NSW Department of Planning, Industry and Environment
320 Pitt Street
Sydney
NSW 2000

Attention: Catherine Van Laeren - Acting Executive Director, Western and Central Sydney

SUBMISSION TO DRAFT MAMRE ROAD STRUCTURE PLAN BY VINCENZO AND JOSEPHINE DE FRANCESCO, THE LANDOWNERS OF LOT 22 DPDP258414, 757-769 MAMRE ROAD, KEMPS CREEK

Dear Catherine,

1.0 INTRODUCTION

I own the property at 757-769 Mamre Road, Kemps Creek (Lot 22 DPDP258414), and write to you regarding the Draft Mamre Road Precinct Structure Plan for *State Environmental Planning Policy (Western Sydney Employment Area) 2009*. Lot 22 forms part of the pending approval from the NSW Department of Planning, Industry and Environment under State Significant Development (SSD) 9522 for a proposed State-of-the-Art Six-Star-Green-Star Warehouse, Industrial and Logistics Facilities Hub.

My Lot is currently within the WSEA but is not zoned under the WSEA. Instead, the Lot is zoned RU2 Rural Landscape, E2 Environmental Conservation and SP2 Infrastructure under the *Penrith Local Environmental Plan 2010*. The Draft Structure Plan will rezone part of Lot 22 to IN1 General Industrial and RE1 Public Recreation under the SEPP (refer to **Figure 1** below). The westernmost portion of Lot 22 will also cease to be within the WSEA. Previously, Clause 12 of the SEPP has been used to permit industrial-type developments on Lot 22 in its entirety.

As Lot 22 forms part of the overall SSD 9522 site which is controlled by Frasers Property Industrial and Altis Property Partners, this rezoning results in around 29ha, or 15%, of the overall 118 hectare site which Lot 22 forms a part of a site which is being unsuited for industrial development. In the case of Lot 22, this will result in around 50% of the Lot being unsuited for industrial development. It is estimated that up to 1,000 equivalent full time jobs could be lost on this overall SSD 9522 site as a result of these changes. Under the Structure Plan, the western portion of both Lot 22 and the overall SSD 9522 site will no longer fall entirely within the WSEA.

I therefore submit that the WSEA boundary aligns with the actual property boundaries, including the western boundary of the overall SSD 9522 site. This would avoid planning law confusions and prevent the site being downzoned from its current planning controls. Also, the IN1 General Industrial boundary should be extended to the west.

It is observed that DPIE has drawn the western boundary of the WSEA largely based on the 1 in 100 Average Recurrence Interval (1:100 ARI). I noted how this is out of step with the way flood planning controls are adopted throughout NSW, including within the Penrith Local Government Area.

I also submit that land mapped for Reservation Acquisition should be acquired according to its highest and best industrial land use.

