

# LUNNEY WATT & ASSOCIATES PTY LTD

ACN 117 148 080 ABN 16 117 148 080

**Property Valuers & Consultants**

---

Suite 6  
76 Henry Street  
PENRITH NSW 2750

P: 02 4722 3343  
F: 02 4722 3383

PO Box 1890  
PENRITH BC NSW 2751

[www.lunneywattvaluers.com.au](http://www.lunneywattvaluers.com.au)

*Our Ref: 19V0108 Valuation Consultancy Advice – Vineyard Release Precinct*

18 June 2019

Ms Sarah Blackwell  
Director – Local Government  
Independent Pricing and Regulatory Tribunal NSW  
PO Box K35  
HAYMARKET POST SHOP NSW 1240

Dear Ms Blackwell,

**RE: CONSULTANCY ADVICE – VINEYARD RELEASE PRECINCT  
HAWKESBURY LOCAL GOVERNMENT AREA**

---

In accordance with your instructions, dated 13 May 2019, I have carried out the necessary inspection, enquiry and investigation to enable the issue of consultancy advice in relation to this matter.

You have instructed me to provide valuation consultancy advice in relation to the impact of the designation as “Existing Native Vegetation” (**ENV**) over certain land which is to be acquired by Hawkesbury City Council (**Council**) in the future for public recreation purposes.

My brief indicates that the Independent Pricing and Regulatory Tribunal of NSW (**IPART**) is currently reviewing the Draft Section 7.11 Local Infrastructure Contributions Plan for the “Vineyard” precinct, dated May 2018 (**Draft CP**). The Vineyard precinct forms part of the North West Growth Centre of Sydney.

You have instructed me that it is IPART’s role to assess contributions plans that propose contributions above \$30,000 per lot or dwelling in identified greenfield areas and \$20,000 per dwelling in other areas and that IPART also assesses whether the contributions plan meets the criteria set out in the Department of Planning and Environment’s (**DPEs**) Infrastructure Contributions Practice Note.

*Liability limited by a scheme approved under Professional Standards Legislation*

---

In this instance, IPART is assessing the Council's Draft CP.

Part of IPART's assessment of the Draft CP is to establish whether the proposed development contributions are based on reasonable estimates of the costs of acquiring land for the proposed infrastructure.

More specifically, I understand that IPART is particularly interested in an area of proposed public recreation land which is known as "District Park 5" within the Draft CP, for which the Council has estimated an amount of \$11.8M for Land Acquisition.

It is my understanding that IPART requires valuation consultancy advice addressing how the market value of "District Park 5" may be assessed in the event that it was to be acquired by the Council in the future and the assessment of market value was to be undertaken in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (Just Terms Act)*.

### References

I have reviewed the following documents for the purpose of providing this report:

1. The Vineyard Precinct – Stage 1 Finalisation Report prepared on behalf of DPE dated November 2017,
2. The Indicative Layout Plan (**ILP**) for the Vineyard precinct prepared on behalf of DPE,
3. A summary of submissions received during the exhibition period for the Vineyard precinct obtained from the DPE website,
4. A report entitled "Growth Centres Biodiversity Certification – Assessment of Consistency between the Relevant Biodiversity Measures of the Biodiversity Conservation Order and Vineyard Precinct – Stage 1" (**Consistency Report**) prepared on behalf of DPE, dated October 2017,
5. Water Cycle Management Report for the Vineyard precinct prepared by Mott MacDonald on behalf of DPE, dated October 2016,
6. The Draft CP prepared on behalf of the Council by GLN Planning, dated May 2018
7. The Precinct Planning Report for the Vineyard precinct prepared by DPE, undated but included with the Exhibition Package between 12 December 2016 and 28 February 2017.
8. The "Re-Zoning Brochure" for the Vineyard precinct – Stage 1 prepared on behalf of DPE, dated December 2017.

