

21 October 2024

Ms Carmel Donnelly PSM
Chair
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop
SYDNEY NSW 1240

Our ref: HAK
Matter no: 9645708

Via online submission

Dear Ms Donnelly

Submission: Mamre Road Stormwater Scheme Review – Draft Report

We make the following submission on behalf of Olathree Pty Limited ACN 002880739, the registered proprietor of [REDACTED]).

Olathree is not a developer and continues to use the Property for agricultural purposes, however in 2022 the Property was rezoned. Since the rezoning in 2022, the Property has been zoned part IN1: General Industrial, RE1: Public Recreation, ENZ: Environment and Recreation, and SP2: Infrastructure as shown in **Annexure A**.

The Property has been identified for a 25 metre wide open stormwater channel as part of the Mamre Road Stormwater Scheme Plan (**Scheme Plan**) trunk drainage to support the development of the area, as shown in **Annexure B**. The open stormwater channel (trunk drainage) will benefit upstream developers in the area and will not benefit the Property and the current use carried on by Olathree. The proposed channel will be positioned on the high side of the Property, meaning that the natural drainage from the Property will flow into the Kemps Creek waterway on the south-western side, rather than into the proposed stormwater channel.

The Scheme Plan aims to formalise natural drainage channels, however there is no existing first order stream through the Property.

The proposed stormwater channel works will impede Olathree's current use of the Property and decrease the development potential of the Property in the future. The construction of the proposed channel will result in the loss of approximately 20% of IN1 zoned land within the Property as seen when comparing the extract of the Scheme Plan in Annexure B with the zoning plan in Annexure A. This reduction not only diminishes the current operational space available to Olathree but also directly impacts the value of the Property and suitability for future expansion or redevelopment. The Scheme Plan has essentially created a blot on the title of the Property, which will become a physical obstruction once constructed and to date Olathree has received nil compensation for this blot on title. Considering the current publicly available information, Olathree will continue to be negatively impacted by the proposed open stormwater channel and the blot on title of the Property.

We have been provided with a copy of the Sydney Water *Mamre Road and Aerotropolis Integrated Stormwater and Recycled Water: Net Developable Area Fact Sheet*, dated January 2024. This document includes a plan of areas that are to be excluded from the calculation of net developable area. This plan excludes the trunk drainage through the Property, as per the extract at **Annexure C**. This demonstrates further that the area of the Property impacted by the truck drainage channel under the Scheme Plan will be undevelopable.

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Olathree is now in a position where they must either sell to a developer at a loss, as it is unable to realise the market value for the channel land or wait for Sydney Water to potentially acquire it at a much later stage. Sydney Water at this stage has **not** indicated that the channel land will be acquired or the blot on title compensated.

1. IPART Draft Report

The recently released IPART Draft Report for the Mamre Road Stormwater Scheme, September 2024 (**IPART Draft Report**), relates to the Scheme Plan and is directly relevant to the Property.

We wish to make submissions in relation to the following sections of the IPART Draft Report:

(a) *Section 3.2 Sydney Water's stormwater scheme design*

The IPART Draft Report refers to Sydney Water releasing its design and costing of the stormwater scheme in March 2023.

We have been unable to locate any documents from Sydney Water in relation to the Scheme Plan dated March 2023.

We encourage IPART to include references to the documents relied upon in this section of the IPART Draft Report.

(b) *Section 4.3 Review of land acquisition costs*

Section 4.3 of the IPART Draft Report indicates that IPART has reviewed the methodology and the unit rates applied by Sydney Water in relation to land acquisitions associated with the Scheme.

Again, we encourage IPART to include references to the documents reviewed and relied upon in the section of the IPART Draft Report.

We have requested a copy of these documents from Sydney Water but have been told that they are "commercial-in-confidence", including two valuation reports prepared by global real estate entities.

In our experience, valuation documents have been referenced and released by IPART as part of pricing of developer contributions where land is required to be acquired to support the development of precincts.

(c) *Section 5.2.2 The broader community also benefits from the stormwater scheme*

Section 5.2.2 of the IPART Draft Report acknowledge that the Scheme Plan will benefit the wider community and create a natural blue grid. Section 5.2.2 of the IPART Draft Report states that "developers should not be expected to pay for the costs that exceed their own impact".

We also urge IPART to consider that this should also be expanded to include and consider existing landowners. Existing landowners, such as Olathree, should not have to pay for the costs that exceed their own impact. In the case of Olathree, it is expected to effectively give up the channel land to support the stormwater scheme that will benefit the wider community, but not directly benefit the Property. The 25m wide channel proposed for the Property is to solely convey flows from Mamre Road and the land above Mamre Road towards the existing creek.

