

Our Ref: 16.094

13 March 2020

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All mail to
PO Box 1912 Penrith NSW 2751

Mr Brett Whitworth
Director Aerotropolis Activation
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Brett,

Re: RSB Australia – [REDACTED] Elizabeth Drive, Cecil Park
Submission on Western Sydney Aerotropolis Draft SEPP

We refer to the above matter and the documentation that has recently been placed on public exhibition. We act on behalf of [REDACTED], the owners of the above site.

[REDACTED]

[REDACTED] have owned the site for many years, and its acquisition and development has been funded by [REDACTED]. We made a public submission on behalf of [REDACTED] in response to the publicly exhibited *Western Sydney Aerotropolis Land Use and Infrastructure Plan: Stage 1: Initial Precincts* (the LUIP), and we attach that submission to this correspondence. **We feel that our submission has not been considered in the preparation of the SEPP documents and (as advised by Departmental staff) formally request a meeting to discuss our clients concerns.**

There are essentially two main concerns with the SEPP as it relates to this site.

Firstly, the original boundaries that were established for supposed biodiversity reasons were done so (we believe) in error and without appropriate 'ground truthing', with areas of the site that had already been developed (mainly with hardstand car parking) being identified as requiring protection. Our submission to the LUIP suggested this SEPP process was an opportunity to rectify the mistake that had previously been made and zone the site appropriately. A suggested zoning approach is contained within the submission.

Secondly, the Draft SEPP mapping identifies the boundary of the SEPP application traversing the site, meaning the Liverpool LEP would apply to the portion of the land fronting Elizabeth Drive, while the rear of the site is proposed to be zoned under the Draft SEPP (See Figure 1 below). The presence of two environmental planning instruments applying to one site is problematic for our client as they use and progress development of the site. The zoning is confusing and, in the event there is a consent authority for development under the SEPP, it may mean there are two consent authorities for the site.

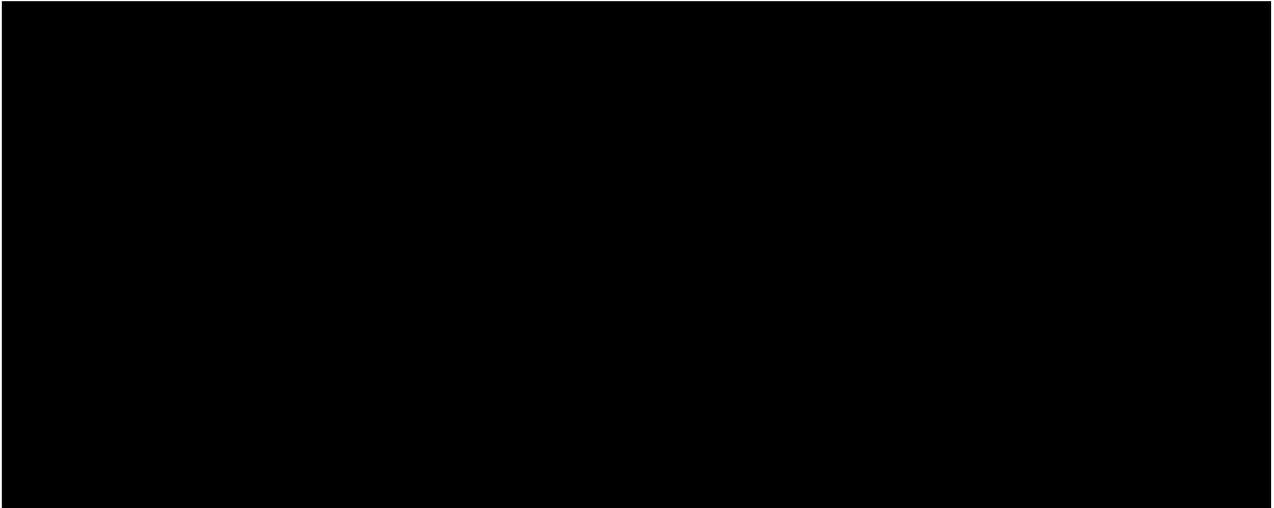


Figure 1 Subject site in red showing SEPP boundaries

The recommended ways in which these anomalies can be resolved include:

1. Amending the SEPP mapping to **include** the entire site within the control of the SEPP; and
2. Amending the SEPP mapping to limit the Environment and Recreation zone to the rear of the site, as detailed in our previous submission (See Figure 12) to the LUIMP.

We note the above amendments would see the site satisfy the strategic outcomes detailed within the Western Sydney Aerotropolis Plan, including:

- *Potential to focus on (in the long term) employment generating uses;*
- *Manage an appropriate and activated interface to recreation zoned areas; and*
- *Plan for high quality development and public domain with Elizabeth Drive appropriately set back to reflect the main approach to the Airport.*

We feel the Draft SEPP documentation has not addressed our original submission to the LUIMP and have attempted to meet with Department staff on a number of occasions through the website, and finally over the phone. We were verbally advised to formally request that meeting as part of this submission – **please take this submission as that formal request to meet with the Department in relation to this submission and the response to our original submission to the LUIMP.**

Please contact the undersigned on [REDACTED] to arrange further discussions.

Sincerely

Stimson & Baker Planning



Warwick Stimson RPIA
Director

Att: Submission on Western Sydney Aerotropolis Land Use and Infrastructure Plan: Stage 1: Initial Precincts (the LUIMP)



**Western Sydney Aerotropolis:
Land Use and Infrastructure Implementation Plan**

Submission on behalf of [REDACTED]

[REDACTED]

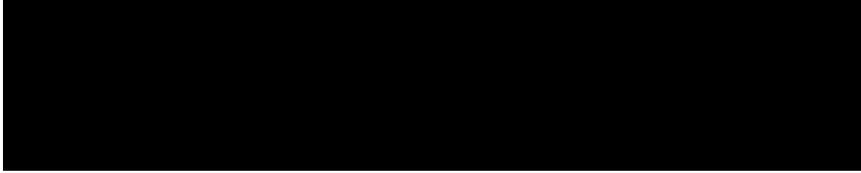
November 2018

Submission on Exhibition Material

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Client and Land Details



Warwick Stimson RPIA
Director



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1 Introduction

1.1 Overview

Stimson & Baker Planning has been engaged by [REDACTED] to review the recently exhibited strategic planning document, *Western Sydney Aerotropolis Land Use and Infrastructure Plan: Stage 1: Initial Precincts* (the LUIIP). [REDACTED] and have developed the land accordingly over the past decade for that purpose.