9. A report entitled ‘Biodiversity and Riparian Corridors Assessment for the Vineyard Precinct’, prepared on behalf of DPE, dated 1 July 2015 (**Eco Logical Report**),
10. The State Environment Planning Policy (Sydney Region Growth Centres) 2006 (**Growth Centres SEPP**),
11. Mapping pursuant to the Growth Centres SEPP including:
  - The Development Control map,
  - Native Vegetation Protection map,
  - Riparian Protection Area map, and
  - Aerial photographs of District Park 5 obtained from the “Near Map” program to which my firm subscribes,
12. Hawkesbury Local Environmental Plan 2015 (**LEP**),
13. The Biodiversity Conservation Order – being an order to confer Biodiversity Certification for the land covered by the Growth Centres SEPP, dated 11 December 2007 (**BCO**),
14. Maps pursuant to the BCO.

#### District Park 5

Little detail is set out in the Draft CP relating to District Park 5.

From my interpretation of the briefed material it appears to me that the District Park 5 comprises part of the following properties:

Address	Title
4 Odell Street, Vineyard	Lot 2 DP 248509
274 Commercial Road, Vineyard	Lot 1 DP 246251
284A Commercial Road, Vineyard	Lot 2 DP 285689

By reference to the revised ILP for the Vineyard precinct, I have depicted the approximate location and area of District Park 5 in Figure 1 below.

Figure 1



From my interpretation of the Draft CP, District Park 5 does not include the proposed playing fields to the south nor does it include the corridor of “drainage” land which traverses District Park 5 as depicted in Figure 2 below, which is an extract of the ILP.



Figure 2



I note that at Appendix C of the Draft CP, District Park 5 is stated to comprises a land area of 38,945 square metres. The estimated acquisition cost in the Draft CP is \$300/m<sup>2</sup> or approximately \$11.8M.

I note that District Park 5 is traversed by a natural water course. I have reviewed the Water Cycle Management Report which was prepared on behalf of DPE by Mott MacDonald, which is dated October 2016, and note that the water course which traverses District Park 5 is designated as a first order stream, with a riparian zone by the side of that water course.

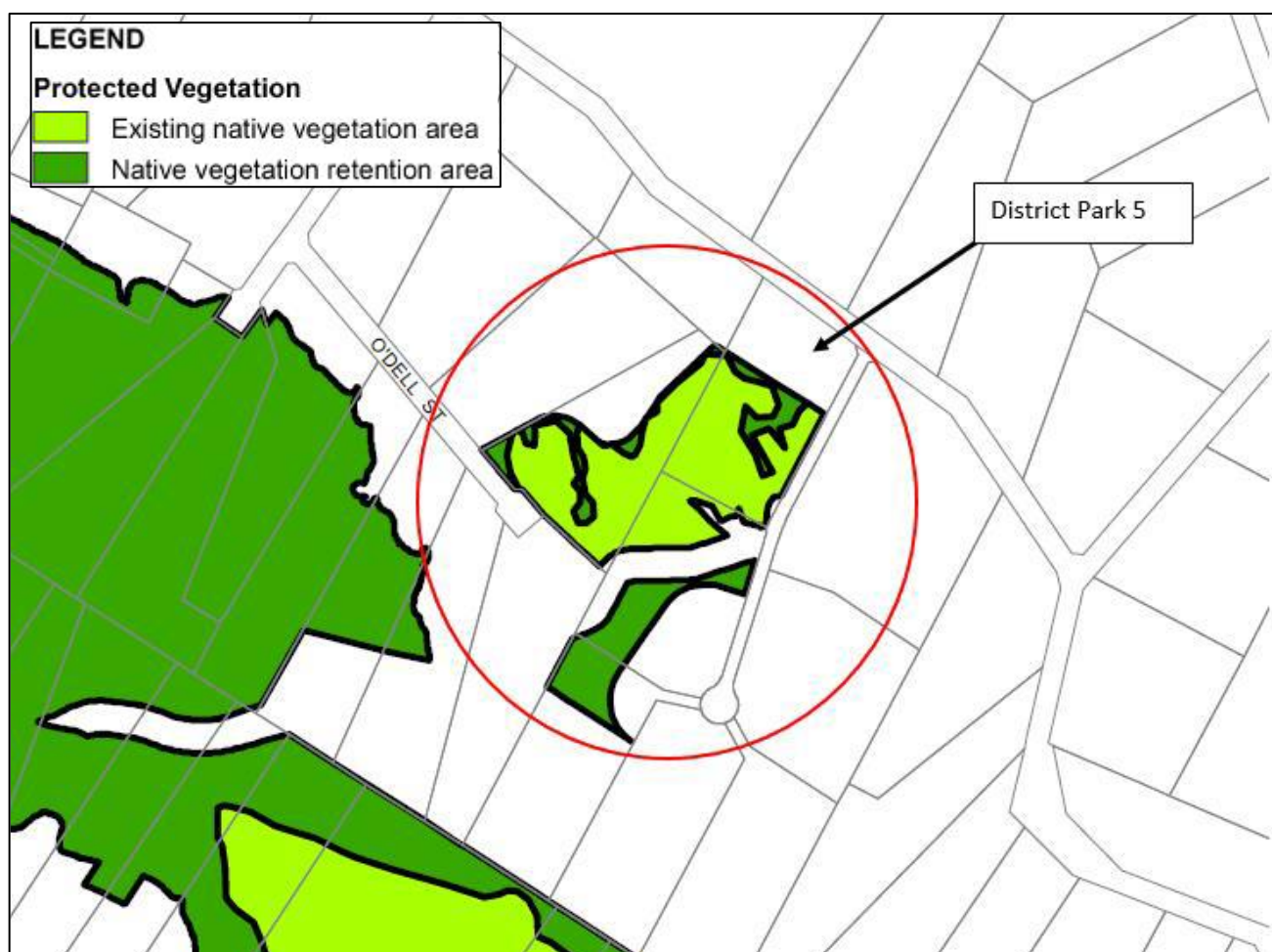
The water course and the associated riparian corridor appears to be included within the “SP2” zone<sup>1</sup> for which an estimated land acquisition cost of \$100/m<sup>2</sup> is set out in the Draft CP.