Olathree should be appropriately compensated for its loss of the channel land and any severed land as the result of the channel location.

(d) *Section 5.4 Developer-incurred costs and benefits*

Again at Section 5.4 of the IPART Draft Report, the following costs to developers are set out:

- *"Capital costs: Installing infrastructure like drainage paths, pipes, culverts, retaining walls, and vegetation to manage stormwater*
- *Land sterilisation: Developers must reserve land for stormwater detention, limiting the portion available for revenue-generating development."*

These costs are passed onto current landowners if they are to sell to a developer. We urge IPART to consider this in finalising its report.

(e) *Other comments*

It is unclear to Olathree why the open channel that is proposed to pass through the Property is 25m in width, especially where there does not seem to be capacity for the stormwater infrastructure under Mamre Road to support a flow that will then require a 25m wide open channel.

The width of the channel directly impacts the price that a developer would be willing to pay for the land (and the acquisition costs if carried out by Sydney Water). A narrow channel would lessen the impact on the Property.

2. Correspondence with Sydney Water & creation of easements

Olathree, through its advisors, has reached out to Sydney Water for clarification regarding the acquisition process for the trunk drainage channels identified in the Scheme Plan.

Sydney Water has pointed to clause 2.4(15) of the *Mamre Road Precinct Development Control Plan 2021 (DCP)* which provides as follows:

- (15) *Trunk drainage paths shall remain in private ownership with maintenance covenants placed over them to the satisfaction of Council (standard wording for positive covenants is available from Council). Easements will also be required to benefit upstream land.*

Sydney Water has indicated that the easements will be with Sydney Water and not Council.

Sydney Water has recently released its Draft Stormwater Developer Works Policy, September 2024 (**SDW Policy**).

Section 2.3.4 of the SDW Policy indicates that land and easements required by Sydney Water for stormwater infrastructure works and the delivery of stormwater assets will be secured either under Stormwater Developer Works Agreements, or where third-party land or easements cannot be negotiated by the developer, under the acquisition process in the *Land Acquisition (Just Terms Compensation) Act 1991* by Sydney Water.

However, the SDW Policy does not commit to any payment for the acquisitions of easements, especially to third-party landowners, and Sydney Water has **not** indicated that it will be acquiring any part of the Property for the open channel.

In the case of the Property, it is unclear how the easement will be practically acquired or created.

There does not appear to be any need for the channel to be created for the development of the Property. The channel appears to be required only to manage flows of upstream land. Given that the upstream land is discharging to the public road reserve, there is no clear mechanism to trigger the need to acquire the easement for the channel as the upstream owner does not usually need to acquire easement rights on the downstream land where water is only discharged to the road.

In this example, it is not clear which party would be seeking to create the easement for the channel as only the road discharges into this channel.

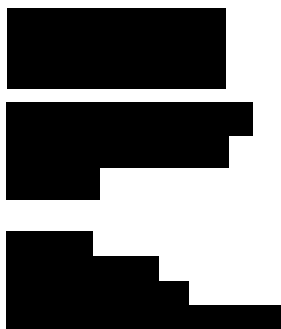
Sydney Water should take steps to use its power under the *Sydney Water Act 1994* and the *Land Acquisition (Just Terms Compensation) Act 1991* to acquire the required land for the Scheme Plan, including the 25m channel through the Property **now** and remove the limbo and uncertainty for landholders and developers in the area.

3. Submission

It is our submission that the following recommendations are implemented as part of the finalising the IPART Draft Report:

- (a) IPART provide references and make publicly available the data relied upon in preparing the IPART Draft Report.
- (b) IPART acknowledge and consider the implications for existing landholders in the area.
- (c) IPART acknowledge the impact to the value of land of the Scheme Plan.
- (d) IPART consider if properties impacted by the Scheme Plan, such as the Property, are included in the proposed costs of acquisition provided by Sydney Water. The Final IPART Report state whether there are funds for the acquisition of the 25m wide easement within the Property in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

