DOC21/880775-6 5 November 2021

Department of Planning, Industry and Environment
anthony.pizzolato@planning.nsw.gov.au

Attention: Western Sydney Aerotropolis Team

Dear Sir or Madam

Western Sydney Aerotropolis Planning Package

I am writing to provide comments on the Western Sydney Aerotropolis planning package which includes that Explanation of Intended Effects to amend Environmental Planning Instruments in relation to the Western Sydney Aerotropolis, Luddenham Village Discussion Paper and Draft Western Sydney Aerotropolis Development Phase 2 Development Control Plan which are currently on public exhibition.

The Environment Protection Authority (EPA) provides the following comments (**Attachment A**) for Department of Planning, Industry and Environment consideration. These comments relate to the following matters:

- Land Use Conflict
- Air Quality
- Noise
- Water quality
- Contaminated land management.
- Waste and resource recovery
- General Matters

Should you require any further information, please contact Mr Paul Wearne (02) 4224 4100.

Yours sincerely

MITCHELL BENNETT
Unit Head – Statutory Planning

Att.

ATTACHMENT A

Land Use Conflict

The Explanation of Intended Effect (EIE) states that in response to the Commissioner's recommendations regarding transitional land uses and clarification of existing use rights, a new clause will be incorporated into the Aerotropolis SEPP and apply to land zoned Enterprise, Mixed Use, Agribusiness and Environment and Recreation. This new clause will seek to retain land uses that were permissible under the relevant local environmental plan prior to the commencement of the Aerotropolis SEPP in 2020. It further states that it will be the responsibility of the landowner to consider the intended nature of the precinct and manage any possible land use conflicts on adjacent sites under the assumption that these sites will transition over time when they are applying for approval for new development. An example is provided where the previous zoning allowed a rural industry. The new provision will ensure this use remains permissible even if the new zone applied by the Aerotropolis SEPP does not have rural industry listed as a permitted use.

However, it appears that no approaches have been presented in the supporting information explaining how potential land use conflicts will be managed, other than the following Benchmark Solution in the Draft Phase 2 DCP (Section 9 "Air Quality").

> *"Proposed sensitive land uses are adequately separated from existing lawful land uses that produce air emissions".*

It is unclear how this benchmark solution could operate and be interpretated in the absence of a supporting management framework.

The EPA has advised in several submissions on the planning of the Western Sydney (WS) Aerotropolis the importance that its design and delivery needs to address approaches that can prevent potential land use conflicts. As highlighted by the EPA in its submissions, once development proceeds, retrospective control options are usually limited and more expensive, and conflict can become intractable and can lead to community outrage

In its letter dated 9 March 2021 (DOC20/933110-28) on the WS Aerotropolis Precinct Plans the EPA recommended that the Plan would benefit from a supporting Transition Strategy to help transition areas from agricultural and industrial uses to residential use, including avoidance of land use conflict especially where existing activities wish to remain. Such a transitional framework is currently missing in the Greater Sydney growth areas, where such conflicts are dealt with during precinct planning and development applications without clear guidance or a pathway to help resolve them leading to project delays, uncertain outcomes and conflict.

The EPA highlights that a key strategic outcome in the WS Aerotropolis Plan 2020 (WSAP) is to:

- *Minimise potential for land use conflict by restricting incompatible land uses*
- *Supporting existing rural industry to minimise land use conflicts*
- *Address any potential for land use conflict between adjoining land uses as a result of future development, including airport operations.*

Such a framework is needed and would not only help support the delivery of the above benchmark solutions but also the strategic outcomes in the WSAP. The EPA could also assist DPIE in the development of such a framework if needed.

Air Quality

The Greater Sydney Regional Plan *A Metropolis of Three Cities* and it's supporting Western City District Plan provide a range of sustainability priorities and actions that should be addressed in the planning proposal. This includes key actions on reducing exposure to urban hazards (which includes air pollution) while also supporting liveability and public health outcomes. Great benefits to

public health come from reducing long-term exposure to air pollution, particularly in highly populated areas.

As highlighted in the Air Quality and Odour Study that supported the Precinct Plans, much of the precinct is currently affected by local air pollution from existing agricultural establishments, waste management and extractive industries. The Site Based and Regional Air Quality Modelling undertaken for Sydney's Second Airport predicted exceedance of air quality goals at a number of nearby residences including the Luddenham village.

