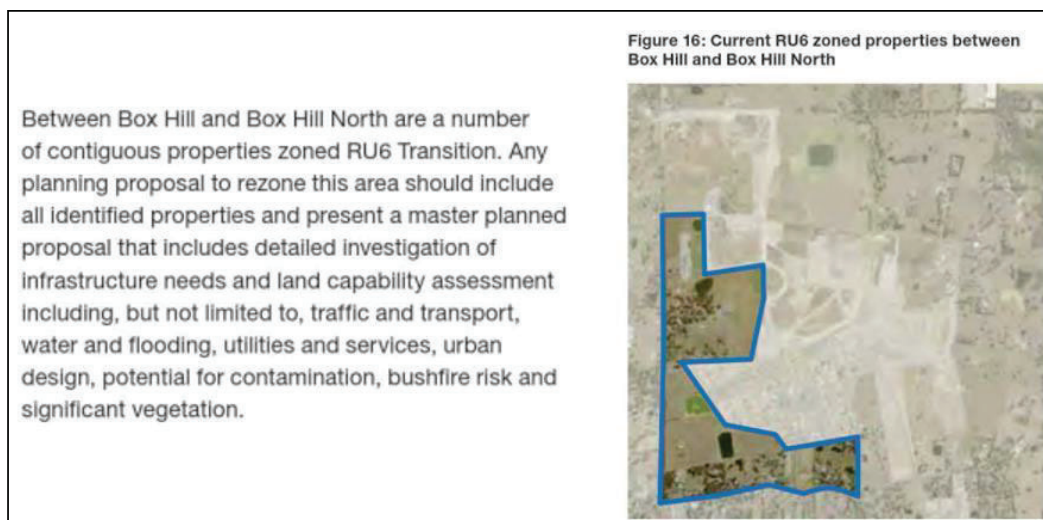


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Council's adopted Housing Strategy (which is a supporting strategy of the LSPS) acknowledges that there is merit in considering urban development on the subject site and this area of land is the *only* area of rural zoned land within the Shire which is identified as having potential for urban development and additional housing within the strategic framework, primarily on account of its isolated location wedged between two urban growth precincts.

Council's Housing Strategy identifies the need for any rezoning of this land to be considered as part of a master-planned approach, which relates to the entirety of this area as one single application and proposal. An extract of the relevant section from Council's Housing Strategy is provided below for reference.



**Figure 6**  
Extract from Council's Housing Strategy

The planning proposal is consistent with Council's LSPS and satisfies the criteria identified within Council's Housing Strategy as it includes all identified land parcels between Box Hill and the Box Hill North (Gables) Precincts, includes the detailed investigations of the land's capability for development (further discussed within Section 4 of the Report) and seeks to enable a master planned and holistic rezoning of these remaining rural land areas wedged between the two urban release areas. The urban development of this area is a logical, orderly and expected expansion of the existing Gables Precinct to complete the urban development footprint in this locality.

### c) Section 9.1 Ministerial Directions

The following Section 9.1 Ministerial Directions are applicable to the subject planning proposal:

- 4.1 Flooding;
- 4.3 Planning for Bushfire Protection;
- 4.4 Remediation of Contaminated Land;
- 5.1 Integrating Land Use and Transport;
- 6.1 Residential Zones; and
- 9.1 Rural Zones.

A discussion on consistency with the Ministerial Directions are provided below.



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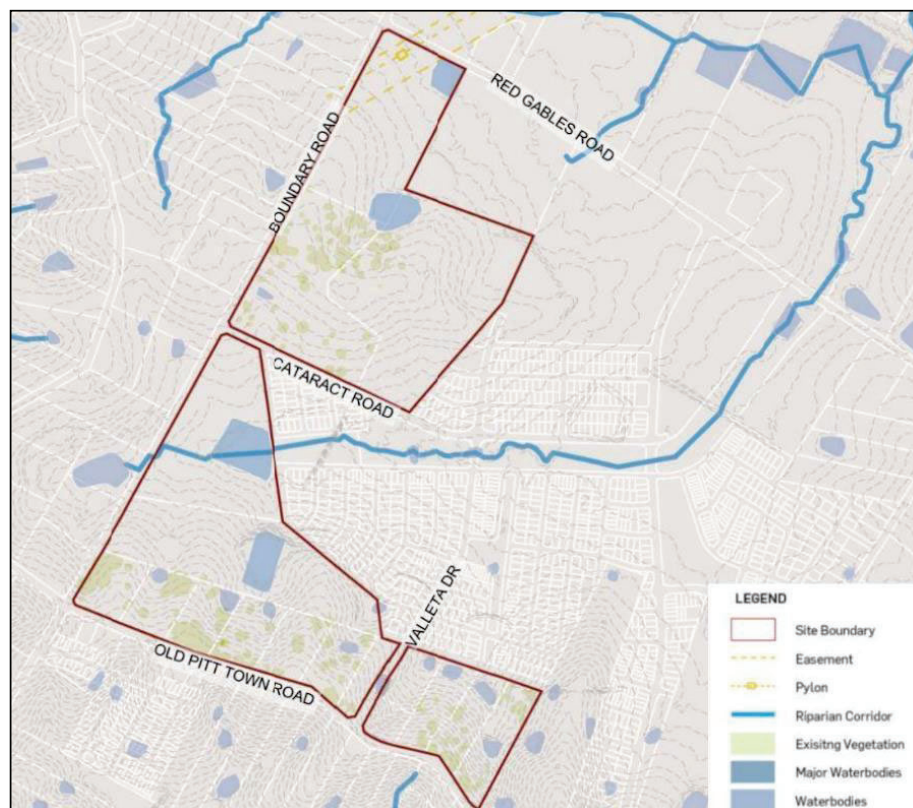
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▪ *Direction 4.1 Flooding*

The purpose of this Direction is to ensure that planning proposals are consistent with the Government's flood related policies and consider potential flood impacts. The Direction applies to all planning proposals that seek to create, alter or remove a zone or provision affecting flood prone land. A transitional provision has recently been introduced to this Ministerial Direction to reflect the new Flood Risk Management Manual 2023 which replaces the Floodplain Development Manual 2005. In order to demonstrate consistency with this Direction, the planning proposal is required to address the principles and guidelines of the Flood Risk Management Manual 2023.

The subject site is identified as flood-controlled land under The Hills DCP 2012 and as such, the provisions of the NSW Flood Prone Land Policy and Flood Risk Management Manual 2023 are applicable.

An existing first order watercourse enters the subject site from the west and continues east into Gables and eventually north into the Cataract Creek tributary. This watercourse has been formalised downstream into a riparian corridor as part of the Gables development. There are five existing ridgelines that define the major catchments of the site which convey stormwater runoff to several large existing farm dams. These large farm dams are located both online and offline to the existing watercourse. There are also a number of smaller farm dams dispersed throughout the subject site. A map showing the subject site along with the dams and watercourse that drains through the site is shown in the following figure.



**Figure 7**  
Hydrology Map

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In recognition of the flooding constraints on the site, an Integrated Water Cycle Management and Flood Management Strategy was submitted with the proposal (provided as Attachment 5 to this report). This Strategy has been informed by previous strategies and assessments undertaken for Gables, directly downstream of the subject site, at the time of its rezoning application in 2013 and later in 2019.

The Strategy considers the impact of the proposal on the site and the broader catchment. It concludes that the proposed development will not produce any significant increases in flood levels over the properties upstream or downstream in the 1% AEP and 39.35% AEP flood events, subject to the implementation of the following localised works to address runoff and water quality:

- Removal of existing farm dams and establishment of riparian corridor where existing online dams are located;
- Detention basins for each of the seven catchments to manage increased stormwater runoff in the post development case; and
- Water quality controls including bio-retention and proprietary devices for each of the seven catchments.

The Strategy also proposes the following stormwater management measures:

- One (1) online storage infrastructure provided within the proposed riparian corridor;
- Five (5) offline detention basins;
- Six (6) water quality basins; and
- Ten (10) gross pollutant traps.

A number of the basins within the “West Gables” development are proposed to discharge directly into the Gables network directly east of the site. These discharge points sit upstream of the water quality infrastructure for Gables and therefore there is an opportunity to utilise redundancies in downstream control measures to reduce treatment requirements for West Gables and provide an optimised treatment train for the wider consolidated precinct.

As part of the lodgement of any future development application, a flood study report will also be required to ensure that:

- The development will not result in the increase in flood levels in downstream areas, including the Gables area, the main lake, and the downstream of the Gables.
- Flood mapping, including flood inundation extents, hazard mapping and flood planning areas are established.
- Existing farm dams are removed and changes to spillway levels of existing farm dams are supported using surveyed details.

In March 2024, the Proponent submitted an additional information package, which includes a Flood Modelling Assessment for Council’s preliminary consideration and assessment. The Assessment undertakes a review of existing modelling and consents, proposed design layouts and surfaces and amends the TUFLOW model to assess the impacts of the development design from the top of the upstream catchment of Old Pitt Town Road to approximately 2km downstream of the existing Gables Lake and detention basin.

It is noted that the Assessment includes the modelling of existing farm dams as full to their lowest spill level and also includes on-site detention in order to offset the removal of a farm dam upstream of Boundary Road and replicate existing conditions. The Flood Modelling Assessment concludes that it is feasible to incorporate detention within the development to mitigate downstream impacts on the Gables Lake and surrounding properties. It also concludes that the master plan development is able to contain the 1% Annual Exceedance

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Probability (AEP) within the riparian corridors throughout the development, consistent with the previously approved master plan for the existing Gables Precinct.

The Flood Modelling Assessment is currently under assessment by Council to determine the appropriateness of how the flooding characteristics have been modelled. Should the proposal progress and result in any development application in the future, the Proponent's consultant will need to further liaise with Council regarding the modelling approach and inputs based on the already established base modelling scenario for the broader Gables area.

The proposal is considered to be acceptable with respect to this Ministerial Direction, noting there is already an established baseline modelling scenario for the broader Gables area that will need to be relied upon for future flood modelling work relating to development of the subject land. The subject proposal also seeks to utilise similar principles to Gables in relation to co-location of land zoned RE1 Public Recreation across the main creek tributaries.

- *Direction 4.3 Planning for Bushfire Protection*

The purpose of this Direction is to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas. Parts of the subject site adjoin land mapped as Category 3 Medium Risk and Category 2 Lowest Risk. These areas are largely located within the areas of established cleared and managed lands, or broken up by dwellings, sheds, and roads, and therefore do not present a continuous unimpeded bushfire hazard.

A Bushfire Strategic Study prepared by Blackash Consulting was submitted with the planning proposal (Attachment 10) and concludes that the subject site meets the requirements for Planning for Bushfire Protection 2019 and does not rely on alternative or performance-based solutions to achieve compliance. Vegetation within the site is limited to a narrow band of low-risk riparian vegetation as well as two isolated pockets of passive open space and grassland areas. They therefore present as low bushfire risk. Similarly, an assessment of the effective slope throughout the area is less than 5 degrees, which would not significantly influence bushfire travel behaviour.

Substantial bushland areas approximately 1km to the north and northeast of the site have been impacted by bushfires in the past, however the previous fire history does not suggest concern for the site or the proposed development within. There are sufficient existing connections to the arterial and local road networks that service the region and are capable of accommodating the evacuation of residents and concurrently responding emergency services if required. The Bushfire Strategic Study also concludes that the site has sufficient room to provide compliant APZs and practical building envelopes across the site.

As such, it is considered that the proposed development is capable of meeting the requirements of Planning for Bush Fire Protection 2019 and achieving compliance with this Direction. Should the planning proposal progress to Gateway Determination, the NSW Rural Fire Service will be further consulted with respect to bush fire risk.

- *Direction 4.4 Remediation of Contaminated Land*

The purpose of this Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are adequately considered as part of planning proposals, where relevant.

The proposed rezoning of the site to residential requires consideration of potential contamination under the Resilience and Hazards SEPP and Local Ministerial Direction. The proponent submitted a Detailed Site Investigation, dated December 2022, which found that

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the site does not contain widespread contamination and is suitable for future residential land use. While some isolated impacts will require future management, these are typical of the site's history of low-intensity agricultural uses and can be readily dealt with as part of a future development application.

As such, it is considered that the proposal is satisfactory with respect to this Direction noting the need for remediation works to be undertaken as required, as part of a future development application for the land.

- *Direction 5.1 Integrating Land Use and Transport*

This Direction aims to improve access to housing, jobs, and services by co-locating development with walking, cycling and public transport options.

The subject site is considered a reasonable location for low and medium density housing given the relatively close proximity to Gables Town Centre, the proposed expanded bus servicing network (with all dwellings being located within 400m walking distance to local/regional bus services), and other nearby services including a high school and future primary school. Further, it will facilitate the delivery of a local road network and walking and cycle paths that will service local traffic and integrate with Gables and surrounding transport networks. The urban development of this area is a logical expansion of the existing Gables Precinct to complete the urban development footprint in this locality.

- *Direction 6.1 Residential Zones*

The objective of this Direction is to encourage a variety and choice of housing types, to provide for existing and future housing needs, and make efficient use of infrastructure and minimise the impact of residential development on the environment and resource lands.

