

12 March 2021

Mr Andrew Jackson
Director, Planning Partnership
PO Box 257
Parramatta NSW 2124

(uploaded through NSW Planning Portal)

Dear Andrew

Submission: Draft Aerotropolis Precinct Plan – Northern Gateway

This submission has been prepared by Elton Consulting on behalf of Luddenham Property Group (LPG) in response to the release of the Draft Aerotropolis Precinct Plans for the Western Sydney Aerotropolis Precinct.

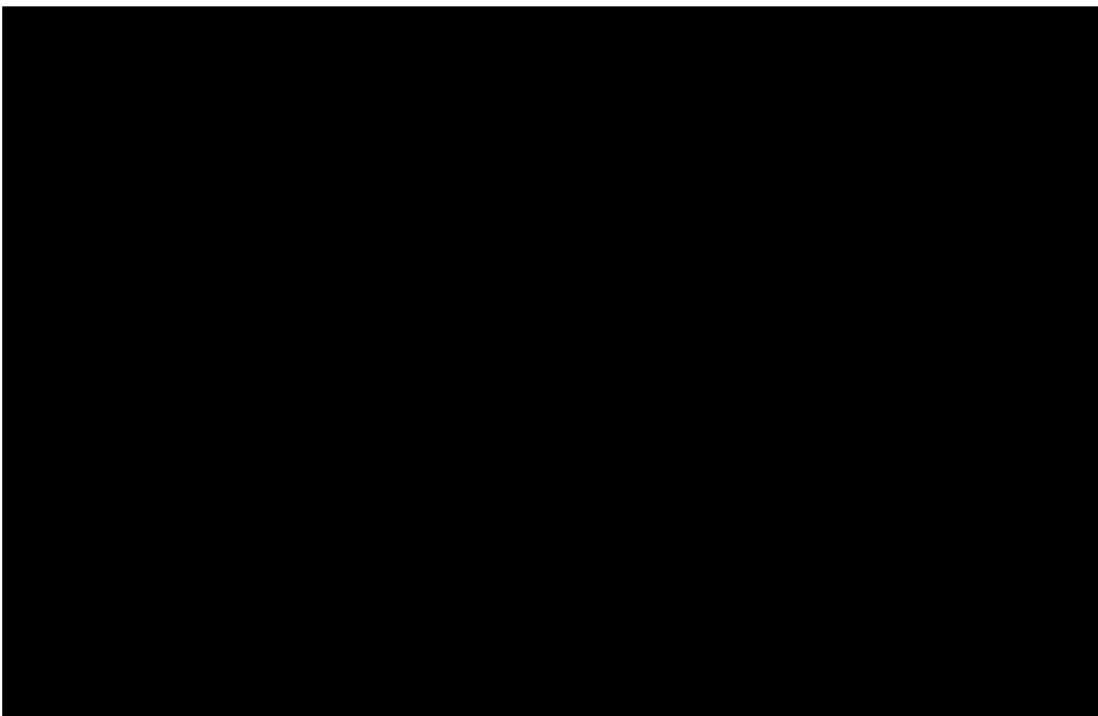
The submission includes commentary of the Draft Precinct Plan for the Aerotropolis with particular focus on the Northern Gateway and specifically our property at [REDACTED] Elizabeth Drive Luddenham (referred to in the submission as LPG Elizabeth Drive).

The property details are as follows:

Address and legal	Legal description	Ha
[REDACTED] Elizabeth Drive, Luddenham	[REDACTED]	36.6

The land was zoned Enterprise under the Western Sydney Aerotropolis SEPP (Aerotropolis SEPP) in September 2020 and is illustrated in **Figure 1**.

Figure 1: LPG Site Land Use Zone SEPP

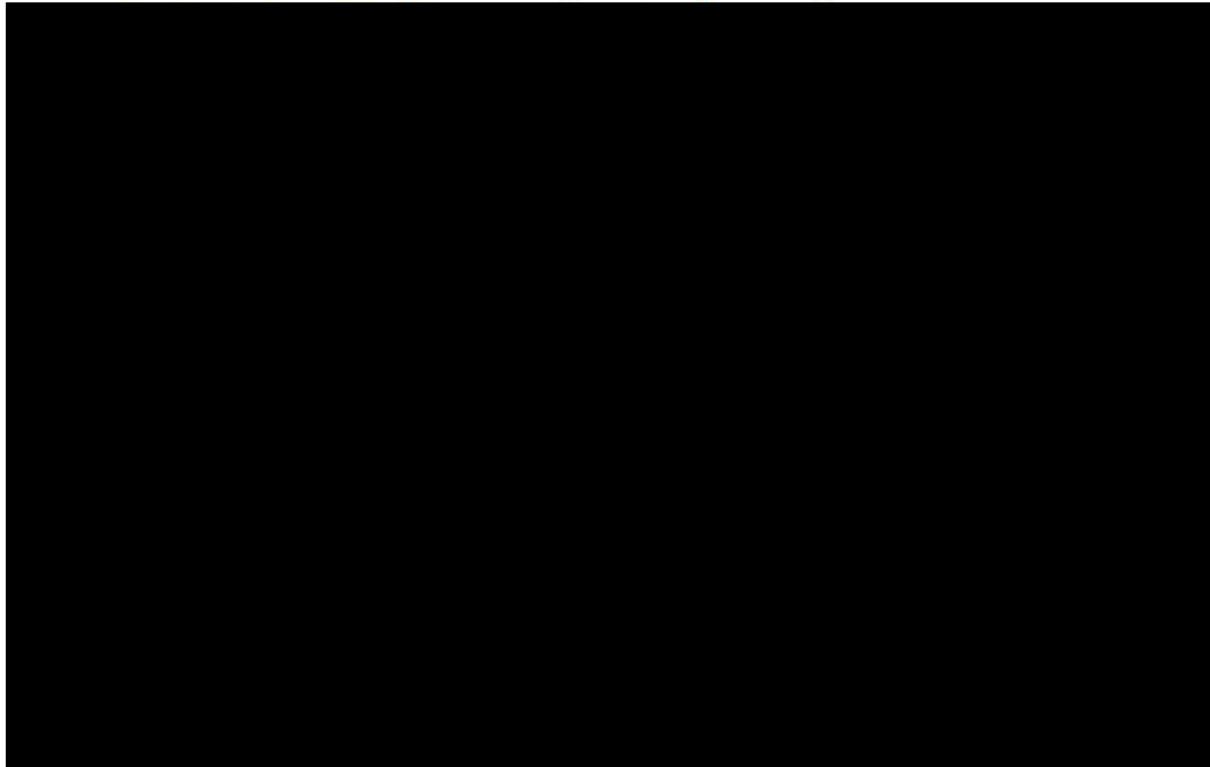


Source: Extract Aerotropolis SEPP LZN_001



In addition to [REDACTED] Elizabeth Drive, we have engaged the interest in development through a masterplan process with adjoining landowners east and west. To this end, we note that an amalgamated site is identified in the Draft SIC package as one of six significant parcels in the Northern Gateway Precinct (refer **Figure 2**). Any masterplan needs to consider the Masterplan Guideline which, despite reference to the document in the SEPP, is yet to be published.

Figure 2: Northern Gateway Precinct Major Land Holdings



Source: Western Sydney Aerotropolis Special Infrastructure Contributions Analysis, Atlas, 2020.

Representation of the Site in the Precinct Plan

As noted about the submission focuses on the LPG Elizabeth Drive holding. The following provides an overview of the key elements of the Draft Precinct Plan and includes a comment in the context of the subject site.

Aerotropolis SEPP zones

The Aerotropolis SEPP rezoned the land in September 2020. The Aerotropolis SEPP is the environmental planning instrument (EPI) and determines the land use zones and permissibility. As can be seen in Figure 1, the subject site is zoned part Enterprise and part Environment and Recreation.

LPG have recently received advice from Penrith City Council that, as a result of the rezoning and revaluation of the land from rural to enterprise, the rates will be increased to \$60,000 pa yet now face a scenario where the land cannot be developed for industrial and business uses as identified in the land use table for the Enterprise zone, rather, the majority will be designated as open space under the land use framework outlined in the *draft Aerotropolis Precinct Plan*.

Land Use Framework

At the crux of the *draft Aerotropolis Precinct Plan* is the intention to disrupt the zoning to the extent that the *draft Aerotropolis Precinct Plan* will override the Aerotropolis SEPP and prohibited otherwise permissible land uses in certain areas. Open space is identified through the Aerotropolis Planning Framework in two ways. Firstly, in the Aerotropolis SEPP. The SEPP is the EPI that zones the land.



One of the zones is Environment and Recreation. This zone has been applied to the riparian zone along Elizabeth Drive.

Open space is also designated in the *draft Aerotropolis Precinct Plan*.

In the case of land owned by LPG, for example, the land use largely zoned Enterprise under the Aerotropolis SEPP (refer **Figure 1**), however, the Draft Precinct Plan assumes that in the order of 200,000sqm of land zoned Enterprise will be developed or reserved as open space (refer **Figure 3 and 4**).

The key question that arises here is the statutory role that the *Aerotropolis Precinct Plan* will have to determine land use permissibility. The drafting of the Aerotropolis SEPP provides no room for objectivity.

The key issues that remain unclear in the *draft Aerotropolis Precinct Plan* documentation:

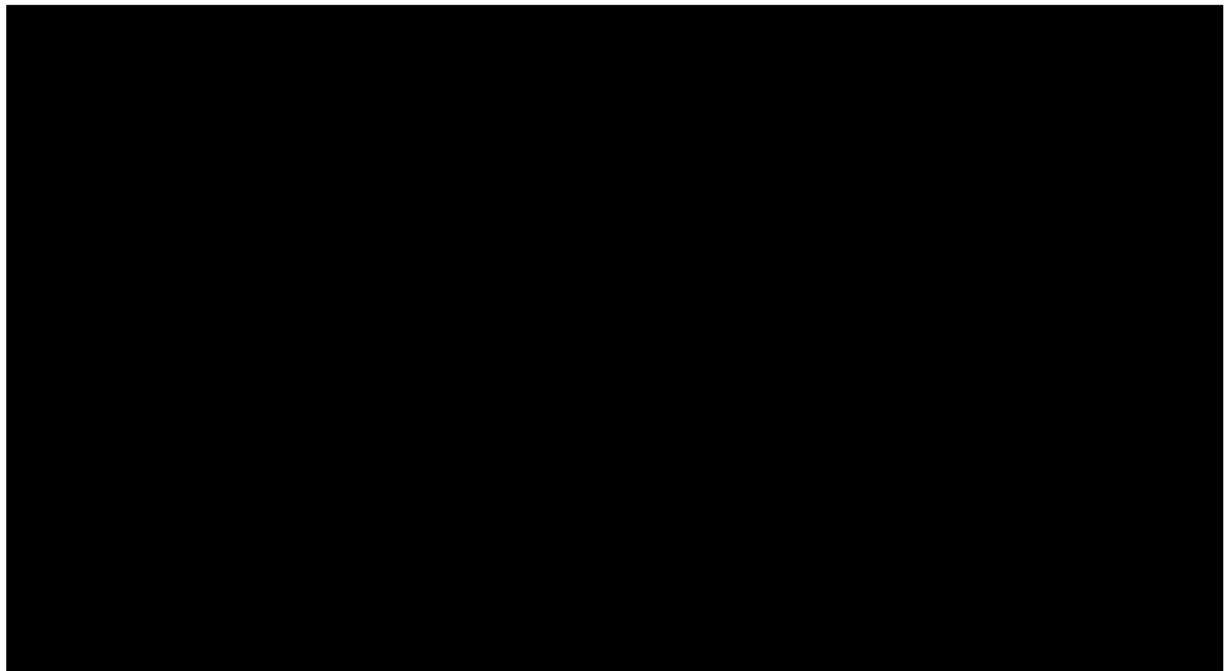
1. The relationship between the SEPP land use table and zoning and the Precinct Plan (once published). The Precinct Plan nor the SEPP appear to include a mechanism for variation (eg a clause 4.6 type provision). Clause 41 of the SEPP requires that development on land to which a precinct plan applies must be consistent with the precinct plan. The omission of the term “generally” is noted.

The Precinct plan shows significant area of land as being reserved for open space and recreation despite an underlying zone being Enterprise.

Does the omission of flexibility result in a prohibition of a land use that is otherwise permissible and does this have legal standing? It is noted that in another planning context a DCP cannot prohibit a permissible land use.