Complementary planning approaches are needed that help reduce long-term exposure to air pollution. For example, pollution from transport can be mitigated through requiring separation from the most sensitive activities, design measures to places and new activities, ventilation arrangements and protective vegetation. In this regard it is important that new development associated with the Aerotropolis is addressing not only potential air quality risks locally but also cumulatively in relation to their contribution to the regional airshed. This includes the management of any new sources of ozone precursors especially from new agribusiness and enterprise related activities. To address these issues the objectives in Section 9.9.1 of the Draft Phase 2 DCP would benefit from strengthening with the following additional objectives:

- *To ensure air quality is maintained or improved to protect public health.*
- *To avoid adverse impacts arising from new development on existing air quality.*
- *To protect air quality for sensitive uses including childcare centres, hospitals, aged care facilities, schools and residences adjoining busy roads and rail corridors.*

These objectives can be achieved in several ways. The supporting performance outcomes and benchmark solutions would benefit from strengthening with the following amendments (strike through, Italics and underlined), inclusions and justification for changes:

1. Table 9.8.2 (Section 9.8 - Odour) include the following additional benchmark solution"

    - Benchmark Solution xx: No offensive odour beyond the boundary of the premises.

    This concept is recognised in the *Protection of the Environment Operations Act* (POEO Act) and should be applied to limit any impacts to the premises and to help with compliance.

2. Table 9.9.2 (Section 9.9 Air Quality) include the following amendments (strike through, Italics and underlined) and inclusions to the benchmark solutions

    - Benchmark Solution 2: *Air Emissions from d*evelopment (including construction) does not ~~unreasonably affect~~ *cause adverse impact upon human health or the environment including* the amenity and environmental quality of the locality, nearby residential premises, sensitive uses or public spaces. ~~due to air quality impacts~~.

    The above changes are recommended to replace "unreasonably affect" with "adverse air quality impacts" as this concept is recognised in the *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW* (EPA 2017). While the following additional benchmark solution builds upon this concept

    - *Benchmark Solution xx:* Air pollution ~~Air emissions resulting~~ from development *should be assessed, managed and mitigated to ensure it does* not cause ~~environmental~~ harm *to the environment* and/or nuisance *including offensive odour beyond the boundary of a premises*. ~~and surrounding land uses are not exposed to unacceptable levels of air pollutants~~

    The concept of air pollution and harm are defined in the POEO Act and the provision should also call out the management of odour especially with agribusinesses being proposed in the Precinct

- Benchmark Solution 4: *Any development that is likely to, or capable of, generating air emissions must comply* ~~*is to be in accordance*~~ with the Protection of the Environment Operations Act 1997 *and its associated regulations.* ~~and other Environmental Protection Authority guidelines for air quality.~~

The above changes are required to ensure compliance with the POEO Act and its associated regulations, while satisfying EPA air assessment guidelines should be separate additional benchmark solutions (See below):

- Benchmark Solution xx. A Development Application seeking approval for the construction of a new building, major alterations and additions to an existing building and/or the occupation of an existing building may be required to be accompanied by an assessment of the potential impacts of the development on air quality and odour.

- Benchmark Solution xx. An assessment should be done in accordance with the Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (EPA 2017) and/or The Technical framework - assessment and management of odour from stationary sources in NSW (EPA 2006). It should also include but not be limited to:

    - characterisation of all emissions
    - measures to mitigate any potential air impacts including an assessment against best practice measures
    - details of any monitoring programs to assess performance of any mitigation measures and to validate any predictions as a result of the assessment.

- Benchmark Solution 5: For development located in or adjacent to *busy* road *and rail* corridors and intersections, incorporate site layout and building design features that address higher level of air emissions generally found in transport corridors.

The above inclusion of both road and rail recognises the need for design elements to be addressed in response to a range of new road and rail infrastructure proposed for the area. Information is provided below on Section 8.1 Building Siting and Design Building Setbacks.

The NSW Government in its submission on 2nd Airport dated the 17 December 2015 advised that:

- *There is a contribution to regional ozone greater than the EPA's maximum allowable increment, and a number of residences may be exposed to one-hour concentrations of nitrogen dioxide (NO_2) greater than the criterion. The EIS did not appear to present a clear mitigation strategy to address these exceedances; and*
- *The air quality assessment did not consider cumulative projected emissions for sources other than the proposed airport.*

The Western Sydney Airport EIS revealed that the long term development (that is a cumulative assessment once the Airport is fully developed) predicted the NO_2 1-hour air quality objective would be exceeded in a number of key centres identified in the WS Aerotropolis including Luddenham. In this regard there needs to be an understanding of potential risks on air quality associated with the operation of the Airport especially on surrounding areas such as Luddenham. This should include seeking information from the Western Sydney Airport Corporation on how it has responded to the predicted NO_2 exceedances including strategies proposed in managing such exceedances. In addition, it is also important that the design of any future development in the Aerotropolis includes strategies to manage any new sources of NO_2 to help deliver either NOX neutrality or achieve Best Available Technique (BAT) emission performance to address cumulative impacts. The following additional benchmark solution is recommended.