The planning proposal seeks to minimise environmental impacts by identifying native vegetation to be conserved within future public open space areas. The planning proposal will facilitate additional dwellings through increased residential density and will broaden the choice of building types available through the provision of a range of lot sizes and resulting dwelling typologies that would contribute to the provision of more 'missing middle' housing product within the Shire.

The planning proposal is considered to be a logical extension of Gables that builds on the established character of the area and will contribute to increased choice of housing options. It is also proposed to be serviced by augmentation to existing infrastructure services in the locality.

Further information with respect to servicing the development is provided within Section 4 f) of this report.

- *Direction 9.1 Rural Zones*

Direction 9.1 Rural Zones seeks to protect the agricultural production value of rural land. The direction requires that a planning proposal must not contain provisions that will rezone land from rural to residential or that will increase the permissible density of development within a rural zone. A planning proposal may be inconsistent with this Direction if it is justified by a strategy approved by the Planning Secretary which gives consideration to the objectives of this Direction and identifies the land which is the subject of the planning proposal.

The planning proposal is inconsistent with this Direction as it seeks to rezone rural land for residential purposes and increase the permissible density on the land. The studies that have



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been completed and submitted by the Proponent indicate that the land subject to this planning proposal is capable of accommodating urban development in the form proposed, following the resolution of outstanding infrastructure servicing issues (as discussed further within this report). It is noted however that these studies have not been endorsed by the Planning Secretary.

However, the proposal's inconsistency *is* justified by Council's Housing Strategy, which is a supporting strategy of the Local Strategic Planning Statement and which has been endorsed by the Department of Planning in July 2021.

As discussed earlier in this report, the subject land is specifically identified in Council's Housing Strategy as the only rural land that is suitable for rezoning for more intensified urban residential purposes. This is due to its location below the Urban Growth Boundary within the LSPS and Housing Strategy, as well as the site's isolated location between the two large urban release areas of Box Hill and Gables Precincts. No other land is identified in Council's strategies for this purpose, and the implementation of the Urban Growth Boundary seeks to protect and reinforce the importance of the Metropolitan Rural Area, as identified in the Region and District Plans.

As such, it is considered that the proposal's inconsistency with this Direction is wholly justified by virtue of a strategy which has been endorsed by the Department of Planning, Housing and Infrastructure and would not set a precedent for other rural land elsewhere to be rezoned throughout the Shire.

- *Direction 9.2 Rural Lands*

Similarly, Direction 9.2 Rural Lands also seeks to protect the agricultural production value of rural land, facilitate orderly and economic use and development of rural lands for rural purposes, promote the social and economic values of rural lands and ensure their ongoing agricultural viability, and minimise potential land fragmentation or land use conflicts in rural areas, particularly between residential and other rural uses. It also seeks to support the NSW Right to Farm Policy and requires planning proposals to be consistent with any applicable strategic plan endorsed by the Planning Secretary, including any applicable Local Strategic Planning Statement.

Under this Direction, proposals need to consider the agricultural significance of the land, identify and protect environmental values and the physical constraints of the land. Proposals that change the existing minimum lot size must demonstrate that it will minimise land fragmentation and land use conflicts and will not adversely affect the operation and viability of existing and future rural land uses.

While the planning proposal would result in the loss of rural land that could potentially be utilised for agricultural purposes, it would result in improved land use management through the minimisation of land use conflicts between rural and residential land. The subject site is an isolated pocket of rural land between two large urban release areas. As such, the retention of this remnant rural land surrounded by urban development is not prudent land use management and has the potential to create land use conflicts. This land would be highly undesirable for future agricultural purposes or investment, given it is surrounded by urban release areas.

While there are a small number of active agricultural practices on nearby land within the Hawkesbury Shire LGA, the proposal would only marginally reduce the distance between these properties and the proposed residential dwellings. Furthermore, planned future dwellings within the existing Box Hill and Gables release areas are already permitted in closer proximity to some of these agricultural practices than would result from this planning proposal.



As such, it is considered that the loss of rural land resulting from the planning proposal is considered justified. Further, the application is consistent with this Direction through its identification and preservation of conservation areas, as well as riparian and creek lines to be preserved as drainage corridors throughout the site. The proposal is also consistent with Council's adopted Local Strategic Planning Statement and supporting Housing Strategy, which was endorsed by the Department of Planning and specifically identifies the subject land for conversion to urban residential development.

#### **4. SITE SPECIFIC MERIT CONSIDERATIONS**

The planning proposal requires consideration of the following site-specific matters:

- a) Traffic and Transport;
- b) Stormwater and Flooding;
- c) Ecology;
- d) Open Space;
- e) Proposed Planning Mechanisms;
- f) Development Control Plan;
- g) Servicing Capacity; and
- h) Local Infrastructure Demand and Funding Mechanisms.

##### **a) Traffic and Transport**

###### Road Network

The Indicative Layout Plan (ILP) for the subject site includes a series of new connecting local roads to service the new release area. This new network will integrate with the planned and existing road network for the broader Gables Precinct which surrounds the subject site, with linkages to Cataract Road, Red Gables Road and Haden Road, as well as Sundowner Parkway and Bloomsdale Circuit on either side of the creek corridor running through the site. The proposed road layout is shown in the figure below.



**Figure 8**  
Connections to existing road network

There are no proposed new direct road intersections with Boundary Road or Old Pitt Town Road, which will assist in managing traffic flows along these key regional routes. There are also a number of future upgrades that will be undertaken along Boundary Road and Old Pitt Town Road that will limit direct access points off these roads into the site. As such, the Indicative Layout Plan demonstrates an internal road layout with a landscaped road buffer between Boundary and Old Pitt Town Roads and the new collector roads within the proposal area generally accessed via the planned internal road network of the Gables Precinct. This is shown in an extract of the Indicative Layout Plan below.

**Figure 9**

Proposed landscape road buffer adjoining sub-arterial roads

There are some concerns with the proposed laneways at the rear of the small lot housing outcomes. Council has difficulty with the collection of waste from rear laneways that do not have an adequate design to accommodate waste vehicles and space for waste collection to occur. Further, the urban design outcome of the rear lanes is often poor, with minimal landscaping, difficulties with maintenance and compromised private open space outcomes. It is recommended that the road layout plan be amended to remove the rear laneways and include lots with front loaded access only. This would comprise alterations to the draft amendment to the DCP which is discussed in Section 4(f) of this report.

Generally, the proposed internal road layout is considered to result in an acceptable outcome, that facilitates orderly development and minimises impact on traffic flows within the broader regional road network. The proposal road layout integrates appropriately with the planned and existing road network within the surrounding Gables Precinct and demonstrates a logical completion to the planned road network for the urban footprint of this locality.

#### Traffic Generation

The Proponent has provided a Parking and Traffic Study prepared by Positive Traffic Pty Ltd. The study examines existing road network conditions (including peak hour traffic volumes and the operation of major approach roads and critical intersections) and considers the potential impact of 1,300 additional dwellings within the precinct.

The Traffic Study also reviewed all current public and draft traffic modelling assessments for the surrounding precincts of Box Hill, Box Hill Industrial and Gables Precincts, and provides an updated assessment to account for the additional yield approved in these Precincts since they were originally rezoned, along with the proposed additional 1,300 dwellings that will be facilitated by the subject planning proposal. The modelling takes into account the majority of planned road and intersection upgrades within the locality associated with the Gables and Box

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Hill development areas (and respective contributions plans and voluntary planning agreements).

The traffic study indicates that when all growth to 2036 within these Precincts is factored in for the intersection of Boundary Road and Old Pitt Town Road, the proposed rezoning of the subject land to accommodate up to 1,300 dwellings would worsen the intersection's performance in the AM peak from Level of Service C to Level of Service D. The performance of the intersection of Old Pitt Town Road and Valletta Drive in the AM peak in 2036 will be worsened from Level of Service D to Level of Service F as a result of the proposed rezoning. The proposed development would also increase wait times at the intersections of both Boundary Road / Red Gables Road and Boundary Road / Cataract Road, however the overall performance of these intersections would not be worsened from Level of Service A and B respectively in the AM peak in 2036, when all other growth in the area is factored in.

With respect to the PM peak, the planning proposal would worsen the anticipated 2036 Level of Service for the intersections of Boundary Road / Old Pitt Town Road from Level of Service C to Level of Service D. The planning proposal will not worsen the anticipated 2036 Level of Service for the Boundary Road / Red Gables Road intersection although the rezoning will result in a minor increase in wait times at this intersection. It is noted that the intersection of Boundary Road / Red Gables Road will operate at a failing Level of Service E in 2036 both with and without the proposed rezoning of West Gables. The proposed rezoning will worsen the anticipated 2036 Level of Service for the intersections of both Boundary Road / Cataract Road and Old Pitt Town Road / Valletta Drive from Level of Service B to Level of Service C.

In response to these findings, the Proponent has invested in concept designs (including concept intersection designs, signals warrant assessment and an indicative cost schedule) for further traffic upgrades in the locality which respond to the above impacts, to enable further discussions with Transport for NSW and inform the preparation of a VPA that would result in traffic upgrades that mitigate these impacts.

In undertaking a review of the existing and draft traffic models for the surrounding precincts, some of the intersection assumptions utilised in the Proponent's traffic study have become outdated since further work has been undertaken in consultation with TfNSW. The Proponent will also need to redesign some key intersections to account for upgrades identified in their traffic report, such as the widening of Boundary Road to two lanes in each direction, which has ramifications for the design of its intersection with Cataract Road and Red Gables Road. The Proponent has been requested to provide an updated traffic report that reflects more recent work undertaken for all future upgraded intersection layouts. It is anticipated that updated modelling which accounts for these updated designs would likely identify a lesser extent of adverse impact on levels of service than the current traffic modelling submitted.

The following updates were requested to the traffic report to reflect updated intersection layouts (for planned upgrades) as well as additional upgrades identified within the Proponent's traffic study to specifically address development of the subject land. This should be accompanied by a revised SIDRA analysis which focuses on analysis of these intersections as a network model:

- Upgrade of Fontana Drive, Terry Road and Old Pitt Town Road intersection to signals;
- Upgrade of Valletta Drive, Mt Carmel Road and Old Pitt Town Road intersection to signals;
- Widening of section of Old Pitt Town Road along West Gables Precinct boundary to achieve two lanes in each direction;
- Proposed new road accessing west of Old Pitt Town Road intersection;
- Upgrade of Boundary Road and Old Pitt Town Road intersection to signals;



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- Widening of section of Boundary Road along West Gables Precinct boundary to achieve two lanes in each direction;
- Upgrade of Boundary Road and Cataract Road intersection to account for the upgrade of Boundary Road to two lanes in each direction (revised intersection layout subject to further design); and
- Upgrade of Boundary Road and Red Gables Road intersection to account for the upgrade of Boundary Road to two lanes in each direction (revised intersection layout subject to further design).

The Proponent provided a revised SIDRA model for the Old Pitt Town Road / Boundary Road intersection to reflect the most updated intersection layout. When compared with the original modelling, the results from the revised SIDRA model indicate that the updated intersection would continue to operate at Level of Service C during the PM peak and would operate with improved conditions during the AM peak, from Level of Service D to Level of Service C, as shown in Table 2 below. This therefore means that the planning proposal will not worsen the anticipated 2036 Level of Service for the intersection of Boundary Road / Old Pitt Town Road noting that it currently operates at Level of Service D during the AM peak and Level of Service C during the PM peak.

Intersection	Control	Morning Peak		Evening Peak	
		Av Delay	LOS	Av Delay	LOS
2036 With Development – Original TIA Report					
Boundary Rd / Old Pitt Town Rd	Signals	50.5	D	32.6	C
2036 With Development – Expanded Intersection					
Boundary Rd / Old Pitt Town Rd	Signals	39.4	C	28.9	C

Avg Delay (sec/veh) is over all movements at signals, and for worst movement at priority and roundabouts

**Table 2**  
2036 Weekday AM / PM Intersection Operating Conditions  
(Comparison of Original Modelling and Revised Modelling)

Revised SIDRA models are yet to be provided by the Proponent for the remaining intersections. However, the Proponent has advised that future modelling requirements will not be known for these intersections until such time as Transport for NSW provide further certainty on the intersection upgrade designs. Accordingly, it is expected that if the planning proposal proceeds, further SIDRA analysis would be required in consultation with TfNSW.

A copy of the Parking and Traffic Study submitted with the Planning Proposal and additional information letter has been provided as Attachments 8 and 21 to this report.

It is considered that the proposed upgrades identified above are necessary and appropriate to cater for the increased demand on the road network that will be generated by the planning proposal. While these matters have not yet been resolved in their entirety, further analysis in the form of a revised traffic study and SIDRA analysis will inform ongoing discussions with the Proponent and TfNSW with respect to an appropriate apportionment of funds to be contributed by the Proponent towards these upgrades. The Proponent will need to contribute funding towards some of these upgrades as well as complete some of the works where appropriate.

There is sufficient certainty that any land take required for these proposed upgrades (insofar as they relate to the Proponent's landholdings) can be appropriately accommodated within the subject site and the associated Indicative Layout Plan. Infrastructure delivery, including funding of upgrades to the road network, is further discussed in Section 4 h) of this report.



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Public and Active Transport

The existing transport network includes a number of bus stops located along Boundary Road, Cataract Road and Old Pitt Town Road. The planning proposal proposes an expansion to the existing network to ultimately enable all future residents of the proposed development to be within 400m walking distance to local/regional bus services, however this is subject to approval from TfNSW. Should the planning proposal progress to Gateway Determination, further discussions with TfNSW will occur with respect to the proposed expansion of the bus network.