In a meeting held between Elton on behalf of LPG and representatives from the NSW DPIE on 7th December 2020, it was suggested that we should consider the *draft Aerotropolis Precinct Plan* as having the same statutory role as an EPI. This relationship and function needs clarification. If the *draft Aerotropolis Precinct Plan* does assume this role, the Aerotropolis SEPP has no work to do in the allocation of zones.

Figure 3: Draft Northern Gateway Precinct Plan Land Use Framework



The Land Use Framework

Source: Extracts Northern Gateway Brochure



Figure 4: Draft Northern Gateway Precinct Plan preferred land uses



Source: Draft Northern Gateway Precinct Plan Summary

Open Space

The quantum and function of open space identified in the Draft Precinct Plan is questioned. This is particularly the case on for land north of Elizabeth Drive and south of the M12. This land is zoned Enterprise. It is presumed that development will be largely bulky warehousing, freight and logistics and supporting infrastructure. These uses are not necessarily employment generating in terms of job creation on site. Who will be using this hilltop park? How will they use it?

These questions were put to DPIE and the following advice was provided.

Rationale for open space in this location

- *Topography is the issue here, where there are a number of localised and steep valleys. The grades are very steep - and although there is a flat portion in the top third of the highlighted area you simply cannot get to it without significant earthworks which will cut through the B horizon (a major objective is to preserve...) and at great cost.*
- *This area is the Ridgeline which spurs from Luddenham Village into and through the Northern Gateway Precinct, so is a major landform feature of the hilltops, and its steepness is one of the reasons an intersection on Elizabeth Drive was so hard to locate.*

Using topography as a rational for the allocation of open space, prohibiting all other forms of business or enterprise development is at odds with the Aerotropolis SEPP and an evidenced based approach to the arrangement of land uses within a site. The site does include areas of moderately challenging topography, however, a site-specific assessment can be undertaken to determine the extent to which the land can be developed and includes development feasibility. Assuming the cost of developing the land is relative and should not be a factor in the strategic planning for the Precinct. Further, the *draft Aerotropolis Precinct Plan* includes built form typologies that could be adopted for steeper sites.

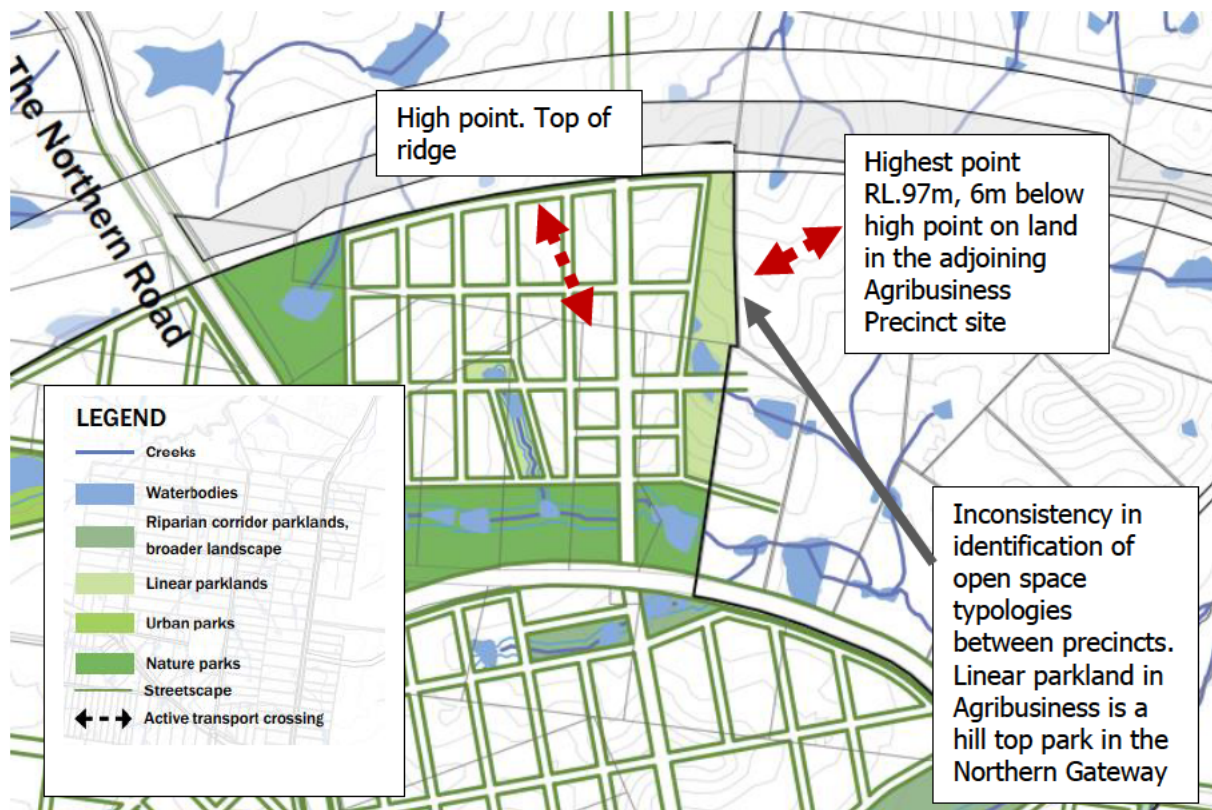
There are a number of constrained ridgelines throughout the Aerotropolis however, if these are considered undevelopable the preservation of these links should have formed part of the open space zoning in the Aerotropolis SEPP in the same way as the creek lines. This unfortunately did not



happen. The quality of hilltops has been eroded over time. Agricultural and associated land use and land clearing have contributed to this.

Further, the manner in which the *draft Aerotropolis Precinct Plan* proposed to preserve these now is inconsistent. In the case of the LPG Elizabeth Drive site, it is not the highest point. In fact, the higher portions of ridgeline are shown in the adjoining Agribusiness Precinct as being completely developed for enterprise (refer **Figure 5**). If the advice from DPIE were to represent the rationale behind the allocation of a park on the Northern Gateway Precinct, why is the approach to the allocation of land use so different in the adjoining Agribusiness Precinct. This needs to be urgently reviewed with greater attention to detail in precinct planning between these two precincts. This is even more important given the east of the Northern Road and north of Elizabeth Drive in the Agribusiness Precinct is the only area in the Agribusiness Precinct zoned Enterprise rather than Agribusiness of which this parcel represents nearly 40 hectares.

Figure 5: High points and open space



Source: Draft Agribusiness Precinct Plan

Landscape - open space and scenic views

In the Open Space Scenic Views section of the *Northern Gateway Urban Design and Landscape Report*, there is a reference to "connect to Country". This report also includes the ability for people to interpret connection to Country as a driving factor to the design. For the most part, however, it appears that the concept of "connection to Country" has been interpreted as providing the opportunity/ability for people to take in the landscape, i.e. placing parks on top of hills.

In reviewing the documentation, including the technical reports, it is unclear as to what exactly "cultural connection" refers to. *Northern Gateway Urban Design and Landscape Report* includes the following "annotation";

"Hilltop parks retained as key features. They provide connection to Country by providing creek to hilltop connections, celebrating the natural landscape and providing scenic views across the precinct and beyond. (page 8)."

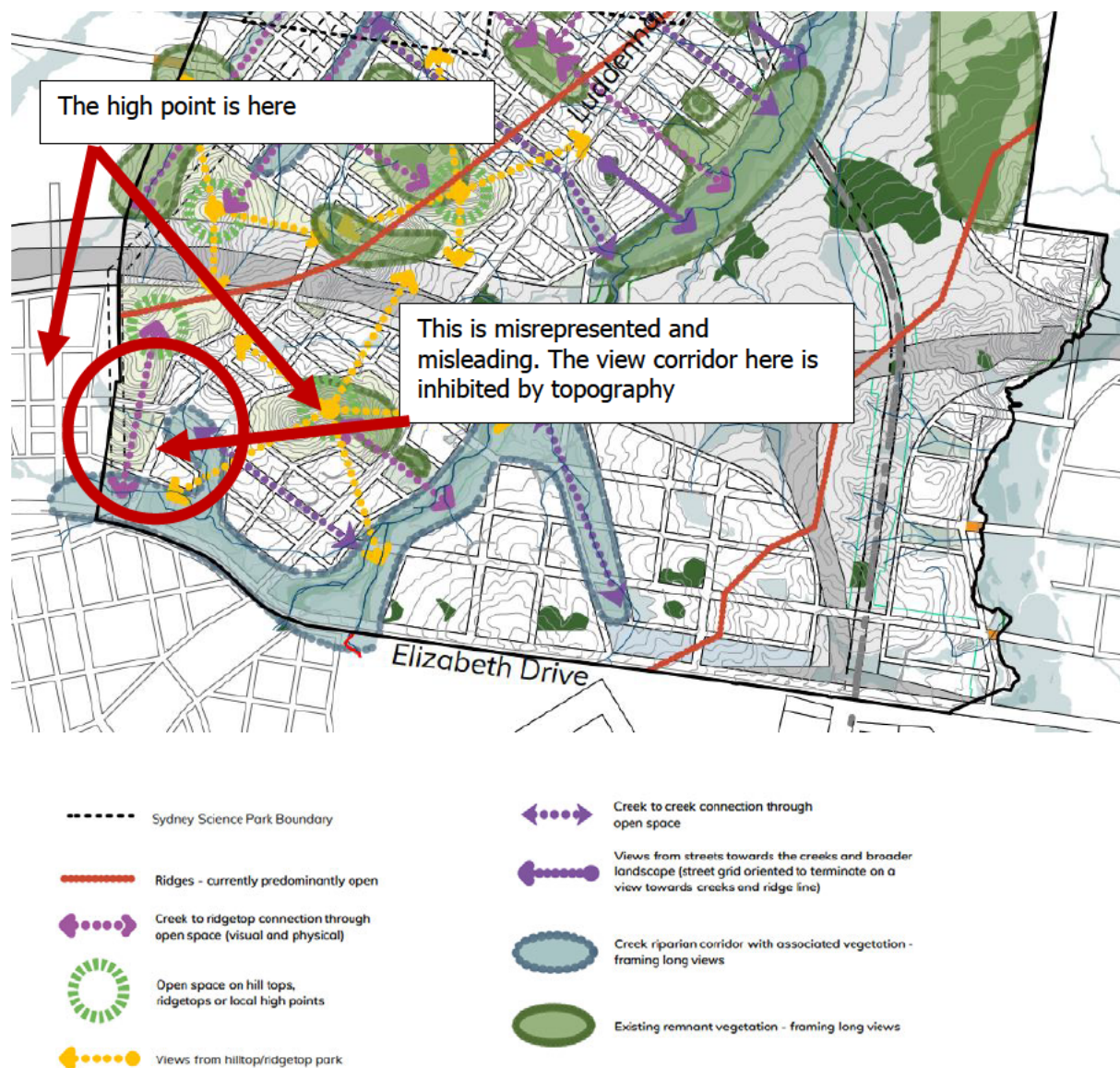


The Scenic and Cultural Connection objectives and requirements, however, do not make any reference to “cultural” (page 88 section 3.2.9 *Aerotropolis Precinct Plan*, 2020).

In the context of the draft Northern Gateway Precinct Plan it seems to be referring to society’s cultural connection, rather a narrow definition of either Indigenous or European cultural connection. Historically, when the phrase “cultural connection” is used, people are typically referring to an Indigenous cultural connection to a landscape/place. The Further clarification is required to align the *draft Aerotropolis Precinct Plan* and *Northern Gateway Urban Design and Landscape Report* to enable the implications of it to be fully understood. The intention of the concept “cultural connection” as it relates to Scenic and Cultural Connection” need to be spelt out in a manner that is clear and concise. This will enable the concept to be assessed as part of the evidence-based consideration of the potential development opportunities in the Enterprise zone across the entire precinct. In its current form, it is vague and uncertain.

As noted above, the lodation of hill top parks is questioned because it is simply not a high point. The high point is 6m higher on the adjoining land in the Agribusiness Precinct shown in the Precinct Plan as completely developed in a grid.

