

Mrs Lucy Wicks
Chair
Joint Committee of Public Accounts and Audit
PO Box 6021
Australian Parliament House
Canberra ACT 2600

30 December 2021

Dear Mrs Wicks

Auditor-General Report 9 2020-21, Leppington Triangle Acquisition

I am writing to inform the committee's inquiry into the Auditor-General's performance audit of the Leppington Triangle acquisition.

For context, I was investigated by the Australian Federal Police (AFP) over the Leppington Triangle acquisition, and the details in this submission were the subject of written communication between the AFP and me following the AFP's announcement on 29 September 2021 that there was no indication of criminality in the acquisition of the Leppington Triangle and that the *Lands Acquisition Act 1989* requirements had been complied with. I note that some of that written communication was recently released under freedom of information legislation to a member of the parliamentary press gallery.

The released information highlights that:

- the Auditor-General mistakenly placed the Leppington Triangle in an agriculture precinct, which would mistakenly infer a lower value for the property (Attachment A)
- the Auditor-General mistakenly overlooked the differences in valuation standards as they apply to 'fair value' and 'market value' (Attachment B)
- the Auditor-General did not seek or have access to additional land valuation advice and, therefore, the Auditor-General had no evidence that the land price was 'inflated' (Attachment C).

In addition, I bring to your attention additional Questions on Notice responses from the Auditor-General, which may have further misled Parliament (Attachment D); a five-year review by the NSW Valuer General of land prices around the Western Sydney International Airport that shows the Leppington Triangle price was within the market price range when purchased and not inflated (Attachment E); and an independent review of the Leppington Triangle's 2018 valuation that shows the Auditor-General misconstrued the valuation process and incorrectly located the Leppington Triangle (Attachment F).

All public officials must exercise their duties with the degree of care and diligence that a reasonable person would exercise in the same position¹. A reasonable person, acting in the absence of evidence, would not publish a definitive conclusion that the Leppington Triangle

¹ Public Governance, Performance and Accountability Act 2013, s25

price was inflated. It is apparent that the Auditor-General did not exercise a reasonable degree of care and diligence in publishing a conclusion, without evidence, that the Leppington Triangle price was inflated. This unreasonable conduct may constitute negligence.

All public officials have a duty to act honestly and in good faith². The Questions on Notice about the location of the Leppington Triangle in relation to the Agribusiness and Agriculture precinct (Attachment D) were an opportunity for the Auditor-General to correct the record on this matter. Instead, the responses were in places misleading or misstated. This likely represents bad faith.

These and other substantive matters raise serious questions about whether the Leppington Triangle performance audit process has misled the Parliament. The evidence collection phase negligently avoided sources of fundamental knowledge. The quality assurance phase avoided expert or third-party opinion. The inference, without evidence, that the Commonwealth may have been defrauded was prejudicial. The conclusion without evidence that the Commonwealth paid an inflated price for the Leppington Triangle may constitute an abuse of public trust. The refusal to correct the record through the QONs likely continues any abuse of public trust.

I make this disclosure in the public interest and in my private capacity, and, with regard to natural justice, note that I was prevented from making an earlier submission to this inquiry by ongoing investigations and administrative processes. The Committee Secretariat confirmed on 23 December 2021 that submissions are still being accepted, and I trust you will accept this submission.

Yours sincerely



submitted electronically

² Public Governance, Performance and Accountability Act 2013, s26

Attachment A

Aerotropolis Land Use and Infrastructure Implementation Plan (LUIIP), Stage 1 Initial Precincts, August 2018³

This section highlights a substantive error of fact in the Auditor-General's performance audit⁴ of the Leppington Triangle acquisition. The performance audit stated in various places that the Leppington Triangle was to be 'placed' in or 'located' in a soon to be released NSW Government land use planning framework, as shown in the following quotes:

p29 The department was consulted on draft land use plans and was aware in advance of purchase that a future announcement about land use planning would place the Leppington Triangle in the 'Agriculture and Agribusiness' precinct of the Western Sydney Aerotropolis, rather than in the more commercial 'Aerotropolis Core'. Also that the land use planning would introduce more stringent land development controls around the airport.

p50 It eventuated that the proposed WSPGA was replaced by the Western Sydney Aerotropolis. In the proposed land use and implementation plan released in August 2018, the Leppington Triangle was located in the 'Agriculture and Agribusiness' precinct.

p71 The minute did not advise that, 20 days after the land was purchased, the Land Use and Infrastructure Implementation Plan for the Western Sydney Aerotropolis was released to the public. It placed the Leppington Triangle in the 'Agriculture and Agribusiness' precinct and not in the more commercial 'Aerotropolis Core'. The Western Sydney Unit was aware of the proposed land use well in advance of the acquisition, having provided input to the development of the Plan.

The map overleaf, Figure 1a, is from page 7 of the August 2018 LUIIP: the dashed red lines and red text in the southeast corner of the airport have been added to clearly indicate the location of the Leppington Triangle. Figure 1a shows that the Leppington Triangle was located within the Western Sydney International Airport precinct, not in the proposed Agriculture and Agribusiness precinct.

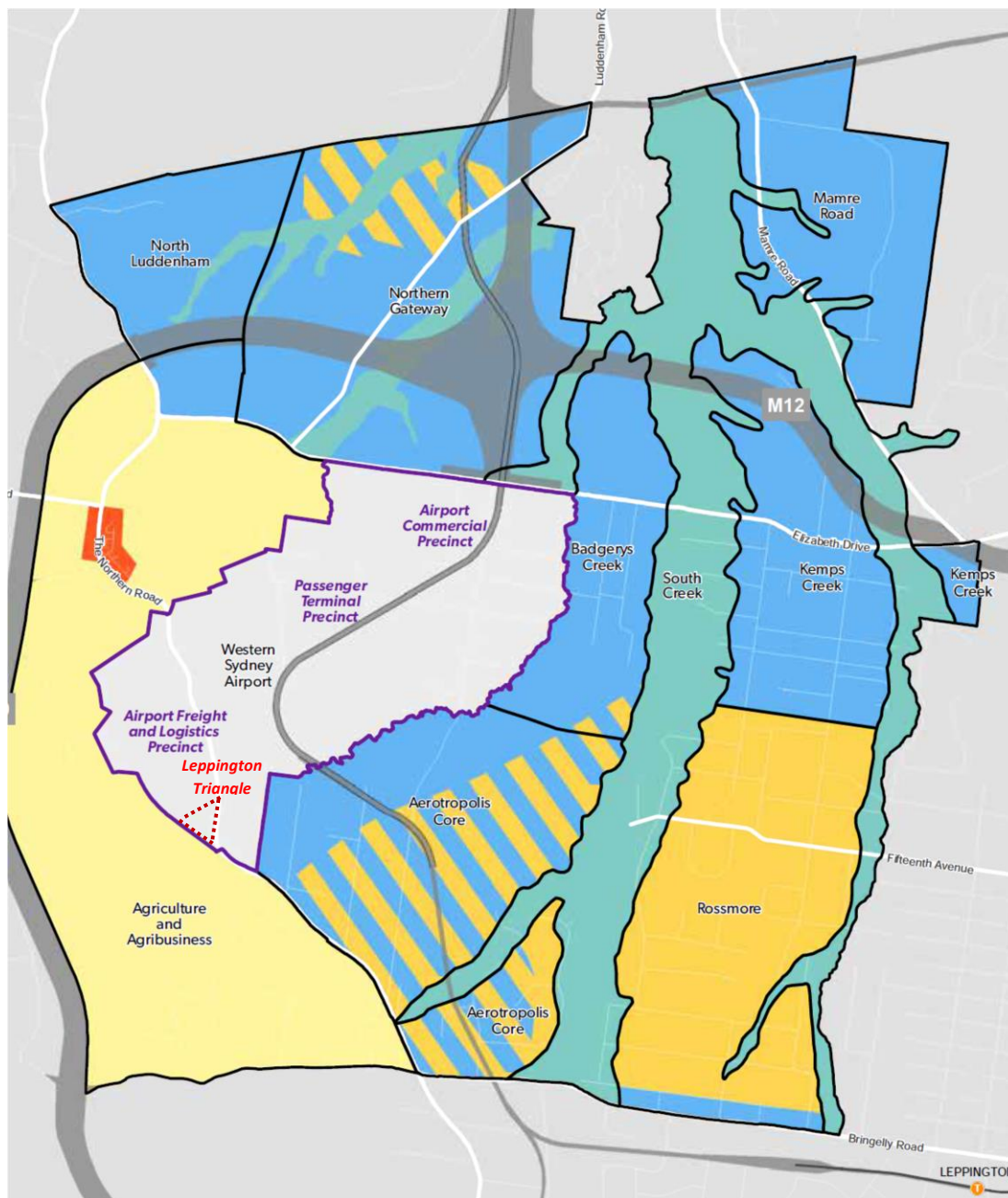
The LUIIP contains other maps – none of the other maps show the Leppington Triangle in the Agriculture and Agribusiness precinct. No text in the LUIIP indicates that the Leppington Triangle land zoning was to be treated as different from the rest of the airport land holding.

Attachment B (below) demonstrates that valuers need to assess future zoning changes to determine a market value. The LUIIP indicated a likely future higher value land use for the Leppington Triangle. **The Auditor-General was wrong to assert the Leppington Triangle was proposed to be located in the Agriculture and Agribusiness precinct, and infer it therefore was restricted to a lower value.**

³ Western Sydney Aerotropolis, Land Use and Infrastructure Implementation Plan, Stage 1 Initial Precincts, August 2018, <https://www.planning.nsw.gov.au/-/media/Files/DPE/Plans-and-policies/western-sydney-aerotropolis-stage-1-plan-08-2018.pdf>

⁴ Auditor-General, 2020, *Purchase of the 'Leppington Triangle' land for the Future Development of Western Sydney Airport*, Auditor-General Report No. 9 2020-21, 21 September 2020

Figure 1a – Structure Plan, Western Sydney Aerotropolis



Structure Plan

Western Sydney Aerotropolis

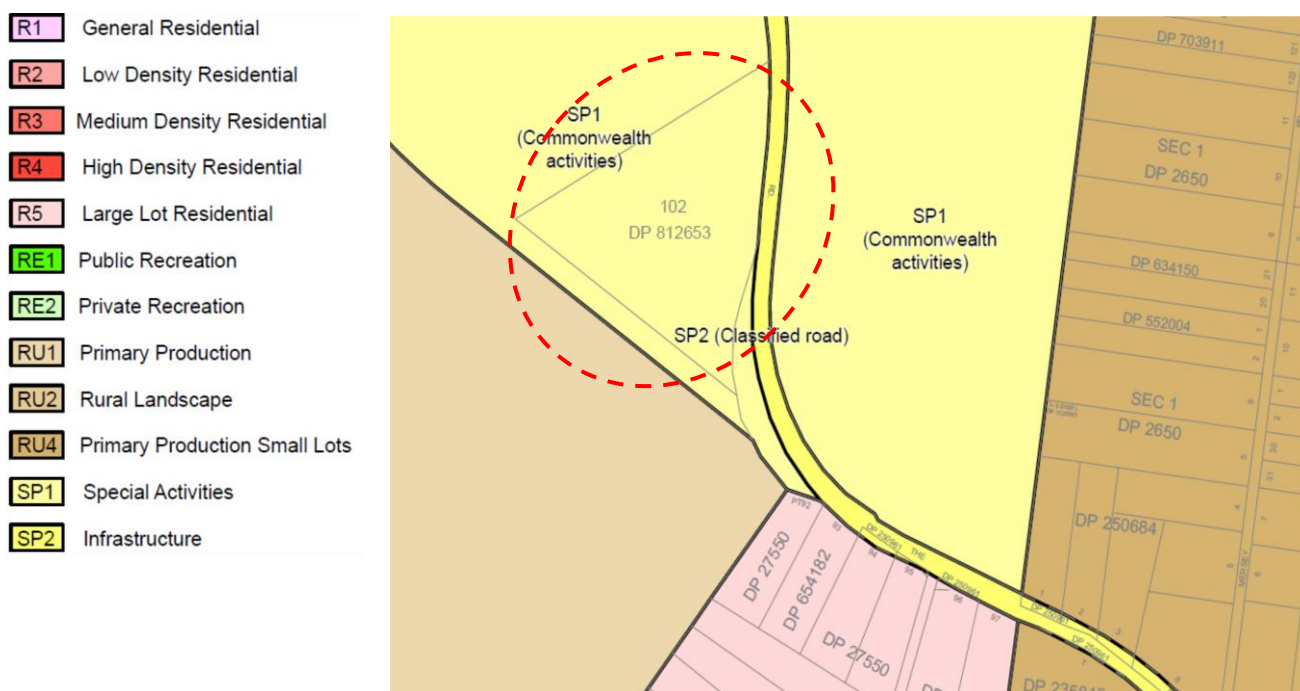
- | | | |
|------------------------------|---------------------|--|
| Precinct Boundary | Agricultural | Non Urban Land |
| Western Sydney Airport | Luddenham Village | Mixed Flexible Employment & Urban Land |
| Proposed Transport Corridors | Flexible Employment | Urban Land |



The LUIIP represented the NSW State Government’s land planning intentions for the region around the Western Sydney International Airport, including for the Leppington Triangle. Both of the two other levels of government had also published similar intentions with regards to the land use for the Leppington Triangle:

- **Local government:** The relevant local government is the Liverpool City Council (LCC), and its land use plan is the Local Environment Plan (LEP). The LCCLEP issued in 2008 was in force before and during the time of the Commonwealth’s acquisition of the Leppington Triangle and contained the Figure 1b (red dashed line added)⁵. This extract shows that the LEP applied a land zoning to the Leppington Triangle that was exactly the same as the rest of the airport, namely Special Purpose 1 (SP1). The SP1 zoning is not an agriculture zone.
- **Federal government:** The federal government published its approved Western Sydney Airport Airport Plan in December 2016. The Airport Plan, in effect at the time of the acquisition, contained a graphic that noted the Leppington Triangle as a ‘proposed acquisition’ for the airport (Figure 1c). The shading of the property showed the federal government’s intention to apply a land use zoning to the Leppington Triangle equivalent to the surrounding airport land, namely, for aviation, not agriculture, purposes.

Figure 1b – Extract from LCCLEP



⁵ Liverpool City Council Local Environment Plan, LZN_003_020_20130702, https://eplanningdlprod.blob.core.windows.net/pdfmaps/4900_COM_LZN_003_020_20130702.pdf

Figure 1c – Extract from Airport Plan⁶



KEY	
	Site Boundary
	Proposed Acquisition
AD1	Aviation Activity (327ha)
AD2	Terminal & Support Services (229ha)
AD3	Aviation Logistics & Support (238ha)
AD4	Aviation Reservation (511ha)
BD1	Business Development (191ha)
BD2	Business Development (Reservation) (155ha)
EC1	Environmental Conservation (117ha)

In summary, at the time of the Commonwealth's acquisition of the Leppington Triangle in 2018, the statutory planning documents of all three levels of government treated the Leppington Triangle as a future part of the airport, not as an agriculture precinct.

⁶ Western Sydney Airport Airport Plan, December 2016, p59
https://www.westernsydneyairport.gov.au/sites/default/files/Western_Sydney_Airport_Plan.pdf

Attachment B

Confusing or conflating 'fair value' and 'market value'

Two 'fair value' valuations in 2019 valued the Leppington Triangle financial value at \$3–4 million. A 2017 'market value' valuation valued the Leppington Triangle acquisition value at \$30 million. This section highlights relevant parts of two different valuation standards: the Fair Value Measurement accounting standard and the Bases of Value valuation standard. The section concludes that the 'fair value' assessments would have resulted in an 'extreme injustice for the dispossessed land owner' if used as the basis of compensation.

For context, it initially appeared that the Auditor-General's Leppington Triangle performance audit had confused 'fair value' and 'market value'. For example, the performance audit notes that Colliers International had stated in a 2019 valuation that 'fair value' and 'market value' were '*considered interchangeable*'⁷, whereas, in fact, Colliers International had caveated the statement with '*...in so far as they are used in our report*'⁸. The caveat was not included in the performance audit.

As a second example, the performance audit references an invalid and incorrect valuation standard⁹. The invalid standard contained a statement about the general compatibility between 'fair value' and 'market value', a statement that was removed from the international standards in 2008 and not contained in any international or Australian standard since.

Notwithstanding these two examples, in response to Senator Ayres at Senate Estimates on 24 May 2021, the Auditor-General said '*I don't think anywhere in the report we've said it's a \$3 million property, that that was the price they should have paid. That's the valuation that has come through. The price that they would have paid would have...may have been significantly more than that...*'. This acknowledgement, not found in the performance audit, is, in essence, a recognition that there are different types of valuations for different purposes. The two most relevant are outlined further below.

Fair value

Australian accounting standard AASB 13, Fair Value Measurement, is the applicable standard for the determination of 'fair value' for financial reporting purposes. AASB 13 is, for the most part, identical to the International Financial Reporting Standard IFRS 13.

⁷ Auditor-General, 2020, *Purchase of the 'Leppington Triangle' land for the Future Development of Western Sydney Airport*, Auditor-General Report No. 9 2020-21, 21 September 2020, p69

⁸ Colliers International, 2019, *Desktop Valuation Report, 165 The Northern Road, Greendale, NSW*, 30 June 2019

⁹ Page 49 of the Leppington Triangle performance audit references Concepts Fundamental to Generally Accepted Valuation Principles (GAVP). The GAVP has not formed part of the set of international or Australian valuation standards since being progressively revised from 2007 and completely removed in 2013. The GAVP contained a statement about the general compatibility between 'fair value', an accounting term, and 'market value', a valuation term. The statement about the general compatibility between 'fair value' and 'market value' was revoked and replaced with '*Fair Value is not necessarily synonymous with Market Value*' in international standard IVA 1, para, 5.3.3, and adopted by Australian and New Zealand institutes of property valuation in 2008 (ANZ Valuation and Property Standards, June 2008, p3.4.6). The statement of general compatibility was wholly removed from the revised international standards in 2013.

The definition of 'fair value' in AASB 13 and IFRS 13 is:

s9 This standard defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

In describing the various parts of the definition, both standards expand on the 'transaction' element noting that the transaction can be measured as in a 'principal market' or a 'most advantageous market' (s16) and then further define the rules that apply to the transaction:

s18 If there is a principal market for the asset or liability, the fair value measurement shall represent the price in that market (whether that price is directly observable or estimated using another valuation technique), even if the price in a different market is potentially more advantageous at the measurement date.

s19 The entity must have access to the principal (or most advantageous) market at the measurement date.

The fair value standard also requires an assessment of the highest and best use of the asset.

s27 A fair value measurement of a non-financial asset takes into account a market participant's ability to generate economic benefits by using the asset in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use.

s28 The highest and best use of a non-financial asset takes into account the use of the asset that is physically possible, legally permissible and financially feasible, as follows:

(a) A use that is physically possible takes into account the physical characteristics of the asset that market participants would take into account when pricing the asset (eg the location or size of a property).

(b) A use that is legally permissible takes into account any legal restrictions on the use of the asset that market participants would take into account when pricing the asset (eg the zoning regulations applicable to a property).

(c) A use that is financially feasible takes into account whether a use of the asset that is physically possible and legally permissible generates adequate income or cash flows (taking into account the costs of converting the asset to that use) to produce an investment return that market participants would require from an investment in that asset put to that use.

29 Highest and best use is determined from the perspective of market participants, even if the entity intends a different use. However, an entity's current use of a non-financial asset is presumed to be its highest and best use unless market or other factors suggest that a different use by market participants would maximise the value of the asset.

Market value

Australia and New Zealand property valuation standards bodies have adopted the International Valuation Standards (IVS) Council's standards – these are the standards used for acquisition purposes. The definition of 'market value' in the relevant standard, IVS 104 Bases of Value, is:

s30.1 Market Value is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length

transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

IVS 104 requires that the market value of an asset reflect its highest and best use, which is further described as:

s30.4 The Market Value of an asset will reflect its highest and best use (see paras 140.1-140.5). The highest and best use is the use of an asset that maximises its potential and that is possible, legally permissible and financially feasible. The highest and best use may be for continuation of an asset's existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid.

s104.5 The determination of the highest and best use involves consideration of the following:

- (a) To establish whether a use is physically possible, regard will be had to what would be considered reasonable by participants.
- (b) To reflect the requirement to be legally permissible, any legal restrictions on the use of the asset, eg, town planning/zoning designations, need to be taken into account as well as the likelihood that these restrictions will change.
- (c) The requirement that the use be financially feasible takes into account whether an alternative use that is physically possible and legally permissible will generate sufficient return to a typical participant, after taking into account the costs of conversion to that use, over and above the return on the existing use.

Comparing 'fair value' and 'market value'

Fair value is used for accounting purposes, while market value is used for acquisition purposes. While the definitions of fair value and market value apply some interchangeable terms and concepts, a major difference relates to the timeframe, as shown by a comparison of the highest and best use descriptions:

Fair value (AASB 13, IFRS 13)

s28(b) A use that is legally permissible takes into account any legal restrictions on the use of the asset that market participants would take into account when pricing the asset (eg the zoning regulations applicable to a property).

Market value (IVS 104)

s104.5 (b) To reflect the requirement to be legally permissible, any legal restrictions on the use of the asset, eg, town planning/zoning designations, need to be taken into account as well as the likelihood that these restrictions will change [underline added].

In other words, the fair value standard **does not require** a consideration of future probable zoning changes whereas the market value standard **does require** the valuer to look into future zoning changes:

- The fair value standard explicitly applies an assessment based on market prices available in the market at the time. Fair value is an estimate of the price at which the asset would

transfer at *'the measurement date under current market conditions'* (s2, s15, s24, s36). The standard requires the entity to *'have access to the principal (or most advantageous) market at the measurement date'* (s19). The fair value standard acts to limit the assessment to current conditions.

- The market value standard explicitly applies both a current and a future timeframe, noting the need to assess *'the likelihood that restrictions will change'* in the future. The Australian and New Zealand property institutes' guidance paper for valuers assessing compensation for acquisition and compulsory acquisitions (ANZVGP 113) prompts the valuer to interview owners/claimants to understand *'legal current and future use'* (s6.1.2). The market value standard requires the valuer to consider future legal uses.

A further difference between 'fair value' and 'market value' is the reliance of market value assessments on court rulings. The ANZVGP 113 guidance paper contains this advice for valuers:

s4.5 A sound knowledge of the application of legal precedents is fundamental to assessing compensation, as many principles interpreting the legislation have been laid down in court decisions. Consideration ought to be had to decisions which may be derived from other states and countries, or established in prior legislation, if it is relevant to the matter at hand.

A sound knowledge of the application of legal procedures is fundamental to assessing compensation.

Valuers commissioned to provide compulsory acquisition market valuations therefore need to understand relevant court rulings and the general application of valuation case law (see Attachment C1 for examples).

Application to the Leppington Triangle acquisition

The Auditor-General's performance audit states the Leppington Triangle 'fair value' assessments were conducted in mid-2019 for financial reporting purposes. There was a mid-term (10yr) agricultural lease in place between the Commonwealth and the Leppington Pastoral Company that limited the land use to agriculture activities.

Accordingly, in 2019, the only market available at the time of measurement was agriculture – this was the only land use allowed under the agricultural lease entered into by the Commonwealth and Leppington Pastoral Company. The fair value assessments concluded that the value of an agriculture-limited Leppington Triangle was between \$3 million and \$4 million. This valuation did not assess the highest and best use of the land, but rather a severely restricted land use (i.e. strictly limited to agriculture by the lease).

Conversely, the 2017 Leppington Triangle acquisition valuation need to establish a 'market value' of the highest and best use. In compliance with the valuation standard, the market value needed to assess not just the current use but also the likelihood of future change in the land's zoning. At the time of the Leppington Triangle market value assessment:

- The Liverpool City Council's Local Environment Plan had zoned the Leppington Triangle as SP1, a special purpose zoning that was used for airport land (August 2008)

- The NSW Government had published an extended Western Sydney Employment Area Draft Structure Plan (land use plan) that indicated the Leppington Triangle had a future land use of 'employment', a broad category including industrial and commercial uses (June 2013)
- The NSW Government had published the Western Sydney Priority Growth Area – this draft structure included the Leppington Triangle in the airport precinct (October 2015)
- The federal government had published its approved Western Sydney Airport Airport Plan indicating the intention to purchase and bring the Leppington Triangle into the airport. The Airport Plan also contained land use plans for the airport, which indicated the Leppington Triangle's likely future use when acquired (Dec 2016)
- The federal government had announced it would equity fund the development of the airport and establish a development company for that purpose, giving certainty to Stage 1 of the airport project (May 2017).

It is a matter of the public record that these land use plans or public announcements indicated a probable future in which the Leppington Triangle would be zoned or used as part of the airport or some other non-agricultural category. The 'market value' assessment would, by virtue of the likelihood of the future zoning change, be required to assess any value attached to the zoning change.

Summary

For the Leppington Triangle acquisition, the valuer was compelled to comply with valuation standards that required a 'market value' assessment. The market value methodology required an assessment of future probable zoning changes. The future probable zoning of the Leppington Triangle, given its location adjacent to an approved and funded international airport, was zoning for industrial purposes. The valuer's task was to determine if the future zoning (industrial) was more valuable than current use (agriculture). **Any suggestion that the Commonwealth should have, for the purpose of an acquisition, relied on a 'fair value' (current) assessment rather than a 'market value' (current and future) assessment is wrong, and would have resulted in an extreme injustice for the dispossessed land owner.**

Attachment C

Evidence about the land price being inflated

The Leppington Triangle performance audit, among other things, stated that the price paid for the Leppington Triangle was '*inflated*' and that the department's approach '*inflated the value of the land, which in turn led to the Australian Government paying more than was proper in the circumstances*'¹⁰. This section highlights that the Auditor-General made that finding without reference to credible evidence.

The Auditor-General's statement about the price being inflated is central to the controversy over the Leppington Triangle. In the nine months from the date of publishing the performance audit through to 21 May 2021, there were slightly more than 3160 print, television and radio media articles that specifically commented on the Leppington Triangle acquisition. Around 98 per cent of those articles repeated the Auditor-General's claim that the Commonwealth paid too much for the land, while 57 per cent stated the Commonwealth paid 10 times too much. The next largest portion (36 per cent) of media articles stated the overpayment was linked to potential fraud, corruption, or a cover-up, echoing the Auditor-General's statement that '*...the Commonwealth may have been defrauded*'¹¹. The Auditor-General's finding on the price being inflated was therefore, by far, the most reported audit finding.