The planning proposal will also facilitate the delivery of pedestrian and cycle paths that will integrate with the riparian corridor, bushland and parks within the West Gables Precinct and link to and complete the broader active transport network within Gables (including provision of the missing link between Sundowner Parkway and Bloomsdale Circuit).

**b) Stormwater and Flooding**

Previous discussion on flooding is contained within Section 3 c) of this report.

The Proponent has submitted a Flood Management Study as part of their supporting material. The study analyses the impact of the proposed development on stormwater flows and identifies measures for appropriately managing the quantity and quality of stormwater. The study concludes that it is feasible to incorporate detention within the development to mitigate impacts on the Gables Lake and downstream properties. It also concludes that the development is able to contain the 1% Annual Exceedance Probability (AEP) to within the identified riparian corridors through the site, which is similar to the outcomes previously approved as part of the master plan development for the adjoining Gables Precinct.

With respect to flood modelling, a 'baseline' scenario must first be established in order to determine the extent of impact that will result from the proposed development. Given the widespread level of growth that is incrementally occurring throughout Box Hill and Gables and the extent of flood modelling already completed in association with these development areas, a baseline flood scenario and its standard modelling inputs have already been agreed upon and utilised broadly throughout the existing Gables Precinct. The model is periodically reviewed and updated as development rolls out throughout the precinct to reflect the current catchment characteristics.

The Proponent has been liaising with Council's Waterways Team with respect to updates to the baseline scenario. As part of a future development application, Council will require a flood study report and the associated hydrologic and hydraulic modelling files for review purposes. The review and approval of the pre-developed (base case) and post-developed flood models will be undertaken by Council in a staged manner.

In March 2024, the Proponent submitted an additional information package, which includes a Flood Modelling Assessment for Council's preliminary consideration and assessment. This is discussed earlier within this report in response to Section 9.1 Ministerial Direction 4.1 Flooding.

The proposal has demonstrated that flooding impacts will be able to be mitigated throughout the site as part of future development, to a satisfactory extent for this stage of the planning process (planning proposal). The creek line and riparian corridor have been identified as RE1 Public Recreation, along with additional open space for water management infrastructure and local parks. This follows the same land use management approach as applied in the existing

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Gables area and there is sufficient land within the West Gables site to appropriately manage flooding and build in detention infrastructure as needed.

There is adequate certainty, sufficient for the planning proposal assessment stage, that all stormwater and flooding matters will be capable of resolution as part of the future detailed design of the development.

At the development application stage, a flood study report will need to consider the following:

1. All future modelling must ensure that there are no net changes in flood levels in downstream areas, including the Gables area, the main lake, and downstream of the Gables.
2. Removal of existing farm dams needs to be considered in the context of the original concept used during the Gables precinct development. Changes to spillway levels of existing farm dams need to be supported using surveyed details.
3. The Proponent must calculate the post-developed Stream Erosion Index (SEI) and demonstrate that it is no greater than 3.5, to ensure the stability of receiving waterways downstream of the development.
4. During the design stage for stormwater management strategy elements, the following Council documents are to be used as reference:
  - a. *THSC Stormwater and Waterways Design Requirements*
  - b. *THSC Development Control Plan (DCP) 2012, Part D, Section 17, Box Hill North* (until a precinct specific DCP is available for West Gables).

**c) Ecology**

The Proponent is intending to undertake Biodiversity Certification of the land in association with the planning proposal, by lodging an application for Biodiversity Certification with the Department of Climate Change, Energy, the Environment and Water (DCCEEW). Council has been advised that the Proponent has not yet submitted their proposal to the DCCEEW for any preliminary consultation, however it is anticipated that the biodiversity certification application would run in parallel with the planning proposal, with the aim to exhibit concurrently.

A Biodiversity Certification Assessment Report (BCAR) (prepared by Ecological Australia Pty and dated December 2022) was submitted with the original planning proposal. The BCAR findings indicate the presence of scattered remnant and regrowth vegetation within the identified Biodiversity Certification Assessment Area (BCAA) including Cumberland Plain Woodland and Shale Sandstone Transition Forest which are listed as Critically Endangered Ecological Communities.

Council provided preliminary comments regarding the Proponent's BCAR and indicated that further information would be required. The Proponent responded to Council subsequently (refer to Attachment 24) largely reiterating the information contained within the original BCAR. The Proponent has not addressed the concerns raised by Council nor made any changes to the planning proposal as a result. In particular, unresolved concerns remain in relation to the areas of land which the Proponent has identified as "avoided areas", also being intended to be used for the purpose of public open space.

Based on the Proponent's BCAR, the Serious and Irreversible Impact (SII) Assessment, for Cumberland Plain Woodland, has identified that 0.41ha of Cumberland Plain Woodland would be directly impacted and that 0.74ha of Cumberland Plain Woodland would be avoided. For Shale Sandstone Transition Forest, it identifies that 6.27ha of Shale Sandstone Transition Forest would be directly impacted and 3.14ha of Shale Sandstone Transition Forest would be avoided. The directly impacted areas are shown as hatched (without blue colouring and where trees are visible in the aerial image) within the Figure below and the impacts in these areas



are intended to be addressed by the Proponent through the Biodiversity Certification process. Areas that are shown as hatched (with blue colouring) were not found to have any biodiversity value.

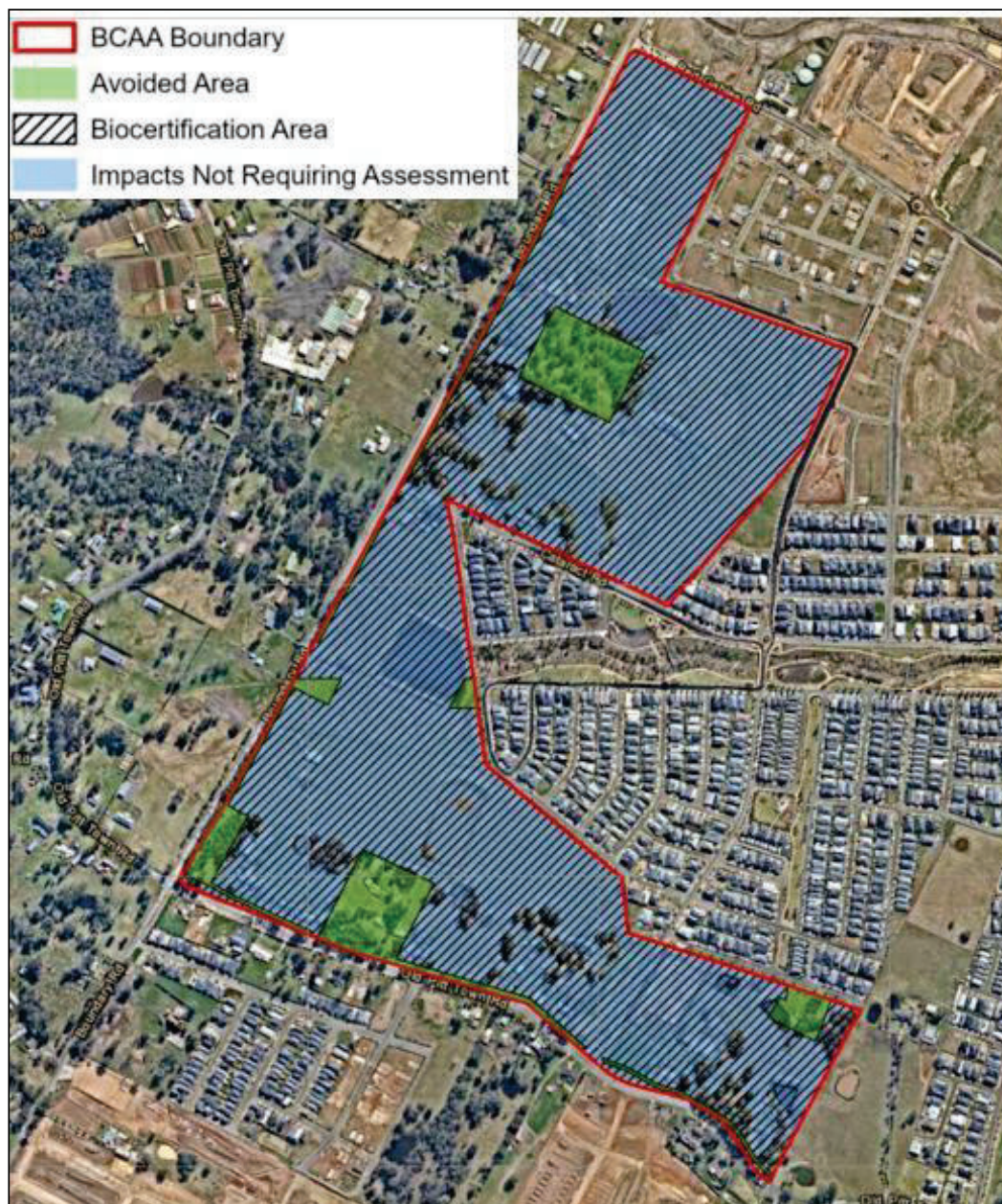
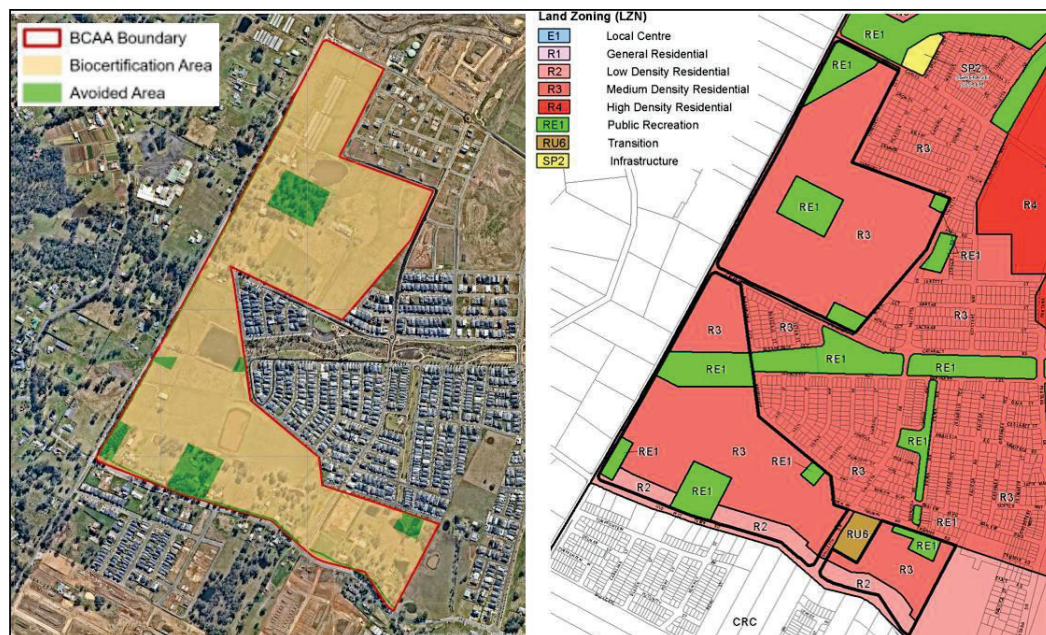


Figure 10

Identification of avoided areas, Biodiversity Certification areas and areas not requiring assessment

The BCAR documentation of Stage 2 of the Biodiversity Assessment Method (BAM) states that the areas of high biodiversity value are to be zoned as park (RE1 Public Recreation) to ensure retention, including amendments to the proposal in the design phase to increase the size of a park to retain more vegetation. A comparison between the proposed 'avoided areas' and future public open space is provided below.



**Figure 11**

Avoided areas correlate with passive open space land proposed to be zoned RE1

As shown above, it appears that the intention is for “avoided areas” to be identified to allow for urban development. These “avoided areas” would then be dedicated to Council, with Council unable to fully utilise these areas for their intended open space function and with Council also taking on the associated burden of complying with any conditions of the Biodiversity Certification with respect to maintenance of these areas. This approach is problematic and unable to be supported by Council.

Avoidance requires careful site selection, as well as actions taken through the design, planning, construction, and operational phases of the development to completely prevent impacts on biodiversity values, or certain areas of biodiversity. This would appear to be at odds with the need to embellish these areas for recreation outcomes.

This matter has been raised with the Proponent. The Urban Design Report and supplementary response provided by the Proponent include some high-level park designs, however these do not demonstrate how the biodiversity values of the land will be protected. The designs include pathways and structures being constructed through the “avoided area” vegetation. The Proponent indicates in their supplementary letter that if any native vegetation is proposed to be impacted, it would then not be classified as ‘avoided area’, however this is inconsistent with the approach in the BCAR which indicates these areas are evidence of actions and measures to avoid the direct and indirect impacts.

**Figure 12**

Illustrative plans of the northern park (left) and southern park (right)

The Proponent has been provided with the opportunity to present a solution where biodiversity and recreation outcomes are not in conflict, however the Proponent has not been able to demonstrate a suitable outcome can be achieved, noting the plans in Figure 12 above would be unlikely to comply with the conditions for the protection of “avoided areas”. The Proponent’s view is that parks can provide protection of high biodiversity values through good design of park facilities, management of biodiversity values and public ownership.

