

CLAUSE 4.39 VARIATION REQUEST

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1. INTRODUCTION

This clause 4.39 Variation Request (**‘the Request’**) has been prepared on behalf of the trustee for Burra Park Prop Trust 1 (**the applicant**) and accompanies a State Significant Development Application (**SSDA**) for **SSD- 70316465** at 1953-2109 Elizabeth Drive, Badgerys Creek (the Site), and identified as ‘Burrah Park’.

The Request seeks variation(s) to the Western Sydney Aerotropolis Precinct Plan (Precinct Plan). The variation is request is made pursuant to Chapter 4 clause 4.39 of *State Environmental Planning Policy (Precincts – Western Parkland City) 2021 (WPC SEPP)* which requires a written request from the applicant to justify an inconsistency.

This report should be read in conjunction with the detailed Environmental Impact Statement (**EIS**) prepared by Urbis Ltd and dated August 2024, Response to Submissions Report (RTS) dated June 2025 and revised appendices and supporting information.

A detailed assessment against the Precinct Plan has been undertaken within the EIS and in the compliance table at Appendix C. The proposed development is broadly consistent with the objectives and requirements of the Precinct Plan.

Minor variances are proposed in relation to Precinct Plan which primarily relate to ongoing discussions with key agency stakeholders, these variances are outlined in Section 4 of this variation request.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the EIS and accompanying drawings.
- **Section 4:** summary assessment table.
- **Section 5:** Conclusion.

