Our Ref: 18-002307

28 September 2018

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

Attention: The Secretary

West Schofields Precinct Exhibition – 39 Durham Road, Schofields

Reference is made to the public exhibition of changes to the West Schofields Precinct. This submission is made on behalf of Olleraccat Pty Ltd, owner of 39 Durham Road, Schofields.

1 SUBJECT SITE

Reference is made to the public exhibition of changes to the West Schofields Precinct. This submission is made on behalf of Olleraccat Pty Ltd, owner of 39 Durham Road, Schofields. Principally, this submission seeks to object to the extent of the following affectations on the subject land:

- Boundary of the RE1 Public Recreation Zone, with respect to the 100 year ARI flood line and its treatment on adjoining properties to the south
- Mapping of a substantial portion of the site as within an Aboriginal Archaeological Site
- Mapping of a substantial portion of the site as being required for public acquisition

Furthermore, the residential development on the site will be subject to onerous requirements for flood resilience as the entire site lies below the extent of the Probable Maximum Flood. Due to the low chance of incidence for events over the ARI 100 year flood event (the long-held planning standard in New South Wales), the degree of affectation for sites such as this are excessive and will make development more onerous and less attractive.

There is still no certainty in respect of the overall levels of the Special Infrastructure Charge and any proposed development contribution charges under s. 7.11 of the Environmental Planning and Assessment Act. This creates significant risk for the estimation of development yield and financial viability of development as landowners and developers are being requested to commit to a land use outcome without knowing the full financial implications of this decision.

Overall, the draft planning controls proposed represent a significant diminution of the development potential of the subject site, seriously affecting its viability for residential subdivision.
The proposed principal development standards on the site are as follows:

- Proposed Maximum Building Height – 9 metres
- Dwelling Density Proposed – Minimum 15-20 dwellings per hectare for R2 zoned portion of the site

2 WEST SCHOFIELDS PRECINCT PLAN

The Draft West Schofields Precinct Indicative Layout Plan implies major changes in the land use controls which will affect the overall subject site as shown in Figure 2. The Draft Indicative Layout Plan proposes a section for low density housing, parks and two local roads that are situated through our clients land.

This causes significant constraints such as:

- Minimised potential residential development
- Decreased residential lot yield relative to other similarly burdened sites in the area

Figure 1: Extract from Draft West Schofields Zoning Map (Source – SEPP (SRGC) 2006)

Figure 2: West Schofields Indicative Layout Plan (Source – NSW Department of Planning)
2.1 Land Reservation Acquisition

The subject site is mapped as having a significant portion of the land area acquired by a state authority as Parkland (the mapping of which corresponds to the Aboriginal Archaeological Site) proposed for inclusion in the RE1 Public Recreation Zone as “Local Parks (RE1)” as shown in Figure 3. This affectation includes potentially developable land above the ARI 100 year floodline.

![Figure 3: Extract from Draft West Schofields Land Reservation Acquisition Map (Source – SEPP (SRGC) 2006)](image)

2.2 Heritage Significance

Approximately 40% of the subject site has been mapped as a Heritage Aboriginal. This portion of the site has also been identified for Acquisition on the draft Land Reservation Acquisition Map.

![Figure 4: Extract from Draft West Schofields Heritage Map (Source – SEPP (SRGC) 2006)](image)

There is no justification presented for the extent of the Item – Aboriginal as mapped. The West Schofields Part Precinct
(Southern Portion) Aboriginal Cultural Heritage Assessment Report, prepared by Extent Heritage Pty Ltd, has been heavily redacted and does not adequately describe the location and extent of the affectation of the Item, nor the reason for significance. The site has been previously investigated by Mary Dallas Consulting Archaeologists, as part of the Blacktown Heritage Study, and this study identified a single reference on a map dating from 1842 to a potential Aboriginal Burial Ground being located in the vicinity. Mary Dallas has been consulted in the preparation of this submission and advises that there was never any ground-truthing of this map reference and no corroborating evidence of a burial ground has ever been located. As such, in the absence of any available physical evidence, there appears to be insufficient grounds to declare the site as an Aboriginal Item and burden it accordingly.