The Auditor-General's performance audit does not contain any direct evidence that the price paid for the Leppington Triangle was inflated. There is no inclusion of a further valuation, or reference to an independent pricing report or the like commissioned for that purpose. Instead, the performance audit infers from three facts that the Commonwealth paid too much for the property:

1. Two 2019 'fair value' assessments indicated a financial reporting value of \$3–4 million.
 - a. Comment: As noted above at Attachment B above, the Auditor-General did not and does not assert that the \$3 million financial reporting valuation was a definitive indication of the Leppington Triangle's market value. It also appears that the Auditor-General did not intend to infer that the Leppington Triangle was worth only the financial reporting value. Point 1 is, therefore, not evidence that the \$30 million purchase price was 'inflated'.
2. A range of other valuations assessed a lower per-unit value than the department's 2017 valuation¹².
 - a. Comment: None of the other valuations were commissioned for the purpose of establishing a 'market value' (see Attachment B) for an acquisition under the Commonwealth's *Lands Acquisition Act 1989* and most are of a different land

¹⁰ Auditor-General, 2020, *Purchase of the 'Leppington Triangle' land for the Future Development of Western Sydney Airport*, Auditor-General Report No. 9 2020-21, 21 September 2020, p6

¹¹ Official Committee Hansard, 2020, *Finance and Public Administration Legislation Committee, Senate Estimates*, 19 October 2020

¹² For example, Auditor-General, 2020, *Purchase of the 'Leppington Triangle' land for the Future Development of Western Sydney Airport*, Auditor-General Report No. 9 2020-21, 21 September 2020, p9

holding. Point 2 is, therefore, not evidence that the \$30 million purchase price was 'inflated'.

3. The Leppington Triangle was to be located in an Agriculture and Agribusiness precinct in a soon to be released (at the time) NSW Government land use planning framework¹³.
 - a. Comment: This is an error of fact – as shown at Attachment A above, the Leppington Triangle was not to be located in an Agribusiness and Agriculture precinct and therefore Point 3 is also not evidence of the purchase price being 'inflated'.

Together with the lack of direct evidence, there appears to a lack of indirect evidence available to the Auditor-General about the land price, and a potentially a lack of diligence in gathering such evidence. The following facts were summarised from the Auditor-General's responses to Questions on Notice (QONs) after his 24 May 2021 Senate Estimates appearance:

- **The Auditor-General did not commission or have access to an independent market valuation**¹⁴ – the Auditor-General did not have a comparison 'market value' to establish a 'proper' price. It appears to be grossly irresponsible to assert the price paid by the Commonwealth was inflated or the Commonwealth 'paid more than was proper' if there is and was no comparison price.
- **The Auditor-General did not seek independent legal advice on acquisition case law** – the Australian and New Zealand property institutes' guidance paper on compensation and compulsory acquisition, ANZVGP 113, states that '*a sound knowledge of the application of legal precedents is fundamental to assessing compensation, as many principles interpreting the legislation have been laid down in court decisions*'¹⁵. The Auditor-General, by not seeking such case law advice, appears to have negligently overlooked what the valuer community holds as a fundamental input to the consideration of the 'proper' price. Case law examples that could be relevant to the consideration of the Leppington Triangle's value are at Attachment C1.
- **The Auditor-General did not indicate that he or his office sought or received any valuation process advice from the NSW Government's Valuer General**¹⁶ – the NSW Valuer General is a statutory, independent officer whose office leads valuation practice in NSW. As such, the NSW Valuer General is both deeply knowledgeable on industry practice and court precedent, and is a keen observer of and participant in the real estate market in NSW, and could be expected to have relevant insights into real estate values around the Leppington Triangle. It is not clear why the Auditor-General did not seek the

¹³Auditor-General, 2020, *Purchase of the 'Leppington Triangle' land for the Future Development of Western Sydney Airport*, Auditor-General Report No. 9 2020-21, 21 September 2020, pp29, 50, 71

¹⁴Parliament of Australia, 2021, *Senate Finance and Public Administration Legislation Committee, ANSWERS TO QUESTIONS ON NOTICE, 2021–22 BUDGET ESTIMATES*, Question reference number 53

¹⁵Australian Property Institute, Property Institute of New Zealand, New Zealand Institute of Valuers, 2021, *Valuations for Compensation and Compulsory Acquisition, Guidance Paper, ANZVGP 113*, p7

¹⁶Parliament of Australia, 2021, *Senate Finance and Public Administration Legislation Committee, ANSWERS TO QUESTIONS ON NOTICE, 2021–22 BUDGET ESTIMATES*, Question reference number 55

independent views of the NSW Valuer General – at best, this seems professionally inadequate.

- **The Auditor-General did not indicate that he or his office sought or received any expert town planning advice with regard to land use zones around the new Western Sydney International Airport** – the performance audit states that any Leppington Triangle re-zoning was ‘*highly unlikely to occur given existing legal restrictions...*’¹⁷, but there is no indication the Auditor-General sought any advice on the current or alternative zoning in coming to that conclusion. The Auditor-General indicated in QON 52 that he did not seek advice from NSW Government planning agencies, and there is no evidence of town planning advice. When compared with the valuation industry guidance and standard for this form of valuation, the Auditor-General’s approach appears to be inadequate:
 - ANZVGP 113 states that ‘*additional information may be required where the current or proposed zoning may be or is a step in the compulsory acquisition process... comment on the most likely alternative zoning should be included (supported, if necessary, by a planning consultant’s report)*’¹⁸. The international standard adopted in Australia and New Zealand states that ‘*To reflect the requirement to be legally permissible, any legal restrictions on the use of the asset, eg, town planning/zoning designations, need to be taken into account as well as the likelihood that these restrictions will change*’¹⁹. Town planning advice is key to determining what may or may not be legally permissible – the Auditor-General did not seek such advice.
- **The Auditor-General did not interview any department staff during the evidence collection phase of the audit**²⁰ – outside of the formal process-oriented entry and exit interviews, the Auditor-General did not, for the purpose of collecting evidence, interview any of the staff involved in the Leppington Triangle acquisition, nor the Australian Government Solicitor legal team that supported the department in the acquisition²¹. This is highly unusual. There appears to be no case in the over 800 performance audits conducted in the 20 years prior to the Leppington Triangle performance audit where substantive findings were issued without agency or related staff being interviewed for evidence collection.

¹⁷ Auditor-General, 2020, *Purchase of the ‘Leppington Triangle’ land for the Future Development of Western Sydney Airport*, Auditor-General Report No. 9 2020-21, 21 September 2020, pp11, 66

¹⁸ Australian Property Institute, Property Institute of New Zealand, New Zealand Institute of Valuers, *Valuations for Compensation and Compulsory Acquisition, Guidance Paper*, ANZVGP 113, p11

¹⁹ International Valuation Standards Council, 2020, *IVS 104 Bases of Value*, p24

²⁰ Parliament of Australia, 2021, *Senate Finance and Public Administration Legislation Committee, ANSWERS TO QUESTIONS ON NOTICE, 2021–22 BUDGET ESTIMATES*, Question reference number 46

²¹ Parliament of Australia, 2021, *Senate Finance and Public Administration Legislation Committee, ANSWERS TO QUESTIONS ON NOTICE, 2021–22 BUDGET ESTIMATES*, Question reference number 48

- **The Auditor-General continues to insist on the validity of an international valuation standard not used since 2007**²² – QON 54 refers to Concepts Fundamental to Generally Accepted Valuation Principles (GAVP) as a ‘*relevant industry standard[s] for conducting valuations*’. GAVP was revised in 2008 and has not been an ‘industry standard’ since that time. The 2008 revised standard, IVA1, in paragraph 5.3.3 stated that ‘*Fair Value is not necessarily synonymous with Market Value*’²³. It is misleading to refer to invalid and incorrect standards.
- **The Auditor-General did not seek advice from the NSW Government planning agencies responsible for land use plans around the new Western Sydney International Airport**²⁴ – as noted at Attachment A above, the performance audit wrongly asserted that the Leppington Triangle was ‘*placed*’ in an ‘*Agriculture and Agribusiness precinct*’ (p71, also see p29, p50) in a soon to be released (at the time of the acquisition) NSW Government planning document. The NSW department responsible for the revised planning around the airport was not consulted by the Auditor-General.

Errors of fact and misleading information

The Auditor-General’s answers to the QONs are in places unequivocally wrong, reinforcing earlier performance audit deficiencies, and in other places misleading. There are at least two substantive matters on which it appears to be irrefutable that the Auditor-General has misled the Parliament.

1. The Auditor-General’s assertion that the price was inflated is at the centre of the Leppington Triangle controversy. Over the nine months from the date the audit was published, there were over 3,160 print, radio and television articles that specifically reported on elements of the Leppington Triangle acquisition. Nearly 98 per cent of those articles repeated the Auditor-General’s claim that the Commonwealth paid too much for the land, while 57 per cent stated the Commonwealth paid 10 times too much. A large portion (36 per cent) of media articles stated the overpayment was linked to potential fraud, corruption, or a cover-up, echoing the Auditor-General’s statement that ‘*...the Commonwealth may have been defrauded*’²⁵.

The Auditor-General’s QON responses confirm he had no evidence to substantiate a claim that the Leppington Triangle price was inflated. The assertion that the price was inflated is unfounded and may have misled the Parliament and the public.

²² *ibid*, Question reference 54

²³ Australian Property Institute, 2008, *Australia and New Zealand Valuation and Property Standards*, Your guide to being a member of an industry leading professional property institute, June 2008, p 3.4.6

²⁴ Parliament of Australia, 2021, *Senate Finance and Public Administration Legislation Committee ANSWERS TO QUESTIONS ON NOTICE, 2021–22 BUDGET ESTIMATES*, Question reference number 52

²⁵ Official Committee Hansard, 2020, Finance and Public Administration Legislation Committee, Senate Estimates, 19 October 2020

2. The performance audit states that any Leppington Triangle re-zoning was '*highly unlikely to occur given existing legal restrictions...*'²⁶; that a '*sales comparison method was used that, by instruction from the department, assumed a highest and best use reflected in speculative industrial re-zoning potential that was highly unlikely to occur given existing legal restrictions*'²⁷; and that '*speculative industrial re-zoning potential*' [that] was highly unlikely to occur given existing legal restrictions and the requirements associated with the future development of the airport'²⁸.

The valuation standard (IVS104) and valuation guidance paper (ANZVGP 113) noted above both advocate including town planning advice when considering the potential for zoning categories to change for such acquisitions. An independent town planner has since stated that the Leppington Triangle acquisition was justified as an industrial valuation and that '*...it would have represented an extreme injustice to the dispossessed land owner for its compensation value to have been calculated based on a future rural zoning*'. The Auditor-General did not seek such professional advice, and appears to have been negligent in referring to legal restrictions without such advice.

The Auditor-General may have misled the Parliament and the public by asserting, without reference to any professional advice, that legal restrictions or the airport development made re-zoning highly unlikely.

²⁶ Auditor-General, 2020, *Purchase of the 'Leppington Triangle' land for the Future Development of Western Sydney Airport*, Auditor-General Report No. 9 2020-21, 21 September 2020, pp11, 66

²⁷ Auditor-General, 2020, *Purchase of the 'Leppington Triangle' land for the Future Development of Western Sydney Airport*, Auditor-General Report No. 9 2020-21, 21 September 2020, p49

²⁸ *ibid*, p66

Attachment C1

Case law examples relevant to compulsory acquisition valuations

Most Australian case law relating to compensation for acquiring, or resuming, land for public purposes is based on defining legal concepts and their application to compulsory acquisitions. The Leppington Triangle was finalised as a non-compulsory acquisition. However, the Auditor-General's performance audit timeline shows that the department's valuation was commissioned as part of what was then a compulsory acquisition process. The \$30 million valuation was an assessment of 'market value' as required under a compulsory acquisition, to which compulsory acquisition case law was applicable.

The following examples summarise in simple terms Australian case law that could apply to the compulsory acquisition valuation of the Leppington Triangle.

Example 1: Sydney Airport expansion

(Goold & Rootsey vs Commonwealth 1992, 42 FCR 51)

Principle – assessing values of land surrounded by an expanding airport

The Goold and Rootsey case was the first compensation claim to come to judgement under the then-new *Lands Acquisition Act 1989*. Table 1 compares the main features of the Goold and Rootsey case with the Leppington Triangle circumstances.

Table 1 – Goold and Rootsey and Leppington Triangle comparisons

	Goold and Rootsey	Leppington Triangle
Location	On the boundary of expanding, existing international airport	Within long-term boundary of newly established international airport
Proximity to airport	Surrounded by airport land, other than fronting road	Surrounded by airport land, other than fronting road
Special purpose zoning	SP zone in place for the purpose of the airport; SP zone covered acquisition properties	SP zone in place for the purpose of the airport; SP zone covered acquisition property
Underlying zoning	Residential	Rural

In the Goold and Rootsey case, two small residential properties were being compulsorily acquired for the Sydney (Kingsford Smith) Airport expansion. The owners rejected the original valuations that were based on comparable residential sales and the Federal Court ruled that, rather than residential, sales of properties with commercial or industrial attributes provided a more equitable comparison.

The Court noted that the proximity of the residential properties to Sydney Airport would make them attractive for various commercial operators but that the lack of recent comparable sales complicated the valuation and required comparison with properties from further afield.

The Court noted that there was no contention among the valuers at the trial about the basis for the valuations – although the airport’s valuers originally valued the properties as residential, by the time of the trial all valuers agreed that the highest economic use was greater than residential.

Ultimately, the Court applied a valuation methodology that upgraded the existing residential land use to a higher value land use, namely a mix of industrial and commercial, resulting in higher compensation for the sellers.

Relevance to the Leppington Triangle compulsory acquisition valuation – As with the Goold and Rootsey case, the Special Purpose zoning that applied to the Leppington Triangle should be disregarded, and a highest and best use assessment should be undertaken free of any constraints or prohibitions in the SP zoning. Any direct value to the Leppington Triangle from the airport development itself should not be a consideration in the valuation. However, the indirect value of proximity to the airport featured strongly in the Goold and Rootsey ruling, adding to the residential properties’ commercial desirability. The indirect value of the Leppington Triangle’s common boundaries with Western Sydney International Airport; its ~500-metre frontage to The Northern Road; and its neighbouring proximity to the freight and logistics hub at the southern end of Western Sydney International Airport appear to be some of the matters that could validly be considered in a highest and best use assessment for the Leppington Triangle valuation.

Example 2 – Sunshine Coast Airport new runway

(Savimaki and Ors vs Sunshine Coast Regional Council, 2013, QLC33)

Principle – assessing land values adjacent to an existing and expanding airport

The Sunshine Coast Airport, then known as the Maroochydore Airport, had contemplated for decades a change from a north-south facing runway to a southeast-northwest orientation. In 2006, a decision to compulsorily acquire adjacent land for the purpose of the new runway and associated infrastructure resulted in a compensation offer being rejected by the then-owners of the adjacent property. Table 2 compares the main features of the Savimaki case with the Leppington Triangle circumstances.

Table 2 – Savimaki and Leppington Triangle comparisons

	Savimaki	Leppington Triangle
Location	On the boundary of expanding, existing regional airport	Within long-term boundary of newly established international airport
Proximity to airport	Various lots but generally adjoining airport land	Surrounded by airport land, other than fronting road

Special purpose zoning	SP zone in place for the purpose of the airport; SP zone covered acquisition properties	SP zone in place for the purpose of the airport; SP zone covered acquisition property
Underlying zoning	Rural	Rural

The Queensland Land Court disregarded any potential direct gain to the then-landowners that would be due to the development of the new runway and associated infrastructure itself. However, the Court noted that any potential buyer of the Savimaki property would likely be seeking to take advantage of proximity to the existing airport, notwithstanding that road access to the Savimaki property was challenging at the time.

The Court found it was correct to view ‘...the land as capable of development for industrial [purposes] ...completely independent of what was occurring at the airport’ and rejected the alternate view ‘...that the highest and best use of the land was for agricultural purposes only’.

The Court therefore set a compensation determination that accorded a highest and best use aligned with the potential likely future industrial attributes of the land.

Relevance to the Leppington Triangle valuation – Although Western Sydney International Airport remains under construction, it is nonetheless fully established under the relevant legislation as an airport and is subject to the same statutory regulations as other federally regulated airports. Western Sydney International Airport is projected to grow to eventually be Australia’s largest airport and the ability to operate without a curfew or flight caps, such as those in place at its main competitor Sydney (Kingsford Smith) Airport, means that the high-value air freight business is projected to be larger at Western Sydney International Airport relative to Sydney (Kingsford Smith) Airport. The Leppington Triangle is the only large, privately held property within the long-term boundaries of the Western Sydney International Airport site and it is also advantageously located at the southern end of the airport close to the airport’s freight and logistics hub. As with the Savimaki land, the Leppington Triangle is highly likely to be attractive for development for industrial purposes independent of the airport development itself.

Example 3 – Valuing Southern Cross Station, Melbourne

(PTDA & Civic Nexus Pty Ltd v Commissioner of State Revenue (Review and Regulation) [2016] VCAT 1457)

Principle – assessing non-commercial public use land with only one likely buyer

Southern Cross Station is located in Melbourne’s central business district (CBD) and is the main public transport hub for the CBD. A valuation required for the purpose of determining land tax was conducted by the Valuer-General Victoria and was opposed by the lease owner.

Table 3 – PTDA & Civic Nexus and Leppington Triangle comparisons

	PTDA & Civic Nexus	Leppington Triangle
Location	Melbourne CBD	Within long-term boundary of newly established international airport
Public land	Used for a public transport intermodal hub	Surrounded by airport land, other than fronting road
Special purpose zoning	No special purpose zoning in place	SP zone in place for the purpose of the airport; SP zone covered acquisition property
Underlying zoning	Mixture of CCZ1 (Capital City Zone) and PUZ1 (Public Use Zone)	Rural (RU1)

The Victorian Civil and Administrative Tribunal (VCAT) noted that both parties to the dispute agreed that the highest and best use of the property was as a public transport hub, its present use.

Although there were significant heritage and other land use restrictions on the site making the current use uncommercial for a private bidder, the property was nonetheless essential to the provision of public services and therefore of significant value.

VCAT noted that, if the state did not own Southern Cross Station, it would need to purchase a similar property to provide those public services. In a hypothetical auction of Southern Cross Station ‘...the pivotal importance of the station site to the State and the people of Victoria who daily use the station is a very strong imperative for the State of Victoria to purchase the station site’ and that given ‘...the importance of the station site to Victoria, the State would inevitably agree to and negotiate to secure a vital infrastructure property’.

VCAT ultimately determined that a valuation based on a mix of commercial and industrial comparison sales was appropriate, even though the state government was the only likely purchaser, that the property could not generate a commercial return and that the property was predominantly used for public purposes

Relevance to the Leppington Triangle valuation – The government or the airport development company could not develop Western Sydney International Airport’s second runway without the Leppington Triangle. The Triangle occupies a space at the southern end of the second runway known as the glide path and public safety zone. This zone is central to the safety integrity of the runway and therefore provides a vital public service, but the context of the that service is within an industrial setting, namely an operating airport.

Example 4 – Valuing undeveloped low-value land for a public purpose

(Vyricherla Narayana Gajapatiraju v Revenue Divisional Officers Vizagapatam, [1939] AC 302)

Principle – valuing disadvantaged land with only one potential buyer

The VCAT determination of Example 3 above stated that, ‘for many decades, the leading decision in Australia dealing with the valuation of land to be used and developed for a public purpose has been the Privy Council decision in Raja Vyricherla Narayana Gajapatiraju v Revenue Divisional Officers Vizagapatam’ (Raja). The Privy Council’s decision in Raja was followed in Australia, New Zealand, and Canada and prominently cited in the decisions in all examples above.

The Privy Council in Raja allowed for increased value in circumstances of a compulsory acquisition where the land was worthless unless used for the purpose for which it was being compulsorily acquired. In Raja an Indian statutory authority in the process of constructing a harbour compulsorily acquired adjoining malarious swamp land because it was a source of fresh water which was required for industrial users of the harbour as well as to carry out anti-malarial works. To parties other than the statutory authority the land had, on all the evidence available, limited value and its future value was highly dependent on the very scheme for which the acquisition was made. On application of the principles established in Clay and Glass v IR Commissioners, the Privy Council held that the land was to be valued on the basis of its expected future use which included the uses of a compulsory acquirer who, but for speculators, might be the only possible purchaser^{29,30}.

Raja is often cited together with another Privy Council judgement known as Pointe Gourde³¹, which confirmed that the ‘compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition’. However, in the Raja case, the Privy Council stated that, while a value increase directly attributable to the ‘scheme’ itself is to be disregarded, the ‘possibility that a particular purchaser of land will give a higher price for it by reason of it possessing a special adaptability’ can be included in compensation assessments, even if there is only one particular purchaser.

Relevance to the Leppington Triangle valuation – Raja indicates that future uses need to be considered in the Leppington Triangle compensation assessment, while Pointe Gourde indicates that value directly attributable to building Western Sydney International Airport could not be included in the valuation. For the Leppington Triangle, the indirect land value increase due to the neighbouring airport and the subsequent likely re-zoning of the Leppington Triangle for industrial purposes could and should be accounted for in the valuation, as could the special adaptability of the land to an airport and its subsequent attractiveness to the airport as a purchaser.

²⁹ Keogh, John. "The 'special value' of land in compulsory acquisition cases." *Australian Property Journal* 38.1 (2004): 47.

³⁰ Clay and Glass v IR Commissioners (1915) 52 Scot LR 414

³¹ Pointe Gourde Quarrying & Transport Company Limited v Sub-Intendent of Crown Lands [1947] AC 565

Example 5 – Road widening land purchase, Mascot, Sydney
(SNS Pty Ltd v Roads and Maritime Services [2018] NSWLEC 7)

Principle – assessing all possible potentialities

To widen a road for the WestConnex project, Roads and Maritime Services compulsorily acquired part of a property in Mascot. The property was zoned B4 Mixed Use, which allowed a mixture of retail, commercial and residential development, and the various town plans in place at the time encouraged developments with a range of residential, office, retail and other commercial possibilities.

The property owners objected to the Valuer-General's compensation assessment. In passing judgement, the NSW Land and Environment Court cited numerous other NSW cases in summarising that the '...land must be valued at the relevant date in its existing condition with all its potentialities' and that '...as a general principle in determining compensation, doubts should be resolved in favour of a more liberal estimate'.

The Court ruled that the statutory valuation in the SNS case was too low because it did not assess the 'most profitable potential use' of the subject land.

Relevance to the Leppington Triangle valuation – The NSW Land Court's SNS determination together with Raja and Pointe Gourde suggest it would be appropriate to value the Leppington Triangle, not as part of a developed and operating airport, but as having additional potential due to the development of the airport and land use changes around the airport.

Attachment D

Misleading QON responses

Three Questions on Notice to the Auditor-General after his 24 May 2021 Senate Estimates appearance pointed out that paragraph 4.77 of the performance audit was mistaken³². Paragraph 4.77 incorrectly stated both that the Leppington Triangle was to be placed on an Agriculture and Agribusiness precinct, and that the department knew that at the time of the acquisition.

The Auditor-General's response to Question 52 of the Senate Finance and Public Administration Legislation Committee 2021-22 Budget Estimates contained the following:

The August 2018 release was intended as a high-level plan, with a more detailed Structure Plan to be released. The 'Western Sydney Aerotropolis Plan' was released for public comment in December 2019 and its more detailed maps of the precincts placed the Leppington Triangle land clearly in the Agribusiness precinct and not in the Aerotropolis Core. See: Western Sydney Aerotropolis Plan 2019 Draft for public comment (shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com) including the map on page 7 of that document.

The Western Sydney Aerotropolis Plan – Draft for Public Comment³³ (Draft WSAP) was not referred to in the Auditor-General's performance audit of the Leppington Triangle acquisition. A side-by-side comparison between the August 2018 LUIIP (Figure 2) that was referred to in the performance audit and the Draft WSAP page 7 Initial Precincts map (Figure 3) is shown below.

The comparison demonstrates that the Auditor-General's performance audit was wrong in its assertion that the Leppington Triangle was in an Agriculture and Agribusiness precinct in 2018.

The QON response reference to the Draft WSAP Structure Plan is also highly misleading – the page 7 map is not the Structure Plan. Instead, the Structure Plan, otherwise known as the land use plan, is at page 27 of the Draft WSAP, as shown at Figure 4 below. The Structure Plan allocates the same land use zoning for the Leppington Triangle as for the airport – **it treats the Leppington Triangle the same as the airport, not as an agriculture zone.**

The Auditor-General's QON response also does not mention that the proposed legislative instrument that was to give effect to the Structure Plan, the State Environment Planning Policy (SEPP), was included at page 29 of the Draft WSAP (Figure 5 below). **The proposed SEPP also contained a land use zoning for the Leppington Triangle the same as the airport, not as an agriculture zone.**

There can be no doubt that the August 2018 and December 2019 NSW planning documents proposed to treat the Leppington Triangle zoning as equivalent to the zoning for the rest of the airport. Therefore, the future probable zoning for the Leppington Triangle was not agricultural, which, as required by the valuation standards, a valuer conducting a market valuation would need to take into account (see Attachment B).

³² Parliament of Australia, 2021, *Senate Finance and Public Administration Legislation Committee ANSWERS TO QUESTIONS ON NOTICE, 2021–22 BUDGET ESTIMATES*, Question reference numbers 35, 36 and 52

³³ https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/A+Aerotropolis/WesternSydneyAerotropolis_Plan_DraftForComment_WEB_optimised.pdf

The Auditor-General's claim in the QONs that the Leppington Triangle was not formally a part of the airport at the time of the acquisition is also misleading. The valuation standard requires that the valuer look into probable, legal and financially feasible future uses and, given the proposed NSW Government zoning and the proposed Commonwealth use, the most probable future use of the Leppington Triangle was not agricultural.

The Auditor-General had the opportunity to correct the record through the QON responses but instead provided responses that may have further misled Parliament.

