

# BGMG 11 PTY LIMITED (ACN 616 276 076)

## AS TRUSTEE FOR

### BGMG 1 OAKDALE WEST TRUST

25 July 2019

Mr William Hodgkinson  
Planner  
Department of Planning, Industry & Environment  
320 Pitt St  
Sydney NSW 2000

Dear William,

#### **SUBMISSION IN RESPONSE TO SSD-9522 IN RESPECT OF LAND LOCATED AT 657-769 MAMRE ROAD, KEMPS CREEK ("SSDA LAND")**

BGMG 11 Pty Limited as trustee for BGMG 1 Oakdale West Trust ("BGMG") is the owner of land at 2-18 Aldington Road, Kemps Creek, being land comprised in 11/1178389 and 1/663937 otherwise known as Oakdale West Industrial Estate, for which SSDA 7348 has been lodged and in respect of which a Voluntary Planning Agreement has been executed with the Minister for the Department of Planning, Industry and Environment.

This submission is made in response to State Significant Development Application (**SSD-9522**) comprising the construction and operation of a Warehouse, Logistics and Industrial Facilities Hub at 657-769 Mamre Road, Kemps Creek.

BGMG takes an interest in development proposals in the locality. It has reviewed the exhibited documents available on the Department of Planning, Industry and Environment (**DPIE**) Major Projects website, the *State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP)* and Western Sydney Aerotropolis Land Use and Infrastructure Implementation Plan (**WSA LUIIP**).

BGMG has a number of concerns in relation to the proposed development and wishes to object to SSD-9522. BGMG submits that SSD-9522 at 657-969 Mamre Road, Kemps Creek should not progress for the following reasons:

#### **1) SSD-9522 results in disorderly development**

There are already significant areas of undeveloped industrial zoned land under the WSEA SEPP which, when developed, will form an orderly development front for warehouse and logistics purposes.

#### **2) SSD-9522 results in development of unzoned land**

The development relies on a legal interpretation of Clause 12 within the WSEA SEPP. As such, this interpretation can be construed to result in an unexpected consequence of 'out of sequence' development.

#### **3) SSD-9522 results in a disjointed rezoning of land**

Whilst the SSDA Land is located within the Broader WSEA it is not itself zoned for industrial purposes. Approval of the proposed development will result in a small patch of industrial development predominantly surrounded by rural lands.

**4) SSD-9522 strains local services and infrastructure**

The proposal will unnecessarily strain and adversely impact the existing road infrastructure utilities, and their capacity to sufficiently service the surrounding area including undeveloped land within the existing WSEA.

**5) SSD-9522 does not address the implications of a “spot” rezoning**

The strategic merits of a change in land use from rural to industrial have not been addressed through a Planning Proposal process or a SEPP WSEA Amendment and as such the broader matters of discontinuous land rezoning have not been thoroughly addressed or resolved by the application. The merits or drawbacks of such a land zoning at this time have not been fully tested.

**6) SSD-9522 is in conflict with the LUIIP**

The site is located within the bounds of the Aerotropolis LUIIP and is not located within an Initial Precinct. The subject proposal is therefore in conflict with the LUIIP which has the force of a Section 9.1 Direction.