District Park 5 has a proposed zoning of “RE1 – Public Recreation” pursuant to the Growth Centres SEPP.

The Growth Centres SEPP is the principle environmental planning instrument which applies in the North West and the South West Growth Centres of Sydney and applies to the “Vineyard” precinct.

Figure 3 below is an extract of the Native Vegetation Protection Map pursuant to the Growth Centres SEPP which depicts land in the vicinity of District Park 5.

**Figure 3**



I note that, for the most part, District Park 5 is depicted as being located within an Existing Native Vegetation area (ENV).

<sup>1</sup> Although from my interpretation of the Water Cycle Management Report the extent of flood liable land appears to extend beyond the boundaries of the “SP2” zone.

A significant part of the District Park 5 is depicted as being within a Native Vegetation Retention Area (NVRA). From my review of the Growth Centres SEPP, there does not appear to be any specific controls related to the NVRA classification. The NVRA is depicted in vegetation mapping in the Eco Logical Report as containing Cumberland Plain Woodland (CPW) vegetation of a similar type and quality to the vegetation on the land which is classified as ENV.

There are specific controls in the Growth Centres SEPP relating to land in the ENV classification.

You have instructed me to assume that of the total area of the District Park 5 (38,945 square metres), 26,557 square metres is within designated ENV area.

Appendix 13 of the Growth Centres SEPP relates to the Vineyard precinct.

Clause 6.3 of Annexure 13 relates to existing native vegetation and is in the following terms:

**6.3 Development Controls – Existing Native Vegetation**

1. *The objective of this clause is to manage existing native vegetation in accordance with the relevant biodiversity measures under Part 8 of the [Biodiversity Conservation Act 2016](#).*
2. *This clause applies to land within an existing native vegetation area as shown on the [Native Vegetation Protection Map](#).*
3. *This clause does not apply to a weed within the meaning of the [Biosecurity Act 2015](#) that is identified as a priority weed on the land to which the Precinct Plan applies by a local strategic plan approved under Division 2 of Part 4 of the [Local Land Services Act 2013](#).*
4. *The consent authority must not grant development consent for development on land to which this clause applies unless it is satisfied that the proposed development will not result in the clearing of any existing native vegetation.*

Pursuant to the BCO, land is classified as either “Certified” land or “Non-Certified” land.

Generally speaking, vegetation on land which is Certified pursuant to the BCO is capable of removal without the onerous environmental assessments which previously applied, or which applied to Non-Certified land<sup>2</sup>.