Figure 6: Views Northern Gateway Enterprise zone

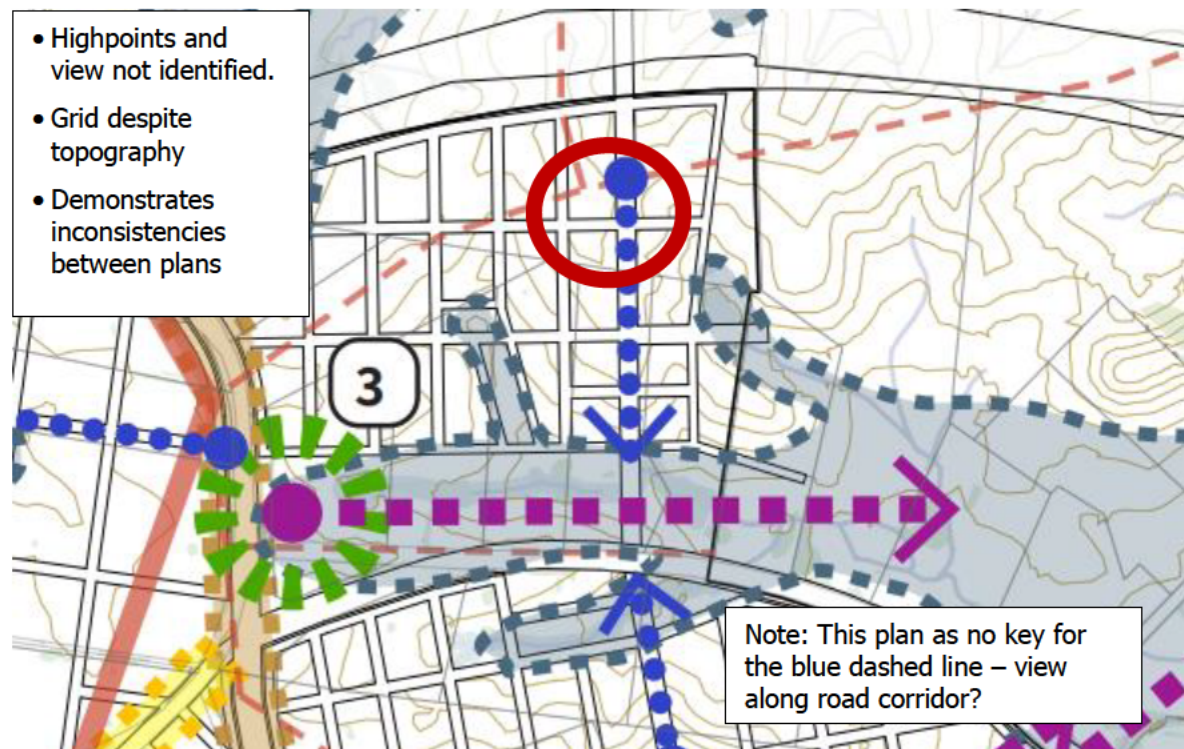


Source: Northern Gateway Urban Design and Landscape Plan



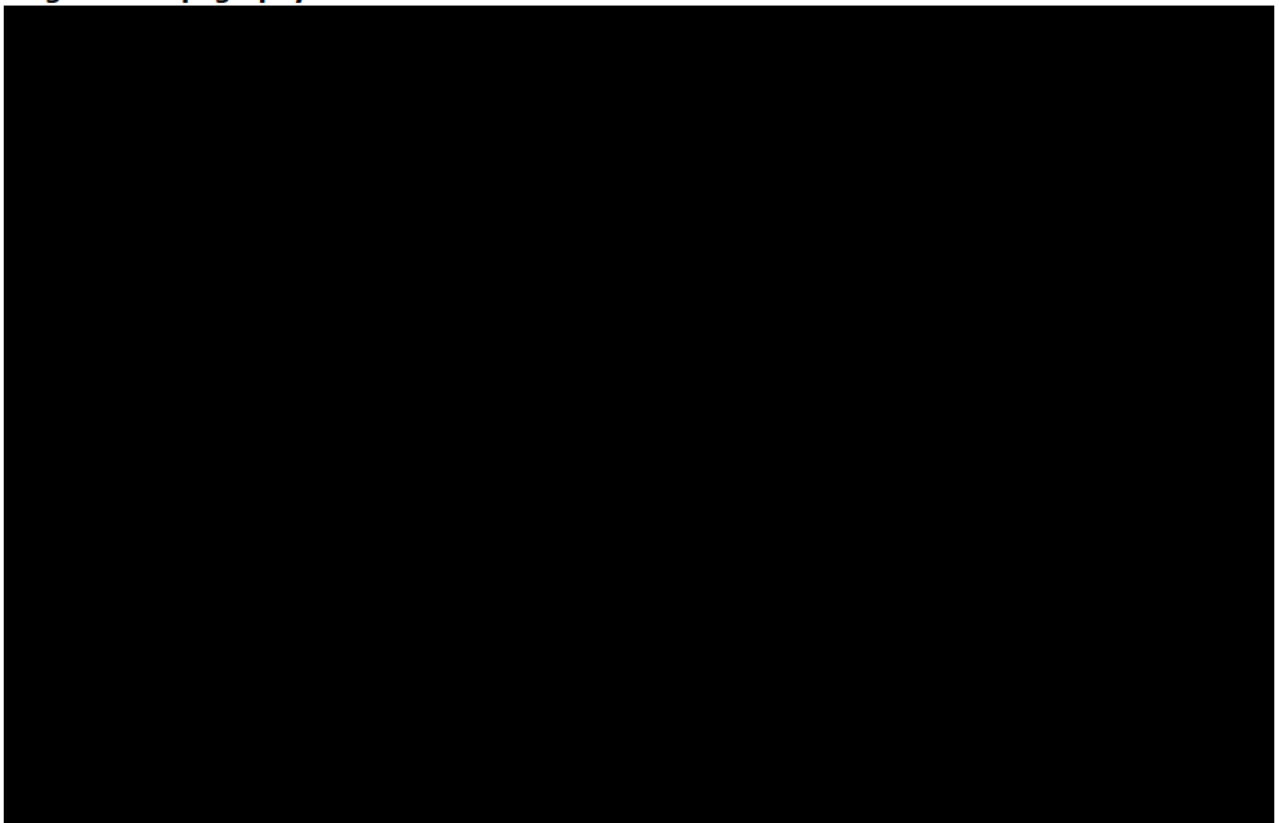
The equivilant image for the neighbouring precinct represents the principles differently. This suggests that the *Northern Gateway and Agribusiness Urban Design Reports* were completed prior to the visual analysis rather than the key visual corridors informing the design.

Figure 7: Views Agribusiness Enterprise zone



Source: Agribusiness Urban Design and Landscape Plan

Figure 8: Topography





While topography is recognised as a challenge, and the business as usual approach not suitable, the alternative that seems to be proposed is to dedicated land with a gradient greater than 5% to open space without any thought to the implications for the practical implication of this approach. Once suitably zoned Enterprise, the development process should be one in which a site specific evidence based approach to determining the developable area. This does not mean that the principles that underpin the draft Precinct Plan need to be set aside, rather, the plan needs to build in the flexibility implied in the supporting technical studies that proclaim to support it.

Creating hilltops as “safe places” in the context of Connection to Country (page 18 *Northern Gateway Urban Design and Landscape Report*) is also a curiosity that has not been explained and difficult to interpret in the context of “Country”.

Acquisition of open space

Open space is an important element in the wider approach to planning for the Aerotropolis. The Aerotropolis SEPP includes the reservation of large areas of open space delivering the blue-green grid and connecting key cultural landscapes¹ along South and Wianamatta Creeks and key transport corridors. A Draft Special Infrastructure Contribution (SIC) has recently been on Public Exhibition. The SIC includes a contribution to the delivery of green infrastructure. The SIC Determination document assumes \$844,161,212 for Regional Open Space. Of this \$209,450,579 (or 25%) is proposed to be collected over time through the SIC. This raises a number of issues. Does the Regional Open Space assumption assume the land zoned open space under the Aerotropolis SEPP or the total amount of land identified as open space in the Draft Precinct Plans? The open space shown on the Elizabeth Drive site is a “regional hilltop park”. Based on a land value for land used Enterprise, the (approx.) 200,000sqm identified as regional park will cost the NSW Government \$80M to acquire before any improvements have been made. This alone is 38% of the SIC amount allocated for regional open space.

A further question arises as to how and when the land would be acquired. Mixed advice has been provided from DPIE in relation to acquisition of land, both land zoned Environment and Recreation and land identified as open space in the draft Precinct Plan. It is understood that the NSW Government cannot use compulsory acquisition powers under current legislation, to acquire land for open space. How then will the delivery of all of this open space be realised, and when? In the meantime, as noted above, land owners will be forced to pay inflated rates to local councils on land that cannot be used for the purpose for which it is zoned.

Aboriginal Cultural Heritage

The issues as to the relationship between the specific parks identified and “Cultural connection” has been noted above. Kayandel Archaeological Services were engaged to look at the LPG Elizabeth Drive site in the context of Aboriginal Cultural Heritage in relation to both the potential development of the site and the relationship between the site and the Draft Precinct Plans (refer **Attachment 1**).

Extent Heritage prepared an *Aboriginal and non-Aboriginal Cultural Heritage Assessment* for the initial precincts including the Northern Gateway. The report, which was high level and desktop, informed the *draft Aerotropolis Precinct Plan*.

The Aboriginal archaeological sensitivity mapping in the Extent Heritage report shows the LPG Elizabeth Drive site as having low sensitivity of the majority of the site with a small area of moderate sensitivity along the riparian zone (refer **Figure 9**). The Extent Heritage report does not preclude development from occurring within areas of low or moderate Aboriginal heritage sensitivity subject to an archaeological investigation at site level.

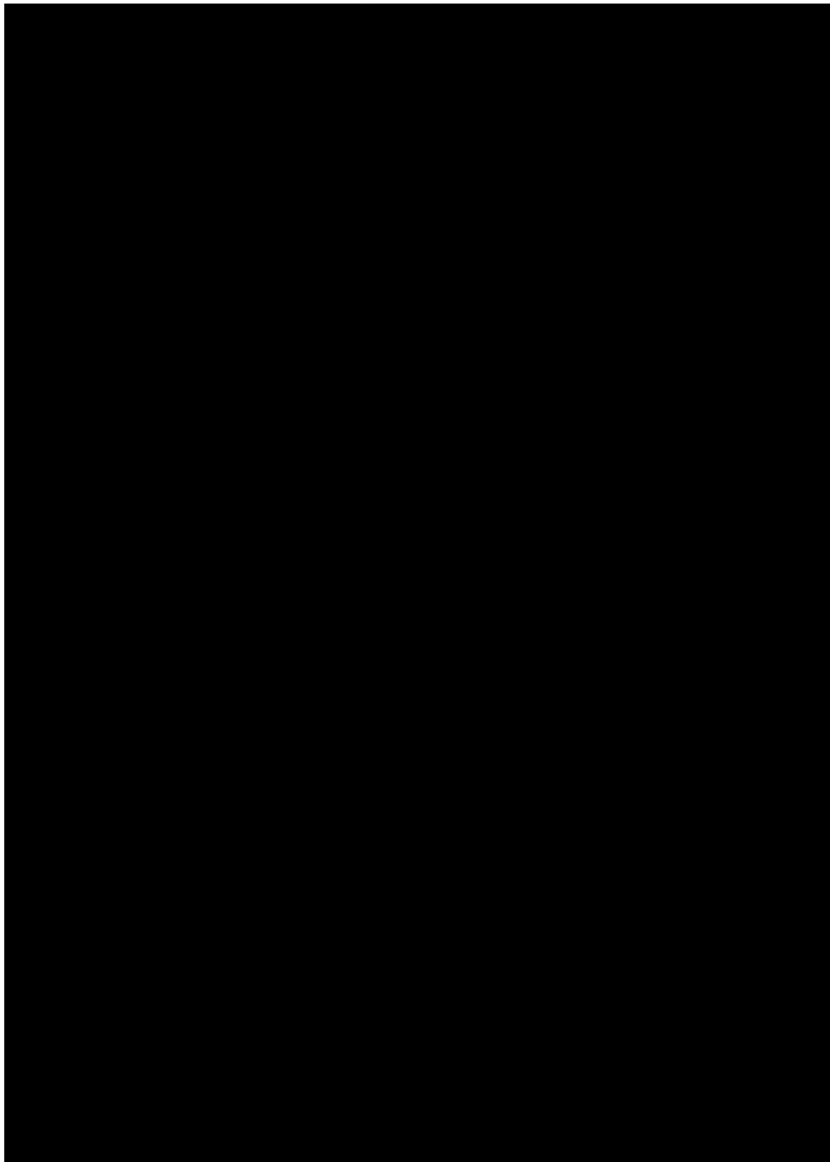
Kayandel is of the opinion that the recommendation by Extent (2020, p. 187) applies to the Subject Property:

¹ It is acknowledged that the creek lines have been identified in the Extent Heritage Report as having high value.