If the existence of such a site is strongly suspected, then a more comprehensive Aboriginal Archaeological investigation would need to be conducted prior to fixing land use boundaries on the subject land. Given the potential sensitivity of the Site, should it in fact be found extant in the area, it would be prudent to conduct this investigation prior to the finalisation of the Precinct Plan, and given the Public Interest in the matter, the investigation should be publicly funded and carried out under the supervision of the Office of Environment and Heritage. We request that these investigations be conducted, and if insufficient evidence is uncovered, that the Item affectation be removed from the subject land. Should any such item be uncovered in the vicinity, then a detailed curtilage boundary should be defined and the remaining lands be removed from affectation. Please refer to the accompanying documentation from Mary Dallas Consulting Archaeologists for further information on this matter.

2.3 Flood Prone Land

A portion of the site is identified to be flood prone land under the Draft Development Control Map for the West Schofields Exhibition.

We note that the R2 Low Density Residential zoning boundary on the subject site is well in excess of the identified Flood Prone Land (ARI 100 year level) and in fact corresponds to the ARI 500 year level, which is manifestly excessive when considered against what is deemed to be suitable for other residential zoned land in New South Wales. We note also that the main flooding effect on the site is a tail water effect from the Hawkesbury River, which, subject to adequate consideration of flood storage, can be potentially filled at the margins to improve the site yield. The location of the R2 Zone boundary should reflect this potential, which should match that of the properties to the south, where the residential zoning extends to the boundary of the Gas Easement. We request that this property be given the same consideration.

The subject site is mapped as being located below the Probable Maximum Flood level for the Eastern Creek catchment. As such It is subject to onerous requirements for flood resilience, by way of ‘wet flood proofing the property. The additional costs to be incurred by the stringent building controls (‘wet flood proofing’) proposed will add to the overall building cost, impacting housing affordability. This is a significant extension of flood planning controls in New South Wales, where the ARI 100 year flood level has long been the accepted standard for restriction of development for flood purposes, as stated in the New South Wales Flood Manual.
This control is likely to add significant cost to construction as well as lessening the attractiveness of the land for sale, by burdening it with additional requirements. We are concerned that this is unduly restrictive, given the low frequency of the events that may adversely affect properties that lie between the ARI 100 year and PMF flood levels. This is especially the case where the controls apply to lands that are located above the ARI 500 year flood line and the PMF flood level, where the probabilities that these controls will need to be called upon within the lifetime of any future dwelling houses would be very small.

3 RECOMMENDATION

We recommend to adjust the RE1 zone boundary to the gas easement boundary, located at the rear of the subject site. This boundary adjustment will be in accordance to the adjacent property located in the southern direction of our client’s site, as shown in Figure 5 below. A flood study conducted by JWP dated (insert date) indicates the flood levelled land to the rear of the site is the same as the adjacent property to the southern direction. This indicates the land is suitable for residential development potential.

The boundary should be moved for the following reasons:

- Boundary of the RE1 Public Recreation Zone, with respect to the 100 year ARI flood line and its treatment on adjoining properties to the south, which can be verified by more detailed flood assessment, with regard to the effects of filling on tail water levels;
- Mapping of a substantial portion of the site as within an Aboriginal Archaeological Site based on questionable evidence;
- Mapping of a substantial portion of the site as being required for public acquisition without sufficient justification.

Residential development on the site will be subject to onerous requirements for flood resilience as the entire site lies below the extent of the Probable Maximum Flood. Due to the low chance of incidence for events over the ARI 100 year flood event (the long-held planning standard in New South Wales), the degree of affectation for sites such as this are excessive and will make development more onerous and less attractive. We request this requirement be removed.

There is still no certainty in respect of the overall levels of the Special Infrastructure Charge and any proposed development contribution charges under s. 7.11 of the Environmental Planning and Assessment Act. This creates significant risk for the estimation of development yield and financial viability of development as landowners and developers are being requested to commit to a land use outcome without knowing the full financial implications of this decision. We request that the plan not be finalised until the full extent of contributions is known.

