

Western Sydney Planning Partnership
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SUBMISSION WITH RESPECT TO WESTERN SYDNEY AEROTROPOLIS PLANNING PACKAGE ON BEHALF OF MAMRE ROAD HOLDINGS PTY LTD AND VAPOVI PTY LTD

1.0 INTRODUCTION

This Submission is made by Willowtree Planning Pty Ltd (Willowtree) on behalf of Mamre Road Holdings Pty Ltd (Mamre Road Holdings) and Vapovi Pty Ltd (Vapovi) with respect to the Draft Western Sydney Aerotropolis Planning Package, including Proposed Aerotropolis State Environmental Planning Policy (SEPP). Vapovi and Mamre Road Holdings own [REDACTED] Mamre Road, Kemps Creek respectively (Lots [REDACTED]). This Submission is supported by the Appended Engineering Memo prepared by Sparks + Partners Consulting Engineers (refer to **Appendix 1**).

The site is currently used for rural residential and related agricultural purposes. Currently, the site lies wholly within the *State Environmental Planning Policy (Western Sydney Employment Area) 2009* (WSEA SEPP) Application Area but has not yet been rezoned under WSEA SEPP, therefore remaining subject to some planning controls under the *Penrith Local Environmental Plan 2010* (PLEP 2010) (refer to **Figure 1** and **Figure 2** below). Under the Draft Western Sydney Aerotropolis Planning Package, the westernmost portion of the site will fall within the Wianamatta-South Creek initial precinct of the Aerotropolis SEPP (refer to **Figure 3** below), where it is proposed to be rezoned for Environment and Recreation

In contrast, the majority of the site towards the east will remain within the WSEA, becoming formally zoned under WSEA SEPP as IN1 General Industrial, RE1 Public Recreation, E2 Conservation and SP2 Infrastructure. The Draft Western Sydney Aerotropolis Planning Package will therefore repeal the application of the WSEA SEPP from the westernmost portion of the site whilst delivering this same portion of land as a greened environmental corridor within the Aerotropolis.

To date, employment generating development at the site has been considered permissible by invoking Clause 12 of WSEA SEPP. As such, the site currently benefits from certain land uses being made permissible due to its innominate zoning status under the WSEA SEPP, which provides the entire site with a quasi-industrial land zoning that can be employed to override the RU2 Rural Landscape zoning under the PLEP 2010. The Draft Western Sydney Aerotropolis Planning Package would essentially 'downzone' the site, when compared to its current planning controls.

The overall effect of the Draft Western Sydney Aerotropolis Planning Package would be to designate more than 50% of the [REDACTED] site owned by Vapovi and Mamre Road Holdings as being unsuitable for urban development. As a result, it is estimated that over 500 potential jobs could be lost on the site alone (based on standardised rates of industrial land use). Vapovi and Mamre Road Holdings therefore submit that the Aerotropolis SEPP's boundaries should be amended to align with actual property boundaries in this location, so as to avoid planning law confusions and to prevent an effective 'downzoning' of a site where industrial land uses are currently permitted.

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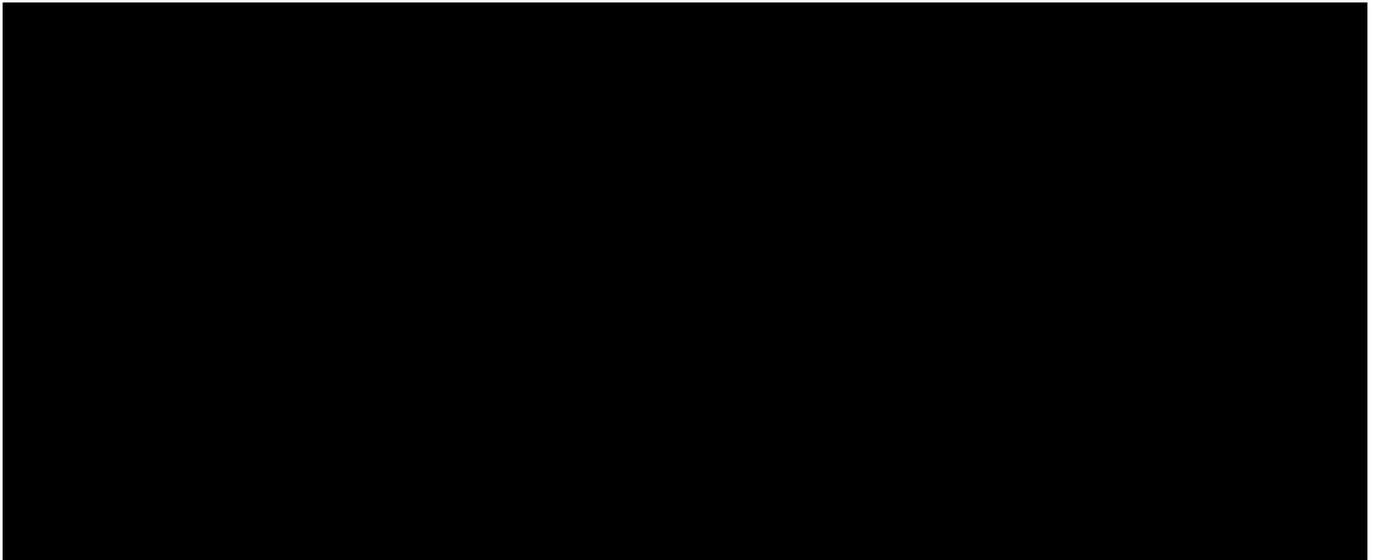


Figure 1 Current WSEA SEPP Land Application Map (NSW Legislation, 2020)



Figure 2 Current WSEA SEPP Land Zoning Map (NSW Legislation, 2020)

Vapovi's and Mamre Road Holdings' other grounds of submission relate to the following:

- Grave zoning inefficiencies and resulting inability to undertake key employment-generating land uses within both Lots;
- Fragmentation of existing properties leading to contradictions with NSW Planning Policies established by the Land and Environment Court;
- The location of the proposed E2 Environmental Conservation zone to preserve the existing tributary of South Creek as it traverses the site not making best use of the land. This tributary could be more efficiently realigned to the south;
- DPIE failing to take the opportunity to align the WSEA SEPP boundaries and land zonings so as to apply them to defined parcels of land;
- Applying overly stringent flood planning controls which directly contradict NSW Government and Penrith City Council planning policies, as well as standard industry knowledge and practice;
- mUncertainty regarding applicable Section 7.11 Contribution and applicable Special Infrastructure Contribution rates; and
- Insufficient details on process for, as well as costs and timing of, land reservation acquisition.

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With regards to land that is mapped for Environment and Recreation, Vapovi and Mamre Road Holdings moreover submit that any such land which is acquired should be acquired according to its highest and best industrial land use, which is currently around the \$750/m² price range. This reflects the current planning law scenario where much of the land under WSEA SEPP can be used for permissible WSEA SEPP land uses even where it is not zoned under WSEA SEPP, by invoking Clause 12 of the same.

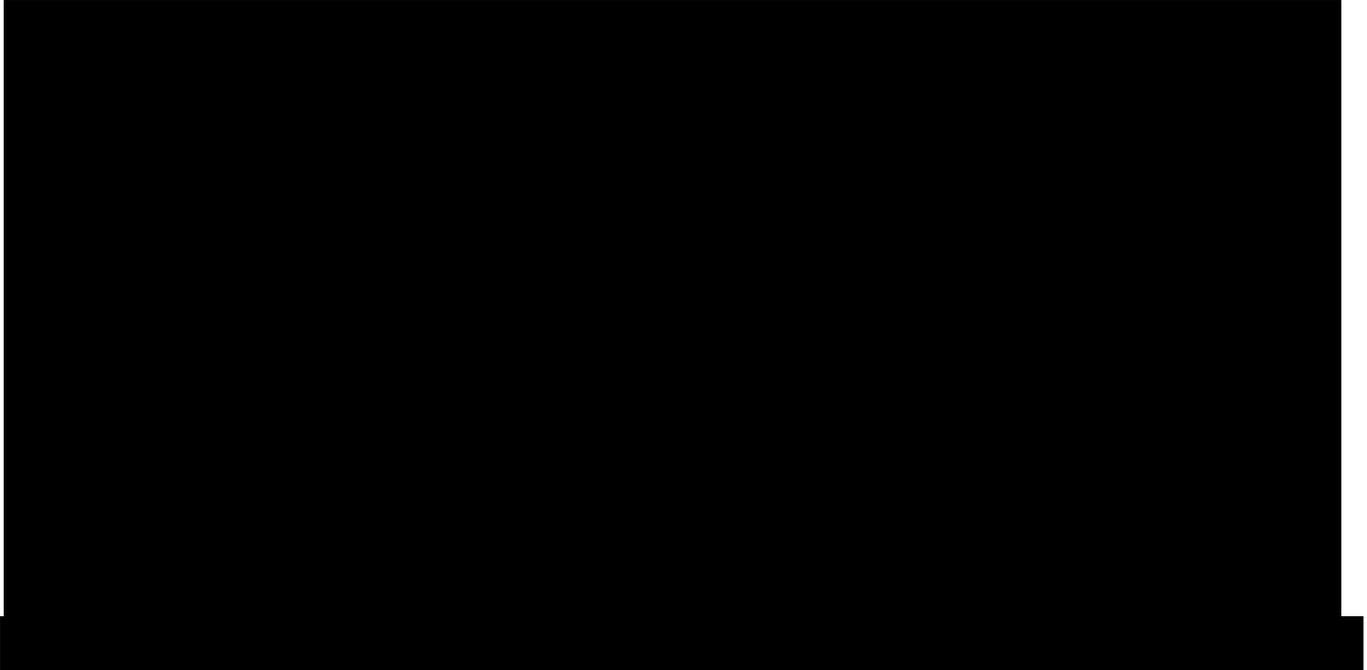


Figure 3 Draft Land Application Map (Western Sydney Planning Partnership, 2019)

Vapovi's and Mamre Road Holdings' further points of submission in relation to the Draft Western Sydney Aerotropolis Planning Package are outlined in **Section 4.0** below. It is recommended that these matters be addressed before the Draft Western Sydney Aerotropolis Planning Package proceeds towards being finalised and the corresponding Aerotropolis SEPP is gazetted.