Figure 2 – August 2018 LUIIP (Leppington Triangle added in red)

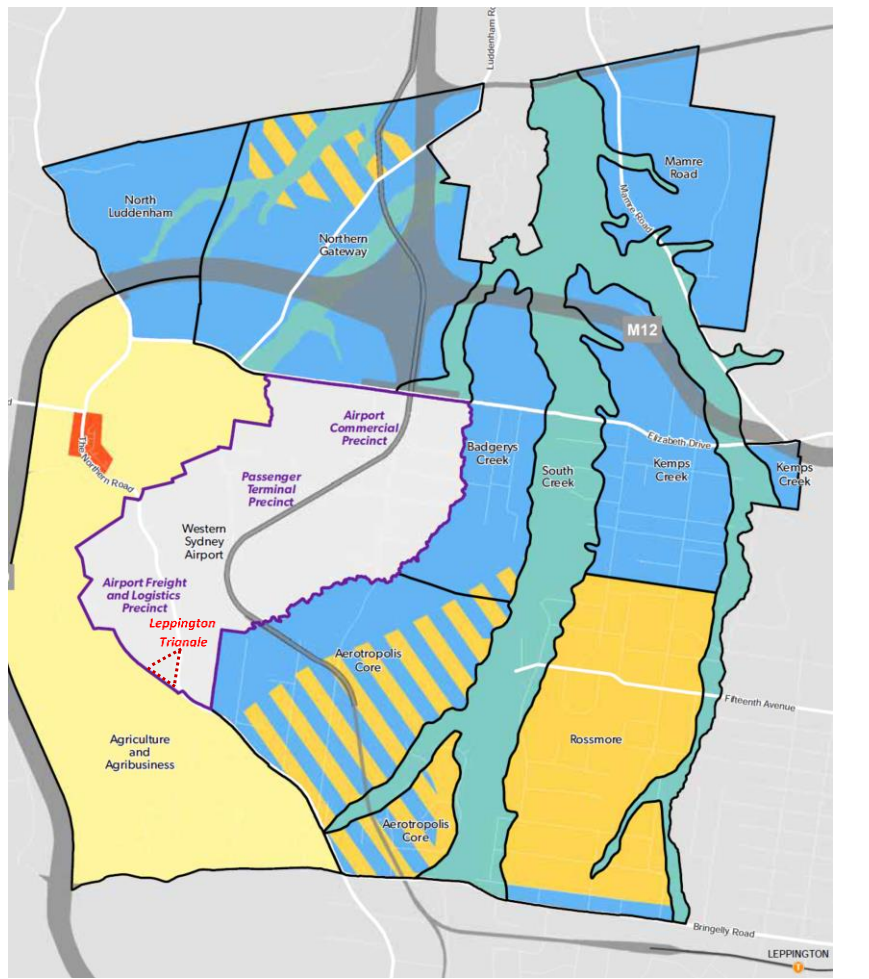


Figure 3 – December 2019 Draft WSAP

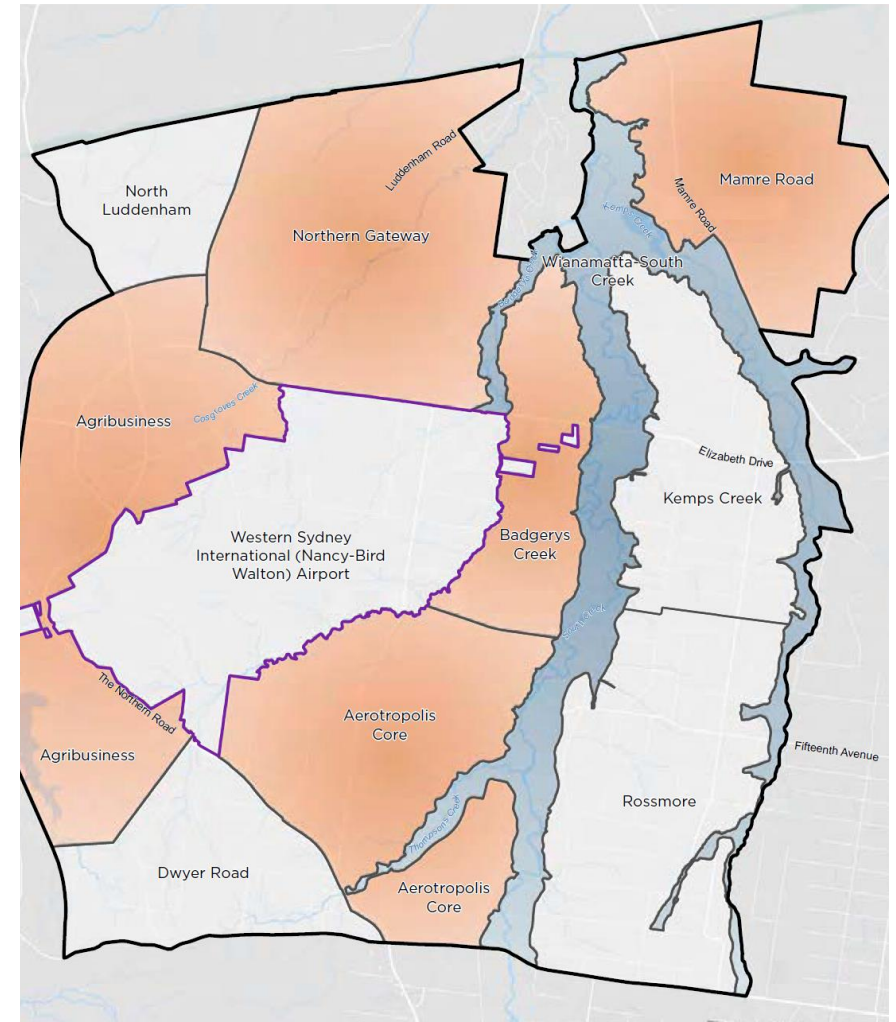
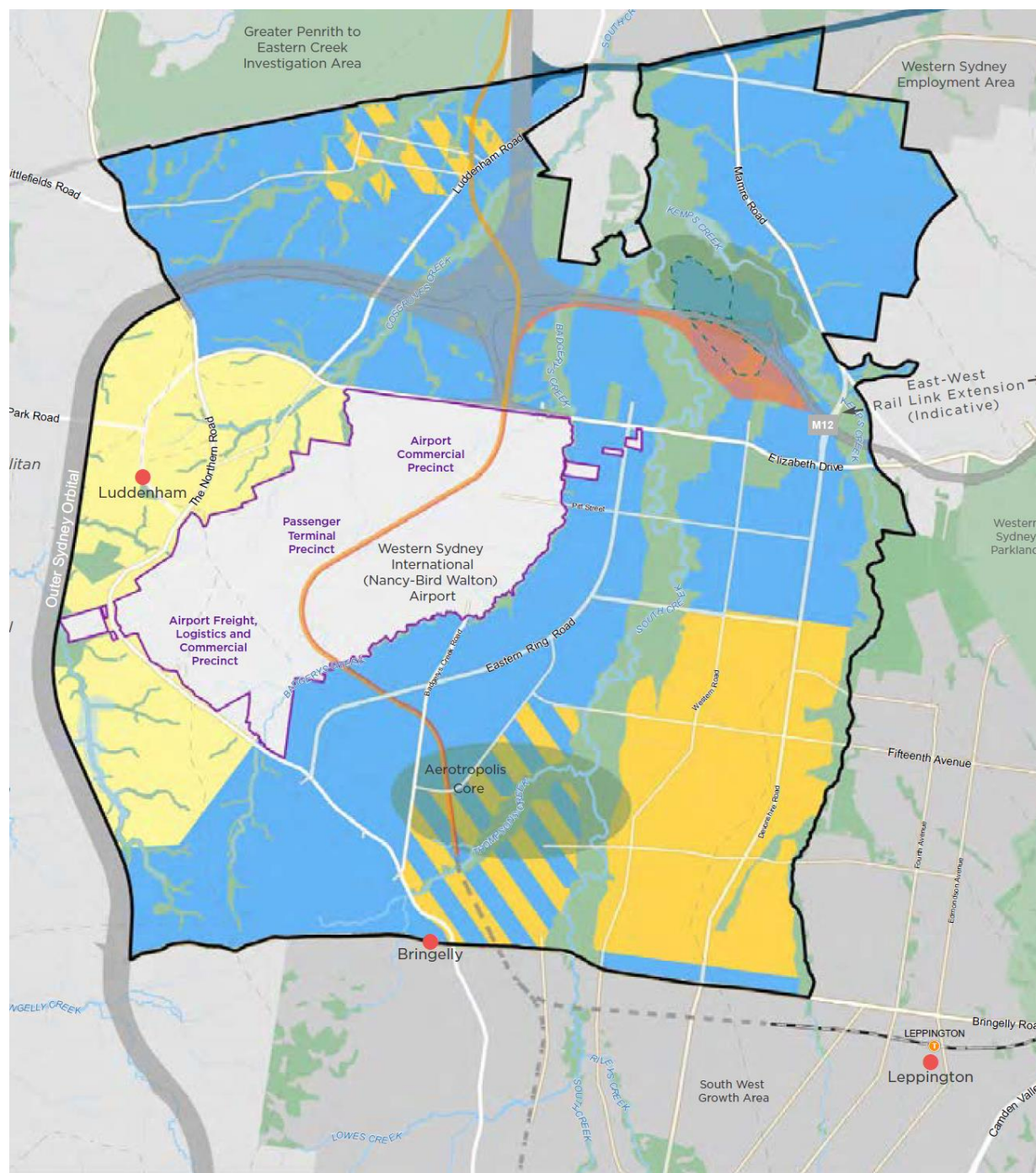


Figure 4 – Draft WSAP Structure Plan (land use plan), p27



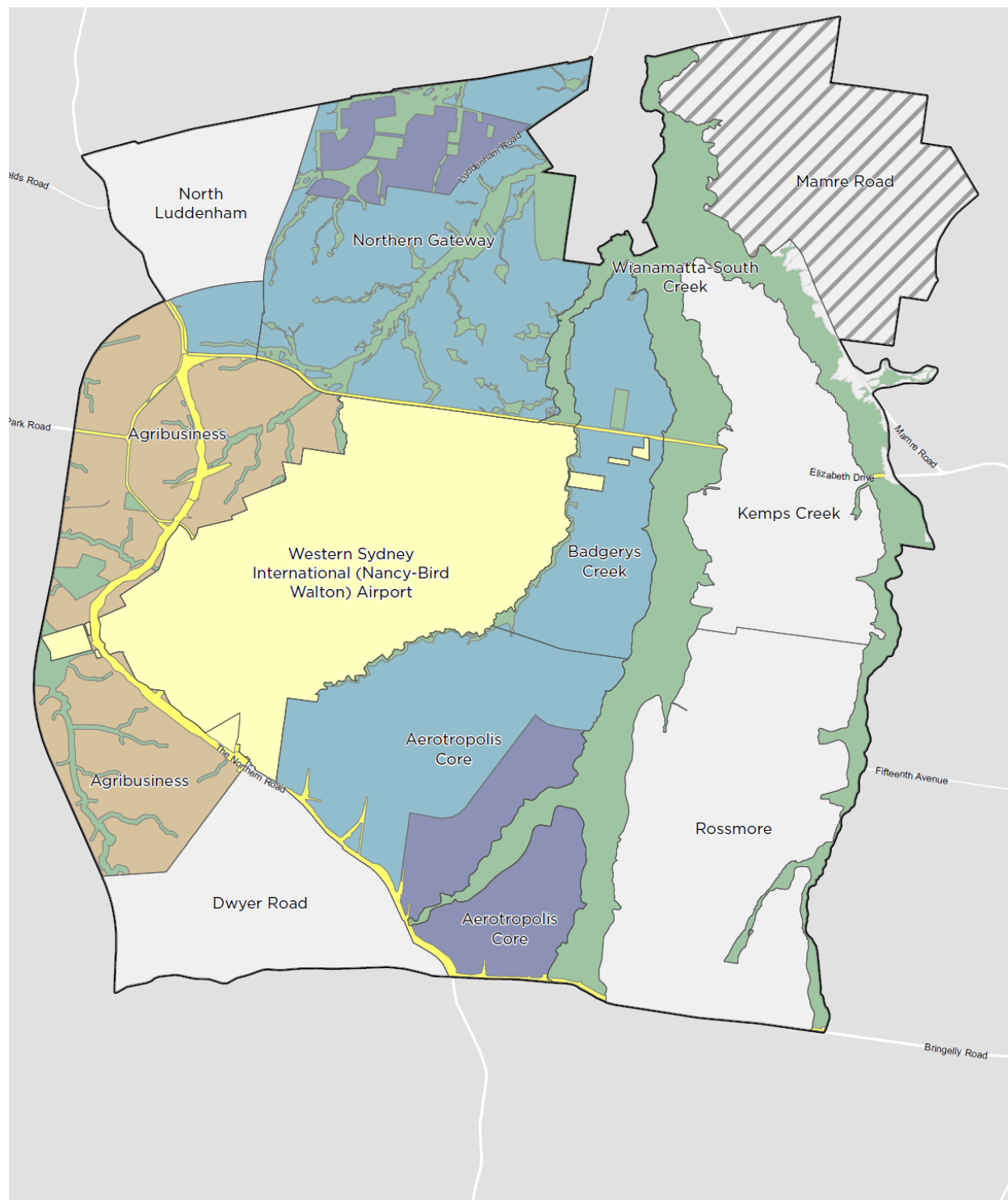
Structure Plan

Western Sydney Aerotropolis

- | | | |
|--|---|--|
| Western Sydney Aerotropolis | Proposed Sydney Metro Greater West | Centre |
| Western Sydney International (Nancy-Bird Walton) Airport | Potential East-West Rail Link, Stabling and Critical Infrastructure | Agribusiness |
| Topographic Ridgeline | Proposed Future Rail Links (Investigation) | Environment and Recreation |
| Key Network Upgrades | Proposed Transport Corridor | Flexible Employment |
| Regional Parkland (Investigation) | Potential Western Sydney Freight Line Corridor | Urban Land |
| Critical Utility / Infrastructure (Investigation) | | Mixed Flexible Employment & Urban Land |



Figure 5 – Proposed State Environment Planning Policy, p29



Land Zone

Western Sydney Aerotropolis

- | | | |
|-----------------------------|----------------------------|------------------------------|
| Western Sydney Aerotropolis | Agribusiness | Special Purpose 1 |
| Precinct Boundary | Enterprise | Special Purpose 2 |
| | Environment and Recreation | Relevant LEP Zone |
| | Mixed Use | Mamre Road (under WSEA SEPP) |



Attachment E

An independent view of the value of the Leppington Triangle

This section outlines key findings from a 2021 report by the NSW Valuer General, and concludes that the price paid by the Commonwealth for the Leppington Triangle was within the range of prices paid in the market at the time, and certainly not inflated.

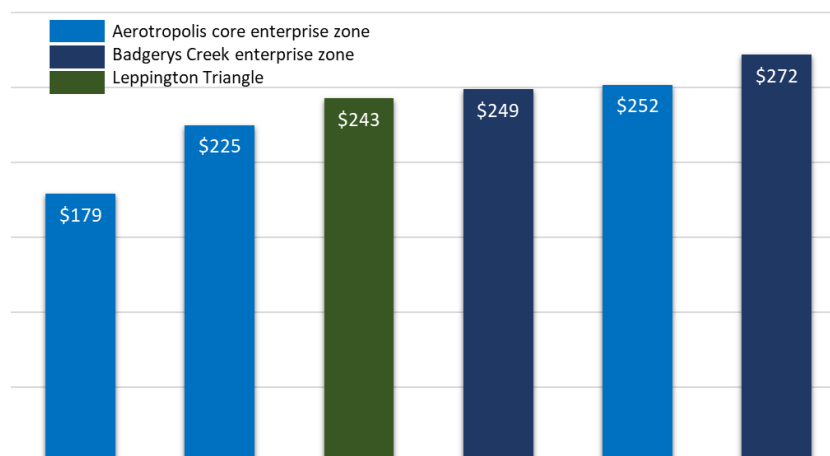
The NSW Valuer General fills a statutory role appointed by the NSW Parliament, and is wholly independent from the Leppington Triangle matter.

The NSW Valuer General published a research report in April 2021 that analysed property price increases around the Western Sydney International Airport in the years 2016 to 2020. The report, *Review of the impact of rezoning potentiality on land values, February 2021*³⁴, noted that land prices around the airport increased rapidly in the four financial years prior to rezoning, with increases of up to 238 per cent (p26).

It also showed that, in 2018, the year of the Leppington Triangle acquisition, there were five properties proximate to and with similar attributes to the Leppington Triangle that sold in the private market. The range of prices for those five properties, and the Leppington Triangle acquisition price, are below, and indicated in Figure 6:

Property price in 2018	\$/m²
5 proximate properties with similar attributes ³⁵	\$179–272
Leppington Triangle	\$243

Figure 6 - 2018 sales of comparable properties, \$/m2



³⁴ NSW Valuer General, 2021, *Review of the impact of rezoning potentiality on land values*, February 2021, https://www.valuergeneral.nsw.gov.au/__data/assets/pdf_file/0004/228712/2021_04_06_Valuer_Generals_Review_of_the_impact_of_rezoning_potentiality_on_land_values.pdf

³⁵ NSW Valuer General, 2021, *Review of the impact of rezoning potentiality on land values*, February 2021, p26, 29

Governments need to pay market prices when buying land and the best measure of the market price is the prices paid by other buyers in the same market. The NSW Valuer General's report is further confirmation that, at \$30 million for 30 acres (12.3 hectares), the Commonwealth paid a fair price for the Leppington Triangle, within the range of prices paid in the market at the time. There is no indication that the Commonwealth paid an inflated price for the Leppington Triangle.

The Auditor-General received a Question on Notice about the NSW Valuer General's research report, and responded noting among other things that land in the Agriculture and Agribusiness precinct was valued at \$35/m² in 2018³⁶. **This is misleading.** The Leppington Triangle was not in the Agriculture and Agribusiness precinct at the time of its acquisition (Attachment A) and the long-term zoning for the Leppington Triangle was equivalent to an airport (Attachment D) – land prices in the Agribusiness precinct have no direct relevance to the value of the Leppington Triangle.

³⁶ Parliament of Australia, *Senate Finance and Public Administration Legislation Committee ANSWERS TO QUESTIONS ON NOTICE, 2021–22 BUDGET ESTIMATES*, Question reference number 55

Attachment F

Expert town planning opinion concerning Leppington Triangle acquisition

An expert town planner was commissioned for the purpose of assessing the Commonwealth's 2017 valuation of the Leppington Triangle, and for assessing the comparison properties used within that 2017 valuation. The expert town planner agreed to be bound by the Expert Witness Code of Conduct found at Schedule 7 and other rules of the Uniform Civil Procedure Rules 2005.

The expert town planner's Town Planning Report is attached below. It includes the following observations:

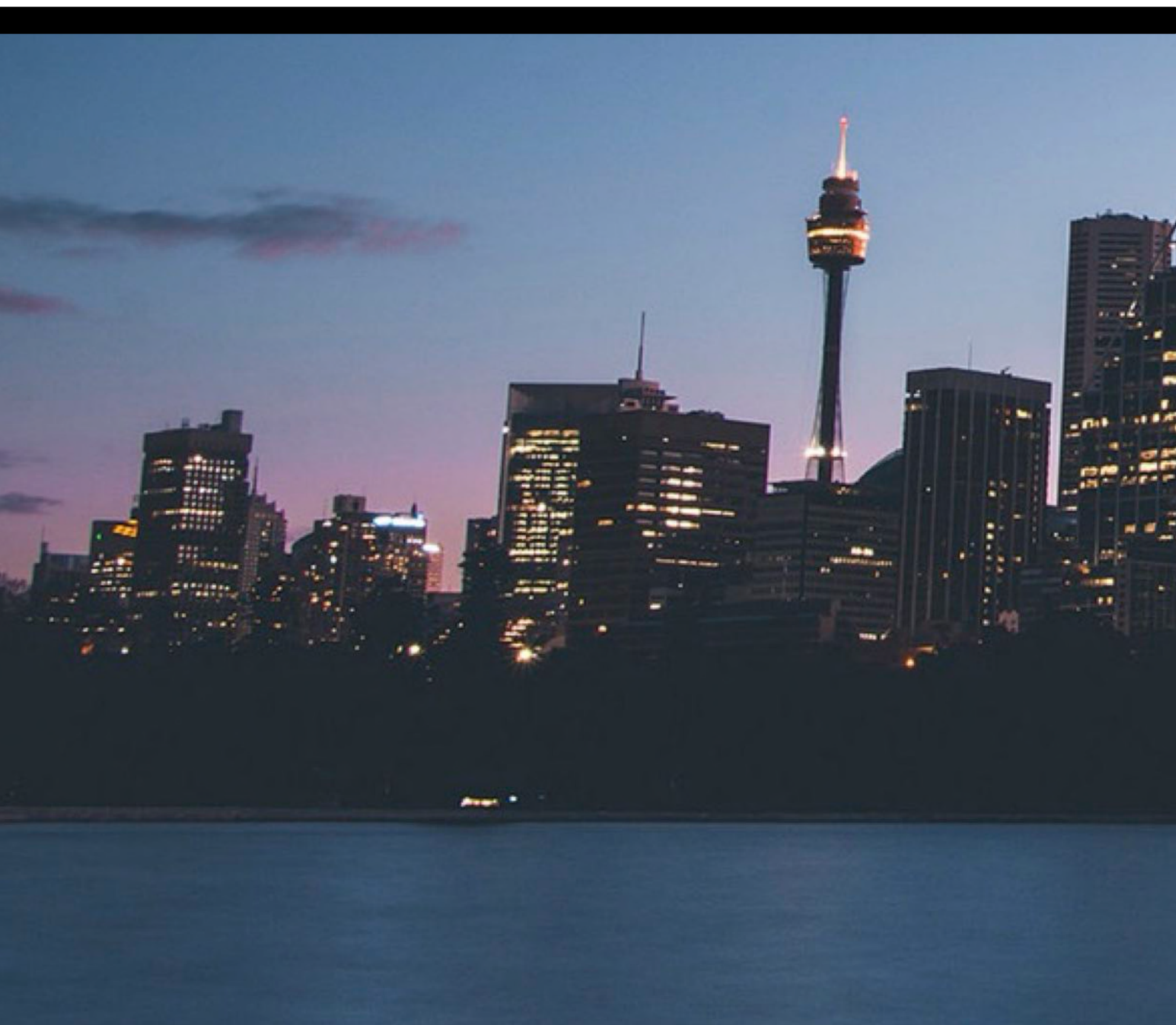
- 'It is an error of fact to say that the Leppington Triangle was located within the Agriculture and Agribusiness precinct' (s76)
- '... it was readily foreseeable that no land on the eastern side of The Northern Road, proximate to the Leppington Triangle would have ultimately been zoned and developed for agriculture' (s78)
- '...the comparison sites chosen for comparison with Leppington Triangle were valid, and sufficiently comparable for an expert valuer to make appropriate adjustments' (s98)
- 'In my opinion, it would have represented an extreme injustice to the dispossessed land owner for its compensation value to have been calculated based on a future rural zoning. Instead, as noted above, a zoning of General Industrial, Heavy Industrial, Enterprise Corridor or Business Development would have been appropriate' (s105).



Expert Town Planning Opinion Concerning Acquisition of Leppington Triangle (Lot 105 DP 1236319)

Prepared under Instructions from FM Legal

15 October 2021



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1. Introduction

1. This Town Planning Report has been prepared by David Haskew. I am a qualified Town Planner with 23 years' experience as a Local Government Planner and as a Planning Consultant. A copy of my Curriculum Vitae is included as Attachment A.
2. FM Legal has engaged me to provide expert opinion about two things concerning the acquisition of Lot 102 DP 1236319 (Leppington Triangle).
3. First, my opinion is requested about the underlying zoning of the land. That is, if Leppington Triangle had not been required for a public purpose, what would have been the zoning of the land on 31 July 2017. Further, I am asked to opine about whether the zoning would have been likely to change by 31 July 2018, and if so, to what.
4. Also, on underlying zoning, I have been asked to consider the findings of a valuation report prepared by MJ Davis and to advise whether I agree with the findings of that report about potential future zoning. If I do not agree with those findings, I am asked to provide my reasons why.
5. Second, I have been provided with a list of comparable sales, which were used for the purposes of determining "market value" of the Leppington Triangle. I have been asked for my opinion about whether they were appropriate comparable sales having regard to their underlying zoning and their exposures to aircraft noise. If I believe them to not be comparable, my opinion is requested as to whether they are inferior or superior to Leppington Triangle.
6. A copy of my letter of instruction is included as Attachment B.

1.1. Expert Witness Practice Directions

7. I have been provided with a copy of Division 2 of Part 31 of the Uniform Civil Procedure Rules 2005 and the Expert Witness Code of Conduct contained within Schedule 7 of those Rules. I have read and understood those rules and agree to be bound by them.

1.2. Documents Relied on

8. In preparing this expert report I have relied on a number documents including:
 - a. State Environmental Planning Policy (Western Sydney Growth Centres) 2006
 - b. State Environmental Planning Policy (Western Sydney Employment Area) 2009;
 - c. State Environmental Planning Policy (Western Sydney Airport) 2020;
 - d. Lands Acquisition Act 1989 (LA Act).
 - e. City of Cities – A Plan for Sydney's Future – Metropolitan Strategy – 2005;
 - f. Metropolitan Plan for Sydney 2036 - 2010,
 - g. Draft Metropolitan Strategy for Sydney 2013;
 - h. Draft Broader Western Sydney Employment Area Structure Plan 2013;

- i. A Plan for Growing Sydney 2014;
- j. Western Sydney Rail Needs Scoping Study, 2016;
- k. Draft Southwest District Plan – 2016;
- l. Greater Sydney Region Plan, 2018;
- m. Western Sydney Aerotropolis Land Use and Infrastructure Plan – Stage 1, 2018;
- n. Draft Western Sydney Aerotropolis Plan, 2019;
- o. Draft Aerotropolis Precinct Plans, 2020
- p. Auditor-General Report No.9 2020-21, Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport

1.3. Relevant Dates

9. Pursuant to my letter of instruction, my opinions are provided on the assumption that the Leppington Triangle was hypothetically transacted on either 31 July 2017 or, alternatively, 31 July 2018. By considering both dates, I can allow for a situation where a highest and best use valuation was concluded in 2017 and the eventual property settlement was concluded in 2018. For the avoidance of doubt, the different dates have a negligible impact on the opinions I express in this report.

2. The Subject Site

10. The subject site is formally described as Lot 105 DP1236319. It is commonly known as the Leppington Triangle and will be that way referred to within this report.
11. It is situated on the north eastern side of the realigned The Northern Road, approximately 540 m north west of its intersection with Dwyer Road. It is triangular in shape, having a total area of 12.26 ha and frontage to the realigned The Northern Road of approximately 475 m.
12. The subject site is former pastoral land and does not contain any ecologically significant vegetation. A natural watercourse bisects the site in an east-west direction through the approximate midpoint. Based on the Strahler system of stream categorisation, the watercourse is a category 2 stream.
13. The site's location is shown in the regional context as Figure 1 and in the local context as Figure 2. A detailed site view aerial photograph showing contours and hydroline mapping is provided as Figure 3.

