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Submission: Please refer to attached document.

URL: <https://pp.planningportal.nsw.gov.au/draftplans/exhibition/western-sydney-aerotropolis-planning-package>

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Western Sydney Planning Partnership  
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**SUBMISSION WITH RESPECT TO WESTERN SYDNEY AEROTROPOLIS PLANNING PACKAGE ON  
BEHALF OF VIMG REGARDING PROPERTY AT [REDACTED], KEMPS CREEK [REDACTED]**

## **1.0 INTRODUCTION**

This Submission is made by Willowtree Planning Pty Ltd (Willowtree) on behalf of VIMG with respect to the Draft Western Sydney Aerotropolis Planning Package, including Proposed Aerotropolis State Environmental Planning Policy (SEPP). VIMG controls [REDACTED], Kemps Creek [REDACTED]

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 key 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 site will fall within the Kemps Creek “non-initial”/“remaining” Precinct which would be largely rezoned to accommodate Flexible Employment purposes (refer to **Figure 3**), albeit remaining subject to key planning controls under the PLEP 2010. This is despite the *Western Sydney Aerotropolis Plan: Draft – For Public Comment* (Western Sydney Planning Partnership, 2019) identifying how strategic planning for the Kemps Creek Precinct will be progressed by Liverpool City Council. Initial mapping for the site also indicates that it will also be subject to a portion of zoning for Environment and Recreation purposes, although the Draft Western Sydney Aerotropolis Planning Package does not clearly map this out. The Draft Western Sydney Aerotropolis Planning Package also indicates that the site will largely fall within the area to be used for the potential East-West Rail Link, Stabling and Critical Infrastructure (refer to **Figure 4** below).

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 an industrial land zoning that can be employed to override the RU2 Rural Landscape zoning under the PLEP 2010.

Overall, the effect of the Draft Western Sydney Aerotropolis Planning Package would be to designate significant portions of the approximately 11.7 hectare site as being unsuitable for a range of private land uses, through constraining portions of the site with transport infrastructure corridors, environmental zonings, and resulting issues of land use conflict. As a result, it is considered that:

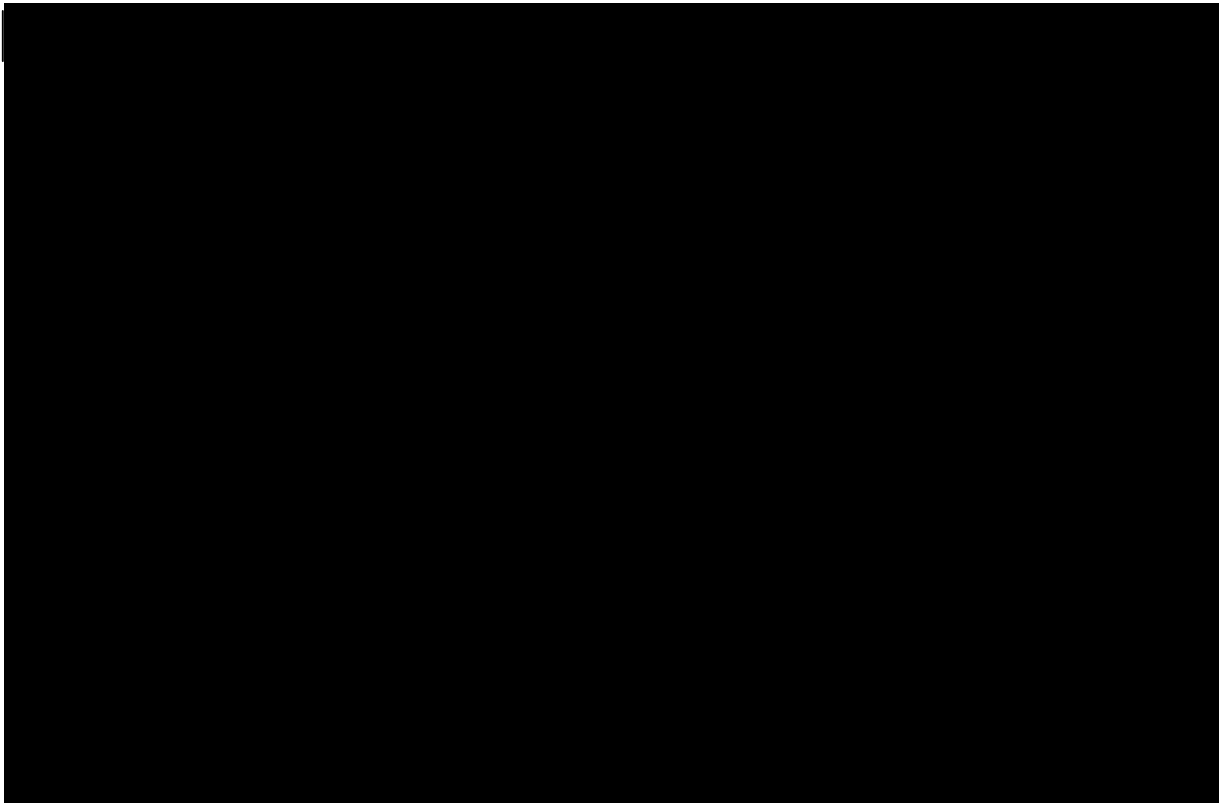
- Future job provision at the site could be reduced;
- Developable lands could be unnecessarily rezoned to Environment and Recreation; and
- Land could become fragmented, isolated and difficult to access; and
- The site would effectively be ‘downzoned’ from a site where industrial land uses are currently permitted, in direct contradiction with the Greater Sydney Commission’s vision for the Aerotropolis.

