Note: This advice is for guidance only and provisions need to be checked in detail prior to proceeding with the development, property purchase, lease or other substantive decisions. The advice contained in this report is not based on a s149 certificate unless one has been provided or we have been instructed to source a s149 certificate. The information is gathered from sources deemed to be reliable however Fragar Planning and Development cannot guarantee its accuracy and interested persons should rely on their own inquiries. Despite our best efforts and professional standards, the consent authority is entitled to exercise its own discretion and reach its own conclusions.
1.0 Introduction & Proposal

The site at No 97 Kerry Road, West Schofield is located within Sydney’s North West Growth Area, and is land included under the State Environmental Planning Policy (SEPP) (Sydney Region Growth Centres) 2006, specifically within the West Schofield Precinct Plan area.

West Schofield is a new precinct that has been undergoing gradual land release and planning for Sydney’s North West Growth Area (refer Figure 1 below, which is an extract from the West Schofield Discussion Paper currently on exhibition). It is approximately 5 kilometres from Schofield town centre and 10 kilometres from Blacktown CBD. The West Schofield Precinct Plan area is one of the latest regions currently targeted for expansion for future growth areas under the SEPP.

Figure 1 - North West Growth Area

The Department of Planning and Environment has prepared the draft West Schofield Masterplan, which guides the future rezoning and development of this new precinct. West Schofield was originally released in two stages, with the southern half released in 2016 and the northern half was released in May 2017. The draft masterplan covers both parts of the precinct.

The client would have received notification from the Department of Planning & Environment regarding the exhibition of the West Schofield Masterplan and Discussion.
Paper, and how this plan affects the sites zoning and future development status. The Masterplan and Discussion Paper are currently on public exhibition for community feedback until 28 September 2018.

It is intended that this PPA shall form the basis of a submission to the public consultation regarding the plan, on behalf of the client.

1.1 Site Description

The regular shaped site is approximately 1.019 ha and located on the eastern side of the road between Kerry Road and Eastern Creek. The site supports a dwelling house and outbuildings and is legally identified as the following:

<table>
<thead>
<tr>
<th>Address</th>
<th>Lot DP</th>
<th>Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>97 Kerry Road, Schofield NSW 2762</td>
<td>Lot 22 DP 12076</td>
<td>1.019 ha (approx.)</td>
</tr>
</tbody>
</table>

Subject Site
The site is surrounded by rural residential properties, low intensity agriculture including market gardens, poultry sheds, commercial activities and rural industries. Land further south supports the CSR quarry and brick works with former land fill sites located throughout the precinct. To the west and south west is recent subdivision and housing that has developed progressively as more land under the Growth Centres SEPP has been released.

Figure 1 below is an extract from the Masterplan and shows the location of the site.
2.0 Summary Environmental Mapping Constraints

2.1 Zoning

The site is currently zoned under Blacktown Local Environmental Plan (LEP) 2015 as RU4 – Primary Production Small Lots. Use and development permitted in this zone with consent (i.e. a DA) includes the following:

3 Permitted with consent

Agricultural produce industries; Bed and breakfast accommodation; Building identification signs; Business identification signs; Cemeteries; Community facilities; Crematoria; Dwelling houses; Environmental facilities; Environmental protection works; Extensive agriculture; Farm buildings; Flood mitigation works; Heliports; Home businesses; Home industries; Intensive plant agriculture; Landscaping material supplies; Places of public worship; Plant nurseries; Recreation facilities (outdoor); Roads; Roadside stalls; Veterinary hospitals; Water reticulation systems

Snapshot of current site zoning under Blacktown LEP

2.2 Important LEP Mapping Overlays

The site is also mapped as the following under Blacktown LEP 2015:

a) Key Sites: Mapped as Clause 4.2A (a) Area 1.

b) Flood Planning: Mapped as Flood Planning Area.

c) Future Residential Growth Area: Mapped as Future Residential Growth Area.
d) Lot Size: Mapped with Lot Size of 40 ha (AB2).

Regarding a) above, Clause 4.2A under the LEP states the following:

*Dwellings in Zone RU4*

*Development consent must not be granted to the erection of a dwelling house on land in Zone RU4 Primary Production Small Lots unless the area of the land:*

(a) **for land within “Area 1” identified on the Key Sites Map**—is not less than 4,000 square metres, or

(b) **for land within “Area 2” identified on the Key Sites Map**—is not less than 10 hectares, or

(c) **for land within “Area 3” identified on the Key Sites Map**—is not less than 2 hectares.

As the land is located in Area 1 and exceeds 4,000 m2 in area, dwelling permissibility is established for this site. For b) above, the land is located within a 1 in 100 year flood event. This means that for any DA, under Clause 7.2 it must (amongst others) be demonstrated the development would be compatible with the flood hazard of the land; will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties; and incorporates appropriate measures to manage risk to life from flood. Clause 7.2 is at Attachment A.

For c) above, the land is located within a Future Residential Growth Area as mapped in the LEP. This mapping correlates with the Growth Areas SEPP for future urban growth areas.