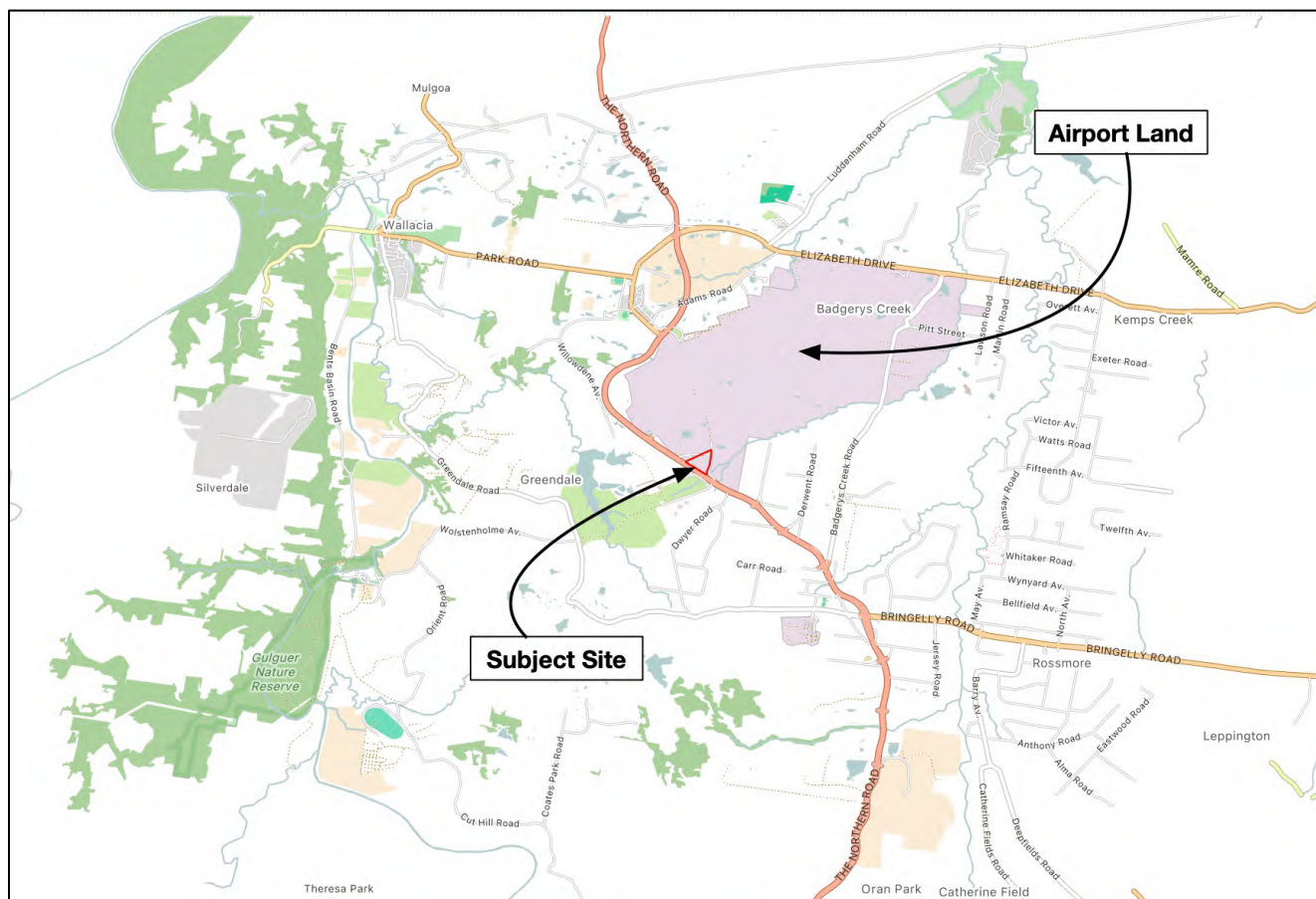


Figure 1: Site Location Regional Context

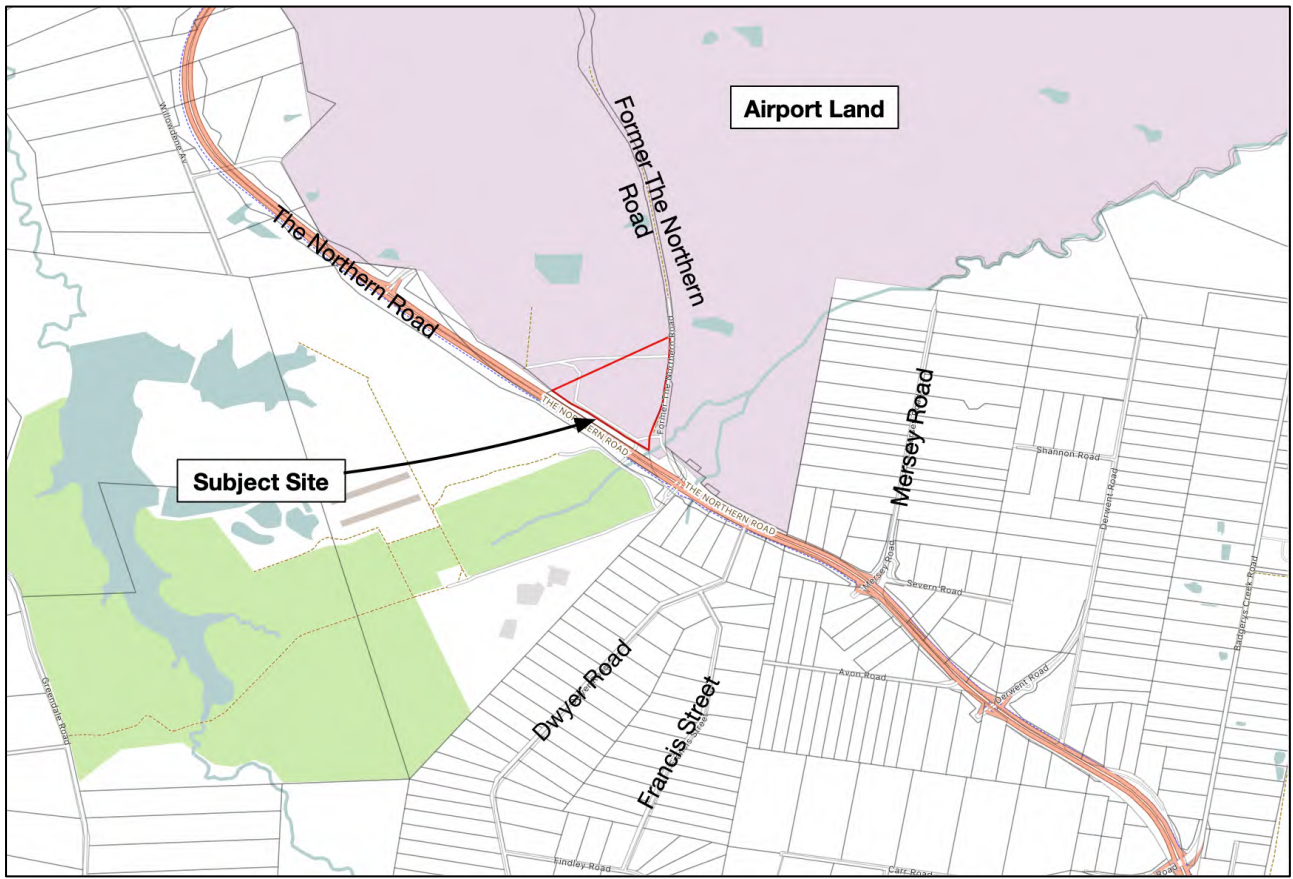


Figure 2: Site Location (Local Context)

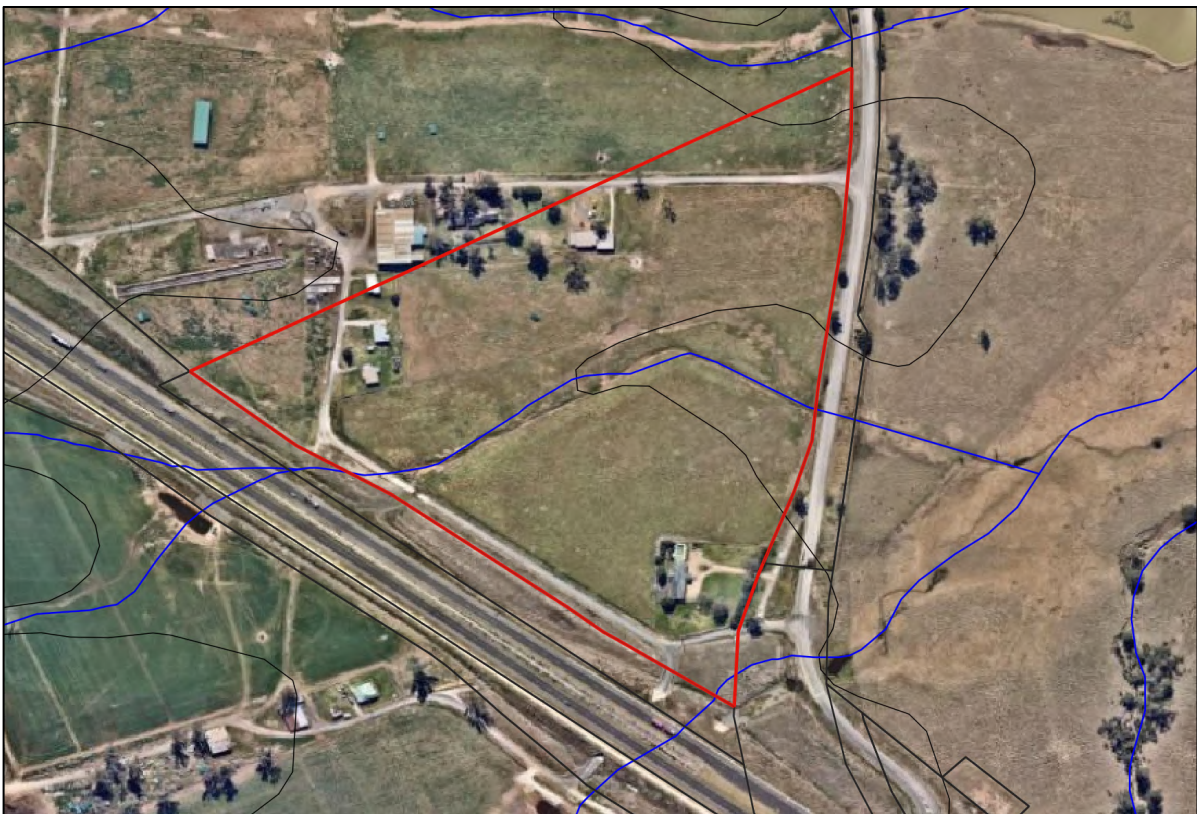


Figure 3: Site Location (Detailed Site View Aerial Photograph Showing Hydroline and contours)

3. The Public Purpose and Underlying Zoning

14. Underlying zoning is a concept used to give effect to the 'statutory disregard' required under s59 (2)(a) of the Lands Acquisition Act 1989 (LA Act). It is the zone that would have been applied, but for carrying out of, or the proposal to carry out, the public purpose.
15. Accordingly, the first step in determining the underlying zoning is to understand the public purpose. That appreciation also extends to understanding the role it has played in town planning decisions that have affected the land's actual zoning.
16. The process of disentangling the public purpose from the historic strategic planning decisions which have been applied to an area of land is commonly described as the San Sebastian principle. Hope JA summarises the principle in *Housing Commission of NSW v San Sebastian Pty Ltd* [1978] HCA 28; (1978) 140 CLR 196 (25 July 1978), where His Honour observed:

The next question concerns the scope of the matters preceding the date of resumption which fall within the ambit of the qualification. That it can apply to matters other than the actual construction of the works, ... has long been accepted ... The decision to go ahead with the proposal or scheme which has resulted in the resumption of the land is clearly within the ambit of the qualification ... such a decision is almost inevitably preceded by actions of many kinds which, if known, show that the works will possibly or probably be carried out. If they are actions by the authority who finally decides to carry out the works ... and if they are part of a series of actions leading up to, and done in contemplation of, the making of the decision to construct the works, any alteration to the value of the land resulting from them should ... fall within the ambit of the qualification.

Source: Compulsory Acquisition: The Assessment of Compensation Under the Acquisition of Land Act 1967, Grant Allan (March 2013), pp 49).

17. It is clear that the public purpose for which the land was acquired is concerned with the construction and operation of Western Sydney International (Nancy-Bird Walton) Airport. This is because Leppington Triangle lies within the published long-term boundary of the airport land and because the acquiring authority was the entity responsible for the airport's construction, namely the Commonwealth Government of Australia.
18. From page 19 of the Auditor-General's report, I understand that the public purpose as stated by the acquiring authority was "for the purposes of facilitating the development and future expansion of Western Sydney Airport as envisaged by the Airport Plan for Western Sydney Airport, determined on 5 December 2016".
19. I also note that from page 6 of the same report that a 'key fact' was that "the Leppington Triangle land is expected to be needed in about 30 years should a second runway be constructed in a future stage of the Western Sydney Airport's development".

20. Having regard to the above, my opinion is that the public purpose is most accurately described as the future expansion of the Airport. As at 31 July 2017 and 31 July 2018, there was certainty that Nancy Bird International Airport would be required, and it would be operational by 2026. Therefore, the Leppington Triangle was not required to enable the Airport to operate in its Stage 1, single-runway configuration. It is only the expansion of the Airport which necessitated the acquisition of the Leppington Triangle. Hence, the public purpose is the future expansion of the Airport.

3.1.1 Part 1.19A - Airport Regulations 1997, the Airport Plan and Pre-Acquisition Declaration

21. A number of statutory documents demonstrate the proposed future use of Leppington Triangle.
22. First, the relevant regulations needed to be changed to enable the Airport to be established. Part 1.19A of Schedule 1 of the Airports Regulations 1997 was updated in August 2015 to formally establish 'Sydney West Airport', which is the name given to Western Sydney International (Nancy-Bird Walton) Airport in legislation. Part 1.19A did not include the Leppington Triangle on 31 July 2017 or 31 July 2018 and it still does not include Leppington Triangle (at the time of this report).
23. Second, on 5 December 2016, the Australian Government approved the Western Sydney Airport - Airport Plan (the Airport Plan). The Airport Plan provided the statutory approval for Stage 1 of the Airport and contained the Airport's long-term development plans. Pages 59 and 60 of the Airport Plan refer to Leppington Triangle as a 'Proposed Acquisition'.
24. Third, on 25 January 2018, the federal government issued a Pre-Acquisition Declaration under the *Lands Acquisition Act 1989*, which stated at Item 6:

6. Particulars of the Proposed Use

a. The land specified to be incorporated as part of the airport site for 'Sydney West Airport' set out in Part 1.19A of Schedule 1 of the Airports Regulations 1997, and

b. to be the subject of an airport lease to WSA Co limited to be granted pursuant to section 13 of the Airports Act 1996.

for the purposes of facilitating the development and future expansion of Western Sydney Airport as envisaged by the Airport Plan for Western Sydney, Airport, determined on 5 December 2016

25. As such, on 31 July 2017 and 31 July 2018, the Airport was already established (August 2015) and the Federal Government had published its intent to acquire Leppington Triangle for the Airport (Dec 2016). Also at that date the Federal Government had explicitly detailed its purpose for Leppington Triangle as an expansion of the Airport.
26. It is clear, therefore, that the public purpose for Leppington Triangle was the expansion of the Airport.

4. Strategic Planning History

27. This section of the report chronicles the history of strategic planning associated with, and resulting from the proposal to carry out the public purpose.

4.1. Key Events Chronology

28. The following infographic summarises in date and chronological form key aspects of relevant strategic planning documents and government decisions.

Chronology

Strategic Context for Greater Western Sydney – 1986 - 2018

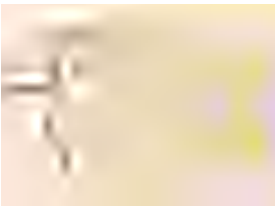
1986-1991



Commonwealth Govt announces Second Sydney Airport. Acquires land covering 1,780ha

2002

Minister approval of M7 Motorway. Opening opportunities for services, employment and freight transport on outer edges of Sydney



2005



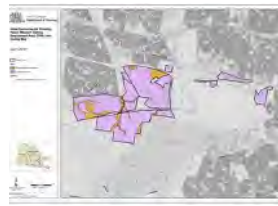
City of Cities – A Plan for Sydney's Future – Metropolitan Strategy

- Identified North West and South West Growth Centres;
- Identified Western Sydney Employment Area

2006

SEPP (Sydney Region Growth Centres) published 28 July 2006

2009



SEPP (Western Sydney Employment Area) published 21 August 2009

2010

Metropolitan Plan for Sydney 2036. Identified:

- Potential for future Outer Sydney orbital,
- Need for expansion of Employment Area



2013



March 2013 Draft Metropolitan Strategy for Sydney. Identified:

- Broader Western Sydney Employment Area
- Global Economic Corridor
- Potential Urban Expansion Area at Orchard Hills
- Outer Sydney Orbital to west of Orchard Hills

2013



June 2013 Draft Broader Western Sydney Employment Area Structure Plan. Identified:

- North-south passenger rail corridor,
- Potential Specialised Centre on Commonwealth Land,
- Intermodal terminal within the WSEA

2014

15 APRIL 2014 Badgerys Creek confirmed as a Second Airport for Sydney

2014



16 April 2014 – Western Sydney Infrastructure plan. Infrastructure funding program to support WSA.



2014

Aug-Sept 2014 – Amended draft Broader Western Sydney Employment Area Structure Plan and SEPP exhibited.

2014



14 December 2014 –A Plan for Growing Sydney. Identified:

- Indicative Corridor for Outer Sydney orbital
- Indicative corridor for SW Rail link Extension
- Western Sydney Airport and Broader WSEA

Chronology

Strategic Context for Greater Western Sydney – 1986 - 2018



Figure 4 Strategic Context

29. A condensed summary of the above in table form is included as Attachment C.

30. A detailed and expansive chronology is included as Attachment D.

4.2. Discussion

31. From the above chronology the most significant date relevant to determining underlying zone is 15 April 2014, that being the announcement of the Badgerys Creek Second Sydney Airport.

32. All strategic planning documents and government decisions which were made after that date have, to varying extents, been infected by the proposal to carry out the public purpose.

33. All of the strategic planning documents prepared after 15 April 2014 contemplate Stage 1 of the Airport as being operational by 2026. Given that Stage 1 of the Airport is not the public purpose which is to be disregarded, it follows that for the purposes of determining "market value", much of the strategic planning history which occurred subsequent to 15 April 2014 is not to be disregarded.

34. Nevertheless, it is also recognised that all the post 15 April 2014 strategic planning documents envisaged the strong potential for a Stage 2 Airport under which a second runway would be required.

35. If that foreshadowed expansion of the Airport had not been contemplated it is conceivable that some aspects of the strategic planning history would have occurred differently in the hypothetical scenario where the second runway was never proposed. For example, it might well be the case that the size and scale of the Aerotropolis would have been smaller. That potential may, in other circumstances, suggest that some land at the periphery of the Aerotropolis could have retained a rural zoning were it not for the proposal to carry out Stage 2 of the Airport.

36. However, in the case of the Leppington Triangle, the site is so proximate to a single runway International Airport that its strategic planning future could have been confidently predicted if the Airport was proposed to have been retained as a single runway airport. My reasoning in that regard will be expanded later in this report.

37. For present purposes, I record the following assumptions which relate to the hypothetical scenario where the Airport was proposed to be a single-runway airport and Stage 2 was never contemplated:

- The Western Sydney Infrastructure Plan (April 2014) would still have proceeded.
- A Plan for Growing Sydney (December 2014) would have still responded to a new international airport. Accordingly, it would still have identified the need for and location of the Outer Sydney Orbital, the South West Rail Link.
- The Western Sydney Priority Growth Area (October 2015) would still have been proposed to focus growth proximate to the new Airport and taking advantage of infrastructure fronts created by the WSEA and the Sydney region growth centres.
- In December 2016, the Western Sydney Airport Plan would still have been adopted. However, it would only have contemplated the Stage 1 runway and associated airport operations.
- The concept of the Aerotropolis, as a broader reimagining of the Western Sydney Priority Growth Area, would still have occurred in the late part of 2016 and would have been included within the Draft Southwest District Plan. I note that the current Aerotropolis shares a common boundary

with the Airport. In the hypothetical case where the second runway was not proposed, it could reasonably be assumed that the boundary between the airport and the Aerotropolis would have been adjusted to reflect the land area required by a single runway airport. At its south-eastern boundary, the airport land in fact follows the alignment of Badgerys Creek. If a single runway airport was proposed that boundary could have been expected to move approximately 1km to the northwest. Under this hypothetical scenario, Leppington Triangle would likely have been part of an Enterprise zone, which is further discussed below.

- Infrastructure funding commitments made in March 2018 under the Western Sydney Deal would still have proceeded. It stands to reason that the infrastructure commitment may not have been as significant with only Stage 1 of the Airport proposed as it was in fact. However, because of the extremely close proximity of the Leppington Triangle to the airport land, there is no material relevance to that difference. In this regard, any infrastructure relevant to the Leppington Triangle required for the actual Airport would have been equally needed for a single runway airport.

38. For the sake of completeness, I will also point out two potential scenarios for the hypothetical single runway.

39. On the first scenario; because the hypothetical single-runway airport requires less land than the dual runway airport, the excess current Commonwealth landholdings are allocated to economic purposes in an Enterprise land zone (Figure 5)

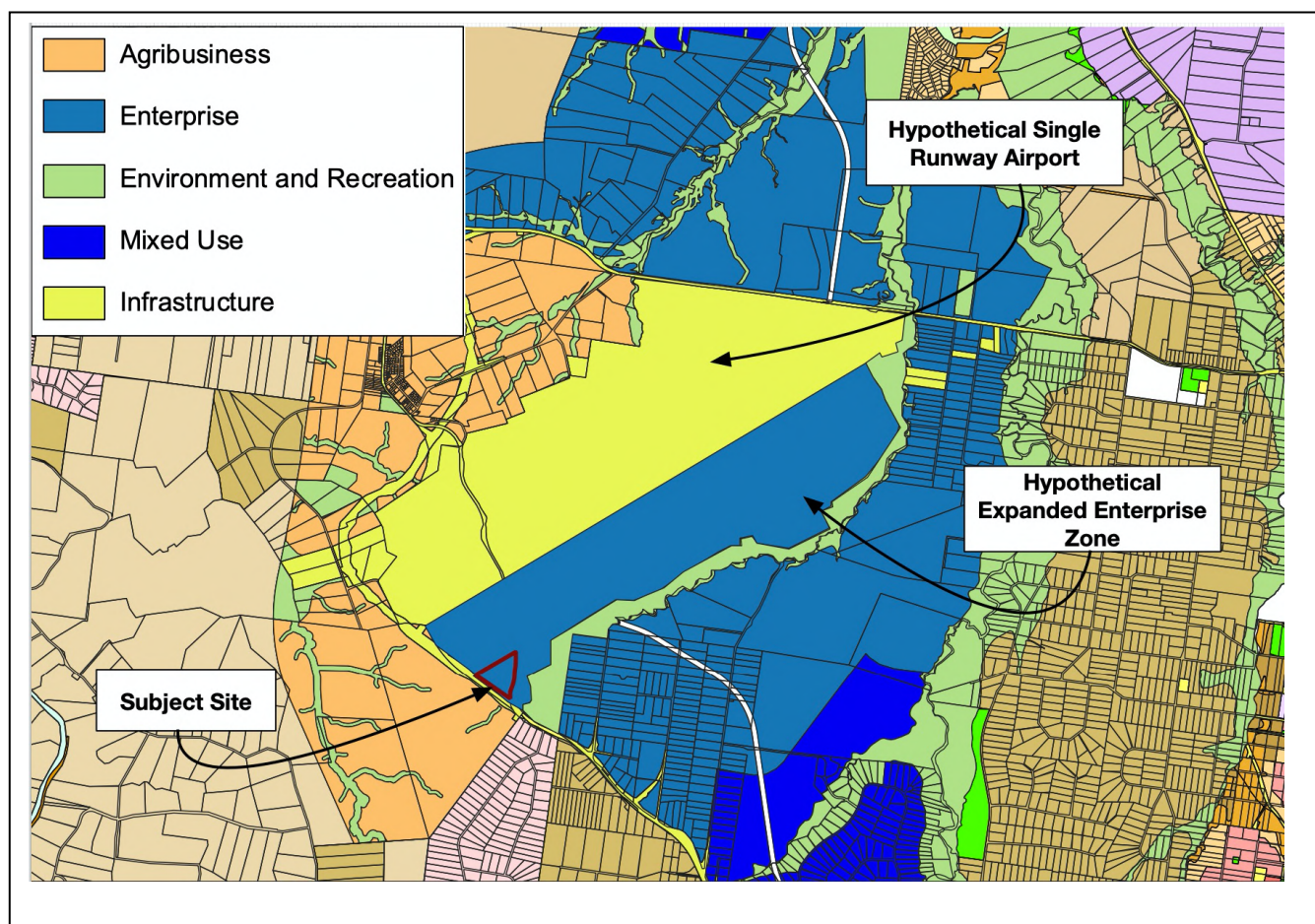


Figure 5 Hypothetical single-runway airport with adjusted Enterprise Zone

40. As at 31 July 2017, future zonings for the Aerotropolis were not known. However, the Western Sydney Priority Growth Area had been established and it adjoined the airport land at Badgerys Creek. If instead of a two runway airport, a single runway airport was proposed, the boundary between the airport and the Priority Growth Area would have been in a different position (generally a kilometre to the north west). That boundary of the hypothetical Priority Growth Area would have become the new boundary of the Enterprise zone under the Aerotropolis. Accordingly, although Aerotropolis zonings were not known in 2017 or publicly known in 2018, it would have been highly foreseeable that Leppington Triangle would have had a future urban zoning consistent with the Priority Growth Area vision, namely an Enterprise zoning.
41. On the second scenario, the excess landholdings remain in Commonwealth ownership but would have been allocated for different uses under the Airport Plan. I deal with the Airport Plan at Section 5 of this report. At this stage it is suffice to say that land which was superfluous to the operational needs of a two runway airport was zoned "Business Development". It follows that land which is superfluous to the operational needs of a single runway airport would have been zoned that way under the Airport Plan. Hence, under the second scenario, land adjoining the Leppington Triangle to the north, east and southeast would have been zoned "Business Development" and it is a plausible scenario that Leppington Triangle would have also been zoned that way.

5. Opinion on Underlying Zoning

42. Given the assumptions relevant to the hypothetical alternative where Stage 2 of the Airport were never proposed, the key document to inform underlying zoning is the Airport Plan.
43. Originally prepared in 2016, the purpose of the Airport Plan is stated on the Commonwealth Western Sydney Airport website as "to provide for the authorisation for Stage 1 of the Airport (a single runway facility capable of handling 10 million passengers per year)".
44. It was amended in 2020 and 2021, however, given both amendments were made after the dates relevant to this report, I have not taken those amendments into consideration.
45. Although it covers detailed aviation operational considerations, the Airport Plan is also a key strategic planning document. This is made clear in the Executive Summary where it is said:

The Western Sydney Airport will be integrated into strategic planning for Greater Sydney. The Australian and New South Wales Governments are working together on land use planning around the airport to maximise opportunities for new jobs and industry and ensure future land uses are compatible with the airport's growth. We are also partnering in the essential infrastructure to support this growth.
46. The Airport Plan includes, at Figure 16, page 59, a site land use plan. An annotated copy of the same is included below as Figure 6.