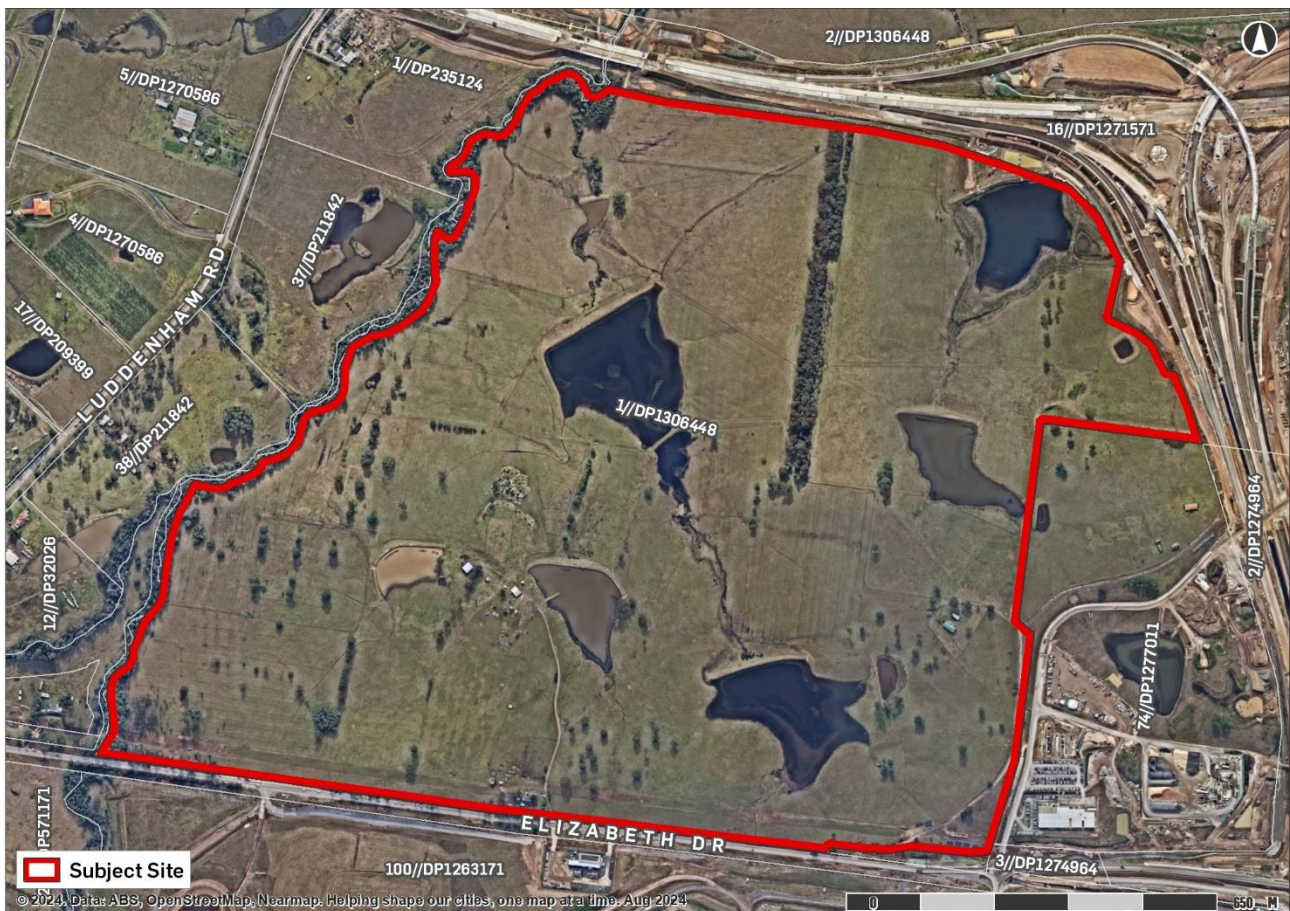
2. SITE CONTEXT

The Site is located at 1953-2109 Elizabeth Drive, Badgerys Creek within the Penrith local government area (LGA). The Site is legally described as Lot 1 in Deposited Plan 1306448. The key features of the site are summarised below:

- 1) The Site has a total area of approximately 171.84ha. The site generally slopes from high points adjacent to Elizabeth Drive (RL 75) to low points in the northeast corner (RL 40). Topography is characterised by a central ridgeline running from the central portion of the southern boundary towards the northeast.
- 2) Surrounding land uses include:
 - a) M12 Motorway and Metro (under construction) to the north and east with predominantly rural uses beyond
 - b) Western Sydney Airport is under construction opposite the site on the southern side of Elizabeth Drive,
 - c) Rural residential uses on the opposite side of Cosgroves Creek to the west.
- 3) The land has previously been used for agricultural purposes and is now largely cleared of vegetation.
- 4) The Site is mostly grass and scattered natural and/or planted tree growth contains several man-made waterbodies, primarily within the central and southern parts of the Site.
- 5) The Site has direct access to Elizabeth Drive with an existing road frontage of approximately 1.6-km along the southern boundary.

An Aerial photo illustrating the site context is provided at Figure 1.