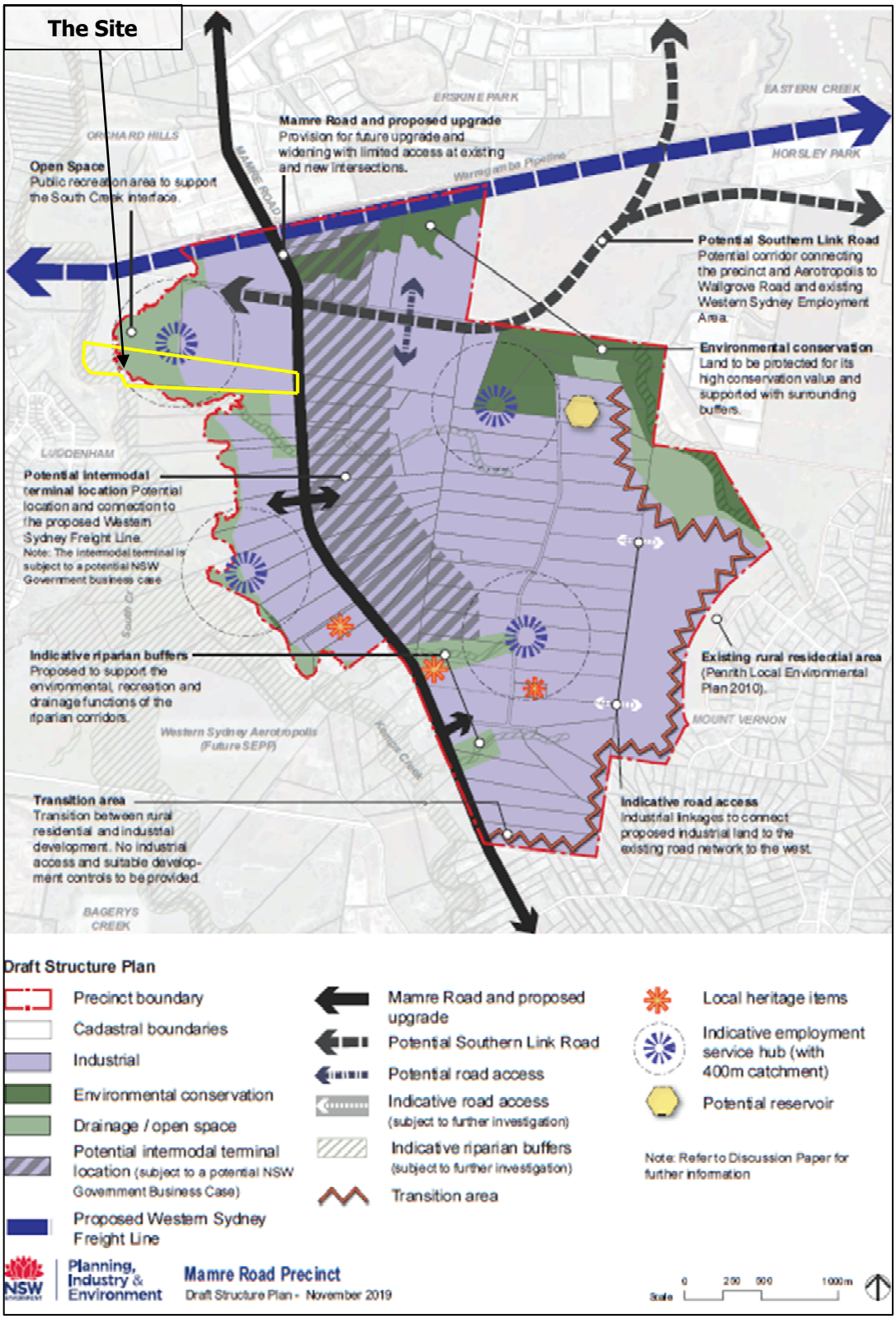

Figure 1 Proposed Draft Mamre Road Precinct Structure Plan (NSW DPIE, 2019)

2.0 EXISTING STATE SIGNIFICANT DEVELOPMENT APPLICATION (9522)

State Significant Development Application 9552 is currently before DPIE, seeking consent for the construction and operation of a Warehouse, Logistics and Industrial Facilities Hub at a broader site which includes Lot 22. **Figure 2** below shows the plan that was lodged with and exhibited by DPIE.