"Development in areas of Moderate sensitivity should seek to minimise impacts where possible. If development impacts are unavoidable, further investigations (e.g., ACHAR) should be undertaken."

Figure 9: Archaeological sensitivity



Source: Refer Attachment 1

Draft Precinct Plan

"Connecting to Country" is one of the key drivers underpinning the *draft Aerotropolis Precinct Plan*. The process incorporated traditional understandings of Country to influence planning, design, and landscape management. It is intended that precinct and sub-precinct design will be guided by Cultural Design Principals and local leaders in the Aboriginal community. While the Northern Gateway Urban Design and Landscape Report (hill thalis Architecture +Urban Projects, 2020) details a layout and structure for future development within the LPG Elizabeth Drive site, the document itself implies that this should be considered a guide only with the typical assessment and investigation process still to be followed. The archaeological investigation must include a consultation process that involves the implementation of GANSW's (2020) Draft Connecting with Country framework. The archaeological investigation would be used to characterise the nature and extent of any archaeological deposits that may be present and could then be used to inform the layout of any future development.



No objectives to Aboriginal cultural heritage have been included in the “Northern Gateway Precinct objectives” of the Draft Aerotropolis Precinct Plan. Section 2.2 “Place-based opportunities and constraints” of the draft Aerotropolis Precinct Plan makes the following statement:

“retain Aboriginal heritage items and significant places in public open space and respect and enable conservation of non-Aboriginal heritage items (pg.47)”

This implies that all Aboriginal heritage items will be retained in public open spaces. This theoretically means that any Aboriginal heritage items that are identified, will result in the alteration of a layout and structure plan to include a new public open space or expand a public open space. This is in counter to what Extent recommended, as previously noted, development can occur in areas of moderate archaeological sensitivity.

Transport

The Transport Assessment undertaken by AECOM includes the following statement in relation to walking as a mode of transport in the Northern Gateway.

*The transport plan recognises walking as an active and sustainable transport mode, and encourages people to walk for transport, **especially for trips within two-kilometre catchments of origins and destinations**. By encouraging more people to walk, and combining more walking with public transport trips, is an effective way to free up capacity on the transport system and reduce congestion in centres. The quality of the walking environment within two kilometres of key destinations will influence walking as an option for residents, workers and visitors within the five initial Aerotropolis precincts.*

There are no mixed use or residential zones proposed within 2km of the hill top park identified within the site. Further, much has been made of the steep topography. This goes to the question raised earlier; who will use these spaces and how will they be paid for?

There are other issues of concern in relation to the road hierarchy and connections in this part of the Agribusiness/Northern Gateway Precinct, not least of which the disconnect between the technical report prepared by AECOM in terms of signalised intersection locations on Elizabeth Drive, and how these are represented in the *draft Aerotropolis Precinct Plan*. This again highlights to inconsistency between the technical supporting documents and the Urban Design and Landscape Reports. The Precinct Plan is rigid and yet key decisions such as signalisation, which have the potential to alter an entire network hierarchy have been left unresolved.

Sub-Arterial roads

There are two roads shown as sub-arterial connections to Elizabeth Drive in close proximity in the Northern Gateway and Agribusiness Urban Design and Landscape Reports (**Figures 10, 11 & 14**). In the draft Aerotropolis Precinct plan only one is shown in the Aerotropolis Framework on page 144 (and referred to as “Primary Arterial with a confirmed signalised intersection”) and two shown again on the Street Typologies plan on page 146.

Further, the location of the Sub-Arterial/Primary Arterial road to Elizabeth Drive at the western location in the Agribusiness Precinct will involve significant investment in a bridge to overcome the topography. Finally, as noted earlier, there is no opportunity for development in the front portion of any of the individual land holdings on the northern side of Elizabeth Drive. Unlocking the developable area will be unfeasible. The LPG Elizabeth Drive site is the key and has the potential to act as a catalyst for development part of the Northern Gateway Precinct and the only opportunity for any development to occur at all in the otherwise land locked Enterprise zoned land in the adjoining Agribusiness Precinct.



Figure 10: Transport strategy (Northern Gateway)

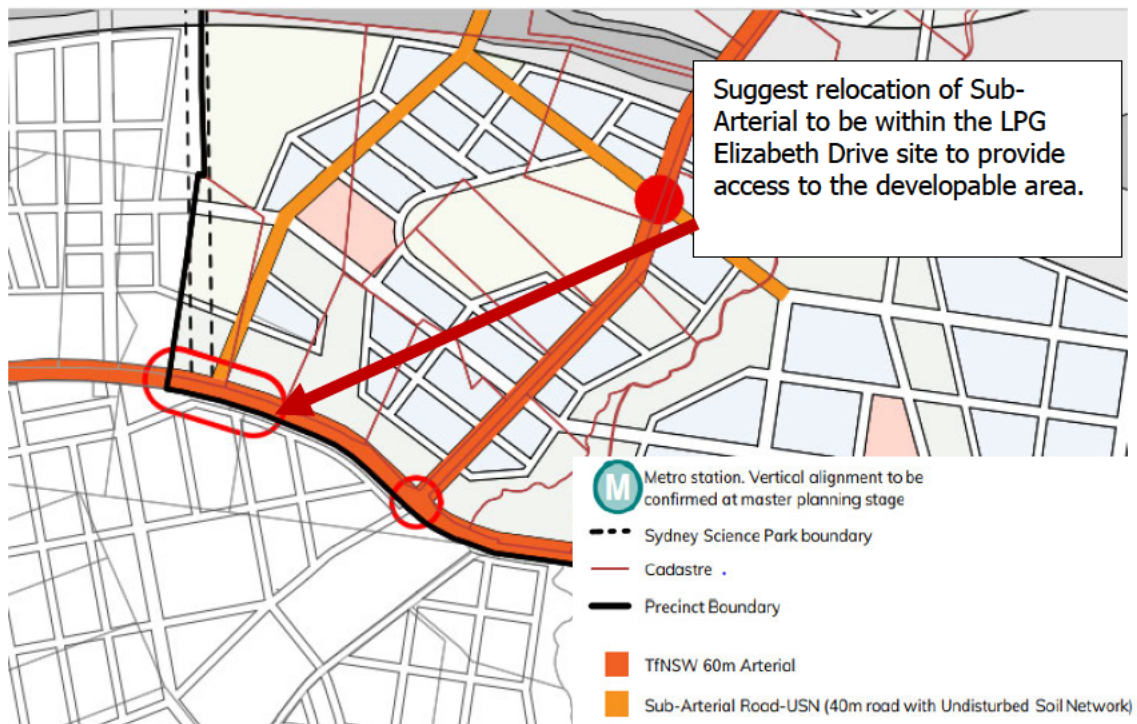
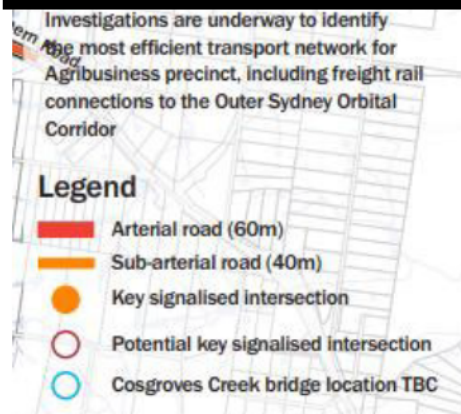
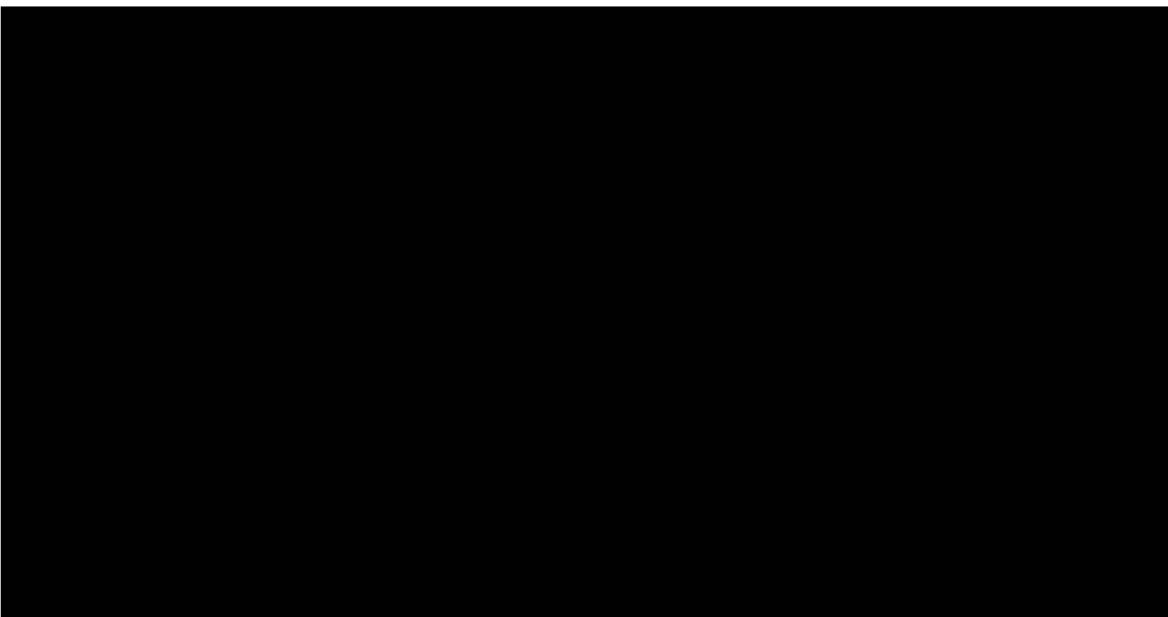


Figure 11: Transport Strategy (Agribusiness)





Topography and Cost of North-South Sub-arterial Road

In addition to the above, the topography of the Sub-arterial Road was analysed for both the "Precinct Plan" position and our "Proponent Proposal" position using LiDAR survey data (accurate to +/- 0.2m).

Figure 12: Sub-arterial Road Long Section (Precinct Plan)

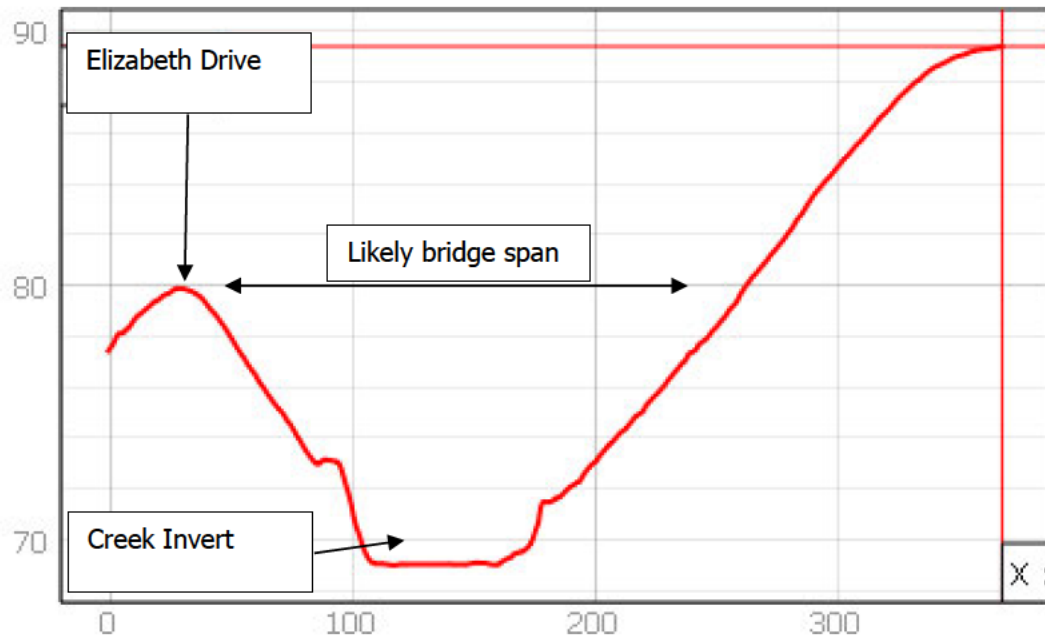
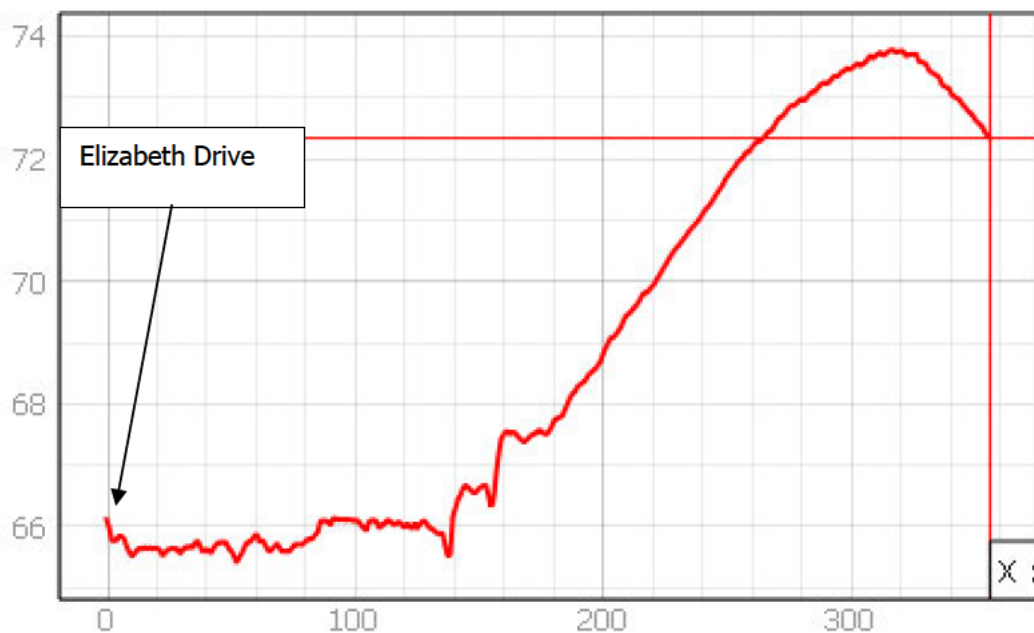