Figure 1 Aerial Photograph



Source: Urbis, 2024

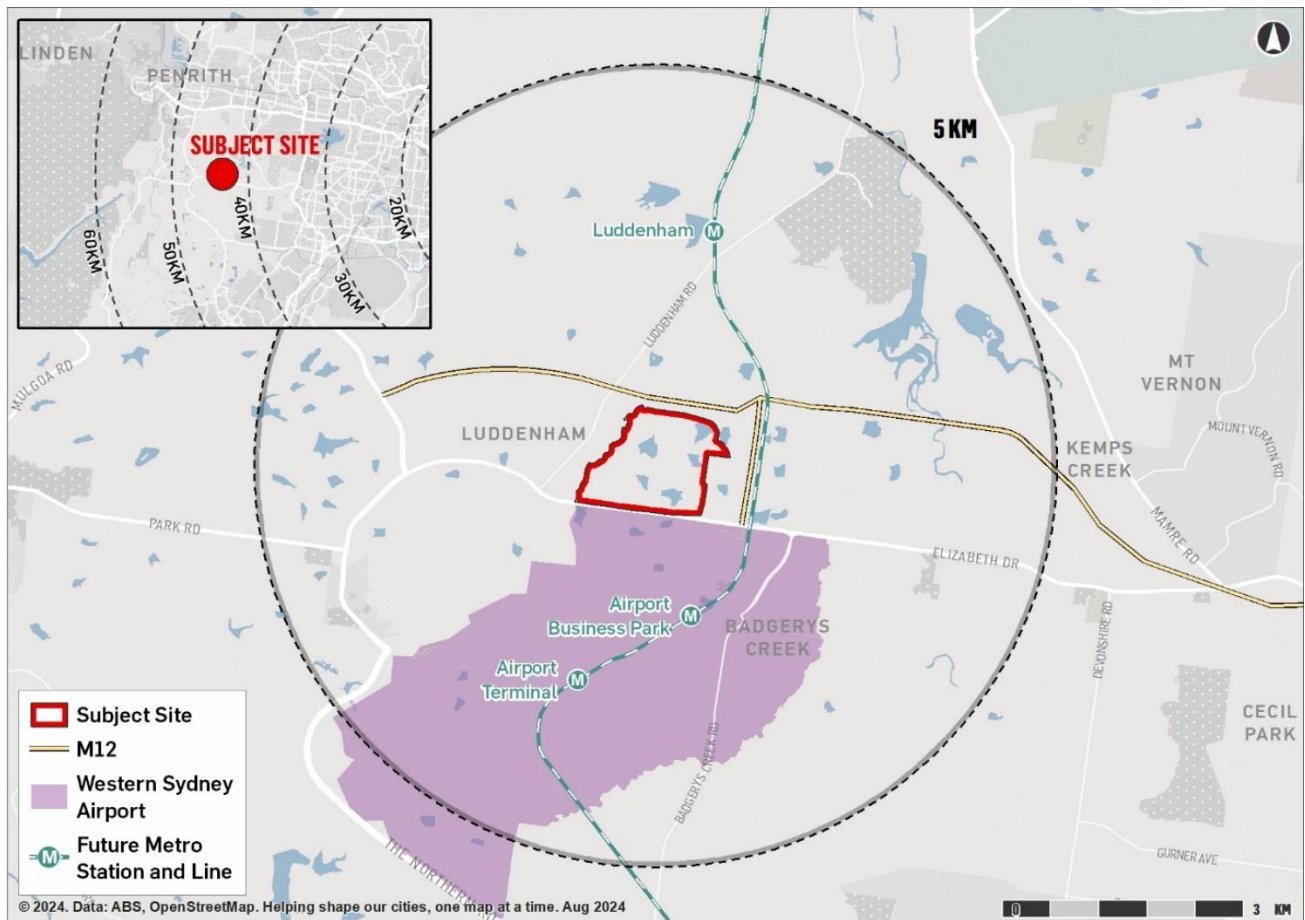
3. LOCALITY CONTEXT

The Site is located within Badgerys Creek, 12.5-km south-east of the Penrith Central Business District (CBD), 27-km west of Parramatta, and 47-km from the Sydney CBD. The regional context is shown below in Figure 2. The Site is currently used for agricultural purposes and is largely cleared of vegetation with areas of dispersed grass and scattered natural and/or planted tree growth. The Site contains ten (10) farm dams, primarily within the central and southern areas.

The Site directly fronts Elizabeth Drive, a State arterial road running east-west along the southern boundary, with the M12 intersection situated along the northern and part of the eastern boundaries of the Site.

Elizabeth Drive will provide vehicular access to the M12 (once completed) and currently connects the M7 to the Northern Road, both of which provide access to the M4 Motorway and wider Sydney Motorway Network.

Figure 2 Context Map



Source: Urbis, 2024

4. PROPOSED DEVELOPMENT

This Clause 4.39 Variation Request has been prepared to accompany a SSDA for the project as described in Table 1 below.