District Park 5 was previously Certified Land pursuant to the BCO however following further vegetation studies undertaken during the preparation of the Consistency Report, District Park 5 was re-classified as Non-Certified land.

Figure 4 and 5 Figure 5 below are extracts from the Eco Logical Report which depict the location of District Park 5.

---

<sup>2</sup> Subject to consistency with other environmental planning instruments and Commonwealth Legislation



Figure 4 – pre-completion of Consistency Report (Certified land)

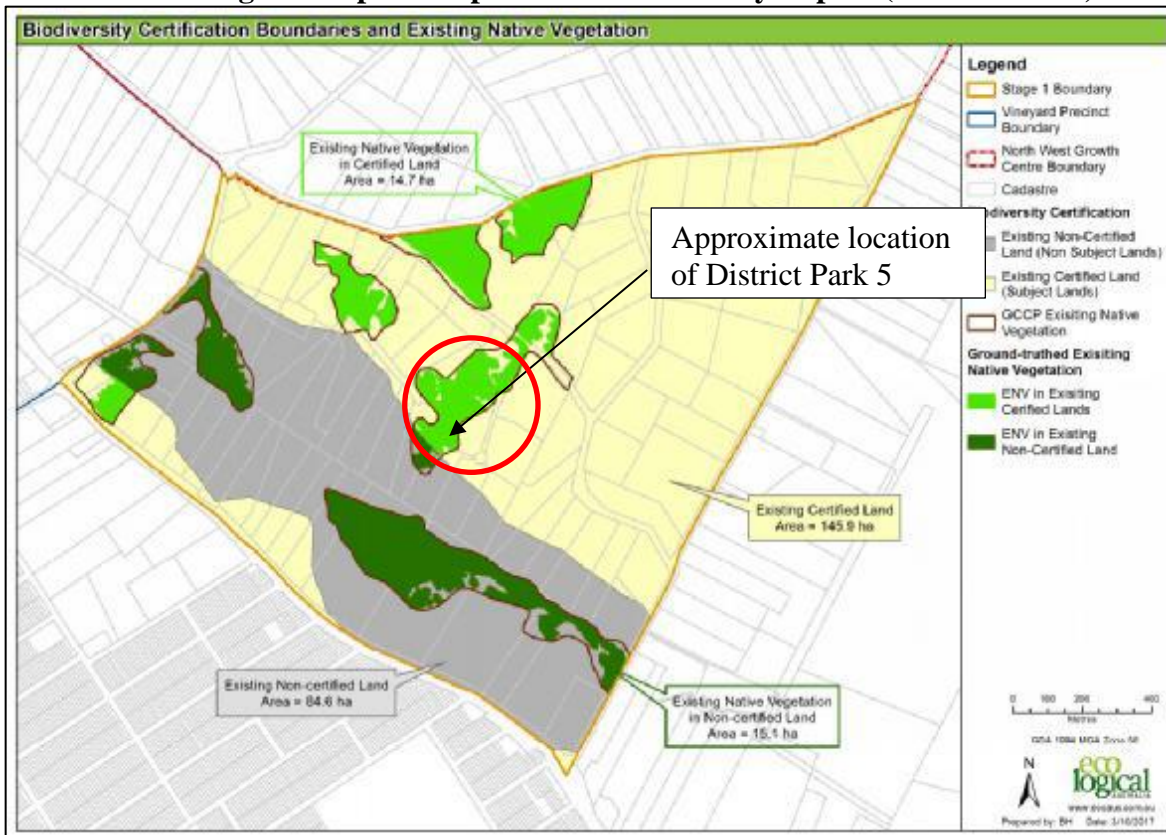
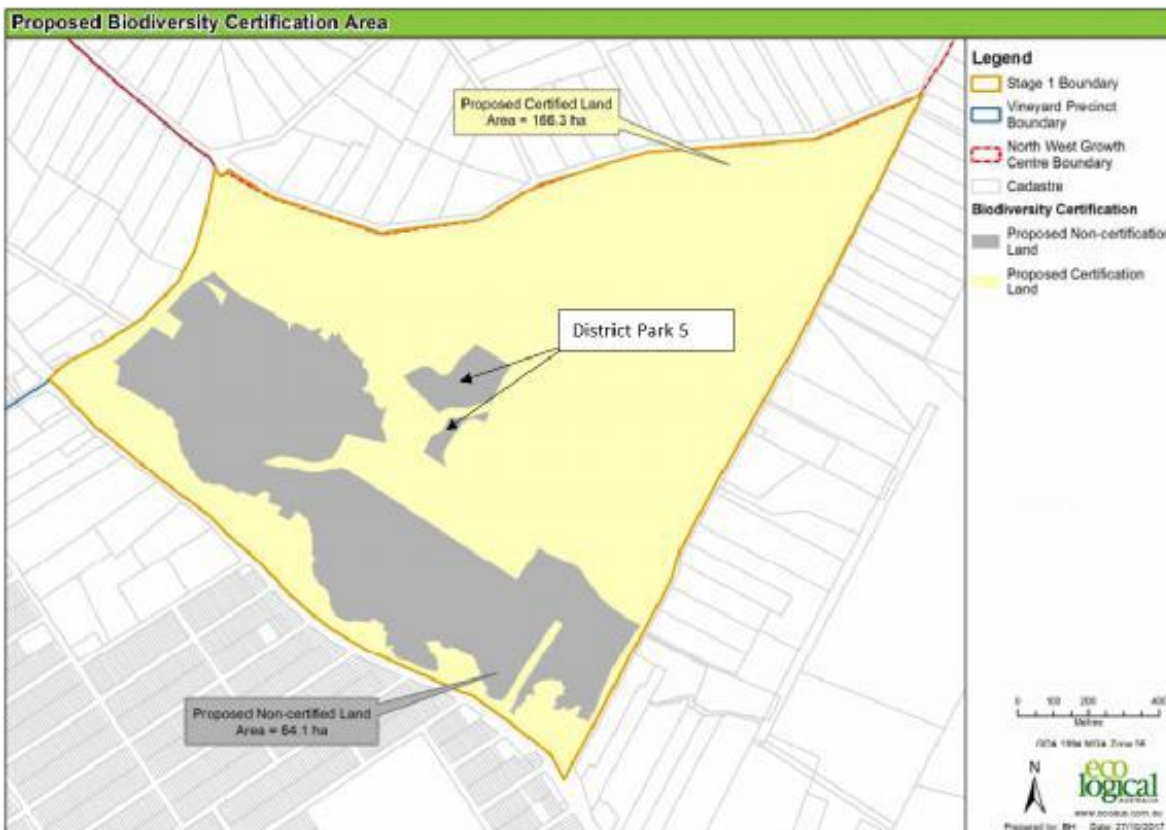