2.0 THE SITE

Vapovi and Mamre Road Holdings own [REDACTED] Mamre Road, Kemps Creek respectively (Lots [REDACTED] which is shown on **Figure 4** below. The site is located largely within the within the Wianamatta-South Creek initial precinct of the Aerotropolis SEPP, as shown on **Figure 3** in **Section 1.0** above. It:

- Is readily accessed by the regional road network, including both the M4 and M7 Motorways;
- Is relatively flat, with a gradual slope in gradient from east to west;
- Is sparsely vegetated with scattered stands of trees and scrub;
- Contains rural residential premises and associated agricultural infrastructure;
- Is traversed by a tributary of South Creek, joining South Creek to the west; and
- Is flood affected along its western boundary.

The site is bound by the following:

- The site controlled by Frasers Property Industrial (Frasers Property) and Altis Property Partners (Altis) to the immediate north, for which approval is pending from the NSW Department of Planning, Industry and Environment (DPIE) under State Significant Development (SSD) [REDACTED] for a proposed State-of-the-Art Six-Star-Green-Star Warehouse, Industrial and Logistics Facilities Hub;
- South Creek to the west;
- Mamre road to the east; and
- Rural and residential land holdings to the south and east, including some educational precincts (Trinity Primary School and Emmaus Catholic College).

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Further to the north of the Frasers Property and Altis site the Warragamba Pipeline is situated. Erskine Business Park lies beyond that, which operates 24/seven including tenants such as CEVA Logistics, CSR, Woolworths and Alvaro Transport. The overall nature of this locality is therefore industrial and/or is progressing towards operating as an industrial precinct.

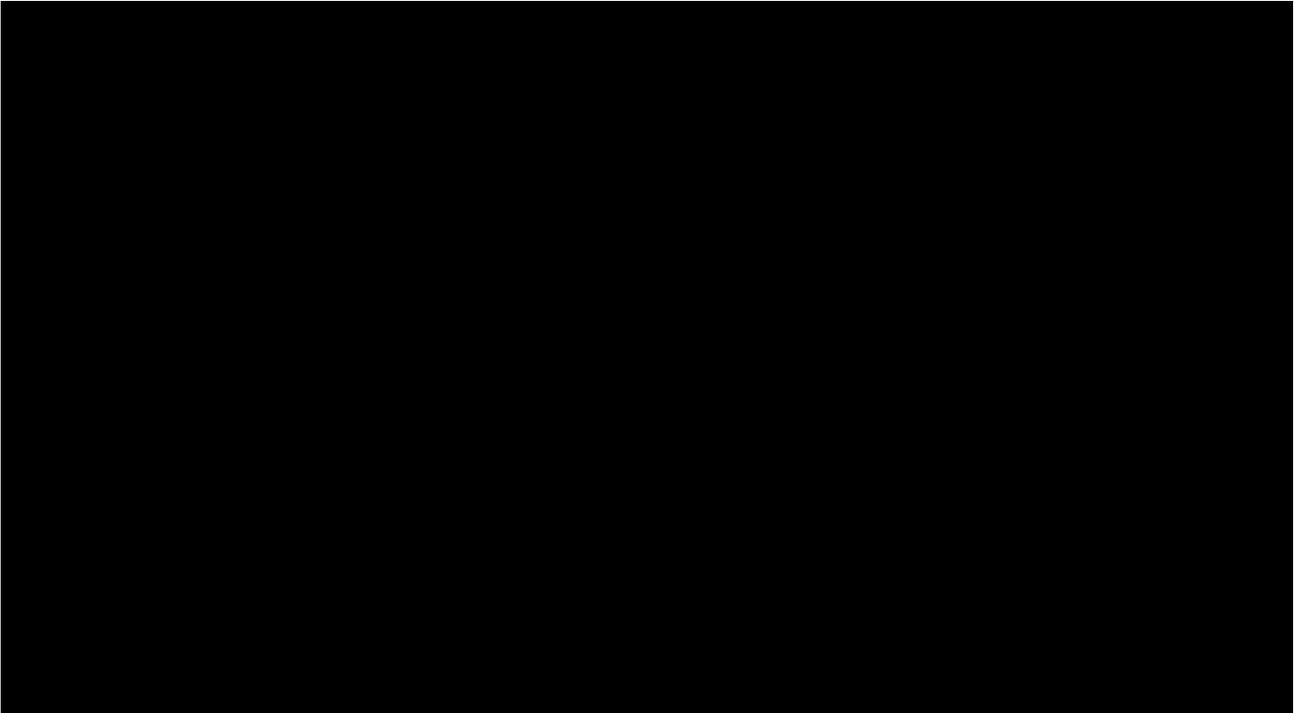


Figure 4 The Site – Aerial View (SIXMaps, 2020)

[REDACTED] was approved for the site on 22 October 2007 for the erection of a glasshouse building and storage dam at Lot [REDACTED]. The site continues to be used for rural residential and related purposes.

The site has direct frontage to Mamre Road of around 290m and a total site area of approximately [REDACTED]. Under the current WSEA SEPP mapping, it is located wholly within the Land Application Area - Precinct 11.

3.0 CURRENT AND PROPOSED CONTROLS

The site currently lies within the WSEA SEPP Application Area. However, it has not been rezoned under WSEA SEPP (refer to **Figure 2** in **Section 1.0** above). Under the PLEP 2010, the site is primarily zoned RU2 Rural Landscape, with the westernmost portion zoned E2 Environmental Conservation, and a strip of land fronting Mamre Road zoned SP2 Infrastructure.

To date, employment generating development at the site has been considered permissible by invoking Clause 12 of WSEA SEPP. As such, the site currently benefits from certain land uses being made permissible due to its innominate zoning status under the WSEA SEPP, which provides the entire site with a quasi-industrial land zoning that can be employed to override the RU2 Rural Landscape zoning under the PLEP 2010.

The Draft Western Sydney Aerotropolis Planning Package would rezone the site under the Aerotropolis SEPP to an Environment and Recreation zoning (refer to **Figure 5** below). The site would also be mapped as being within the 1:100 Flood Area (refer to **Section 4.5** below).

Introducing the extensive Environment and Recreation zone as is proposed under the Draft Western Sydney Aerotropolis Planning Package (refer to **Figure 5** below) would essentially 'downzone' the site, when compared to its current planning controls.