Up until 4 April 2014 the entire site had been zoned and mapped *RU4 Primary Production Small Lots* under the *Liverpool Local Environmental Plan 2008* (LEP), this being the main environmental planning instrument (EPI) under which development had been considered by Liverpool Council for a number of Development Applications relating to the site.

The zoning maps attached to *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (SEPP) show, from between May 2008 to date, the site marked as Public Recreation – Regional. Our client advises they were not aware of any zoning change on the site, and that up until a bank valuation being recently commissioned, were under the impression the entire site was still zoned RU4 under the LEP.

To a large extent the actual timing of the rezoning, and whether the various instruments were considered correctly by Council is somewhat inconsequential in the context of the LUIIP. The concern is that the biodiversity boundaries established under the Growth Centres Commission *Growth Centres Conservation Plan*, around the time of December 2007, informed the eventual April 2014 rezoning, including the removal of the zoning of the southern part of the site from the LEP and transferred it to the SEPP. We are of the view that this zoning boundary was most likely determined at desktop level and was never properly ‘ground truthed’. Indeed, significant concerns over the ground truthing were raised through the consultation process of that Plan by many people that made submissions at the time. The location of the zoning boundary resulted in heavily developed portions of the site being zoned Public Recreation – Regional, with these parts of the site (because of their development) unlikely to ever be able to achieve the regeneration objectives of the biodiversity certification imposed on it.

During 2016/2017 enquiries were made with the Department of Planning and Environment (DPE) and GIPA searches lodged – the primary purpose of which was to identify the level of detailed assessment that had been undertaken in formulating the zoning under the SEPP and Biodiversity Certification as it directly related to this site. Meetings were held with DPE staff however no assessment report or record could be produced justifying the zoning boundary location in the context of development on the site. Quite simply, the zoning boundary appeared to be located literally as an extension of a paper road boundary on an adjoining parcel of land. No evidence of any ‘ground truthing’ was provided. Again, we note this concern was raised during the consultation process of the Plan by many of those who made submissions

The conclusion we have arrived at is that the location of the zoning boundary has been inaccurately positioned. The objectives of the area of the site that was zoned Public Recreation – Regional, yet had been developed, would never have been able to achieve the objectives of

the zone, or contribute in any meaningful way to the biodiversity corridor that had been established as a result. The impacts of this on [REDACTED] are significant and have hampered [REDACTED] financially.

The LUIP now on exhibition, unfortunately reinforces this error. Indeed, we are of the opinion that the situation is made worse through the errant corridor/zoning boundary now indicated. This will result in a further financial constraint on the [REDACTED] and its ability to conduct its [REDACTED]

This submission proposes that through this LUIP process, the error be rectified, and it outlines the changes that should be made. We trust it will be considered favourably by DPE.

1.2 Introduction to Client

[REDACTED]

2 The Site

The subject site and its surrounds has the following characteristics.