With respect to the Potential East-West Rail Link, Stabling and Critical Infrastructure mapping in particular, VIMG makes the following firm suggestions:

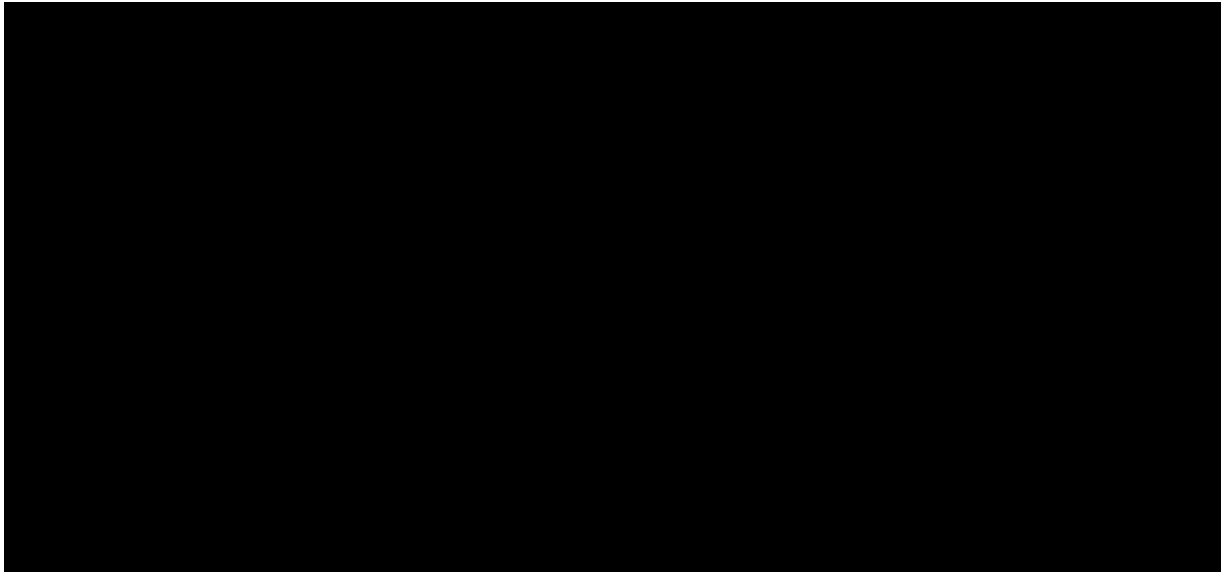
1. The area mapped as being required for Potential East-West Rail Link, Stabling and Critical Infrastructure is excessive and could be reduced without impeding on the future operation of the Potential East-West Rail Link;
2. The process for protecting this potential future corridor and preventing potential land use conflicts with it should be clarified; and
3. The process for Government-led land acquisition or developer-led instigation of the Potential East-West Rail Link be extrapolated on. Not doing so essentially leaves the site with a 'Land Reservation Acquisition' designation without being formally mapped for Land Reservation Acquisition purposes, and therefore with no recourse to standard Land Reservation Acquisition provisions (i.e. being able to insist on Government acquisition prior to public-led development occurring).

VIMG also firmly requests that the area mapped as being required for the Potential East-West Rail Link, Stabling and Critical Infrastructure be clarified as a matter of urgency, so that affected landowners can understand the scale of potential impacts to its properties.

VIMG's additional grounds of submission are summarised in **Section 4.0**, and detailed in full within **Sections 4.12 to 4.18** below.



**Figure 1 Current PLEP 2010 Land Zoning Map (NSW Legislation, 2020)**



**Figure 2 WSEA SEPP Application Area Extract (NSW Legislation Online, 2020)**



**Figure 3 Draft Western Sydney Aerotropolis Land Zone (Western Sydney Planning Partnership, 2019)**



**Figure 4 Draft Structure Plan (Western Sydney Planning Partnership, 2019)**

## **2.0 THE SITE**

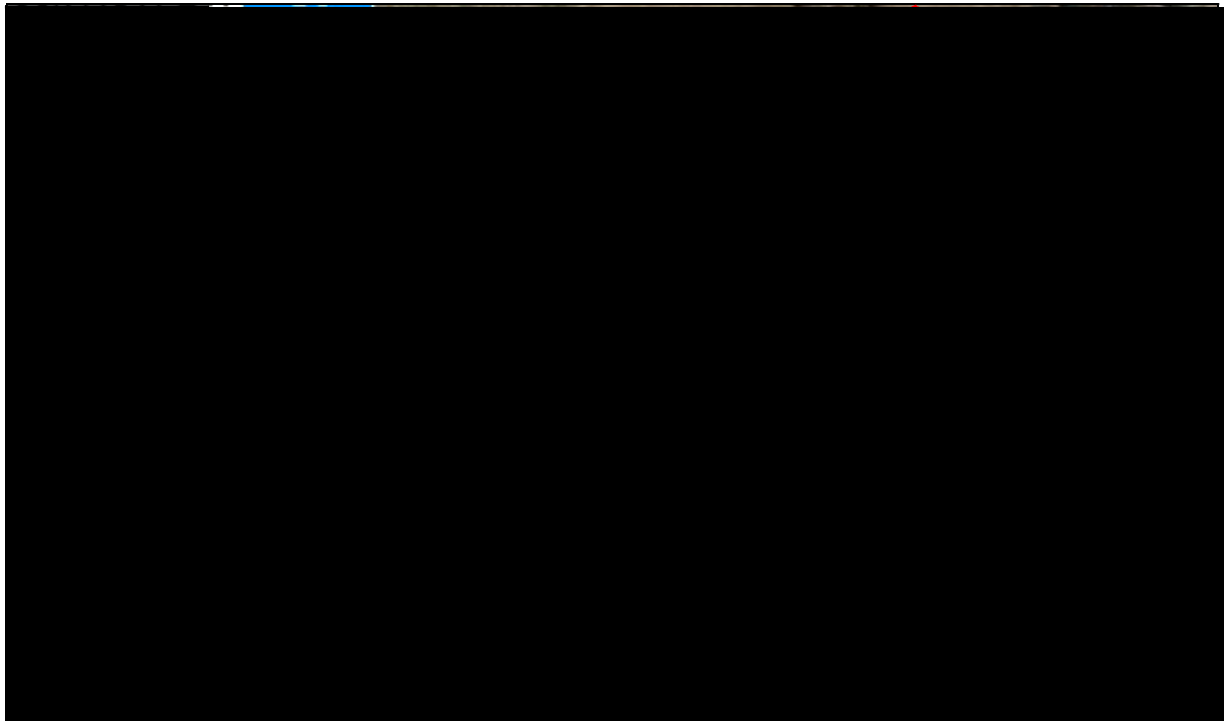
VIMG controls [REDACTED] Kemps Creek [REDACTED] which is shown on **Figure 5** below. The site is located within the Draft Western Sydney Aerotropolis Planning Package, as shown on **Figure 3** and **Figure 4** in **Section 1.0** above. It:

- 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 agricultural infrastructure; and
- Is located around 120m east of the nearest tributary of Kemps Creek.