The Proponent cites other examples of this in the Shire (for example Equinox Park in Box Hill and the Withers Road Park in North Kellyville) where this has occurred. However, it is critical to differentiate that these parks are located on biodiversity certified land (that is, land that was able to be clear entirely, but where Council has chosen to retain vegetation as part of the park design). This is an extremely different scenario to the Proponent’s proposal of having “avoided areas” (that must be retained and protected) within local parks. In these examples, Council had more flexibility to balance biodiversity and tree retention objectives with the recreation outcomes, rather than having the recreation outcomes dictated, reduced or eliminated in order to comply with conditions of the Biodiversity Certification and protect biodiversity values on ‘avoided areas’.

Council officers do not accept that the transfer of ‘avoided areas’ and the associated maintenance burden to Council in order to facilitate the Proponent’s urban development outcomes, at the expense of useable local parks, is appropriate. It would be placing an unreasonable cost and maintenance burden on Council, in perpetuity. Unfortunately, Council does not have the resources to take on vegetation retention areas associated with new development. By comparison, other release areas in the locality (including the existing Gables development) do not require Council to take ownership of any retained vegetation and instead, they seek alternatives to preserving vegetation such as in community title lots or purchasing additional biodiversity credits offsite. The approach of co-locating ‘avoided areas’ and local parks is not supported. The Proponent will need to consider alternative approaches to obtaining biodiversity certification, which may include the need to purchase additional credits to offset all vegetation within the subject area, such that there are no “avoided areas” on land proposed to be dedicated to Council.

The BCAR currently calculates the ecosystem credits that would be required for the Biodiversity Certification Area (excluding the ‘avoided areas’), for both flora and fauna impacts, being 276 ecosystem credits for the vegetation communities and 149 species credits for the fauna species. The planning proposal material identifies the intent to meet this credit



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obligation by purchasing credits off the market or paying into the Biodiversity Conservation Fund. The amount of credits may need to be increased to address the issues raised above.

At this time, the application material submitted by the Proponent has not demonstrated that biodiversity is conserved in accordance with the Biodiversity Conservation Act and relevant planning policies and legislation. It is recommended that the Proponent resolve the following matters:

- Land intended to be dedicated to Council for open space should not contain any proposed 'avoided areas';
- Following rectification of the above, it would be necessary to identify the necessary ecosystem and species credits; and
- Amendments should be made to the planning proposal material and Proponent's application for Biodiversity Certification, which should be submitted to DCCEEW. The Proponent will need to obtain Biodiversity Certification of the land, prior to the finalisation of any rezoning.

#### d) Open Space

The planning proposal includes the zoning of land as RE1 Public Recreation for the purpose of passive open space and drainage, consistent with the zoning framework of the existing Gables urban area. The urban design report further breaks down the uses of the land proposed to be zoned RE1 Public Recreation, in accordance with the figure below:



**Figure 13**  
Location of open space

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- Passive open space

The proposal includes a network of passive open spaces, in some instances co-located with drainage land, that provides reasonable access to parks and reserves. All new homes within the development areas would be within approximately 400m to 500m walking distance of passive open space.

The urban design report provided indicates 6.15Ha of land is to be provided as 'local parks', as distinct from drainage land, landscape buffers, riparian corridors and infrastructure easements.

The provision of 6.15Ha and proposed distribution of passive open space in the proposal is broadly consistent with the passive open space objectives in Council's Recreation Strategy (noting a benchmark of 1.62Ha per 1,000 people for passive recreation, which would require 7.1Ha of land for this purpose), noting also the added utility that the additional drainage land, landscape buffers, riparian corridors and infrastructure easements also contribute as well as connectivity that will be provided to access the existing and planned open space network within the adjoining Gables precinct.

If the land identified for local parks was capable of being used entirely for passive recreation and embellished without any significant constraint, the provision of passive open space facilities as proposed by the Proponent is considered satisfactory.

However, the identification of "avoided areas" (for the purpose of biodiversity certification) within these proposed open spaces is not supported. However, based on the information provided to date, there is not sufficient certainty that Council will be able to utilise or embellish these passive open space areas to a standard that is adequate to service development from a recreational perspective. Furthermore, it is not considered reasonable that Council take on the additional burden of maintaining "avoided areas" of vegetation. This is discussed in detail in Section 4 (c) above.

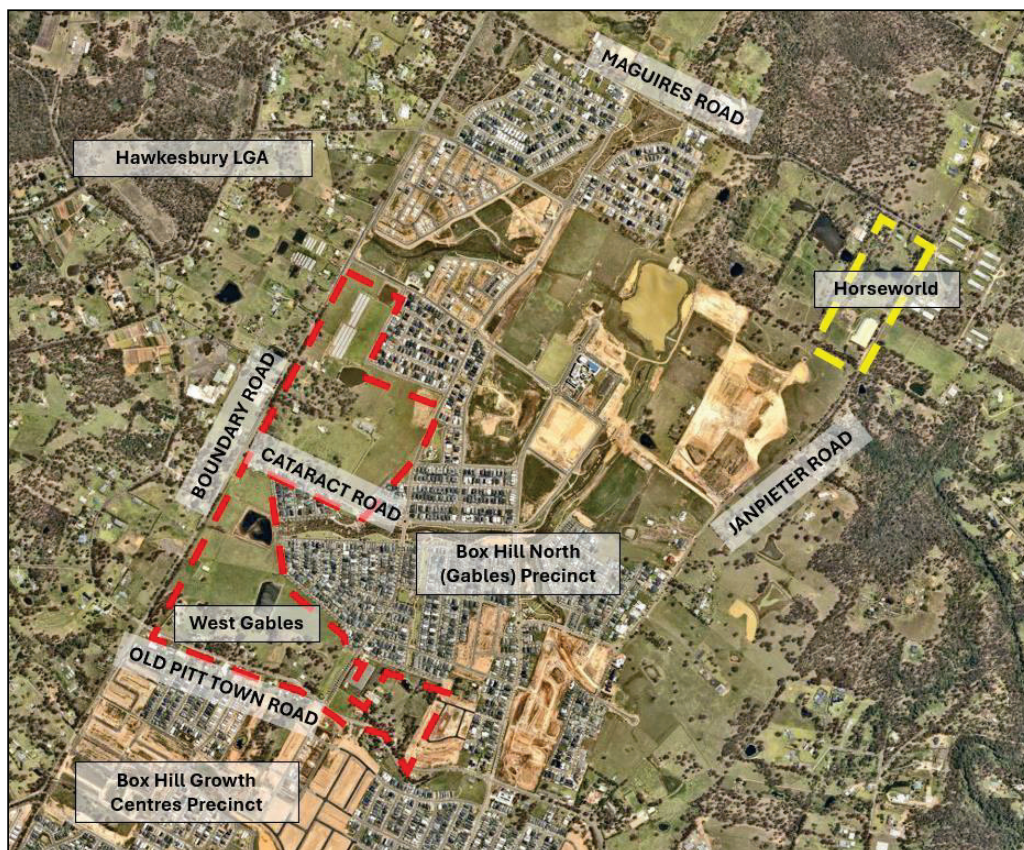
Council's Recreation Strategy identifies that local suburban parks should contain (at a minimum) internal pathways, a playground, a playground shade structure, playground synthetic/soft fall rubber, shelter and seating, rubbish bins and collection areas, drinking water, tap, park signage, an open space kick around area and landscaping.

The adequacy of the proposed passive open space provision would be entirely contingent on the Proponent being able to resolve the issues identified in Section 4(c) above. If the land identified for passive open space was biodiversity certified, and Council was not restricted in its ability to embellish these sites for passive recreation, the proposed provision of local parks would be considered satisfactory (noting that Council would still have the flexibility to retain some vegetation in these parks as part of their design, similar to Equinox Park and Withers Road Reserve).

- Active open space

The proposal does not include any on site active open space facilities. Instead, the proposal indicates that the Proponent will make monetary contributions toward active open space facilities that Council will deliver. The proposed dwelling yield facilitated by the rezoning proposal would generate demand for 2 additional playing fields based on the adopted benchmarks in Council's Recreation Strategy. While it would be ideal for the development to meet the demand for active open space generated by the development within the site, via the allocation of land and capital works, this has not been proposed for the subject proposal.

The nearest site that could potentially service the West Gables development with active open space facilities is the 'Horseworld' property, located on Maguires Road and currently in Council ownership. Council is currently considering options for the use of this land, some of which include active open space facilities. However, the site requires servicing to be developed in this capacity and the embellishment of this land for recreation outcomes is currently not funded by Council or in any Contributions Plan. The location of the 'Horseworld' site in relation to West Gables is shown in the figure below.



**Figure 14**  
Subject site (red) and 'Horseworld' site (yellow)

Given the proximity of this future facility to the development area (both Gables and West Gables), it may be reasonable to consider the "Horseworld" site as a logical solution to the active open space demands generated by this proposal, however this would be contingent on the Developer contributing sufficiently to the funding and/or provision of these outcomes through monetary contributions and/or works in kind. The Developer has indicated a willingness to make such contributions and Council officers are currently negotiating the details of this potential option with the Proponent.

- Pedestrian and cycle paths

The planning proposal material indicates that pedestrian and cycle paths will be delivered that will integrate with the riparian corridor, bushland and parks, to link to the broader network within Gables (including the missing link between Sundowner Parkway and Bloomsdale Circuit). These items will facilitate active transport and connectivity between



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open spaces in the locality and are supported as a logical and orderly completion of the broader pedestrian and cycle network in this locality.

The preliminary assessment of the proposal indicates that there is sufficient land available and flexibility within the broader subject site to accommodate a suitable passive open space and pedestrian and cycle network, subject to the Proponent addressing issues in relation to the identified “avoided areas” (for the purpose of Biodiversity Certification) within proposed passive open spaces. There is also scope for the Proponent to address the additional demand for active recreation through contributions towards the embellishment of the “Horseworld” site for active recreation outcomes. These matters would ultimately need to be resolved in full through agreement between Council and the Proponent, as discussed further in Section 4(i) of this report. These matters should be resolved to Council’s satisfaction prior to (or concurrent with) Council determination of the planning proposal.

**e) Proposed Planning Mechanisms**

The planning proposal seeks to reduce the mapped minimum lot sizes down to 700m<sup>2</sup> for land proposed to be zoned R2 Low Density Residential and 450m<sup>2</sup> for land proposed to be zoned R3 Medium Density Residential. This generally reflects the minimum lot size controls applicable to these same zones within the adjoining Gables Precinct.

In addition to this, the planning proposal seeks to include a new site-specific local provision (under Part 7 of the LEP) that enables further reductions in minimum lot size in areas zoned R3 Medium Density Residential, below the mapped control of 450m<sup>2</sup>. The clause is intended to facilitate the delivery of:

- Lots with a size ranging from 225m<sup>2</sup> – 300m<sup>2</sup> through the ‘Integrated Development Application Pathway’, whereby a single development application grants consent to both the subdivision of land *and* the erection of the dwelling on each resulting lot. This clause would operate in the same manner as the existing integrated development pathway under Clause 4.1B of Council’s LEP which currently allows lot sizes down to 240m<sup>2</sup> (in contrast to the proposed lot size of 225m<sup>2</sup> for R3 land in West Gables); and
- The subdivision of land into 3 or more lots ranging between 300m<sup>2</sup> and 450m<sup>2</sup>, subject to Council being satisfied that each lot can contain a building envelope and would not result in more than 4 contiguous lots in a row with the same frontage width. This pathway would require approval of a building envelope concurrently with the subdivision, but not a specific dwelling. As result, there would be some flexibility in terms of the future dwelling design by each purchaser of a lot, within the parameters of the defined envelope.

**Minimum Lot Size of 225m<sup>2</sup> – 300m<sup>2</sup>**

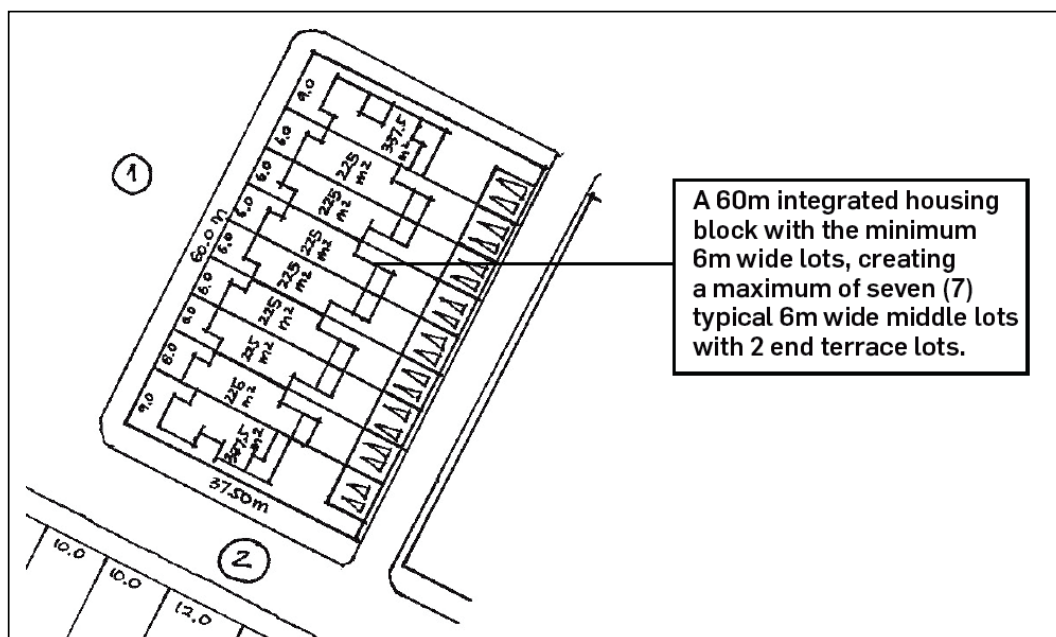
Under LEP 2019, Clause 4.1B establishes a framework for small lot residential development, allowing for attached dwellings or dwelling houses on lots down to 240m<sup>2</sup> in R3 Medium Density and R4 High Density Residential zones where development is undertaken as integrated development (that is a single application for both the subdivision *and* the erection of a dwelling house or attached dwelling on each resulting lot). These existing provisions have proven to be an effective mechanism for the assessment and delivery of small lot housing product within The Shire, including in the adjoining Gables Precinct. These outcomes are generally able to be achieved successfully as part of a holistic master planned outcome for a larger landholding (such as the subject site), as opposed to piecemeal infill development sites.