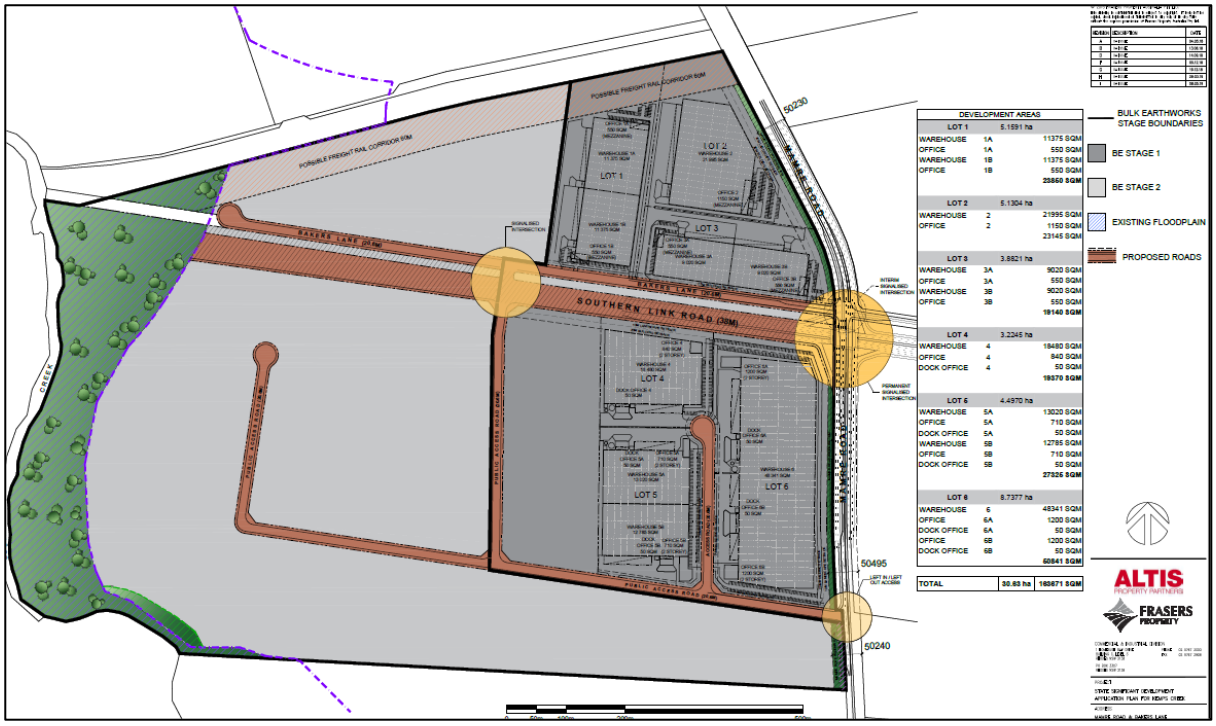

Figure 2 SSD Masterplan 1 (Frasers Property, 2019)

A revised scheme has been prepared to address the Response to Submissions received following exhibition which ended on 7 July 2019. However, this has not been formally submitted to NSW DPIE for assessment. Following approval of this revised (reduced) scheme in the future, it is intended to lodge a subsequent Development Application that relates to the rear (western portion of the site) for more warehouses and associated uses to provide further activation and jobs for this area. I consider that the Draft Structure Plan impedes this opportunity.

The revised scheme (SSD Masterplan 2) is shown on **Figure 3** below, overlaid with the proposed zoning and Transport Infrastructure Investigation Area under the draft Structure Plan.

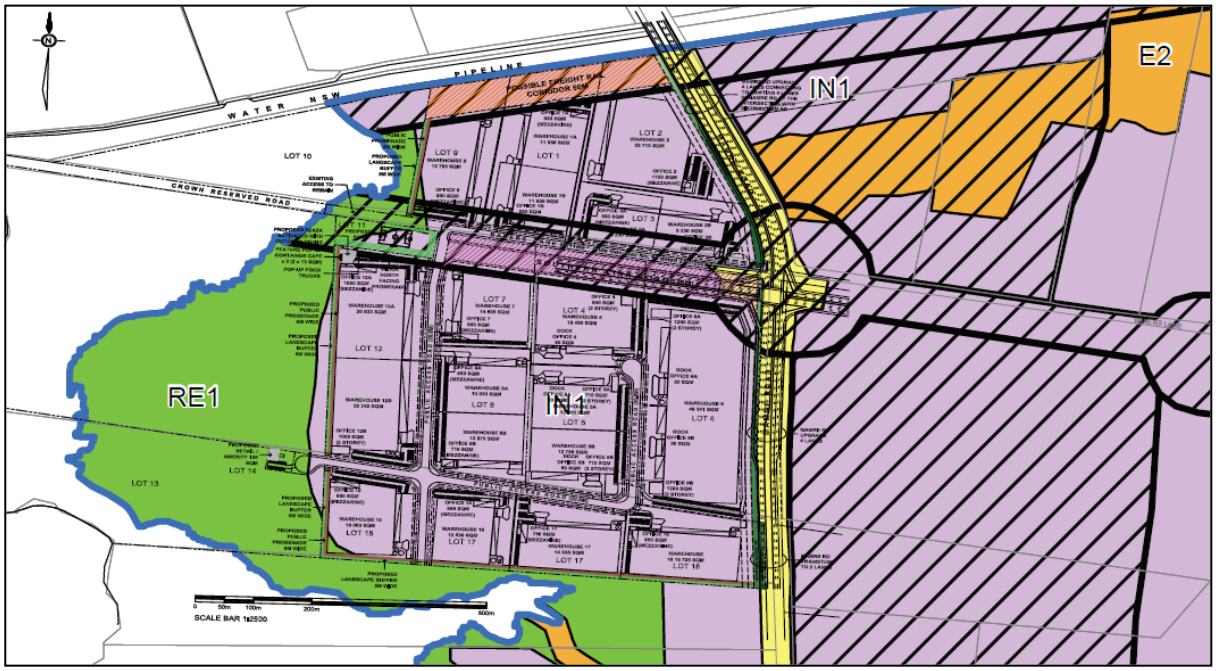

Figure 3 SSD Master Plan 2 - not yet formally lodged (Frasers Property, 2019)

3.0 GROUNDS FOR SUBMISSION

My grounds of submission to the Draft Mamre Road Precinct relate to the following matters:

- The WSEA boundaries and zone boundaries should follow property boundaries rather than cutting through existing property boundaries. This creates planning uncertainties and sterilises otherwise developable industrial land;
- The Precinct's zoning and boundaries have been drawn based on overlying stringent flood planning controls (i.e. built form development not considered suitable within the 1:100 ARI), which directly contradicts NSW Government and Penrith City Council planning policies, as well as standard industry knowledge and practice. This results in an unnecessary sterilisation of land;
- Using the PMF as the default building level is not in line with standard NSW planning practice. This would mean that land in the Mamre Road Precinct may be considered unusable due to flooding matters, when in fact, there is precedent for development in these circumstances, especially in the case of industrial development;
- The Transport Infrastructure Investigation Area is too large. It could be scaled back to align with existing lot boundaries;
- Government has not advised what landholders can do with this land in the meantime;
- Government has not advised process for obtaining TfNSW concurrence to develop this land;
- There is currently no sound business case for the proposed Western Sydney Intermodal;
- Government has not advised on the process, costs and timing for land reservation acquisition;
- The proposed Western Sydney Freight Line corridor width should not exceed 60m;
- Landholders need more information about the contribution rates that will apply to their land;
- The Department makes no mention of Exempt or Complying Development opportunities for these sites; and
- The area already contains a lot of open space. However, open space zonings should be broader, encourage more private investment and avoid detrimental impacts to nearby industrial zoned land; and
- Incompatibilities with SSD 9522. The IN1 General Industrial zone should apply to this Development Application in its entirety.

I also found that the Discussion Paper contained some inconsistencies, and was overall, poorly worded and difficult to read. This made it difficult for me to comment fully on the matters contained therein.

3.1 WSEA SEPP and Zone Boundaries

As Lot 22 site forms part of the overall SSD 9522 site which is controlled by Frasers Property Industrial and Altis Property Partners, the Draft Structure Plan would result in around 29ha, or 15%, of the overall 118 hectare site which Lot 22 forms a part of as being unsuited for industrial development. In the case of Lot 22, this will result in around 50% of the Lot being unsuited for industrial development. It is estimated that up to 1,000 equivalent full time jobs could be lost on this overall SSD 9522 site as a result. This conflicts with the Greater Sydney Commission's views for the preservation of industrial lands within Western Sydney.

DPIE appears to have used the 1:100 ARI to largely draw the extent of the WSEA and corresponding zone boundaries, claiming that this land is not suitable for 'urban development.' Not only is this 1:100 ARI a standard that has never been used to date, it directly contradicts official NSW Government Policy and current Penrith City Council standards.

By not allowing development up the 1:100 ARI, the full extent of land lost on the overall SSD 9522 site equates to 22ha which is shown in **Figure 4** below.