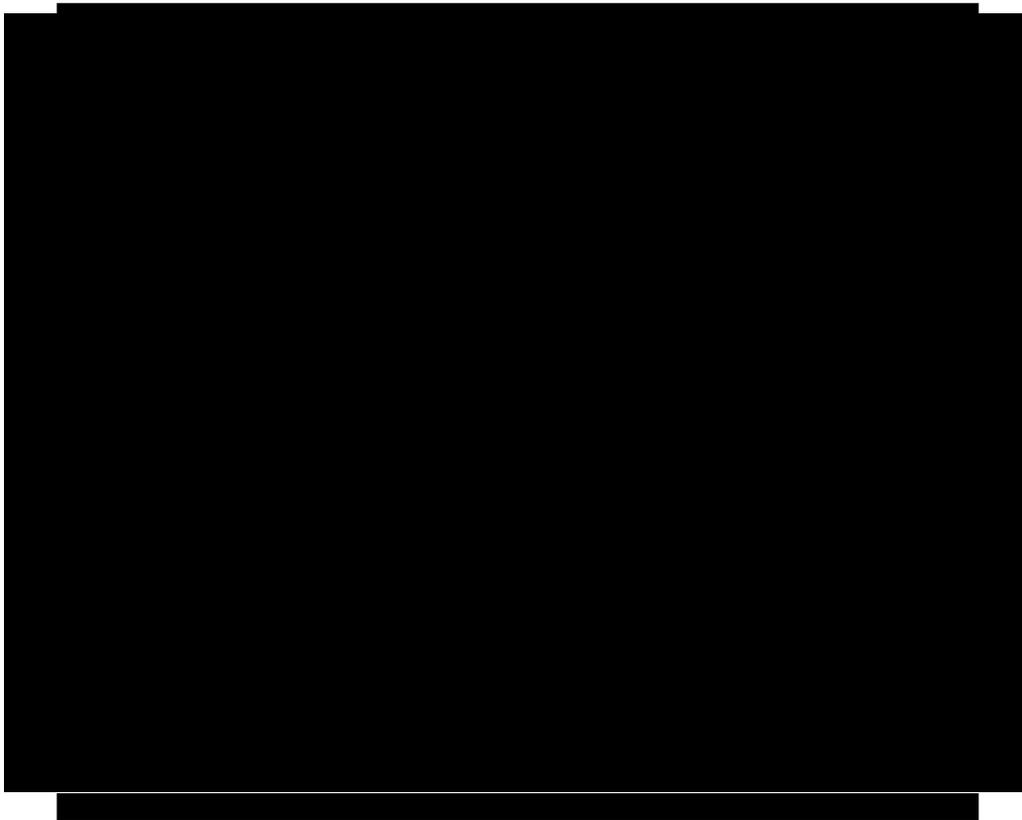
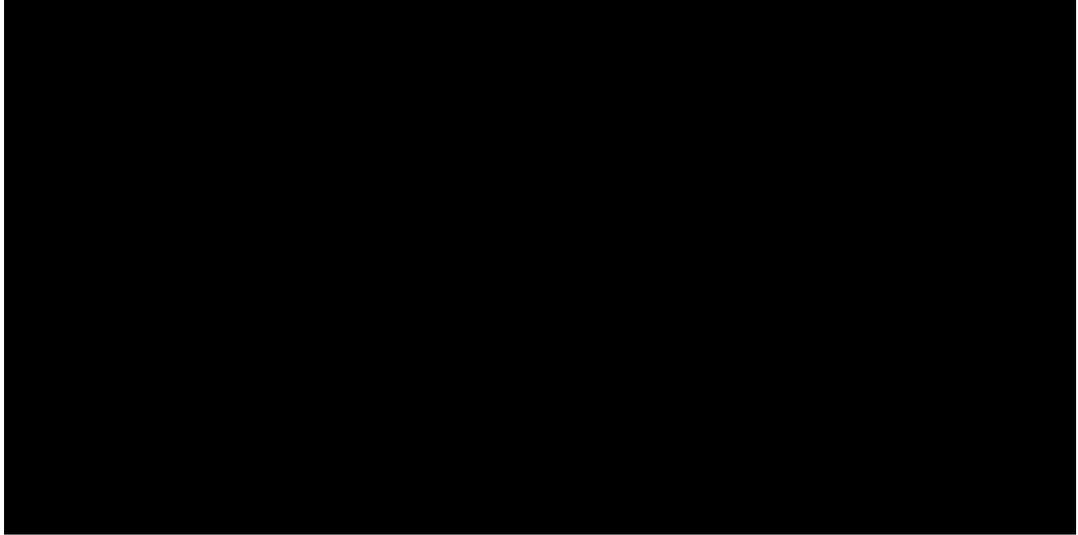
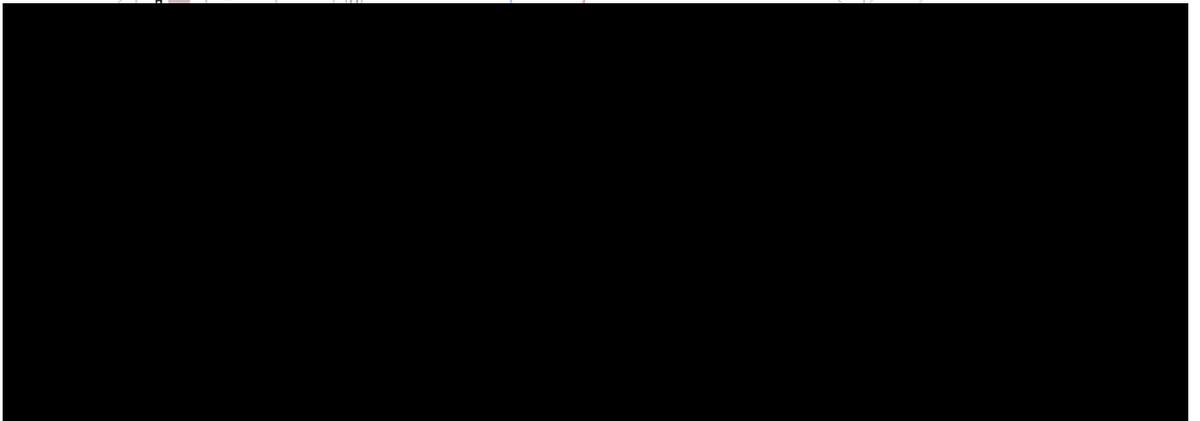
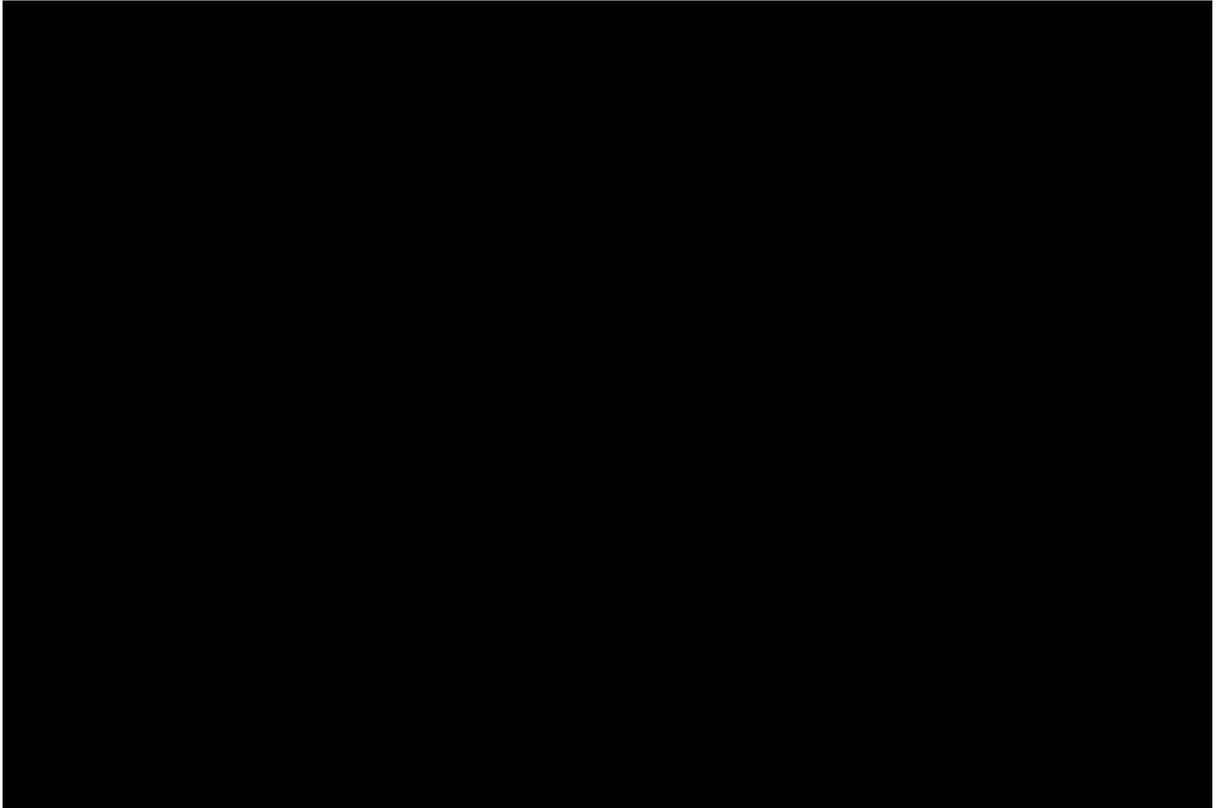


Figure 1 Subject Site Aerial (Nearmap)



3 Planning History

3.1 Previous Approvals and Land Use Zoning

A number of development applications have been approved by Liverpool City Council over the years. Importantly, Council has referred applications to the DPE for concurrence, with that concurrence never being withheld.