Figure 5 – Non- Certified land (post completion of the Consistency Report)





## Compensation for Future Land Acquisitions

When a public authority in NSW, including a Local Government Authority, acquires land for a public purpose, the market value of that land and the compensation which is payable to the land owner is usually assessed in accordance with the provisions of the Just Terms Act.

The provisions of the Just Terms Act are usually applied irrespective of whether the land is acquired by compulsory process or by negotiation between the parties.

In this regard, I note that Section 5 of the Just Terms Act confirms that the act applies to the acquisition of land (by agreement or compulsory process) by an authority of the State which is authorised to acquire the land by compulsory process<sup>3</sup>.

Market value is defined at Section 56 of the Just Terms Act in the following terms:

### **56 Market value**

*(1) In this Act:*

*market value of land at any time means the amount that would have been paid for the land if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer, disregarding (for the purpose of determining the amount that would have been paid):*

- (a) any increase or decrease in the value of the land caused by the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired, and*
- (b) any increase in the value of the land caused by the carrying out by the authority of the State, before the land is acquired, of improvements for the public purpose for which the land is to be acquired, and*
- (c) any increase in the value of the land caused by its use in a manner or for a purpose contrary to law.*

*(2) When assessing the market value of land for the purpose of paying compensation to a number of former owners of the land, the sum of the market values of each interest in the land must not (except with the approval of the Minister responsible for the authority of the State) exceed the market value of the land at the date of acquisition.*

*(3) If:*

- (a) the land is used for a particular purpose and there is no general market for land used for that purpose, and*
- (b) the owner genuinely proposes to continue after the acquisition to use other land for that purpose, the market value of the land is taken, for the purpose of paying compensation, to be the reasonable cost to the owner of equivalent reinstatement in some other location. That cost is to be reduced by any costs for which compensation is payable for loss attributable to disturbance and by any likely improvement in the owner's financial position because of the relocation.*

In most cases, land which is acquired by a Government Authority has a restrictive “public” zoning which relates to the proposed public use of the land.