Yours faithfully
Hunt & Hunt

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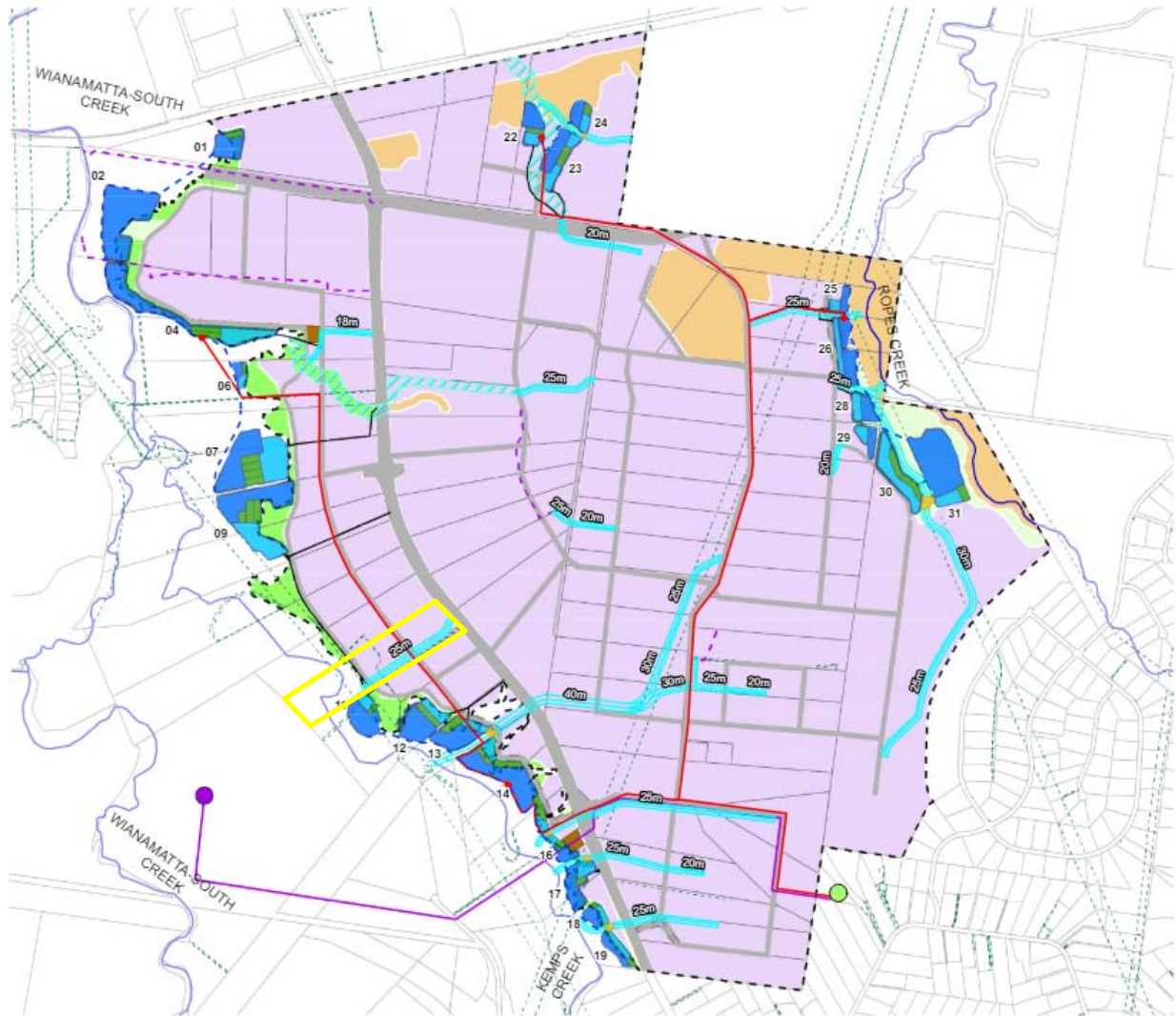
**Annexure A
Zoning of Property**

Extract from NSW Planning Portal



Property shown in yellow outline

Annexure B
Extract from Stormwater Scheme Plan



<ul style="list-style-type: none"> Mamre Road Precinct Boundary Existing Lot Boundary Major Waterways Existing Easement Indicative Roads (DPE) Indicative Road Realignment Indicative Private Drainage Indicative Wastewater Pumping Station AWRC Indicative Recycled Wastewater Pipeline 	<ul style="list-style-type: none"> Land Zoning C2 Environmental Conservation IN1 General Industrial RE1 Public Recreation RE2 Private Recreation SP2 Infrastructure 	<ul style="list-style-type: none"> Proposed Stormwater Collection and Harvesting Infrastructure Proposed Trunk Drainage Naturalised Channel 20m Minimum Required Trunk Drainage Corridor Width Labels Waterways with Riparian Corridor Diversion Pipes 	<ul style="list-style-type: none"> Proposed Treatment Systems Wetland Bioretention Storage Pond Maintenance Track & Batters 01 Basin Reference Number Labels Online Sediment Basins 	<ul style="list-style-type: none"> Proposed Recirculation Infrastructure Indicative Stormwater Gravity Main Indicative Stormwater Rising Main Indicative Harvesting Pump Location Indicative Distribution Reservoir Location
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Property indicated in yellow outline



Annexure C

Figure A1: NDA Exclusions Map