Figure 12 above shows a significant level drop down from Elizabeth Drive to the creek level, some 11m. This would require a bridge structure as filling this much in the riparian zone would likely result in unacceptable environmental consequences. The section also shows that this bridge would need to be in the order of 200m.

Figure 13 below shows that our Proponent Proposal alignment for the Sub-arterial Road requires no bridge at all, but could manage the creek flows with "at grade" culvert crossing. Using a bridge length of 200m and 20m wide at an average cost of approx \$5,000/sqm our proposed option would save approximately \$20 million and have far less environmental impacts.

Figure 13: Sub-arterial Road Long Section (Proponent Proposal)

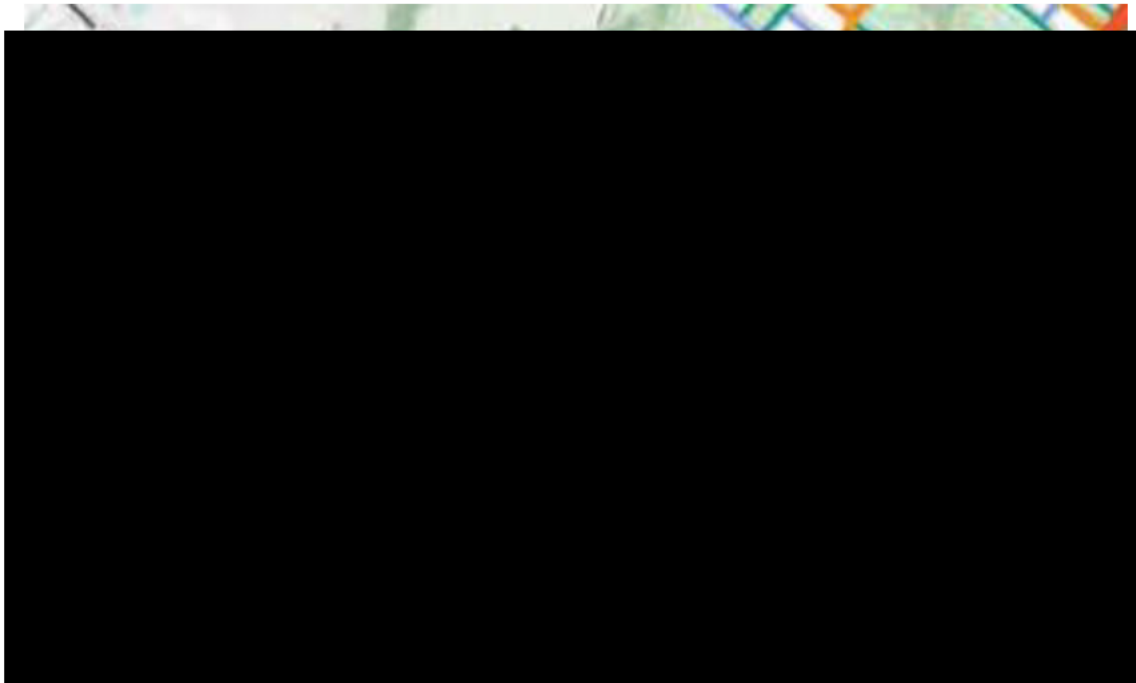




Delivery of development

The advantage of the LPG Elizabeth Drive site is that it is the only parcel of land along Elisabeth Drive within the poartion of the Aerotropolis Precinct that is bounded by The Northern Road, Elizabeth Drive, Luddenham Road and the Outer Sydney Orbital (M12) the provides access to the developable, Enterprise zoned land (**Figure 14**). However, the primary access to the LPG Elizabeth Drive site from Elisabeth Drive may is not on the LPG lot (refer **Figure 15**). Without flexibility in the *draft Aerotropolis Precinct Plan*, this will make any development of this part of the precinct impossible. Further, the lot on which the point of access does join Elisabeth Drive is completely identified as a hilltop park. Not only is it not on a hill top, it includes land that is outside the riparian corridor and suitable for development. As drafted, there is no incentive at all for anyone to deliver access at this point. We implore DPIE to reslove this issue by either religgning the road (as peoposed in the development scenario outlined further in this submission) or at the very least build in flexibility to the Precinct Plans to enable an evidenced based variation to the otherwise rigid arrangement of both land uses and infrastructure.

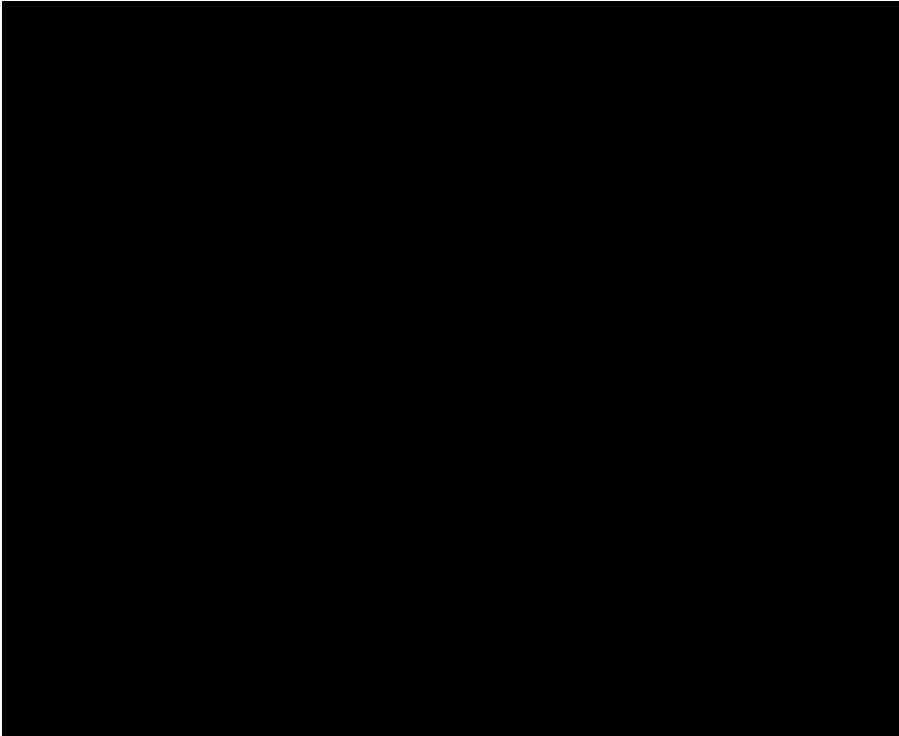
Figure 14: LPG Land key to unlocking development



Source: draft Aerotropolis Precinct Plan, page 146



Figure 15: Access



Source: Draft Precinct Plan and Aerotropolis SEPP.

This presents a unique opportunity for the development of the site either under the Aerotropolis SEPP prior to the finalisation of the Draft Precinct Plans or immediately following albeit a much reduced development footprint.

Alternative development scenario

As noted above, the LPG Elizabeth Drive site is the only parcel of land within the locality that connects to Elizabeth Drive and runs through to the M12. In terms of early movers, there is no other opportunity to provide direct access for land that is zoned Enterprise in the adjoining Agribusiness Precinct or land to the west of the LPG site linking Luddenham Road.

LPG, working closely with Nettleton tribe have developed an alternative arrangement for the site that will achieve the net developable area and open space balance as proposed in the *draft Aerotropolis Precinct Plan* but in a manner that unlocks the central portion of the site for future development. The proposed arrangement is consistent with and permissible under the EPI Enterprise zone.

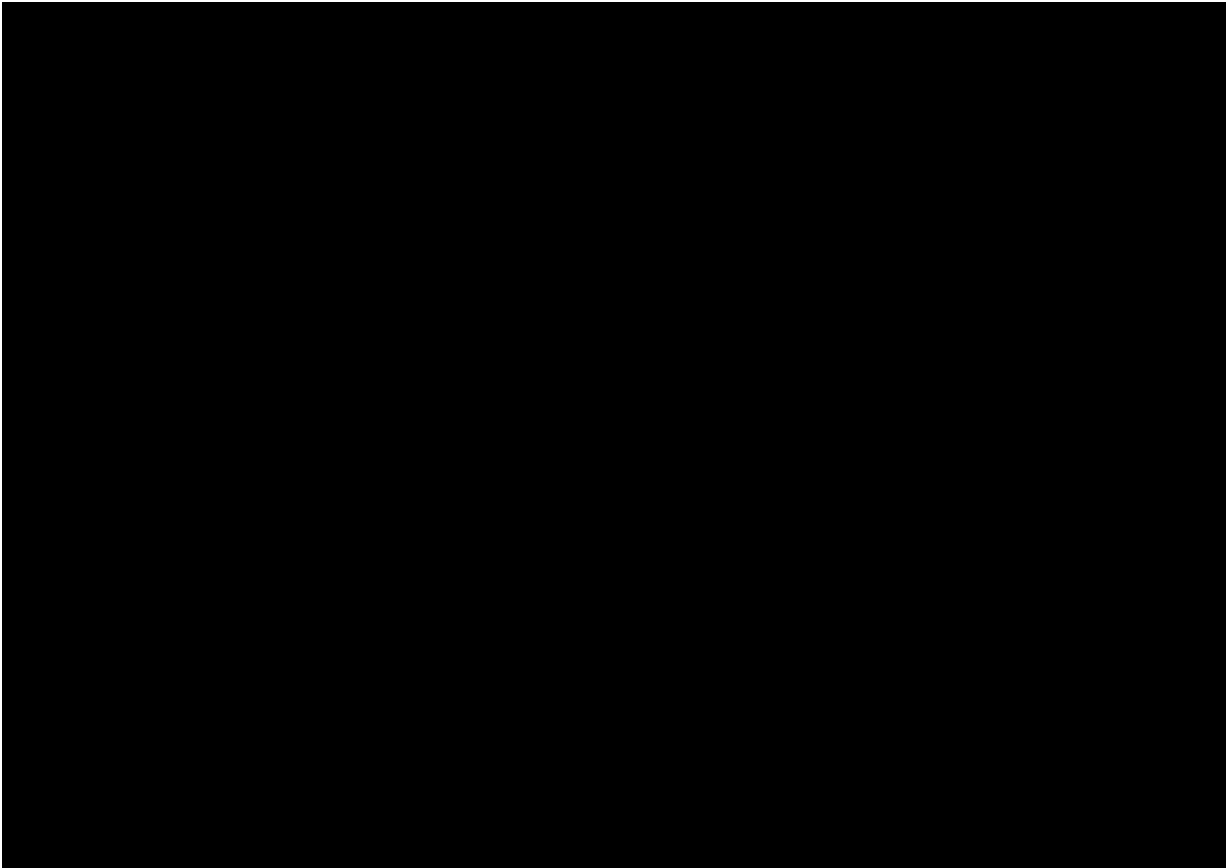
The key advantages of this arrangement are:

- Access onto Elizabeth Drive at a grade that will not result in the need for a bridge or significant civil works or further land acquisition.
- Unlocking land within the agribusiness precinct otherwise land locked from The Northern Road
- Maintaining key corridors of open space along the riparian zones and under Transmission Line easements to maintain physical connectivity.
- Preserving a visual connection to through the precinct north-south that utilises the existing easements
- Facilitating the development of the hill top parkland across the high point to the east.
- Maintaining the opportunity for connections across Elizabeth Drive to the south.
- Reducing the need for an overpass across the M12.