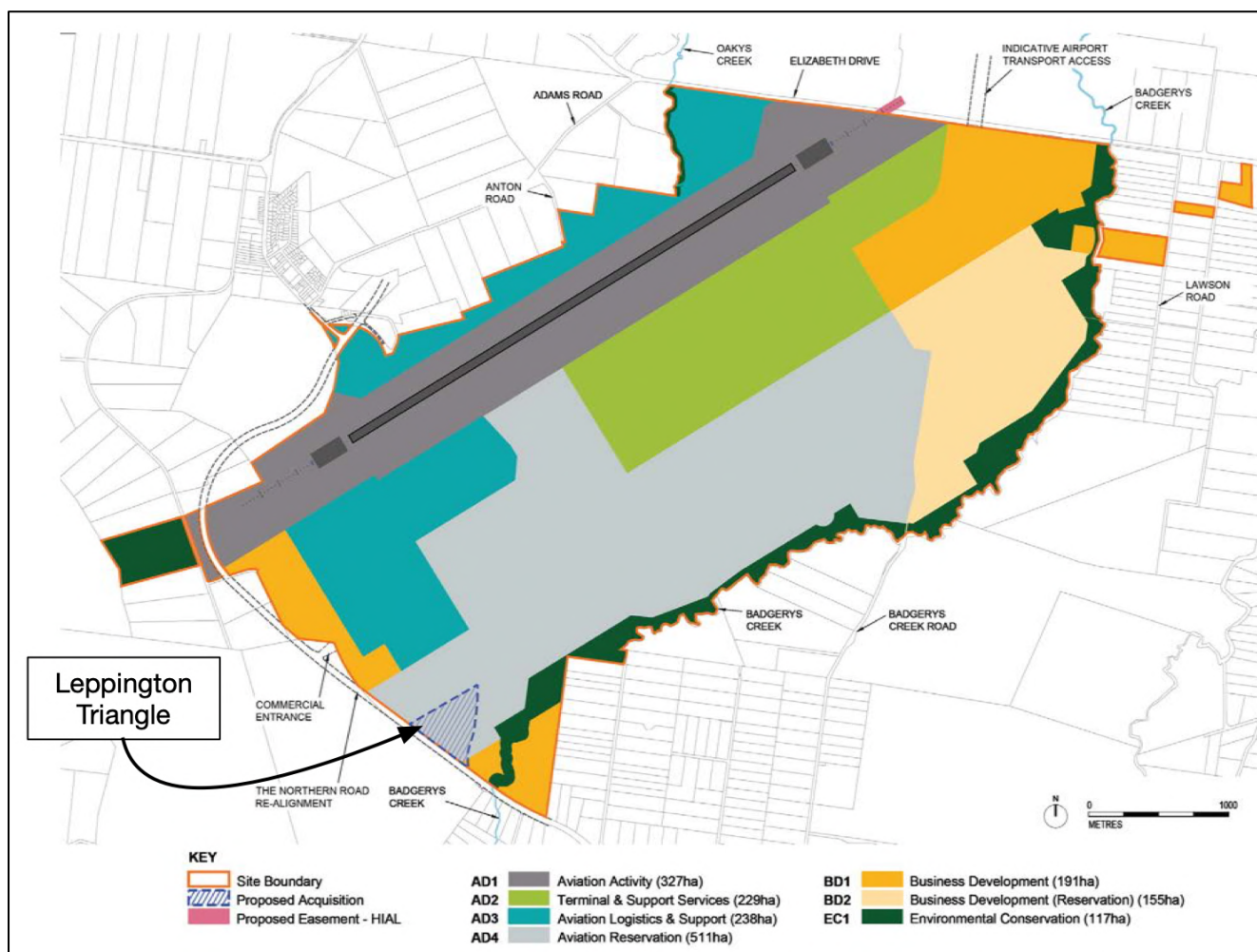


Figure 6: Annotated Extract of Airport Plan Airport Site Land Use Plan

47. The Site Land Use Plan includes seven different zones. Of these, four are directly related to airport operations, and one is an environmental zone along the northern alignment of Badgerys Creek. The remaining two are "Business Development" and "Business Development (Reservation)".
48. The Business Development zone extends along the eastern side of The Northern Road within the Airport land.
49. As of 31 July 2017 and 31 July 2018 land use zoning under the Aerotropolis SEPP was not known. I am aware that the Auditor-General's report indicates that some information concerning a draft Land Use and Infrastructure Implementation Plan (LUIIP) for the Aerotropolis had been shared by the NSW Department of Planning with the Commonwealth Government prior to 31 July 2018. Whilst this information was not known to the public in July 2018, it should be noted that, as shown in Figure 10 further below, the Draft LUIIP referred to by the Auditor-General released in August 2018 did not place Leppington Triangle in the Agriculture and Agribusiness precinct but rather placed it in the airport precinct.
50. In any case, I would apply negligible weight, if any, to the Draft LUIIP in the hypothetical case of the single-runway airport because the draft Airport Plan is infected by the public purpose of the second runway. But for a second runway the contents of Government documents would have been

fundamentally different. In the hypothetical scenario, it would involve a significant level of speculation to conclude that the Commonwealth land not required for an airport would have remained excluded from the Aerotropolis and that significant changes to the boundary of the airport land would not have been made (see Figure 5).

51. Hence, the Business Development and Business Development (Reservation) zones were the only known proposed land use zones that were not directly associated with Airport Operations. Albeit, it is also the case that they only applied to land within the Airport Land, and noted in Part 3 of this report, the Leppington Triangle was and is not within the Airport Land according to the Airports Regulations.
52. Descriptions of the Business Development and Business Development (Reservation) zones are described within Section 2.4.2.5 and 2.4.2.6, respectively as follows:

Permissible Uses in BD1 – Business Development

This zone is reserved for on-site business development and has been informed by the operational requirements of the Airport.

Overarching requirements

Development in this zone must not be inconsistent with:

- *Neighbouring environmentally sensitive areas;*
- *Built form considerations for the Airport; or*
- *Surface transport access for aviation facilities.*

Objectives	Permissible uses
<p>The objectives of the BD1 zone are to:</p> <ul style="list-style-type: none"> enable a mix of business, retail and industrial uses in locations that are close to and that support the functioning of the Airport; integrate suitable and compatible land uses in accessible locations so as to maximise public transport patronage and encourage cycling; encourage employment opportunities and promote businesses along main roads; enable a limited range of other land uses that will provide facilities and services to meet the day-to-day needs of the local workforce; and maximise, where possible, the use of existing access and egress points. 	<ul style="list-style-type: none"> Agriculture Animal boarding Aviation activity Aviation educational facility Aviation support facility Business premises Car park and parking spaces Child care centre³⁷ Detention basin Earthworks* Environmental protection works Extractive industry* Freight handling and transport facility Hotel or motel accommodation Light Industry Medical centre Navigational aids Office premises Passenger transport facility Public administration facility Public utility undertaking Recreation facility (indoor) Retail premises Road Service station Shop Signage Telecommunications facility Temporary structure Vehicle hire premises Warehouse and distribution centre Works depot*

Figure 7: Extract of Airport Plan Business Development (BD1) Zone Objectives and Permissible Uses

Permissible Uses in BD2 – Business Development (Reservation)

This zone is reserved for future aviation activities and terminal and support facilities. It has been informed by the long-term operational requirements of the Airport. It may be used for onsite business development but, to the extent not used for the Stage 1 Development, will be incrementally released for the reserved purposes as it becomes operationally required over the next 40 years or so.

Overarching requirements

A number of activities could be located in this zone in the interim. The ALC will be required to pursue development strategies that allow for the necessary controls to ensure delivery of aviation needs. This includes ongoing tenure reviews and the consideration and implementation of temporary and alternative uses. The non-aviation land uses identified in this zone are permitted in the short to medium term, until the land is required for aviation purposes, provided that:

- the proposed development will not render the land unfit, or affect the capacity of the land to be used, for aviation purposes;
- the proposed development will be capable of being removed or relocated easily and economically; and
- appropriate provisions or arrangements are in place to ensure that the land can be vacated when needed for aviation purposes.

Objectives	Permissible uses
<p>The objectives of the BD2 zone are to:</p> <ul style="list-style-type: none"> • enable a mix of business, retail and industrial uses in locations that are close to and that support the functioning of the Airport; • integrate suitable and compatible land uses in accessible locations so as to maximise public transport patronage and encourage cycling; • encourage employment opportunities and promote businesses along main roads; • enable a limited range of other land uses that will provide facilities and services to meet the day-to-day needs of local workforce; and • maximise, where possible, the use of existing access and egress points. 	<ul style="list-style-type: none"> • Agriculture • Animal boarding • Aviation activity • Aviation educational facility • Aviation support facility • Business premises • Car park and parking spaces • Child care centre³⁸ • Detention basin • Earthworks* • Environmental protection works • Extractive industry* • Freight handling and transport facility • Hotel or motel accommodation • Light Industry • Medical centre • Navigational aids • Office premises • Passenger transport facility • Public administration facility • Public utility undertaking • Recreation facility (indoor) • Retail premises • Road • Service station • Shop • Signage • Telecommunications facility • Temporary structure • Vehicle hire premises • Warehouse and distribution centre • Works depot*

53. It is clear from the above that the Business Development (Reservation) zone is a holding zone pending future clarity about the operational requirements of the Stage 2 Airport (i.e. second runway).
54. Pursuant to the assumptions required for the 'statutory disregard', it is to be assumed that this zone was never proposed.
55. Given the above, there is little if any doubt that if Leppington Triangle were not required for the Stage 2 Airport (i.e. second runway), land which adjoined the Triangle to the north, east and southeast would have been zoned "BD 1 - Business Development" under the Airport Plan in 2016.

56. I note that some small and irregular-shaped pockets of land on the eastern and southern side of The Northern Road and which adjoin the Airport land, were not included within the Airport Plan. Accordingly, if the Leppington Triangle were not required for Stage 2 of the Airport, it is reasonable to conclude it would have been similarly excluded from the Airport Plan.
57. Some irregular-shaped lots between the Airport land and The Northern Road have been subsequently zoned Agribusiness under SEPP (Aerotropolis) 2020. However, it is my opinion that such zoning could not have been foreseen on 31 July 2017 or 31 July 2018.
58. Accordingly, on 31 July 2017 and 31 July 2018, it was impossible to know how land immediately adjoining the Airport would have been zoned. Nevertheless, there was strong and informative commentary from politicians and industry groups surrounding the future of the Aerotropolis, and among other things this commentary noted the intention for the Aerotropolis to be located around or adjacent to the Airport, for example:
- a. The NSW Business Chamber's April 2015 report into a potential Aerotropolis stated that much of the *"commercial and industrial muscle will form and grow in the Western Sydney Employment Area (WSEA) adjoining WSA"* (p14) and also noted a possible *"planned industrial area"* (p15-16) adjacent to the Airport's eastern boundary¹
 - b. In his 23 February 2017 speech to the Western Sydney Aerotropolis Summit, the responsible federal Minister, Urban Infrastructure Minister Paul Fletcher, said *"by optimising land uses around the site we can drive compatible development and help attract businesses that get value from being located close to an airport"*²
 - c. The Airport's host local government area, Liverpool City Council, released a study into the Aerotropolis in November 2017 noting that the aerotropolis should form around the north, east and south of the airport, and that *"the first 5kms around the airport ought to be reserved for industrial or environmental uses"* and that success of the aerotropolis relies on coordinated planning *"in order to enable large scale industrial precincts to develop around the airport"*³.
 - d. In his 28 May 2018 speech to the Aerotropolis Investor Forum, Urban Infrastructure Minister Paul Fletcher said *"key to the City Deal is our commitment to establish the 'Aerotropolis' adjacent to the airport. This will be an urban area designed to attract the kinds of businesses which value the connectivity an airport provides"*⁴

5.1.1 Previous Expert Advice Regarding Future Airport Land Uses.

59. On 16 May 2018, I prepared a Statement of Evidence for the NSW Land and Environment Court in the matter of Sivida Pty Ltd ATF for the Camilleri Family Trust v RMS [NSW LEC No. 187289 of 2017]. The

¹ NSW Business Chamber, April 2015, A Western Sydney Aerotropolis – Maximising the benefits of Badgerys Creek, commercial and industrial muscle will form and grow in the Western Sydney Employment Area (WSEA) adjoining WSA

² Paul Fletcher, February 2017, Portfolio Speech to the Western Sydney Aerotropolis Summit, <https://www.paulfletcher.com.au/portfolio-speeches/speech-to-the-western-sydney-aerotropolis-summit>

³ Liverpool City Council, November 2017, Liverpool: the Gateway to Sydney's Aerotropolis, p30, <https://www.pwc.com.au/agendas/cities/liverpool-city-council-the-gateway-to-sydneys-aerotropolis.pdf>

⁴ Paul Fletcher, May 2018, Portfolio Speech to the Aerotropolis Investor Forum, <https://www.paulfletcher.com.au/portfolio-speeches/speech-to-the-aerotropolis-investor-forum>

following three pages are an extract from that Statement (pages 22 to 24). They describe the information which was known to the market up to May 2018 and are therefore highly relevant to understanding the correct valuation approach for market value compensation for Leppington Triangle at 31 July 2017 and 31 July 2018.

Aerotropolis

The South West District Plan (November 2016), as well as the Federal Department of Urban Infrastructure describe future development around the airport as an Aerotropolis. In a speech delivered on 23 February 2017, The Hon Paul Fletcher said:

Why is there so much interest in the 'aerotropolis' vision for Western Sydney Airport?

I think it is because we all recognise the potential of Western Sydney Airport to catalyse economic activity—and to be the core of a vibrant new urban region in Western Sydney.

Liverpool Council, in its submission to the Airport EIS dated 17 December 2015 made the following recommendation:

The Minister for the Environment should condition the approval of the draft Airport Plan requiring a detailed master plan that addresses:

- *Sustainability measures, such as: ...*
 - *Integration of airport into the surrounding environment (including land uses);*
 - *Future uses and expansion; and □*
 - *Future Development as an Aerotropolis. □*

At the date of this report, there is general consensus between state and federal governments that land around the Airport should be developed as an "aerotropolis". This is evidenced by the South West District Plan promoting a "vision for the Western City and an aerotropolis" and the Minister for Urban Infrastructure and Cities speaking publicly and favourably about the aerotropolis. However, neither at the date of acquisition nor presently, is there clear policy framework as to what that means in practice. We can glean some rudimentary understanding by examining the types of land uses which are referred to when politicians and policy makers reference the aerotropolis. The following Table lists a range of sources mentioning a range of land uses.

Table 1: Policy Inferences about the Aerotropolis

Date / Reference	Quote / Source	Listed Land Uses
<p>14 November 2016</p> <p>The Hon. Paul Fletcher MP Federal Minister for Infrastructure</p> <p>Speech to the Committee for mic Development of Australia</p>	<p><i>"The jargon term 'aerotropolis' is sometimes used to describe the cluster of economic activity centred on an airport.</i></p> <p><i>There has already been some excellent work done in highlighting some of the possibilities that Western Sydney Airport could offer. The Sydney Business Chamber has commissioned a very useful report, 'A Western Sydney Aerotropolis: Maximising the Benefits of Badgerys Creek'".</i></p>	<p>Cluster of economic activity</p>
<p>April 2015</p> <p>A Western Sydney Aerotropolis - Maximising the benefits of Badgerys Creek</p> <p>John Kasarda on Behalf of Liverpool Council and Sydney Business Chamber</p>	<p><i>Their [international airports] dual roles as airline routers and global-local interfaces are making airports business magnets and regional economic catalysts as they attract, sustain, and grow aviation-enabled firms in their environs.</i></p> <p><i>By 'aviation-enabled', I mean firms and industries that are able to operate primarily because of the connectivity afforded by passenger and air cargo transport....</i></p> <p><i>The aerotropolis also contains the full set of logistics and commercial facilities that support aviation-enabled businesses, cargo, and millions of air travellers who pass through the airport annually. These include, among others, freight forwarding, third-party logistics (3PL), warehouse and distribution facilities, hotels, recreation, wellness, convention and exhibition complexes, and of course buildings along with shopping, dining, leisure, entertainment, and tourism venues.</i></p> <p><i>In addition, the aerotropolis attracts and sustains a range of advanced business service firms whose executives and professionals frequently travel to distant sites or who bring in their clients by air for short-stay meetings. These firms, referred to as</i></p>	<p>Logistics and warehousing; Commercial; Hotels; recreation; wellness businesses; convention and exhibition business; retail; dining; tourism; entertainment</p>

Date / Reference	Quote / Source	Listed Land Uses
	<p><i>producer service firms by economists, include such sectors as auditing, architecture and engineering, consulting, corporate law, ICT, international finance, and marketing.</i></p> <p><i>Corporate headquarter functions are likewise gravitating to airport areas either physically in of service complexes or by using airport area hotels as virtual corporate headquarters where widely dispersed executives fly in for sales meetings, board meetings, and high-level decision-making. This optimises executives' long-distance connectivity while minimising their local ground transport times and costs.</i></p>	
23 February 2017	<p><i>This is a once-in-a-lifetime opportunity. The task ahead is not just to build a runway and an aircraft terminal. That's only half the job.</i></p> <p><i>We must extract maximum community benefit from this project by making it a catalyst for development of thousands of jobs across a range of industries.</i></p>	
<p>The Hon. Anthony Albanese, Shadow Minister for Infrastructure, Transport, Cities and Regional Development</p>	<p><i>We need to create an aviation precinct so successful that it transforms the entire region.</i></p> <p><i>We must consider the Badgerys Creek site not as Sydney's second airport, but as the airport for Western Sydney.</i></p> <p><i>We want the Western Sydney Airport to be so successful that its success unleashes waves of prosperity across a range of sectors including research, tourism, education, advanced manufacturing, logistics and residential development.</i></p>	<p>Tourism; Education; Advanced Manufacturing; Logistics and Residential</p>

60. In 2017 and 2018, the word Aerotropolis was a relatively new term for the NSW planning and development sector. The industry was at that time looking to international examples and international experts as to what an Aerotropolis was and how the process for developing one should be undertaken.

61. The work of Dr. John Kasarda, internationally acclaimed air commerce academic, was off-referenced. Indeed his name was mentioned by the Hon. Paul Fletcher, in his 23 February 2017 speech to the Western Sydney Aerotropolis Summit and is also cited above as having been engaged by Liverpool Council to provide expert advice to Council and the Sydney Business Chamber.
62. In the Sivida matter, among my instructions was to predict the likely future zoning of the land. To do this, I reviewed one of Dr. Kasada's books, Aerotropolis: The Way We'll Live Next (2011): Penguin Books Limited.
63. From that book, I understood how cities are most appropriately arranged around an operational international airport. I then tested the application of those principles against an already established Aerotropolis. For the case study investigation, I considered three airports: Incheon, South Korea; Denver International, USA and Schipol, Amsterdam. I undertook the case study on Incheon because it was geographically more proximate to Australia, and the number of international flights was numerically more comparable.
64. It proved to be a sound choice for a case study because on 24 August 2017, the Premier delivered a press release from Incheon Airport to announce the Aerotropolis 2026 Summit.
65. From my research and case study, it was evident and highly predictable that employment, community or residential land would not be located in the high ANEF exposure contours.
66. Having analysed the then May 2017 future of the Aerotropolis in that fashion, I predicted that land at the western and eastern ends of the runways would be zoned industrial. Land to the north and south, outside of the high ANEF contours, would likely have been zoned for very high-density commercial and retail land. Residential land uses would be further removed from the Airport to the north and south.
67. My May 2017 predictions concerning the future of the Aerotropolis was that land within the high ANEF contours to the west and east of the runways would be zoned for industrial uses. There was no information or any other source of evidence that would have lead me to predict that the zoning of land to the west of the Airport would be retained as agricultural.
68. I additionally note that the expert town planner engaged by the Respondent in the Sivida matter also did not include agriculture in any of his predictions concerning the future of the Aerotropolis.
69. My opinion was, in May 2017, based on all of the information which was available to me at that date, that land to the west of the Airport would be zoned for industrial purposes. That remains my opinion at the present day, provided that I constrain my analysis to information which was known at 31 July 2017 and 31 July 2018.

5.2. Additional Analysis of Future Zoning of Land Between the Airport and The Northern Road

70. I have said above, that there was no information which was available to me at 31 July 2017 or 31 July 2018 which could have led me to predict a future agricultural zone for land to the west of the Airport. However, as a matter of history, in August 2018, the Draft Stage 1 LUUP was placed on public exhibition. It proposed an Agriculture and Agribusiness zone which was generally located on the

western side of the Airport. Section 5.3 of this report provides additional analysis concerning the Agriculture and Agribusiness zone. Also within that Section, I address two of the findings of the Auditor-General, wherein that office concludes that land on the eastern side of The Northern Road was zoned for Agriculture and Agribusiness and secondly, a suggestion that the Agriculture and Agribusiness zone was akin to a rule zone.

71. Before addressing those findings however, it is helpful to make the additional observation that in close proximity to Leppington Triangle, land on both sides of The Northern Road, between Bringelly Road and the Airport land, had long been proposed to be a mixed use employment corridor, under the South West Growth Centre Structure Plan, being a land use framework plan forming part of SEPP (Sydney Region Growth Centres) 2006. A georeferenced extract of the Structure Plan map is included as Figure 8 below.

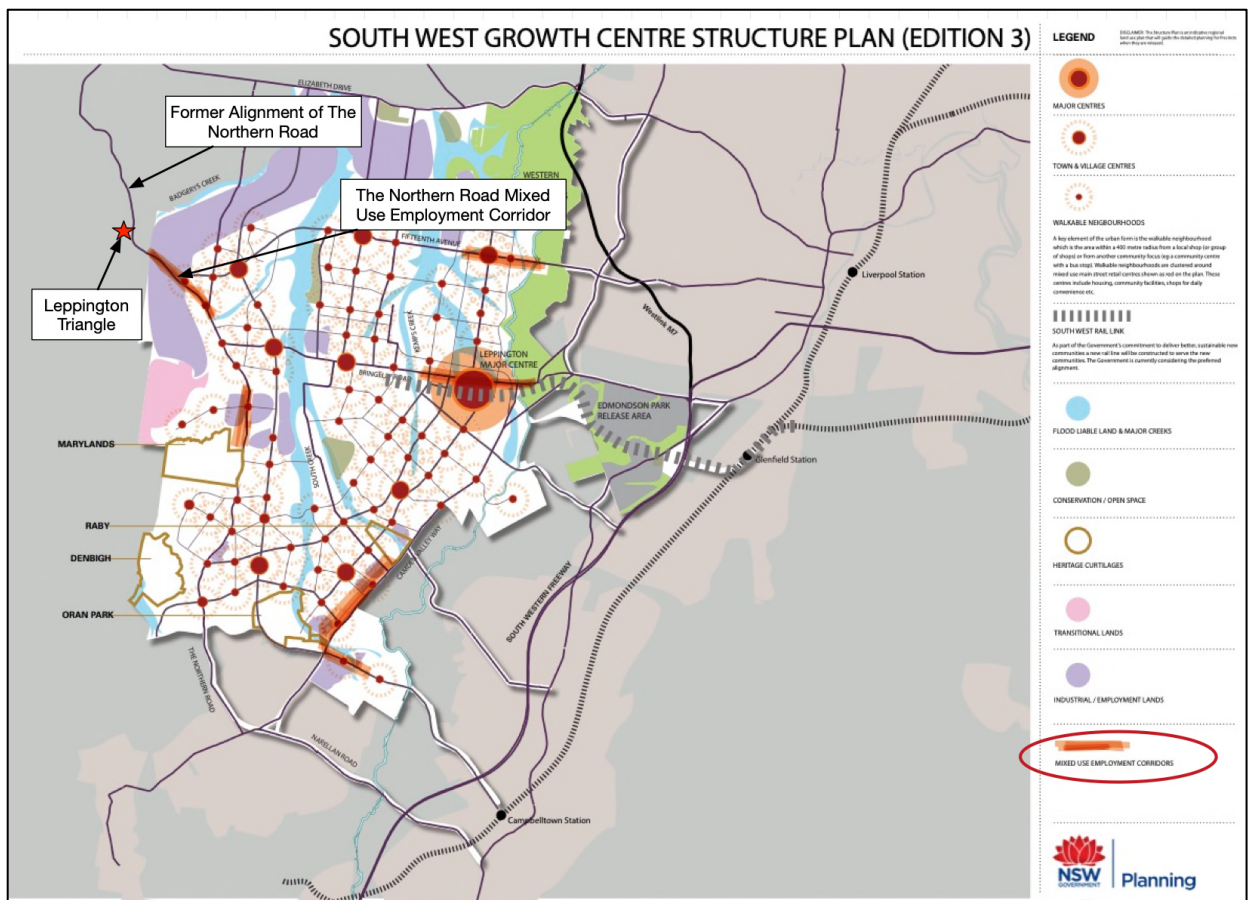


Figure 8: Annotated South West Growth Centre Structure Plan

72. The South West Growth Centre Structure Plan had been in existence well before the Airport had become a committed project and well before the Aerotropolis had become government policy. Given the long established land use planning future for the Northern Road immediately to the south east of the Airport, combined with the city shaping influences of a future Aerotropolis, it would have been inconceivable on 31 July 2017 and 31 July 2018, that the zoning of the Leppington Triangle would have been for rural land uses at or shortly before commencement of Airport operations.

5.3. The Agribusiness Zone

73. In August 2018, DPIE placed on public exhibition the *Western Sydney Aerotropolis: Land Use and Infrastructure Implementation Plan (Stage 1: Initial Precincts) (LUIIP)*. On page 19, the LUIIP included an Aerotropolis Structure Plan, a copy of which is included as Figure 9 below.

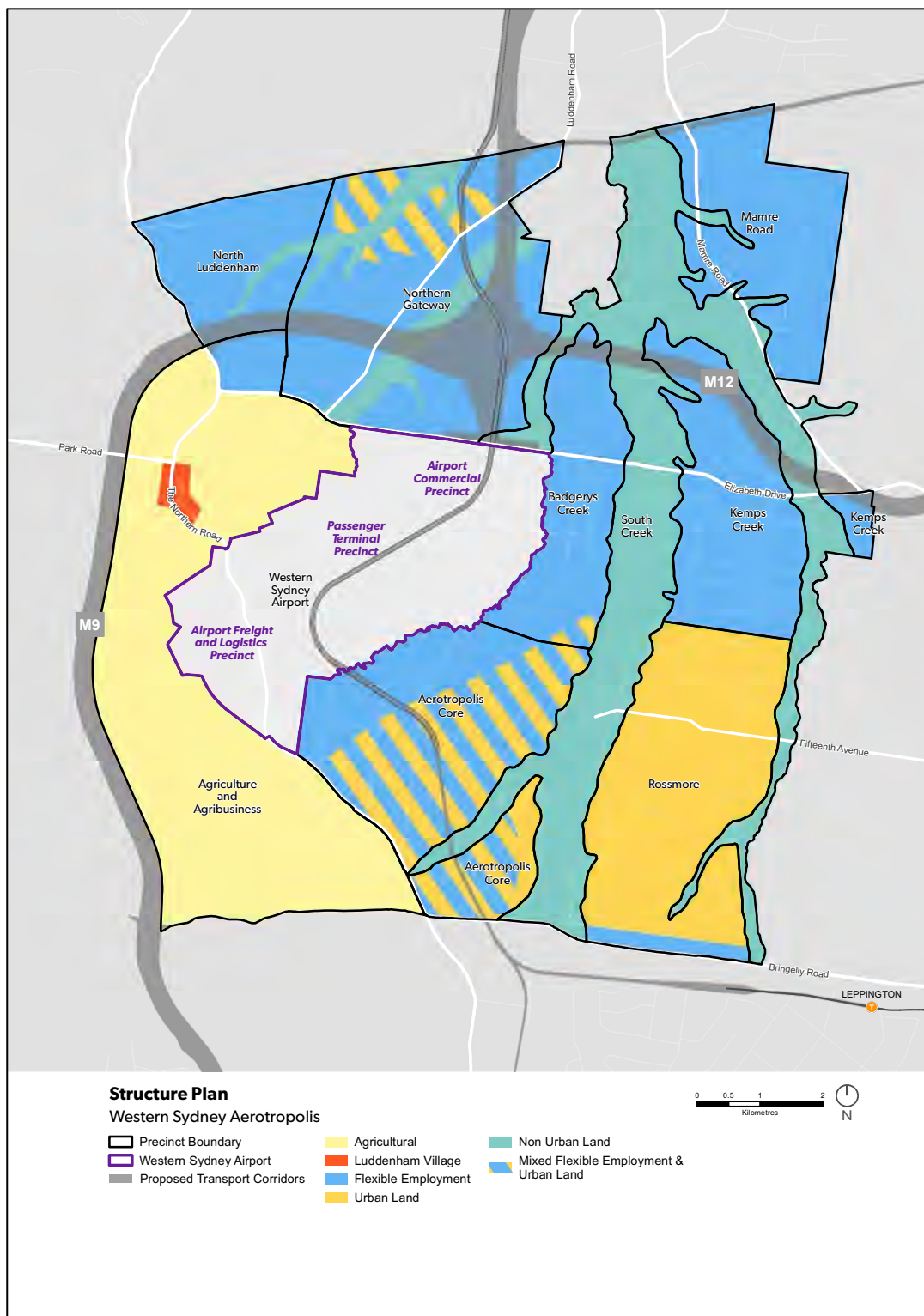


Figure 9: LUIIP Structure Plan

74. Paragraph 3.49 of the Auditor General's Report states:

It eventuated that the proposed WSPGA was replaced by the Western Sydney Aerotropolis. In the proposed land use and implementation plan released in August 2018, the Leppington Triangle was located in the 'Agriculture and Agribusiness' precinct.