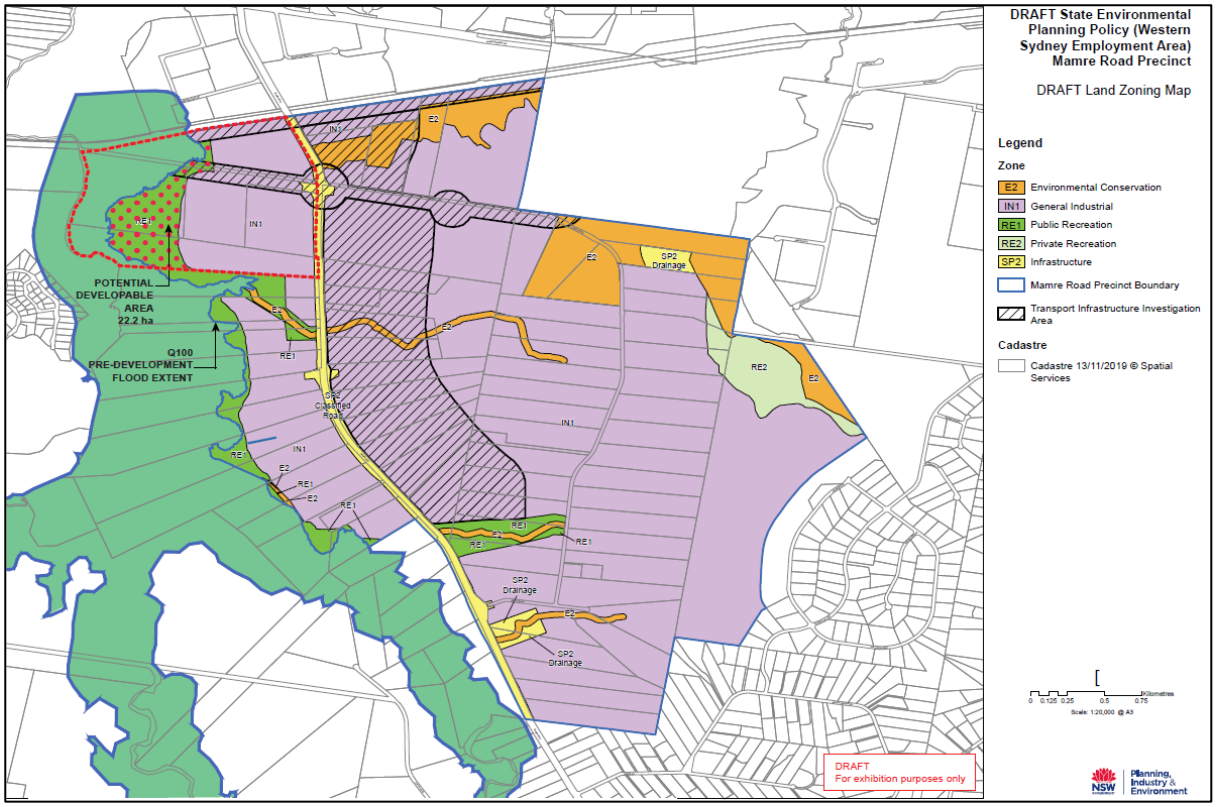

Figure 4 Diagram showing SSD 9522 land lost by not allowing development up to 1:100 ARI (Frasers Property, 2019)

It is considered that the IN1 General Industrial zoning should therefore extend to the 1:100 ARI line as shown above to include the land shown dotted with any open space can be provided beyond this extent as there is more than ample area for such purposes. This would provide sufficient area (around 422ha – refer to **Figure 3** and **Figure 4** above) for activation and open space that accords with the intended outcomes for land adjacent South Creek.

To date, the overall SSD 9522 site has been entirely within the WSEA SEPP Application Area, albeit remaining unzoned. Nevertheless, industrial development is currently permitted across the site by virtue of Clause 12 under the SEPP.

Unfortunately, the Draft Precinct Structure Plan does not take the opportunity to streamline the overall SSD 9522 site's zoning, aligning zone boundaries and property boundaries alike. Most importantly, it is not preferred to alter the boundary of the WSEA SEPP so that it runs through the middle of Lot 34 DP1118173, Lot 1 DP1018318 and Lot 22 DP258414. Rather, parts of these Lots will be zoned under the new Western Sydney Aerotropolis SEPP. This will result in a convoluted outcome whereby the westernmost portions of the overall SSD 9522 site are subject to a different Environmental Planning Instrument which will create confusion and conflict in terms of future land uses and zone objectives. In effect, this downgrades the development potential of these lots by not allowing them to be used for industrial employment-generating purposes.

With approval for SSD 9522 pending from DPIE, I consider that the overall SSD 9522 site should be given the benefit of operating under a concise, modern, flexible set of planning controls which have been specifically designed for this industrial locality, as opposed to residual planning controls which remain from when the locality was primarily comprised of rural landholdings

3.2 Flooding Controls

Lot 22 includes land that is within the PMF and the 1:100 ARI. The Discussion Paper identifies how the Precinct's boundary has been mostly aligned with the 1:100 ARI flood zone. **Figure 5** shows the Draft Mamre Road Precinct flood affectation as published within the Discussion Paper.

The Discussion Paper states:

> *Development within the 1 in 100 chance per year flood level data from Penrith City Council land will be limited to open space, drainage or similar.*
>
> ……..
>
> *A new clause is proposed to require consent authorities to consider the cumulative and local impact of development on the whole flood plain within the PMF and 1 in 100 chance per year flood level.*

Mamre Road Precinct: Frequently Asked Questions (DPIE, 2019) then states:

> *Studies in progress will provide more information about the controls that will apply in the area between 1 chance in 100 per year and the PMF levels. This may mean the extent of land identified as zoned industrial is reduced before the plan is finalised. Alternatively, it may involve additional DCP controls to guide what land uses and building forms are possible in this area. Filling in this area to the PMF may need to be limited and large structures that could impede the flood conveyance may be unsuitable. At grade uses such as car parking and storage of (non-hazardous) plant and equipment may be suitable.*

It is a significant oversight not to extrapolate on these matters further within the Discussion Paper.

I reject this approach to prohibit urban land uses on and within the PMF. This approach is considered this to be too strict and out-of-step with the approach taken by Penrith City Council and the Department for other nearby sites. I am also concerned that this could trigger a higher level of assessment for development on Lot 22 than would usually be required.