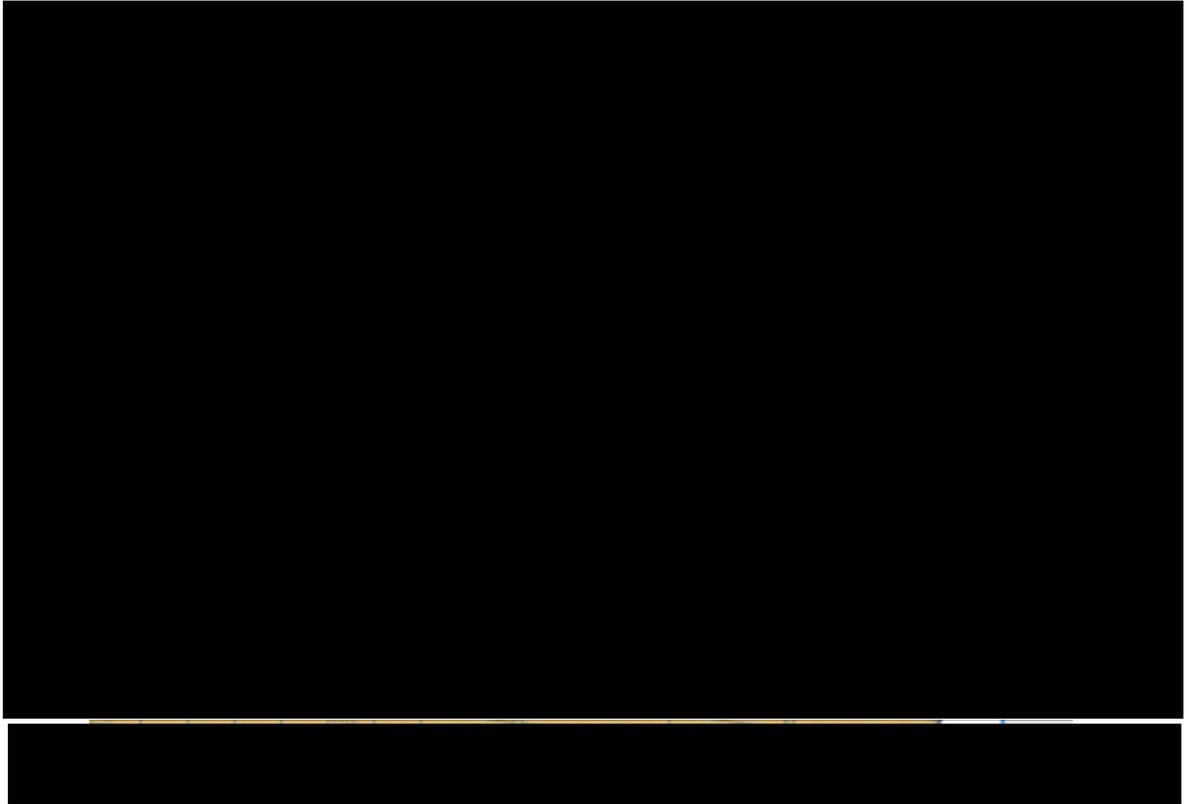
Whilst historically it appears the relevant planning instruments required DPE to be consulted prior to an applications determination, those applications had been determined while the land still retained an RU4 zoning under the LEP.

Unfortunately, it appears to us that approved applications were not considered through the process determining the boundaries relating to the Biodiversity Certification and related land use zoning change.

4 Current Planning Environment

4.1 Land Use Zoning and Environmental Planning Instrument

Currently, the front portion of the site is zoned *RU4 Primary Production Small Lots* under *Liverpool Local Environmental Plan 2008*.



The Land Use Zoning Table nominates the following in respect of the RU4 zone.