Benchmark Solution xx. All development should be designed to avoid, minimise or manage potential air quality and odour impacts, including the appropriate selection of plant and equipment, minimising emissions. In particular, development should either be NOX neutral or required to achieve Best Available Technique (BAT) emission performance. US EPA Tier 4 final or equivalent exhaust emission performance standards are best practice for non-road engines and vehicles.

Careful planning will be needed to address any potential air quality risks associated with the operation of adjoining major road and rail infrastructure. For example, high traffic volumes create air pollution that can periodically exceed safe levels especially where sensitive land uses such as residences, aged care facilities and childcare centres adjoin such infrastructure. In particular the *Development near Rail corridors and busy roads – Interim guideline, NSW Department of Planning* (DoP 2008) highlights the use of setbacks and architectural approaches to help better design such places. Setbacks remain the most reliable method for protecting people from health impacts of air pollution. In this regard Section 8.1 Building Siting and Design Building Setbacks and Interfaces and its supporting table 5 would benefit from the following inclusions which are currently guiding development in key growth areas across Greater Sydney such as Wilton:

- *Development adjoining busy roads shall comply with:*
  a) Minimum separation distances from the kerb as outlined in Table 1; or
  b) Where minimum separation distances are not achievable, ducted mechanical ventilation for the supply of outdoor air in compliance with AS1668.2: The use of ventilation and air conditioning in buildings-Mechanical ventilation in buildings. Mechanical ventilation outdoor air intakes must be located at least the minimum distance from the kerb specified in Table 1, measured in the horizontal and vertical planes from the kerb. Filtration of outdoor air must be to a minimum Australian Standard performance rating of F6 or minimum efficiency reporting value (MERV) 9.

  Table 1. Minimum setback required for air quality controls

Road classification	***Residential type buildings***	***Childcare centres, hospitals, aged care facilities, schools***
Motorway	*30m*	*80m*
High Volume: More than 60,000 AADT; and 40,000-60,000 and 5% or more Heavy Vehicles	*20m*	*80m*
Moderate 20,000-40,000	*n/a*	*40m*
Intermediate Roads: 40,000-60,000 AADT; and 30,000-40,000 and 10% or more Heavy Vehicles	*10m*	*40m*
High volume intersection	*30m*	*60m*

- *When roads are flanked by continuous walls of buildings, the air pollution from vehicles may become trapped, exposing the users of roads and buildings to higher levels of pollution. Development in mixed use areas zoned for four floors or more shall:*
  - *Use horizontal and vertical articulation on the street frontages*
  - *Vary roof forms between adjacent buildings.*

- *The siting and design of sensitive development (where vulnerable populations are at risk of exposure to pollution), including but not limited to residences, health facilities and facilities for children and the aged, playgrounds and schools should be in accordance with the Development near rail corridors and busy roads – interim guideline and Best Practices for Reducing Near-Road Pollution Exposure at Schools.*

- *Development including childcare centres, hospitals, aged care facilities, schools, residential* dwellings *and other sensitive uses adjoining the rail corridor must be setback a minimum of 100m from the corridor, with a minimum 10m within this setback to be densely planted for potential dust mitigation.*

- *Development applications for childcare centres, hospitals, aged care facilities, schools and residences adjoining rail corridors shall detail design and architectural treatments such as:*
  - *barriers/fences*
  - *landscaping*
  - *reconfiguration of internal spaces to provide non-sensitive rooms adjacent to rail corridors.*

Managing impacts of wood heaters - Wood smoke has been identified as one of the largest contributors to particle pollution in Sydney during winter months. Domestic wood heaters contribute approximately 36% of annual PM2.5 particle emissions in the Sydney Region according to the *NSW Air Emission Inventory 2013*. Domestic wood heaters have a significant effect on ambient fine particle air quality, particularly in western parts of Sydney. In the winter months smoke from domestic wood heaters can contribute up to 60% to 80% of fine particles in winter. (*Sydney Particle Characterisation Study ANSTO 2016*)

Providing more sustainable heating solutions including driving more energy efficient precincts and housing should be a key focus for the delivery of new development in the Aerotropolis. However, to reduce local and regional levels of particle pollution and to protect local amenity and public health, restrictions on the installation of wood heaters and open fireplaces should be considered. Similar approaches have been adopted in the Blacktown City Council Growth Centre Precincts Development Control Plan where such heating is not permitted.

Noise

The Luddenham Village Discussion Paper appears to only reference noise associated with aircraft noise contours associated with the Western Sydney 2nd Airport. There is no mention of planning around land use conflicts from a noise perspective in any of the scenario studies even though the village will be surrounding by land zoned to support new agribusiness, is in the vicinity of new major transport corridors and where new mixed use settings are proposed.