75. I have georeferenced the LUIP Structure Plan into a GIS model to precisely plot the Leppington Triangle on the Structure Plan. The results are shown in the following Figure 10.

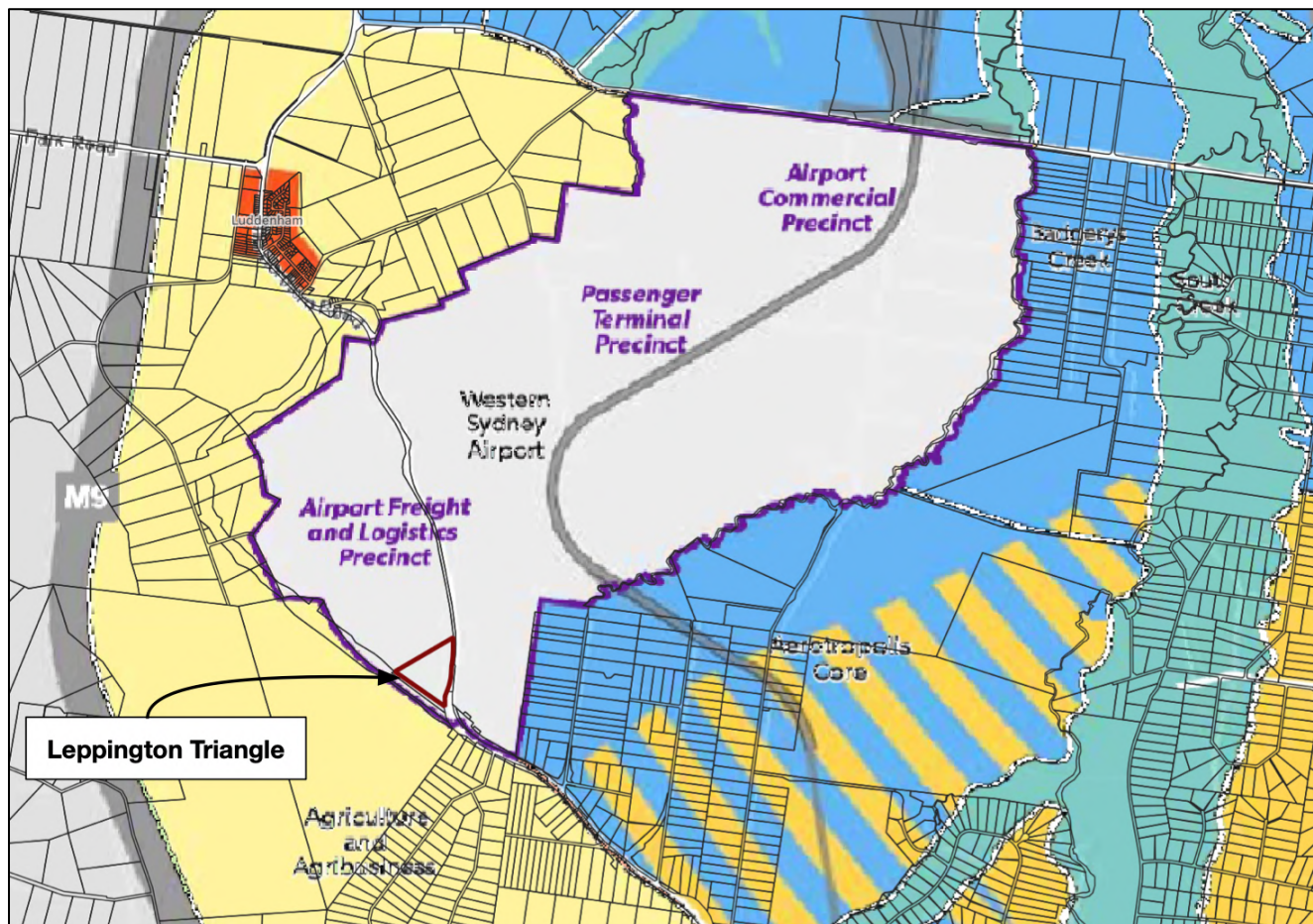


Figure 10: Georeferenced LUIP Structure Plan

76. It is an error of fact to say that the Leppington Triangle was located within the Agriculture and Agribusiness precinct. Rather, it adjoined that precinct.

77. It is the case that to the north west of the Leppington Triangle, there is an area of land on the eastern side of the re-aligned The Northern Road, between that land and the Airport land, which is zoned Agriculture and Agribusiness. However, it is clear, that is a drafting error in the Stage 1 LUIP. The LUIP Structure Plan responded to the original land holding for the Airport but did not take into account the pre-existing Airport Plan, which showed the abovementioned land on the eastern side of The Northern Road as being Airport Operational Land. That situation is shown by an overlay of the Airport Plan and the Draft Stage 1 LUIP, as provided in Figure 11.

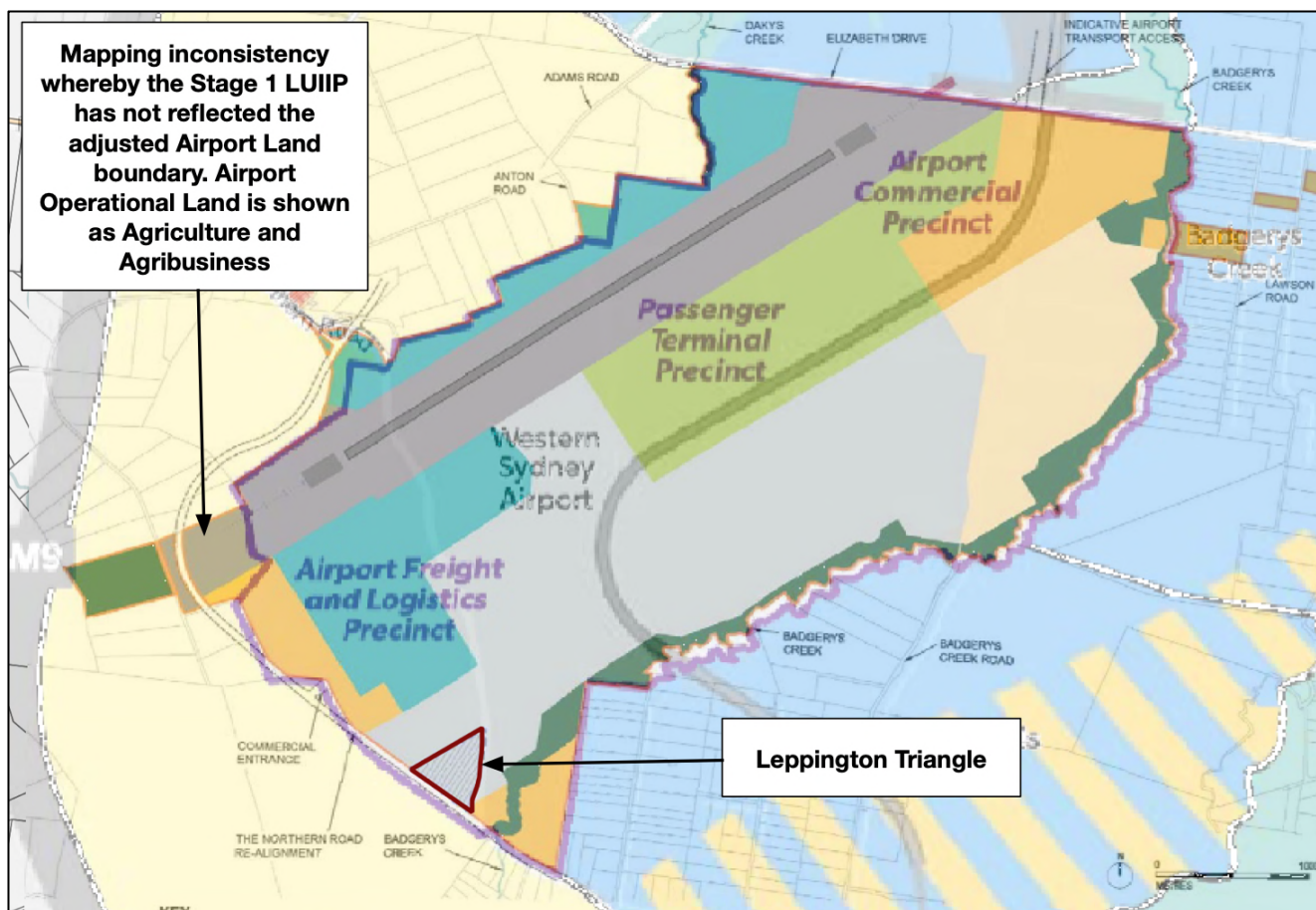


Figure 11: Overlay of Airport Plan onto Stage 1 LUIP

78. The expanded Airport operational land subsumes the vast majority of the proposed Agriculture and Agribusiness zone on the eastern side of the Airport. There remains extremely small pockets of land on the eastern side of The Northern Road which are not Airport Operational Land and which are zoned Agriculture and Agribusiness. However, when considered in the context of the Airport Plan, it is clear that the Airport Plan's proposed Business Development Zone would have required access from The Northern Road. This access would be required for the proposed freight and logistics facilities proposed in the Airport Plan to be located at the southern end of the Airport, accessed from The Northern Road. It would be an irrational planning outcome to position extremely small parcels of agriculture and agribusiness development between Airport Business Development Land and the Northern Road. Given the conceptual nature of the Stage 1 LUIP, it was readily foreseeable that no land on the eastern side of The Northern Road, proximate to the Leppington Triangle would have ultimately been zoned and developed for agriculture.
79. Putting aside all of the above, the Auditor-General additionally appears to have misconstrued what was contemplated by the Agriculture and Agribusiness zone. At page 29 of his report, the Auditor-General notes that one of the claimed benefits of early acquisition of the Leppington Triangle was that future Aerotropolis announcements would tend to drive up the value of the land over time. In

response to that claim, the Auditor-General states "[t]he reason was negated by the department's approach of requiring that the land be (sic) valued as 'industrial' instead of 'agricultural'.

80. The Agriculture and Agribusiness zone was not an agricultural zone. Page 62 of the Draft LUIP identified the following desirable land uses within the zone:

Development within the agriculture or agribusiness lands may include:

- *ongoing agriculture production such as dairying and poultry farming*
- *intensive horticulture such as mushroom and tomato farming*
- *food processing*
- *food research and technology.*

81. Recognising that the Agriculture and Agribusiness zone was not known in the public domain on 31 July 2017 and 31 July 2018, the relevance of the Stage 1 LUIP could only be to confirm a foresight, which, as I have said, I did not have when undertaking my investigations in May 2018. However, if a person could have foreseen the Agriculture and Agribusiness zone before 31 July 2018, then a foresight that it was equivalent to an agricultural zone would have been inconsistent with the Draft Stage 1 LUIP. Moreover, with the passing of time, a picture of a much more industrialised agribusiness zone emerged with the publication of the Western Sydney Aerotropolis Plan, published September 2020. In respect of the Agribusiness zone, the Aerotropolis Plan states the following:

- *Agribusiness Zone: to support high-tech agribusiness uses, including freight, logistics and horticulture in the Agribusiness Precinct. (Page 28);*
- *Planning for the Aerotropolis will accommodate a new freight infrastructure corridor between key freight centres and the Aerotropolis, as well as freight and logistics development in precincts identified for flexible employment and agribusiness. (Page 38);*

82. In November 2020, DPIE released the Precinct Plan for the Agribusiness Precinct. The following is an annotated extract from the map and key appearing on page 5 and 4 respectively.

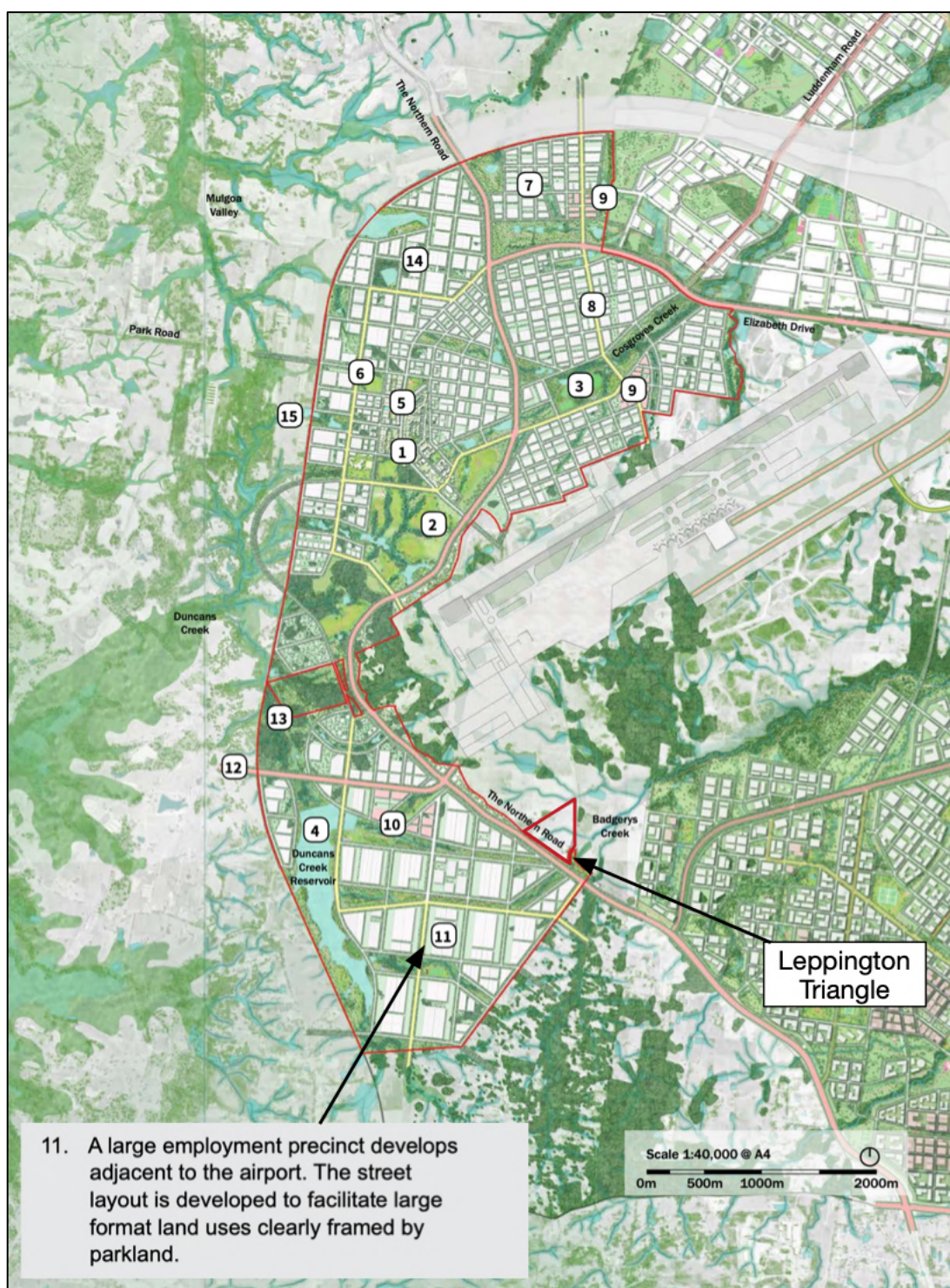


Figure 12: Annotated Extract of Agribusiness Precinct Plan

83. It is my opinion that a future agricultural zone adjacent to the Airport could not have been foreseen on 31 July 2018 or earlier. Tracking through subsequent planning events to 2020, it is also the case that if any foresight was claimed, strategic planning history would prove it to be a false foresight.

5.4. Conclusion Regarding Underlying Zoning

84. From the foregoing analysis, I consider the following factors to be important for determining underlying zoning:

But for the proposal to construct the second runway:

- the subject site would have been adjoined to the north, east and southeast by land which was to be zoned Business Development under the Airport Plan;
- Land on either side of The Northern Road, in close proximity to the south east of Leppington Triangle had long been foreshadowed as a mixed use employment corridor under the South West Growth Centre Structure Plan;
- The land use planning for the Aerotropolis was likely to have been informed by global experiences of aerotropolis development, including Songdo, South Korea which had been recently developed around Incheon Airport.
- There was no information in existence within the public domain which could have foreshadowed a future rural zoning for land immediately adjoining the Airport on its western boundary.
- The Leppington Triangle would have been affected by aircraft noise from a single runway airport such that there was no prospect that a future zoning would permit residential accommodation.

85. Based on the above factors, I consider the most likely underlying future zoning would be any of the following

- IN1 General Industrial;
- IN3 Heavy Industrial
- B6 Enterprise Corridor
- BD1 – Business Development under the Airport Plan

86. Subsequent to 31 July 2018, the contents of the SEPP (Western Sydney Aerotropolis) 2020 become relevant, under which the likely underlying zoning would become "Enterprise". However in my opinion, that zoning could not have been foreseen on 31 July 2018 or beforehand.

5.5. Timing of Future Business Development Type Zoning

87. Timing of rezoning to support the Aerotropolis is tied to the operational commencement date of the Airport in 2026. From that point, strategic planners in the Department of Planning would work backwards to allow the following:

- 12 months to allow airport support business to establish
- 12 months to allow construction
- 12 months to allow for provision of public utilities including sewer
- 12 months to allow for development application preparation and assessment

88. The last 2 of these could be expected to overlap without increasing overall timeframe. Hence, on 31 July 2018 I would have expected, under the assumptions of the statutory disregard, that the Leppington Triangle would have been zoned for one of the above zones by 2022 to 2023.

89. The timeframe which in fact occurred was slightly in advance of the above.

6. Comparable Sales

90. I am instructed to provide town planning opinion about 9 comparable sales sites. The 9 sites are shown in Figure 13.

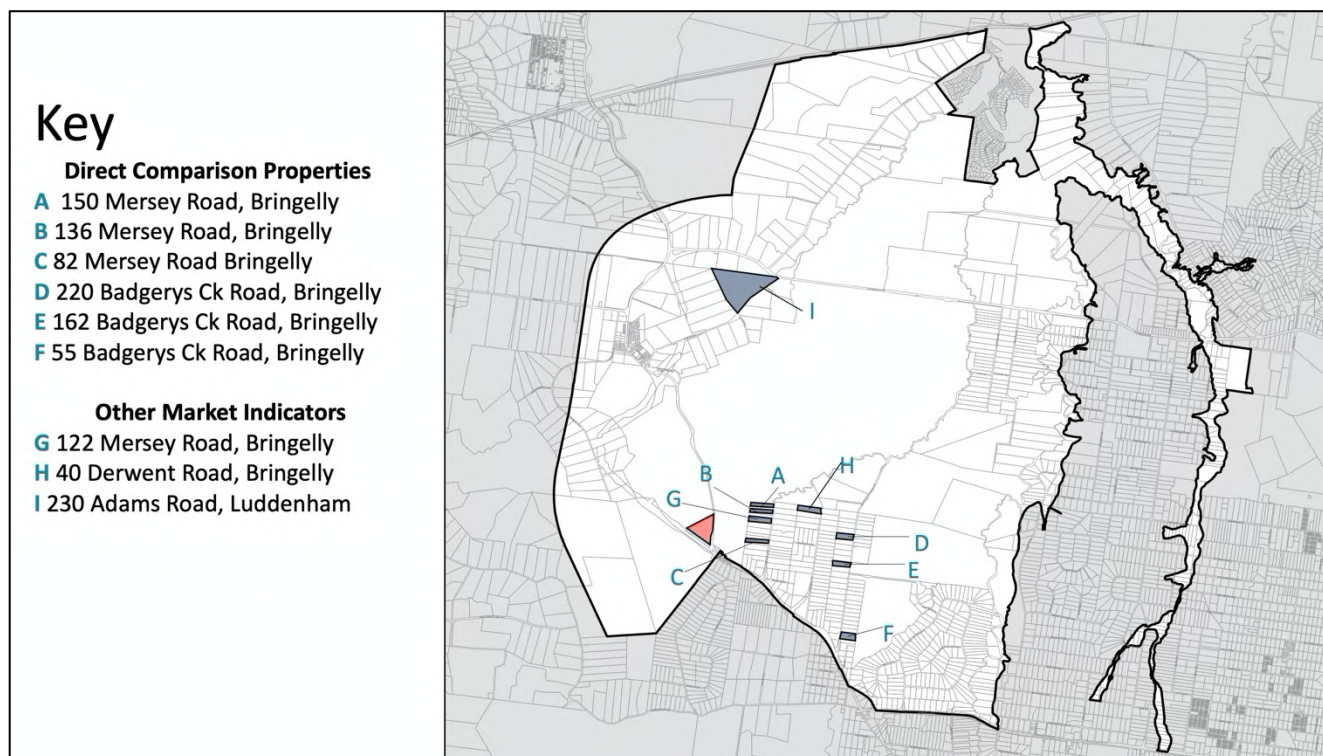


Figure 13: Comparable Sales Sites

91. On 31 July 2017 and 31 July 2018 I would have predicted the strategic planning future of the comparable sales lands in the same way as I predicted future strategic planning decisions in the Sivida matter in May 2017. Applying the Aerotropolis principles as advanced by John Kasarda, I note that Sites A, B, C, G and H are similarly distant from the first runway as the Leppington Triangle. Site 'I' is much closer to the first runway. Sites D, E and F are all much farther distant.
92. Hence, in my opinion, sites A, B, C, G and H are most comparable in terms of the way in which ANEF Contours would affect likely future zoning.
93. Applying the Kasarda Aerotropolis principles, I would predict similar future zoning for Sites A, B, C, G and H under the assumptions of the statutory disregard.
94. Sites D, E and F have a lower impact from airport noise (i.e. lower ANEF) and therefore have a greater potential for a future business zoning when applying the Kasarda Aerotropolis principles. In that respect, they might be viewed as superior.
95. However, my task is not to individually assess Sites A-I but rather to assess each property in relation to its validity as a comparison with Leppington Triangle.

96. As clearly stated above, Leppington Triangle's underlying zoning assessment requires a town planner to disregard the second runway proposal, and consider a situation where the second runway was not proposed. In such a case, the published 2050 ANEF contours are the relevant noise contours because they reveal the noise impacts of the single runway operating at its maximum.
97. Applying the 2050 ANEF contours from the Noise Modelling Tool on the [westernsydneyairport.gov.au](https://www.westernsydneyairport.gov.au) webpages⁵, it is clear that all Sites from A to H are outside the high-noise zone for the single runway airport, and would therefore not have any planning restrictions placed on them. In short, with regard to the planning-related noise impacts, they are equally unimpacted.
98. In summary, the comparison sites chosen for comparison with Leppington Triangle were valid, and sufficiently comparable for an expert valuer to make appropriate adjustments.

⁵ Noise modelling tool, <https://www.westernsydneyairport.gov.au/about/flight-paths/noise-tool>

7. Conclusion

99. Land known as the Leppington Triangle was acquired for the purposes of expanding the operational capacity of Western Sydney International (Nancy-Bird Walton) Airport. But for that public purpose, it is to be assumed that the Airport would have continued to operate as a single runway airport.
100. On that assumption, the concept of an Aerotropolis would still have been advanced at all levels of government. Town planning controls to guide and support the development of an Aerotropolis around the single runway airport would have still progressed.
101. The Airport Plan would still have existed, albeit in a different form which reflected the single runway operational requirements. Land directly adjoining Leppington Triangle to the north, east and west would have been zoned BD1 – Business Development under the Airport Plan.
102. The urban structure of the Aerotropolis would still have been based on internationally recognised aerotropolis planning principles. Applying those principles, the Leppington Triangle would have been zoned for industrial purposes, including potentially, a business industrial blended zone such as the B6 – Enterprise Corridor zone.
103. On 31 July 2017 and 31 July 2018 there was no information available to me or anyone other member of the public which could have predicted future rural zone for Leppington Triangle, and any such prediction would, in any case, have been in error.
104. The Agriculture and Agribusiness zone which ultimately arose from town planning events after 31 July 2018 resulted in a zoning which is very far removed from primary industry and is extremely dissimilar to traditional rural zones.
105. In my opinion, it would have represented an extreme injustice to the dispossessed land owner for its compensation value to have been calculated based on a future rural zoning. Instead, as noted above, a zoning of General Industrial, Heavy Industrial, Enterprise Corridor or Business Development would have been appropriate.
106. The timing of the future rural zoning would be tied to the commencement of operations of Nancy Bird International Airport, being December 2026. In my opinion, a planning and public works program would have been designed to ensure Airport support services were capable of established 12 months before the Airport operations commenced (i.e. December 2025). Allowing for Development Application preparation and assessment time as well as the provision of urban services, I would have predicted, on 31 July 2017 and 31 July 2018 that the further industrial or B6 zone would have been in place by late 2022 or early 2023.