In the present matter, the Acquisition Land (District Park 5) has a proposed zoning, of “RE1 – Public Recreation”.

---

<sup>3</sup> Section 5(2) provides an exception in circumstances where the land is available for public sale and the land is acquired by agreement.

In order to give effect to the statutory “disregard” which operates pursuant to Section 56(1)(a) of the Just Terms Act, it is necessary to consider whether, and if so to what extent, the imposition of the public zoning caused an increase or decrease in the market value of the Acquisition Land.

The “RE1” zoning is more restrictive than the “R2 – Low Density Residential” zoning which will apply to adjoining land.

In order to comply with the Section 56 disregard, it is necessary to assess the market value of the Acquisition Land on the basis of an alternative or *Underlying Zoning*.

The concept of an *Underlying Zoning* is well established in valuation principle and relevant case law and is generally understood to be the zoning which would have applied to the Acquisition Land if the proposal to carry out the particular public purpose for which the land is to be acquired did not exist and had never existed.

If a thorough legal and factual analysis indicates that the actual zone had been imposed or retained by reason of the proposal to carry out the public purpose for which the land was to be acquired, it is necessary and appropriate to consider the market value of the land on the basis of an alternative or *Underlying Zoning*.

In most cases, particularly where the Acquisition Land does not suffer any significant physical or environmental constraints, determining the *Underlying Zoning* is a relatively simple and uncontroversial process. It is often the adjoining zoning.

In circumstances where the Acquisition Land suffers physical and environmental constraints, determining the *Underlying Zoning* can be a more difficult and subjective process.

It is important to note that Section 56 requires a sufficient or causal connection between the proposal to carry out a particular public purpose and the increase or decrease in the market value of the Acquisition Land.

In the present matter, the Acquisition Land, District Park 5, has a moderate cover of remnant native vegetation which is likely to represent a material development constraint.

By reference to the foregoing material I have prepared the following chronology of events relating to District Park 5:

Date	Event/Description
Nov 2007	BCO. District Park 5 identified as Biodiversity Certified Land.
July 2015	<p>Eco Logical Report. A Biodiversity and Riparian Corridors Assessment for the Vineyard Precinct identifies District Park 5 as containing Cumberland Plain Woodland vegetation of Good quality (A-C) and Field Validated CPW EPBC (refer to map – Validated EPBC Act Listed Vegetation Communities). It identifies District Park 5 as being a conservation significance Category 3a defined as having:</p> <p><i>“high to moderate ecological value and which should be considered in the allocation of the appropriate sympathetic land use zones such as open space, environmental conservation/environmental living etc”.</i></p> <p>The Aquatic and Riparian Assessment defines the watercourse as a “System E” being a tributary of Killarney Chain of Ponds.</p>
12 Dec 16 – 28 Feb 17	Draft Precinct Planning package for Stage 1 was exhibited. Part of District Park 5 identified for residential zoning and development. Significant parts of District Park 5 shown as ENV.
12 Dec 16 – 28 Feb 17	<p>Submissions during exhibition. Submission by Office of Environment and Heritage (relevant parts):</p> <ol style="list-style-type: none"> <li><i>1. OEH’s previous comments and concerns in response to the draft ILP for the precinct in relation to biodiversity, floodplain risk management, Aboriginal cultural heritage and climate change adaptation have not been addressed in the draft Indicative Layout Plan (ILP).</i></li> <li><i>2. OEH does not support the draft Precinct Plan due to the 5.7 ha ENV deficit with no additional ENV identified and the proposed protection measures for ENV on private land (which is under an E4 Environmental Living zoning). The plan is inconsistent with the Relevant Biodiversity Measures of the Biodiversity Certification Order. There should be no loss of protected ENV (i.e ENV in non-certified areas).</i></li> <li><i>3. The previous biodiversity survey was limited. A comprehensive survey, ground-truthed of sites that have been impacted by canopy clearing and disturbance and mapping/calculations are required to be updated to provide more accurate baseline ENV data.</i></li> </ol>
Oct 17	District Park 5 identified as being non-certified under the Consistency Report (updated post-exhibition).
Nov 17	<p>Vineyard Precinct Stage 1 – Finalisation Report November 2017, provides details of the changes to “Open Space” in the vicinity of District Park 5 due to:</p> <p><i>“Following a thorough investigation, two areas recommended to be adjusted to protect additional ENV. These additional areas of ENV met the definition of ENV in the Biodiversity Certification Order, are located within or near existing areas of ENV and could readily be incorporated into exhibited areas of open space. Consideration was also given to other areas of ENV elsewhere in the precinct, however, due to their disconnect to areas of open space and riparian corridors, did not offer an equal or similar ecological value to the identified areas”</i></p>