To date, the site has been used for intensive agricultural purposes by CR & M Ash & Sons egg farm. It is bound by the following:

- Elizabeth Drive and agricultural land uses to the south;
- Land zoned RU2 Rural Landscape and RU4 Primary Production Small Lots, primarily comprising forested land to the east;
- Hi-Quality Group recycling and quarrying to the east; and
- Andreasens Green Wholesale Nurseries to the west.

The overall nature of this locality is therefore agricultural and rural industrial.



**Figure 5 The Site – Aerial View (SIXMaps, 2020)**

The site has 297m of direct frontage to a rural agricultural road that joins to Elizabeth Drive, and a total site area of approximately 11.7 hectares.

### **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). The site is therefore subject to key planning controls under the PLEP 2010 and the *Penrith Development Control Plan 2014* (PDCP 2014). However, employment generating development is also currently permissible at the site due to 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 an 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 indicates that the site would be subject to the following:

- Potential East-West Rail Link, Stabling and Critical Infrastructure area;
- Flexible Employment rezoning, albeit under the PLEP 2010;
- Australian Noise Exposure Concept units of between 20-25, 25-30 and 30, gradually increasing in exposure from south to north;
- Obstacle Limitation Surface Mapping of between 125.5-150m AHD;
- Lighting Intensity and Windshear Light Control Zone D; and
- Wildlife Buffer Zone of 8km.

However, the Draft Western Sydney Aerotropolis Planning Package states that the site would continue to be subject to planning controls under the PLEP 2010. It is not known what the detailed process will be to affect these planning changes to the site under the PLEP 2010. This is particularly the case as the Draft Western Sydney Aerotropolis Planning Package also states that planning for the Kemps Creek Precinct would be managed by Liverpool City Council.

Introducing Environment and Recreation zonings to the site would also essentially 'downzone' the site, when compared to its current planning controls.

### **4.0 GROUNDS OF SUBMISSION**

VIMG's grounds of submission to the Draft Western Sydney Aerotropolis Planning Package relate to the following matters:

- 4.1 VIMG strongly rejects the proposed location of the Potential East-West Rail Link, Stabling and Critical Infrastructure Area;
- 4.2 Currently VIMG is preparing a masterplan for the site for employment generating purposes. As part of this VIMG also has an MOU with a major tenant that will potentially provide much needed local job opportunities on the site. Any potential Environment and Recreation zone or stabling yard would put this investment at risk;
- 4.3 VIMG firmly requests that the area mapped as being required for the Potential East-West Rail Link, Stabling and Critical Infrastructure be clarified as a matter of urgency, so that affected landowners can understand the scale of potential impacts to its properties;
- 4.4 The mapped Potential East-West Rail Link, Stabling and Critical Infrastructure Area is too broad, and no guidance is provided as to how interim land uses might be undertaken on this land, or how TfNSW might use its decision-making powers as a concurrence authority to allow development on this land. Specifically:
  - 4.4.1 The area mapped as being required for the Potential East-West Rail Link, Stabling and Critical Infrastructure is not clearly defined in the Draft Western Sydney Aerotropolis Planning Package, creating significant uncertainty for landowners in the Aerotropolis;
  - 4.4.2 The area mapped as being required for the Potential East-West Rail Link, Stabling and Critical Infrastructure within the Kemps Creek Precinct is excessive and could be reduced without impeding on the future operation of the Potential East-West Rail Link;



- 4.4.3 The land which is subject to TfNSW requirements should be defined, and the related process for obtaining this concurrence should be clarified; and
- 4.4.4 The process for Government-led land acquisition or developer-led instigation of the Potential East-West Rail Link, Stabling and Critical Infrastructure should be extrapolated on. Not doing so essentially leaves portions of the Aerotropolis site with a 'Land Reservation Acquisition' designation without being formally mapped for Land Reservation Acquisition purposes, and therefore with no recourse to standard Land Reservation Acquisition provisions (i.e. being able to insist on Government acquisition prior to public-led development occurring);
- 4.5 The Draft Structure Plan – Kemps Creek (refer to **Figure 6** in **Section 4.13** above) indicates that the western-most portion of the site would be subject to zoning for Environment and Recreation purposes. The fact that this land zoning would take place at some future, unidentified time, is problematic. Specifically, on reading the Draft Western Sydney Aerotropolis Planning Package it is not obvious that the site would be subject to Environment and Recreation zoning. Indeed, whilst this is included in the Draft Structure Plan for the Kemps Creek Precinct, it is not highlighted upfront within the Exhibition Rezoning Maps (due to this rezoning not being planned for the immediate future refer to **Figure 7** in **Section 4.13** above). This lack of clarity up front with the proposed rezoning for non-initial/remaining precincts within the Aerotropolis creates significant obstacles for landowners who are attempting to understand the effects of the Draft Western Sydney Aerotropolis Planning Package on their land;
- 4.6 This would result in grave inefficiencies in the site's zonings, leading to land fragmentation preventing portions of the site from being used for employment-generating purposes and thereby reducing employment uptake at the site. Nearby lands within the broader Aerotropolis would also be unnecessarily sterilised due to this overzealous application of the Environment and Recreation zone, especially to nearby lands mapped within the 1:100 Flood Area;
- 4.7 Fragmentation of existing properties leading to contradictions with NSW Planning Policies established by the Land and Environment Court;
- 4.8 Uncertainty regarding applicable Section 7.12 Contribution and applicable Special Infrastructure Contribution rates under the Place Infrastructure Compact, as the Draft Western Sydney Aerotropolis Planning Package contains insufficient details;
- 4.9 Dichotomy between public and private land ownership of Environment and Recreation zoned land within the Aerotropolis being a matter which requires resolution;
- 4.10 The fact that strategic planning management of the Kemps Creek Precinct would be undertaken by Liverpool City Council; and
- 4.11 Lack of clarity surrounding the continuation and expansion of agricultural land uses within the Kemps Creek Precinct prior to future Flexible Employment land uses being supported.