Table 1 Project Overview

Key Element	Proposal
Concept Proposal	▪ Concept Masterplan for Burrah Park, a new warehouse and logistics estate with 24 hour/day, seven day/week operation, ▪ Indicative site/lot layout comprising building envelopes, site access, internal road network layout, building locations, GFA, car parking, concept landscaping, building heights and setbacks, Design Excellence Strategy and Connection with Country framework. ▪ Signage strategy ▪ Public Art Strategy ▪ Gross developable area of 131.06ha (approx.). ▪ Total GFA of 63.37ha (approx.). ▪ Six (6) development stages and five (5) civil stages to be implemented in line with infrastructure delivery and market demand.
Stage 1 – Site Preparation	▪ Demolition and removal of existing structures and vegetation. ▪ Construction of roads, access infrastructure, including a signalised intersection with Elizabeth Drive. ▪ Bulk earthworks, cut and fill, benching, battering and retaining walls. ▪ Lead in infrastructure, utilities and servicing. ▪ Stormwater infrastructure including construction of Sydney Water basins and Water Sensitive Urban Design (WSUD) elements. ▪ Reinstatement of the central riparian corridor and protection of Cosgroves Creek through landscaping works.
Stage 1 – Development	▪ Construction and fit out of 3 warehouse buildings and ancillary office space which will operate 24 hours/day, seven days/week. ▪ On-lot stormwater management, fencing and landscaping. ▪ Estate-wide, street tree plantings. ▪ Subdivision. ▪ Estate and on lot signage.

A detailed description of the proposed development is provided in the Environmental Impact Statement (EIS) prepared by Urbis Ltd and dated November 2024 and RTS Report dated June 2025.

The proposal is also detailed within the revised architectural, engineering and landscape drawings that form part of the SSDA and submitted with the RTS Package.

The key features of the proposed development are illustrated in the revised Concept Master Plan at Figure 3:

Figure 3 Concept Masterplan



Source: Nettleton Tribe

5. ASSESSMENT OF CLAUSE 4.39 VARIATION

The following summary assessment should be read in conjunction with the Precinct Plan compliance tables provided as appendices to the EIS.

CLAUSE	PARAMETER(S)	PROPOSED ALTERNATE SOLUTION	IS THE VARIATION MINOR?	IS CONSISTENCY UNREASONABLE OR UNNECESSARY?	ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?	CONSISTENT W/ STRATEGIC VISION AND OBJECTIVES?
3.2	Development Sequencing DS5 – Road Network to be consistent with Street Hierarchy Map (Figure 10)	Refer Figure 4 Road Network Comparison Removes the sub-arterial road based on TfNSW advice in relation to location of intersection on Luddenham Road.	Yes Road layout and future external connections remain generally consistent with Precinct Plan.	Yes The location of the Elizabeth Drive intersection reflects ongoing discussions with TfNSW and other agencies. TfNSW have advised that any future Luddenham Road connection would be further north of the location shown on the Precinct Plan which means that the sub-arterial road shown in the Precinct Plan cannot be provided in that location.	Yes The variations reflect ongoing discussions and requirements of key agencies, including Transport for NSW and Sydney Water The changes reduce impacts to ENZ, areas of high biodiversity, areas of identified Aboriginal cultural heritage and Sydney Water assets.	Yes The development is consistent with the strategic vision for the Northern Gateway.
4.6.2	Street Hierarchy and Typology SH2 – SH3 Local and Collector Streets	Minimises the orthogonal grid by aligning key roads with the topography and adjacent open space areas Reduces the extent of roads and cut and fill across the site. Facilitates safe movement of heavy vehicles and appropriate circulation noting that the Park Edge Street widths are not suitable for these types of vehicles. Reduces extent of road crossings across the ENZ and impacts to future Sydney Water assets. Aligns road connections to the east generally in accordance with the Precinct Plan and shows an indicative alignment for a future connection to Luddenham Road to the north (not part of this DA).		TfNSW confirmed in meetings that the sub-arterial road is not warranted as it is no longer providing a regional role and presents an issue due its short distance to the proposed Elizabeth Drive intersection. The lower order roads within the Precinct Plan are shown as indicative only and not necessarily required. Strict consistency would thwart TfNSW's wider objectives for the regional road network.	The roads are more responsive to topography reducing cut and fill, ensuring minimal level changes between the building edges and the public domain and landscape areas.	