I also note how extensive floodplain assessments have been undertaken for the overall SSD 9522 site. SSD 9522 does not impact or extend within any areas affected by 1:100 ARI flood event from South Creek. However, SSD 9522 does encroach the PMF flood extent. Overall, SSD 9522 meets all of the criteria in the NSW Floodplain Manual, the PDCP 2014 and the *Draft Exhibition South Creek Floodplain Risk Management Study* (2019).

It follows on from the above that it is completely unnecessary to rezone such a significant portion of the overall SSD 9522 site to RE1 Public Recreation under WSEA SEPP, as there is no compelling flood risk reasons why much of this land cannot be developed for industrial or other purposes. Overall, I reject the extent of this RE1 Public Recreation zoning in the west of the SSD 9522 site.

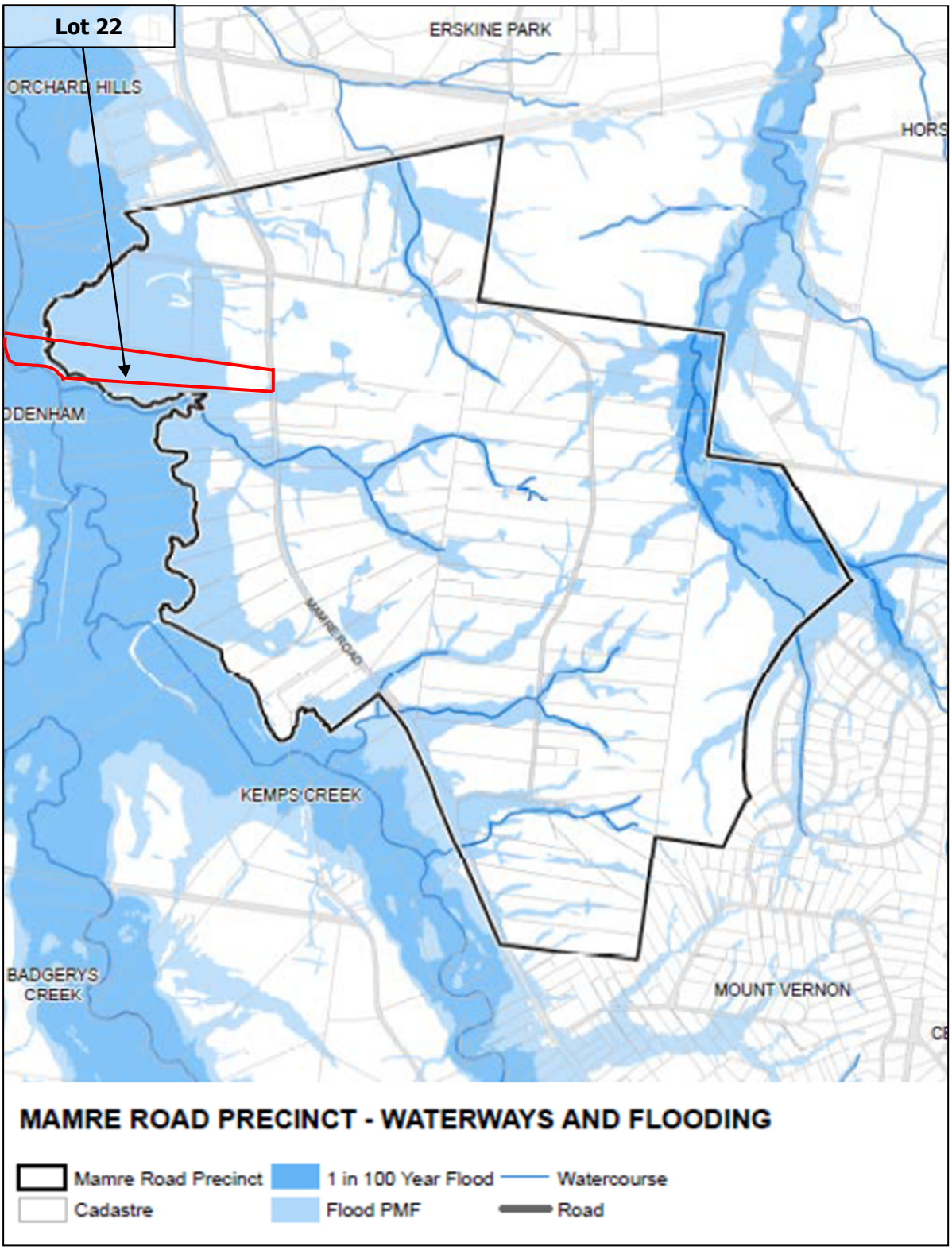

Figure 5 Draft Mamre Road Precinct Flood Affectation (NSW DPIE, 2019)