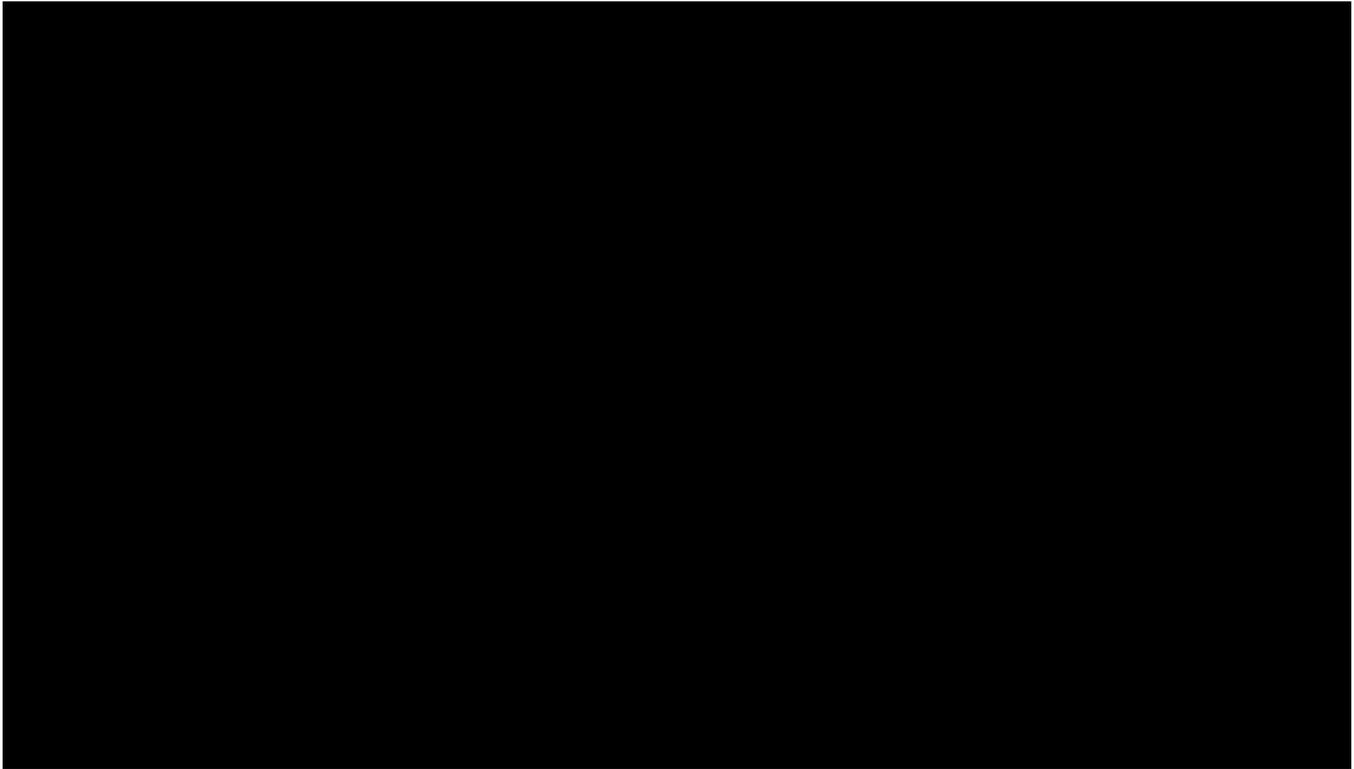


Figure 5 Proposed Aerotropolis SEPP Zoning (Western Sydney Planning Partnership, 2019)

4.0 GROUNDS OF SUBMISSION

Vapovi's and Mamre Road Holdings' grounds of submission to the Draft Western Sydney Aerotropolis Planning Package relate to the following matters:

- That rezoning of more than half of the site for Environment and Recreation, whilst leaving the remainder under WSEA SEPP, would result in grave inefficiencies in the site's developable footprint, with irregular shaped and relatively small pockets of developable land created between the Aerotropolis SEPP and WSEA SEPP. This would effectively prohibit several permissible IN1 General Industrial land uses from being undertaken on both Lots;
- The location of the proposed Environment and Conservation zone to preserve the existing tributary of South Creek as it traverses the site not making best use of the land. This tributary could be more efficiently realigned along the southern boundary of [REDACTED] to support more efficient development outcomes;
- DPIE failing to take the opportunity to align the Aerotropolis SEPP and WSEA SEPP boundaries and land zonings so as to apply them to defined parcels of land, creating planning system uncertainties and sterilising the use of land which may otherwise be most efficiently used for industrial purposes;
- The Precinct's zoning and boundaries have been drawn based on overly stringent flood planning controls (i.e. built form development not considered suitable within the 1:100 Average Recurrence Interval), which directly contradict NSW Government and Penrith City Council planning policies, as well as standard industry knowledge and practice. This results in an unnecessary sterilisation of land. These flood affected areas, when adjusted to the prevailing topography, would not result in any net loss of flood storage, nor any changes to the existing flood hazard/overall flooding characteristics of the locality;
- Uncertainty regarding applicable Section 7.11 Contribution and applicable Special Infrastructure Contribution rates, as the Discussion Paper contains insufficient details;
- Insufficient details on process for, as well as costs and timing of, land reservation acquisition; and
- There is already adequate open space provided for in the locality. Nevertheless, should Environment and Recreation zonings be applied within the Aerotropolis, these should permit a broader range of compatible land uses and the RE2 Private Recreation zone should also be considered for possible application.

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Each of these submission matters are set out in more detail in **Sections 4.1 to 4.8** below.

Overall, Vapovi and Mamre Road Holdings suggest that the bulk of its site should be subject to a suitable employment-generating land use zone under the Aerotropolis SEPP.

4.1 Balance of Significant Open Space and Environmental Zonings

The effect of the Draft Western Sydney Aerotropolis Planning Package would be to rezone more than half of the site to Environment and Recreation under the Aerotropolis SEPP, cutting through the site's middle from north-west to south-east. This would result in Grave inefficiencies in the site's developable footprint, with irregular shaped land zoning boundaries.

In Willowtree's experience, such misaligned zoning boundaries are usually later amended by proponent-led Planning Proposals. In this case, such an outcome is almost guaranteed, given that most of the permissible land uses under the Aerotropolis SEPP cannot be undertake within the Environment and Recreation zone. Moreover, the proposed mapping creates irregular zoning boundaries, leading to inefficiencies with adjoining urban services land zoned under WSEA SEPP. This is especially the case when industrial and warehousing developments require geometric shaped parcels of land.

This could also contribute to adjoining WSEA SEPP land being unable to access the surrounding road network.

As set out in the Engineering Memo prepared by Sparks + Partners Consulting Engineers (refer to **Appendix 1**), this proposed Environment and Recreation zoning would create significant issues for the site. Most significantly, the two resulting IN1 General Industrial zoned portions of land under WSEA SEPP would not be connected to other IN1 zoned land to the north and south (where road networks are most likely to be located in future). Rather, any future local road would most likely dissect these proposed zones, and would be required to convey traffic to and from the two main precinct traffic intersections proposed for Mamre Road. This would also result in a significant divide between the northern and southern IN1 General Industrial pockets of land, fragmenting the land.

Submission comments from Penrith City Council and RSM relating to the nearby SSD [REDACTED] indicate there will be, in future, a north-south collector road through this IN1 General Industrial zone, conveying traffic from the Southern Link Road to run along the Precinct's north to another intersection with Mamre Road in the Precinct's centre. Due to the proposed location of the Precinct's boundary spur within Lot [REDACTED] and the RE1 and E2 zones, such a future north-south collector road would traverse these zones, conflicting with the primary objectives of these zones (refer to **Appendix 1**).

The alternative alignment of the RE1 Public Recreation zone as suggested by Vapovi and Mamre Road Holdings (refer to **Figure 3** in **Appendix 1**) consists of geometric lines rather than an arbitrary one that would better reflect the intention and purpose of both environment and employment generating land use zones proposed under both the Aerotropolis SEPP and WSEA SEPP. This would also allow for easier implementation and compliance during the development approvals and construction processes. **Figure 3** in **Appendix 1** demonstrates how an appropriate open space offset could be provided. This alternative open space/conservation alignment would allow for a more streamlined approvals and construction process. It would also involve realigning the tributary to the southern boundary of Lot [REDACTED] before heading north along the proposed Mamre Road Precinct boundary located in the west of Lots [REDACTED] and [REDACTED] (refer to **Appendix 1**). The Draft Western Sydney Aerotropolis Planning Package zoning width of 40m indicates this tributary should be classified as a First Order Stream. Based on the *Guideline for Riparian Corridors on Waterfront Land* (Office of Water, July 2012), First Order streams are able to be realigned if required. Such a realignment would create less land fragmentation and prevent the creation of irregular-shaped land parcels. Ultimately, this would result in a better realization of:

- The strategic value of the locality in contributing to the employment options for Western Sydney and building upon the opportunities presented by the Western Sydney Aerotropolis;

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- Objective (c) of the *Environmental Planning and Assessment Act 1979* which is “to promote the orderly and economic use and development of land;”
- The primary objectives of the RE1, E2 and IN1 zones; and
- Environmental requirements to suitably convey overland flows from the upstream catchment located in the east (refer to **Appendix 1**).

Furthermore, the irregular shape of the proposed Environment and Recreation zone boundary along with its arbitrary location would make the legal and permissible development of the remainder of these Lots difficult to achieve. A surveyor, for instance, would need to set out this zoned boundary on site, which would not be an easy task. There is therefore real potential that errors could be made with the zoning boundary on the ground, resulting either in unlawful development within the Environment and Recreation zone (noting that boundary flexibility clauses generally do not apply to these types of zones), and/or under-development of the adjoining IN1 General Industrial zone under WSEA SEPP to prevent such errors (refer to **Appendix 1**). This directly contradicts Objective (c) of the *Environmental Planning and Assessment Act 1979* which is “to promote the orderly and economic use and development of land.”

The shape of the proposed Environment and Recreation zoning also does not allow for effective activation of the area, as it is disconnected from Mamre Road and surrounded by IN1 General Industrial zoned land to the immediate east under WSEA SEPP. Indeed, access to this area would be restricted, as direct access from Mamre Road would not be permitted by RMS due to the nature of warehousing and industrial developments within the locality. As such, any future activation of this open space would most likely take place along the boundary of the zone, resulting in public access and recreation benefits not being fully realised (refer to **Appendix 1**).

As mentioned above, future development at the site would most likely be accompanied by a request to Government to realign this Environment and Recreation zone, to allow for a better realisation of the land in accordance with Objective (c) of the *Environmental Planning and Assessment Act 1979* which is “to promote the orderly and economic use and development of land.”

It would therefore be greatly more efficient to deal with these inefficient zoning boundaries now, rather than jeopardise the timing of development delivery, the payment of developer contributions, the embellishment of open space land, and the provision of employment, within the Wianamatta-South Creek initial precinct. This acknowledges the fact that developers will wait for optimum land zoning conditions to be approved prior to committing to employment-generating development, which generally involves significant capital investment.

