



18 December 2019

Via Online Portal

Greater Sydney Place and Infrastructure,
Department of Planning, Industry and Environment,
GPO Box 39,
SYDNEY NSW 2001

Attention: Central (Western) – Mamre Road Precinct Team

Dear Ms Metcalfe,

**Objection to amendment to State Environmental Planning Policy – Western Sydney
Employment Area and Draft Mamre Road Precinct Structure Plan**

We act on behalf of our clients, who own 1030-1048 Mamre Road, Kemps Creek (Lot 3 DP 250002).

The following letter sets out our written objection to the proposed amendments to the State Environmental Planning Policy – Western Sydney Employment Area (**SEPP WSEA**). The primary grounds for objection go to the significant impact the amendment will have on our client's property in terms of land fragmentation, development utility, ongoing maintenance and land value.

Site Features – 1030-1048 Mamre Road Kemps Creek

Our client's property (**the site**) is located on the eastern side of Mamre Road and has an area of 11.61 hectares. It is trapezoidal in shape, undeveloped and sparsely vegetated. It slopes gently down toward Mamre Road. A tributary creek line (**the creek**) flows east to west towards Kemps Creek and is located at the north west corner of the site. It is a Category 2

watercourse under the Strahler classification system and a 20m riparian corridor either side of the creek would be ordinarily anticipated (40m corridor width plus width of creek)¹

The site, in the regional and local context is depicted in **Figure 1** and **Figure 2** below.