- Reducing the need to create access to the landlocked parcel to the west via The Northern Road.

Figure 16: Alternative Arrangement



Source: Nettleton Tribe Partnership Pty Ltd, 2020

Figure 16 shows the LPG site and how it could be delivered as a standalone development site while incorporating linkages east/west and north/south. It provides the opportunity for development with an active frontage to Elizabeth Drive through those areas that are not challenged by the Environment and Recreation zone. The blue-green grid has been maintained along the riparian zone and this also coincides with the high value archaeological areas.

The arrangement for the site challenges the need for the additional fly-over the M12, rather providing strong east/west links capturing the developable land within the sub-precinct.

A signalised intersection at Elizabeth Drive at this location is a more appropriate location given not only the ownership pattern but also the topography.

The arrangement is sensitive to the key drivers articulated in the *draft Aerotropolis Precinct Plan*, to objectives of which can be as readily achieved through the proposal layout as can be accommodated in the *draft Aerotropolis Precinct Plan*.

Summary

Greater attention to detail needs to be given to the numerous documents uploaded for comment. This submission has flagged inconsistencies that are avoidable and unacceptable in the plan as significant as this one.

Precinct Planning at this scale is challenging. The Planning Partnership need to ensure that the scale is not lost. Plans need to include a degree of flexibility that enables a strong, evidence-based assessment at site level to be undertaken. When, after such a process, the result is a change,



modification or amendment to the Precinct Plan this needs to be able to be accommodated in the planning framework. A rigid, inflexible approach risks stalling development altogether.

The role that the Precinct Plan has in the assessment process needs further clarification. At present the draft Aerotropolis Precinct Plan is contrary to the Aerotropolis SEPP. It prohibits uses that are otherwise permissible in the Enterprise zone. This cannot be the case under the *Environmental Planning and Assessment Act* in which only the EPI can designate land use.

The quantum of open space is excessive, particularly through the Enterprise zone. The SIC will only fund 25% and it is unclear as to whether this includes land costs. Land has been rezoned and revalued. Land that was previously rural is now an Enterprise zone. Council's have already issued notices of rate increases for 2021 based on the amended land value. Valuation is based in the EPI zone not the Precinct Plan. The cost of delivering the regional open space will need to be financed. There needs to be a clear and transparent process for how the NSW Government and Planning Partnership propose to fund this and include guidance on when and how land will be acquired.

Finally, we have proposed an alternative development scenario that will enable the early movement of the LPG Elizabeth Drive site and unlock other development within this part of the Aerotropolis Precinct. The opportunity for individual land owners to develop land in an orderly and efficient manner based on evidence and consideration through a merit assessment needs to remain a fundamental function of the planning framework.

Thank you for the opportunity to add to this process. Should you require further information as to any of the matters raised above, please contact the undersigned on mobile 0438 744 384.

Yours sincerely

Liz Densley
Associate Director

Refer also **Attachment 1: Kayandel Archaeological Services Cultural Heritage Advice**

About Elton Consulting

We've been delivering trusted advice, contemporary services and practical solutions to government, the private sector and community organisations for more than 25 years.

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Our Reference: KA-112

Luddenham Property Group
c/o Elton Consulting
Elizabeth Densley
Leve 27, 680 George Street
Sydney NSW 2000

12th March 2021

Dear Ms Densley,

**Re: Heritage Advice on the Western Sydney Aerotropolis Draft Precinct Plan - [REDACTED] Elizabeth Drive,
Luddenham**

Kayandel has been commissioned by Elton Consulting on behalf of Luddenham Property Group to prepare a letter to identify the potential Aboriginal heritage opportunities and risks to the future development of [REDACTED] Elizabeth Drive, Luddenham (Subject Area) (refer to Figure 1), following the exhibition of draft precinct plans for the various precincts under the *State Environment Planning Policy (Western Sydney Aerotropolis) 2020 (Aerotropolis SEPP)*.

As the Subject Area is fully contained within the land subject to the *Aerotropolis SEPP*, it is subject to the relevant precinct plans. The *Western Sydney Development Control Plan 2020 – Phase 1 (Western Sydney DCP 2020 – Phase 1)* shows the Subject Area falling within the proposed Northern Gateway Precinct, currently on exhibition.

It is understood that this letter will form part of a public submission on the draft Northern Gateway Precinct Plan.

1. Statutory Context

1.1. Aerotropolis SEPP

The majority of the Subject Area has been zoned as 'ENT – Enterprise', with a small area along the southern boundary zoned as 'ENZ – Environment and Recreation' under the *Aerotropolis SEPP* (refer to Figure 2).

Heritage (including Aboriginal heritage) is addressed in Clause 28 and Schedule 2 of the *Aerotropolis SEPP*. The clause states that development consent is for the following:

- a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—
 - i. a heritage item,
 - ii. an Aboriginal object,
 - iii. a building, work, relic or tree within a heritage conservation area,
- b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 2 in relation to the item,
- c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,



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- d) disturbing or excavating an Aboriginal place of heritage significance,
- e) erecting a building on land—
 - i. on which a heritage item is located or that is within a heritage conservation area, or
 - ii. on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
- f) subdividing land—
 - i. on which a heritage item is located or that is within a heritage conservation area, or
 - ii. on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

The *Aerotropolis SEPP* does not identify the areas of Aboriginal heritage sensitivity identified by Extent (2020) (see Figure 8) to be “heritage conservation areas”.

For the purpose of reading Clause 28, the areas of Aboriginal heritage sensitivity are not considered to be an “Aboriginal object”. Clause 5 of the *National Parks and Wildlife Act, 1974* defines “Aboriginal object” to be:

any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Clause 41 of the *Aerotropolis SEPP* states that:

development consent must not be granted to development on land to which a precinct plan applies unless the consent authority is satisfied that the development is consistent with the precinct plan.

1.2. Western Sydney Aerotropolis Development Control Plan 2020 –Phase 1

Section 6 of the *Western Sydney Aerotropolis Development Control Plan 2020 –Phase 1* (*Western Sydney Aerotropolis DCP – Phase 1*) deals with “Heritage and Cultural Conservation” and aims to ensure that the significant elements of the past are appropriately managed and respected by new development. Heritage conservation does not prevent change but rather responds to different constraints and opportunities.

Section 6.3 “Aboriginal Cultural Heritage” of the *Western Sydney Aerotropolis DCP* states that it will be necessary for an “initial investigation” to be undertaken to determine if the proposed development or activity occurs on land potentially containing an item of Aboriginal archaeology or is within an area of cultural significance to Aboriginal peoples. If any of the above features apply then the relevant Aboriginal community must be consulted, as part of the initial investigation to ensure that the potential for the land to contain Aboriginal sites, places or relics has not been overlooked by previous studies.

The Performance Outcomes for Aboriginal cultural heritage are:

PO1	Development does not result in the demolition or removal of or damage to the Aboriginal heritage place or object.
PO2	Development retains, conserves and does not detract from the features and values of the Aboriginal heritage place or object.



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PO3	Development is compatible with the Aboriginal heritage significance of the place.
PO4	Development is designed to care for and connect to Country.
PO5	New development adjacent to or within the vicinity of an item or place of Aboriginal heritage significance should have no impact on that item or place.

Table 1: Western Sydney Aerotropolis DCP – Phase 1 Aboriginal Culture and Heritage Performance Outcomes

A Phase 2 DCP will be prepared for the future precincts.



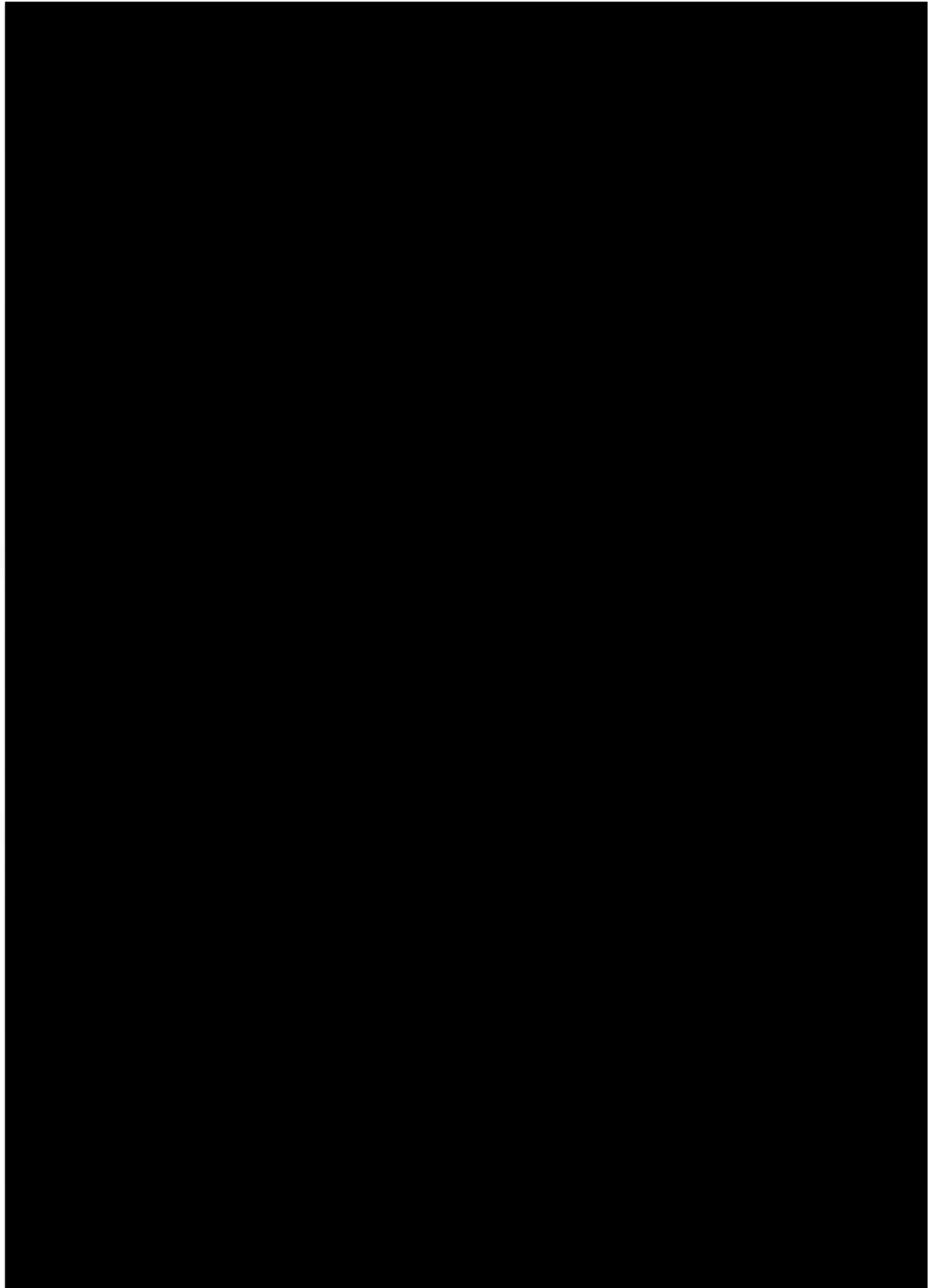


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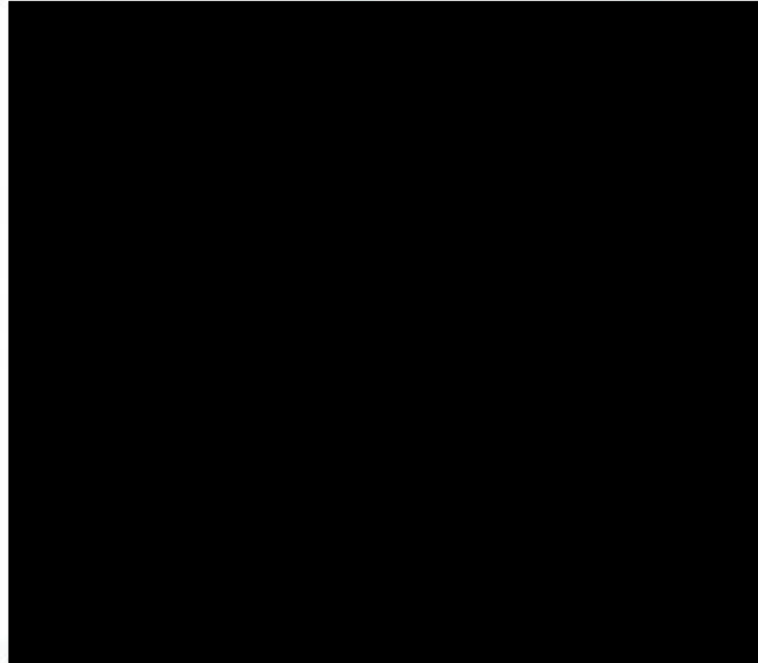


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2. Previous Archaeological Investigations

The Subject Area has been included in the following Aboriginal heritage studies:

- Aurecon Australasia (2016);
- Jacobs and Baker Archaeology (2019a, 2019b) ; and,
- Extent (2020).