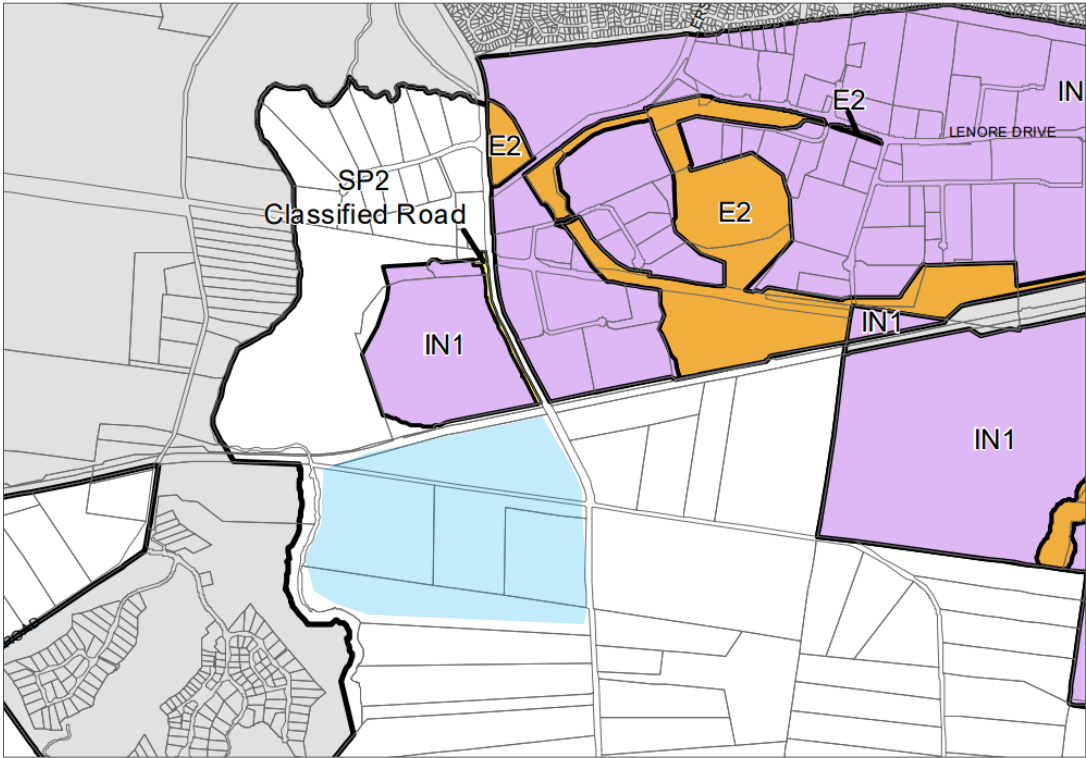
This submission details the above concerns and provides recommendations to the DPIE which aim to result in an improved outcome for both the SSDA Land and broader locality.

**1) SSD-9522 Results in disorderly development**

The SSDA Land is proposed to be developed into an industrial warehouse, logistics and industries hub. This is despite the land being ‘unzoned’ under the WSEA SEPP and zoned RU2 - Rural Landscape under *Penrith Local Environmental Plan 2010* (PLEP 2010).

For the purposes of the application, the provisions of WSEA SEPP have been invoked as the prevailing Environmental Planning Instrument (**EPI**) in order to achieve permissibility under Clause 12. However, the site is surrounded by portions of undeveloped industrial zoned land under the WSEA SEPP to the northwest (refer to Figure 1). This existing industrial zoned land is readily available to be lawfully developed under the WSEA SEPP, and if developed would form an orderly development front for warehouse and logistics purposes. Given that there is an abundance of undeveloped industrial zoned land, the proposed rezoning of WSEA SEPP land is unorderedly, unnecessary and undesirable as it will not decrease the amount of undeveloped industrial zoned land in the area.

Figure 1 – WSEA SEPP Land Zoning Map (Site is blue)



Source: WSEA SEPP 2009

**2) SSD-9522 results in development of unzoned land**

Under Clause 12 of WSEA SEPP, development may be carried out on unzoned land only with consent and with the requirement that the consent authority:

- (a) must consider whether the development will impact on adjoining zoned land and, if so, consider the objectives for development in the zones of the adjoining land, and*
- (b) must be satisfied that the development is appropriate and is compatible with permissible land uses in any such adjoining land.*

While consideration has been given on the adjoining IN1 land under the WSEA SEPP, the proposal has not considered the industrial impact on the adjoining E2 and E4 land under the PLEP 2010 (grey area in Figure 1). The objectives and permissible land use of both zones are provided in Table 1.