The Proponent is seeking to utilise this same clause, however to allow for the delivery of slightly smaller lot sizes down to 225m<sup>2</sup>. Some examples and design analysis of the potential outcomes have been submitted by the Proponent.



**Figure 15**  
Streetscape image for 225m<sup>2</sup> lots

The Proponent has provided a site plan of a proposed 225m<sup>2</sup> lot and block layout. This is shown in the figure below.



**Figure 16**  
Site plan and block layout for 225m<sup>2</sup> lots

It is considered that there is insufficient evidence provided with the application to demonstrate that the proposed planning mechanism for these lot sizes provides a superior outcome to that already being delivered by the existing Clause 4.1B, that allows for lots with a minimum size of 240m<sup>2</sup>. The reduction in minimum lot size from 240m<sup>2</sup> to 225m<sup>2</sup> will make it more difficult to comply with minimum private open space, solar access, privacy and amenity requirements in the DCP and is not considered necessary in the context of a greenfield release area, where there is ample flexibility to design for a range of varied lots sizes as part of a master planned development. This element of the proposal is not supported and it is recommended that the



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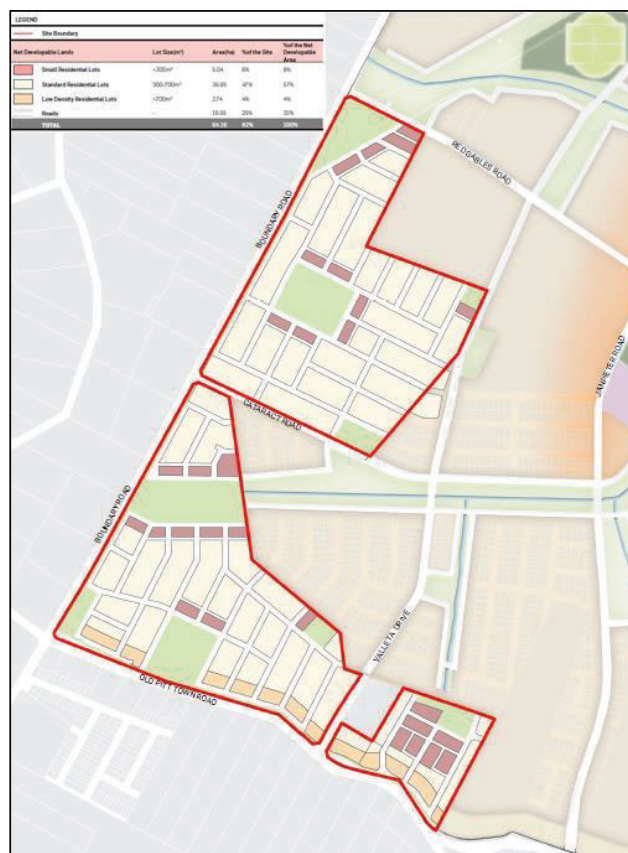
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achievement of minimum lot sizes of less than 300m<sup>2</sup> should continue to be managed under the existing provisions within Clause 4.1B of The Hills Local Environmental Plan, which allow for a minimum lot size of 240m<sup>2</sup> (rather than 225m<sup>2</sup> as requested by the Proponent), consistent with other areas of The Shire and adjoining Gables development.

Further, Council has experience with poor maintenance outcomes with respect to the verges fronting these rear loaded terrace type dwellings. In addition, the laneways with only garages fronting them are often an attractor for anti-social behaviour resulting in graffiti and social unrest, as there is poor passive surveillance without dwellings fronting the laneways. Council has also experienced difficulties in collecting waste from rear laneways that are undersized for the current fleet of waste collection vehicles. The Proponent has been advised of the required laneways depth and require space for waste collection and has responded by stating that they wish to continue with the existing controls for Gables (which were established in 2013 and are no longer suitable for the current fleet of waste vehicles or the need to present 3 bins for collection in the next few years).

It is recommended that DCP controls be prepared to remove the ability for the developer to provide dwellings with rear lane access, instead requiring all dwelling products be front loaded, with a minimum lot width of 7m. The minimum lot width of 7m will enable 3 bins to be presented per lot and provide sufficient space for bin presentation and collection.

The following image demonstrates where the proposed smaller lots would be delivered within the Precinct (shown in dark red).



**Figure 17**  
Indicative location of proposed lot typologies

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The proposed location of the smaller (240m<sup>2</sup>) lots is generally supported, as the more dense smaller lots are co-located in the areas of highest amenity, adjacent to riparian and open space corridors and public parks. This allows for a greater number of residents to be located in close proximity to these areas where they can benefit from the provision of passive recreation. This is generally a sound urban design approach to this type of housing product.

Council officers do remain concerned about the certainty of many lots will be provided within each of the different lot size ranges across the entire West Gables Precinct. This could have implications for how the total dwelling cap for the area would be applied, administered and upheld over the longer-term development horizon. This is discussed further below.

Minimum Lot Size of 300m<sup>2</sup> – 450m<sup>2</sup>

The Proponent is seeking to enable subdivision between 300m<sup>2</sup> and 450m<sup>2</sup> with a building envelope plan only (rather than an integrated subdivision and built form development application as currently required elsewhere in the Shire under Clause 4.1B of the LEP).

The Proponent has provided details of document requirements for a Building Envelope Plan for Council's consideration. The Building Envelope Plan would be required to include:

- A drawing title, north point, scale and labels such as street names and lot numbers;
- Maximum permissible building envelopes including setbacks, storeys, articulation zones, consistent with the DCP;
- A minimum 150m<sup>2</sup> building footprint, with a minimum dimension of 6m clear of any restrictions or building line setbacks;
- Principal private open space location;
- Indicative landscaping;
- Garage size (single or double) and location of zero lot line boundaries;
- Special fencing requirements;
- Easement and sewer lines;
- Retaining walls;
- Entry and frontage location (for corner lots);
- Access denied frontages; and
- Electricity kiosks or substation.

The provision of this information on a Building Envelope Plan, to be approved with a subdivision, is considered acceptable in terms of providing Council with certainty that lots between 300m<sup>2</sup> and 450m<sup>2</sup> can reasonably accommodate a dwelling without the need for a concurrent subdivision and dwelling approval.

Dwelling Cap

The original proposal included a total dwelling cap of 1,260 dwellings in the site-specific clause for the entirety of the subject site ("West Gables"). However, concerns were raised with the administration of the dwelling cap over the course of the development, given the variety of lot sizes that are proposed. Council officers were concerned that the information provided did not give sufficient certainty that the dwelling cap was accurate and that an over or under estimation of the number of dwellings would create problems with implementation in the future, as well as insufficient infrastructure. In response, the Proponent has proposed to remove the dwelling cap from the suggested clause and indicated that the dwelling cap could form part of the Voluntary Planning Agreement, to ensure that appropriate infrastructure is provided should additional dwellings be achieved.

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The total yield of 1,260 is considered to be an appropriate outcome, having regard to the outcomes depicted in the Indicative Layout Plan and consideration of the serviceability of development and necessary infrastructure upgrades in Sections 4 (h) and (i) of this report. While there are concerns with the longer-term enforcement of a dwelling cap given the extent of flexibility that could theoretically be achieved through the diversity of lot sizes, a dwelling cap control in the LEP is still considered appropriate, to provide certainty with respect to the final development yield and ensure that development rolls out throughout the Precinct commensurate with servicing and infrastructure planning limitations and expected built form outcomes. It is recommended to reinstate the dwelling cap control as a LEP mechanism *in addition to* the Proponents suggestion of including additional contribution requirements in the Voluntary Planning Agreement should the dwelling cap be exceeded.






The site-specific clause proposes lot sizes down to 225m<sup>2</sup> (however as noted above, it is recommended that lot size reductions be limited to 240m<sup>2</sup>) and 300m<sup>2</sup>-450m<sup>2</sup> respectively. The break down and proposed location of these lot categories are shown in the following images.



**Figure 18**  
Proposed Housing Diversity Plan

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LEGEND					
 Site Boundary					
Net Developable Lands		Lot Size(m <sup>2</sup> )	Area(ha)	%of the Site	%of the Net Developable Area
	Small Residential Lots	<300m <sup>2</sup>	5.04	6%	8%
	Standard Residential Lots	300-700m <sup>2</sup>	36.85	47%	57%
	Low Density Residential Lots	>700m <sup>2</sup>	2.74	4%	4%
	Roads	-	19.55	25%	31%
<b>TOTAL</b>			<b>64.16</b>	<b>82%</b>	<b>100%</b>

**Figure 19**  
Proposed Breakdown of Lot Typologies

However, there is no certainty within the clause, the Indicative Layout Plan or the Housing Diversity Plan with respect to enforcing these outcomes or how many lots within each of the size categories will be achieved. In part, this is intended to provide the Proponent with suitability to respond to the market in the future. However, in practice, it could enable a situation where the full 1,260 dwellings could theoretically be achieved (in smaller lots sizes) within a small portion of the rezoned development area. This could in turn lead to areas of remaining urban zoned land that could not be developed (as a result of the dwelling cap) and future requests from the Developer (to either Council or Government) to lift the dwelling cap to enable the orderly development of the remainder of the Precinct, which would have implications for development servicing, infrastructure upgrades and provision of diverse and varied housing stock, not properly considered or resolved as part of this application. A similar outcome occurred within the Showground Residential Precinct recently where Government removed the dwelling cap from Council's LEP without properly resolving the outstanding infrastructure issues which led to the imposition of the cap in the first place.

While this is not the intended development outcome currently depicted by the Developer and will not necessarily occur, it would nonetheless be prudent to amend the site specific clause slightly to give a greater certainty with respect to how the total yield of 1,260 dwellings will be apportioned across the various lot size ranges. This could still be done in a manner that provides the Proponent with sufficient flexibility to tailor their development and dwelling stock as the development progresses, but would at the same provide greater certainty that the intent of the dwelling cap will be achieved and upheld over the longer term development horizon and that development rolls out in accordance with infrastructure and servicing requirements and the anticipated built form outcomes illustrated in the Indicative Layout Plan.

This concern was raised in Council's Preliminary Feedback Letter to the Proponent. In response, the Proponent has sought to delete the dwelling cap as an LEP mechanism altogether and instead utilise a Voluntary Planning Agreement to control the dwelling numbers as development rolls out across the Precinct. This was not the intent of Council officer's feedback and while the use of the VPA in providing certainty on the development outcomes and roll out of dwelling numbers is supported, it should be utilised *in tandem with* an appropriate LEP clause, not *instead of* a dwelling cap as an LEP mechanism.

The Proponent has indicated that lot sizes down to 225m<sup>2</sup> (or 240m<sup>2</sup> as recommended by Council officers) will not be widely taken up across the Precinct, as the clause requires both the subdivision *and* construction of a dwelling under the same application. The achievement of lot sizes between 300m<sup>2</sup> and 450m<sup>2</sup> requires an application for the subdivision *only* (along with a building envelope plan). The Proponent submits that this is a more attractive development option that will be used more broadly across the Precinct as it will enable the sale of vacant land whereby future purchasers have the flexibility to determine their dwelling



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design, more so than is currently enabled through a combined house and land package. The Proponent has also submitted that Council could refuse development applications that seek blanket utilisation of 225m<sup>2</sup> lot sizes (or 240m<sup>2</sup> as recommended by Council officers) on the basis that they are inconsistent with the objectives of the R3 zone, which include “to provide a variety of housing types”.

While it is agreed that this may be how development will roll out across the Precinct, it does not adequately address the concerns raised by Council officers with respect to lack of certainty of lot size take up. It is also considered that future refusal of development applications based on their inconsistency with the zone objective to provide a variety of housing types is highly unlikely to be successfully upheld.

It remains the view of Council officers that the local provision should include a mechanism that apportions the total dwelling cap as a percentage of the three lot size types under the Proponent's Housing Diversity Plan. This will ensure flexibility for the Proponent in terms of where these lot sizes can occur throughout the West Gables Precinct, whilst also providing certainty to Council that the incremental roll out of development across the Precinct will not result in residual undeveloped land that will necessitate the need to lift the dwelling cap in future.