We request that the State undertake further detailed assessment of the Aboriginal Item mapped on the site to determine:

1. Its existence;
2. Its precise location and extent;

And that all properties not directly affected by the item have this affectation lifted from them and their development potential considered in light of this.
If you have any further questions, please do not hesitate to contact me at Calibre Group on (02) 8808 5000 or alternatively via email on Tom.Foster@calibregroup.com

Yours Faithfully

Tom Foster
Senior Town Planner
Calibre Professional Services
Tony deLutis and Benson Zhong  
At 39 and 27 Durham Road, 
Schofields NSW


Dear Mr deLutis and Mr Zhong,

Re: West Schofields Draft ILP and Properties in vicinity of “Aboriginal Item”

You have asked me to provide advice on the West Schofields Draft ILP which proposes rezoning of lands, inclusive of your properties, from RU4 – Primary Production Small Lots to R2 - Low Density Residential and RE1 – Public Recreation. See Figures 1 and 2

It would appear that the zoning boundaries are based partly on the assumed presence of what is referred to as an “Aboriginal Item” and flood modelling. It is noted that all other evidence of Aboriginal cultural remains are described as Aboriginal Sites. The “Aboriginal Item” is a possible burial ground. One of the most sensitive and significant sites to the Aboriginal community.

Other planning matters effecting landholders, in the immediate vicinity of the “Aboriginal Item”, such as flood modelling, and justification for the extent of public recreational and Parklands have been assessed in a submission by Tom Foster a Senior Town Planner from Calibre [Calibre Group Limited Submission Sept 2018]

Figure 1 Extent of Aboriginal Item [hatched area] relative to nearby Lots
History of Investigation of the “Aboriginal Item”

The ‘Aboriginal Item’ is referred to on numerous plans and documents, reports and a discussion paper on the release area [see Department of Planning Website on West Schofields].
Figure 3  Surveyor J. Musgrave’s 1842 Map and detail of annotation “Burial ground of the Blacks”
It was first found as a hand-written annotation on the 1842 Survey plan by surveyor J. Musgrave, by MDCA 2010 for the Blacktown City Wide Heritage Study and listed on the Blacktown Aboriginal database but not listed on the Aboriginal Heritage Information Management System [AHIMS]. The reason being the lack of any supporting physical evidence and the unknown accuracy of its position on the early Plan [see Figure 3].

As far as I am aware there have been no comprehensive attempts to ground-truth across the purported broad area of the Musgrave hand drawn plan, assuming it is accurate.

Following the Blacktown Heritage Study it was registered on AHIMS by Leanne Watson an Aboriginal community member as AHIMS Site # 45-5-4770

Figure 4 AHIMS site recording by Leanne Watson

This site card was augmented by Extent Heritage Pty Limited, in particular by mapping and photographs.

The Aboriginal heritage of West Schofields South has been investigated by Extent Heritage Pty Limited and a Draft Report is available online. All references to the “Aboriginal Item” have been redacted, therefore, its precise location and extent as may have been described therein is not available for scrutiny. It is noted that all other evidence of Aboriginal cultural remains is described as - Aboriginal Site indicating the specialness of the Item.

The significant Extent Heritage additions to the original Site card include two site plan See Figure 5 and Attachment 2

Plan 1 shows the “Aboriginal Item” located across Angus Road, largely to the west of Carnarvon Road and the remainder below Angus Road plus a 75m buffer
Plan 2 shows an expanded view of the Musgrave plan and an orange outlined area purporting to be the Burial ground.

**Figure 5** Extent Heritage Site Plan on AHIMS Site card 45-5-4770

**Figure 5** [Plan1] is inconsistent with the Draft ILP [see Figure 2] which proposes that the extent of the Aboriginal Site does NOT go beyond or north of Angus Road. The lands impacted by the Aboriginal site all fall below Angus Road, including 27 and 38 Durham Road.

