28 September 2018

Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Re: Submission to draft masterplan for West Schofields on behalf of the landowners at Kerry Road, Schofields

1. Introduction

This submission to the draft masterplan for West Schofields has been prepared by Mecone Pty Ltd (Mecone) on behalf of the landowners of the site at Kerry Road, Schofields. This submission objects to the proposed RU6 zoning for the site and prohibition of dwelling houses.

This submission outlines the reasons for objection and proposes amendments to the draft masterplan that would result in a better environmental and planning outcome for the site.

In summary, the landowners welcome the development of the West Schofields Precinct but are concerned that the proposed RU6 zone and prohibition of dwelling houses would downzone the land, introduce unnecessary complexity into the planning system, run contrary to the standard use of the RU6 zone and sterilise the land. It is recommended that Zone E4 Environmental Living (with dwelling houses permitted) be considered as the preferred and most logical zone, which would be consistent with approach taken for similar land elsewhere in the North West Growth Area.

2. The Site

The site is located in the suburb of Schofields to the west of Eastern Creek and south of the intersection of Kerry Road and Angus Road. The site comprises Lots 45-49 inclusive of DP1035546 and Lots 7-19 inclusive of DP12076 and has total area of approximately 25.7ha, as shown in the map below.

The site is currently zoned RU4 Primary Production Small Lots and is currently used for rural purposes and comprises mostly cleared land with some sparse vegetation, namely along the Eastern Creek corridor. Existing development on the site includes dwelling houses and various rural/agricultural buildings and structures.
The portion of the site relevant to this submission is that portion proposed to be zoned RU6 Rural Transition. This portion is marked in Figure 2 below.

3. Exhibition Material

The West Schofields Precinct was placed on public exhibition in August 2018. Key exhibited documents include the Exhibition Discussion Paper, draft State Environmental Planning Policy (SEPP) Sydney Region Growth Centres 2006 mapping, draft West Schofields Indicative Layout Plan (ILP), draft Development Control Plan (DCP) Schedule 9, and draft main body DCP amendments.

The draft zoning map identifies the site as zoned part RU6 Rural Transition, part E2 Environmental Conservation and Part RE1 Public Recreation. This submission relates to the portion proposed to be zoned RU6 (see Figure 2 below).

The Exhibition Discussion Paper states that dwelling houses will be prohibited in the zone due to flooding constraints. The relevant extract is provided below:

Land wholly below the 1:100 chance per year flood level that is not proposed for open space, environmental conservation or drainage purposes is proposed to be zone RU6 Transition. This zone will enable limited uses however new residential dwellings will be prohibited (p. 44).
The draft Indicative Layout Plan (ILP) for the precinct shows the site as adjoining a new sports park (see Figure 3 below).

4. **Key Reasons for Objection**

The landowners of the subject site strongly object to application of the RU6 zoning together with the prohibition of dwelling houses at the site. The key reasons for opposing the zoning include:

- It would result in the introduction unnecessary complexity into the planning system, resulting in existing use rights across a large number of the properties that presently have dwellings;
- It would be contrary to the standard use of the zone; and
- It would sterilise the land and make it unfit for any redevelopment.
The site is most suited to an E4 zoning, which will be discussed in further detail later in this submission.

The failings of the proposed zoning are discussed in detail below.

**Existing Use Rights**

The majority lots within the site contain existing dwelling houses. As such, prohibiting dwelling houses would result in the existing dwellings having to rely upon existing use rights for redevelopment. This would introduce unnecessary complexity into the local area’s planning framework and impose an unfair burden on the landowners, whilst a regulatory burden for the consent authority.

Utilisation of existing use rights is fraught with potential administrative and legal difficulties. The development proponent is required to provide evidence of the continued use of the land, and this is not always a straightforward process. Therefore, while existing use rights may theoretically provide an avenue for continued residential use, the process entailed in utilising these rights may make continued residential use difficult to achieve in practice.

An ongoing objective of the State and local planning systems is to simplify and streamline the assessment process. Introducing existing use rights for dwelling houses would run contrary to this objective, complicating the approval and delivery of basic, low-impact residential development.

**Inconsistency with standardised planning system**

Under the Standard Instrument Local Environmental Plan (SI LEP), it is compulsory for dwelling houses to be permitted in the RU6 zone. It is acknowledged that the SEPP Growth Centres is not an LEP; however, the SEPP has been structured in accordance with the SI LEP, and we believe the two instruments should aim to achieve consistency in their approach as part of a streamlined NSW planning system.