3.4 Transport Infrastructure Investigation Area

The Transport Infrastructure Investigation Area shown on **Figure 1** in **Section 1.0** above is too extensive. For landowners, it is not clear how they can use their lands once they are covered by this overlay. I am also concerned about the requirement to obtain TfNSW concurrence for any development on such lands, and the Draft Structure Plan does not provide adequate details on this. It is also not clear when the Western Sydney Freight Line might be delivered, and who will be developing this piece

of key infrastructure. It is therefore difficult to know whether parts of the overall SSD 9522 site might be acquired in the future to support this Freight Line, or whether certain types of development will be prevented on the SSD 9522 site on the basis of possible conflict with the future Intermodal. It is also difficult to understand what can be developed on this land prior to the Western Sydney Freight Line being developed.

As shown on **Figure 2** and **Figure 3** in **Section 2.0** above, these Transport Investigation Areas also cross into portions of the SSD 9522 site that are proposed to be used for built-form/operational purposes. These Transport Investigation Areas also do not align with the function road reserve layouts that have been discussed and agreed with RMS regarding SSD 9522.

3.5 Western Sydney Intermodal Site

We are concerned about the sheer size of the Western Sydney Intermodal area which has been set aside with no sound business case in support. Indeed:

- Land ownership/acquisition for this site is unclear;
- The site poses some engineering challenges; and
- The timeline for delivering the Intermodal could effectively sterilise land in the meantime.

3.6 Developer Contributions

Landholders in the Precinct are concerned as no information has been provided on Draft Development Contributions or Special Infrastructure Contributions that we might have to pay to Penrith City Council or the Department. This makes it difficult to forward-plan capital investment for Lot 22.

Also, no indication is given as to whether developer-provided infrastructure can be used to offset against such Contributions. This creates more uncertainty in the meantime as developers are left having to negotiate these costs with Penrith City Council and/or the Department on a case-by-case basis.

3.7 Freight Rail Corridor Width

Frasers Property Industrial and Altis Property Partners made a detailed submission to the Corridor Investigation Office in 2018 regarding the proposed Western Sydney Freight Line, highlighting their concerns regarding the imposition of a railway corridor which is wider than required, effectively sterilising otherwise developable employment land within the locality. I now echo these concerns. The Draft Structure Plan shows the Western Sydney Freight Line corridor potentially wider than 60m. This sterilisation of significant employment lands and resulting reduction in potential job creation is considered wholly unnecessary. Indeed, Frasers Property and Altis had previously submitted to the Corridor Investigation Office in 2018 that the Western Sydney Freight Line could function as a 20m railway corridor, which would still be sufficient to accommodate up to four operational railway lines.

3.8 Land Reservation Acquisition

The Discussion Paper does not provide sufficient details on the process for, nor the timing and costs of, land reservation and acquisition. It is submitted that a mechanism be put in place to manage this process of land acquisition for the Mamre Road Precinct, so as to provide developer certainty. The permissibility and feasibility of potential interim land uses should also be considered in the meantime.

Furthermore, the NSW Government has not specifically budgeted for this land acquisition, and associated embellishment. This may well prove cost prohibitive.

I also submit that land mapped for Reservation Acquisition should be acquired according to its highest and best industrial land use.

3.9 RE1 Public Recreation Zone

I am concerned about plans to provide extensive public recreation spaces in the Precinct, as this could conflict with permissible land uses in the IN1 General Industrial zone. The Precinct already contains an abundance of open space. Using zoning to achieve this open space throughout the locality also removes the flexibility for developers to provide open space where it is most sensible to do so, without unnecessarily sterilising pockets of their lands.

3.10 Exempt and Complying Development

The Department should give an indication of the types of Exempt or Complying Developments that may be undertaken in the Precinct. This would allow smaller-scale investments to kick-start growth in the Precinct without getting caught up in unnecessary planning delays.

3.11 Inconsistencies with SSD 9522

The Transport Investigation Areas proposed under the Draft Mamre Road Precinct traverse into portions of the site that are proposed to be used for built-form/operational purposes under SSD 9522. Operational development proposed under SSD 9522 would also be partly constrained by an RE1 Public Recreation zoning.

Rather, the proposed IN1 General Industrial zoning should extend in a westerly direction to the 1:100 ARI line. These zone boundaries should be squared up to match the lot boundaries in the locality and the pending SSD 9522 scheme, instead of being curved.

The Discussion Paper mentions how there will be savings and transitional provisions. However, it is not clear how these might operate, and whether SSD 9522 could benefit from them.