2.1. Aurecon Australasia (2016)

Aurecon Australasia (2016) undertook a targeted site inspection for Aboriginal heritage values as part of preparing a strategic route options analysis for the M12 Motorway between the M7 Motorway, Cecil Park and The Northern Road, Luddenham. This assessment included portions of the Subject Area (refer to Figure 3).

No Aboriginal sites recorded on the Aboriginal Heritage Information Management System (AHIMS) are present within the Subject Area; however, there are a number of Aboriginal sites that have been recorded in close proximity (see Figure 4).

The Subject Area was accessed as part of the archaeological survey (see Figure 5). It noted by Aurecon Australasia (2016, p. 7) that generally ground visibility was:

extremely low due to high and dense pasture grass cover. A generally high degree of ground disturbance was evident due to farming activities and other intrusive developments

No Aboriginal sites were recorded within the Subject Area as part of the archaeological survey.



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Aurecon Australasia (2016) presented “areas of predicted Aboriginal archaeological sensitivity” as mapped by Navin Officer Heritage Consultants (NOHC) (no date) as it related to the M12 Motorway study area (see Figure 6). The Subject Area contained several portions of the “areas of predicted Aboriginal archaeological sensitivity” along the southern margin.

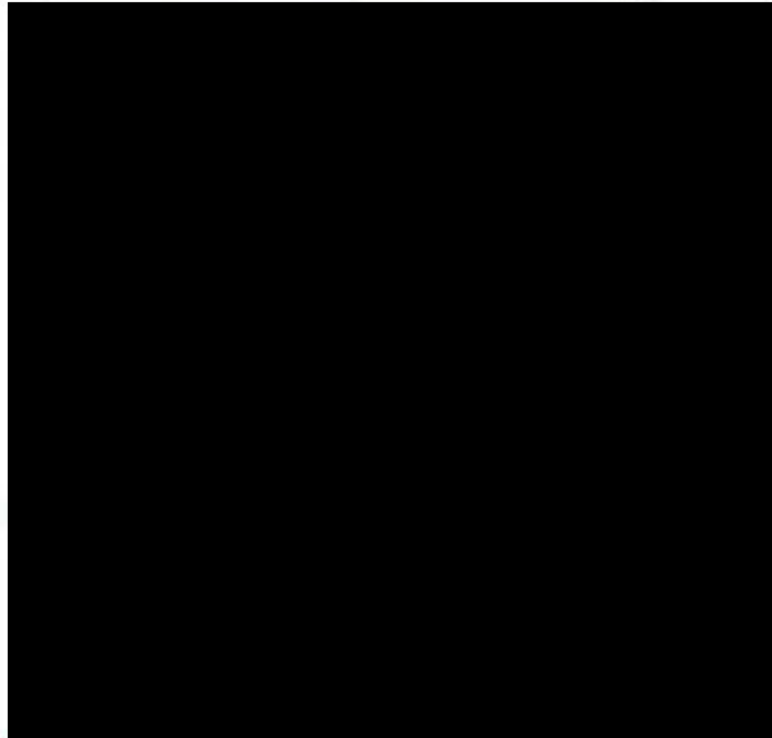


Figure 3: M12 Strategic Rout Options Analysis from Aurecon Australasia (2016, p. 3). The Subject Area is circled red.



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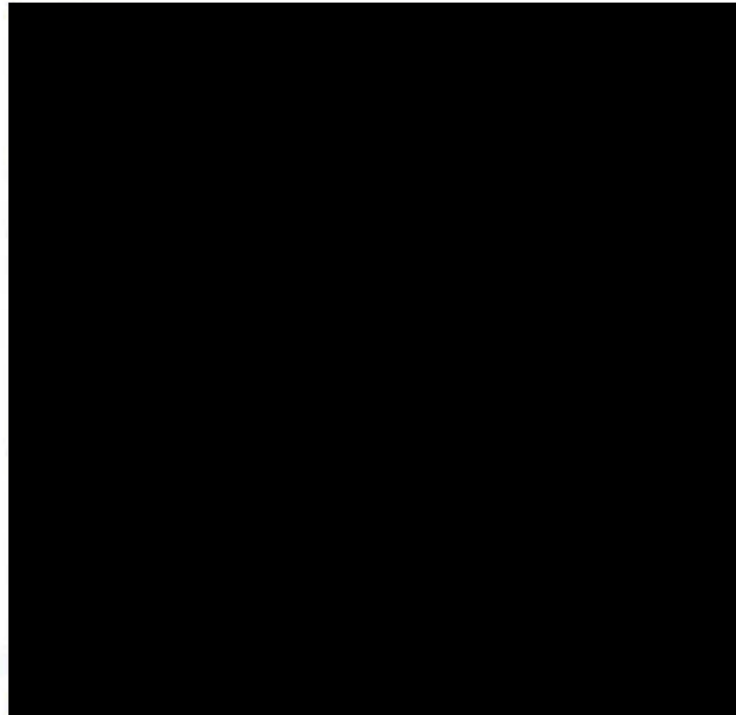


Figure 4: Location of AHIMS sites within the M12 Motorway study area (Aurecon Australasia, 2016, p. 17). The Subject Area is circled red.

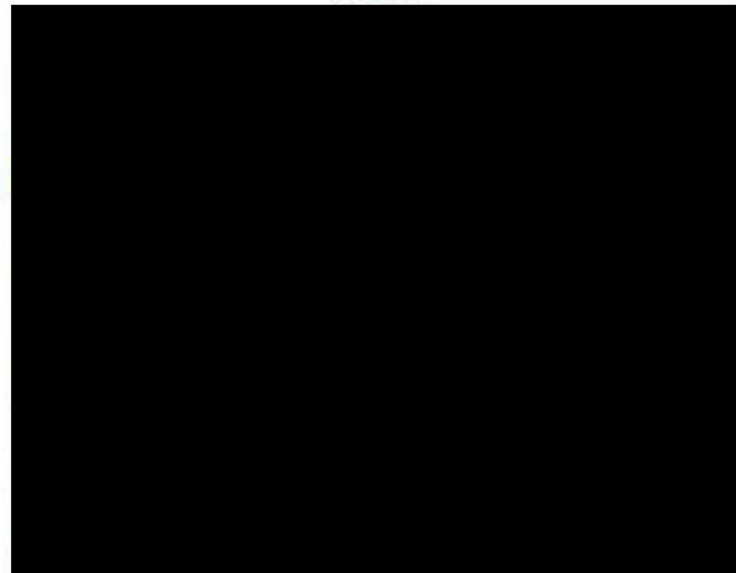


Figure 5: Properties Accessed for the Archaeological Survey (Aurecon Australasia, 2016, p. 7). The Subject Area is circled red.



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Figure 6: NOHC areas of archaeological sensitivity in relation to the M12 Motorway study area (Aurecon Australasia, 2016, p. 93). The Subject Area is circled red.

2.2. Jacobs and Baker Archaeology (2019a, 2019b)

As a follow on from the Aurecon Australasia (2016) study, Jacobs and Baker Archaeology (2019a) prepared an Aboriginal Cultural Heritage Assessment Report (ACHAR), which included an Aboriginal archaeological test excavation, and consultation with Aboriginal communities about the project in accordance with the *NSW Procedure for Aboriginal Cultural Heritage Consultation and Investigation (PACHCI)* (Roads and Maritime Services, 2011).

This ACHAR, Aboriginal archaeological test excavation, and consultation with Aboriginal community was prepared for address the Secretary's Environmental Assessment Requirements (SEARs) for the project (SSI 9364) and to enable the NSW Minister for Planning and Public Spaces and the Commonwealth Minister of the Environment to make a determination on whether the M12 Motorway project could proceed.

The Subject Area was not surveyed as part of the project (see Figure 7).

While no areas of potential archaeological deposit (PAD) were identified within the Subject Area, (Jacobs & Baker archaeology, 2019b, p. 47) did state that "most of the PADs area areas extending along watercourses. The PADs along Cosgrove, Badgerys, South and Kemps creeks are defined by the area 300 metres either side of the creek channels". A 3rd order tributary of Cosgrove Creek is located in the southeastern corner of the Subject Area.



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No Aboriginal archaeological test excavation appears to have been undertaken within the Subject Area as part of Jacobs and Baker archaeology (2019b).

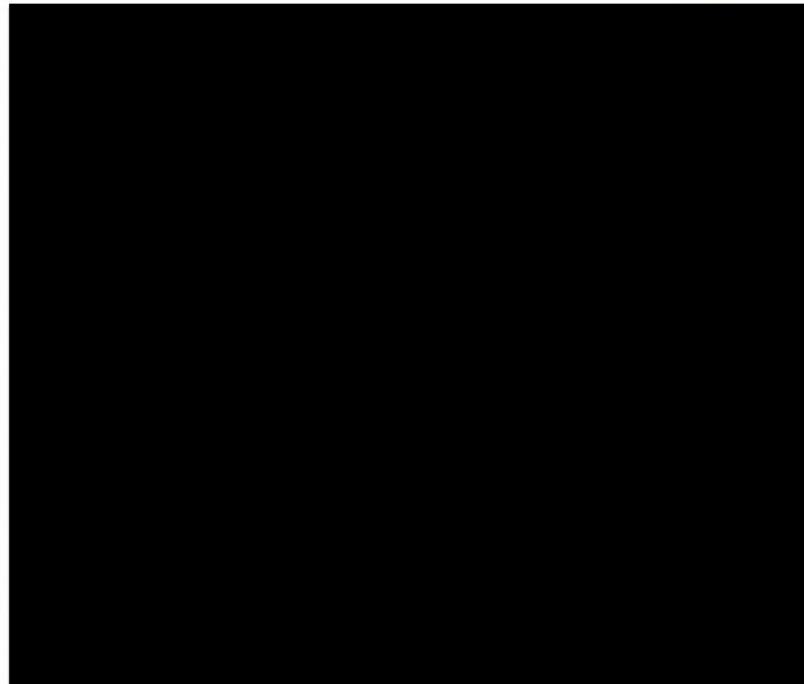


Figure 7: Survey Coverage (yellow areas) (Jacobs & Baker archaeology, 2019b, p. 46). The Subject Area is circled red.

2.3. Extent (2020)

Extent (2020) prepared an Aboriginal and non-Aboriginal Cultural Heritage Assessment for the initial precincts within the Western Sydney Aerotropolis, which included initial high-level desktop analysis designed to guide the precinct planning and highlight key heritage issues and areas of sensitivity.

No Aboriginal sites were inspected as part of the Extent (2020) assessment; and no subsurface archaeological investigation was undertaken as part of the assessment.

Kayandel is aware that the assessment undertaken by Extent was used to inform the *Western Sydney Aerotropolis Urban Design and Landscape Report* (Hassell, 2020) (refer to Figure 9) which has formed a significant direction and framework for the draft *Aerotropolis Precinct Plan*.