Zone RU4 Primary Production Small Lots

1 Objectives of zone

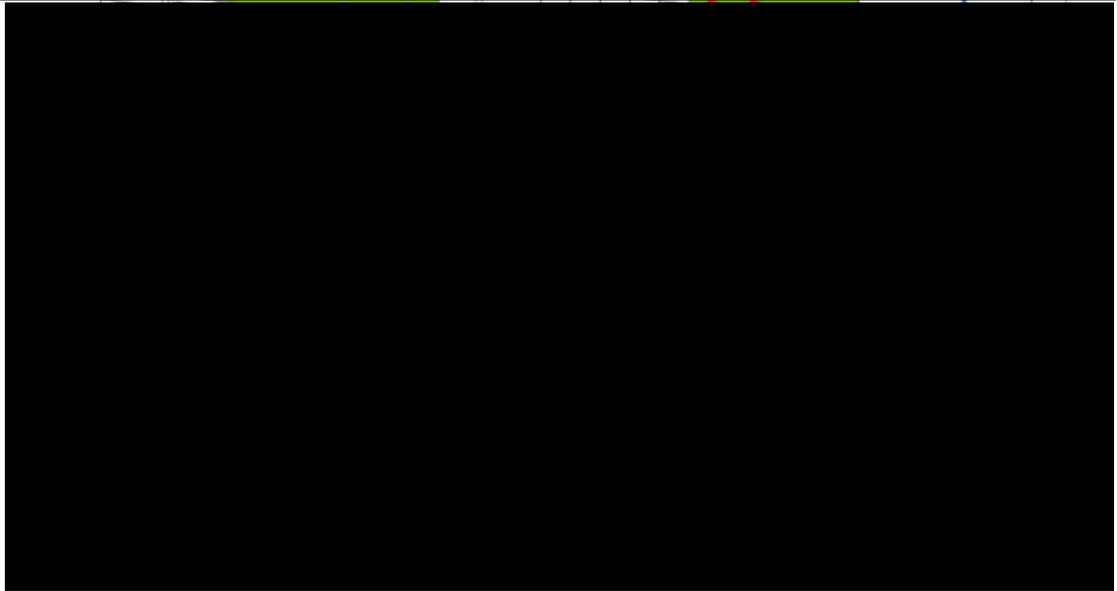
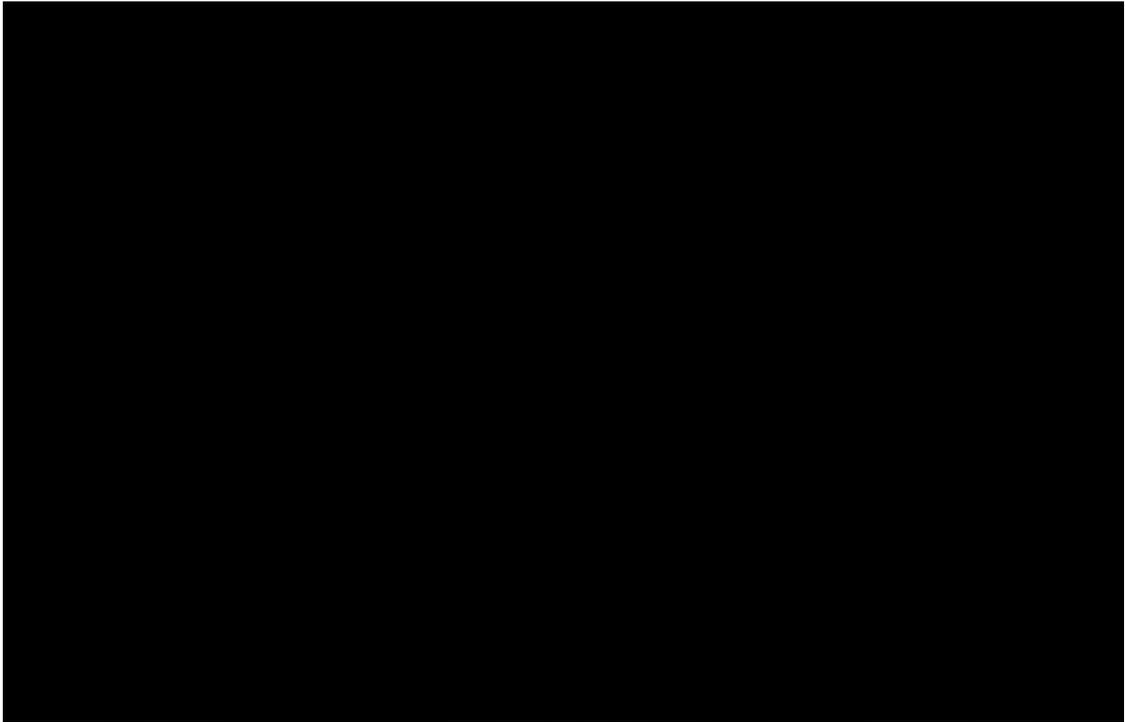
- *To enable sustainable primary industry and other compatible land uses.*
- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

2 Permitted without consent

Extensive agriculture; Home-based child care; Home occupations

3 Permitted with consent

Agriculture; Animal boarding or training establishments; Bed and breakfast accommodation; Building identification signs; Business identification signs; Cemeteries; Community facilities; Crematoria; Dual occupancies; Dwelling houses; Entertainment facilities; Environmental facilities; Environmental protection works; Farm buildings; Farm stay accommodation; Flood mitigation works; Helipads; Home businesses; Home industries; Landscaping material supplies;



Development permitted by or under the National Parks and Wildlife Act 1974 (but only if the land is reserved under that Act); development for the purpose of eradicating noxious weeds in accordance with the Noxious Weeds Act 1993.

(2) Permitted with consent

Development for building identification signs, environmental facilities, environmental protection works, flood mitigation works, information and education facilities, kiosks, public entertainment, recreation areas, recreation facilities (outdoor), temporary structures.

(3) Prohibited

Any other development.

We also note Clause 14 and 15 which state the following:

14 Development for previously permitted uses of land

- (1) *Despite anything to the contrary in this Part, the consent authority may grant consent to the carrying out of development on land zoned under this Part that is not otherwise permitted by this Part if:*
- (a) *the development is of a kind that could be carried out on the land under an applicable environmental planning instrument immediately before the commencement of this Policy, and*
 - (b) *the relevant public authority referred to in clause 15 that may be required to acquire the land grants concurrence to the proposed development, and*
 - (c) *the development is consistent with the aims of this Policy.*
- (2) *In deciding whether to grant concurrence to proposed development under this clause, the relevant public authority must take the following matters into consideration:*
- (a) *the need to carry out development on the land for the purposes for which the land is zoned under this Part,*
 - (b) *the imminence of acquisition of the land by the public authority,*
 - (c) *the likely additional cost to the public authority resulting from the carrying out of the proposed development.*

15 Acquisition of land zoned under this Part

The authority of the State that will be the relevant authority to acquire any land zoned under this Part, if the land is required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991, is:

- (a) *in the case of land within the Environment Conservation Zone or the Public Recreation—Regional Zone—the corporation constituted under section 2.5 (1) of the Act, or*
- (b) *(Repealed)*
- (c) *in the case of land within the Public Recreation—Local Zone—the council of the area in which the land is situated.*

Whilst it is acknowledged that [REDACTED] could utilise Clause 14 to progress any development on their site, the zoning itself has resulted in financial harm. Moreover, it is illogical and unreasonable to have the potential for acquisition sitting over a portion of the land that [REDACTED] and its [REDACTED] have so heavily invested in.

We also note the site is mapped as follows in respect of potential flood prone and creek lands.



4.2 Biodiversity Certification

Biodiversity certification was conferred on *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* on 11 December 2007.

Throughout the consultation process a number of concerns were raised over the 'ground truthing' of the ecological assessments. An extract from the 'Report on Public Submissions' stated:

Approximately one quarter (24%) of submissions raised concern about the level of ground truthing used, and its impact on the reliability/validity of the proposed biodiversity certification. In response to this, it is noted that all assessment methods have been developed in close consultation with DECC, and were based on guiding principles that have been developed by DECC. The assessment of the existing remnants was based on the best available information at a regional scale across the Cumberland Plain. The process to develop the original data by the National Parks and Wildlife Service involved modelling, remote sensing and field validation. On this basis, individual site surveys are not considered appropriate for a regional assessment. Some limited additional work was undertaken in response to the regional nature of the data, with a view to improving the reliability and consistency of the data at a regional scale, rather than a localised/ lot scale. This is considered acceptable because it provides the basis for regional conservation strategy, rather than a detailed local design. Any further refinement to this process is better suited to the precinct planning process, where the opportunity for refinement of the information may be available.