3.12 General Inconsistencies and Uncertainties in the Discussion Paper

The Discussion Paper assumes that land currently unzoned in the WSEA cannot be used for employment-generating purposes. However, this ignores the function of Clause 12 in the SEPP. The Discussion Paper states the following:

> *Land not rezoned within the WSEA SEPP means that the zoning under the Penrith LEP 2010 does not apply to the site, and instead development consent is required for a consent authority which muse consider appropriateness and compatibility with adjoining land.*

This does not reflect the complexities of Clause 12. Members of the public, on reading the Discussion Paper, will find it difficult to draw out the meaning of this planning control, as it has not been fully explained within the Discussion Paper. Moreover, the Discussion Paper does not clarify the applicability or not of other PLEP 2010 planning controls besides land zoning which may or may not apply to unzoned land within the WSEA.

The Table in Section 4.3 of the Discussion Paper states the following:

> *Proposed amendment to include additional acquisition authorities, where relevant, and supporting Land Reservation Acquisition Map to reflect proposed land use zoning amendments to SP2 Infrastructure zone.*

However, the proposed Land Reservation Acquisition Map also reflects land which is proposed to be rezoned RE1 Public Recreation. This mapping is not simply limited to SP2 Infrastructure land.

The Discussion Paper is also considered to be misleading as it does not specify that no built form would be permitted in the extensive RE1 Public Recreation zone. However, given the stringent application of flooding levels to define the buildable zone within the Precinct, it can be inferred that this is the intent of the Draft Mamre Road Precinct Structure Plan. In contrast, it is considered that there are various compatible built form land uses that could be undertaken within the RE1 Public Recreation zone should this zone be formalised within the Precinct.

I also note that the *Mamre Road Precinct: Frequently Asked Questions* (DPIE, 2019) says that the final WSEA SEPP may provide an IN1 General Industrial footprint which is reduced even further. However, I did not see this referenced in the Discussion Paper. This makes it difficult to make full and informed comment at this stage.

The Discussion Paper also mentions a savings and transition clause. However, once again, few details are provided.

4.0 CONCLUSION

The effect of the Draft Mamre Road Precinct Structure Plan would be to designate more than 29ha, or 15%, of the overall 118 hectare SSD 9522 site as being unsuitable for urban development. Lot 22 forms part of this broader site, which is controlled by Frasers Property Industrial and Altis Property Partners. In the case of Lot 22, this will result in around 50% of the Lot being unsuited for industrial development. It is estimated that up to 1,000 equivalent full time jobs could be lost on this overall SSD 9522 site as a result.

I therefore submit that the WSEA boundaries and zone boundaries should be amended to align with actual property boundaries. This would avoid planning law confusions and prevent the site being downzoned from its current planning controls. Also, the IN1 General Industrial boundary should be extended to the west.

I have observed that DPIE has drawn the western boundary of the WSEA largely based on the 1 in 100 Average Recurrence Interval (1:100 ARI). I note how this is out of step with the way flood planning controls are adopted throughout NSW, including within the Penrith Local Government Area.

Specifically, I make the following submissions to the Draft Structure Plan:

- The WSEA boundaries and zone boundaries should follow property boundaries rather than cutting through existing property boundaries. This creates planning uncertainties and sterilises otherwise developable industrial land;
- The Precinct's zoning and boundaries have been drawn based on overlying stringent flood planning controls (i.e. built form development not considered suitable within the 1:100 ARI), which directly contradicts NSW Government and Penrith City Council planning policies, as well as standard industry knowledge and practice. This results in an unnecessary sterilisation of land;
- Using the PMF as the default building level is not in line with standard NSW planning practice. This would mean that land in the Mamre Road Precinct may be considered unusable due to flooding matters, when in fact, there is precedent for development in these circumstances, especially in the case of industrial development;
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- Government has not advised what landholders can do with this land in the meantime;
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- Landholders need more information about the contribution rates that will apply to their land;
- The Department makes no mention of Exempt or Complying Development opportunities for these sites; and

- The area already contains a lot of open space. However, open space zonings should be broader, encourage more private investment and avoid detrimental impacts to nearby industrial zoned land; and
- Incompatibilities with SSD 9522. The IN1 General Industrial zone should apply to this Development Application in its entirety.

I also submit that land mapped for Reservation Acquisition should be acquired according to its highest and best industrial land use. I also found that the Discussion Paper contained some inconsistencies, and was overall, poorly worded and difficult to read. This made it difficult for me to comment fully on the matters contained therein.

Overall, I request the Department satisfactorily deals with these matters before WSEA SEPP is amended.

Kind regards

Vincenzo and Josephine De Francesco
The landowners of Lot 22 DPDP258414, 757-769 Mamre Road, Kemps Creek