VIMG's 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 Draft Western Sydney Aerotropolis Planning Package proceeds towards being finalised and the corresponding Aerotropolis SEPP is gazetted.

#### **4.12 Potential East-West Rail Link, Stabling and Critical Infrastructure**

The Draft Western Sydney Aerotropolis Planning Package proposes an extensive Potential East-West Rail Link, Stabling and Critical Infrastructure, as shaded pink on **Figure 4** in **Section 1.0** above. This would affect the majority of the site, especially its northern and eastern portions, as is further identified on **Figure 6** in **Section 4.13** below. However, the area mapped as being required for this Potential East-West Rail Link, Stabling and Critical Infrastructure is not clearly defined, as it does not contain property boundaries. This of itself creates significant uncertainty for potentially affected landowners within the Aerotropolis, making it difficult for them to understand the scale of impacts to its properties. It is VIMG's firm suggestion that this mapping be clarified as a matter of urgency, so that affected landowners can understand the scale of potential impacts to its properties.

VIMG also considers that the area mapped as being required for the Potential East-West Rail Link, Stabling and Critical Infrastructure within the Kemps Creek Precinct is excessive and could be reduced without impeding on the future operation of the Potential East-West Rail Link. It is particularly unclear as to why the Draft Western Sydney Aerotropolis Planning Package proposes an extensive Environment and Recreation

zone through the middle of the Potential East-West Rail Link, Stabling and Critical Infrastructure mapped land. It is considered that this creates significant inefficiencies in the placement of the East-West Rail Link, compounding the argument that such a large East-West Rail Link mapped footprint is in fact unnecessary.

It is also not clear whether TfNSW concurrence requirements would be triggered for development within this mapped Potential East-West Rail Link, Stabling and Critical Infrastructure area. Where this is the case, the Draft Western Sydney Aerotropolis Planning Package does not adequately explain how this process and decision-making power would function. Moreover, it does not clarify how such infrastructure is to be funded or what the expected delivery timeframe will be. Indeed, the process for Government-led land acquisition or developer-led instigation of the Potential East-West Rail Link should be extrapolated on. Not doing so essentially leaves portions of the site with a 'Land Reservation Acquisition' designation without being formally mapped for Land Reservation Acquisition purposes, and therefore with no recourse to standard Land Reservation Acquisition provisions (i.e. being able to insist on Government acquisition prior to public-led development occurring).

#### **4.13 Delivery of the Kemps Creek Precinct**

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 entire site with an industrial land zoning. This can be employed to override the RU2 Rural Landscape zoning under the PLEP 2010.

Under the Draft Western Sydney Aerotropolis Planning Package, the site will fall within the Kemps Creek Precinct which would be subject to rezoning for Flexible Employment purposes (refer to the Draft Structure Plan – Kemps Creek extracted in **Figure 6** below), albeit remaining subject to key planning controls under the PLEP 2010. This is despite the *Western Sydney Aerotropolis Plan: Draft – For Public Comment* (Western Sydney Planning Partnership, 2019) identifying how planning for the Kemps Creek Precinct will be progressed by Liverpool City Council.

Kemps Creek is identified as a “non-initial” or “remaining” precinct within the Aerotropolis. The *Western Sydney Aerotropolis Plan: Draft – For Public Comment* specifies how the timing of precinct planning for these remaining precincts would be determined by the timing of infrastructure provision and the amount and nature of development in adjoining areas. Existing rural land use zones will be retained until precincts are rezoned but will remain subject to Ministerial Directions 3.5 (Development Near Regulated Airports and Defence Airfields) and 7.8 (Implementation of *Western Sydney Aerotropolis Interim Land Use and Infrastructure Plan*) (as amended from time to time).

The Vision and Land Uses statement for the Kemps Creek Precinct is as follows:

*The Kemps Creek Precinct will create opportunities for flexible employment development connected to residential communities in the south, Aerotropolis Core, the Airport and other centres such as Liverpool CBD. It is anticipated that the precinct will be appropriate for mixed commercial development such as smaller innovative and creative industries that seek more affordable, out of centre accommodation with accessibility and amenity. The regional park investigation areas and the Wianamatta–South Creek corridor will provide opportunities for recreation and amenity and link to the broader Western Sydney Parklands.*

Desirable land uses for the Kemps Creek Precinct are also identified in the *Western Sydney Aerotropolis Plan: Draft – For Public Comment* (Western Sydney Planning Partnership, 2019) as follows:

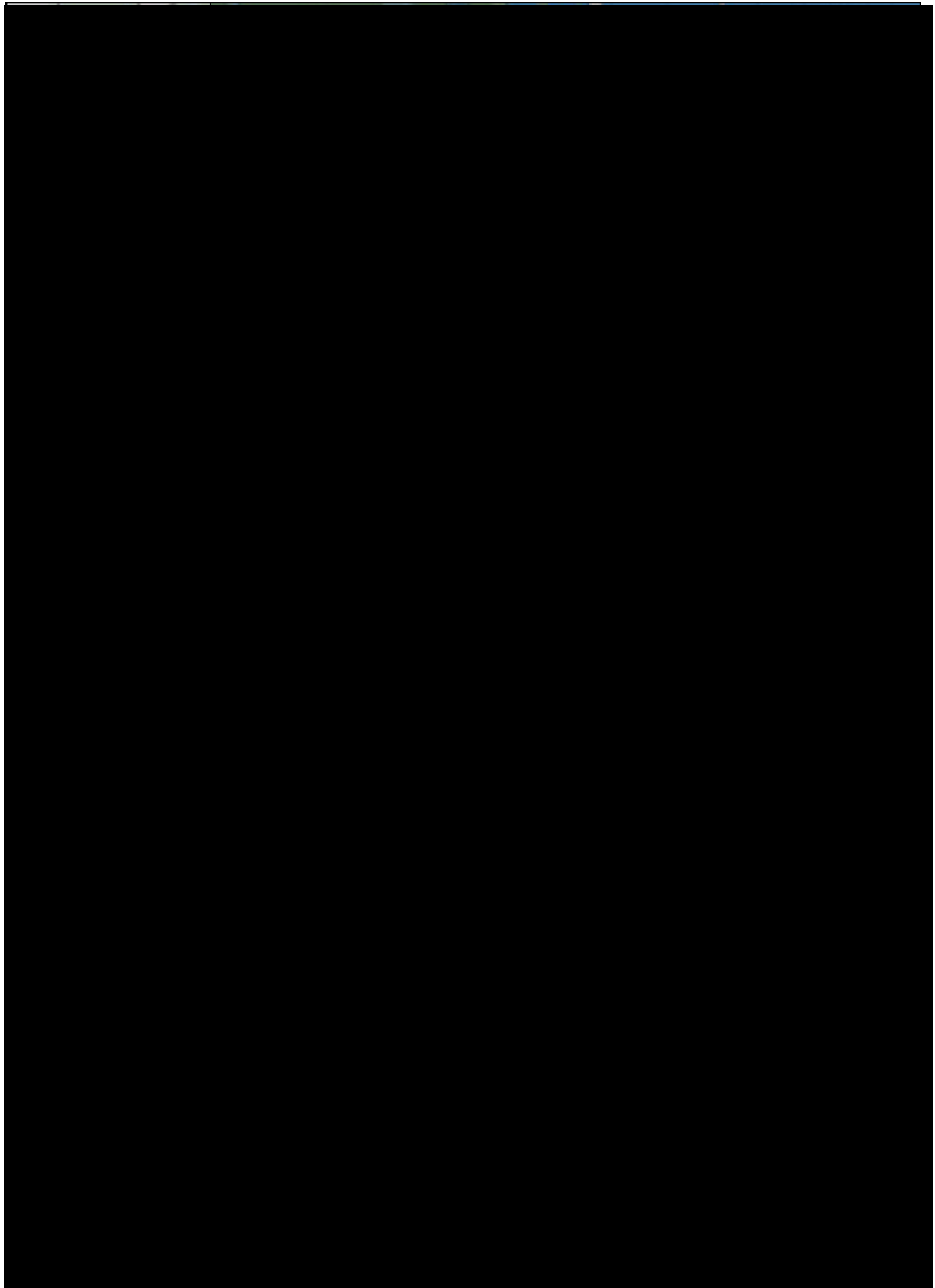
- Small and medium enterprises;
- Creative industries;
- High technology industries; and
- Urban services.\*

Key considerations for the Kemps Creek Precinct as identified in the *Western Sydney Aerotropolis Plan: Draft – For Public Comment* (Western Sydney Planning Partnership, 2019) are as follows:

- Aircraft noise;
- Safeguarding airport operations;
- Upgrade of Elizabeth Drive;
- Connection to proposed M12 Motorway;
- Potential upgrade of Western Road and Devonshire Road;
- Potential road connection to Airport via extension of Pitt Street;
- Cycle networks to the Airport and rest of the Aerotropolis;
- Potential east–west rail link including potential stabling and maintenance facility;
- Water and wastewater infrastructure; and
- Resource Recovery Facility.

Strategic outcomes for the Kemps Creek Precinct as identified in the *Western Sydney Aerotropolis Plan: Draft – For Public Comment* (Western Sydney Planning Partnership, 2019) are as follows:

- Focus on employment generating uses;
- Connect across Wianamatta–South Creek to employment precincts further west;
- Locate noise sensitive uses in appropriate locations;
- Manage an appropriate and activated interface to Wianamatta–South Creek, Kemps Creek and Western Sydney Parklands;
- Plan for high-quality development and public domain with Elizabeth Drive appropriately set back to reflect the main approach to the Airport;
- Rationalise access points on Elizabeth Drive and connect to the local road network to service private development; and
- Protect transport corridors to prevent possible conflict with adjoining land and ensure the orderly and timely provision of infrastructure.



**Figure 6 Draft Structure Plan – Kemps Creek (Western Sydney Planning Partnership, 2019)**

It is curious to understand the rationale as to why future strategic planning for the Kemps Creek Precinct would be undertaken by Liverpool City Council, when in fact the site is and will remain subject to the PLEP 2010. The Draft Western Sydney Aerotropolis Planning Package does not explain the process for rezoning such sites under the PLEP 2010 and the PDCP 2014. Specific concerns stemming from this include:

- The fact that Liverpool City Council is to retain strategic planning ownership of sites outside of its Local Environmental Plan;
- The process for undertaking Local Environmental Plan rezoning is lengthy, subject to influence by interested parties, and potentially open to mapping errors;
- Local Councils in Western Sydney do not necessarily have sufficient, available strategic planning staff to be able to dedicate the required resources to this matter. This is especially so as the Aerotropolis relates to a matter of Commonwealth importance (i.e. the proposed Nancy-Bird Walton Airport).

The *Western Sydney Aerotropolis Development Control Plan 2019: Phase 1 Draft – For Public Comment* (Western Sydney Planning Partnership, 2019) makes mention of the future use of Precinct Plans and Development Control Plans to guide the strategic development of the Aerotropolis. This includes the use of a Phase 2 DCP, which will be prepared once Precinct Planning for the initial Precincts has been completed. An option is also allowed whereby site-specific DCPs can be prepared by a proponent where they satisfy criteria specified in the Aerotropolis SEPP. This approach would enable proponents to advance planning ahead of precinct planning being finalised.