The re-drafting of the proposed local provision to achieve this greater level of certainty should be discussed further with the Proponent before the planning proposal application is reported to Council for determination.

**f) Development Control Plan**

The Proponent had originally submitted a new site-specific DCP in support of the planning proposal. However, given future development within the subject site is intended to align with the character and built form outcomes already established for the Gables precinct, it is more logical and appropriate for the existing section of Council's DCP which applies to the Gables precinct (Part D Section 17 - Box Hill North) to be expanded to also apply to this land. This would also mean that rather than duplicating all controls which are already within this part of Council's DCP, there would only be a need to include *additional* controls relating to the current proposal, where they differ from those already in place.

The Proponent has since supplied documentation to support an amendment to the existing controls within Part D Section 17 – Box Hill North of the DCP, to enable it to continue to apply to the existing Gables development and apply to the subject site, including controls that relate to road design, public domain, stormwater management, visual character, safety, car parking, landscaping, solar access and dwelling design. Amendments to the following maps and figures within the existing Part D Section 17 - Box Hill North, to include the desired outcomes for the West Gables Precinct have been provided:

- ‘Land to which this section of the DCP applies’ Map;
- Indicative Layout Plan; and
- Indicative Street Layout Map.

A number of other maps and diagrams will be required to be updated for inclusion in the amended DCP, which will be requested from the Proponent.

A number of additional controls specific to West Gables have been drafted and submitted by the Proponent, including:

- Lot dimensions and setbacks for lots:



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- equal to or greater than 225m<sup>2</sup> and smaller than 300m<sup>2</sup>;
  - equal to or greater than 300m<sup>2</sup> and smaller than 450m<sup>2</sup>;
  - equal to or greater than 450m<sup>2</sup> and smaller than 700m<sup>2</sup>; and
  - equal to or greater than 700m<sup>2</sup> and less than 2,000m<sup>2</sup>
- Requirements for a Building Envelope Plan for lots equal to or larger than 300m<sup>2</sup> and smaller than 450m<sup>2</sup>, as per the Proponent's submitted specifications.
  - Dwelling controls for each lot size range, generally consistent with those already applicable under the Concept DA 1397/2015/JP that applies to the Gables.

Council had requested that the Proponent update the draft DCP to reflect the requirements for waste servicing, for both local street and rear laneway collection, as well as designing lot widths to accommodate the presentation of 3 bins concurrently, requiring a minimum 2.74m clear kerbside length, as a result of the mandatory implementation of a FOGO (Food Organic Garden Organic) collection service, which will commence in the Hills Shire in the next few years. Council gave advice about the necessary depth for bins to be presented in laneways, being 2m, however the Proponent has provided updated information indicating a 1m wide verge would be provided in laneways where bin collection is proposed, consistent with the existing Gables DCP.

Unfortunately, the existing Gables area has experienced issues with waste collection under these settings. These issues within the existing Gables have prompted Council to reconsider laneways as appropriate for waste collection.

Therefore, it is recommended that the draft DCP controls provided by the Proponent be altered to remove the ability for the developer to provide dwellings with rear lane access. This will require the master plan to be amended removing the rear laneways, with reference to rear loaded or rear accessed dwellings and associated controls being deleted. The DCP will instead require all dwelling products in West Gables be front loaded, with the minimum lot width for 240m<sup>2</sup> lots to remain at 7m.

The preliminary assessment of the draft DCP indicates that appropriate development controls can be applied to ensure the character of the existing Gables development is continued within West Gables. It is recommended that a draft DCP which amends Part D Section 17 - Box Hill North to address the above matters be considered by the Council concurrently with the planning proposal.

#### g) Servicing Capacity

The Proponent has submitted a Services Infrastructure Plan in support of the planning proposal to demonstrate the extent of utilities servicing available to the site and the potential need to upgrade, extend or alter services to accommodate the additional growth proposed. The following key conclusions are included in the Services Infrastructure Plan:

- *Gas Services:* Jemena do not currently have sufficient capacity within its network to cater for the subject land without augmentation. As a result, the Proponent has decided not to supply gas reticulation for the development. This is a commercial decision of the Proponent and would not hinder the development outcome proposed.
- *Electrical Infrastructure:* Endeavour Energy has advised that the Gables Zone Substation is currently under construction and is expected to be commissioned by December 2023. Subject to timing of the development, the first stage of the development will need to be supplied from existing feeders. Further consultation with Endeavour Energy will occur should the planning proposal proceed, however it is

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unlikely that the development will occur prior to the completion of the Gables Zone substation and it is anticipated that once this substation has been completed, sufficient electricity supply will be available for the future West Gables development.

- *Potable Water:* The potable water reservoirs in the study area do not have sufficient spare capacity to accommodate development on the subject site. The proponent is currently liaising with Sydney Water to determine the augmentation works required for potable water. Further consultation with Sydney Water will occur should the planning proposal progress and this would need to be adequately resolved before any rezoning is finalised for the land.
- *Wastewater:* Altogether Group is the primary supplier of recycled water and pressure sewer of the Box Hill North/Gables Precinct and has confirmed that there is sufficient capacity to service the site from the existing sewage plant through an augmentation of the plant and series of new recycled water and pressure sewer mains. Council officers have been advised that planning for the augmentation of the facility has commenced and recycled water and sewerage services will be available to future development.
- *Telecommunications:* NBN has confirmed that fibre capacity to service the entire development is available. With live networks available within the vicinity, there will be no backhaul charges required. This is considered satisfactory, subject to further consultation with telecommunications providers as the proposal progresses.

The Proponent's Services Infrastructure Plan has been provided as Attachment 11 to this report.

The Proponent has adequately demonstrated that the subject land is capable of being serviced with the required utilities infrastructure through a combination of existing capacity as well as extension and augmentation of facilities. However, further confirmation will be required from Sydney Water as part of the public agency consultation to confirm the augmentation works required for potable water.

#### **h) Local Infrastructure Demand & Funding Mechanisms**

The planning proposal seeks to facilitate 1,260 dwellings (approximately 4,400 people), which would generate demand for local and regional infrastructure, much of which is not currently planned or catered for within the existing infrastructure contributions framework. It is crucial that any rezoning and future development of the land is serviced with an adequate level of local and regional infrastructure that meets the needs of local residents and workers.

The proposal would generate the need for 2 new playing fields, at least 6.2Ha of passive open space, 75% of a community centre, 13% of a library, as well as a range of traffic, transport and drainage infrastructure discussed earlier within this report.

The Hills Section 7.12 Contributions Plan currently applies to the subject site. However, this plan is generally intended to levy minor and incremental redevelopment of land under the current planning framework, and it does not plan or cater for significant rezoning areas or the residential development outcome being proposed through this proposal. As such, a new mechanism will be required to identify and fund the infrastructure required to support the proposed development.

The Proponent has submitted an Infrastructure Delivery Plan (IDP), which identifies infrastructure items that are required to service the development. The IDP indicates that the Proponent intends to make a Voluntary Planning Agreement (VPA) offer and progress with a Planning Agreement as the mechanism to address the additional demand for public

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infrastructure generated by the proposal. The IDP identifies the following items for inclusion in a planning agreement:

- Internal collector/local roads and intersections;
- 4 local parks, totalling 57,912m<sup>2</sup>;
- A monetary contribution toward active open space facilities;
- 7 detention basins and connection to the truck stormwater works in the road reserves;
- A monetary contribution toward community centre floor space; and
- A monetary contribution toward library floor space.

The IDP also identifies other infrastructure items to be discussed with Council, noting that these items are *partly* funded by other Contributions Plan and Planning Agreements. These items include:

- Signalised intersection of Old Pitt Town Road and Boundary Road;
- Signalised intersection of Old Pitt Town Road and Valetta Drive;
- Widening of Boundary Road to 2 lanes in each direction; and
- Widening of Pitt Town Road to 2 lanes in each direction.

Council Officers are generally satisfied that the Proponent has identified the required infrastructure categories necessary to support the proposed development. However, as no monetary values or letter of offer has been provided, Council officers are not yet in the position to form a view with respect to whether fair, reasonable and proportionate contributions towards these infrastructure outcomes will be secured, such that the cost of servicing the development is not subsidised by other development areas or the broader rate-base of The Hills Shire.

Council officers have been in discussions with the Proponent to ensure that an appropriate contribution (whether it be works, land or monetary contributions or a combination of all three) is made toward each infrastructure category and have held a number of meetings to discuss the infrastructure items identified and appropriate mechanisms to deliver such infrastructure.

It is anticipated that a Letter of Offer will be submitted by the Proponent in due course, prior to the planning proposal being reported to Council for consideration. It is the view of Council officers that this letter of offer should, at a minimum, include the following:

– *Traffic and Transport Infrastructure items*

- a. Boundary Road – widening the carriage way to 2 lanes in each direction between Old Pitt Town Road and Red Gables Road (likely to involve land and capital costs);
- b. Old Pitt Town Road – widening the carriageway to 2 lanes in each direction between Boundary Road and Valetta Drive (noting that development on the southern side in Box Hill Precinct will undertake half width construction);
- c. Intersections
  - i. Old Pitt Town Road/Terry Road/Fontana Drive (contribution towards intersection upgrade to signals)
  - ii. Mt Carmel Drive/Old Pitt Town Road/Valetta Drive (contribution towards capital works to upgrade to signals, noting the land for this is already obtained via Contributions Plan No.15 – Box Hill Precinct)

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- iii. Boundary Road/Old Pitt Town Road (land and capital)
  - iv. Boundary Road/Cataract Road (intersection treatment)
  - v. Boundary Road/Red Gables Road (intersection treatment)
  - d. Pedestrian Bridge over drainage land, as noted on the Proponents masterplan.
- *Open space infrastructure items*

- a. Passive Open Space – Embellishment and dedication of all land identified for passive open space within the subject site. The quantity and distribution of land identified for passive open space appears generally consistent with the objectives of Council's Recreation Strategy. However, all of the land identified for passive recreation is also identified as proposed 'avoided areas' (for the purpose of Biodiversity Certification). If this land is identified as an 'avoided area' and the Biodiversity Certification places restrictions on the type of uses that can be carried out on this land, it is unlikely to be able to support the necessary recreation outcomes, such as the construction of play equipment, soft fall, kick about grassed areas, BBQ areas, paths, seating, shelters, lighting and the like.

This will need to be resolved through further discussions with the Proponent and any future letter of offer will need to be clear regarding what land is identified for passive open space and what land will be 'avoided area' in terms of biodiversity certification.

- b. Active Open Space – The proposal would generate demand for 2 additional playing fields, based on the benchmarks in Council's Recreation Strategy. While it would be ideal for a development to meet the demand generated within the site, via the allocation of land and capital works, the Proponent's Infrastructure Delivery Plan indicates that active open space demand would be met by a monetary contribution, towards facilities outside of the boundary of West Gables.

The nearest site that could potentially service the West Gables development with active open space facilities is the 'Horseworld' property, located on Maguires Road and currently in Council ownership. Council is currently considering options for the use of this land, some of which include active open space facilities. However, the site requires servicing to be developed in this capacity and the full embellishment of this land (or its acquisition) is currently not funded in any Contributions Plan.

Given the proximity of this future facility to the development area (both Gables and West Gables), it may be reasonable to consider the "Horseworld" site as a logical solution to the active open space demands generated by this proposal, however this would be contingent on the Developer contributing sufficiently to the land and capital costs of providing these outcomes, through a combination of monetary contributions and/or works in kind. The Developer has indicated a willingness to make such contributions and Council officers are currently negotiating the details of this potential option with the Proponent.

Other Contributions Plans in the locality calculate that the cost of servicing residential development within this locality with open space is between \$20,000 to \$25,000 per dwelling. The Proponent has been advised that this value

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should be used as an indication of the likely cost to provide appropriate levels of open space for the West Gables precinct also. This contribution could however be satisfied through the completion of works on behalf of Council by the Developer (for example, completion of embellishment of the "Horseworld" facility for active recreation).

A future letter of offer would need to detail any proposed works or land dedication proposed, as well as any monetary contributions for Council to use toward other facilities to meet the demand for active open space facilities.

– *Community facilities*

- a. The proposal identifies that there will be increased demand for community centre floor space as a result of the proposal. Based on industry benchmarks of 1 community centre per 6,000 people, the proposal would generate demand for 75% of a local community centre. It is noted that no community centre is proposed in the material provided and it is understood that the Proponent intends to make proportionate monetary contributions toward the provision of community centre upgrades to support the proposed development.
- b. The proposal identifies that there will be increased demand for library floor space as a result of the proposal. Based on industry benchmarks of 1 branch library per 33,000 people, the proposal would generate demand for 13% of a branch library. It is noted that no library floor space is proposed in the material provided and it is understood that the Proponent intends to make proportionate monetary contributions toward the provision of community centre upgrades to support the proposed development.

– *Drainage and stormwater infrastructure*

- a. The Proponent's Flood Management Strategy identifies:
  - i. One (1) online storage infrastructure provided within the proposed riparian corridor;
  - ii. Five (5) offline detention basins; and
  - iii. Six (6) water quality basins.
- b. The Infrastructure Delivery Plan refers to 7 individual basins (as many include both water quantity and water quality treatment) which aligns with the Water Cycle Management report.
- c. It is indicated that works in the trunk drainage land will be delivered by the developer and at this stage the proposed strategy appears satisfactory. All land and capital costs associated with these items should be included in the letter of offer.