Related to the ground truthing issue, almost half (46%) of submissions received from landowners queried the validity of the ecological designation allocated to their property in the Draft Conservation Plan. In response to this, it is noted that mapping information should be considered as being approximate arising from the regional nature of the exercise and the scale of the mapping information. Again, this is considered acceptable in view of the regional nature of the exercise, and any further refinement to this is better suited to the precinct planning process. The 15% of landowners concerned about inaccuracies in the location of 'green' areas are advised that any future maps to be prepared are not proposed to include any green areas.

When the biodiversity conservation was ultimately conferred, it was done so conditionally.

Condition 1 of the certification allows for the Minister to amend the conditions to address anomalies, errors, boundary revisions and to take into account new information. We assume this was to cater for situations, such as this one, where a zoning boundary had been placed inaccurately.

4.3 Physical Development versus Zoning Boundary

The Figure below shows clearly the Public Recreation – Regional zoning imposed on the site, in comparison with the development that is on the site.

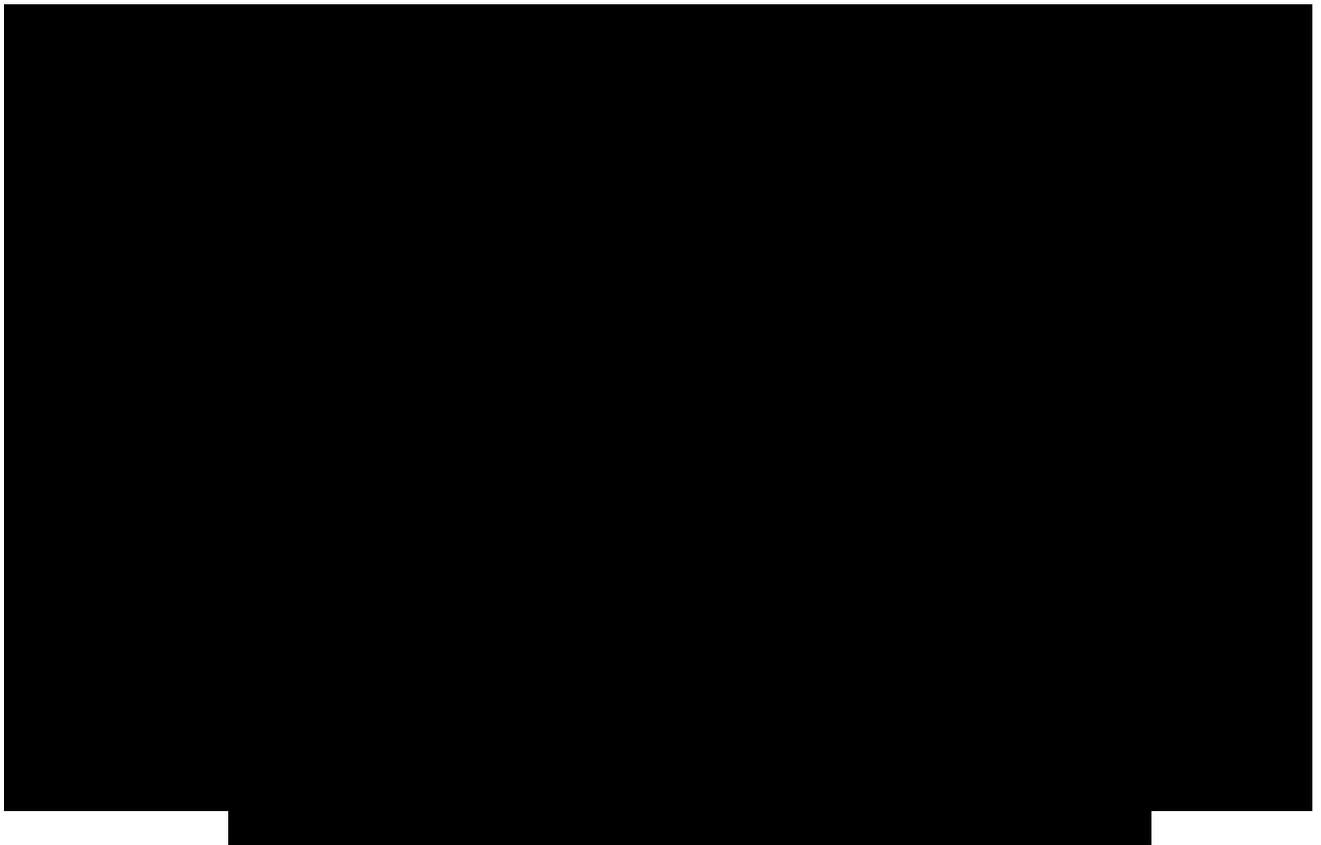


Figure 7 Subject site showing the existing open space zoning

The zone clearly imposed on parts of the land that have been heavily developed and have no conservation opportunities.

5 The LUIIP

The LUIIP provides an overview of proposed land uses and the sequence of development that will deliver Sydney's newest economic hub around the new Western Sydney Airport. Importantly for [REDACTED] this body of work will establish the future zone and zoning boundaries, and it is in that context this submission is made.

The following extract details how the LUIIP recognises the biodiversity certification work already applicable to the site.

4.3.4 Environmental conservation in the Cumberland Plain

Western Sydney is home to some of the last remaining critically endangered plant communities on the Cumberland Plain as well as other threatened flora and fauna.

Strategic biodiversity certification allows for biodiversity values to be considered early in the planning process. It protects areas of high conservation value, identifies areas suitable for development and offsets any residual impacts to biodiversity. Strategic biodiversity certification removes the need for site-by-site threatened species assessment, provides certainty for developers and landowners and enables better environmental outcomes.