Signed



David Haskew (B.T.P Hons 1)
Senior Partner
HDC Planning

8. Attachments

Attachment A – CV of David Haskew

Attachment B – Letter of Instruction

Attachment C – Summary Chronology Table

Attachment D – Detailed Chronolgy

Attachment A

CV of David Haskew



Curriculum Vitae

David Haskew

Current Position	2017 – Present	Haskew de Chalain Planning
	Partner	
		<ul style="list-style-type: none">• Preparation of Planning Reports, Planning Proposals, Statements of Environmental Effects• Provision of Expert Witness services in the NSW Land and Environment Court
Experience	2015-2016	Haskew Planning
	Director	
		<ul style="list-style-type: none">• Preparation of Planning Reports, Planning Proposals, Statements of Environmental Effects• Provision of Expert Witness services in the NSW Land and Environment Court
	2002 – 2015	Rhodes Haskew Associates
	Partner	
		<ul style="list-style-type: none">• Preparation of Planning Reports, Rezoning Applications, Statements of Environmental Effects and Traffic Impact Statements• Assessment of Rezoning and Development Application on behalf of numerous Local Government Authorities.• Land capability analysis and housing supply study for Campbelltown City Council• Provision of Expert Witness services in the NSW Land and Environment Court• Provision of Expert Witness services to Commissions of Inquiry
Experience	2000 – 2001	Rhodes Thompson Associates
	Senior Associate	
		<ul style="list-style-type: none">• Preparation of Planning Reports, Rezoning Applications, Statements of Environmental Effects and Traffic Impact Statements• Assessment of Rezoning and Development Application on behalf of numerous Local Government Authorities.• Provision of Expert Witness services in the NSW Land and Environment Court

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Gilbert de Chalain (Partner)
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E: gilbert@hdcplanning.com.au

PLANNING

APPROVALS

DEVELOPMENT ADVICE

www.hdcplanning.com.au

1998–2000 **Rockdale City Council**

Development Planner

- Assessment of Development Applications including residential, industrial, commercial and high rise mixed use developments.
- Responsibility for Development Applications having major significance to Rockdale City

1996 – 1998 **Rhodes Thompson Associates**

Associate

- Preparation of Planning Reports, Rezoning Applications, Statements of Environmental Effects and Traffic Impact Statements
- Assessment of Development Applications on behalf of Rockdale City Council.

1995-1997 **University of New South Wales.**

Academic Tutor

- Provision of seminars, lectures and tutorials to undergraduate students of UNSW in various town planning related planning fields, including architecture, heritage, transport, social planning, planning history and urban design.

1995-1996 **Campbelltown City Council**

Student Development Planner

- Assessment of Development Applications as part of a multi-disciplined assessment team

1994-1995 **M-Plan**

Undergraduate Associate

- Preparation of Statements of Environmental Effects for numerous Development Applications
- Assistance in the preparation of Narellan and Camden Town Centre Master Plans
- Assistance in the preparation of a town planning syllabus for University of Western Sydney.

Education

1992-1997 **University of New South Wales**

- Bachelor of Town Planning (Hons 1).

Expert Witness Experience

Proceedings	Parties
289731 of 2020	Austino Epping 2 Pty Ltd v Antoinette Farris (Second Respondent)
46497 of 2021	Al Maha Pty Ltd v Inner West Council
121082 of 2021	Qi Sheng & Kieren O'Neill v Mosman Council
278687 of 2020	Canyon High Pty Ltd v Inner West Council
267076 of 2020	Graphio AM v The Council of the City of Sydney
39217 of 2020	Aplus Architecture Pty Ltd v Georges River Council
22333 of 2020	Harmon International Holdings Pty Ltd & Anor v Inner West Council
00016489 of 2020	Karyn Lesley Grebert & Shane Daren Findlater v City of Parramatta Council
385185 of 2019, 396786 and 396839 of 2019 & 396829, 385150 and 396853 of 2019	C. & V Engineering Co Pty Ltd as Trustee for the Pizzolato Settlement v Valuer General & CV Property Holdings Pty Ltd as Trustee for Mascot Properties Trust v Valuer General
75642 & 75655 of 2019	Buhac v Transport for NSW
84959 of 2020	Summer Hill Business Estate Pty Ltd v Transport for NSW
219259, 275365 and 275377 of 2019	Johnson Property Group Pty Ltd V Cessnock City Council
365462 & 365460 of 2019	Cutajar & Tabone v Blacktown City Council
00314606 & 00314598 of 2018	Hatzitoulousis v Health Administration Corporation Hogan v Health Administration Corporation
00120709 of 2019	The Owners - Strata Plan 70187
00324554 of 2017 (Supreme Court)	Northern Beaches Council ats Built Development (Manly) Pty Ltd & Ors
103782, 103783, 103784, 103785	Orica Limited v Valuer General
208981 of 2018	John Anthony White v Sydney Water Corporation
208965 of 2018	Neil Alfred Jenman and Reiden May Jenman v Sydney Water Corporation
164491 of 2018	Brian Daniel Hayward and Rochelle Demarco v Sydney Water Corporation
98034 of 2018	Cauchi v The Hills Shire Council
75914 & 288404 of 2018	Limina Holdings Pty Ltd ITF Galileo Superannuation Fund v Valuer-General
329426 of 2017	Department of Education ats Northern Beaches Council
384761 of 2017	The Owners - Strata Plan 6666 v Kahu Holdings Pty Limited (Dissenting Owner) and GSA Australia Acquisition No. 2 Pty Limited
63560 of 2018	Soligo v Fairfield City Council
278211 of 2017	Albert Chahda v Liverpool City Council
SYC 866 OF 2017 (Family Court)	Anabel Debelak And Milan Debelak
187289 of 2017	Sivida Pty Ltd ATF the Camilleri Family Trust v RMS
00054142 of 2017	City of Sydney v RMS
356019 of 2017	Shaun Sorbello v Hawkesbury City Council
236350 of 2017	Robert Croft Holdings Pt Limited v Valuer General of New South Wales
251912 of 2017	Nathan Carlini v Canterbury Bankstown Council
54143 of 2017	City of Sydney Council v RMS
188443 of 2017	Nhi Giang Nguyen Ly v Hunters Hill Council
296992 of 2016	Rossmore Centre Pty Ltd v RMS
143249 of 2017	Verran v Valuer General
Not yet assigned	Usatti v Department of Planning and Environment
Not yet assigned	Chidel v Blacktown City Council
00133274 of 2017	Evan Christodoulou v Blacktown City Council
321056 of 2016	Norwest City Pty Ltd ATF Norwest City v Valuer General
281472 of 2016	Citywide Civil Engineering (NSW) Pty Ltd - v - Roads And Maritime Services
290621, 290633 & 290654 of 2016	Syna Co Pty Ltd v Valuer General
376840 of 2016	Tran v City of Canada Bay

30185; 30186 and 30187 of 2016	Olefines Pty Ltd v Valuer General
160710 of 2016	United Petroleum Pty Ltd v RMS
30456 of 2016	Dennis Charles Williams v Valuer General of NSW
154349 of 2016	Dan Wei Zheng v Roads and Maritime Services
154352 of 2016	Bill and Tina Hatzivasiliou v RMS
151784 of 2016	APS Property Management v RMS
30809, 30810, 30811, 30812, 30813 and 30814 of 2015	Omaya Holdings Pty Ltd & Ors v Valuer General
11004 of 2015	ABAX Contracting Pty Ltd v The Hills Shire Council
10027 of 2016	Baxter v Pittwater Council
Yet to be assigned	Infinitus Group Pty Ltd & Parg Pty Ltd-V- Transport For New South Wales
10201 of 2016	Deab-Anthony Succar and Sally Succar v Hurstville Council
319743 of 2014	Pyntoe Pty Limited and Joseph Gilles v Valuer-General
To be advised	Zinghini v RMS
30558 of 2015	Meduri v Blacktown Council
319743 of 2014 (Supreme Court)	Ligdas ats Bilton & Ors
10746 of 2015	Bisso v Fairfield City Council
10819 of 2015	Chouman & Alaeddine v Hurstville City Council
30658 of 2014	Sydney Metro Tree Services Pty Ltd v Transgrid NSW
30327 of 2015	Linley Point Estates v Lane Cove Council
30549 of 2015	Constantine v Blacktown Council
30103 of 2015	Xerri v RMS
30021 of 2015	Constantine v RMS
14/130617 and 14/130619	Minister Administering the Crown Lands Act v NSW Aboriginal Land Council
11080 of 2014	Camden Council ats Proust Gardner Consulting Pty Ltd
165658 of 2013 (Supreme Court)	Matthews v The Owners Strata Plan 58087
30491 of 2014	Department of Education Ats Rockdale City Council
30447 of 2014	Department of Education Ats Harvestrove Pty Ltd
31025 of 2013	Valuer General Ats The Austral Brick Company Pty Ltd v
30076 of 2014	Richard Pike v Blacktown City Council
10973 of 2014	Red Ventures Pty Ltd v Strathfield Council
1013 of 2014	Kyselov v Campbelltown City Council
1127 of 2013	Valuer General Ats Perpetual Limited
31133-7 of 2013	Valuer General Ats Kogarah Town Centre Pty Ltd
30818 of 2013	Capocchiano v Shellharbour City Council
31202 of 2012	Calarco v Department of Planning
31225 of 2012	Hrubala v Department of Planning
31219 of 2012	Chai & Seiling Holdings Pty Ltd v Department of Planning
31041 of 2012	Hutchison v Department of Planning
30108 of 2013	El Jiz v Department of Planning
10363 of 2012	Jawad v Hurstville City Council
20990 of 2011	Willoughby Council v RMS
30164 of 2009	Gyecsek v RTA
30164 of 2008	Broadway Estates v Department of Planning
10976 of 2009	McLean v Liverpool City Council
10549 of 2007	Brodie v Baulkham Hills Shire Council
10071 of 2007	Samir Trebincevic v Campbelltown Council
10865 of 2006	James Godfrey v Wollondilly Shire Council
10257 of 2006	King Mix Pty Ltd v Campbelltown City Council
10414 of 2006	Ikhtiar v Campbelltown City Council and Anor
31108 of 2005	Corigliano v RTA
11448 of 2004	David Blyth Pty Ltd v Kogarah Council
11327 of 2004	Dunn v Liverpool Council
10809 of 2004	Robert Stevens v Campbelltown Council
10210 of 2004	Stocklands v Wollongong Council
31278 of 2003	Calagero v RTA
30162 of 2003	Nasser v RTA
30163 of 2003	Millstar v RTA

11272 of 2003	Sandran Pty Ltd v Campbelltown Council
31072 of 2002	Lalic v RTA
1052 of 2002	Sorensen v Sutherland Shire Council
0356 of 2002	Himak Constructions v Rockdale Council
10734 of 2001	Mamone v Liverpool Council

Attachment B

Letter of Instruction

Flo Mitchell
Acc. Spec. (Commercial Litigation)



FMLEGAL
Litigation | Acquisition | Defamation

Our Ref: FM:200416
Your Ref: David Haskew

23 July 2021

Attn; David Haskew
HDC Planning
50 Carrington Street
SYDNEY NSW 2000

By Email: david@hdcplanning.com.au

Dear David,
Address: 165 Greendale Road, Greendale NSW 2745
Title: 102/DP812653

We act for [REDACTED] land known as the Leppington Triangle to the Commonwealth of Australia, in 2018.

The land was purchased under the Commonwealth acquisition powers, being the Lands Acquisition Act 1989, which are broadly the same as the NSW Land Acquisition (Just Terms Compensation) Act 1991 with which you are very familiar. Both Acts define market value as the price a willing but not anxious seller would accept, and a willing but not anxious buyer would pay. Both acts also allow that consideration can be given to the potential the land has, which is not confined to the current actual use.

We seek your expert opinion on had the land in question not have been required for a public purpose, what your advice would have been to a hypothetical purchaser in the marketplace of the potential rezoning of the land and the timeframe for such rezoning. We want to identify if the sales that were used were truly comparable, and if not, what of any of the sales were the most comparable.

Facts

In July 2017, a valuation was compiled by an independent valuer. The valuation established the underlying zoning of the land and assessed the land's current value with reference to potential future land use. An agreement between the landowner and the Commonwealth was reached based on this report and the property was exchanged/settled in July 2018.

We **enclose** the report of MJ Davis dated **31 July 2017**, which sets out the facts and background to the planning position as they saw it at that time.

We ask you for your opinion on the following;

FM Legal Pty Ltd

☎ 02 8379 1277
✉ law@fmlegal.com.au
📍 Level 13, 111 Elizabeth Street, Sydney NSW 2000
🌐 www.fmlegal.com.au

Litigation | Acquisition | Defamation

1. Question 1.

Had the land in question not been required for a public purpose, what would you be advising a hypothetical purchaser in the marketplace of the underlying zoning and potential future rezoning of the land in **July 2017**?

- 1.1. Does your opinion remain the same or change if the timeline is July **2018** (note this is the date the acquisition was finalised)?
- 1.2. If you do not agree with the findings on the potential future rezoning of the land as set out in the MJ Davis report, please set out your reasons why.

2. Question 2

At the time of the valuation report compiled in July 2017, the valuer had regard to the following sales.

Direct comparison properties	
A	150 Mersey Road, Bringelly
B	136 Mersey Road, Bringelly
C	82 Mersey Road, Bringelly
D	220 Badgerys Ck Road, Bringelly
E	162 Badgerys Ck Road, Bringelly
F	55 Badgerys Ck Road, Bringelly
Other market indicators	
G	122 Mersey Road, Bringelly
H	40 Derwent Road, Bringelly
I	230 Adams Road, Luddenham
	Badgery's Creek Road, Bringelly

- 2.1. Would you advise a hypothetical purchaser at that time that the properties in the table above were appropriate comparable sales with regard to the same underlying rezoning potential as the Leppington Triangle land?
- 2.2. If different would your advice at that time to a hypothetical purchaser that the properties in the table were in the inferior zoning, superior or about the same?
- 2.3. In addition to the rezoning, could noise contours have been a factor to distinguish the sales?

Noting that we are requesting your advice be placed within the context of mid-2017 and mid-2018, we have included in **Attachment A** some of the features of the statutory and market setting in place at the time. Also, concerning the properties selected by MJ Davis as comparison properties, we have included in **Attachment B** further details about those properties concerning the noise contours established for the Western Sydney International Airport.

Please confirm in your report that you have read and agree to be bound by the **enclosed** Expert Witness Code of Conduct and attach your CV to your report. Although this is not a Court matter as such it may be that your opinion could be admitted in court or other forums such as to the client's employer, or the Auditor-General, or other public inquiry. For that reason, we ask you to ensure you have stated in your report that you have read and agree to be bound by the Code of Conduct.

We confirm you are likely to charge in the order of [REDACTED] for your time in this matter in responding to this letter. We would like a written response within 21 days.

Yours faithfully
FM Legal Pty Ltd



Flo Mitchell
Partner

Attachment C

Chronology Table – Summary

Year	Event
1986	Badgerys creek announced as a Second Airport site for Sydney
1986-1991	1,780ha or land acquired at badger's creek
2002	M2 Motorway creating a north south freeway link in Western Sydney, approved
2005	A City of Cities - A plan for Sydney's Future – Metropolitan Strategy – Identified the Now and SW Growth Centres and Western Sydney Employment Area
2005	Western Sydney Employment Lands identified at junction of M4 and M7 motorways in the 2005 City of Cities Metropolitan Strategy
2006	Western Sydney Growth Centres State Environmental Planning Policy (SEPP) published. Western Sydney North West and South West Growth Centres announced
2009	Western Sydney Employment Area SEPP published
2010	Metropolitan Plan for Sydney 2036 – Identified need for expansion of Western Sydney Employment Area
2013	Draft Broader Western Sydney Employment Area Structure Plan released, identified airport land as <u>Potential Specialised Centre sites over top of SW growth Centre</u>
2014 – 15 April	BADGERYS CREEK AS SECOND SYDNEY AIRPORT ANNOUNCED
2014 - 16 April	Western Sydney Infrastructure Plan announced - included realignment of the Northern Road around future airport, <u>identified WSEA Extension to south east of airport land</u>
2014 - August	Draft Broader Western Sydney Employment Area Structure Plan released, removed airport land from the area
2015 - October	<u>Western Sydney Priority Growth Area</u> announced which included the airport land.
2016 – September	EIS for Western Sydney Airport completed for Airport and first runway. EIS referred to second runway
2016 - October	Aerotropolis 'leaked' to media
2016 - November	Aerotropolis referenced in the draft Southwest District Plan - Co-Creating a Greater Sydney
2016 - December	Western Sydney Airport Plan - did not refer to Aerotropolis
2017 – 31 July	BRIEF FOR VALUATION PURPOSES ISSUED BY DEPARTMENT OF INFRASTRUCTURE AND REGIONAL DEVELOPMENT
2017 – August	Aerotropolis officially announced
2018 - March	Greater Sydney Region Plan – identified 3 cities within a City. The Western Parkland City to be established on strength of new Badgerys Creek Airport and Aerotropolis
2018 - March	Western City Deal announced to deliver jobs, services and infrastructure to Western Sydney
2018 – 31 July	LEPPINGTON TRIANGLE PURCHASED BY COMMONWEALTH GOVERNMENT OF AUSTRALIA
2018 - August	Western Sydney Aerotropolis Land Use and Infrastructure Plan (Stage 1: Initial Precincts)
Post 2018	Ongoing planning approvals

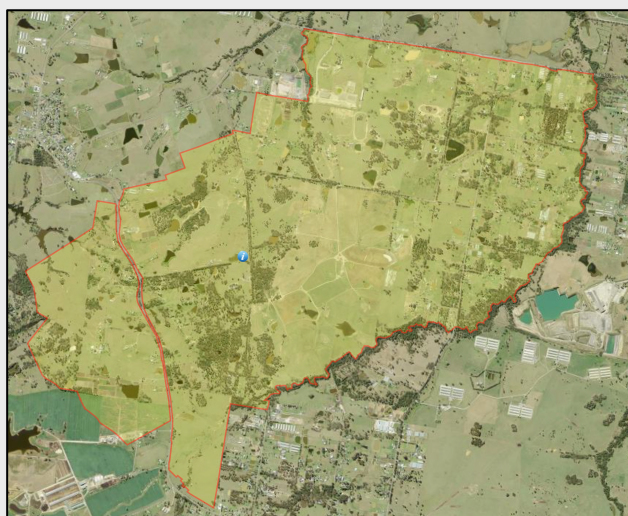
Attachment D

Chronology Table – detailed

Year	Planning document or event and town planning relevance	Source Documents
1945-1985	<p>Policy decisions regarding a second Sydney Airport and consideration of nineteen possible sites</p>	<p>Parliament of Australia, Paula Williams, – Second Sydney Airport – A Chronology, June 1998</p>
1986	<p>17 February 1986</p> <p>Commonwealth Government announces Badgerys' Creek as location for a second Sydney airport</p> <p>This announcement was the first of many in a long line of political decisions relating the need or not for a second airport to supplement air transport traffic into Sydney.</p>	<p>Link to web archive⁶</p> <p>Parliament of Australia, Paula Williams – Second Sydney Airport – A Chronology, June 1998</p>
1986-1991	<p>Australian Government land acquires land for a future second Sydney airport at Badgerys Creek</p> <p>The resulting site totalled 1,780 hectares.</p>	<p>Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport. Australian National Audit Office (September 2020) p21</p>

⁶ The Hon. Peter Morris, MP, Minister for Aviation 'Second Sydney airport site announced', *News Release*, 17 February 1986.

Year	Planning document or event and town planning relevance	Source Documents
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Graphic screenshot from SixMaps

1998 **Shaping Our Cities - The planning strategy for the Greater Metropolitan Region of Sydney, Newcastle, Wollongong and the Central Coast.**

Web Archive⁷

Referred to the significance of the uncertainty relating to a second Sydney airport.


There will continue to be unresolved urban issues which will have a significant bearing on the shape and management of the Region. The most significant of these may be the Commonwealth Government's decision on the proposed Second Sydney Airport at Badgerys Creek

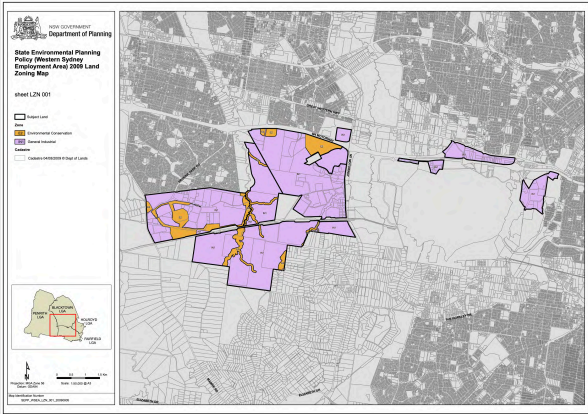
2002 **Minister approval for M7 Motorway 28 February 2002**

M7 created a north-south freeway link in Western Sydney opening opportunities for growth of services, employment, and freight transport on the outer edges of Sydney

Westlnk M7 motorway: Summary of contracts NSW RTA – August 2003, p8.

⁷ Shaping Our Cities 1998 - <http://web.archive.org/web/20020305164712/http://www.planning.nsw.gov.au/plansforaction/metro.html#anchor17799>

Year	Planning document or event and town planning relevance	Source Documents
2004	<p>December 2004 South West and North West Growth Centres announced</p> 	<p>City of Cities, A Plan for Sydney's Future – Metropolitan Strategy, NSW Government, page 133</p>
2005	<p>City Of Cities – A Plan for Sydney's Future – Metropolitan Strategy</p> <ul style="list-style-type: none"> ● Identified the <u>North West and South West Growth Centres</u> ● Identified the <u>Western Sydney Employment Lands</u>. <p>Key strategies introduced to utilise the land at the junction of the M7 and M4 for future employment as well as identifying future areas that could accommodate future employment:</p> <p>A1.7.2 <i>Identify areas that could accommodate employment lands growth.</i></p> <p style="padding-left: 40px;"><i>Potential areas to be considered include Badgerys Creek and environs, Hume corridor, Lower Hunter and Kembla Grange in Wollongong.</i></p> <p>A1.5.2 <i>Protect and enhance employment lands in the M7 Motorway Corridor.</i></p> <p><i>Located near the intersection of the M7 and M4 Motorways, the area referred to as the Western Sydney Employment Hub currently contains 1,500 hectares of zoned industrial land and has the potential to generate over 1,000 hectares of additional employment land.</i></p> <p><i>The opening of the M7 Motorway in December 2005 will increase the significance of this area as a metropolitan employment area. Sites identified as future employment lands needs to be</i></p>	<p>City of Cities, A Plan for Sydney's Future – Metropolitan Strategy, NSW Government, pages, 64, 66 and 110, 165</p>

Year	Planning document or event and town planning relevance	Source Documents
	<p><i>protected from fragmentation and inappropriate development. (Page 64)</i></p> <p>B5.2.1 <i>Implement the findings of the M7 landuse study to better manage existing employment lands and identify additional future supply. (page 110)</i></p> <ul style="list-style-type: none"> ● Identified new <u>North West-CBD—SW Rail link</u> to link the NW and SW Growth Centres with the CBD – no plans were identified for a North South Rail Link. ● No reference to the Outer Sydney Orbital in the 2005 Strategy. 	
2006	<p>State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (published 28 July 2006)</p>	<p>Weblink to historic SEPP (Growth Centres) 2006⁸</p>
2009	<p>21 August 2009</p> <p>State Environmental Planning Policy (Western Sydney Employment Area) 2009 published</p> <p>The Western Sydney Employment Area is underpinned by the State Environmental Planning Policy (Western Sydney Employment Area) 2009. The employment area is intended to provide businesses in the region with land to facilitate employment, including transport logistics, warehousing, and office space.</p>	<p>Weblink to Historic SEPP (WSEA) 2009⁹</p>
		

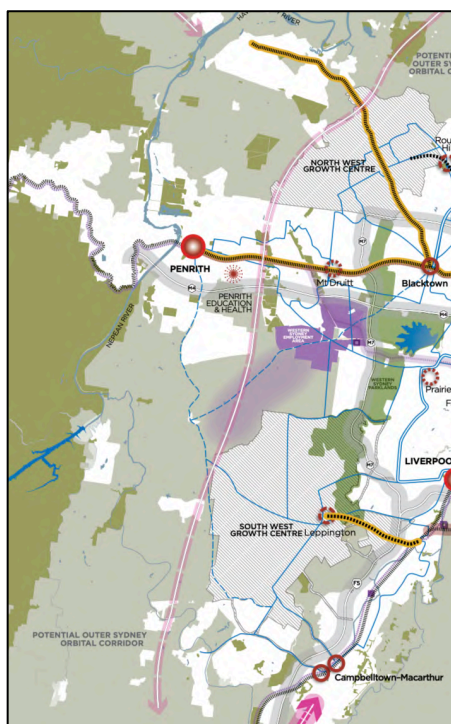
⁸ <https://legislation.nsw.gov.au/view/html/2006-07-28/epi-2006-0418>

⁹ SEPP (WSEA) 2009 – Historic Version - <https://legislation.nsw.gov.au/view/html/2009-08-21/epi-2009-0413>

Year	Planning document or event and town planning relevance	Source Documents
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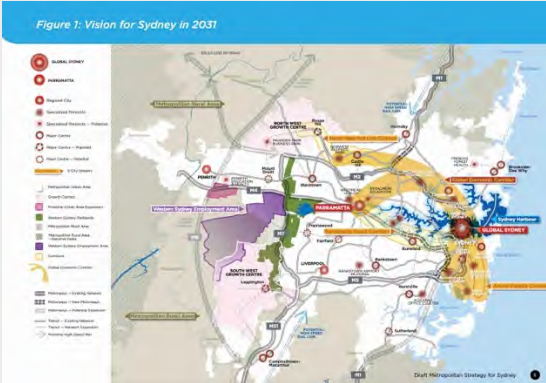
SEPP (WSEA) 2009 Original Zoning Map as first published 21 August 2009

2010	<p>December 2010</p> <p>Metropolitan Plan for Sydney 2036 –</p> <ul style="list-style-type: none"> ● Identified potential for a future <u>Outer Sydney Orbital</u>: <p>Objective C6 <i>To ensure transport corridors are preserved for future growth.</i></p> <ul style="list-style-type: none"> ● Identified need for expansion of <u>Employment Lands</u> <p>Action E3.1 <i>monitor supply and demand for employment lands, and plan for new employment lands</i></p>	<p>Metropolitan Plan for Sydney 2036 – December 2010, NSW Department of Planning, pages; 102, 140, figure from page 18</p>
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Graphic reproduced from page 18 of 2010 Metropolitan Plan. Identifies future Outer Sydney Orbital and areas for future Employment land Expansion

2013	<p>March 2013</p> <p>Draft Metropolitan Strategy for Sydney to 2031</p> <p>Draft Metropolitan Strategy released for community consultation in May 2013</p>	<p>Draft Metropolitan Strategy for Sydney to 2031, NSW Department of Planning,</p>
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Year	Planning document or event and town planning relevance	Source Documents
	<ul style="list-style-type: none"> ● Identified the <u>Broader Western Sydney Employment Area</u> as one of nine 'city shapers' <p style="text-align: center;">Action 13.4 Prepare a Structure Plan for the broader Western Sydney Employment Area</p> <ul style="list-style-type: none"> ● Identified the <u>Global Economic Corridor</u> ● Identified a Potential Urban Expansion Area at Orchard Hills – page 93: <p style="text-align: center;"><i>support ongoing housing growth through urban renewal especially around Penrith and other centres on the Strategic Transit Network and investigation of an <u>extension to the Metropolitan Urban Area at Orchard Hills</u> (page 93)</i></p>	pages; 5, 39, 49, 93
		
	<p>Graphic reproduced from 2013 Draft Metropolitan Strategy Figure 1: Vision for Sydney, page 5. Shows Broader WSEA, Global Economic Corridor and Outer Sydney Orbital and potential Urban Expansion Area at Orchard Hills</p>	

2013

June 2013

Draft Broader Western Sydney Employment Area Structure Plan

Draft structure plan for the Broader WSEA prepared.