This is particularly the case as there is already significant open space provided for within the locality, for example, as a result of the adjoining SSD [REDACTED] application for a State-of-the-Art Six-Star-Green-Star Warehouse and Logistics Hub to the north. Nevertheless, additional open space/public recreation land uses could be achieved within the Wianamatta-South Creek initial precinct through the provision of DCP controls requiring industrial private open space for staff, contractors and visitors to use in the case of employment-generating developments. This would allow people who are likely to use the site to enjoy such amenities. Indeed, given the preponderance of industrial zoning within the WSEA, it is unlikely that a significant portion of this proposed Environment and Recreation zoned land would be utilised by vast members of the general public.

Section 4.8 below further discusses some alternative options for enabling open space and recreational activation of these areas.

4.2 Fragmentation of Lands

Vapovi and Mamre Road Holdings submit that the proposed zoning map would fragment existing properties, including their own landholding. Indeed, it is generally not considered to be good planning practice to fragment existing, developable lands in this manner, thereby restricting their development potential. This could lead to a result whereby half of Vapovi’s and Mamre Road Holdings’ lands within the Aerotropolis SEPP would be adversely impacted by a State Government planning decision which only relates to half of this landholding. Should the Draft Western Sydney Aerotropolis Planning Package be gazetted in its current form,

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this could lead to contraventions of the following NSW Planning Policies established by the Land and Environment Court:

- *Davies v Penrith City Council* [2013] NSWLEC 1141 at 116-121 – General impact;
- *Seaside Property v Wyong Shire Council* [2004] NSWLEC 600 at 30 – Location of communal open space;
- *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 at 17-19 – Lot isolation;
- *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 at 22-31 – Compatibility of proposal with surrounding development; and
- *Seaside Property Developments Pty Ltd v Wyong Shire Council* [2004] NSWLEC 117 at 25 – Development at zone interface.

Vapovi and Mamre Road Holdings therefore submit that the Draft Western Sydney Aerotropolis Planning Package consider landholdings cumulatively, rather than with the intent of fragmenting them arbitrarily.

4.3 South Creek Corridor Location and Zoning

Vapovi and Mamre Road Holdings submit that the proposed location of the Environment and Recreation zone to preserve the existing tributary of South Creek as it traverses the site does not make best use of the land. This tributary could be more efficiently realigned along the southern boundary of Lot [REDACTED] or to Lot [REDACTED] to support more efficient development outcomes. Indeed, the land has been used for rural purposes for some time, with many dams located in the area which has changed the direction and alignment of natural overland flows. In terms of precedent, nearby developments within the Penrith Local Government Area have successfully negotiated planning outcomes to realign streams within the South Creek catchment, including such nearby locations as Orchard Hills and Sydney Science Park.

4.4 Aerotropolis SEPP, WSEA SEPP and Zone Boundaries

The effect of the Draft Western Sydney Aerotropolis Planning Package would be to designate more than 50% of the [REDACTED] site owned by Vapovi and Mamre Road Holdings as being unsuitable for urban development. As a result, it is estimated that over 500 jobs could be lost on the site alone (based on standardised rates of industrial land use). The resulting losses to capital investment, potential employment generating development, and resulting job creation are considered unacceptable in this current economic climate, particularly given the growing scarcity of developable industrial lands throughout Greater Sydney. Indeed, the Greater Sydney Commission's Strategy 16.1 within *A Metropolis of Three Cities* recognises the need to retain industrial lands from the encroachment of non-compatible land uses. This curious decision by DPIE to remove the western portion of the site from WSEA SEPP and rezone it to Environment and Recreation under the Aerotropolis SEPP appears to be based on the arbitrary adoption of the 1:100 Average Recurrence Interval (ARI) flooding extent as being not suitable for 'urban development.' **Section 4.5** below further details how this approach directly contradicts official NSW Government Policy and current Penrith City Council standards.

To date, the site has been entirely within the WSEA SEPP Application Area, albeit remaining unzoned under the WSEA SEPP. Whilst on the surface, the PLEP 2010 currently governs the permissibility of land uses at the site as it is not currently zoned under WSEA SEPP, employment generating development at the site is nevertheless permitted by invoking Clause 12 of WSEA SEPP. As such, the site currently benefits from certain land uses being made permissible due to its innominate zoning status under the WSEA SEPP, which provides the site with a quasi-industrial land zoning. This can be employed to override the RU2 Rural Landscape zoning under the PLEP 2010.

However, such an approach is considered inadequate, most importantly due to the fact that the full extent of the operation of Clause 12 of WSEA SEPP is also not obvious on a surface reading. It is therefore imperative that steps are taken to clarify and coordinate the zoning approach for this land. One obvious step would be the drafting and gazettal of a complete, coherent planning instrument to remove any such confusion, the opportunity for which is now occurring.

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Indeed, Vapovi and Mamre Road Holdings acknowledge that this approach is not sustainable in the long term, and should be rectified in order to restore certainty to the site's overriding planning controls. In addition, there has been a long running understanding on the part of landholders within the Mamre Road Precinct that the site's quasi-industrial zoning would be formalised under WSEA SEPP, not rezoned for Environment and Recreation under the Aerotropolis SEPP.

Unfortunately, the Draft Western Sydney Aerotropolis Planning Package fails to take this opportunity to streamline the site's zoning, aligning zone boundaries and property boundaries alike. Most importantly, it is not preferred to alter the boundary of the WSEA SEPP and Aerotropolis SEPP so that they runs through the middle of both Lots [REDACTED] as is currently proposed (refer to **Figure 5** in **Section 3.0** above). This would essentially 'downzone' the site, when compared to its current planning controls. This will result in a convoluted outcome whereby the westernmost portions of this site are subject to the environmental and recreational zonings whereas the eastern portions of the same site are rezoned to IN1 General Industrial and RE1 Public Recreation, as well as becoming subject to planning controls under WSEA SEPP (whilst also retaining a portion of SP2 Infrastructure zoning).

In terms of broader industrial land supply, the Greater Sydney Commission's *A Metropolis of Three Cities* states the following:

With the development of the Western Sydney Airport and Badgerys Creek Aerotropolis it will be critical, from the outset, to secure the access requirements for the airport and off-site industrial land for its 24/7 operation. It will also be critical to plan and protect from encroachment the freight corridors that serve the airport and industrial lands.

.....

While the Western Parkland City will benefit from the Western Sydney Employment Area, there may be a need to provide additional industrial and urban services areas across the extensive footprint of the Western City to accommodate significant population growth beyond 2036.

.....

All existing industrial and urban services land should be safeguarded from competing pressures, especially residential and mixed-use zones. This approach retains this land for economic activities required for Greater Sydney's operation, such as urban services... There will be a need, from time to time, to review the list of appropriate activities within any precinct in consideration of evolving business practices and how they can be supported through permitted uses in local environmental plans. Any review should take into consideration findings of industrial, commercial and centre strategies for the local government area and/or the district. The retain and manage approach applies across the Eastern Harbour City, the North West Growth Area and industrial land in the established urban areas of the Western Parkland City, including the existing Western Sydney Employment Area.

In contrast, it is considered that this decision to excise significant portions of land from the WSEA SEPP has been largely based on an arbitrary application of flood management principles (refer to **Section 4.5** below), rather than with regard to the Greater Sydney Commission's requirements for retaining and managing industrial and urban services land as quoted above.

Rather, it should be the intent of the Planning Partnership and DPIE, in preparing the Aerotropolis SEPP and amending WSEA SEPP, to avoid a convoluted planning outcome such as this, whereby the Aerotropolis SEPP and WSEA SEPP and the PLEP 2010 apply to halves of the same site. This could lead to:

- Planning law complications regarding future development permissibility;
- Confusion surrounding the potential application of future planning controls such as Floor Space Ratio calculations (based on the premise that only land on which development is permitted is to be included in such calculations);

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- Significant loss of industrial land that is capable of being serviced and supporting employment-generating development; and
- Significant losses to land values for the precinct.

Vapovi and Mamre Road Holdings submit that it is most ideal for their lots to be rezoned under WSEA SEPP in their entirety, and that their lots should be rezoned as IN1 General Industrial or a similar employment-generating zone to the fullest extent that it is reasonable and feasible to do so. In particular, the application of this IN1 General Industrial zoning should be extended in a westerly direction. Moreover, as identified in **Section 4.8** below, there is already more than adequate provision of open space within the Precinct.

As per **Figure 3** in **Appendix 1**, Vapovi and Mamre Road Holdings consider that the spur protruding into Lot [REDACTED] can be removed through cut and fill earthworks, with cut from the western Precinct boundary line mapped as being RE1 Public Recreation (refer to **Appendix 1**). This approach would most likely result in a zero to positive flood storage offset with no detrimental effects to the flooding regime. The *Draft Exhibition South Creek Floodplain Risk Management Study* (Penrith City Council, 2019) shows this spur as being within the flood fringe/flood storage area. From an engineering perspective, flood storage and fringe areas can be developed, as they are not in the main floodway, as long as adequate assessment is undertaken (refer to **Appendix 1**). The *Draft Exhibition South Creek Floodplain Risk Management Study* (Penrith City Council, 2019) has assessed various flood risk/mitigation scenarios, including the impacts of cutting and filling within the floodplain. Vapovi and Mamre Road Holdings therefore submit that the Planning Partnership undertake further assessment in conjunction with Penrith City Council to understand the impacts of cutting and filling within this spur. Such an outcome could better reflect the requirements of the Wianamatta-South Creek and Mamre Road Precincts, whilst also managing the requirements of the South Creek Catchment and floodplain. Such a realigned Precinct boundary would also have a positive effect on any future local collector road alignment. By realigning the Precinct boundary, a collector road is able to be easily provided with any future road reserve linking the north and south areas of the western side of the Mamre Rd precinct (refer to **Appendix 1**).