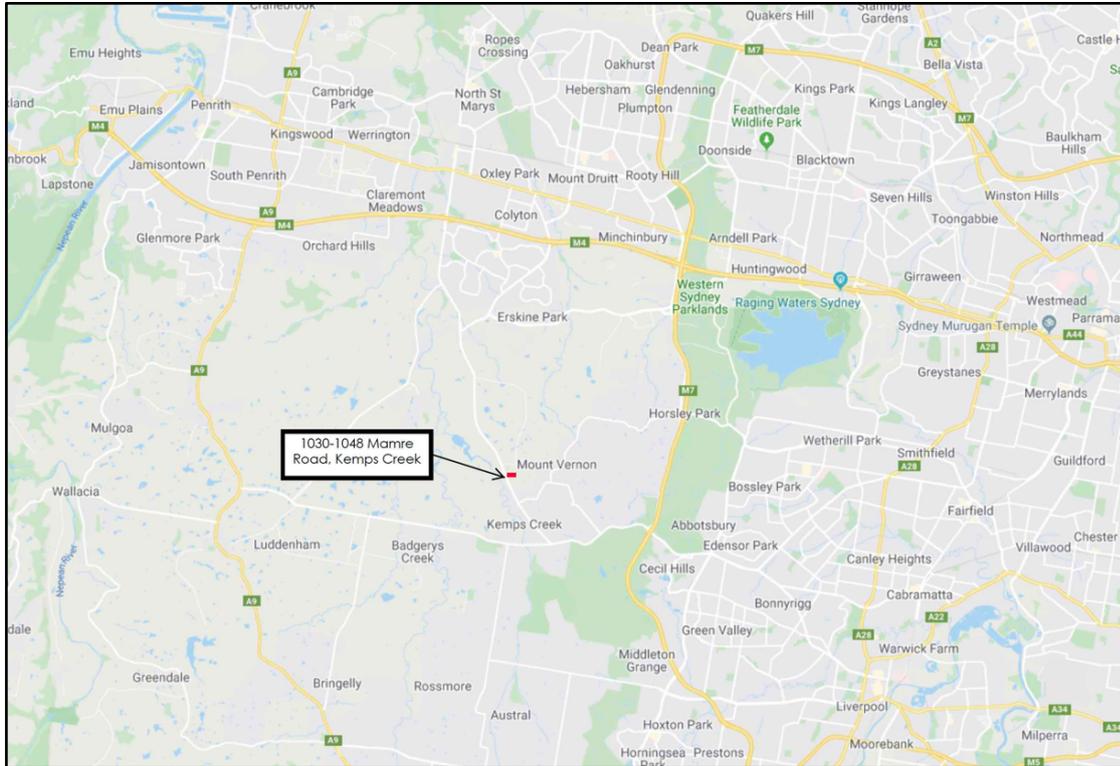


Figure 1 Regional context

¹ Guidelines for riparian corridors on waterfront land

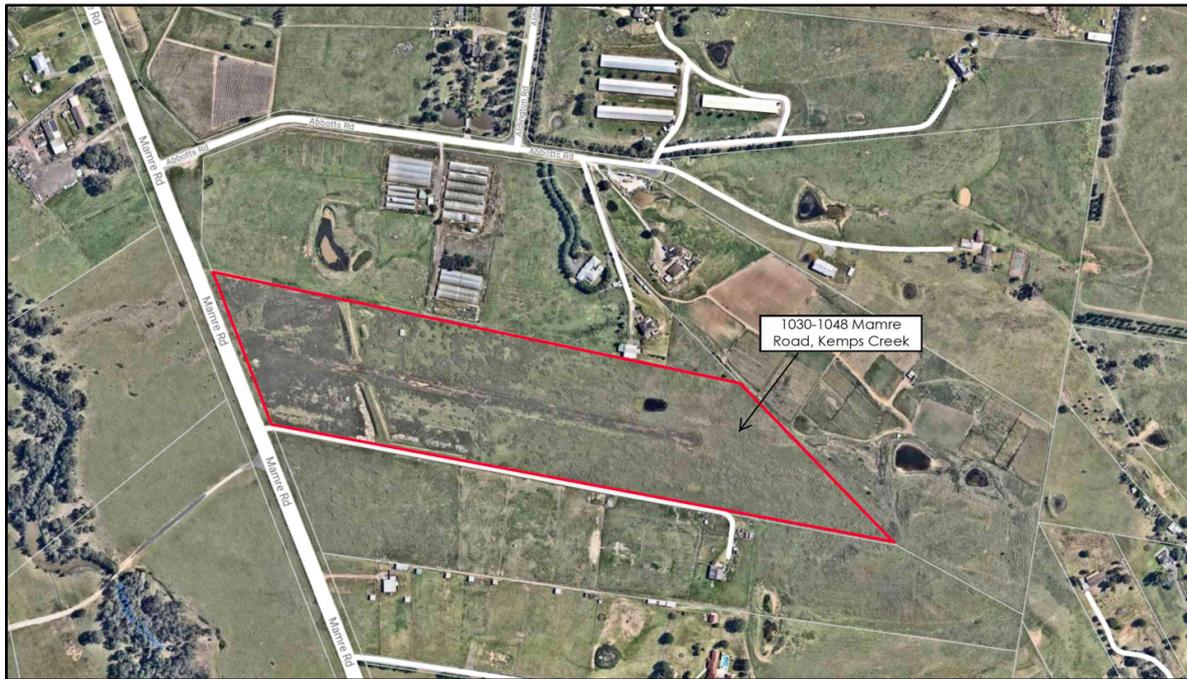


Figure 2 Local context

The property falls within the southern portion of the proposed Mamre Road Precinct and is identified in Figure 3 below:

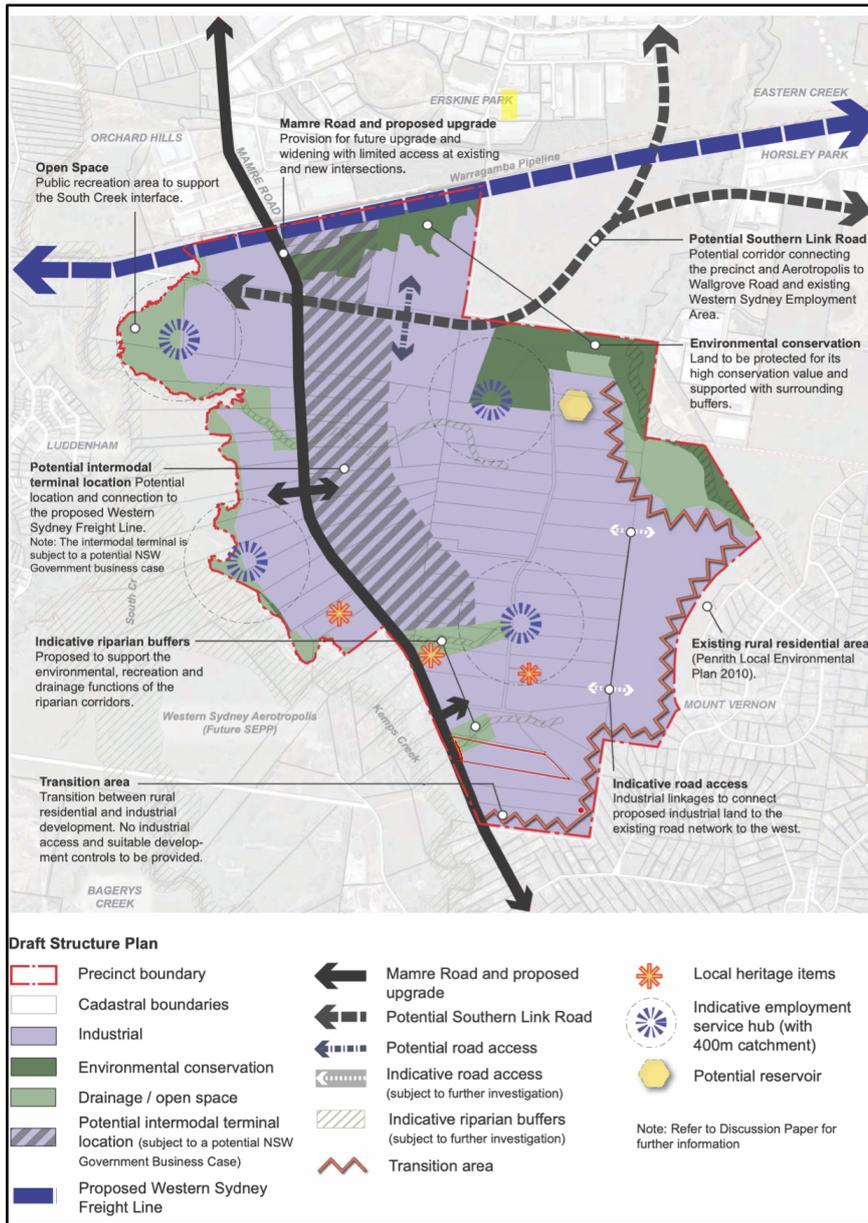


Figure 3 Site location within draft Mamre Road Precinct

Proposed Draft amendments

The draft amendments propose to rezone our client's property from RU2 Rural Landscape under Penrith Local Environmental Plan 2010 to IN1 General Industrial, SP2 Infrastructure (Drainage), SP2 Infrastructure (Classified Road) and E2 Environmental Conservation. The E2 zoned portion reflects the creek line with a 20m buffer either side from the top of the bank.

The draft plan also proposes to acquire the SP2 Drainage and SP2 Classified Road portions of the site, leaving the E2 Environmental Conservation in private ownership.

Figure 4 below identifies the proposed zoning and Figure 5 provides a detail view of the proposed area of acquisition.