I have carefully considered the foregoing chronology.

If the fact were to be that the designation of the District Park 5 as “ENV” pursuant to the Native Vegetation Protection Map and/or the re-classification of District Park 5 to “Non-Certified” land pursuant to the BCO was caused by the Council’s proposal to acquire District Park 5 in the future for public recreation purposes, it would be necessary to ignore any restrictions or development constraints which are suffered as a result of these matters. This would be necessary to give effect to the Section 56 statutory disregard.

From my review of the foregoing chronology, there does not appear to me to be a sufficient causal connection between the Council’s (future) proposal to acquire District Park 5 and the ENV designation or the Non-Certified land classification. In fact, there does not appear to be any nexus or causal connection at all.

The native vegetation which exists on District Park 5 is a physical characteristic and constraint of the land. The existence of this vegetation, and consequential constraint was not caused by any proposal of the Council to acquire District Park 5 in the future, for public recreation purposes.

Accordingly, it would appear to me that it would be incorrect, as a matter of valuation principle, to ignore either the ENV designation or the fact that District Park 5 is “Non-Certified” pursuant to the BCO for the purpose of determining the market value (or likely future acquisition cost) of District Park 5, pursuant to Section 56 of the Just Terms Act.

#### Application of the Just Terms Act and Valuation Principles to District Park 5

From my review of the Draft CP, I note land acquisition costs are set out as follows:

Category of Land	Estimated Acquisition Cost
Land which is seemingly assumed to suffer physical and environment constraints	\$100/m <sup>2</sup>
Land which is seemingly assumed to suffer no physical and environmental constraints	\$300/m <sup>2</sup>

From my knowledge of englobo land values within the North West Growth Centre of Sydney, the estimated land acquisition cost for District Park 5 which is set out in the Draft CP (\$300/m<sup>2</sup>) appears to be representative of the value of prime, unconstrained englobo residential land rather than the value of constrained land which has little or no potential for urban development.

In my opinion the vegetation constraints of District Park 5, at least that part which is designated as ENV, would likely result in the land having an *Underlying Zoning* of “E2 – Environmental Conservation” rather than an *Underlying Zoning* of “R2 – Low Density Residential”.

On one view, physically and environmentally constrained land within the “E2 – Environmental Conservation” zone has no significant value and, in some cases can represent a burden of ownership to a developer. The cost of re-vegetating or rehabilitating such land (particularly creek corridors and the like) can impact on the economic viability and profitability of a sub-division of adjoining land.



There is a somewhat artificial market for constrained land similar to District Park 5 which is comprised of various “public” purchasers including:

- Blacktown City Council,
- The Hills Shire Council,
- Hawkesbury City Council,
- Sydney Water Corporation, and
- DPE.

These Local and State Government Authorities have demonstrated a preparedness to pay a price for physically and environmentally constrained land which typically ranges from \$50/m<sup>2</sup> to \$100/m<sup>2</sup>, depending upon the size, nature and location of the land.