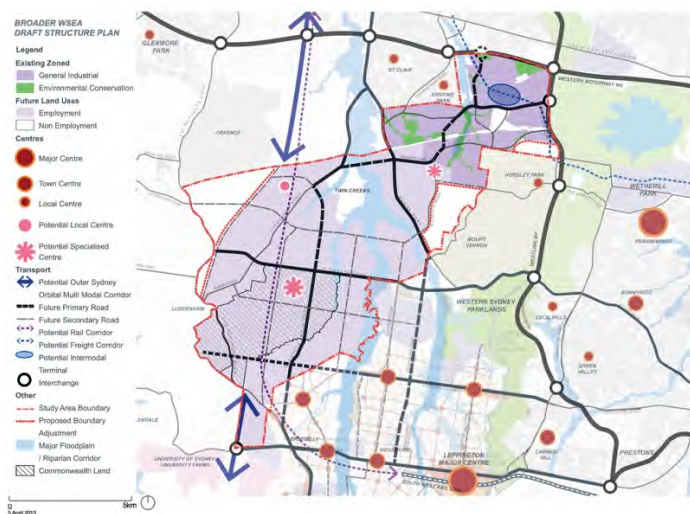
- Identified a potential north-south passenger rail corridor
- Identified Potential Specialised Centre on Commonwealth Land, (now the WSA)
- Identified future intermodal terminal within existing WSEA.

Supporting specialist studies informing structure plan confirmed that the 2013 draft plan did not include plans for the second Sydney airport including:

NSW Department of Planning and Infrastructure, Broader Western Sydney Employment Area, Draft Structure Plan, Securing long-term employment for Western Sydney,

Year	Planning document or event and town planning relevance	Source Documents
	<p><u>Urbis Economic report:</u></p> <p><i>The study area incorporates part of the existing Western Sydney Employment Area (WSEA) identified and zoned under State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP) in its northern extent and a section of the SWGC in its south-eastern extent. Of note, the Broader WSEA also includes the 1,700 ha Commonwealth-owned site at Badgerys Creek earlier earmarked for the second Sydney Airport.</i></p> <p><i>At the time of writing this report <u>a second airport at Badgerys Creek was not Government policy</u> therefore the presence of an airport within the Study Area has not been accounted for in the model;</i></p>	<p>June 2013, page: 45, 46, 47,</p> <p>Urbis, Broader Western Sydney Employment Area Economic Issues and Drivers Study – April 2013, pages 6, 27,</p>
	<p><u>GHD Transport Report:</u></p> <p><i>The structure plan and integrated transport network makes no provision for a second Sydney airport at Badgerys Creek.</i></p> <p><i>An established public transit framework exists to the east and south of the site. <u>These connections can be supplemented to service BWSEA.</u> The South West Rail Link and the Outer Sydney Orbital transport corridor further connect the site and allow freight access supporting the functions for this area.</i></p> <p><i>Ultimately this plan will require development and may require revision should Badgerys Creek airport be defined on this site.</i></p>	<p>GHD Broader Western Sydney Employment Area Structure Plan Transport Planning - Preliminary Analysis Report, June 2013, pages 16, 87.</p>

Year	Planning document or event and town planning relevance	Source Documents
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Graphic reproduced from Broader WSEA Structure Plan, Figure 23, p39

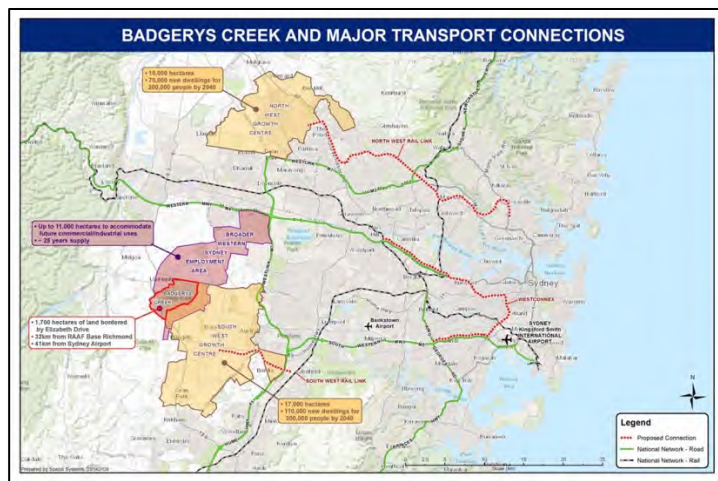
2015

2014

15 April 2014

Badgerys Creek confirmed as a second Airport for Sydney

[Link to Media Release¹⁰](#)



Graphic sourced from web archive media release of 14 April 2014 announcing second Sydney airport.

¹⁰https://web.archive.org/web/20140416210638/http://www.minister.infrastructure.gov.au/wt/releases/2014/April/wt056_2014.aspx

Year	Planning document or event and town planning relevance	Source Documents
2014	<p data-bbox="336 349 504 378">16 April 2014</p> <p data-bbox="336 409 943 439">Western Sydney Infrastructure Plan announced</p> <p data-bbox="336 468 1203 707">The Australian and NSW Government funding a 10 year, \$3.6 billion road investment program for western Sydney. The Western Sydney Infrastructure Plan (WSIP) will deliver major road infrastructure upgrades to support an integrated transport solution for the region and capitalise on the economic benefits from developing Western Sydney International Airport at Badgerys Creek.</p> <p data-bbox="336 736 751 766">Projects funded under the WISP:</p> <ul data-bbox="384 795 1219 1122" style="list-style-type: none"> - Northern Road Upgrade – includes realignment at western edge of Airport - Bringelly Road Upgrade - M12 Motorway - Werrington Arterial Road - Glenbrook Intersection at Ross Street - Local Roads Package – for road improvements programs for key Western Sydney councils 	<p data-bbox="1233 349 1477 589">Prime Minister Tony Abbot, Western Sydney Infrastructure Plan: More Jobs, Better Roads</p> <p data-bbox="1233 618 1422 736">Link to Web archive Media Release link¹¹</p> <p data-bbox="1233 766 1477 875">Western Sydney Infrastructure Plan Portal¹²</p>
2014	<p data-bbox="336 1167 668 1196">August – September 2014</p> <p data-bbox="336 1227 1102 1301">Amended draft Broader Western Sydney Employment Area Structure Plan and SEPP (WSEA) exhibited</p> <ul data-bbox="384 1330 1171 1657" style="list-style-type: none"> ● Amended draft structure Plan to remove the airport from the previously identified Broader WSEA expansion area: <ul style="list-style-type: none"> <i>To enable Western Sydney to realise its potential, the NSW Government established the Western Sydney Employment Area.</i> <i>Located about 50 kilometres from the Sydney central business district, the Western Sydney Employment Area</i> 	<p data-bbox="1233 1167 1477 1536">NSW Department of Planning and Environment, Exhibition Material Brochure – Western Sydney: Australia's Growth Engine, August 2014, pages, 3, 4,</p>

¹¹ <https://web.archive.org/web/20140416222208/http://www.pm.gov.au/media/2014-04-16/western-sydney-infrastructure-plan-more-jobs-better-roads>

¹² Link to Western Sydney Infrastructure Plan portal <https://caportal.com.au/rms/wsip>

Year	Planning document or event and town planning relevance	Source Documents
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enables businesses to use land for purposes such as transport and logistics, warehousing and office space.

In April 2014, the Commonwealth Government confirmed Sydney's second airport would be built at Badgerys Creek, near the Western Sydney Employment Area.

This means we can expect the Western Sydney Employment Area to provide more than the 57,000 jobs we'd predicted over the next 30 years, and the 212,000 jobs we'd forecasted for the longer term.

The Badgerys Creek announcement means the NSW government can plan for the future of Western Sydney.

This includes reworking the proposal we posted in June last year. We'll be doing this between now and 2015. In the meantime, we're planning to extend the existing Western Sydney Employment Area boundary south to Elizabeth Drive and to include land west of the planned second Sydney airport.

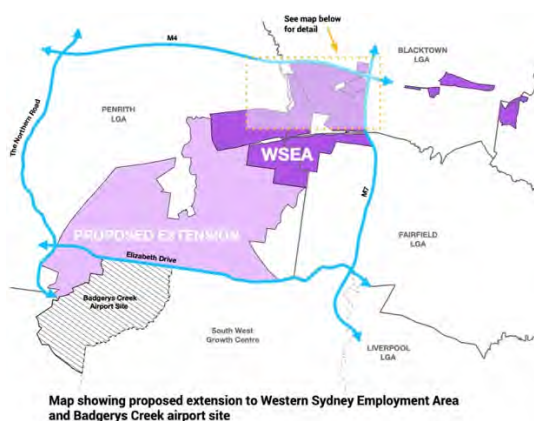


Figure sourced from Draft SEPP(WSEA) exhibition material August 2014

2014	<p>14 December 2014</p> <p>A Plan for Growing Sydney</p> <p>This plan was a single document and no subregional plans were ever released for A Plan for Growing Sydney. The Plan identified key</p>	<p>NSW Planning and Environment – December 2014</p>
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Year	Planning document or event and town planning relevance	Source Documents
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priorities for Sydney's then, six, subregions. In relation to the West Subregion the Plan:

- Identified Orchard Hills in the expanded Metropolitan Urban Area (MUA),
- Identified indicative corridor for the Outer Sydney Orbital;
- Identified indicative corridor for the SW Rail Link extension (the extension was renamed as the North South Rail link in 20XX)

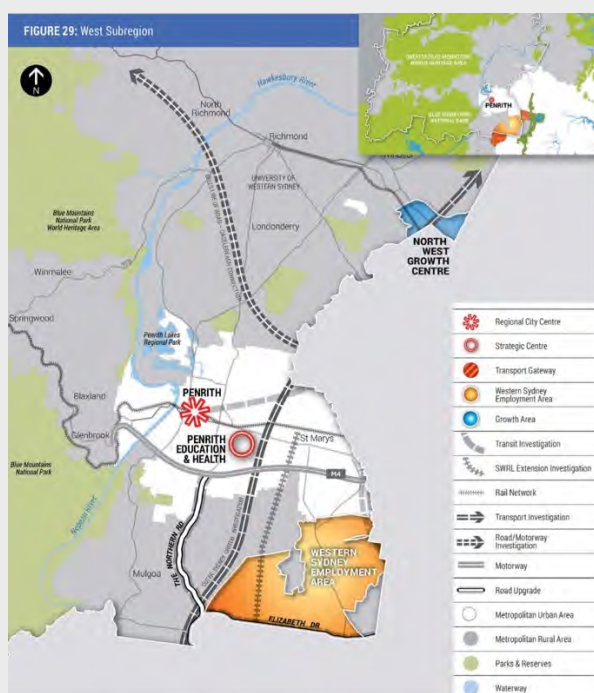


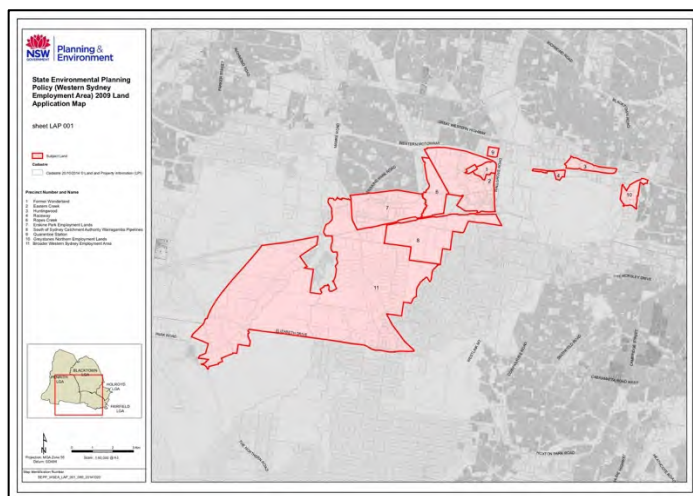
Figure sourced from *A Plan for Growing Sydney*, figure 21, page 121

2015 16 January 2015 [Link to Historic](#)

Amendment State Environmental Planning Policy (Western Sydney Employment Area) 2009 published

- Amendment Introduced Broader Western Sydney Employment Precinct – Precinct 11

Year	Planning document or event and town planning relevance	Source Documents
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SEPP(WSEA) 2009 as amended to include 'Precinct 11' as the Broader WSEA

2015

8 October 2015

[Link to Media Release¹³](#)

Western Sydney Priority Growth Area announced

The Priority Growth Area incorporated land already identified as part of the Broader Western Sydney Employment Lands and the South West Growth Centre.

The concept of the Priority Growth Area between the WSEA and the South West Growth Area represents a government commitment to obtain high cost-benefit from the Western Sydney Infrastructure Plan announced in conjunction with the Second Sydney Airport announcement on 16 April 2015.

From Media Release:

The Western Sydney Priority Growth Area will involve a new strategic framework being set out to ensure future planning for new homes, jobs and infrastructure.

Establishing this Priority Growth Area will maximise the economic and strategic benefits of the airport at Badgerys

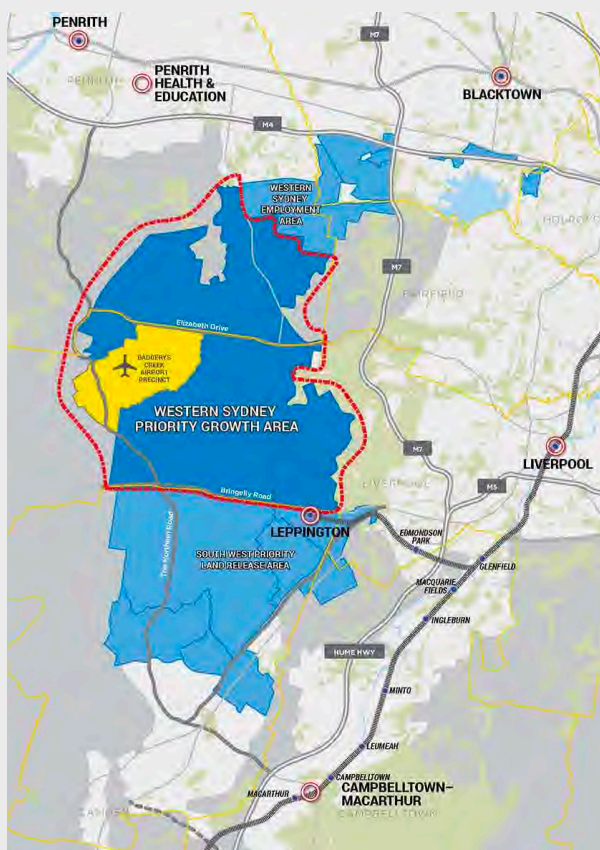
¹³ <https://www.planning.nsw.gov.au/News/2015/Helping-Badgerys-Creek-take-off>

Year	Planning document or event and town planning relevance	Source Documents
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Creek. It will also help bring about the full benefits of the associated \$3.6 billion infrastructure plan.

The Department of Planning and Environment will prepare a Land Use and Infrastructure Strategy to guide new infrastructure investment; identify new homes and jobs close to transport; and coordinate services in the area.

The new Badgerys Creek Airport will bring nearly 60,000 jobs to the region over the next three decades. Preliminary planning and investigations are already underway into future transport links, housing supply and social infrastructure.



Graphic sourced from Media Release announcing Western Sydney Priority Growth Area

2016	<p>September 2016</p> <p>Western Sydney Rail Needs Scoping Study – Discussion Paper</p>	<p>NSW Transport for NSW and Australian</p>
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Year	Planning document or event and town planning relevance	Source Documents
●	<p>Identified need for preservation of a public transport corridor to the South West Rail Link Extension. This was to become the North -South Rail Link. The discussion paper states:</p> <p><i>While the South West Rail Link Extension may connect to the proposed airport, the NSW Government anticipates that this extension will be needed regardless of the airport to support population growth in Sydney's south-west (p22).</i></p> <p>A north south link would have been eventually required to link the north west and south west growth centres.</p>	<p>Government - Western Sydney Rail Needs Scoping Study – Discussion Paper, September 2016, pages 22,</p>
2016	<p>18 October 2016</p> <p>'Leaked' media release regarding Aerotropolis</p> <p>Daily Telegraph article citing leaked Greater Sydney Commission information about the future Aerotropolis "Badgerys Creek airport: 'Aerotropolis' will be known as Greater West City"</p>	<p>Media release link – Daily Telegraph¹⁴</p>
2016	<p>December 2016</p> <p>Australian Government - Western Sydney Airport Plan</p> <p>The Airport Plan sets the vision for the development and operation of the Western Sydney Airport. Its focus is only on design and land uses within the Airport boundaries but also refers to land surrounding the airport:</p> <p><i>The Australian and New South Wales Governments are working together on land use planning around the airport to maximise opportunities for new jobs and industry and ensure future land uses are compatible with the airport's growth. We are also partnering in the essential infrastructure to support this growth.</i></p>	<p>Australian Government - Western Sydney Airport - Airport Plan, December 2016, page iii</p>

14 Daily Telegraph "Badgerys Creek airport: 'Aerotropolis' will be known as Greater West City - <https://www.dailytelegraph.com.au/news/nsw/badgerys-creek-airport-aerotropolis-will-be-known-as-greater-west-city/news-story/cf1193c048eb9edd36b166f96ff40ec0>

Year	Planning document or event and town planning relevance	Source Documents
	<p><i>The airport will be connected by high-quality transport. The Australian and New South Wales Governments are investing in new transport connections through the \$3.6 billion Western Sydney Infrastructure Plan, including the M12 motorway that will connect the airport into Sydney's freeway network. There will be regular bus services linking the airport to local centres and the city. The joint Western Sydney Rail Needs Scoping Study is examining options to connect the airport by passenger rail. A rail corridor has been identified and protected on the airport site.</i></p>	
2016	<p>November 2016</p> <p>Draft Southwest District Plan - Co-Creating a Greater Sydney</p> <p>The draft plan was intended to progress the directions of the 2014 A Plan for Growing Sydney (p12). It is noted that the subregional plans were never formally made however the relevance of this plan is that it first refers to the 'Aerotropolis'</p> <ul style="list-style-type: none"> Identified the <u>Aerotropolis within the Western Sydney Priority Growth Area.</u> <p>3.2.2 The core Western Sydney Airport Aerotropolis</p> <p><i>The land surrounding the Western Sydney Airport, defined as the Western Sydney Priority Growth Area is the core of the Western Sydney Airport Aerotropolis. It will be focused on agglomerating world class knowledge intensive airport-related activities (p43).</i></p> <p>3.2.6 Creating a polycentric city of jobs and opportunity around the Western Sydney Airport (p46)</p> <ul style="list-style-type: none"> Need for identifying alignments and preserving regionally significant <u>east-west and north-south rail and road corridors</u> (page 44), <p>3.2.3 Identifying alignments and preserving regionally significant east-west and north-south rail and road corridors for the Western City</p>	<p>Greater Sydney Commission, Draft Southwest District Plan - Co-Creating a Greater Sydney November 2016, pages 43, 44, 46</p>

Year	Planning document or event and town planning relevance	Source Documents
<p>3.3.1 Improving District significant east-west and north-south connectivity</p> <p><i>Greater Sydney's evolution to a metropolis of three cities will provide better access to hubs of major economic activity. Increasing the range of jobs and other opportunities that people can access within 30 minutes is a metropolitan aspiration as outlined in Our vision – Towards our Greater Sydney 2056. This requires better transport connections and stronger economic and employment centres.</i></p> <p><i>With the significant employment and population growth planned for the District, timely provision of enabling transport infrastructure is a critical consideration for connecting people to jobs and places at the metropolitan and district levels.</i></p>		
2016	<p>Western Sydney Airport Plan</p> <p>Focus on design and land uses within the airport boundaries and need for bus and train networks to connect to airport</p>	Western Sydney Airport Plan
2017	<p>25 August 2017</p> <p>Aerotropolis Officially Announced</p> <ul style="list-style-type: none"> Distinction made between an Aerotropolis, which is a city established surrounding an airport rather than building just an 'airport'. The importance of capitalising on the infrastructure spending <p><i>"We want Western Sydney Airport to be about much more than just building an airport we want it to be a fully integrated economic precinct that will deliver jobs and</i></p>	Link to Media Release - NSW Government Premier Gladys Berejiklian, 25 August 2017 ¹⁵

¹⁵ Aerotropolis announced: nsw.gov.au/media-releases/aerotropolis-2026-global-and-local-best-for-western-sydney-airport-precinct

Year	Planning document or event and town planning relevance	Source Documents
2018	<p data-bbox="475 349 1150 423"><i>opportunities for the people of Western Sydney and across NSW" Ms Berejikian said.</i></p> <p data-bbox="475 472 1214 707"><i>"There is much we can learn from Incheon Airport and its surrounding infrastructure as we plan for Western Sydney Airport. Incheon is a powerful example of how to leverage the economic impact of an airport by creating an 'aerotropolis', or city around an airport, with thriving industrial and commercial presence."</i></p> <p data-bbox="475 757 1203 1037"><i>The NSW Government is working closely with the Australian Government to maximise the opportunities from unprecedented levels of infrastructure spending in Western Sydney. The Australian Government is responsible for delivering the airport and is investing up to \$5.3 billion in equity with the airport to be operational by 2026.</i></p> <p data-bbox="336 1099 1082 1184">March 2018 Greater Sydney Region Plan – A Metropolis of Three Cities</p> <ul data-bbox="384 1211 1203 1975" style="list-style-type: none"> <li data-bbox="384 1211 1203 1285">● Identified <u>three cities</u> – Western Parkland City, Central River City and Eastern Harbour City (p7), <li data-bbox="384 1294 1203 1559">● Identified vision for <u>Western Parkland City</u>: <i>The city will be established on the strength of the new international Western Sydney Airport and Badgerys Creek Aerotropolis. It will be a polycentric city capitalising on the established centres of Liverpool, Greater Penrith and Campbelltown-Macarthur.</i>(p16) <li data-bbox="384 1599 1203 1975">● Identified the upcoming <u>Western City Deal</u>: Western Sydney City Deal – <i>The delivery of the Western Sydney Airport and Badgerys Creek Aerotropolis will be driven by a Western Sydney City Deal. It will transform the Western Parkland City into a thriving, productive and sustainable area, with the Western Sydney Airport as the economic catalyst. This will require collaboration of all tiers of government with the</i> 	Greater Sydney Commission - Greater Sydney Region Plan – A Metropolis of Three Cities, March 2018

Year	Planning document or event and town planning relevance	Source Documents
	<p><i>Australian and NSW governments working with local governments across the Blue Mountains, Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly (p82)</i></p> <ul style="list-style-type: none"> <li data-bbox="387 551 973 580"> <p>Identified the <u>Western Economic Corridor</u></p> <p><i>The development of a new Western Economic Corridor with north-south access for the Western Parkland City and the Western Sydney Airport and Badgerys Creek Aerotropolis at its heart, will agglomerate the economic activities of the city. The established centres of Liverpool, Greater Penrith and Campbelltown-Macarthur will be critical locations for commercial and retail businesses and health, education and other services as the city grows. The Western City Deal will drive the delivery of these outcomes. (p82)</i></p> 	
2018	<p>March 2018</p> <p>Western City Deal announced</p> <p>In March 2018 the Australian and NSW governments and eight Western Sydney Councils agreed to the <u>Western City Deal</u> – a plan designed to deliver services, infrastructure, and long-term prosperity for Western Sydney. The Western City Deal aims to deliver on the government commitment to build the Western Parkland City into Sydney's third economic centre.</p> <ul style="list-style-type: none"> <li data-bbox="387 1469 1214 1543"> <p><u>North South Rail Link</u> was one of six commitments making up the Deal.</p> <p>Western Sydney City Deal</p> <p><i>The Australian and NSW Governments have agreed to work with local government on the development of a Western Sydney City Deal, a generational deal to deliver almost 100,000 jobs, more housing and better transport for outer Western Sydney in what is the nation's largest ever</i></p>	<p>Link to Media release ¹⁶.</p> <p>Commonwealth of Australia, Western City Deal, March 2018,</p>

¹⁶ Transport for NSW Media Release, *Western Sydney City Deal to deliver rail, investment and jobs*, 4 March 2018.

Year	Planning document or event and town planning relevance	Source Documents
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planning and investment partnership. The Western Sydney City Deal is intended to drive a new economy in the emerging aerotropolis that incorporates the areas immediately around the Western Sydney Airport, and the broader region.

2018 **August 2018**

Western Sydney Aerotropolis Land Use and Infrastructure Plan (Stage 1: Initial Precincts)

NSW Government released the Stage 1 LUIP.

Nine Precincts:

i. Aerotropolis Core;

ii. Northern Gateway;

iii. South Creek (green spine and recreation area);

iv. North Luddenham;

v. Rossmore;

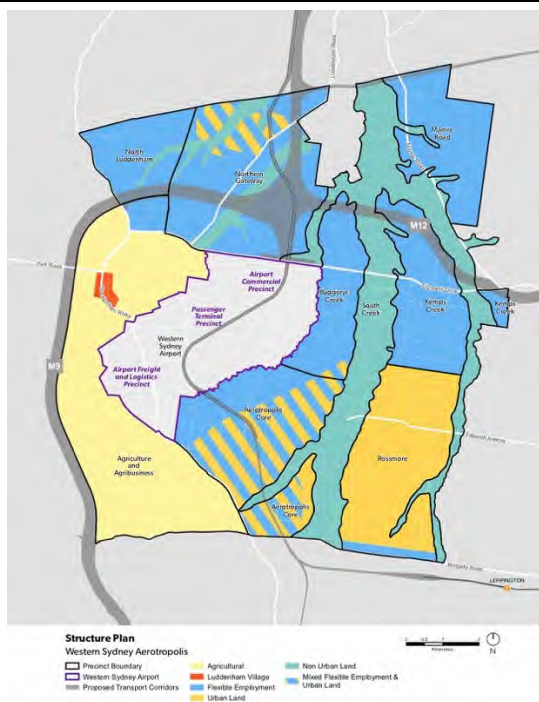
vi. Mamre Road

vii. Kemps Creek;

viii. Badgerys Creek; and

ix. Agriculture and Agribusiness

Year	Planning document or event and town planning relevance	Source Documents
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2019	<p>December 2019</p> <p>Draft Western Sydney Aerotropolis Plan exhibited</p>	<p>Draft Western Sydney Aerotropolis Plan – NSW DPIE</p>
2020	<p>1 October 2020</p> <p>SEPP – Western Sydney Airport</p> <p>Proi</p>	