It is therefore clear from the above discussion that the site does have dwelling entitlement despite its flood status. Whether a site has dwelling entitlement or not will significantly affect its land value. While a dwelling house already exists on the property, the implications for the current zoning under the LEP is that the land’s valuation would be greater than if the site did not have dwelling entitlement.

### 2.3 Proposed zoning

The West Schofield Precinct Masterplan and Discussion Paper presents the intended future zonings for the land located within West Schofield Precinct. This is shown on Figure 2 below which is an extract from the Discussion Paper. The subject site and some surrounding land has been marked for a future zoning as that associated with public drainage, and once introduced into the Blacktown LEP, this zoning would be **SP2 Infrastructure**. Should this zoning be accepted as the proposed zone following the processing of all submissions received from landowners, then Blacktown Council will be required to amend its LEP to rezone the land to this zone.
The use and development permitted in SP2 zone includes that under the following Land Use Table:

**Zone SP2  Infrastructure**

1 **Objectives of zone**
   - To provide for infrastructure and related uses.
   - To prevent development that is not compatible with or that may detract from the provision of infrastructure.
   - To ensure that development does not have an adverse impact on the form and scale of the surrounding neighbourhood.

2 **Permitted without consent**

   Environmental protection works; Flood mitigation works

3 **Permitted with consent**

   Roads; Signage; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

4 **Prohibited**

   Any development not specified in item 2 or 3

Note the purpose shown on the Land Zoning Map is in fact purposes for Classified Road (SP2) Local Open Space (RE1) Local Road (SP2) Local Waterway - Council (W1) Railway (SP2) Regional Open Space (RE1) Sydney Water Drainage (SP2)

The implication here is that by virtue of any development not included in Item 2 Permitted without consent and Item 3 Permitted with consent in the above Land Use Table, is in fact prohibited development. As a dwelling house is not listed in Item 2 or 3 above, then a dwelling house would be prohibited. However existing use rights will continue assuming the existing dwelling house was legally established. This will significantly affect the lands property value, despite the fact there is already a dwelling house on the land.
Figure 2: Proposed zoning SP2 Infrastructure (shown in yellow as drainage)

3.0 Land Reservation Acquisition

If the land is rezoned to the SP2 Infrastructure, then because it will be land zoned for a public purpose (as in infrastructure for drainage), it will also be designated acquisition provision status in the future, and Clause 5.1 of Blacktown LEP 2015 Relevant acquisition Authority which apply.

The states acquisition of land provisions is controlled by the Land Acquisition (Just Terms Compensation) Act 1991. The general principal of the Act is that where land is affected by a proposal for acquisition by an authority of the State, it is eventually acquired by that authority.

Under Clause 5.1 of LEP 2015, Relevant acquisition authority, nominates council as the relevant acquisition authority for lands that are required for a public purpose.

Under Section 21 of Land Acquisition (Just Terms Compensation) Act 1991, defines land that is designated for acquisition for a public purpose. This is such land if:

(1) (a) an authority of the State has, in connection with an application for development consent or building approval, given the local authority or other person dealing with the application written notice that the land has been designated by the authority of the State for future acquisition by it for a public purpose, or

(b) the land is reserved by an environmental planning instrument for use exclusively for a
purpose referred to in section 26 (1) (c) of the Environmental Planning and Assessment Act 1979 and the instrument (or some other environmental planning instrument) specifies that authority as the authority required to acquire the land.

(3) For the purposes of subsection (1) (b), land is reserved by an environmental planning instrument for use exclusively for a purpose referred to in section 26 (1) (c) of the Environmental Planning and Assessment Act 1979 only if

(a) the land is expressly set apart by that instrument for use exclusively for such a purpose, or

(b) the land is expressly set apart by that instrument for use for such a purpose and also for other purposes, but those other purposes do not constitute a reasonable use of the land.

It is clear that 1(b) will apply as the land is intended to be reserved for a public purpose by an environmental planning instrument as it will be rezoned to SP2 under Blacktown LEP. In addition, 3(a) also has the potential to occur, because the land is targeted to be rezoned under an environmental planning instrument, being Blacktown LEP 2015, to SP2.

The land acquisition Act also states that the amount of compensation to be paid to a landowner will be not less than the market value of the land at the date of acquisition. The Act also legislates compensation to be paid on just terms for land owners that is acquired by council when the land is not available for public sale. The council may also acquire land designated for acquisition for a public purpose where hardship is demonstrated. Acquisition of land by the state is encouraged under the Act to be by way of agreement instead of compulsory process.

Depending on whether the land will be formally reserved for a public purpose (as in rezoning to SP2) and given the acquisition status, council has an obligation to acquire those lands that are mapped as acquisition within its municipality. This is because the future sale of privately owned sites to be sold would be affected by virtue of the public purpose rezoning to SP2. That being said, this again raises the issue of the downgrading of the market value of that will occur should the land be rezoned from the current RU4 zone to SP2 Infrastructure.