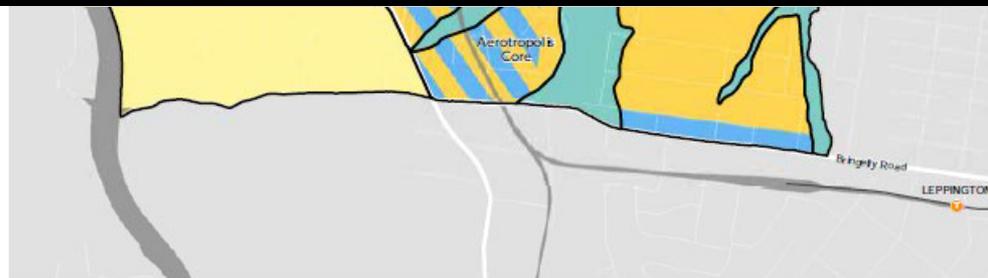
The *Cumberland Plain Conservation Plan*, a strategic conservation plan, will support an application by the Department of Planning and Environment for the biodiversity certification of the Aerotropolis and other new development areas in Western Sydney under the *Biodiversity Conservation Act 2016*. It will also propose a range of conservation measures, including protection of high conservation value core and corridor areas, revegetation and renewal, protection using development controls and investment in species recovery initiatives.

The development of the *Cumberland Plain Conservation Plan* and the biocertification of the Aerotropolis and other new areas in Western Sydney will run concurrently with precinct planning. The Aerotropolis includes an area which was biodiversity certified in 2007 and the conditions and planning controls that apply in this area will continue.

The Department of Planning and Environment has carried out field surveys to identify the biodiversity values in the Aerotropolis so that precinct plans can avoid or minimise impacts to biodiversity. The Department has also undertaken preliminary mapping of core biodiversity sites.

This confirms that at this time, the biodiversity certification is intended to be retained in its current form.

The LUIIP divides the entire Aerotropolis precinct into several precinct as shown in Figure 8 below. The subject site sits within the Kemps Creek precinct.



Structure Plan
 Western Sydney Aerotropolis

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

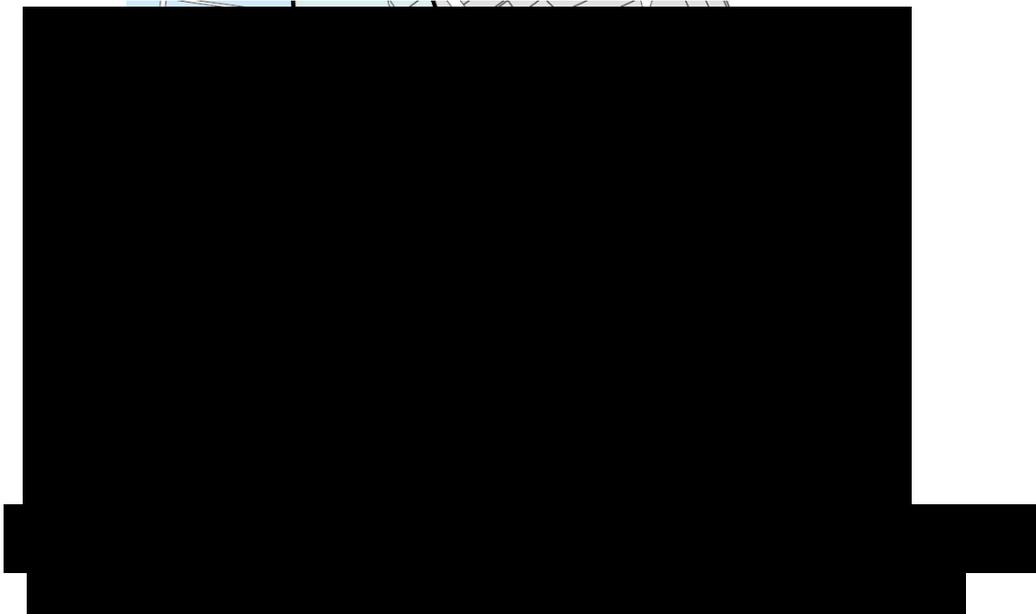
Figure 8 Overall Precinct Plan

Figure 9 shows the Structure Plan magnified and the subject site within it.



Figure 9 Kemps Creek Precinct

The LUIP exhibition material includes a lot overlay across the proposed precinct areas and we have reproduced that in Figure 10. This clearly shows the potential zoning boundaries that could be proposed under the LUIP. The potential zoning boundary differs from the current zoning boundary.



We have applied the boundaries within Figure 10 onto an aerial photo within Figure 11 and this shows the potential zoning in respect of existing development on the site.

