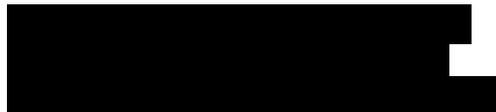


Our Ref: 19-0119

24 December 2019

The Secretary  
NSW Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

By email and Post



Dear Sir

**Draft Mamre Road Structure Plan  
Re 54-72 Aldington Road, Kemps Creek**

We act for the registered proprietors of 54-72 Aldington Road, Kemps Creek, Mrs Janet Esho and BNR Trading Pty Limited.

Our clients have a number of concerns with the Draft Structure Plan as it pertains to their land, both in terms of the duration of the exhibition period of the Draft Structure Plan and, secondly, in terms of the supportability of the proposed E2 Environmental Conservation to the totality of their land, excluding a portion of the land proposed as SP2 Drainage.

**Inadequate Notification Period**

The Draft Precinct Plan was released on 20 November 2019, with the notification period ending on 18 December 2019. That period, barely four weeks (without extension), was manifestly inadequate, particularly for those landowners uniquely burdened by the prospect of their land being zoned E2 Environmental Conservation under State Environmental Planning Policy (Western Sydney Employment Area) 2009 (SEPP).

At issue is the nature and purpose of the E2 Environmental Conservation zone. As the Department is aware, this zone is appropriate for areas with high ecological, scientific, cultural or aesthetic values outside national parks and nature reserves. The zone provides “the highest level of protection, management and restoration for such lands whilst allowing uses compatible with those values.”<sup>1</sup>

That zone criterion brings into consideration a range of technical issues, specifically ecological issues in this instance, for which any landowner poised to be adversely impacted by such a zone should be afforded the opportunity to meaningfully respond. That has not occurred in this instance. Our clients were able to engage an ecological consultant to prepare a very preliminary report on the

---

<sup>1</sup> NSW Department of Planning LEP Practice Note PN 09-002, dated 30 April 2009, page 1.

T. 02 9025 0808  
E. [law@projectlawyers.com.au](mailto:law@projectlawyers.com.au)  
W. [www.projectlawyers.com.au](http://www.projectlawyers.com.au)

**St James Centre**  
Level 11, 111 Elizabeth Street  
Sydney NSW 2000

**Project Lawyers Pty Ltd**  
ABN 34 608 111 404

issue, which was hurriedly completed and submitted to the Department for the purposes of meeting the notification deadline.<sup>2</sup>

The preliminary report raises a number of prima facie issues about the application and supportability of the E2 Environmental Conservation zone over most of our clients' land which the landowners should be given the opportunity to further respond to.

Further, our clients were made aware of vegetation studies carried out by the Department, but not apparently made public, which identified clusters of vegetation on other parcels of land nearby to our clients' land which, for whatever reason, did not result in the E2 Environmental Conservation zone being applied to those parcels of land, in whole or part.

It cannot be lost on the decision makers that the proposed application of the E2 Environmental Conservation zone over land within the precinct has substantial financial consequences for affected landowners, for which a proper right of response must be afforded.

We would not anticipate any of these concerns arising for landowners faced with the prospect of their land being zoned IN1 General Industrial under the SEPP.

In the circumstances, we invite the Department to permit our clients the opportunity, via their environmental consultants, to further respond to the Draft Precinct Plan by 30 January 2020, prior to any decision being made by the Department in relation to the Draft Precinct Plan, as it pertains to their land.

Our clients do not wish to go down the path of challenging any future decision made by the Minister in connection with the Draft Precinct Plan, but they reserve their rights to do so on the grounds of the manifestly inadequate exhibition period afforded to our clients – in circumstances where our clients are substantially and detrimentally impacted by the rezoning.

### **The E2 Environmental Conservation Zone**

Separate to the foregoing, our clients are concerned about the land use constraints proposed by the E2 Environmental Conservation zone, assuming that a portion of our clients' land is, in fact, appropriate for such a zone (about which further consideration must be given).

Clause 11 of the SEPP sets out the permissible land uses available under the E2 Environmental Conservation zone:

*Artificial waterbodies; Environmental facilities; Environmental protection works; Flood mitigation works; Roads.*

All other uses are prohibited under the SEPP.

On any view, these nominated land uses are public purpose type uses, having no utility for non-government authorities or the non-government market. This highly restrictive land use approach, across the bulk of our clients' land, renders the land relatively worthless to the market. The application of the E2 Environmental Conservation zone across the bulk of our clients' land can also properly be characterised as a de facto acquisition of land for a public purpose, albeit retained in private ownership.

---

<sup>2</sup> Letter to the NSW Department of Planning and Environment by Metro Planning Services, dated 17 December 2019.

The Department has previously cautioned local councils and other decision makers (including itself) about highly restrictive uses associated with the application of the E2 Environmental Conservation zone. Relevantly:

*Councils should be aware that uses [under the E2 Environmental Conservation zone] should not be drawn too restrictively as they may, depending on circumstances, invoke the Land Acquisition (Just Terms Compensation) Act 1991 and the need for the Minister to designate a relevant acquiring authority.<sup>3</sup>*

In our view, the proposed application of the E2 Environmental Conservation zone to the bulk of our clients' land (should the Draft Precinct Plan be adopted in its current form) meets the precise circumstances cautioned against by the Department.

For the foregoing reasons, we would invite the Department to carefully reconsider whether the E2 Environmental Conservation zone is appropriate for our clients' land, and specifically the western portion of that land. We would also invite the Department to reconsider the highly restrictive – and public-purpose related – land uses set out in clause 11 of the SEPP as it pertains to our clients' land.

Yours faithfully



**Anthony Perkins**

Partner

Email: anthony@projectlawyers.com.au

**Claire Parsons**

Senior Associate

Email: claire@projectlawyers.com.au

---

<sup>3</sup> NSW Department of Planning LEP Practice Note PN 09-002, dated 30 April 2009, page 6.