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4.5.3	Public Domain and Canopy Cover BG4 Park Edge Streets to be provided in accordance with Figure 10.	Refer Figure 4 (Park Edge Street shown light green in Precinct Plan) The proposal does not provide park edge streets as outlined in Figure 10 (not Figure 5), instead offering a local industrial road which is more appropriate for heavy vehicles. The proposed development does not provide the park edge street alongside the M12	Yes Road layout and typology is generally consistent with Precinct Plan	Yes The proposed road network supports large format warehouse and logistics land uses that are consistent with the objectives of the Enterprise Zone The Park Edge Street is not an appropriate typology for the safe operation of the road network for industrial land uses. The Park Edge Street alongside the M12 conflicts with the location of planned Sydney Water infrastructure.	Yes The local industrial road offers a more appropriate carriageway width for large trucks expected to frequent the site. This ensures efficient and safe movement of heavy vehicles. The Park Edge Street alongside the M12 would require additional passive surveillance measures noting that it would run to the rear of existing lots that front the local industrial street network. A CPTED review has determined that a park edge street in this location would be an inappropriate outcome.	Yes The development is consistent with the strategic vision for the Northern Gateway
4.6.1	Transport Strategy MF1 Transport network to be designed generally in accordance with Figure 8 SH1 The Road Network within the Transport Network is to be generally consistent with the alignment and connections of roads shown in Figures 8-10.	Refer Figure 5 Transport Network Comparison Refer Figure 6 Active Transport Network Comparison Alternate road layout results in alternate locations and routes for the bus and active transport networks.	Yes	Yes Bus stops can still be provided within 400m walking distance of any businesses within the development area. Active transport infrastructure is integrated into all proposed streets.	Yes The proposed alternate routes do not result in a detrimental outcome for public and active transport accessibility. The alternate layout supports the Transport Strategy objectives by ensuring: - Safe and efficient movement of people and freight. - Prioritising freight movements ensuring quick connection to WSA and the regional freight network. - Supporting infrastructure for active transport including end of trip facilities and green travel plans.	Yes The development is consistent with the strategic vision for the Northern Gateway

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4.1	Proposed Land Use and Structure LU3 Subdivision and civil works are to be consistent with the land use plan in Figure 3, road network shown in Figure 7.	Refer to Figure 6 Active Transport Network Comparison	Yes	Yes The proposal continues to support sustainable transport choices. It includes provisions for active and public transport routes, promoting a greener and more sustainable transport system. This aligns with the control's intent to prioritise active and public transport.	Yes While the proposal may not strictly follow the Transport Network Plan an extensive on and off street active transport network is proposed.	Yes The development is consistent with the strategic vision for the Northern Gateway
4.1	Proposed Land Use and Structure LU3 Subdivision and civil works are to be consistent with the land use plan in Figure 3	Refer to Figure 7 Zone Comparison Minor realignment of trunk drainage corridor in accordance with Sydney Water Scheme Plan results in minor inconsistency with ENZ zone boundary.	Yes	Yes Consistency is unreasonable given the changes being driven by the draft Sydney Water Scheme Plan	Yes The regional stormwater infrastructure reflects ongoing design, discussion and engagement with Sydney Water. It is understood amendments to the SEPP will be undertaken when the scheme plan is finalised.	Yes The development is consistent with the strategic vision for the Northern Gateway
4.5.1	Total water cycle management BG5 Multifunctional stormwater assets are to be located generally as shown in Figure 6.	Refer Figure 8 and 9 Stormwater Infrastructure Comparison Relocation of stormwater infrastructure in accordance with draft Sydney Water scheme plans and ongoing discussions with Sydney Water. Realignment of trunk drainage in accordance with draft Sydney Water scheme plans.	Yes	Yes Sydney Water has undertaken and exhibited their draft regional stormwater scheme which reflects changes to the areas shown in the Precinct Plan for basins and trunk drainage The draft scheme plan is broadly consistent with the applicant's proposed scheme prepared in consultation with Sydney Water.	Yes The alternate arrangement is generally consistent with the draft Sydney Water scheme plans. The revised design has also responded to detailed feedback provided by Sydney Water in its submission to the exhibition of the EIS.	Yes The development remains consistent with the strategic vision for the Northern Gateway.