The *Western Sydney Aerotropolis Development Control Plan 2019: Phase 1 Draft – For Public Comment* (Western Sydney Planning Partnership, 2019) also clarifies that:

*The Phase 1 DCP only includes precinct vision statements for initial precincts (Aerotropolis Core, Northern Gateway, Wianamatta-South Creek, Badgerys Creek, and Agribusiness). Detailed vision statements for non-initial precincts (North Luddenham, Kemps Creek, Rossmore, Dwyer Precinct) and associated performance outcomes and acceptable solutions will be developed during precinct planning and provided within Phase 2 of the DCP. For an overview of each precinct, please refer to the WSAP.*

The *Western Sydney Aerotropolis Summary of Key Planning Documents* (Western Sydney Planning Partnership, 2019) also states that:

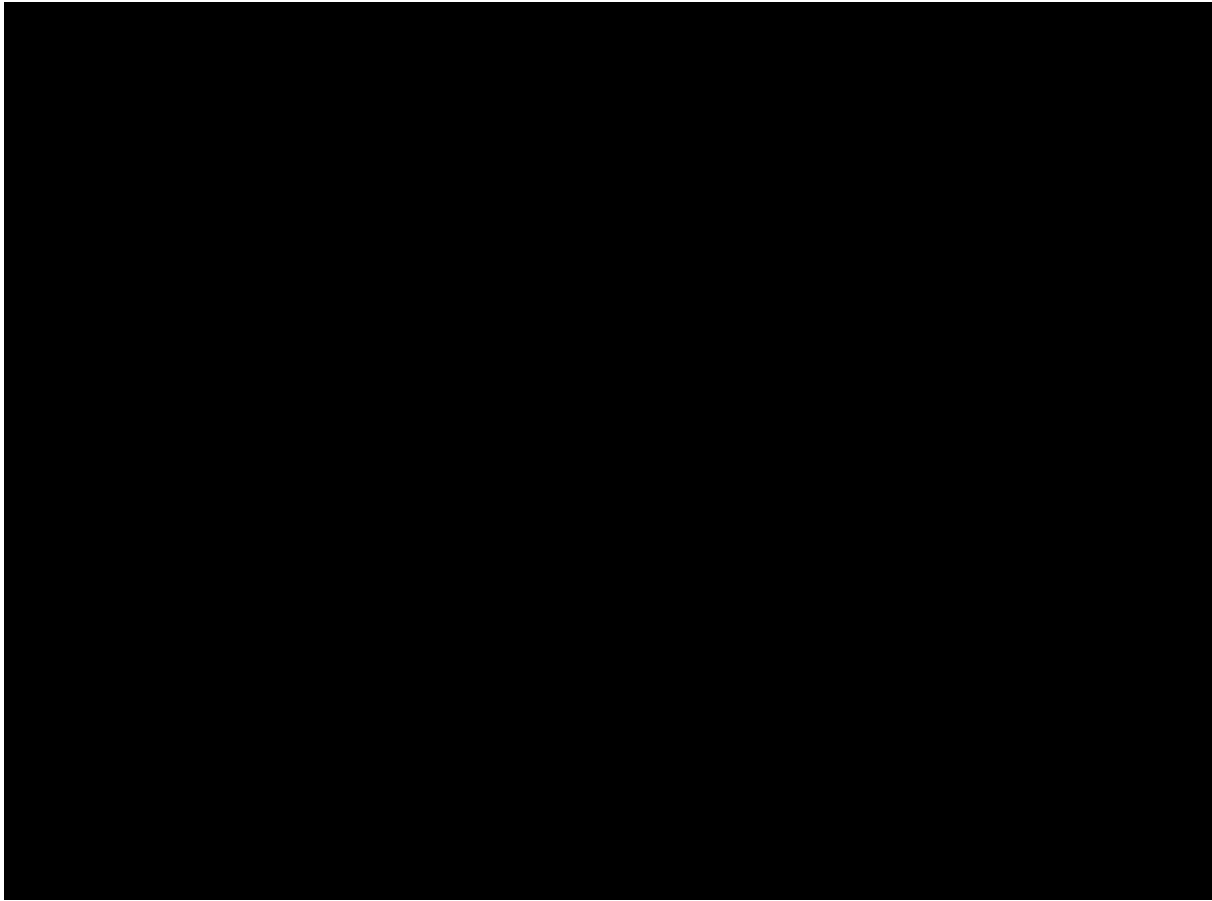
*Precinct planning for the remaining precincts will follow as infrastructure and services are planned and delivered and demand for additional land is generated.*

And

*A DA may be submitted with a draft site-specific DCP and assessed concurrently by Council. However, it is preferable that the site-specific DCP is approved prior to the preparation of the more detailed DA plans.*

VIMG welcomes the flexible approach whereby DCPs may be provided in lieu of the Precinct Planning process, given the delays that the Precinct Planning approach can cause. In particular, it is important to recognise that the submission of a DCP to Council as part of the DA package allows the Applicant to tie that DCP to its DA determination timeframe and DA appeal rights under the EP&A Act.

However, VIMG's above-listed concerns about the responsibility for Kemps Creek strategic planning being managed by Local Government remain unresolved at this time.



**Figure 7 SEPP Aerotropolis SEPP Draft Exhibition Map 1 of 2 (Western Sydney Planning Partnership, 2019)**

#### **4.14 Environment and Recreation Zone**

The Draft Western Sydney Aerotropolis Planning Package proposes to rezone the western-most portion of the site as being for Environment and Recreation purposes. Indeed, the Draft Structure Plan – Kems Creek (refer to **Figure 6** in **Section 4.13** above) indicates that the western-most portion of the site would be subject to zoning for Environment and Recreation purposes. The fact that this land zoning would take place at some future, unidentified time, is problematic. Specifically, on reading the Draft Western Sydney Aerotropolis Planning Package it is not obvious that the site would be subject to Environment and Recreation zoning. Indeed, whilst this is included in the Draft Structure Plan for the Kems Creek Precinct, it is not highlighted upfront within the Exhibition Rezoning Maps (due to this rezoning not being planned for the immediate future – refer to **Figure 7** in **Section 4.13** above). This lack of clarity up front with the proposed rezoning for non-initial/remaining precincts within the Aerotropolis creates significant obstacles for landowners who are attempting to understand the effects of the Draft Western Sydney Aerotropolis Planning Package on their land.