Overall, the site, comprising one consolidated landholding within the WSEA, should be given the benefit of functioning under one consolidated set of planning controls within the WSEA SEPP or the Aerotropolis SEPP. Indeed, such a planning outcome would best reflect Objective (c) of the *Environmental Planning and Assessment Act 1979* which is "to promote the orderly and economic use and development of land." It would also best reflect the following Aims of WSEA SEPP:

- (2)(b) *to provide for the co-ordinated planning and development of land in the Western Sydney Employment Area; and*
- (2)(d) *to improve certainty and regulatory efficiency by providing a consistent planning regime for future development and infrastructure provision in the Western Sydney Employment.*

Vapovi and Mamre Road Holdings consider that this site should be given the benefit of operating under a concise, modern set of planning controls which have been specifically designed for this industrial locality, as opposed to residual planning controls which remain from when the locality was primarily comprised of rural landholdings. Indeed, given that WSEA SEPP has been operational for some 10 years, it is imperative that the opportunity not be missed to adequately amend this Environmental Planning Instrument so as to ensure that it remains fit for purpose.

4.5 Flooding Controls

South Creek, Kemps Creek and Ropes Creek traverse the Wianamatta-South Creek initial precinct, and the Precinct is affected by the 1:100 Year Flood Area along these creek corridors (refer to **Figure 6** below). Vapovi and Mamre Road Holdings reject this approach by DPIE to effectively prohibit urban land uses on land within the 1:100 ARI. In essence, the Draft Western Sydney Aerotropolis Planning Package in its current form proposes to use the PMF as the flood planning level in lieu of the 1:100 ARI. This ignores standard industry practice throughout the realms of town planning, civil engineering, urban design and environmental legislation whereby the PMF is instead used for emergency response planning to address public safety. This standardised approach is referenced in Clause 38 of Schedule to the *Environmental Planning and Assessment Regulation 2000*, which defaults the flood planning level across NSW for the purposes of

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applying Designated Development provisions to mean “those areas inundated as a result of a 1 in 100 ARI event” where no other level is nominated in the prevailing Local Environmental Plan. Moreover, Clause 7.2 of the PLEP 2010 nominates 1:100 ARI plus 0.5m freeboard as the applicable flood planning level applying throughout the Penrith Local Government Area. Indeed, 1:100 ARI has been confirmed as the South Creek Floodplain flood planning level, and Council’s Draft Exhibition South Creek Floodplain Risk Management Study makes the following comment:

The adoption of the PMF as the planning flood is not realistic or practical as it would sterilise a large area of land, thereby forcing development to areas of higher ground which may not historically be serviced or which could introduce unrealistically high infrastructure costs.

Vapovi and Mamre Road Holdings note that extensive floodplain assessments have been undertaken for the adjoining SSD [REDACTED] site directly to the north. It is reported that SSD [REDACTED] would not impact or extend within any areas affected by 1:100 ARI flood event from South Creek. However, SSD [REDACTED] would encroach the PMF flood extent. Indeed, it is reported that the influence of SSD 9522 on the PMF event would be limited to the development area, and that the flooding safety of existing residents in the area would not be adversely impacted. Furthermore, the occupants of the new development would be clear of PMF affected areas. Whilst being clear of the 1:100 ARI, SSD [REDACTED] would also not affect the existing 1:100 ARI flooding conditions or be affected by the 1:100 ARI flooding event. Overall, SSD [REDACTED] meets all of the criteria in the NSW Floodplain Manual, the PDCP 2014 and the *Draft Exhibition South Creek Floodplain Risk Management Study* (2019).

The curious decision by the Planning Partnership to rezone all of this land to Environment and Recreation appears to be based on the arbitrary adoption of the 1:100 ARI flooding extent as being not suitable for ‘urban development.’ Not only is this a standard that has never been used to date, it is in direct contradiction of official NSW Government Policy, namely the *NSW Floodplain Management Manual 2005*, and current Penrith City Council standards. Indeed, the Draft Western Sydney Aerotropolis Planning Package fails to recognise widespread industry practice and current engineering standards, which all adopt the 1:100 ARI and build to this line. The 1:100 ARI has in fact been used, and continues to be used, as the buildable flooding standard throughout NSW for well over 50 years. The resulting losses to capital investment, potential employment generating development, and resulting job creation are considered unacceptable in this current economic climate, particularly given the growing scarcity of developable industrial lands throughout Greater Sydney. Indeed, the Greater Sydney Commission’s Strategy 16.1 within *A Metropolis of Three Cities* recognises the need to retain industrial lands from the encroachment of non-compatible land uses.

In any event, industrial, residential and commercial developments are generally considered suitable for the 1:100 ARI zone where adequate flood design and mitigation measures are implemented, as per standard civil engineering practice throughout NSW. Moreover, Part C3 of the *Penrith Development Control Plan 2014* (PDCP 2014) sets out adequate controls to guide and manage such industrial, commercial and residential developments within the floodplain. The PDCP 2014 goes on to state that Penrith City Council will not grant consent to new development in floodways or in high hazard areas. ‘Floodways’ experience significant discharges during flood events whilst ‘high flooding hazards’ occur where there is:

- Possible danger to life and limb;
- Evacuation by truck is difficult;
- There is potential for structural damage; and
- Social disruption/financial losses could be high.

It is also considered that the *Western Sydney Aerotropolis Development Control Plan 2019: Phase 1 Draft – For Public Comment* (Western Sydney Planning Partnership, 2019) proposes suitable flooding controls for developments within the Aerotropolis. As such, there is no need to adopt a more stringent approach whereby all 1:100 ARI land is effectively sterilised from being used for industrial purposes. Vapovi and Mamre Road Holdings therefore submit that the newly proposed flood assessment clause within the Aerotropolis SEPP should:

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- Use the PMF level as the standard for flooding safety and evacuation requirements only, rather than as the allowable building line; and
- Allow development to the 1:100 ARI building line, with development beyond that subject to a separate study demonstrating no/acceptable cumulative impacts.

It follows on from this argument that it is completely unnecessary to rezone such a significant portion of the site to Environment and Recreation under the Aerotropolis SEPP, as there is no compelling flood risk reasons why much of this land cannot be developed for industrial or other purposes. Overall, Vapovi and Mamre Road Holdings reject the extent of this Environment and Recreation zoning running through the middle of the site (refer to **Section 4.8** below for more details).

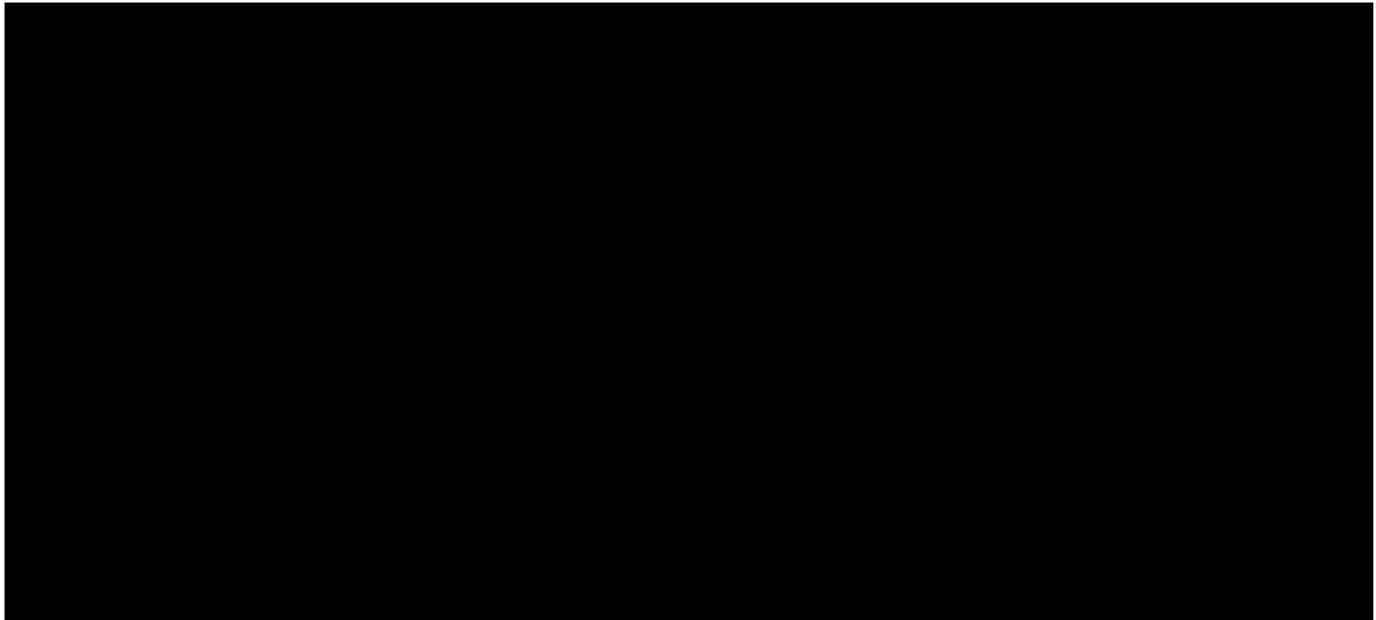


Figure 6 Draft Aerotropolis SEPP 1:100 Year Flood Map (Planning Partnership, 2020)

4.6 Developer Contributions

The Draft Western Sydney Aerotropolis Planning Package should have provided draft Special Infrastructure Contribution rates as per the Place Infrastructure Compact for the Aerotropolis, and the draft Section 7.11 Contribution rates for industrial development within the Penrith Local Government Area. Without these draft rates, it is not possible for landholders, developers, and other interested parties to make full and informed commentary on the Draft Western Sydney Aerotropolis Planning Package. Furthermore, it is not known whether the applicable Special Infrastructure Contributions will relate to areas of open space as well as other forms of urban development.