Given the community's desire to maintain the character, amenity and liveability of the village, its planning provides an opportunity to guide its design to manage any risks associated with such conflicts. Such a need is further warranted as the discussion paper appears to be centred around activation and densification of the village. Its recommended that as the plans and community engagement progress, noise sources other than the airport are appropriately considered and included in the Luddenham Village Plan. These provisions should also be reflected in the Final Aerotropolis Precinct Plan and the Phase 2 DCP.

Part 8 of the Draft Phase 2 DCP (Building Siting and Design, Table 8.1.2, PO1) provides the following Performance Outcomes and supporting Benchmark Solution in relation to interfaces between potential conflicting uses.

> *"New development occurs alongside existing major land uses in a compatible manner to ensure coexistence for the period of transition".*
>
> *"The application is to demonstrate that the buffer, building setback and building separation is appropriate from the existing neighbouring uses and identify any mitigation measures to be implemented on the site. The assessment must include consideration to hours of operation, noise, vibration, odour, lighting, traffic, visual impact and any other potential nuisance from the existing or proposed major transport infrastructure operations".*

This provision appears to focus on the interfaces between any new development and the airport, major roads and rail infrastructure. While this is important, it does not fully cover the scenarios in which there may be land use conflict. Of major importance in the Aerotropolis is where new and existing residential land uses (such as in the Luddenham Village) are placed alongside new industrial precincts. Determining the impact between these interfaces is likely to be equally important to those related to transport infrastructure operations such as those detailed in section 10 of the draft Phase 2 DCP that help safeguard the airport.

It appears that this is achieved throughout the draft Phase 2 DCP when addressing the performance outcomes for various development types. In some cases this takes the form of noise management solutions (such as the "curfew" for boarding houses and tourist and visitor accommodation) and in other cases this takes the form of requiring an acoustic report (such as the performance outcomes for Animal Boarding or Training Establishments).

However, some land uses have a recommendation for an acoustic report but others do not. We recommend that any development that is nearby a sensitive land use, such as residential dwellings, obtain an acoustic report to ensure the acoustic amenity of the area is maintained. The DCP should be updated to ensure that this is the case for all listed sensitive uses. This would also help support key sustainability priorities and actions in the Greater Sydney regional Plan and its supporting Western City District Plan which state that "effective planning is needed to reduce the exposure to urban hazards and such exposure should be reduced". The EPA would welcome the opportunity for further discussions with DPIE on this suggested change.

Water Quality

The Explanation of Intended Effect propose amendments to the Environment and Recreation zone for land in the Wianamatta-South Creek Precinct reverting back to RU4 Primary Production Small Lots as per the Liverpool Local Environmental Plan 2008. This relates to land zoned Environment and Recreation to the east of Wianamatta-South Creek, adjoining the Kemps Creek and Rossmore Precincts. While these changes are in response to the Community Commissioner's recommendations, it does remove a major area of land that will be important to help the delivery of the vision and the waterway health outcomes being sought for Wianamatta-South Creek.

To help support this change, the proposal would benefit from exploring whether all or some of the proposed provisions in Part 4 of the draft Phase 2 DCP (Stormwater, Water Sensitive Urban Design and Integrated Water Management) could also be applied across this land use setting. This would help contribute to the delivery of the aspirations and vision being sought for Wianamatta-South Creek, but would also signal whether any proposals for future land use change or development in this area need to be delivering a higher-level of waterway health expectation.

Part 4 of the of the Draft Phase 2 DCP (Stormwater, Water Sensitive Urban Design and Integrated Water Management – Section 4.1 Waterway Health and Riparian Corridors) outlines the following objectives for the protection of riparian corridors, river health and ecology:

- *Waterways and riparian corridors are protected and restored through a risk-based approach that mitigates development impacts as documented in the NSW Government's Risk-based Framework for Considering Waterway Health Outcomes in Strategic Land-use Planning Decision (Objective O1)*
- *Manage indirect and ongoing impacts of development on waterways to ensure water quality and flow objectives established in the Precinct Plan are achieved and maintained (Objective O4)*

However, the corresponding performance outcome and benchmark solutions appear to be unclear about how these objectives will be achieved. In this regard, Table 4.1.2 would benefit from recognising the Wianamatta-South Creek water quality and river flow objectives detailed in the Draft Western Sydney Aerotropolis Precinct Plan. These objectives can then help guide new development in protecting and restoring the community's environmental values and uses of the waterway. To support this approach, the Table would benefit from the following additional performance outcome and corresponding benchmark solutions:

Performance Outcome xx: Development protects and restores the environmental and community values of the waterways

Benchmark Solution xx: Development Applications protect and restore waterways consistent with the Wianamatta-South Creek Water Quality and River Flow Objectives

Table 4.3.2 includes Performance Outcomes with construction and operational pollution reduction targets. It is important that these targets are based on the Wianamatta-South Creek water quality and river flow objectives and the targets are updated in the table where required. In addition, the table would also benefit from the inclusion of the following additional benchmark solution for Performance Outcome 1 and 2.