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5.3	Floor Space Ratio FS1 Floor Space Ratio	Any FSR applicable to the Neighbourhood Centre will be transferred to the agreed location for the Neighbourhood Centre.	Yes	It is unclear why an FSR control was applied to area that was clearly intended to be indicative and capable of moving 400m from the location shown in the Precinct Plan. Compliance with this control would be unreasonable and unnecessary in the circumstances.	Given the indicative nature of the location of the neighbourhood centres adherence to this requirement is considered unreasonable and unnecessary under the circumstances.	Yes The development remains consistent with the strategic vision for the Northern Gateway

Figure 4 Road Network Comparison

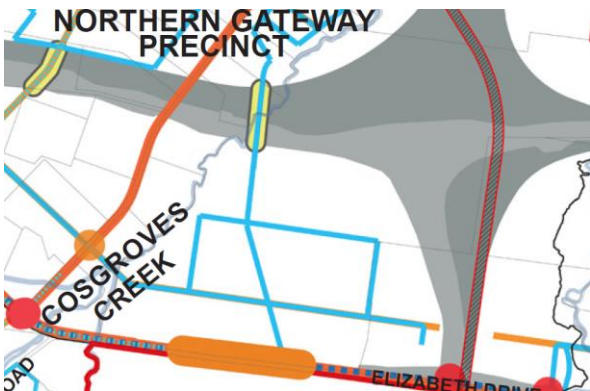


Picture 1 Precinct Plan Road Hierarchy
Source: Aerotropolis Precinct Plan

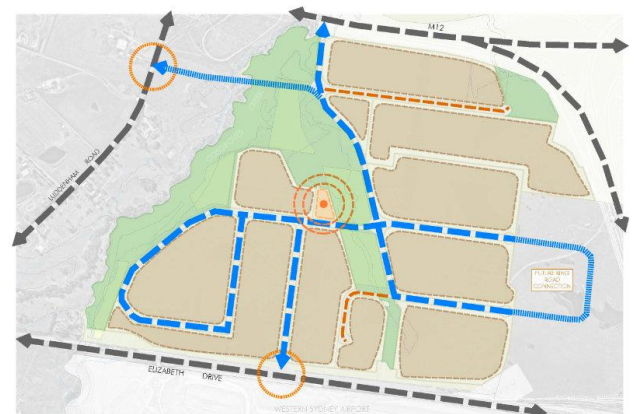


Picture 2 Concept Plan Road Layout (
Source: Nettleton Tribe

Figure 5 Public Transport Route Comparison

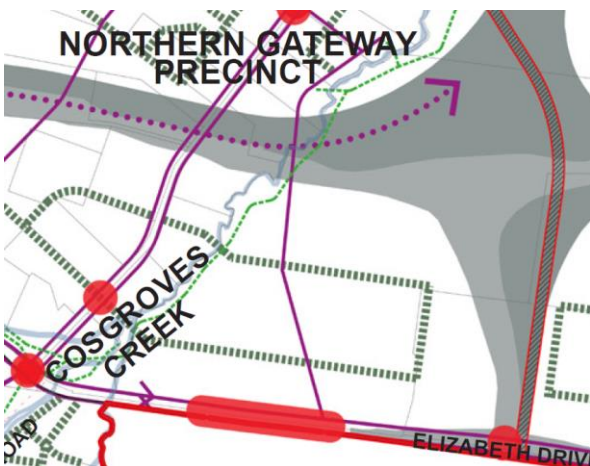


Picture 3 Precinct Plan Indicative Local Bus Network
Source: Aerotropolis Precinct Plan