Vapovi and Mamre Road Holdings also make the following specific comments regarding developer contributions for the Mamre Road Precinct:

- The scope of any new applicable Section 7.11 Contributions Plan should relate to local infrastructure, roads, drainage and open space only;
- Developers should have the option to provide infrastructure which can offset against applicable Section 7.11 Contributions and Special Infrastructure Contributions; and
- The potential for value capture mechanisms to be implemented, as referred to in the *Western Sydney Aerotropolis Plan: Draft – For Public Comment* (Western Sydney Planning Partnership, 2019) should be identified and clarified.

Overall, the current situation where no formal Section 7.11 Contributions Plan or Special Infrastructure Contribution rate applies leads to developer uncertainty. It moreover does not meet the following Objectives under Section 1.3 of the EP&A Act:

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- *(a) To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources; and*
- *(i) To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.*

4.7 Land Reservation Acquisition

Vapovi and Mamre Road Holdings note how the Environment and Recreation zone mapped area has not also been identified as being subject to Land Reservation Acquisition. Vapovi and Mamre Road Holdings are therefore concerned that their land will not be subject to a clear and concise future development process, such as the case with land that is mapped for Land Reservation Acquisition (i.e. being able to insist on Government acquisition prior to public-led development occurring).

Moreover, the Draft Western Sydney Aerotropolis Planning Package does not provide sufficient details on the process for, nor the timing and costs of, such land acquisition. It is submitted that a mechanism be put in place to manage this process of land acquisition, so as to provide developer certainty.

Furthermore, the NSW Government has not specifically budgeted for this land acquisition, let alone the costs involved in embellishing this land. It is therefore possible that the costs to Government in both acquiring and embellishing this land may well be cost prohibitive.

Vapovi and Mamre Road Holdings moreover submit that any land which is proposed to be acquired should be acquired according to its highest and best industrial land use, which is currently around the \$750/m² price range. This reflects the current planning law scenario where much of the land under WSEA SEPP can be used for permissible WSEA SEPP land uses even where it is not zoned under WSEA SEPP, by invoking Clause 12 of the same.

4.8 Environment and Recreation Zone

As set out in **Section 4.5** above, it is completely unnecessary to rezone such a significant portion of the site to Environment and Recreation on the grounds of flooding risk. Indeed, Vapovi and Mamre Road Holdings reject the extent of this zoning running at the site.

Nevertheless, should the proposed Environment and Recreation zoning prevail within the Precinct, it is considered that the permissible land uses must be broadened. Specifically, Vapovi Mamre Road Holdings make the following firm suggestions:

- Restaurants and Cafés be permitted to encourage a suitable level of private investment activation;
- Centre-based Child Care Centres be permitted to make use of the surrounding open space network and to support the adjacent employment-generating land uses;
- Recreation Facilities be permitted to encourage further public use of these spaces;
- Artisan Food and Drink Industries be permitted to further encourage private investment and public access into these spaces;
- The extent of the employment-generating zoning within the precinct should be increased so as to encourage more private provision of active land uses near to the creekline; and
- Provide an RE2 Private Recreation zoning or similar to creek facing land so as to furthermore encourage private investment in activating this space.

The above, whilst encouraging private investment in and public access to these areas, could also assist in lessening the Government's financial burden in acquiring and embellishing open space land within the Precinct.

5.0 CONCLUSION

The effect of the Draft Western Sydney Aerotropolis Planning Package would be to designate more than 50% of the [REDACTED] site owned by Vapovi and Mamre Road Holdings as being unsuitable for urban development. As a result, it is estimated that over 500 jobs could be lost on the site alone (based on

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standardised rates of industrial land use). Vapovi and Mamre Road Holdings therefore submit that the Aerotropolis SEPP and/or adjoining WSEA SEPP's boundaries should be amended to align with actual property boundaries in this location, so as to avoid planning law confusions and to prevent an effective 'downzoning' of a site where industrial land uses are currently permitted, in direct contradiction with the Greater Sydney Commission's vision for the Aerotropolis. This key issue with the Draft Western Sydney Aerotropolis Planning Package is largely a result of an arbitrary application of flood planning controls in direct contradiction to NSW Government and Penrith City Council's policies, as well as standard industry practice and knowledge.

Specifically, Vapovi's and Mamre Road Holdings' grounds of submission to the Draft Western Sydney Aerotropolis Planning Package relate to the following matters:

- That rezoning of more than half of the site for Environment and Recreation, whilst leaving the remainder under WSEA SEPP, would result in grave inefficiencies in the site's developable footprint, with irregular shaped and relatively small pockets of developable land created between the Aerotropolis SEPP and WSEA SEPP. This would effectively prohibit several permissible IN1 General Industrial land uses from being undertaken on both Lots;
- The location of the proposed Environment and Conservation zone to preserve the existing tributary of South Creek as it traverses the site not making best use of the land. This tributary could be more efficiently realigned along the southern boundary of Lot [REDACTED] or to Lot [REDACTED] [REDACTED] to support more efficient development outcomes;
- DPIE failing to take the opportunity to align the Aerotropolis SEPP and WSEA SEPP boundaries and land zonings so as to apply them to defined parcels of land, creating planning system uncertainties and sterilising the use of land which may otherwise be most efficiently used for industrial purposes;
- The Precinct's zoning and boundaries have been drawn based on overly stringent flood planning controls (i.e. built form development not considered suitable within the 1:100 Average Recurrence Interval), which directly contradict NSW Government and Penrith City Council planning policies, as well as standard industry knowledge and practice. This results in an unnecessary sterilisation of land. These flood affected areas, when adjusted to the prevailing topography, would not result in any net loss of flood storage, nor any changes to the existing flood hazard/overall flooding characteristics of the locality;
- Uncertainty regarding applicable Section 7.11 Contribution and applicable Special Infrastructure Contribution rates, as the Discussion Paper contains insufficient details;
- Insufficient details on process for, as well as costs and timing of, land reservation acquisition; and
- There is already adequate open space provided for in the locality. Nevertheless, should Environment and Recreation zonings be applied within the Aerotropolis, these should permit a broader range of compatible land uses and the RE2 Private Recreation zone should also be considered for possible application.

Specifically with regards to land that is to be mapped for Environment and Recreation, Vapovi and Mamre Road Holdings moreover submit that any land which is rezoned as such should be acquired according to its highest and best industrial land use, which is currently around the \$750/m² price range. This reflects the current planning law scenario where much of the land under WSEA SEPP can be used for permissible WSEA SEPP land uses even where it is not zoned under WSEA SEPP, by invoking Clause 12 of the same.

It is recommended that these matters be addressed before the Draft Western Sydney Aerotropolis Planning Package, proceeds towards being finalised and the corresponding Aerotropolis SEPP is gazetted.

To discuss further the matters highlighted in this Submission to the Draft Western Sydney Aerotropolis Planning Package, please contact the undersigned.

Yours faithfully,

Regards,

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Submission to Western Sydney Aerotropolis Planning Package

On Behalf of Vapovi Pty Ltd and Mamre Road Holdings Pty Ltd, [REDACTED] Mamre Road, Kemps Creek WTJ19-561



Jessica Miller
Willowtree Planning Pty Ltd



Submission to Western Sydney Aerotropolis Planning Package

On Behalf of Vapovi Pty Ltd and Mamre Road Holdings Pty Ltd, [REDACTED] Mamre Road, Kemps Creek WTJ19-561

APPENDIX 1 CIVIL ENGINEERING MEMO

28 February 2020
Job No: 19325

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Re: Submission with Respect to Western Sydney Aerotropolis Planning Package On Behalf of Vapovi Pty Ltd and Mamre Road Holdings Pty Ltd

Attention Katherine,

We Sparks & Partners Consulting Engineers at the request of Vapovi Pty Ltd and Mamre Road Holdings Pty Ltd being the owners of [REDACTED] Mamre Road, Kemps Creek ([REDACTED]) respectively have undertaken a review of the Draft Western Sydney Aerotropolis Planning Package, including the Proposed Aerotropolis State Environmental Planning Policy (SEPP) (WSA) as prepared by the NSW Government Department of Planning, Industry and Environment. The review of the proposed planning has also been undertaken against the proposed Draft Mamre Road Precinct Structure Plan Under State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA). The review focuses on the proposed land zones for the above mentioned properties from a civil engineering perspective and assess the possible implications the zoning will have on the future use of the site and the overall Mamre Road precinct as a whole.