Extent (2020) does not appear to explain the process by which the Aboriginal archaeological sensitivity (refer to Figure 8) was determined. The desktop Aboriginal archaeological sensitivity mapping presented in Figure 8 shows the Subject Area as having very low to moderate archaeological sensitivity, with moderate sensitivity occurring in the middle of the property occurring at confluence of a 2nd order watercourse, and the confluence of the 2nd and a 3rd order watercourse that flows southeast into Cosgrove Creek.

The preliminary high-level recommendations presented in Extent (2020, p. 187) are a guide. Kayandel does not consider them to prevent the landowner from developing their property:



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Development in any areas identified by Aboriginal stakeholders as places of identified cultural values should be avoided where possible. If development impacts in these areas are unavoidable, further investigations (e.g., ACHAR) should be undertaken.

In consideration of the Subject Area as being assessed to contain an area of Moderate archaeological sensitivity (refer to Figure 8), Kayandel is on the opinion that the below recommendation by Extent (2020, p. 187) applies to the Subject Area:

Development in areas of Moderate sensitivity should seek to minimise impacts where possible. If development impacts are unavoidable, further investigations (e.g., ACHAR) should be undertaken.

Project specific archaeological investigation within property should be undertaken, as and when the landowner decides to develop, in order to assess the archaeological potential of the property. The results of the archaeological investigation should be used to support refining the extent of the archaeological sensitivity.



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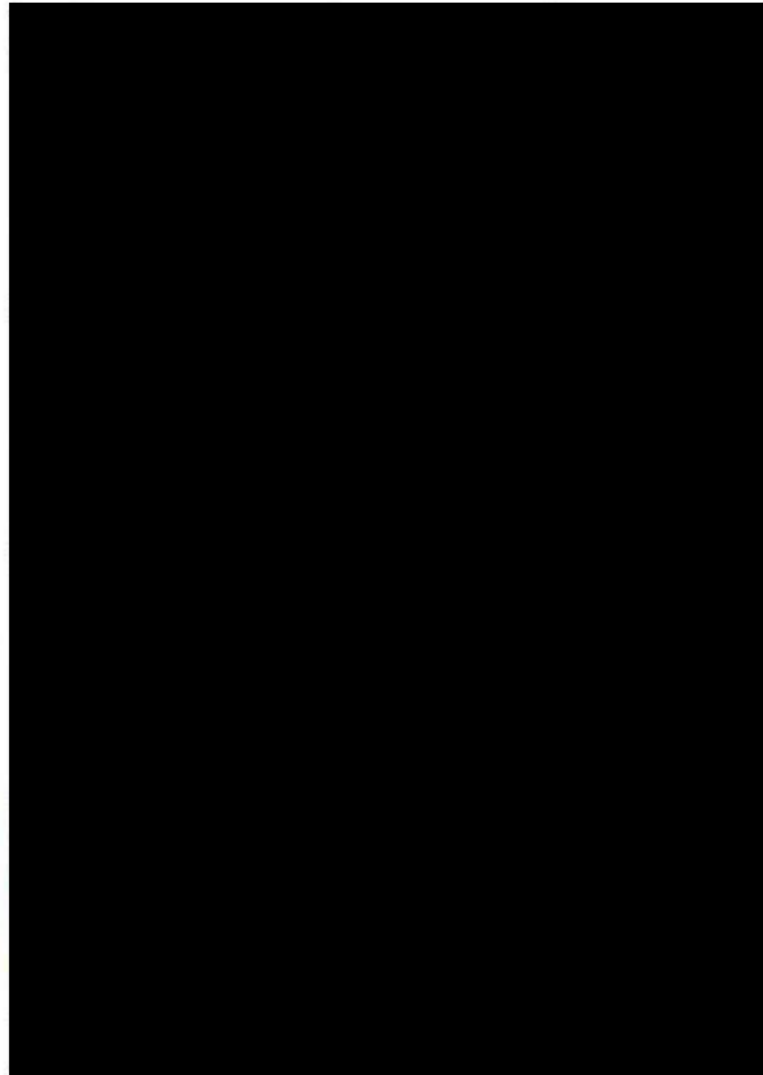


Figure 8: Aboriginal heritage sensitivity within the Aerotropolis (Subject Area circled in red) (sourced from Western Sydney Planning Partnership (2020, p. 5))



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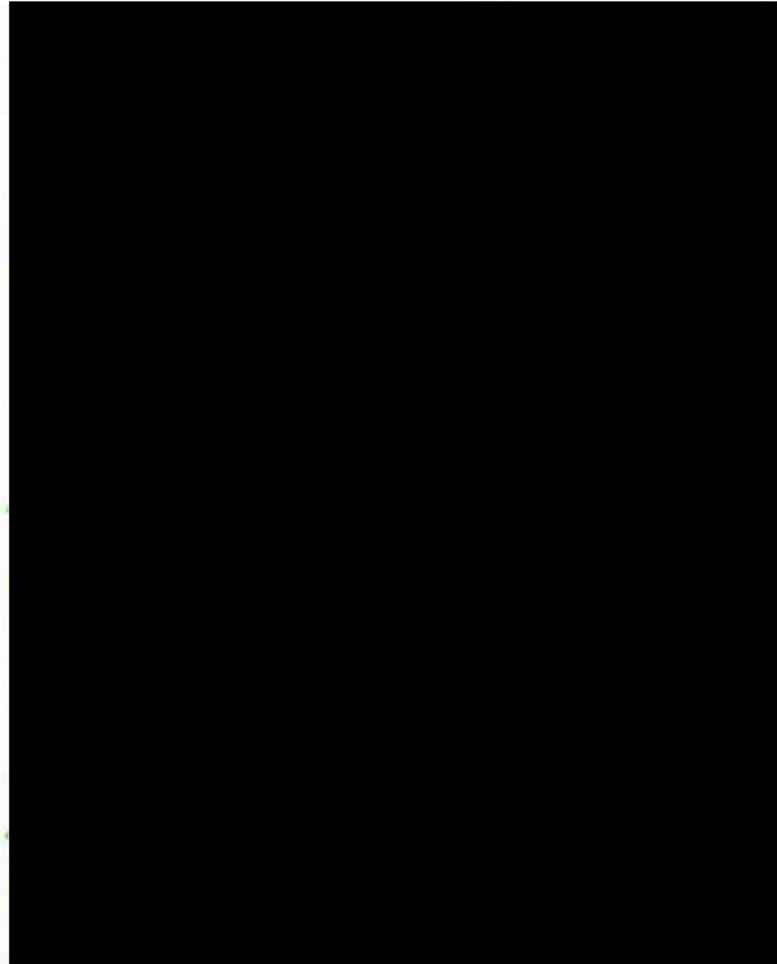


Figure 9: Extract from Precinct Principles and Structure (hill thalis Architecture +Urban Projects, 2020, p. 18). The Subject Area is circled red.

3. Aerotropolis Precinct Plan

One of the key drivers that underpins the framework for the draft *Aerotropolis Precinct Plan* is “Connecting to Country”. The process incorporated traditional understandings of Country to influence planning, design, and landscape management. It is intended that precinct and sub-precinct design will be guided by Cultural Design Principals and local leaders in the Aboriginal community.

While the *Northern Gateway Urban Design and Landscape Report* (hill thalis Architecture +Urban Projects, 2020) details a layout and structure for future development within the Subject Area. It should be subject to revision from consultation between Aboriginal community and developments once archaeological investigations have been completed. The archaeological investigation must include a consultation process that involves the implementation of GANSW’s (2020) *Draft Connecting with Country* framework, and archaeological investigations (including test excavation). The archaeological investigation would be used to



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characterise the nature and extent of any archaeological deposits that may be present and could then be used to inform the layout of any future development.

No objectives to Aboriginal cultural heritage have been included in the "Northern Gateway Precinct objectives" of the *Draft Aerotropolis Precinct Plan*.

Section 2.2 "Place-based opportunities and constraints" of the draft *Aerotropolis Precinct Plan* makes the following statement:

retain Aboriginal heritage items and significant places in public open space and respect and enable conservation of non-Aboriginal heritage items (pg.47)

The above implies that all Aboriginal heritage items will be retained in public open spaces. This theoretically means that any Aboriginal heritage items that are identified, will result in the alteration of a layout and structure plan to include a new public open space or expand a public open space.

This is in counter to what Extent recommended, as previously noted, development can occur in areas of moderate archaeological sensitivity, subsequent to an archaeological investigation, and any required approvals from Heritage NSW. Development is not precluded from occurring within areas of moderate Aboriginal heritage sensitivity.

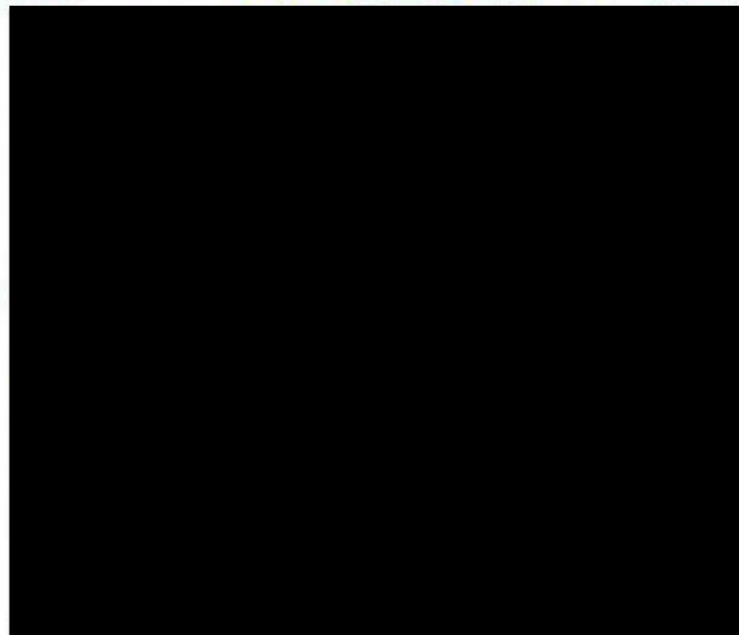


Figure 10: Layout and Structure Plan from hill thalis Architecture +Urban Projects (2020, p. 9). The Subject Area is circled red.

4. Conclusion

A review of Figure 6 and Figure 8 highlights that there is a difference between consultants regarding the assessment for identifying areas of Aboriginal heritage sensitivity/potential. The areas of Aboriginal heritage sensitivity/ identified by Extent (refer to Figure 8), was based on a desktop assessment, and presented by



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Aurecon Australasia (2016), have not been subject to archaeological investigation. As such the nature and extent of any archaeological deposits has not been characterised as part of the process to-date.

Furthermore, depending on the results of any archaeological investigation undertaken to characterise the nature of any archaeological deposits present. It may be necessary for the layout and structure plan (refer to Figure 10) presented in draft *Northern Gateway Precinct Urban Design Report* (hill thalis Architecture +Urban Projects, 2020) to be revised.

It is recommended that draft *Northern Gateway Precinct Urban Design Report* (hill thalis Architecture +Urban Projects, 2020) and the precinct plan allow for revision of the layout and structure plan once archaeological investigations, as part of undertaking consultation with Aboriginal stakeholders, have verified the nature and extent of any archaeological deposits.

The results of any archaeological investigation should be used to inform any advice regarding the layout and structure of any future development and allow for a conservation about how Aboriginal heritage items should be conserved.

It is therefore recommended that the draft *Aerotropolis Precinct Plan* be revised to take the above issues into consideration.

It is also recommended that planning instruments for the Aerotropolis Precinct make provision for this need for flexibility in design.

The recommendations presented in Extent (2020) do not prevent the landowner from developing the Subject Area within the areas of moderate Aboriginal heritage sensitivity. Where future development will extend into the assessed area of moderate archaeological sensitivity, it will be necessary for further investigation to be undertaken in conjunction with consultation with Aboriginal stakeholders, as to assess whether archaeologically sensitive deposits or features would be impacted by the proposed layout of any future development. As part of consultation with Aboriginal stakeholders, they should be included in discussion regarding the layout of any future development, and how Aboriginal cultural values should be conserved.

The Performance Outcomes for Aboriginal cultural and heritage for the *Western Sydney DCP 2020 – Phase 1* (refer to Table 1) is inconsistent with Extent's recommendations regarding future development within areas of moderate sensitivity. It is recommended that the *Western Sydney DCP 2020 – Phase 1* to take the above issue into consideration.

Alternatively, this issue should be considered as part of the drafting of the Phase 2 DCP for the Northern Gateway Precinct.



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Should you have any further questions regarding this matter, please do not hesitate to contact me on [REDACTED]

Yours sincerely,

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Associate Member International Council on Monuments and Sites

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