Picture 4 Proposed Indicative Bus Route
Source: Nettleton Tribe

Figure 6 Active Transport Network Comparison



Picture 5 Precinct Plan Active Transport Network
Source: Aerotropolis Precinct Plan

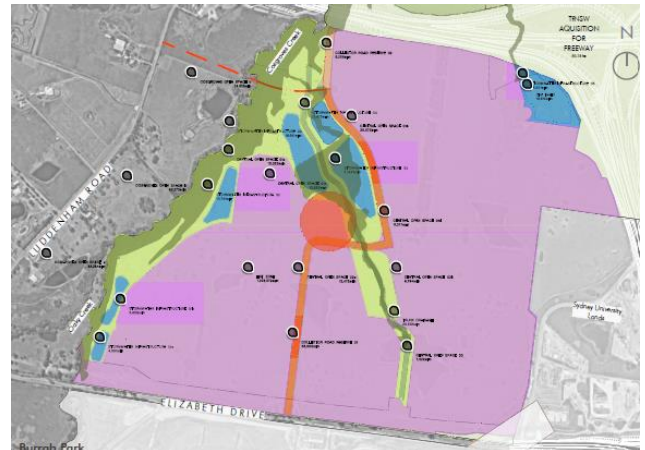


Picture 6 Proposed Active Transport Network
Source: Nettleton Tribe

Figure 7 Zone Comparison

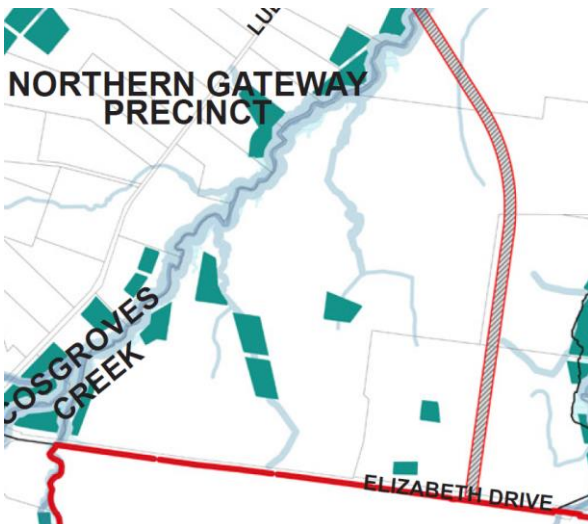


Picture 7 Precinct Plan Structure
Source: Aerotropolis Precinct Plan, 2023



Picture 8 Proposed Structure
Source: Nettleton Tribe

Figure 8 Stormwater Infrastructure Comparison

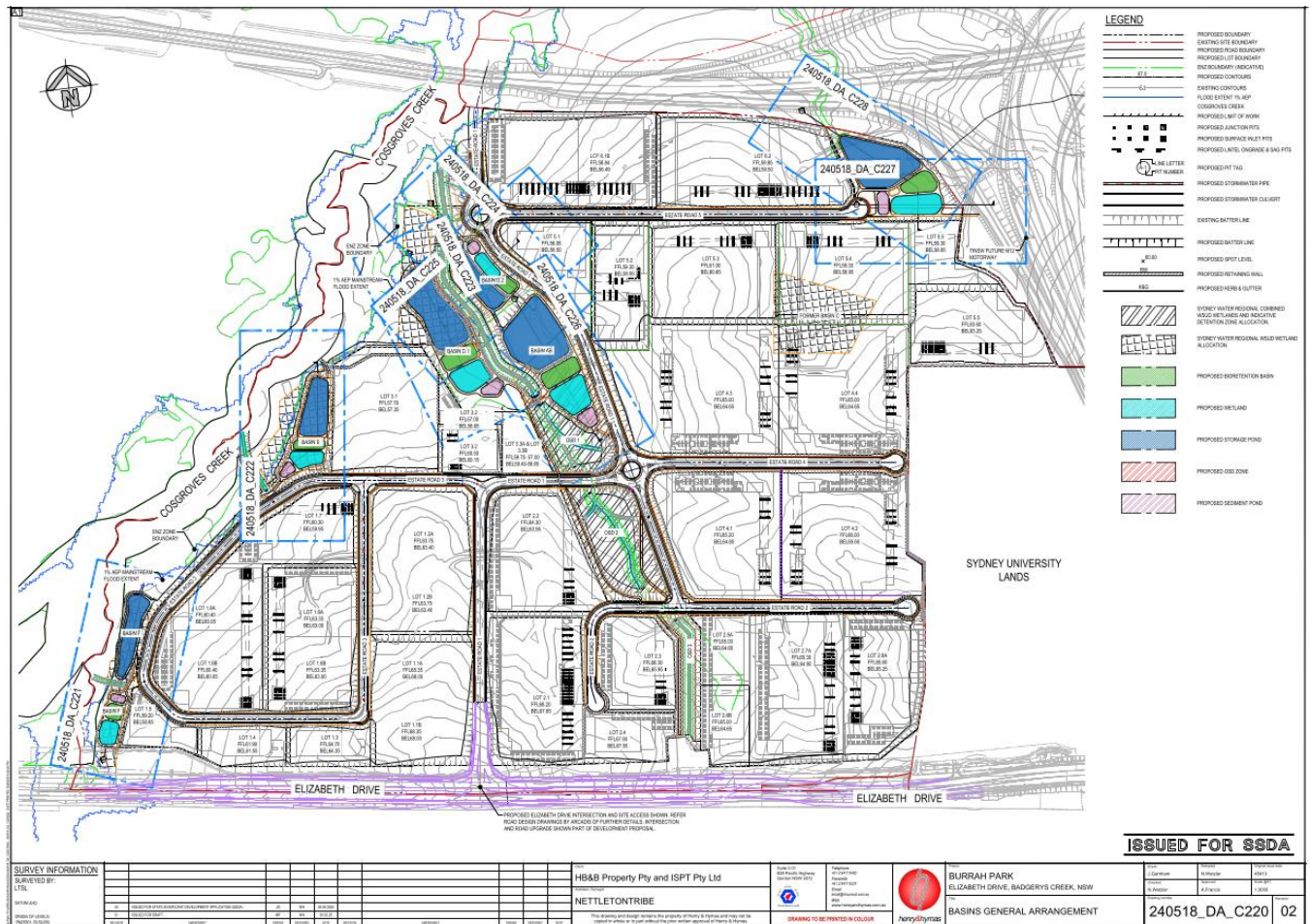


Picture 9 Stormwater Infrastructure
Source: Aerotropolis Precinct Plan, 2023



Picture 10 Draft Sydney Water Scheme Plan
Source: Sydney Water, 2018

Figure 9 Proposed Sydney Water Infrastructure and Trunk Drainage Alignment



Source: Henry and Hymas

6. CONCLUSION

For the reasons set out in this written request, consistency with the Precinct Plan parameters outlined within this report is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variations as they are minor and result in a development that remains consistent with the strategic vision and objectives for the Northern Gateway.

As noted, the majority of the variations reflect ongoing discussions with key Government agencies including TfNSW and Sydney Water and reflect a broader regional purpose and outcome.

It is reasonable and appropriate to vary the Precinct Plan to the extent proposed within the Concept and Stage 1 SSDA on merit for the reasons summarised within this request and justified in detail within the EIS and appendices.

The clause 4.39 variation request is well-founded and the alternate solutions to the Precinct Plan do not derogate from the Aims for the Aerotropolis set out in Chapter 4 of the WCP SEPP and the Precinct Vision and Objectives within the Precinct Plan. In the circumstances of this case, flexibility in the application of the Precinct Plan should be applied.

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APPENDIX A