Proposed Land Zoning

The proposed land zoning in the WSA on the western side of the site is Environment and Recreation, with the eastern portion of the site falling under the zoning of the WSEA which is a mixture of IN1, RE1 and E2. The extent of the Environment and Recreation zoning appears to follow the 1:100yr ARI flooding extents as detailed in both the Updated South Creek Flood Study, January 2015 prepared by Worley Parsons for Penrith City Council, and the Exhibition Draft South Creek Floodplain Management Study and Plan, August 2019 prepared by Advisian for Penrith City Council. This boundary dissects the properties approximately halfway along the southern boundary, with a central spur running into the properties to the east before dissecting the properties toward the west on the northern boundary. Figures 1, 2 and 3 show the location of the site in relation to the DRAFT Precinct Boundary Map, DRAFT Flood Map and DRAFT Land Zoning Map respectively.

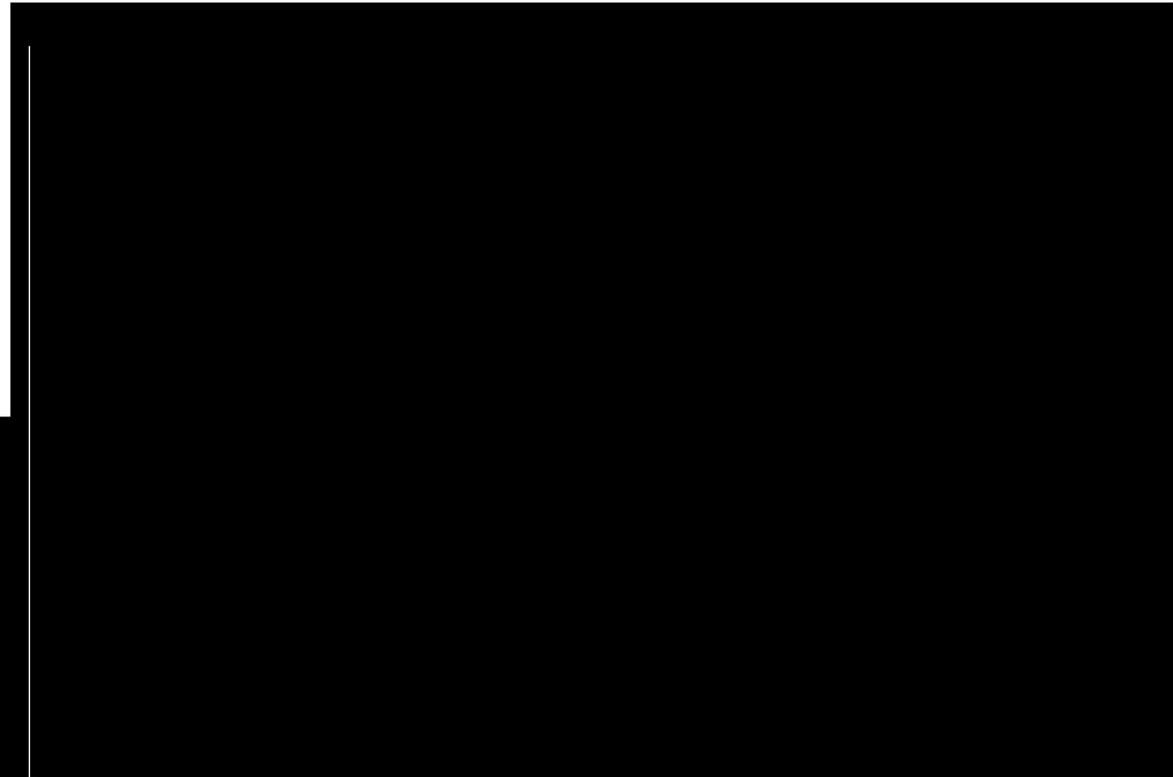


Figure 1 - Site Location in DRAFT Precinct Boundary Map

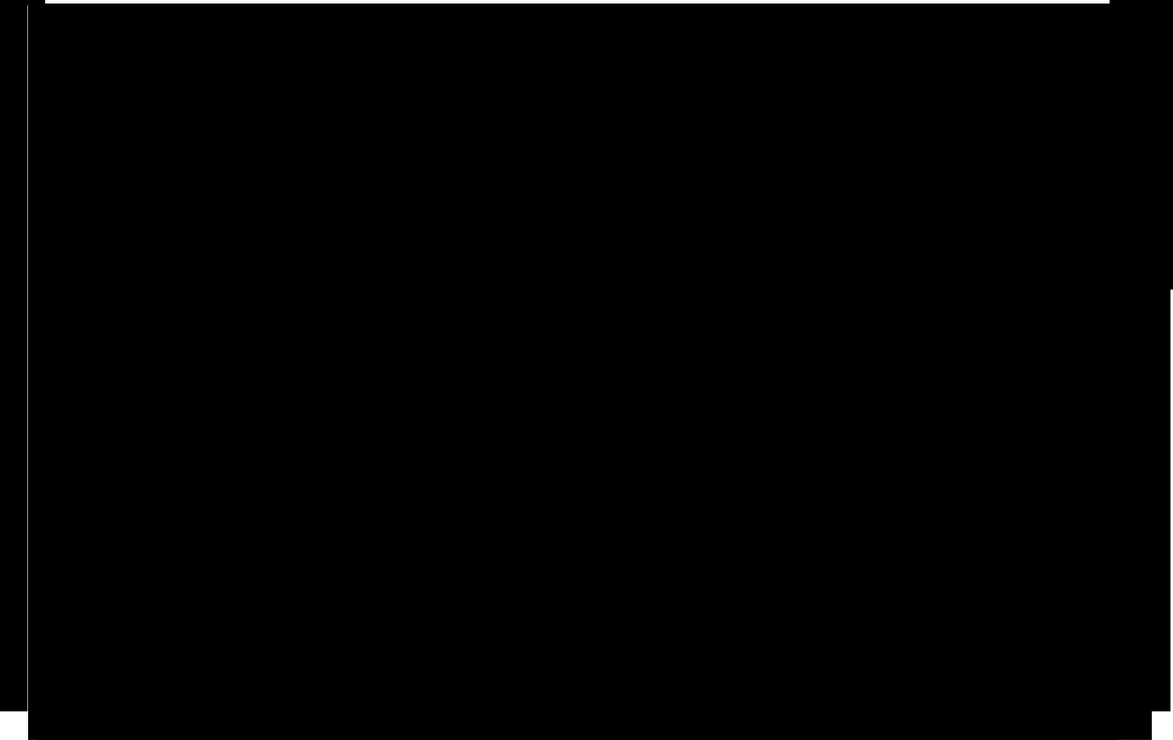


Figure 2 - Site Location in DRAFT Flood Map

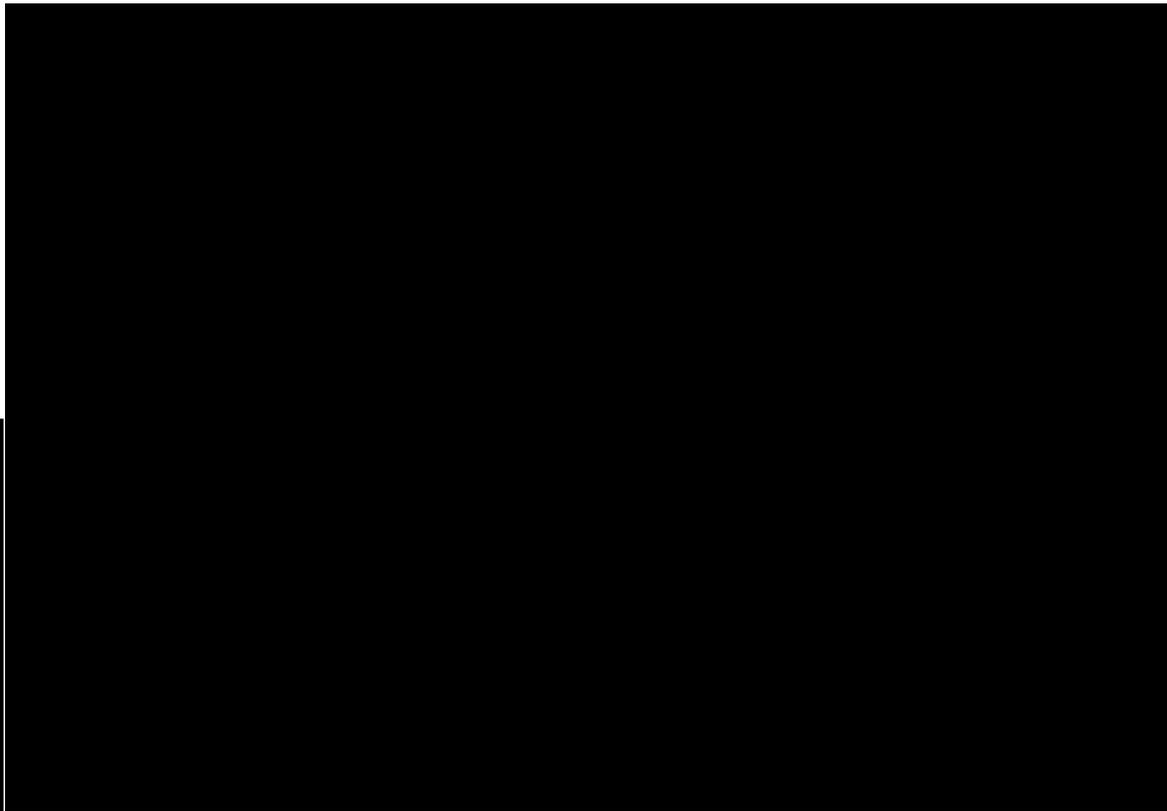


Figure 3 - Site Location in DRAFT Land Zoning Map

Proposed Zoning Impacts

Proposed Amendments
Precinct Boundary



storage. From an engineering perspective flood storage and flood fringe areas are able to be developed as they are not the main floodway, as long as adequate assessment is undertaken to assess the risks of the proposed development and there are nil impacts to the flood plain as a whole. In this regard the current flood modelling assessment