In my opinion the \$/m<sup>2</sup> rates which are set out in the Draft CP are within acceptable market parameters for the different land categories however in my opinion the assessment of the whole of District Park 5, including the Non-Certified ENV land at the rate of \$300/m<sup>2</sup> significantly overestimates the likely future acquisition cost of the land.

As I have indicated above, part of District Park 5 is designated at NVRA, rather than ENV. This land contains remnant native vegetation and is Non-Certified Land under the BCO.

In my opinion an intending purchaser of that land, even if it was assumed to have an *Underlying Zoning* or “R2 – Low Density Residential”, would reasonably foresee that significant time, cost and risk would be encountered in realising any development potential. Onerous assessments are required in order to remove native vegetation from Non-Certified Land and onerous conditions of any approval may be imposed by the relevant consent authorities, including the requirement to purchase expensive Biobanking Ecosystem Credits, of a similar CPW profile.

In my opinion, having regard to the vegetation/ecology constrains which are suffered by District Park 5, the following \$/m<sup>2</sup> rates would be a more accurate estimate of the likely future acquisition cost of District Park 5, than that which is set out in the Draft CP:

Category	Area (m <sup>2</sup> )	\$/m <sup>2</sup>	\$	Basis
ENV Land	26,557	\$100	\$2,655,700	Constrained Land rate in Draft CP.
NVRA Land	12,388	\$150	\$1,858,200	Non Constrained Land rate in Draft CP (\$300/m <sup>2</sup> ) less 50% for ecology risk/cost.
<b>Total</b>	<b>38,945</b>		<b>\$4,513,900</b>	Plus indexing per Draft CP.

## Conclusion

For the foregoing reasons, it is my opinion that the estimated future land acquisition cost of District Park 5 should be assessed on the basis that:

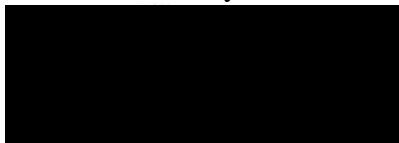
- The land suffers vegetation constraints and is unlikely to be (hypothetically) capable of residential subdivision and development,
- The provisions of the SEPP relating to “ENV” would likely prohibit the clearing of the native vegetation on the land,
- Even assuming development consent could be granted for the clearing of the vegetation on the NVRA land, the cost of acquiring bio-banking credits to offset the effects of such clearing would likely be significant and possibly even prohibitive, and
- There is no causal connection between the vegetation constraints which are suffered by District Park 5 and the Council’s (future) proposal to acquire the land for the purpose of public recreation.

If the ENV designation is not a matter which can be ignored or disregarded pursuant to the Just Terms Act, this designation would materially impact and likely sterilise any (hypothetical) development potential of District Park 5.

In these circumstances, it is my opinion that a more appropriate land acquisition cost should be assessed on the basis of the land being constrained land rather than prime, unconstrained englobo residential land.

I trust the foregoing analysis and report is sufficient for your requirements. Please do not hesitate to contact me with any questions arising in relation to this matter.

Yours faithfully,



**David Lunney B.Com (L.Ec) AAPI**  
**Certified Practising Valuer**  
**API Membership No. 68801**  
*Director*

### ***Limiting Conditions & Liabilities***

*This valuation is for the use only of the party to whom it is addressed, and for no other purpose. No responsibility is accepted to any third party who may use or rely on the whole or any part of the content of this valuation. No responsibility will be accepted for photocopied signatures. Neither the whole nor any part of this valuation or any reference thereto may be included in any published documents, circular or statement, nor published in part or in full in any way, without written approval of the form and context in which it may appear. No liability is accepted for any loss, harm, cost or damage (including special, consequential or economic harm or loss) suffered as a consequence of fluctuations in the property market subsequent to the date of valuation. This valuation is current as at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period (including as a result of general market movements or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value. Without limiting the generality of the above comment, we do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of 3 months from the date of the valuation, or such earlier date if you become aware of any factors that have any effect on the valuation. I confirm that I am a member of the Australian Property Institute and have the relevant experience and qualifications to value the class of property being valued. I confirm that neither myself nor Lunney Watt & Associates Pty Limited have a pecuniary interest that could conflict with the valuation of the property and the opinion expressed is free of any bias in this regard.*