Benchmark Solution xx: Development should demonstrate that appropriate measures have been taken to restore and maintain the Wianamatta-South Creek water quality and river flow objectives.

Part 9 of the Draft Phase 2 DCP (Flooding and Environmental Resilience and Adaptability – Section 9.6 – Erosion and Sediment Control) outlines the following objective for the protection of the Wianamatta-South Creek catchment during construction:

- *Protect the health of Wianamatta-South Creek and its tributaries from construction and building runoff and meet the performance criteria for ambient water quality objectives (Objective O1)*

Performance Outcome 4 and its corresponding benchmark solution 2 in Table 9.6.2 requires development to achieve a total suspended solids concentration of 50mg/L or less and pH range of 6.5-8.5 for 80% of all flows leaving the construction site.

The construction discharge concentrations appear inconsistent with the Wianamatta-South Creek water quality and river flow objectives outlined in the Draft Western Sydney Aerotropolis Precinct Plan of total suspended solids concentration of 37mg/L or less and pH range of 6.2-7.6. It is also unclear how compliance with a requirement that places limits on a percentage of flow that leaves a site would be achieved and measured.

It is recommended that the water quality objectives for Wianamatta-South Creek are adopted as construction stage discharges could potentially comprise the majority of flows in some circumstances. Alternatively, the target could be derived based on the expected discharge quality given the recommended sediment basin design specifications, and erosion and sediment control practices and local soils and landscape. In addition, such targets should not be based on a percent flow from a site but should be a compliance requirement for any discharge that may leave a site during construction based on an appropriate rainfall event.

To address these issues the following amendments (strike through, Italics and underlined) to the performance outcome and corresponding benchmark solution are recommended:

- Performance Outcome 4: Development is to ensure ~~80% of all flows leaving the construction site achieves total suspended solids of 50mg/L or less and a pH of 6.5-8.5~~ *all flows leaving the construction site achieves total suspended solids of 37mg/L or less and a pH range of 6.2-7.6* during the construction and building phases until the site is stabilised and landscaped

- Benchmark Solution 2: All exposed areas greater than 2,500m2 must be provided with sediment controls which are designed, implemented and maintained to a standard which would achieve ~~at least 80% of the average annual runoff volume of the contributing catchment treated (i.e. 80% hydrological effectiveness) to 50mg/L Total Suspended Solids (TSS) or less, and pH in the range (6.5–8.5)~~ *total suspended solids (TSS) of 37mg/L or less, and pH in the range (6.2–7.6)*

Contaminated Land Management

The following amendments and changes are provided to the draft Phase 2 DCP Section 9.7 Contaminated Land to provide information and clarify in relation to the management of contaminated land.

a) Second paragraph of introduction, include the following additional information (italics and underlined)
……..,groundwater, surface water (if applicable), leachate (if applicable), and hazardous ground gas (if applicable) contamination. *The detailed site investigation must be undertaken, and the subsequent report/s, must:*
- *be prepared, or reviewed and approved, by consultants certified under either the Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)) or the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.*
- *be prepared in accordance with the relevant guidelines made or approved by the EPA under section 105 of the Contaminated Land Management Act 1997 (CLM Act).*

b) Third paragraph of introduction, include the following additional information (italics and underlined)
The EPA's Contaminated Land Consultant Certification Policy *(https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/clm/18520-contaminated-land-consultant-certification-policy.pdf?la=en&hash=D56233C4833022719BCE0F40F870C19DC273A1F7)* supports the development and implementation of nationally consistent certification schemes in Australia, and encourages the use of certified consultants by the community and industry. *The EPA recognises the importance of contaminated land consultants being certified to acceptable competency levels by independent bodies. Note that the EPA requires all reports submitted to the EPA to comply with the requirements of the CLM Act to be prepared, or reviewed and approved, by a certified consultant.*

Where appropriate, reports for development approval should include:
1. *Preliminary Site Investigation (PSI)*
2. *Sampling Analysis Quality Plan (SAQP)*
3. *Detailed Site Investigation (DSI)*
4. *Site-specific risk assessments and modelling*
5. *Remedial action plan (RAP)*
6. *Site remediation and validation report*
7. *Environmental management plan (where appropriate)*
8. *Ongoing monitoring reports*

c) The Objectives in Section 9.7.1 be amended as follows with suggested changes and additional objectives (Italics, underlined and strikethrough)

O3. Ensure all developable land that is ~~validated as~~ *made* suitable ~~or made suitable through remediation or management methods for its intended land use and zoning~~ through *remediation or management methods is validated as suitable for its intended land use and zoning.*

O6. To minimise risks to human health and the environment from the development of actual or potentially contaminated land.