The Discussion Paper furthermore states that:

*Riparian corridors will be required to be retained and rehabilitated to support the 'Blue-Green Grid'. Precinct planning will assess the status of riparian corridors in line with Water NSW's 'Guidelines for riparian corridors on waterfront land' and make recommendations for their future rehabilitation, ownership and management.*

Moreover, the *Western Sydney Aerotropolis Summary of Key Planning Documents* (Western Sydney Planning Partnership, 2019) states:

*Land that is of high biodiversity value is to be protected and will therefore benefit from additional planning controls in the proposed SEPP that prohibit the clearing of vegetation. These areas will be mapped in the final SEPP.*

It is therefore considered that the application of an Environment and Recreation zone to the site would have the effect of bundling this land alongside land that has existing high biodiversity values. This would result in an automatic downzone of any land with an Environment and Recreation zone.

The Environment and Recreation zoning is also proposed to be applied through the site of the mapped East-West Rail Link, Stabling and Critical Infrastructure. Should this Environment and Recreation rezoning be realised, it would result in grave inefficiencies in the site's developable footprint, with irregular shaped and relatively small pockets of Environment and Recreation zoning in the site's west, with otherwise developable Flexible Employment land cut off from the site's existing rural road frontage. Most significantly, the resulting Flexible Employment zoned portion of the site would only benefit from a narrow connection to the adjoining lot in the south. As such, access must be gained to these areas of the site by dissecting the Environment and Recreation zone, conflicting with what are likely to be the primary objectives of this zone. This has the potential to contribute to lot isolation issues in future at the site.

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 within the proposed Flexible Employment zone could not be practically undertaken within such small, irregular pockets of land, especially when many employment-generating land uses require geometric shaped parcels of land.

**Overall, VIMG rejects the application of the Environment and Recreation Zone to its site.**

The Draft Western Sydney Aerotropolis Planning Package also fails to clarify who would own this Environment and Recreation zoned land in future. Specifically, VIMG notes that 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. This vague reference to future open space land ownership does not give any comfort to landowners whose properties could be affected by the Environment and Recreation Zone.

It is also not clear how the areas mapped as being for Environment and Recreation purposes could be effectively used for Recreation purposes, given that they are not accessible by members of the public without encroaching through private landholdings. This dichotomy between public and private land ownership and Environment and Recreation zoned land within the Aerotropolis is a matter which requires resolution.

Furthermore, the irregular shape of these Environment and Recreation zoned portions of land at the site would make legal and permissible development of the remainder of this Lot 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 zones), and/or under-development of the Flexible Employment zone to prevent such errors. 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."

As such, future development at the site would most likely be accompanied by a request to Government to realign any Environment and Recreation zoned land, 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 Kemps Creek 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.



Nevertheless, additional open space/public recreation land uses could be achieved within the Kemps Creek 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 types of land uses which are likely to be approved in future within the Kemps Creek Precinct, it is not likely that a significant portion of any such Environment and Recreation zoned land would be utilised by vast members of the general public.

#### **4.15 Fragmentation of Lands**

VIMG submits that the proposed Potential East-West Rail Link, Stabling and Critical Infrastructure mapping would fragment existing properties, including its 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 portions of VIMG's land within the Aerotropolis would be adversely impacted by a State Government planning decision which relates to the majority of this landholding, leaving a remaining portion which is undevelopable. It could also result in portions of Environment and Recreation zoning running through the site. Both of these land use restraints would conflict with the delivery of Flexible Employment land uses at the site. The Environment and Recreation zoning would also isolate developable portions of the site from the nearest road frontage.

The fact that strategic planning for the Kemps Creek Precinct would be led by Local Government, rather than the Western Sydney Planning Partnership, also does not give affected landowners sufficient comfort that the Precinct will be adequately incorporated into the overall Aerotropolis.

Should the Draft Western Sydney Aerotropolis Planning Package and corresponding Aerotropolis SEPP be gazetted in their current form, 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.

VIMG therefore submits that the Draft Western Sydney Aerotropolis Planning Package consider landholdings cumulatively, rather than with the intent of fragmenting them arbitrarily.

#### **4.16 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.

VIMG also makes the following specific comments regarding developer contributions for the Kemps Creek 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:

- (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.*

#### **4.17 Land Reservation Acquisition**

VIMG notes how the area mapped as being for the Potential East-West Rail Link, Stabling and Critical Infrastructure (refer to **Figure 4** in **Section 1.0** above) has not also been identified. VIMG is therefore concerned that its 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 for the Potential East-West Rail Link, Stabling and Critical Infrastructure, 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.

VIMG moreover submits that any land which is proposed to be acquired should be acquired according to its highest and best Flexible Employment purposes land use (as envisaged under the Draft Western Sydney Aerotropolis Planning Package).

The table in Appendix 2 of the *Western Sydney Aerotropolis Discussion Paper on the Proposed State Environmental Planning Policy* (Western Sydney Planning Partnership, 2019) states that the Draft Land Zoning Map (refer to **Figure 3** in **Section 1.0** above) "identifies land use zoning and corridor reservation requiring concurrence from Transport for NSW." However, this is in fact not included on the Draft Land Zoning Map. VIMG firmly suggests that the Western Sydney Planning Partnership release this mapping so that affected landowners may adequately understand the implications for its landholdings.

#### **4.18 Proposed Land Uses and Master Planning**

Section 4.3 of the *Western Sydney Aerotropolis Discussion Paper on the Proposed State Environmental Planning Policy: Draft – For Public Comment* (Western Sydney Planning Partnership, 2019) discusses the remaining precincts of the Aerotropolis, including the Kemps Creek Precinct, including the following statements:

*Under the proposed SEPP, master planning provisions outlined in Part 9 of this discussion paper will not apply to these precincts until the land is rezoned under the SEPP. This approach will allow existing rural activities to continue to operate, recognising the longer-term occupation and use of this land for rural-based uses, along with its economic contribution.*

*Extensive agriculture as a use that is permitted without consent in these precincts creates potential risks in terms of compatibility with the Airport. Airport safeguarding approaches by Western Sydney Airport will include investigations will be undertaken to determine the application of extensive agriculture as a permissible use in these precincts.*

VIMG insists that agricultural landholders affected by this policy stance be provided with greater information on how this may affect the operation of its lands into the near future.