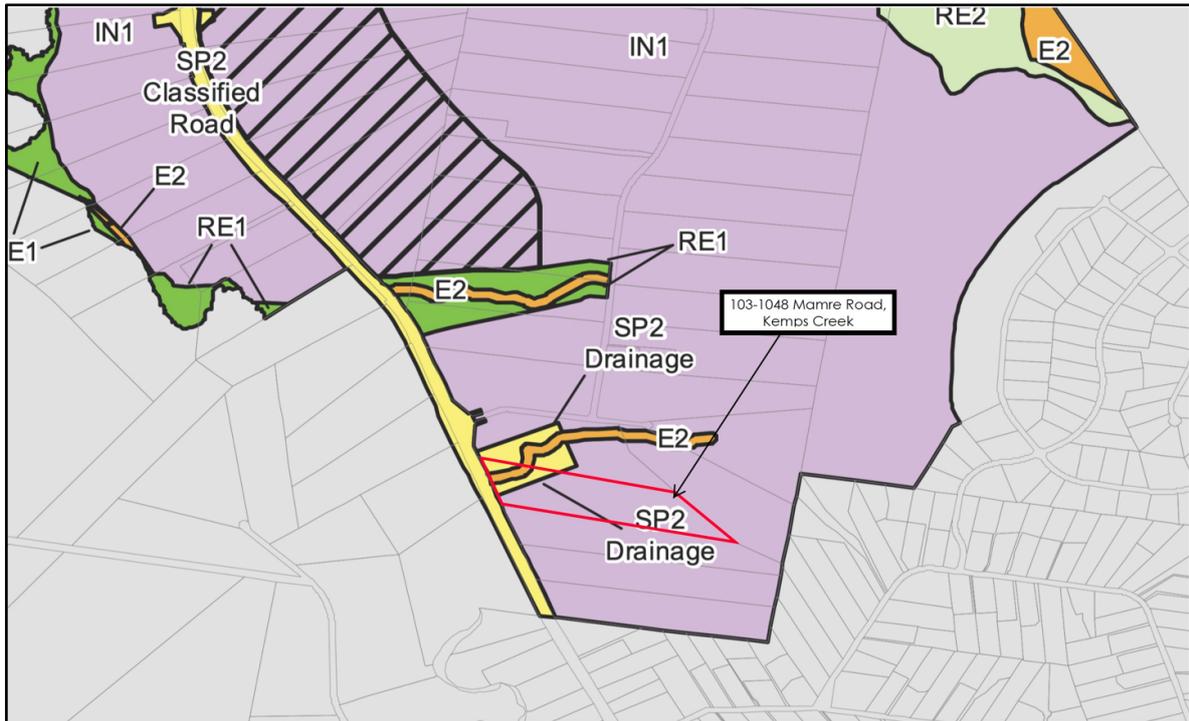


Figure 4 proposed zoning

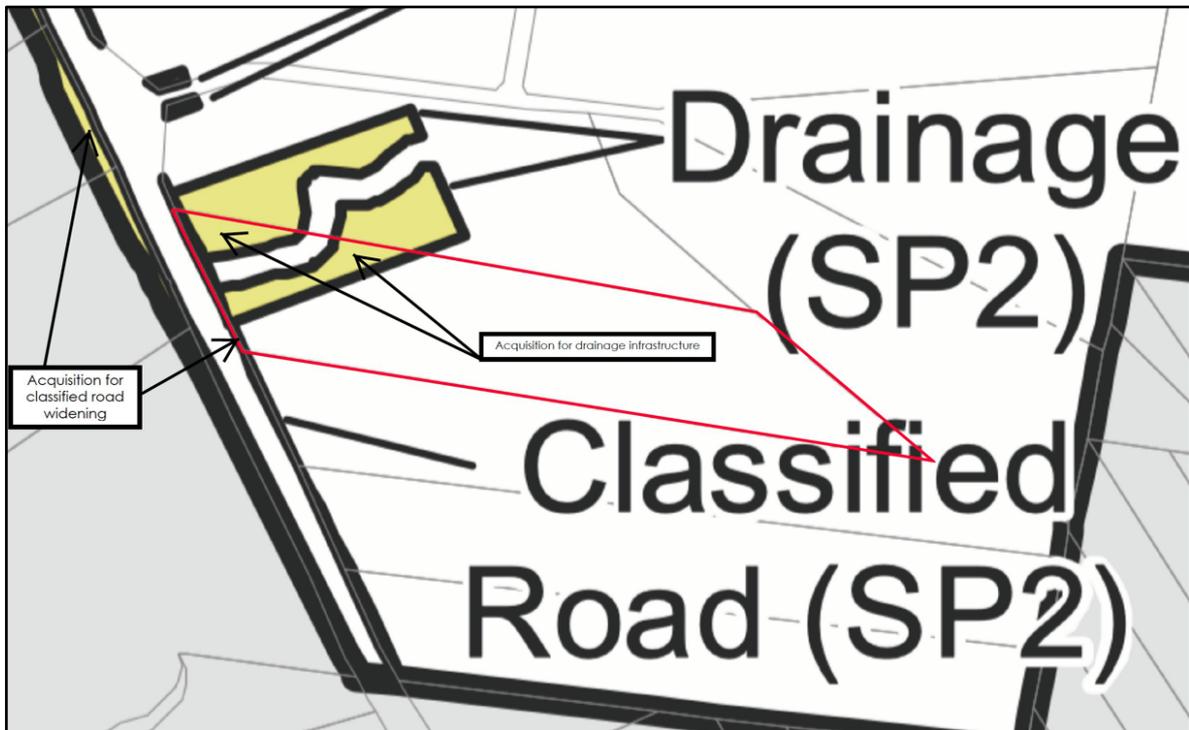


Figure 5 Detail view of area of future acquisition

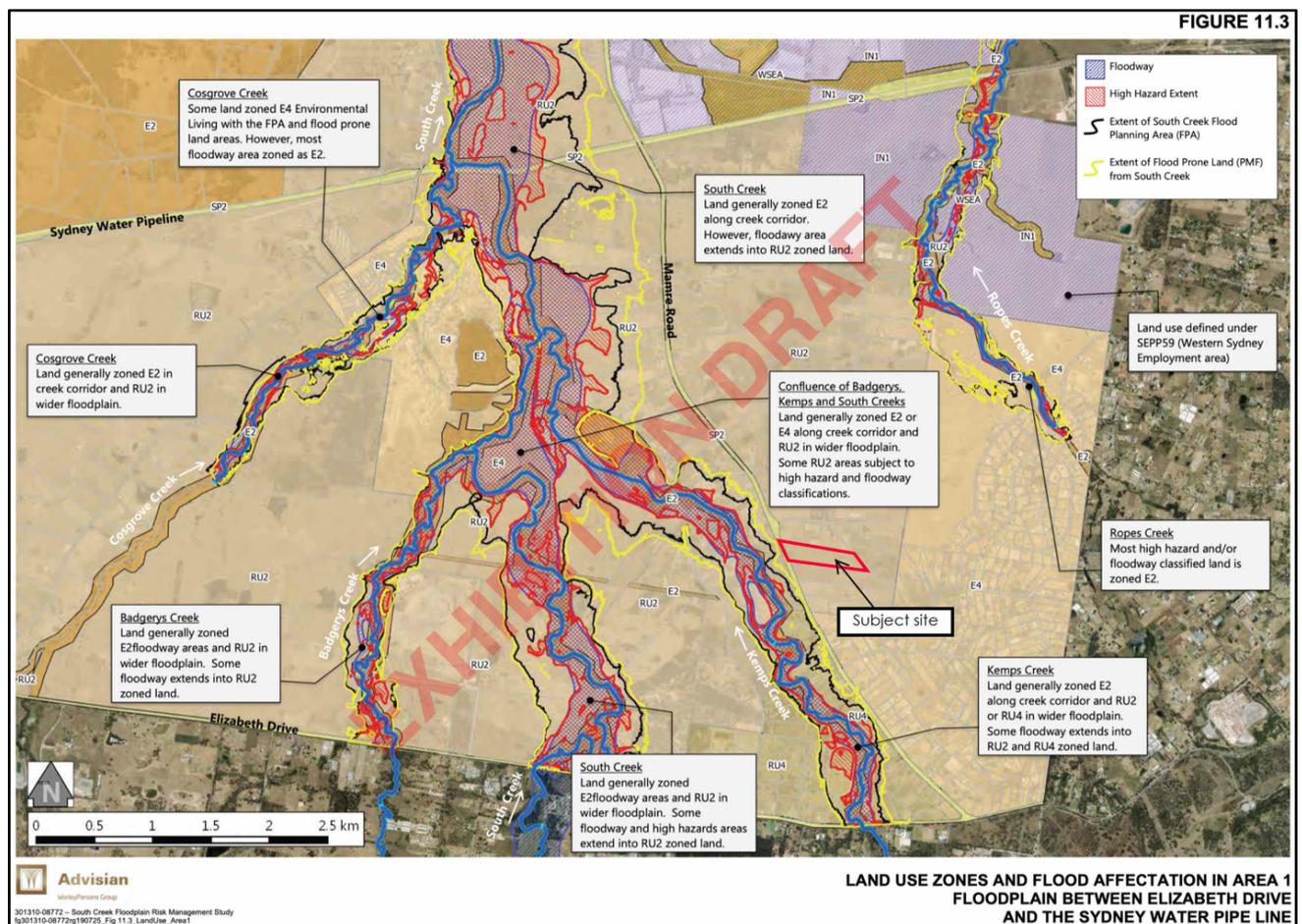
Summary of objection

In essence, the proposed amendments in their current form, present a fundamental problem for our client in that the proposed area of acquisition will result in an irregular lot shape, will require ongoing maintenance of the retained E2 land and will likely result in a costly and complicated land compensation claim drawing on the provisions