O7. Ensure all land is suitable for its intended use prior to occupation.

O8. Ensure all waste generated on land identified as contaminated (as part of the development of the site) is managed and disposed of in accordance with NSW legislation under the Protection of the Environment Operations Act 1997 and other legislation as appropriate.

d) Table 9.7.2 Performance Outcomes and Benchmark Solutions would benefit from replacing with the following table to help strengthen and provide clarity on key requirement to guide management of contaminated land. The EPA would welcome the opportunity to have further discussions with DPIE on the contents of this suggested table.

Performance Outcomes & Benchmark Solutions

	Performance Outcome	Benchmark Solution
PO1	Development or changes of land use are not adversely impacted by contaminated land.	1. Assessment of the potential for contamination on land is undertaken prior to development approval in accordance with State Environmental Planning Policy 55 – Remediation of Land and guidelines made or approved by NSW EPA under s105 of the Contaminated Land Management Act 1997.
PO2	Development is located and designed to ensure users and nearby sensitive land uses are not exposed to unacceptable levels of contaminants.	1. Management of contamination is considered through the design, development, and approval process to ensure development considers end use, waste and circular economy approaches to managing contaminated land. 2. Contamination does not migrate from the development site during and/or after development.
PO3	The site contamination assessment process is undertaken on affected lands within the Aerotropolis.	1. The assessment of site contamination as per National Environment Protection (Assessment of Site Contamination) Amendment Measure 2013 is part of the DA. 2. Development applications include contamination investigation reports that are prepared in accordance with current applicable legislation and statutory and non-statutory guidelines. This may include, (but is not limited to): - State Environmental Planning Policy 55 – Remediation of Land, 1998. - Contaminated Land Management Act 1997 - Contaminated Land Management Regulation 2008 - National Environment Protection (Assessment of Site Contamination) Amendment Measure 2013 - Guidelines made or approved by NSW EPA under s105 of the Contaminated Land Management Act 1997
PO4	Land is safe and suitable for the proposed uses prior to subdivision.	1. An appropriately qualified person/consultant is engaged throughout the duration of works to ensure that any work required in relation to contamination is appropriately managed. The qualified person/consultant should be certified under either the • Environment Institute of Australia and New Zealand's Certified Environmental Practitioner (Site Contamination) scheme (CEnvP(SC)) or • the Soil Science Australia Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.

		2. Development is in accordance with Contaminated Land Management Act 1997 and State Environmental Planning Policy 55 – Remediation of Land. • Ensure that contaminated land is managed with consideration to the principles of ecologically sustainable development. • If contamination makes land unsuitable for the proposed use, the land must be remediated and made suitable for the proposed use.
PO5	Waste generated through remediation and contamination management is appropriately handled and disposed of.	1. All waste soil, spoil and fill material generated that requires offsite disposal as a waste from the developable land will be classified prior to disposal in accordance with the NSW EPA Waste Classification Guidelines (2014).
PO6	The site contamination assessment process is followed based on NSW and National approaches to the assessment and management of contaminated land.	1. The general process for the assessment of site contamination is shown in **Attachment B**. 2. All development will be accompanied by a Preliminary Site Investigation prepared in accordance with the guidelines made or approved by the EPA under Section 105 of the Contaminated Land Management Act, 1997 (CLM Act).
PO7	No new land is permitted to be created in relation to subdivision until identified contaminated land is remediated and validated.	1. Any subdivision certificate must not be issued until a validation report has satisfactorily demonstrated the site is suitable for the proposed use. 2. An NSW EPA accredited Site Auditor must be engaged throughout the duration of works to ensure that any work required in relation to contamination is appropriately managed. 3. A Section A1 Site Audit Statement, or a Section A2 Site Audit Statement accompanied by an Environmental Management Plan, must be prepared by an NSW EPA accredited Site Auditor and submitted to the development consent authority.
PO8	For sites that have been identified as potentially contaminated based on the preliminary site investigation (see **Attachment B**), undertake a detailed site investigation and, if necessary, confirm if remediation is necessary to make the site suitable for the intended use.	1. The detailed site investigation is to be undertaken in accordance with guidelines made or approved by NSW EPA under s105 of the Contaminated Land Management Act 1997. 2. The detailed site investigation report should also specify whether the site is suitable for the proposed use and, if remediation is necessary. 3. If, in accordance with the relevant guidelines made or approved by the EPA under section 105 of the Contaminated Land Management Act 1997, a Remedial Action Plan (RAP) is required to address the contamination to ensure the site is suitable for the propose use, a RAP must be prepared prior to commencing with the remediation. The report should state what remediation options exist, the remediation methods to be used and whether those works will be Category 1 or 2 remediation works. 4. If a RAP is required, then prior to implementation of the RAP, a Section B Site Audit Statement or an interim audit advice prepared by an NSW EPA