Moreover, VIMG holds grave concerns over this language in the Draft Western Sydney Aerotropolis Planning Package which seeks to curtail the rights of landowners within the “non-initial/remaining precincts” from undertaking master planning for their land. Indeed, the *Environmental Planning and Assessment Act 1979* sets out the legislative process for obtaining a master plan/concept plan DA within NSW. To prevent landowners from being able to access these legislative provisions is of significant concern. This is especially the case as VIMG is currently preparing a master plan for the site for employment generating purposes. To this end, VIMG currently holds an MOU with a major tenant which could provide much-needed employment-generation for the locality. The proposed Environment and Recreation zoning of the site, as well as the Potential East-West Rail Link, Stabling and Critical Infrastructure Area put this arrangement in jeopardy.

## **5.0 CONCLUSION**

Overall, the effect of the Draft Western Sydney Aerotropolis Planning Package would be to designate significant portions of the approximately 11.7 hectare site as being unsuitable for a range of private land uses, through constraining portions of the site with transport infrastructure corridors, environmental zonings, and resulting issues of land use conflict. It would also effectively ‘downzone’ the site where industrial land uses are currently permitted under Clause 12 of WSEA SEPP, in direct contradiction with the Greater Sydney Commission’s vision for the Aerotropolis. As a result, it is considered that:

- Future job provision at the site could be reduced;
- Developable lands could be unnecessarily rezoned to Environment and Recreation; and
- Land could become fragmented, isolated and difficult to access.

VIMG’s grounds of submission to the Draft Western Sydney Aerotropolis Planning Package relate to the following matters:

- 5.1 VIMG strongly rejects the proposed location of the Potential East-West Rail Link, Stabling and Critical Infrastructure Area;
- 5.2 Currently VIMG is preparing a masterplan for the site for employment generating purposes. As part of this VIMG also has an MOU with a major tenant that will potentially provide much needed local job opportunities on the site. Any potential Environment and Recreation zone or stabling yard would put this investment at risk;
- 5.3 VIMG firmly requests that the area mapped as being required for the Potential East-West Rail Link, Stabling and Critical Infrastructure be clarified as a matter of urgency, so that affected landowners can understand the scale of potential impacts to its properties;
- 5.4 The mapped Potential East-West Rail Link, Stabling and Critical Infrastructure Area is too broad, and no guidance is provided as to how interim land uses might be undertaken on this land, or how TfNSW might use its decision-making powers as a concurrence authority to allow development on this land. Specifically:
  - 5.4.1 The area mapped as being required for the Potential East-West Rail Link, Stabling and Critical Infrastructure is not clearly defined in the Draft Western Sydney Aerotropolis Planning Package, creating significant uncertainty for landowners in the Aerotropolis;
  - 5.4.2 The area mapped as being required for the Potential East-West Rail Link, Stabling and Critical Infrastructure within the Kemps Creek Precinct is excessive and could be reduced without impeding on the future operation of the Potential East-West Rail Link;
  - 5.4.3 The land which is subject to TfNSW requirements should be defined, and the related process for obtaining this concurrence should be clarified; and
  - 5.4.4 The process for Government-led land acquisition or developer-led instigation of the Potential East-West Rail Link, Stabling and Critical Infrastructure should be extrapolated on. Not doing so essentially leaves portions of the Aerotropolis site with a ‘Land Reservation Acquisition’ designation without being formally mapped for Land Reservation Acquisition purposes, and therefore with no recourse to standard

Land Reservation Acquisition provisions (i.e. being able to insist on Government acquisition prior to public-led development occurring);

- 5.5 The Draft Structure Plan – Kemps Creek (refer to **Figure 6** in **Section 4.13** above) indicates that the western-most portion of the site would be subject to zoning for Environment and Recreation purposes. The fact that this land zoning would take place at some future, unidentified time, is problematic. Specifically, on reading the Draft Western Sydney Aerotropolis Planning Package it is not obvious that the site would be subject to Environment and Recreation zoning. Indeed, whilst this is included in the Draft Structure Plan for the Kemps Creek Precinct, it is not highlighted upfront within the Exhibition Rezoning Maps (due to this rezoning not being planned for the immediate future refer to **Figure 7** in **Section 4.13** above). This lack of clarity up front with the proposed rezoning for non-initial/remaining precincts within the Aerotropolis creates significant obstacles for landowners who are attempting to understand the effects of the Draft Western Sydney Aerotropolis Planning Package on their land;
- 5.6 This would result in grave inefficiencies in the site's zonings, leading to land fragmentation preventing portions of the site from being used for employment-generating purposes and thereby reducing employment uptake at the site. Nearby lands within the broader Aerotropolis would also be unnecessarily sterilised due to this overzealous application of the Environment and Recreation zone, especially to nearby lands mapped within the 1:100 Flood Area;
- 5.7 Fragmentation of existing properties leading to contradictions with NSW Planning Policies established by the Land and Environment Court;
- 5.8 Uncertainty regarding applicable Section 7.12 Contribution and applicable Special Infrastructure Contribution rates under the Place Infrastructure Compact, as the Draft Western Sydney Aerotropolis Planning Package contains insufficient details;
- 5.9 Dichotomy between public and private land ownership of Environment and Recreation zoned land within the Aerotropolis being a matter which requires resolution;
- 5.10 The fact that strategic planning management of the Kemps Creek Precinct would be undertaken by Liverpool City Council; and
- 5.11 Lack of clarity surrounding the continuation and expansion of agricultural land uses within the Kemps Creek Precinct prior to future Flexible Employment land uses being supported.

**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 Andrew Cowan of Willowtree Planning [REDACTED]

Yours faithfully,

[REDACTED]

Andrew Cowan  
Director  
Willowtree Planning Pty Ltd