While there is not yet sufficient detail provided at this time to confirm definitively that the proposal is supported by appropriate infrastructure, the material provided to date indicates that there are no significant barriers that would prevent the provision of sufficient infrastructure to service the proposed development. However, it is critical that if the planning proposal does progress, this only occurs concurrent with a suitable mechanism that clearly identifies the schedule of infrastructure to be provided and requires the developer to proportionately contribute to the funding and provision of these outcomes (through a combination of monetary



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contributions, land dedication and works in kind). Council officers are engaged in positive discussions with the Proponent on this matter and it is understood that the Proponent intends to submit a letter of offer to enter into a Voluntary Planning Agreement shortly.

It is recommended that if the Council resolves to proceed with the planning proposal, this should only occur once the Council is also satisfied that the above infrastructure outcomes can be resolved and captured in an appropriate mechanism (such as a Voluntary Planning Agreement) that will progress concurrently with the planning proposal.

**CONCLUSION**

The planning proposal generally aligns with the relevant strategic planning framework and will facilitate the logical completion of the urban footprint in this locality, as an extension of the existing Gables precinct comprising 1,260 low and medium density dwellings, open space and riparian corridors.

It is the view of Council officers that the planning proposal is capable of demonstrating adequate strategic and site-specific merit to warrant progression to Gateway Determination, subject to the resolution of a number of outstanding matters detailed within this report prior to the matter being considered by Council for determination.

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**ATTACHMENTS (UNDER SEPARATE COVER)****Original Submission**

1. Planning Proposal Report (92 pages)
2. Appendix A Urban Design Report and Indicative Layout Plan (71 pages)
3. Appendix B Owner's Consents (8 pages)
4. Appendix C Biodiversity Certification Assessment Report and Supporting Appendices (169 pages)
5. Appendix D Water Cycle Management and Flood Management Study (124 pages)
6. Appendix E Preliminary Site Investigation Report (970 pages)
7. Appendix F Geotechnical Study (227 pages)
8. Appendix G Traffic Impact Assessment (193 pages)
9. Appendix H Aboriginal Heritage Archaeological Assessment (69 pages)
10. Appendix I Bushfire Strategic Study (37 pages)
11. Appendix J Services Infrastructure Plan (18 pages)
12. Appendix K Social Infrastructure Needs Assessment (46 pages)
13. Appendix L Economic Lot Size Analysis (20 pages)
14. Appendix M Draft Box Hill North DCP and Appendix (37 pages)
15. Appendix N Prelodgement Letter (5 pages)
16. Appendix O Infrastructure Delivery Plan (38 pages)

**Additional Information**

17. Request for Information Response Summary Letter (46 pages)
18. Appendix A Lot Testing Package (8 pages)
19. Appendix B Draft Site-Specific Development Control Plan and Appendix (23 pages)
20. Appendix C Flood Modelling Assessment (66 pages)
21. Appendix D Transport Impacts Letter (18 pages)
22. Appendix E Altogether Servicing Letter (2 pages)
23. Appendix F Owner's Consent Letter for 99 Old Pitt Town Road (1 page)
24. Appendix G Biodiversity Letter (8 pages)

**LOCAL PLANNING PANEL – THE HILLS SHIRE COUNCIL**

**DETERMINATION OF THE HILLS LOCAL PLANNING PANEL ON 17 APRIL 2024**

**PRESENT:**

Pamela Soon	Chair
Elizabeth Kinkade	Expert
Patrick Hurley	Expert
Alan Haselden	Community Representative

**DECLARATIONS OF INTEREST:**

NIL

Elizabeth Kinkade declared a non-significant non-pecuniary interest for Item 2

**COUNCIL STAFF:**

The Panel were briefed by the following Council Staff on 17 April 2024:

Nicholas Carlton	-	Manager – Forward Planning
Megan Munari	-	Principal Coordinator, Forward Planning
Dragana Strbac	-	Senior Town Planner
Emma Langan	-	Senior Town Planner

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**ITEM 2: LOCAL PLANNING PANEL – PLANNING PROPOSAL – WEST GABLES (1/2024/PLP)****COUNCIL OFFICER'S RECOMMENDATION:**

The planning proposal proceed to Gateway Determination.

**PANEL'S ADVICE:**

1. The Panel advises that the site has a lot of potential to deliver additional housing, however this should not be in the absence of appropriate mechanisms to ensure the infrastructure to support future residents will be efficiently provided.
2. The planning proposal is capable of demonstrating adequate strategic and site-specific merit to warrant progression to Gateway Determination, subject to the following matters being resolved to Council's satisfaction:
  - a) Achievement of minimum lot sizes of less than 300m<sup>2</sup> should continue to be managed under the existing provisions within Clause 4.1B of The Hills Local Environmental Plan, which allow for a minimum lot size of 240m<sup>2</sup> (rather than 225m<sup>2</sup> as requested by the Proponent), consistent with other areas of The Shire and adjoining Gables development.
  - b) Land intended to be dedicated to Council for open space must not contain any proposed 'avoided areas' (for the purpose of Biodiversity Certification).
  - c) The Proponent's application for Biodiversity Certification should be updated to account for 1 b) above and then lodged and progressed DCCEEW. The Proponent will need to obtain Biodiversity Certification of the land, prior to the finalisation of any rezoning.
  - d) If 'avoided areas' are retained on the site, the Bushfire Strategic Study needs to address the bushfire hazard presented by more dense vegetation formations.
  - e) The proposed site-specific clause should be revised to give greater certainty with respect to how the total yield of 1,260 dwellings will be achieved across the various lot size ranges proposed. This should be resolved prior to the planning proposal being reported to Council for determination.
  - f) The draft site-specific Development Control Plan prepared by the Proponent, which amends the existing Part D Section 17 of the Hills DCP – Box Hill North Precinct to incorporate the subject land be amended by Council officers to Council's satisfaction and as outlined in Council Officer's report and reported to Council concurrent with the planning proposal.
  - g) Establishment of a mechanism that secures adequate and proportionate contributions from future development of the subject land to address the demand for new local infrastructure arising from the proposal. This should be resolved prior to the planning proposal being reported to Council for determination.
  - h) The additional information submitted on 5 April 2024 includes an approach that has not been utilised in other locations for local infrastructure and relies on an amendment to the *Environmental Planning and Assessment Regulation 2021*, which is outside of Council's control. More work is required to establish an appropriate mechanism for

infrastructure delivery as what has been proposed does not give Council sufficient certainty or reasonable belief that the infrastructure mechanism will be in place at the time a rezoning occurs.

- i) An updated SIDRA analysis should be prepared as part of any public agency consultation with TfNSW, should a Gateway Determination be issued for the proposal.
- 3. The Panel advises that the lack of school infrastructure in the locality is a critical issue. The Panel's support for the progression of the planning proposal is contingent upon certainty that this infrastructure will be delivered. This is a key issue for this locality, that currently has a high public profile and needs to be addressed in order for additional housing to be supported.

**VOTING:**

Unanimous





**THE HILLS**  
Sydney's Garden Shire

**THE HILLS SHIRE COUNCIL**  
3 Columbia Court, Norwest NSW 2153  
PO Box 7064, Norwest 2153  
ABN 25 034 494 656 | DX 9966 Norwest

20 May 2022

Mr Adrian Villella  
Associate Director – Urbis  
Angel Place, Level 8, 123 Pitt Street  
SYDNEY NSW 2000

Via Email: [avillella@urbis.com.au](mailto:avillella@urbis.com.au)

Our Ref: FP35

Dear Adrian

#### **PRELODGEEMENT FEEDBACK – POTENTIAL PLANNING PROPOSAL – WEST GABLES**

I refer to our meeting held on 6 April 2022 with respect to the above matter. Thank you for presenting your preliminary plans to Council Officers. The following matters are provided for your consideration following on from the pre-lodgement meeting discussions and our preliminary review of the submitted material.

- **Strategic Context**

The Greater Sydney Region Plan and Central City District Plan seek to protect land within the Metropolitan Rural Area from residential development and prevent its conversion to more intensified urban land uses. As the subject land is mapped as being within the Metropolitan Rural Area within the Region and District Plans, rezoning for urban development would technically be inconsistent with the Government's Region and District Plans and this would need to be adequately justified in order to satisfy the strategic merit test.

It is acknowledged that there is a disconnect between the District Plan and Council's adopted Local Strategic Planning Statement (LSPS) and supporting Housing Strategy, particularly with respect to this land. Council's policies reflect the urban zoning of the Gables Precinct and *do* identify the subject land (being remaining rural land between Box Hill and Gables Precincts) as being within the Urban Growth Boundary (UGB). Council's policies point to the merit of a master-planned approach to the rezoning of this particular land for residential development.

It is appreciated that the land subject to this potential planning proposal encompasses all remaining rural sites located between the North West Growth Centre Box Hill Precinct and the Gables Precinct. A holistic master planned approach to deal with all of this remaining rural land between the two urban precincts as one single proposal is critical to the merit of any rezoning application.

It should be noted that Council's LSPS and Housing Strategy demonstrate that The Hills is well-placed to meet its identified housing targets, as well as forecast housing demand to 2036 and beyond. In light of this, Council's LSPS states that Council will only support further rezoning for

residential purposes where a clear and substantial public benefit is provided, beyond the infrastructure upgrades that are generally required to support development uplift.

Consideration should be given to the justification for the proposal to provide additional housing in this context, and clearly demonstrate the tangible community and public benefits associated with any rezoning proposal. Any future planning proposal application should address all elements of the strategic context and not solely rely on the land being suitable for conversion to urban purposes.

- **Infrastructure Demand and Funding**

With the potential for 1,200 – 1,300 new dwellings based on the material submitted, detailed consideration of infrastructure capacity, required upgrades and potential funding mechanisms will be necessary.

It is recommended that you undertake early consultation with relevant public authorities. Prelodgement discussions identified that Transport for NSW and Schools Infrastructure NSW are two key State Government agencies that should be consulted as early as possible in the planning proposal process. The following contact details may assist you in your preliminary engagement.

Mr David Doyle  
Director Strategic Transactions  
Schools Infrastructure NSW  
[David.doyle29@det.nsw.edu.au](mailto:David.doyle29@det.nsw.edu.au)  
0408 226 812

Mr Steven Nguyen  
Network & Safety Officer (Central River City)  
Planning and Programs  
Transport for NSW  
[Steven.nguyen@transport.nsw.gov.au](mailto:Steven.nguyen@transport.nsw.gov.au)  
0427 121 791

The planning proposal should be accompanied by a Needs Assessment, having regard to existing and forecast local infrastructure capacity as well as the benchmark rates within Council's recreation Strategy. Consideration should be given to the cumulative impact of development, rather than the subject planning proposal's impact in isolation. This is particularly important with respect to traffic and access, which is discussed in further detail in a later section of this letter.

Any proposed new or upgraded local infrastructure will need to consider the ongoing financial maintenance burden that will be placed on Council in the longer term. While high quality amenity and embellishment outcomes are desirable, the ability to financially sustain new assets into the future should also be a central consideration. The establishment of a local association is a potential solution to avoid an undue burden on ratepayers elsewhere in the Shire.

Any proposed infrastructure funding mechanisms should be submitted to Council at the time of lodgement, to ensure a full assessment and resolution concurrent with the proposed planning outcomes.

- **Utilities Servicing**

The pre-lodgement discussion indicated that the proposed development would be capable of connecting to the existing privately operated water treatment plant on Red Gables Road, Gables. The supporting planning proposal material should demonstrate that this is possible and detail any plans for augmentation that may be required to accommodate the additional capacity. Demonstrating certainty on this matter is crucial to considering the appropriateness of any additional yield.

Should the private water treatment plan be unable to accommodate the proposed development, further discussions will likely be required with public utilities agencies and these authorities should be engaged as soon as possible.

▪ **Traffic and Access**

There are a number of planned intersection upgrades in the area that are relevant for the subject site and future development on the land should seek to integrate with these plans. Notably, there are proposed upgrades to the intersection of Valletta Drive and Old Pitt Town Road, as well as the intersection of Boundary Road and Old Pitt Town Road. The most recent preliminary and 80% design concepts are attached for your consideration with respect to these intersections, as well as the line marking and signposting plans for Boundary Road and Old Pitt Town Road. Please note that these plans are not publicly available information and should not be shared outside of this proposal.

As mentioned in prelodgement discussions, Old Pitt Town Road is a key evacuation route for the northern locality of The Hills and Hawkesbury areas. Given current circumstances, there are ongoing discussions within State Government with respect to the adequacy of this evacuation route and the subsequent impacts on future development capacity. While the subject land itself may not utilise this road for evacuation purposes in the same critical manner as land further north, any development that adds new users to this evacuation route will be further scrutinised in terms of its cumulative load impact.

In addition to meeting the current requirements of Ministerial Direction 4.1 Flooding, planning proposals are also required to seek additional flooding advice from DPE until such time as the findings from NSW Flood Inquiry are known. The planning proposal will need to be updated to address the Inquiry findings as no savings provisions will apply. It is therefore recommended that you commence early consultation with the relevant public authorities on this matter.