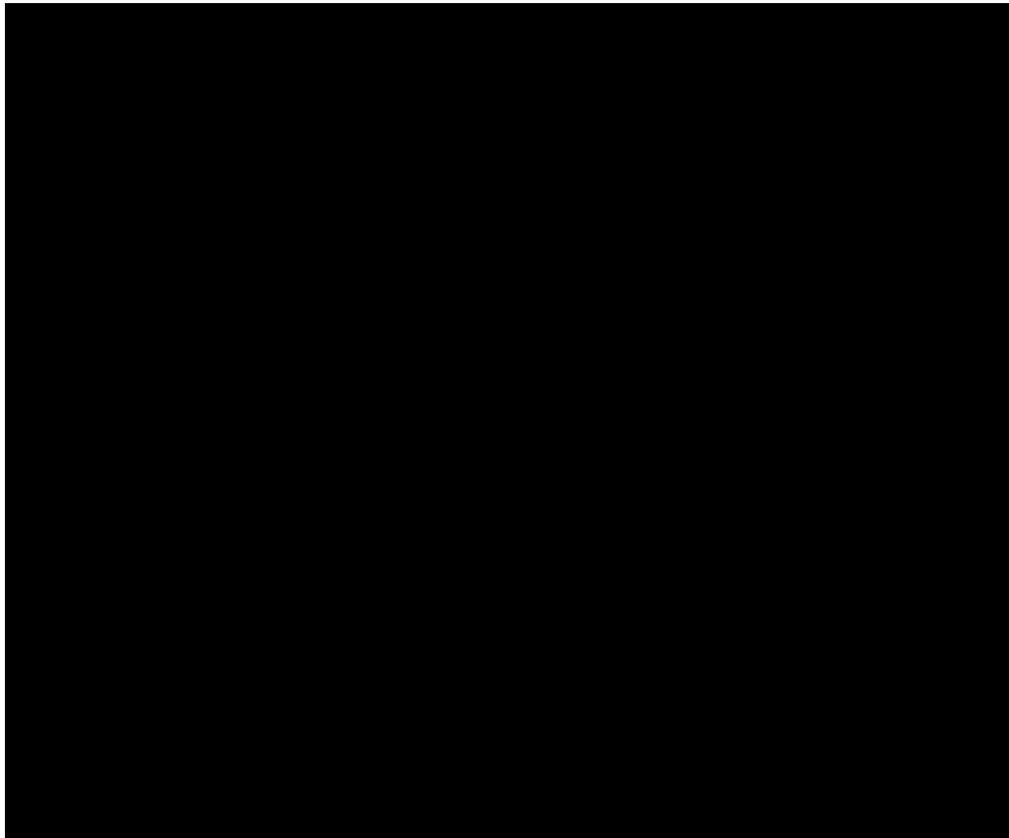


Figure 11 Subject site showing potential zoning under the LUIP

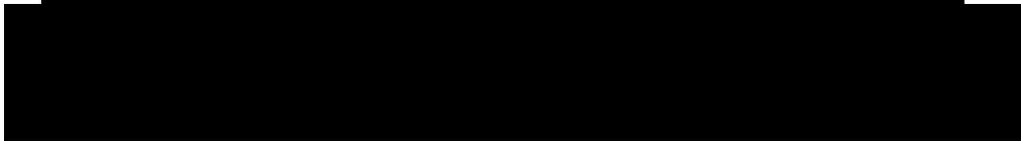
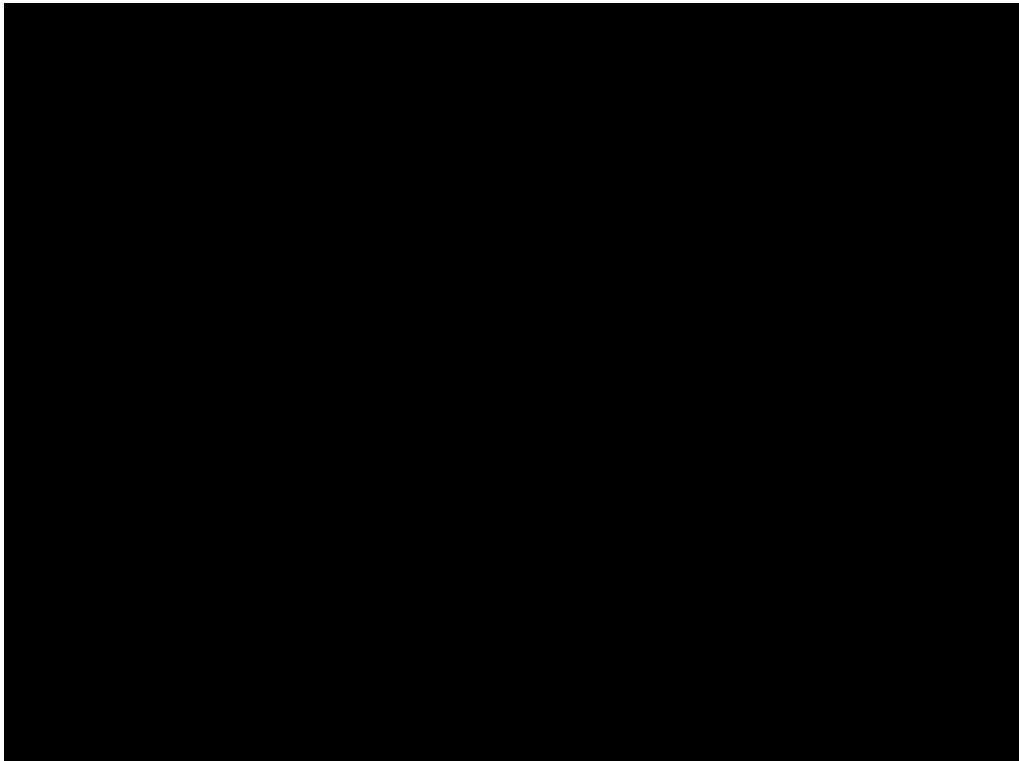
It is clear that the proposed boundaries constrain the site further than what the current zoning boundary does (as shown in Figure 7). Again, we consider this unnecessarily and unreasonably constrains the site.

6 Opportunities for the Site under LUIIP

The exhibition of the LUIIP will inform the future planning of the entire Aerotropolis. As it relates to the [REDACTED] site, it is likely that further constraints would be imposed, with no justification whatsoever. With no explanation being provided by DPE to date about the mapping or the methodology behind its accuracy, it is timely that the mapping errors and anomalies are recognised and rectified.

The opportunity exists to accurately identify an appropriate zoning boundary across the site, in the context of existing approvals, existing development, and importantly, existing vegetation.

We propose a zoning boundary consistent with Figure 12 below to be applied to the site.



7 Summary

The following provides a summary of this submission.

- [REDACTED] acquired and developed the site through [REDACTED]. The site accommodates a [REDACTED].
- Several development applications have been approved on the site by Liverpool Council, with concurrence being granted by DPE.
- Until April 2014 the entire site had been zoned RU4 under Liverpool LEP 2008. Clauses within the LEP recognized the biodiversity nature of the site, requiring concurrence to be obtained from DPE for every development application. Concurrence has always been granted.
- In 2007, biodiversity certification was conferred on the site and the SEPP. This eventually informed and resulted in the April 2014 amendments to the LEP, where the zoning of the southern portion of the site was transferred to the SEPP.
- The mapping of the biodiversity certification was never reflective of the constraints of the site (natural and development) or the existing vegetation, but has within it mechanisms to rectify errors and anomalies.
- As a direct result of the unreasonable, inaccurate and unnecessary rezoning that has been imposed on their land, [REDACTED] have been financially impacted.
- The LUIPP identified additional parts of the site as being part of the South Creek corridor, unnecessarily further constraining the site.
- The LUIPP will inform eventual new zoning boundaries.
- The process around the LUIPP should recognise the past decision and seek to rectify this unfair anomaly.
- Figure 12 represents a more suitable zoning boundary that accounts for existing vegetation with high value, existing development on the site, and potential flooding constraints. The zoning boundary in Figure 12 would limit financial impacts on [REDACTED].

[REDACTED] therefore formally request that the subsequent zoning amendments to be made for the LUIPP consider this situation and amend the zoning boundary to reflect that shown in Figure 12.