		Accredited Site Auditor must be provided to Council to certify the site can be made suitable for the proposed use. 5. After implementation of the RAP, a Section A1 Site Audit Statement, or a Section A2 Site Audit Statement accompanied by an Environmental Management Plan, must be prepared by an NSW EPA accredited Site Auditor and submitted to the development consent authority to certify that the site is suitable for the intended use.
PO9	If remediation is required, Council consent is required	1. All remediation works should be undertaken in accordance with guidelines made or approved by NSW EPA under section 105 of the Contaminated Land Management Act 1997 and applicable Council policy.
PO10	Where site contamination remains after remediation of the development site and would need an environment management plan, detailed information about the contamination is to be provided to Local Government for recording on section 10.7 certificates.	1. Local Government record information about land contamination on planning certificates issued under section 10.7 of the EP&A Act 1979. 2. Residual contamination which needs to be managed on the developable land, must have an enforceable environmental management plan (EMP).

Waste and Resource Recovery

It is important that the Design Requirements for New or Upgraded Waste or Resource Management Facilities in Part 5.1.8.1 reflect the requirements in the Phase 1 DCP as these provisions followed extensive engagement with EPA during the development of the Phase 1 DCP to address the range of waste activities being proposed in the area.

While the proposed performance and benchmark solutions in the Draft Phase 2 DCP appear to focus on the operation of the airport in relation to activities that intend to process organic and putrescible wastes, there is an equally important need that these control settings protect the community from any adverse environmental and health related impacts from all types of new waste related activities. It is important that any new waste related development delivers best practice environmental performance controls.

In this regard it is recommended that the provisions in the draft Phase 2 DCP be amended as follows (Italics, underlined and strikethrough) in order to address the control settings proposed in the Phase 1 DCP:

Performance Outcome PO1	Waste and resource recovery are managed to minimise risk of wildlife attraction*, prevent* ~~and~~ land pollution and *do not cause adverse impact upon human health or the environment.*
Benchmark Solution 1.	Receive, process, handle and stockpile any ~~organic or putrescible~~ waste in an enclosed building.
Benchmark Solution 2.	Do not store any waste or finished waste products ~~organic or putrescible wastes~~ outside of the building.

The definition of waste under the POEO Act is broad includes both organic and putrescible wastes. To help support this suggested change, the provision could be provided with a note that includes a

reference to the definition of waste under the POEO Act and recognise that this also includes organic or putrescible wastes if needed.

It is also important to recognise the management of finished waste products is also undertaken in an enclosed building to minimise dust, noise, odour and access to wildlife.

In addition, the following additional benchmark solutions should also be included to support Performance Outcome PO3. These benchmark solutions are in the Phase 1 DCP and needed to deliver best practice controls for these activity types.

5. *Outside surfaces must be sealed hardstand or vegetated.*
6. *Bunding is designed and installed in accordance with relevant Australian Standards and the Dangerous Goods Act 1975.*
7. *No offensive odour beyond the boundary of the premises.*
8. *Measures to ensure air quality impacts and dust emissions are prevented from activities from the premises. The protection of amenity from adverse impacts due to noise from operations and activities associated with the development.*
9. *Any storage, treatment and disposal of waste is done in accordance with Environment Protection Licencing issued under the Protection of the Environment Operations Act 1997 where required.*
10. *Satisfying the requirements of the NSW Fire and Rescues NSW's Fire safety guideline: Fire safety in waste facilities.*