The Zoning described on the Draft ILP [see also Figure 1] may therefore, have potentially missed a portion of the Aboriginal site and as such any subdivision works north of Angus Road would be an offence under the Nation Parks and Wildlife Act of 1974 as amended.

This inconsistency is underpinned by the fact that as of today no one has ground-truthed any of the space identified as the Site. Survey to identify its precise location has been cursory and the Musgrave 1842 plan remains the only documented evidence for the site. This plan is very broad scale and his annotation necessarily comparatively large. Georeferencing for this ultimately has to take into account the accuracy of Musgrave plan which remains unproven. A buffer of 75m additionally adds to a possible factor of error.

The exclusion of whole lots or portions of Lots is manifestly unacceptable from both the point of view of the Landowners and the Aboriginal community who first registered the site.
Rezoning prior to identifying whether this site exists at all or knowing its lateral extent shows poor planning and a disregard or no understanding of Aboriginal Heritage protection and management.

It is proposed to rezone most of the site as described on Figure 5 to RE1 – Public Recreation. This type of land use would still have detrimental impacts to the area. eg., excavations for facilities, cycleway, seating etc and It would be inappropriate for individual landowners to pay for the assessment of the fringes of the site within the proposed zones within their proprieties.

Because of the purported Aboriginal Item rezoning as it currently stands should be reconsidered.

Recommendations

1. Extensive and in depth Aboriginal community consultation should be undertaken prior to the rezoning
2. Research into Musgrave’s journal or field noters, the Ivery and Pye family records and other sources, including Aboriginal oral history
3. Field survey and subsurface investigation should be undertaken prior to the rezoning to determine what remains if any may have survived and over what area. Attachment 1 shows the burial discovery protocol appropriate for this area.
4. A Management Plan should be developed if remains are found.
5. Government should fund the recommended work and consultation.

Yours sincerely,

Mary Dallas 27.9.18

Principal Heritage Consultant
Mary Dallas Consulting Archaeologists
E: mdca.archaeologists@gmail.com  W: www.mdca.com.au
Attachment 1

**Burial/Human Bone Discovery Procedure.**

**Human Bone**

Aboriginal

or

European

▼

On-site Forensic Anthropologist
provides contextual assessment

▼

or

Contact Police/Coroners Office

Secure context as may be a crime scene and crucial forensic evidence may be contaminated or destroyed.

▼

DISTURBED GROUND
Isolated or fragment of bone

▼

UNDISTURBED GROUND
possible burial
Notify OEH apply for AHIP

▼

REBURIAL at the same spot at a greater depth*

▼

REMOVAL
Care of Bone*

or

Controlled unobtrusive Investigation under OEH Permit

REMOVAL
Care of Bone*

©Mary Dallas Consulting Archaeologists 2008

* These procedures to be determined by Deerubbin LALC and Aboriginal community representatives
**Attachment 2  AHIMS Site Recording Sheet by Extent Heritage Pty Limited**

<table>
<thead>
<tr>
<th>Site Number</th>
<th>45.5-4770</th>
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<td>Date received</td>
<td>/ /</td>
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<td>Date entered into system</td>
<td>/ /</td>
</tr>
<tr>
<td>Date catalogued</td>
<td>/ /</td>
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### Information Access
- Gender/male
- Gender/female
- Location restriction
- General restriction
- No access

### For Further Information Contact:

#### Nominated Trustee
- **Title**: 
- **Surname**: 
- **First Name**: 
- **Initials**: 

#### Knowledge Holder
- **Title**: 
- **Surname**: 
- **First Name**: 
- **Initials**: 

### Aboriginal Heritage Unit or Cultural Heritage Division Contacts

### Geographic Location
- **Site Name**: Bulgardi ground of the Blacks (1842 Burial)
- **Easting**: 301661
- **Northing**: 6268256
- **AGD/IGDA**: GDA
- **Mapsheet**: 
- **Zone**: 56
- **Location Method**: Scanned Map
- **Other Registration**: 