of section 58 (severance) and Section 59(f) of the Land Acquisition (Just Terms Compensation) Act 1991.

The following provides our key grounds for objection

1. Identification of 'drainage' infrastructure

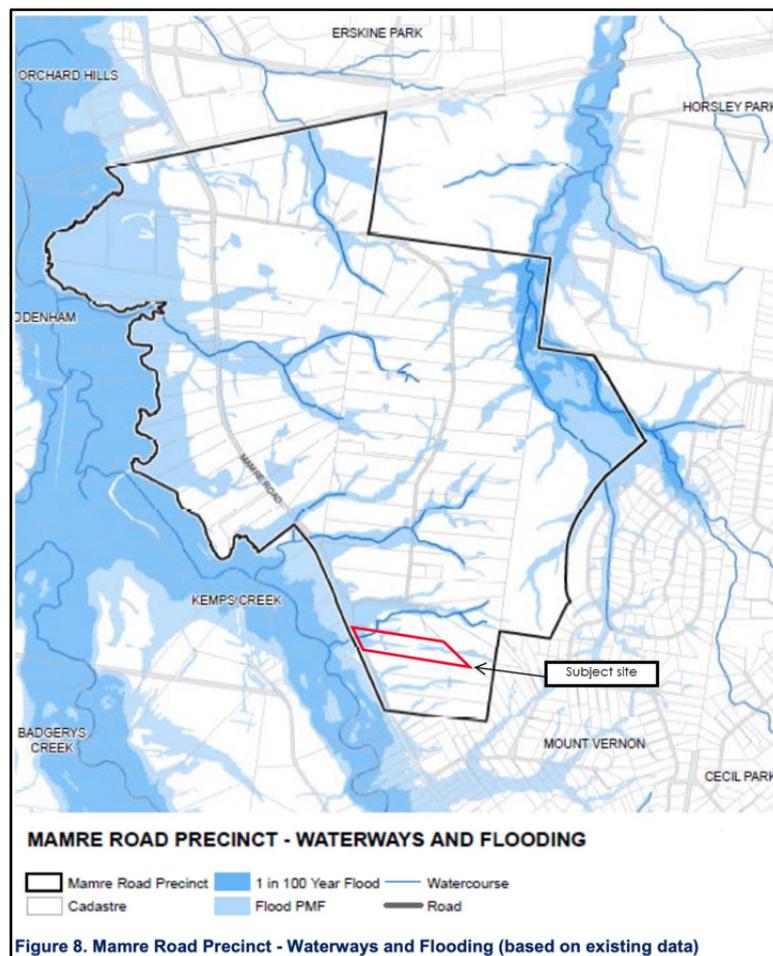
The planning package provided on the Department's website, relating to the draft amendments, does not provide a copy of the relevant flood study that informed the application of the SP2 Drainage zoning on the subject site. This practice has identified that Penrith Council has recently prepared and exhibited the draft "South Creek Floodplain Risk Management Study and Plan" however this study does not appear to identify any flood affectation of the site as depicted in Figure 6 below:



Source: draft South Creek Flood Plain Risk Management Study – page 180

Figure 6 Extent of draft South Creek Flood Study - Penrith Council

We acknowledge the site is identified as partly flood affected in the 'Mamre Road Precinct Rezoning Discussion Paper' provided on the Department's website. Figure 8 of that report provides a Waterways and Flooding Map and is reproduced below in Figure 7.