**5.0 Conclusion**

It is clear as advised in this PPA that development of the land for a future dwelling house on the subject site, although currently permitted in the RU4 zone, will be affected if the lands future rezoning to SP2 Infrastructure proceeds, as is the suggestion by the West Schofield Precinct Masterplan and Discussion Paper that are currently on exhibition.

While it may not be the intention of the client to sell the land at this stage, there is every chance that a sale could be desired in the future. There is some reprieve whereby if those lands zoned SP2 are also designated as Land Reservation Acquisition under LEP 2015, then
the council would have an obligation to acquire that land. However, as raised in this PPA, market value of the land only has to be met for acquisition of land reserved for a public purpose, and that market value will be significantly reduced if the land is zoned SP2.

It is on this basis that a submission should be made to the Department of Planning & Environment the Draft West Schofield Precinct Plan currently on exhibition, and that this PPA should for the subject of that submission.

The next steps

- Formally make a submission on behalf of the client to the public notification of the Draft West Schofield Precinct Plan;
- Should further action be required in the future for example, formal request for council to acquire the land, then Fragar Planning be engaged to prepare and coordinate that process.
Blacktown Local Environmental Plan 2015

7.1 Flood planning
(1) The objectives of this clause are as follows:
(a) to minimise the flood risk to life and property associated with the use of land,
(b) to allow development on land that is compatible with the land’s flood hazard, taking into account projected changes as a result of climate change,
(c) to avoid significant adverse impacts on flood behaviour and the environment.
(2) This clause applies to land at or below the flood planning level or the highest historical flood level.
(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:
(a) is compatible with the flood hazard of the land, and
(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
(c) incorporates appropriate measures to manage risk to life from flood, and
(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.
(4) A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.
(5) In this clause:
- highest historical flood event means the highest recorded flood in the Blacktown local government area, which occurred in 1867.
- land at or below the flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard.

Blacktown Local Environmental Plan 2015
Current version for 31 August 2018 to date (accessed 26 September 2018 at 15:22)

Part 6 Urban release areas

6.1 Arrangements for designated State public infrastructure
(1) The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.
(2) Development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.
(3) Subclause (2) does not apply to:
(a) any lot identified in the certificate as a residue lot, or
(b) any lot to be created by a subdivision of land that was the subject of a previous development consent grant in accordance with this clause, or
(c) any lot that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utility undertakings, educational facilities or any other public purpose, or

(d) a subdivision for the purpose only of rectifying an encroachment on any existing lot.

(4) This clause does not apply to land in an urban release area if all or any part of the land is in a special contributions area (as defined by section 93C of the Act).

6.2 Public utility infrastructure

(1) Development consent must not be granted for development on land in an urban release area unless the consent authority is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.

(2) This clause does not apply to development for the purpose of providing, extending, augmenting, maintaining or repairing any public utility infrastructure.

Blacktown Local Environmental Plan 2015

Current version for 31 August 2018 to date (accessed 27 September 2018 at 13:49)

Part 5 Clause 5.1

5.1 Relevant acquisition authority

(1) The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991 (the owner-initiated acquisition provisions).

Note. If the landholder will suffer hardship if there is any delay in the land being acquired by the relevant authority, section 23 of the Land Acquisition (Just Terms Compensation) Act 1991 requires the authority to acquire the land.

(2) The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the Land Reservation Acquisition Map (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).

<table>
<thead>
<tr>
<th>Type of land shown on Map</th>
<th>Authority of the State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone RE1 Public Recreation and marked “Local open space”</td>
<td>Council</td>
</tr>
<tr>
<td>Zone RE1 Public Recreation and marked “Regional open space”</td>
<td>The corporation constituted under section 8 of the Act</td>
</tr>
<tr>
<td>Zone SP2 Infrastructure and marked “Classified road”</td>
<td>Roads and Maritime Services</td>
</tr>
<tr>
<td>Zone SP2 Infrastructure and marked “Local drainage”</td>
<td>Council</td>
</tr>
<tr>
<td>Zone SP2 Infrastructure and marked “Local road”</td>
<td>Council</td>
</tr>
<tr>
<td>Zone SP2 Infrastructure and marked “Railway”</td>
<td>The corporation constituted under section 8 of the Act</td>
</tr>
<tr>
<td>Zone SP2 Infrastructure and marked “Sydney Water drainage”</td>
<td>Sydney Water</td>
</tr>
<tr>
<td>Zone E1 National Parks and Nature Reserves and marked “National Park”</td>
<td>Minister administering the National Parks and Wildlife Act 1974</td>
</tr>
</tbody>
</table>

Note. When this Plan was made it did not include all of these zones.

(3) Development on land acquired by an authority of the State under the owner-initiated acquisition provisions may, before it is used for the purpose for which it is reserved, be carried out, with development consent, for any purpose.
Note.
If land, other than land specified in the table to subclause (2), is required to be acquired under the owner-initiated acquisition provisions, the Minister for Planning is required to take action to enable the designation of the acquiring authority under this clause. Pending the designation of the acquiring authority for the land, the acquiring authority is to be the authority determined by order of the Minister for Planning (see section 21 of the *Land Acquisition (Just Terms Compensation) Act 1991*).