Table 1 – Objectives and Permissible Land Uses of Adjoining E2 and E4 Zones

Zone	Objectives	Permissible Land Uses
<b>Penrith Local Environmental Plan 2010</b>		
<b>E2 Environmental Conservation</b>	<ul style="list-style-type: none"> <li><i>To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.</i></li> <li><i>To prevent development that could destroy, damage or otherwise have an adverse effect on those values.</i></li> <li><i>To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, wetlands, groundwater resources, biodiversity corridors, areas of remnant indigenous vegetation and dependent ecosystems.</i></li> <li><i><u>To allow for low impact passive recreational and ancillary land uses that are consistent with the retention of the natural ecological significance.</u></i></li> </ul>	<p>Environmental facilities; Environmental protection works; Flood mitigation works; Oyster aquaculture; Recreation areas; Roads.</p> <p><b>Prohibited:</b> Business premises; Hotel or motel accommodation; <u>Industries</u>; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; <u>Warehouse or distribution centres</u>;</p>
<b>E4 Environmental Living</b>	<ul style="list-style-type: none"> <li><i>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i></li> <li><i>To ensure that residential development does not have an adverse effect on those values.</i></li> <li><i><u>To minimise conflict between land uses within the zone and land uses within adjoining zones.</u></i></li> <li><i>To ensure land uses are compatible with the available infrastructure, services and facilities and with the environmental capabilities of the land.</i></li> <li><i>To preserve and improve natural resources through appropriate land management practices.</i></li> </ul>	<p>Bed and breakfast accommodation; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Environmental protection works; Flood mitigation works; Home-based child care; Home businesses; Home industries; Information and education facilities; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Schools; Secondary dwellings; Tank-based aquaculture</p> <p><b>Prohibited:</b> <u>Industries</u>; Service stations; <u>Warehouse or distribution centres</u></p>

As stated in Table 1, importantly 'Industries' and 'Warehouse or distribution centres' are expressly prohibited in the zone and the objectives specifically seek to protect the natural elements of the land, support ecological restoration and minimise conflict between land uses within adjoining zones.

Adequate consideration has not been given to the impact of the proposal on the adjoining E2 – Environmental Conservation and E4 – Environmental Living zoned land and the objectives of these adjoining zones to the west. Furthermore, the Environmental Impact Statement (EIS) does not adequately address clause 12(2)(a-b) of the WSEA SEPP.

Figure 2 – PLEP 2010 Land Zoning Map (Site is blue)



Source: Penrith LEP 2010

Critical consideration must be given to the compatibility of land uses and the adjoining environmental zone objectives given that the proposed use of the SSDA Land is prohibited under the SEPP.

### **3) SSD-9522 results in a disjointed rezoning of land**

The SSDA Land, while located within Precinct 11 of the WSEA is not zoned for industrial purposes. Approval of the proposed development will result in an isolated industrial development that is disconnected from the overall WSEA and surrounded by undeveloped rural lands. This will be an undesirable result as aesthetically the development will not accord with the land immediately surrounding it.

### **4) SSD-9522 strains local services and infrastructure**

The location of the proposal will detrimentally and permanently impact upon the existing services capacities of the surrounding area. This will require the installation of new or intervention of existing infrastructure, which has been built to accommodate the surrounding developments such as Oakdale West Industrial Estate. According to the EIS, services may require adjustment or completely new infrastructure to accommodate the proposed development. Proposals to resolve these fundamental issues are not addressed in SSD-9522

### **5) SSD-9522 does not address the implications of a spot rezoning**

The proposal seeks a change in land use from rural to industrial. Typically, rezoning the land would require a Planning Proposal or an amendment to the EPI. However, the application circumvents these