### Primary Recorder
- **Title**: Ms
- **Surname**: Ngaire
- **First Name**: Richards
- **Organisation**: Extent Heritage Pty Ltd
- **Address**: 3/73 Union Street PYRMONT
- **Phone number**: 95554000
- **Fax**: 
- **Date recorded**: 21/03/2016
**NPWS Aboriginal Site Recording Form - Site Information**

### Site Context
- **Landform**
  - □ Mountainous
  - □ Plain
  - □ Rolling hills
  - □ Steep hills
  - □ Undulating plain
- **Slope**
  - □ degrees
- **Vegetation**
  - Closed forest
  - Grasslands
  - Isolated clumps of trees
  - Open forest
  - Open woodland
  - Scrub
  - Woodland
  - Cleared
  - Revegetated
  - N/A
- **Land use**
  - Conservation
  - Established urban
  - Farming-intensive
  - Farming-low intensity
  - Forestry
  - Industrial
  - Mining
  - Pastoral/grazing
  - Recreation
  - Semi-rural
  - Service corridor
  - Transport corridor
  - Urban expansion
  - Residential

### Landform Unit
- □ Beach
- □ Coastal rock platform
- □ Dune
- □ Intertidal flat
- □ Lagoon
- □ Tidal Creek
- □ Tidal Flat
- □ Cliff
- □ Crest
- □ Flat
- □ Lower slope
- □ Mid slope
- □ Upper slope
- □ Plain
- □ Ridge
- □ Tor
- □ Valley flat
- □ Levy
- □ Stream bank
- □ Stream channel
- □ Swamp Terrace
- □ Terrace flat

### Water
- **Distance to permanent water source**
  - 420 metres
- **Distance to temporary water source**
  - 120 metres
- **Name of nearest permanent water source**
  - Eastern Creek
- **Name of nearest temporary water**
  - 1st order tributary

### Directions for Relocation
The site was identified on an 1842 Plan of part of the Windsor District. The burial ground was located to the east of Plumpton Ridge, on the floodplain in the vicinity of what is now Durham, Angus and Kerry Roads, Schofields. The site location could not be visually confirmed as ground surface visibility was low.

### Site Location Map

**Current Land Tenure**
- □ Public
- □ National Park / other Government Dept.
- □ Private

**Primary report**
- Extent Heritage Pty Ltd. (2016): West Schofields Part
- Precinct: Aboriginal Cultural Heritage Assessment
- Report: CSR Ltd. id.

**L.D.**
- O.D. Office Use only
### General Site Information

<table>
<thead>
<tr>
<th>Shelter/Cave Formation</th>
<th>Rock Surface Condition</th>
<th>Open Site</th>
<th>Site Orientation</th>
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<td>Boulder</td>
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<td>NE-SW</td>
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<tr>
<td>Water erosion</td>
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<td>Rock collapse</td>
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<table>
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<th>Condition of Ceiling</th>
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<td>Silica gloss</td>
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<td>Tessellated</td>
<td>South East</td>
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<tr>
<td>Weathered</td>
<td>South</td>
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<td>Other platform</td>
<td>South West</td>
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<tr>
<td></td>
<td>West</td>
</tr>
<tr>
<td></td>
<td>North West</td>
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### Features

- 1. Aboriginal Ceremony & Dreaming
- 2. Aboriginal Resource & Gathering
- 3. Art
- 4. Artefact
- 5. Burial
- 6. Ceremonial Ring
- 7. Conflict
- 8. Earth Mound
- 9. Fish Trap
- 10. Grinding Groove
- 11. Habitation Structure
- 12. Hearth
- 14. Ochre quarry
- ✔ 15. Potential Archaeological Deposit
- 16. Stone Quarry
- 17. Shell
- 18. Stone Arrangement
- 19. Modified Tree
- 20. Water Hole

### Site Plan

Indicate scale, boundaries of site, features

### Site Dimensions

**Closed Site Dimensions (m)**

- Internal length
- Internal width
- Shelter height
- Shelter floor area

**Open Site Dimensions (m)**

- Total length of visible site
- Average width of visible site
- Estimated area of visible site
- Length of assessed site area
### Aboriginal Community Interpretation and Management Recommendations

### Preliminary Site Assessment

**Site Cultural & Scientific Analysis and Preliminary Management Recommendations**

This section should only be filled in by the Endorsee.