Source: Mamre Road Precinct Discussion Paper page 23

Figure 7 – Mamre Road precinct – Waterways and flooding – Discussion Paper

Given that the Department has chosen not to exhibit flood studies or analysis in the exhibition material, we are not provided with any rationale to explain why our client's property is flood liable under the Draft SEPP maps, but is not flood prone under Council's flood study.

The Department appears not to have provided any supporting documentation to demonstrate why the area or shape of SP2 drainage zoning has been applied to our client's land.

Despite the omission of flood studies from the exhibited material, land which was previously identified as flood free, is now mapped as flood prone and an area of land is zoned for acquisition for drainage purposes. The only land on our client's land which might conceivably be presumed to be in fact affected by flooding is the creek (blue line on the

topographic map). It is difficult to conclude otherwise than the Draft zoning appears to force the creek line portion of our client's land to enact a public purpose but, via mischievous zoning manipulation, affords no compensation for the use of our client's land for that public purpose.

2. Draft E2 Environmental Conservation zone is not identified for acquisition

The proposed acquisition retains, in private ownership, the water course that traverses the north western corner of the site and bisects the land to be rezoned SP2 drainage. This watercourse has been zoned as E2 Environmental Conservation. The application of such a zoning is not the issue but the exclusion of that area from acquisition is manifestly unreasonable for several reasons including:

- Any obligation for riparian planting, channelisation works, stormwater quality improvement measures, installation of rainwater rock gardens or any other number of water sensitive urban design measures which are typically required at subdivision stage will fall exclusively on the owners of one lot. These are WSUD matters which have catchment wide benefits and need to be provided to mitigate catchment wide impacts. It would be grossly unreasonable and unlawful for a consent authority to attempt to compel a single land owner to provide that public infrastructure as part of the development of a single parcel. Newbury Principals would not be even remotely satisfied;
- It is not satisfactory to suggest that the landowner is responsible for maintenance of the creek area within the riparian and recreation buffer. There are no such cases, that we are familiar with, of this type of acquisition for drainage whereby the waterway is left in private ownership, after acquisition of adjoining drainage/recreation zoned land; and
- It would also seem unconventional that control over a water way, that may be required to be manipulated/managed to support the proper functioning of the compulsorily acquired riparian buffer, would remain in the control of an external body such as the landowner. It empowers the land owner to frustrate orderly subdivision by simply refusing to allow entry onto their land for drainage infrastructure works to be carried out.

3. The acquisition in its current form will trigger a land compensation claim in which at least the following matters would be considerations in that claim:

Potential future compensation for loss attributable to disturbance (Land Acquisition (Just Terms Compensation) Act 1991 (clause 59(1)(f)) would be influenced by factors such as the resultant financial burden to upkeep and maintain the E2 residue creek line. Additionally, the provisions of clause 58 – Loss attributable to severance, would unquestionably be triggered due to reduction in value of the residue land due to the obligation of upkeep costs of the retained E2 portion on the land as well as the reduction in value due to the creation of an irregular shaped block limiting conventional design and development options

There are also matters that would substantially impact land value (*Valuation of Land Act 1916* (clause 6A)) including:

- Future land use options potentially limited to future purchasers of the land due to the irregular shape of the residue lot; and
- The significant reduction in the useable road frontage of the land restricting future development and accessibility options.

Proposed recommendation to rectify objections

Given the proposed amendments, in their entirety, and the subsequent impact on the functionality, usability and future potential land uses of the lot it is most likely to be subject to a significant compensation claim from the landowner.

It is recommended that the land proposed to be zoned E2 Environmental Conservation be considered for the public purpose of drainage and therefore also form part of the land reservation acquisition mapping.

I am available on 0410177954 at your convenience should you require any clarification in relation to the above.

Yours faithfully,



Edwina Nelson
Senior Associate