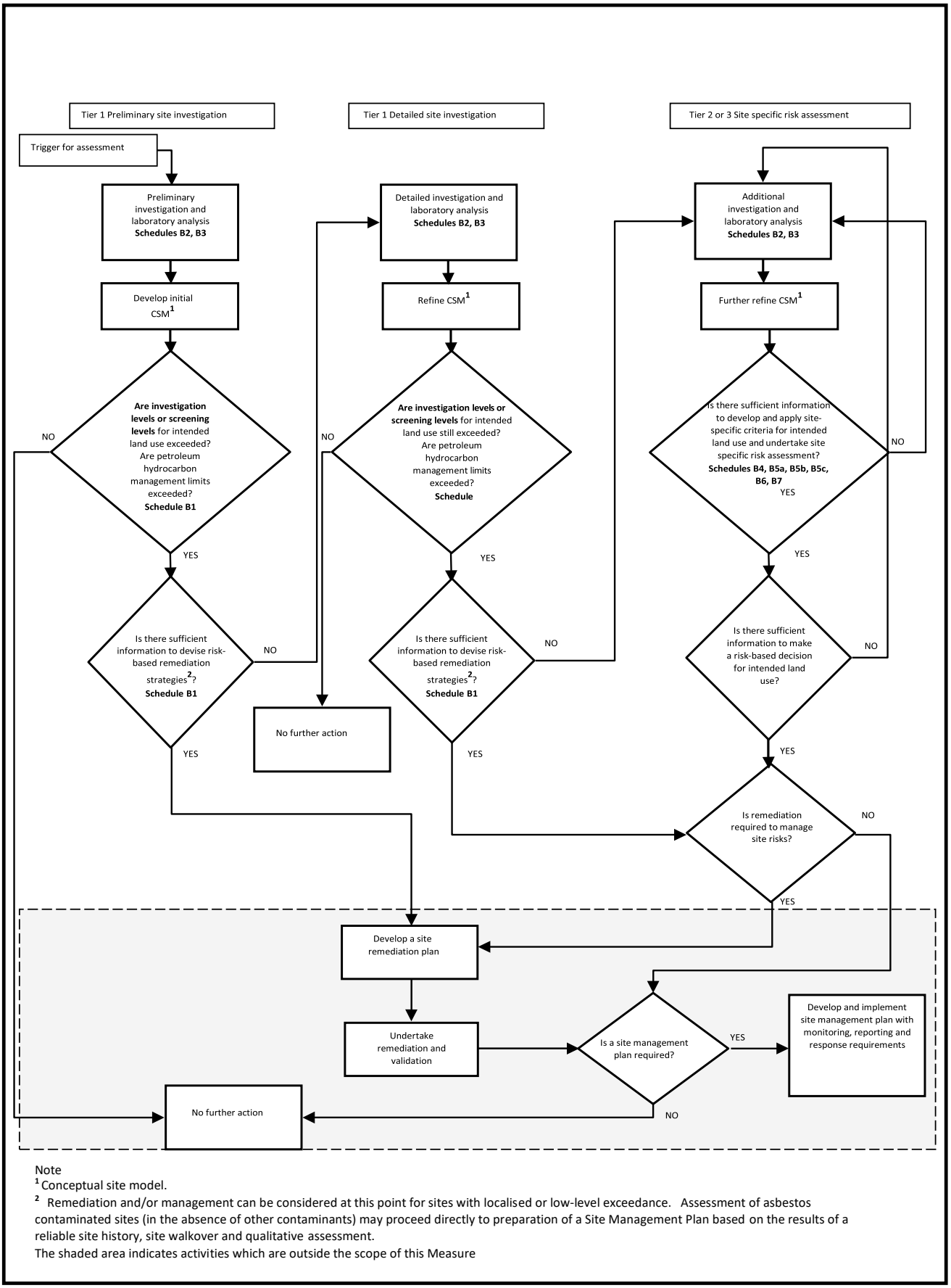
Performance Outcome PO4 includes a supporting Benchmark Solution that includes sites to be backfilled with "clean fill". To provide clarity on what constitutes "clean fill" its recommended that the DCP recognize the definition of clean fill that is in the Draft Precinct Plans being virgin excavated natural material that is validated and fit for its intended use.

General Matters

- The proposal involves changes to the complying development pathway however it is unclear if these changes will have implications for activities regulated by the EPA. It is important that any development where the EPA is an Appropriate Regulatory Authority and requires Environment Protection Licensing under the POEO Act 1997 should require development consent. This is due to these activities normally being complex with a range of environmental considerations that require detailed assessment and the need for community engagement.
- The EPA considers the *Draft Western Sydney Aerotropolis Recognise Country Guideline* is an important benchmark piece for Western Sydney, and an opportunity exists to acknowledge traditional custodians, recognise connection with country, design for country and care for country in the Aerotropolis.
- Matters relating to Circular Economy provisions in the DCP will be provided by DPIE Environment, Energy and Science group in its submission on the proposal and should be considered in the further development of the Phase 2 DCP as these will help support the delivery of the directions in the *NSW Waste and Sustainable Materials Strategy 2041*.

ATTACHMENT B

General contamination site assessment process (National Environment Protection (Assessment of Site Contamination) Amendment Measure 2013 Schedule A



Note

[1] Conceptual site model.

[2] Remediation and/or management can be considered at this point for sites with localised or low-level exceedance. Assessment of asbestos contaminated sites (in the absence of other contaminants) may proceed directly to preparation of a Site Management Plan based on the results of a reliable site history, site walkover and qualitative assessment.

The shaded area indicates activities which are outside the scope of this Measure