Additionally, prohibition of dwelling houses would run contrary to the Department of Planning and Environment’s published guidance on applying standard zones. The Department’s practice note “Preparing LEPs using the Standard Instrument: standard zones” (PN 11-002) states:

*RU6 Transition*

The transition zone is to be used in special circumstances only in order to provide a transition between rural land uses (including intensive agriculture, landfills, mining and extractive industries) and other areas supporting more intensive settlement or environmental sensitivities.

Contrary to the above guidance, the draft masterplan for West Schofields proposes to use the RU6 zone in order to provide a transition between urban land and environmentally sensitive land (i.e., between R2 and E2 land). Accordingly, we do not believe the RU6 to be the appropriate zone for the site, which will be located along an urban (not rural) fringe.

Alternatives are recommended in Section 5 below.
Sterilisation of land

The proposed RU6 zone is extremely restrictive in terms of land use, particularly given the proposed prohibition of dwelling houses. Permitted uses are generally associated with agriculture or recreation. Such uses are unsuited to the future urban context of the locality. The site will be generally surrounded by urban land as the surrounding precincts develop, and it is unlikely that agricultural or similar uses would be operationally viable, whilst also posing externality impacts on nearby urban land, from odour, noise and air emissions. Additionally, several of the lots within the site do not currently contain dwelling houses. As such, new houses would not be able to be built on these lots using existing use rights, where as under the current zoning they could – this is a down zoning of the land.

Given these restrictions, the RU6 zone would potentially sterilise the land by resulting in unmaintained, unoccupied lots. This is undesirable generally—but particularly so in subject case given that the site directly adjoins proposed RE1 Public Recreation land. Based on the principles of Crime Prevention Through Environmental Design, it is preferable that recreation land be adjoined and overlooked by permanently occupied land in order to increase passive surveillance and encourage the feeling of community ownership. A park adjoined by unmaintained, unoccupied lots would increase crime risk at the park and generally the reduce amenity of the area.

The principal objective of the Environmental Planning and Assessment Act 1979 (EP&A Act) is the promotion and coordination of the orderly and economic use and development of land. Prohibiting dwelling houses at the site would run directly contrary to this objective by sterilising land that could otherwise be used for residential or other productive purposes.

5. Recommendations

Based on the above objections, the proposed RU6 zone would result in a poor outcome for the site. We request that the Department consider the following:

Rezone to E4 Environmental Living

The site be rezoned to E4 Environmental Living, which would provide a suitable transition between the E2 land along the Eastern Creek Corridor and the urban land to the west. This is the preferred outcome and consistent with the orderly and efficient use of the land.

The E4 zone has been similarly applied elsewhere in the North West Growth Area, including in the Schofields Precinct immediately to the west, even in areas below the 1-in-100-year flood extent.

In regards to flood impacts, it is considered that this issue should be addressed on a case-by-case basis through the development application process rather than through wholesale restrictions during the rezoning process.

Compulsorily acquire the land

If the Department insists on prohibiting dwelling houses, the land should be compulsorily acquired or the landowners should be otherwise compensated.

Prohibiting dwelling houses would be a blatant down-zoning of the land and result in the loss of all economically viable redevelopment opportunity. Agricultural or similar uses are to
suitable for the site as the precinct develops and as the site becomes generally surrounded by urban land.

This letter serves as notice to the Department that the owners of the subject area will pursue compensation from the NSW Government if this proposal proceeds and is adopted.

3. Conclusion

This submission has been prepared in response to the draft masterplan for West Schofields currently on exhibition.

The release of the West Schofields Precinct overall is a positive step in addressing the need for additional housing supply in Sydney and capturing the value of important infrastructure projects such as the Sydney Metro Northwest. However, as outlined in this submission, we are of the firm opinion that the application of the RU6 zone and prohibition of dwelling houses is a strategic misstep that would result in a poor planning and environmental outcome.

In this submission, we have expressed the issues evident with the prohibition of such use. These issues include the introduction of complexity into the planning system, inconsistency with the standard application of the zone and the sterilization of the land.

We recommend an alternative zoning for the subject site—E4 Environmental Living—which we believe will provide a more appropriate outcome for the site, providing occupied, well-maintained lots that will integrate with the surrounding precinct. The other option as proposed is that the area becomes an effective “waste land” with dilapidated properties given no incentives for on-going up keep or economic output.

We thank you for the opportunity to provide a submission. If you wish to discuss this submission in more detail, please contact me at 02 8073 4677 or acoburn@mecone.com.au.

Regards,

Adam Coburn