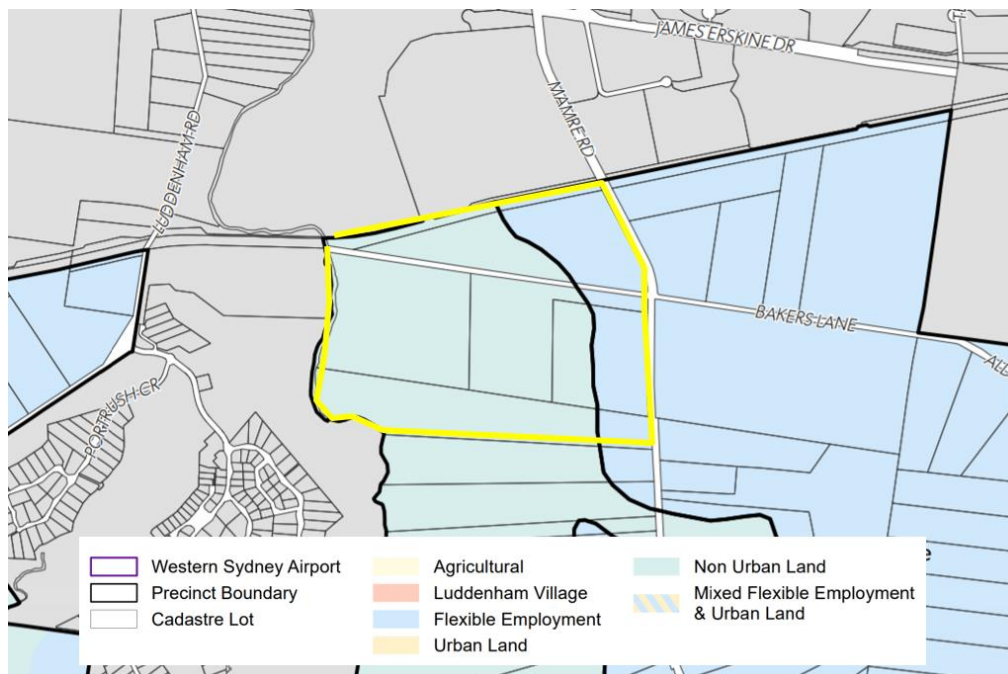
established planning processes and as such has not thoroughly addressed the broader matters of the land rezoning. The strategic merits and disadvantages of such a disjointed and isolated land rezoning has not been fully tested.

#### 6) SSD-9522 is in conflict with the LUIIP

The WSA LUIIP identifies the majority of the site to be within the South Creek Precinct (refer Figure 3). The site's inclusion within the LUIIP indicates that it has been considered to be serviced by the proposed transport infrastructure set out in the plan. The site's location would be better serviced via the new freight network links being considered under the WSA LUIIP.

Stage 1 of the WSA LUIIP proposes land within the South Creek Precinct to be zoned for environmental conservation and non-urban purposes. The South Creek Precinct is described as the 'central green spine of the Aerotropolis' and is planned to create an accessible and connected open space network that will rehabilitate the natural assets such as the waterways and riparian lands.

Figure 3 – WSA LUIIP (Site highlighted in Yellow)



Source: Western Sydney Aerotropolis Stage 1 LUIIP

In addition, a Ministerial Direction issued under Section 9.1 of the *Environmental Planning and Assessment Act* (EP&A Act) has given effect to the WSA LUIIP. Chapter 5.4 of the WSA LUIIP notes that 'out of sequence' proposals will be considered against specific criteria. However, it ultimately concludes that rezonings will not be occurring until the Final Plan is released.

The proposal is therefore in conflict with the LUIIP and should await the finalisation of the LUIIP before any rezoning is to take place. This is because approval of the proposal would prejudice the ability to achieve the envisioned revitalisation of the Western Parkland City and obstruct the 'greening' of the South Creek Precinct.

At the very least DPIE should await the finalisation of the LUIIP prior to the assessment and determination of the SSD, to avoid conflict with the Ministerial Direction and the overall vision and strategy for the South Creek Precinct.

## Summary


BGMG objects to SSD-9522 for the following reasons:

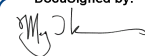
- 1) Lawfully zoned industrial lands located within the WSEA which have not yet been developed are available;
- 2) SSD-9522 does not adequately consider the adjoining environmental land uses to the west;
- 3) The proposal if approved, will create an isolated industrial site disconnected from the broader WSEA;
- 4) The proposal will place pressure on the existing service infrastructure, and require upgrades or new infrastructure to sufficiently service the surrounding area;
- 5) The strategic merits of the proposed "spot" rezoning have not been sufficiently considered as required by due planning process; and
- 6) The SSDA Land is subject to the WSA LUIIP which is still in the process of being finalised.

Finally, BGMG has an interest in the matters contained within Annexure 39 of the EIS and note that it has not been included in the public exhibition package.

Representatives of BGMG would be happy to meet with the DPIE to discuss the above views or to contribute to any further consultation on this project.

Yours sincerely,

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