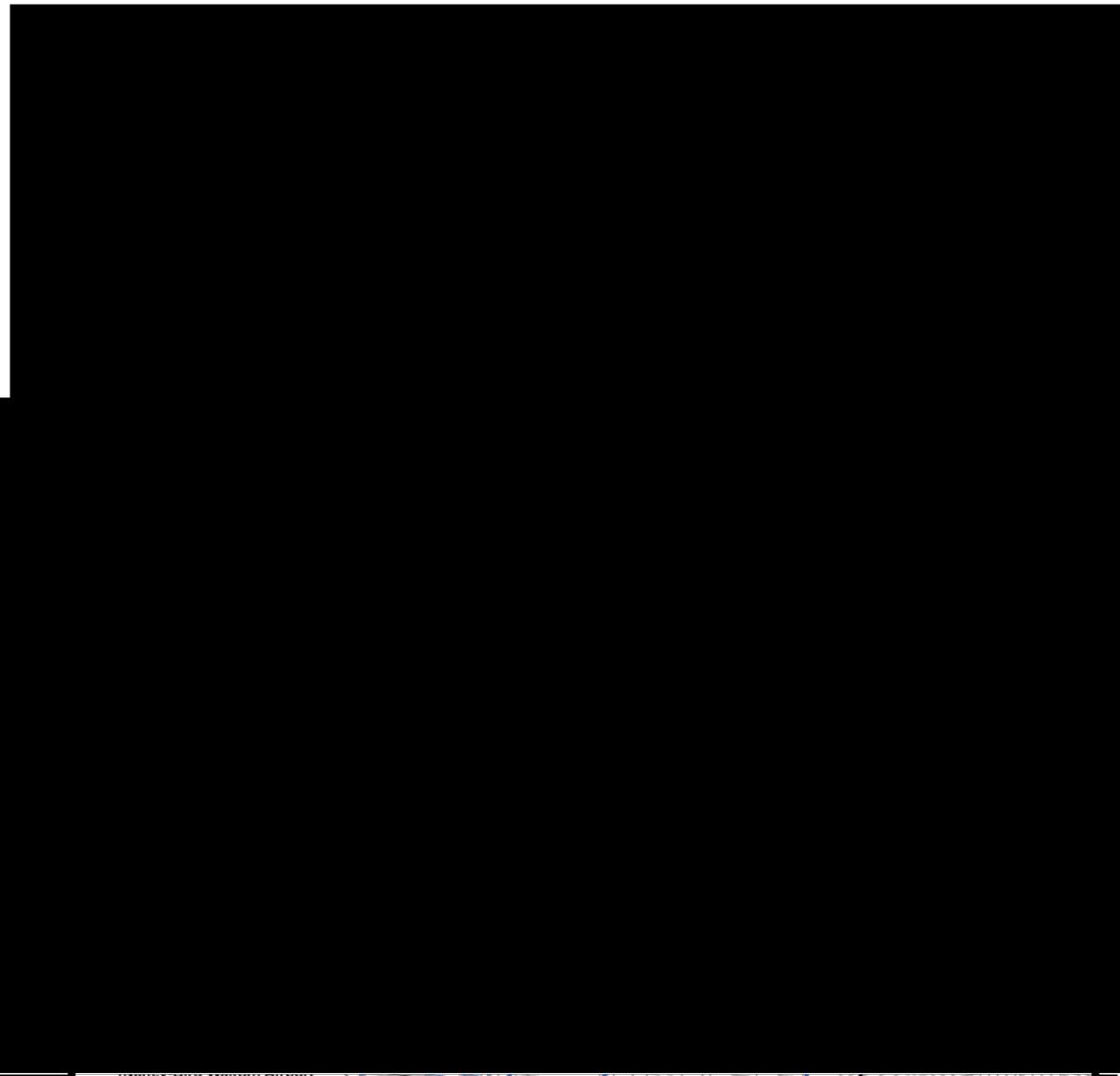
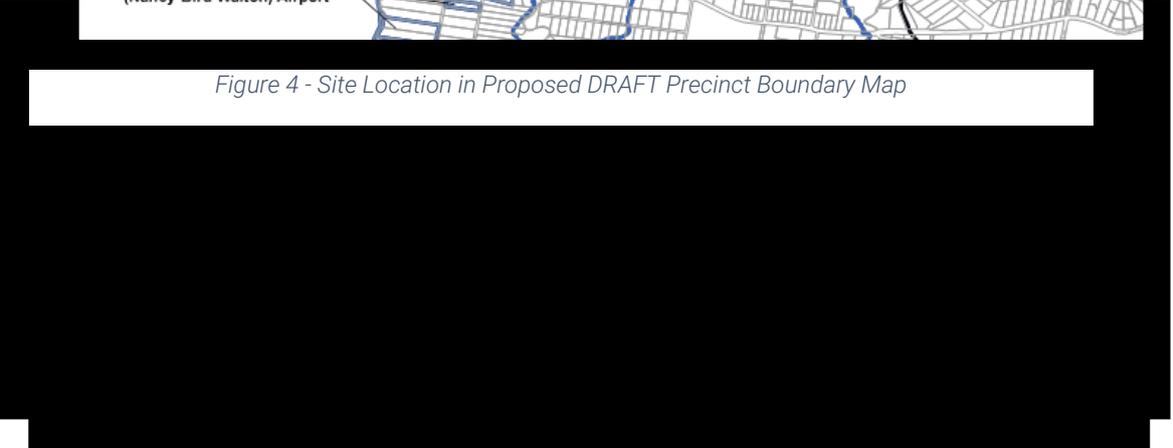


Figure 4 - Site Location in Proposed DRAFT Precinct Boundary Map



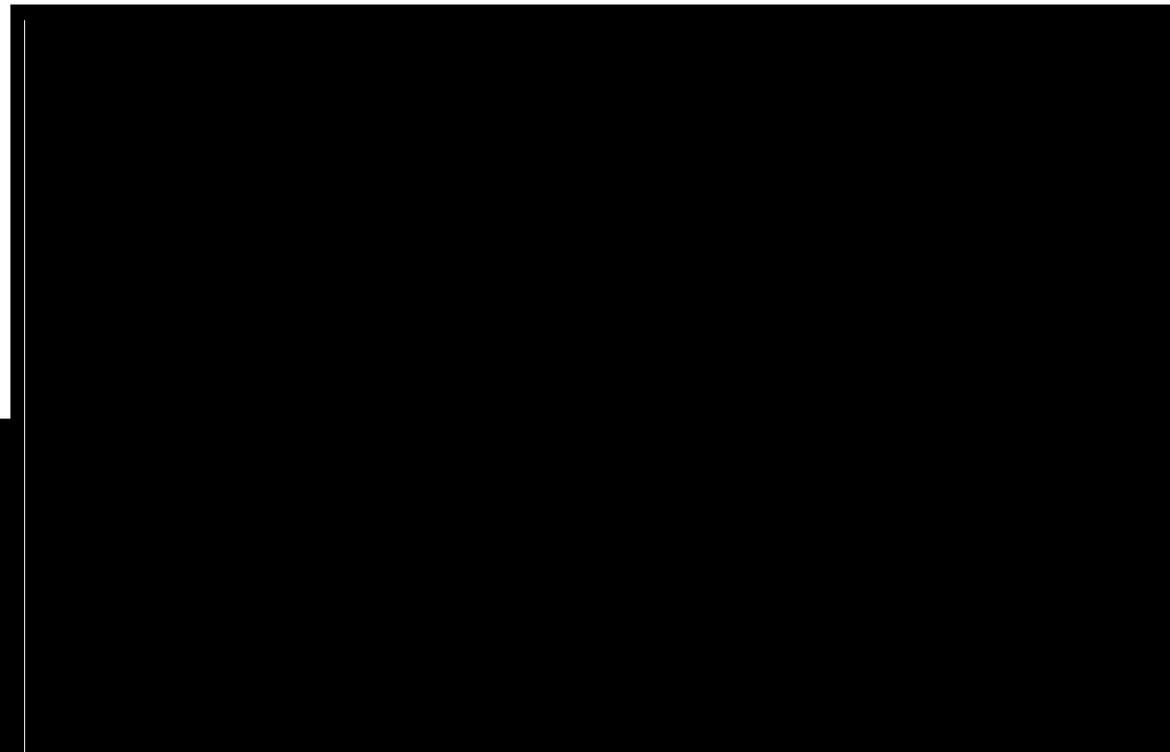


Figure 5 - Site Location in Proposed DRAFT Flood Map



Figure 6 - Site Location in Proposed DRAFT Land Zoning Map

Conclusion

[REDACTED]

[REDACTED]

Morgan Walter

[REDACTED]