<table>
<thead>
<tr>
<th>Endorsed by:</th>
<th>Knowledge Holder</th>
<th>Nominated Trustee</th>
<th>Native Title Holder</th>
<th>Community Consensus</th>
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<td>Organisation</td>
<td>Address</td>
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### Attachments (No.)

- [x] A4 location map
- [ ] B/W photographs
- [ ] Colour photographs
- [ ] Slides
- [ ] Aerial photographs
- [ ] Site plans, drawings
- [ ] Recording tables
- [x] Other
- [ ] Feature inserts-No.

### Comments

The area identified in the site location map is based on a georeferenced 1842 Plan of part of the Windsor District between the Old Richmond Road and the Road from Windsor to Sydney by surveyor J. Musgrave. The site dimensions include a 75m buffer to account for inconsistencies in the location of property boundaries in the historical map. The buffer was determined through a comparison of the average distance between various structures on the map using affine and spline transformation georeferencing methods.
Figure 9

Dated from the 1942 Plan of the area. This cultural material is part of the Old School Road and the Road from Baskin to Suttles from the area by resealing of the cultural heritage reference to the 1942 Plan of the area.

MARY DALLAS CONSULTING ARCHAEOLOGISTS • PO BOX 6184 KANGAROO VALLEY 2577 • TEL (02) 4465 2546 • FAX (02) 8520 2006
mdca.archaeologists@gmail.com
AHIMS 45-5-4770 - ‘1842 burial’

Recorded site feature(s): Burial

Recorded coordinates (GDA94 / MGA Zone 56): 301224E, 6268205N

Recorded location: 4 Durham Road, Schofields (Lot 37 DP129076)

Updated site feature(s): Potential Archaeological Deposit; Burial

Updated coordinates (GDA94 / MGA Zone 56): 301661E, 6268258N

Updated location: 19 Durham Road, Schofields (Lot 62, DP 12076), 27 Durham Road, Schofields (Lot 61, DP 12076), 39 Durham Road, Schofields (Lot 60, DP 12076), 28 Kerry Road, Schofields (Lot 48, DP12076), 36 Kerry Road, Schofields (Lot 49, DP12076), Kerry Road, Schofields (Lot 47, DP12076), 30 Angus Road, Schofields (Lot 3, DP1205591), 35 Angus Road, Schofields (Lot 44, DP12076), 45 Angus Road, Schofields (Lot 43, DP12076), 46 Angus Road, Schofields (Lot 40, DP12076), 55 Angus Road, Schofields (Lot 42, DP12076), 58 Angus Road, Schofields (Lot 38, DP12076), Angus Road reserve, Carnarvon Road Schofields (Lot 9, DP1205591), Carnarvon Road reserve.

Description: The location of the potential Aboriginal burial site has been identified based on a historical map by surveyor J. Musgrave, the 1842 Plan of part of the Windsor District between the Old Richmond Road and the Road from Windsor to Sydney, which contains a reference to a ‘Burial ground of the Blacks’ on the western portion of Joseph Pye’s ‘Waaraw Waara’ Estate, between Bells Creek and Eastern Creek. This area is located on the Eastern Creek floodplain.

This site was registered on the AHIMS database by the Darug Custodian Aboriginal Corporation following the archaeological survey for the current study, prior to finalisation of this report. No surface features indicating the potential location of this site were identified. Current land uses in this area include primary production small lots, market gardens (including a small dam) and roads/road reserve.

Plate 28. Mapped location of AHIMS 45-5-4770 ('1842 burial'), view north east towards 35 and 45 Angus Road.

Plate 29. Mapped location of AHIMS 45-5-4770 ('1842 burial'), view south east towards Lot 47 DP12076 and 28 Kerry Road, Schofields.