▪ **Targeted Consultation Sessions**

Given the large scale of the proposal, you have expressed your intent to arrange more targeted technical meetings within Council to focus on specific environmental or design matters. Following discussions at the prelodgement meeting, the following targeted meetings are considered to be beneficial:

- Civil Engineering, Subdivision and Waterways
- Traffic and Transport
- Open Space, Recreation, Civil Maintenance, Contributions and Infrastructure
- Environment, Biodiversity

It is noted that discussions have progressed with respect to these since our initial meeting and Council Officers are in the process of scheduling these targeted meetings.

Please note that these sessions seek to facilitate Officer-level technical discussions only. They should not be viewed as an indication of approval or acceptance with respect to the decision of the elected Councillors on whether to support the planning proposal's progression to Gateway Determination

▪ **Submission Requirements and Planning Proposal Process**

The following supporting studies would likely be required (as a minimum) with any planning proposal application:

- Application Form, Owners Consent and completed Political Donations forms;

- A Planning Proposal Report, which addresses the Department of Planning and Environment's *Local Environmental Plan Making Guideline* and the matters outlined in this letter;
- Master Plan/Structure Plan/Urban Design Report;
- Heritage Assessment Report;
- A draft Development Control Plan;
- Traffic, Parking and Accessibility Report;
- Environmental constraints reports (stormwater, flooding, biodiversity & bushfire);
- Economic and Residential Demand Analysis;
- Utilities Servicing Report;
- Local Infrastructure Analysis – which considers the impacts of the proposal on the demand for local infrastructure and recommends a suitable development contributions framework in association with any development uplift on the land; and
- Workshop presentation material for Councillor briefing session (refer to attached Planning Proposal Policy).

The subject proposal would be categorised as a “Precinct” application, with an associated fee of \$169,380. A copy of Council's Schedule of Fees and Charges for the 2021-2022 Financial Year can be accessed on Council's Website here: <https://www.thehills.nsw.gov.au/Council/Documents-Reports-Registers-and-Policies/The-Hills-Shire-Plan-Archive> Please note the fees and charges are under review and may change with the adoption of the next Hills Shire Plan and commencement of the new financial year.

A draft fee structure for the 2022-2023 Financial Year is currently on public exhibition and available for public viewing on Council's website. The draft fee structure includes a pre-lodgement and scoping fee of \$3,500 and revised planning proposal categories that seek to align with DPE's new Local Environmental Plan Making Guideline. Council Officers can confirm the applicable fees closer to the time of lodgement should the planning proposal be lodged in the 2022-2023 Financial Year.

It should be noted that the Department of Planning and Environment has implemented its Planning Reform Action Plan, which seeks to fast track planning proposal assessment timeframes and provides minimal opportunity to obtain timeframe extensions. Council is expected to determine whether or not a planning proposal will proceed to Gateway Determination within 120 working days of a proposal being lodged. This change in the planning proposal process means that detailed consideration of infrastructure, design or other technical matters can no longer be deferred to the post-Gateway stage, nor is there substantial opportunity to negotiate and revise elements of a proposal following formal lodgement.

For this reason, Council officers are happy to continue to work through technical matters with you prior to lodgement of the proposal, in order to enable submission of a holistic package of supporting documentation that will enable expedient and full assessment and reporting to be completed. Please be aware that following formal lodgement, Council officers will promptly progress with the following steps:

- You will be invited to provide a presentation to the elected Council at the next available Councillor Workshop, in accordance with Council's Planning Proposal Policy. Please note that a suitable presentation must be included as part of the planning proposal lodgement package;
- Council officers will complete a full technical assessment of the application, as submitted, and report this to the Local Planning Panel for advice; and
- Following the Local Planning Panel, Council officers will report the application to Council, as submitted, for a determination on whether or not to progress to Gateway Determination.



It is noted that there are two landowners and multiple organisations that will be involved in this planning proposal application. Your suggested approach of one consolidated point of contact is supported to ensure ease and clarity in communication throughout the application process.

Should you wish to discuss this matter further, please contact Kayla Atkins, Strategic Planning Coordinator, on 9843 0404 or at [katkins@thehills.nsw.gov.au](mailto:katkins@thehills.nsw.gov.au).

Yours faithfully



**Megan Munari**  
**PRINCIPAL COORDINATOR FORWARD PLANNING**

ATTACHMENTS:

1. PRELIMINARY ROAD DESIGNS
2. PLANNING PROPOSAL POLICY



## Department of Climate Change, Energy, the Environment and Water

Our ref: DOC24/222104

David Bonjer  
Eco Logical Australia  
Email: [DavidB@ecoaus.com.au](mailto:DavidB@ecoaus.com.au)

23 May 2024

**Subject: West Gables Planning Proposal – Biodiversity Certification – Pitt Town and Boundary Road, Gables – Preliminary Consultation**

Dear David,

I refer to the preliminary consultation meeting held with the Biodiversity, Conservation and Science Group (BCS) of the Department of Climate Change, Energy, the Environment and Water (DCCEEW) on 30 April 2024 for the proposed biodiversity certification associated with the West Gables Planning Proposal (PP).

BCS has not reviewed the Biodiversity Certification Assessment Report (BCAR) prepared by Eco Logical Australia (dated 6 December 2022). BCS advise that an assessment of the BCAR will not be undertaken until the PP has been submitted to the Department of Planning, Housing and Infrastructure (DPHI) for Gateway determination and a biodiversity certification application submitted which is consistent with the PP. Please note that a BCAR submitted in support of a biodiversity certification application must meet the requirements of section 6.13 and 6.15 of the *Biodiversity Conservation Act 2016* (BC Act). Resources to assist with the preparation of biodiversity certification applications are available on our website:

<https://www2.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/biodiversity-certification/biodiversity-certification-forms-and-resources#biodiversity-certification-forms-and-resources>

BCS does not support the proposed use of avoided land for recreation purposes including but not limited to BBQ/picnic areas, basketball courts and kick-around areas, which would be inconsistent with the retention of biodiversity values. Furthermore, BCS understands that The Hills Shire Council does not support the approach of avoided land being dedicated to Council when that land is intended to meet the recreation needs of the future development. At its meeting of 17 April 2024, the Hills Shire Council Local Planning Panel determined in part that “*Land intended to be dedicated to Council for open space must not contain any proposed ‘avoided areas’ (for the purpose of Biodiversity Certification).*”

Should you have any queries regarding this matter, please contact the Greater Sydney Planning Team via [rog.gsrplanning@environment.nsw.gov.au](mailto:rog.gsrplanning@environment.nsw.gov.au).

Yours sincerely,



Dana Alderson  
A/Senior Team Leader Planning  
**Greater Sydney Branch**  
**Biodiversity Conservation and Science Group**

cc:

Zoe Melis, Director, ClarityPM

Megan Munari, Principal Coordinator Forward Planning, The Hills Shire Council

### **HISTORY OF THE PLANNING PROPOSAL**

- 06/04/2022** Formal pre-lodgement meeting held with Council officers with respect to a new planning proposal application. The preliminary proposal indicated a range of between 1,200 and 1,300 new dwellings.
- 20/05/2022** Council Officer Pre-lodgement Feedback Letter provided to Proponent (Attachment 3). This letter indicated that the proposal has the potential to demonstrate strategic merit however a holistic master planned approach is critical to the merit of the rezoning application for the subject land. The letter also provided advice on submission requirements and further issues to resolve, such as infrastructure capacity, required upgrades and potential funding mechanisms.
- April 2022 – March 2023** Targeted meetings were held to facilitate technical discussions with individual teams within Council including:
- Civil Engineering, Subdivision and Waterways
  - Traffic and Transport
  - Open Space, Recreation, Civil Maintenance, Contributions and Infrastructure
  - Environment, Biodiversity
- 29/08/2023** Planning proposal lodged with Council.
- 05/08/2023** Proponent presented the planning proposal at a Councillor Briefing session.
- 7/12/2023** Feedback regarding the preliminary assessment of the proposal provided to the Proponent.
- 22/2/2024** Additional feedback provided to the Proponent regarding biodiversity and open space.
- 27/2/2024** Further information received from Proponent regarding housing typologies.
- 19/3/2024** Further information received from Proponent regarding traffic and transport, flood modelling, draft Development Control Plan, servicing and biodiversity.
- 5/4/2024** Further information received from Proponent regarding infrastructure and letters of offer to enter into Voluntary Planning Agreements.
- 20/05/2024** Planning proposal reported to the Hills Local Planning Panel for advice. The Local Planning Panel advised that the planning proposal should proceed to Gateway Determination subject to amendments being made to address concerns relating to minimum lot size, rear-laneways, passive open space provision, biodiversity management, infrastructure delivery and certainty of development outcomes within the proposed planning mechanisms. The Council Officer's Technical Assessment Report is provided as Attachment 1 and the Panel's advice is provided as Attachment 2.
- 16/05/2024** Meeting held with Council officers and Proponent to discuss advice from the Local Planning Panel.



- 20/05/2024** Further information submitted to Council for consideration in response to the Local Planning Panel advice.
- 28/05/2024** Meeting held with Council officers and Proponent to further discuss outstanding matters relating to biodiversity, passive open space and infrastructure mechanisms.
- 05/06/2024** Revised information submitted to Council for consideration. This revised information is the subject of this report.

## ATTACHMENT 6

Item Description	Estimated Value	Identified By	Responsibility for delivery	Mechanism for delivery
<b>TRANSPORT AND ACCESS</b>				
Boundary Road - verge and cycle path - capital works	\$4,803,898	Proponent	Stockland/TBC	Planning Agreement/TBC
Boundary Road upgrade to 4 Lanes - capital works	\$17,984,367	Council Officers	Not identified	TBC
Boundary Road /Cataract Road intersection - roundabout	\$6,820,000	Council Officers	Not identified	TBC
Boundary Road /Red Gables Road intersection upgrade - land and capital works	\$6,820,000	Council Officers	Not identified	TBC
Intersection of Boundary and Old Pitt Town Road - land dedication	\$1,477,000	Proponent	Stockland	Planning Agreement
Boundary Road/Old Pitt Town Road intersection signals - land and capital works	\$14,447,638	Council Officers	Not identified	TBC
Old Pitt Town Road upgrade to 4 lanes - capital works	\$2,800,000	Council Officers	Not identified	TBC
Old Pitt Town Road and Valetta Drive intersection to signals - land and capital works	\$2,824,266	Proponent	Stockland	Planning Agreement
Old Pitt Town Road, Terry Road, Fontana Drive intersection - capital works	\$829,453	Council Officers	Not identified	TBC
Cycleway to Old Pitt Town Road - capital works	\$285,811	Proponent	Stockland/TBC	Planning Agreement
Bus stop - capital works	\$12,785	Proponent	Stockland	Planning Agreement
Pedestrian crossing of riparian corridor along basin wall - capital works	\$737,100	Proponent	Stockland	Planning Agreement
<b>TOTAL - TRANSPORT AND ACCESS</b>	<b>\$59,842,318</b>			
<b>OPEN SPACE AND RECREATION</b>				
Northern Park - land and capital works	\$18,589,590	Proponent	TBC	TBC
Eastern Park - land and capital works	\$4,905,001	Proponent	Allam	Planning Agreement
Local open space - Transgrid easement - land and capital works	\$1,514,539	Proponent	Stockland	Planning Agreement
Riparian corridor including cycleway - land and capital works	\$5,786,944	Proponent	Stockland	Planning Agreement
Western Park - land and capital works	\$5,407,181	Proponent	Stockland	Planning Agreement
Southern Park - land and capital works	\$17,344,614	Proponent	Stockland, other developers	Planning Agreement
Active open space - embellishment of Horseworld - capital works	\$11,300,000	Proponent	All developers	Planning Agreement
Active open space - approximate proportionate contribution towards land cost of new active recreation facilities	\$17,500,000	Council Officers	Not identified	TBC
<b>TOTAL - OPEN SPACE AND RECREATION</b>	<b>\$82,347,869</b>			
<b>WATER CYCLE MANAGEMENT</b>				
Basin - water quantity - land and capital works	\$2,770,545	Proponent	Stockland	Planning Agreement
Basin - water quality - capital works	\$1,854,057	Proponent	Stockland	Planning Agreement
Basin - water quantity - land and capital works	\$2,949,783	Proponent	Stockland	Planning Agreement
Basin - water quality - capital works	\$281,906	Proponent	Stockland	Planning Agreement
Basin - water quantity - land and capital works	\$2,033,713	Proponent	Allam	Planning Agreement
Basin - water quality - capital works	\$315,514	Proponent	Allam	Planning Agreement
Basin - water quantity - land and capital works	\$5,883,651	Proponent	Other developers	TBC
Basin - water quality - capital works	\$893,005	Proponent	Other developers	TBC
Basin - water quantity - land and capital works	\$4,307,933	Proponent	Stockland	Planning Agreement
Basin - water quality - capital works	\$1,884,463	Proponent	Stockland	Planning Agreement
Basin - water quantity - land and capital works	\$2,571,032	Proponent	Other developers	TBC
<b>TOTAL - WATER CYCLE MANAGEMENT</b>	<b>\$25,745,602.00</b>			
<b>COMMUNITY FACILITIES</b>				
Provision of monetary contribution for additional community centre floorspace	\$3,049,500	Proponent	All developers	Planning Agreement
<b>TOTAL - COMMUNITY FACILITIES</b>	<b>\$3,049,500.00</b>			