



Ordinary Council Meeting

Attachments

Part 3 of 3

Monday, 27 November, 2017

Central Coast Council
Attachments to the
Ordinary Council Meeting
to be held in the Council Chamber,
2 Hely Street, Wyong
on Monday, 27 November 2017,
commencing at 6.30pm

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13 November 2017

Our ref: 217.100

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**SUBJECT: REZONING PLANNING ADVICE – CENTRAL COAST AVIATION HUB BRIEF
CPA/291962**

Dear Jamie,

I refer to your letter dated 21 June 2017 wherein you engaged TPG NSW to carry out an assessment of planning options for the Central Coast Aviation Hub and determine appropriate planning pathways to enable the Aviation Hub to become a catalyst for new business development in the region.

1 Study Area

The subject site that is being investigated does not have a defined boundary, however, the study area for the purpose of this report is shown in Figure 1.



Figure 1: Approximate study area boundaries. Source: SIX maps



The site is broadly defined by the existing Central Coast Aviation Hub and a portion of industrial land located off Warren Road. The land is legally described as:

- Central Coast Airport - 150-190 Sparks Road (Part of Lot 3, DP 1230740);
- 150-190 Sparks Road (off Warren Road) (Lots 1 and 2, DP 1230740);
- 25 Jack Grant Avenue (Lot 211 and 212, DP 812718);
- 140 Sparks Road (Lot 5, DP 239691);
- 10 Jack Grant Avenue (Lot 8, DP 240709); and
- 20 Jack Grant Avenue (Lot 9, DP 240709)

2 Land Ownership

It is understood that the majority of the landholdings, including the Central Coast Airport, is owned by the Central Coast Council.

3 Proposed Development

It is understood that Central Coast Council would like to enhance the existing airport facility at Warnervale and use it as a catalyst for attracting new business and employment opportunities to the locality. In this respect, there is a significant amount of land zoned for industrial purposes in the immediate vicinity of the site, both to the north and east, with limited development having had occurred to date. It is anticipated that through the appropriate growth and expansion of the existing airport facility, that synergies will be created with other businesses to encourage employment growth.

A preliminary Master Plan has been prepared, titled 'Draft Central Coast Aviation Hub – Master Plan 2017'. Option 3A within this Master Plan (refer **Attachment A**) has been supplied to TPG as the preferred development outcome scenario for the land. Option 3A includes the following development outcomes:

- Enhancement of the existing runway, including resurfacing and creation of new runways (Code C TWY);
- Apron Reserves and formal aircraft parking;
- Helicopter landing and helicopter apron;
- A Corporate Aviation Hanger and Helicopter Hangar reserve;
- A 2.36ha site for the Central Coast Aero Club;
- 4 development sites with areas of 6.54ha, 1.89ha, 1.06ha and 6.16ha;
- An aircraft assembly facility; and
- Associated car parking and amenities/utilities.

It is understood that these land uses are subject to change, but the broad intent is to encourage land uses that will be beneficial to the operation of the aviation hub. Suggested uses for the development sites include service stations and aviation related industries.



Jetties; Marinas; Mooring pens; Moorings; Open cut mining; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Residential accommodation; Tourist and visitor accommodation; Water recreation structures; Wharf or boating facilities

Zone E2 Environmental Conservation

1 Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To protect endangered ecological communities, coastal wetlands and littoral rainforests.
- To enable development of public works and environmental facilities if such development would not have a detrimental impact on ecological, scientific, cultural or aesthetic values.

2 Permitted without consent

Nil

3 Permitted with consent

Eco-tourist facilities; Environmental facilities; Environmental protection works; Flood mitigation works; Recreation areas; Research stations; Roads; Water reticulation systems

4 Prohibited

Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

4.2 Permissibility of the proposed land uses

Prior to preparing land for development, it must first be established if the proposed land use/s are permissible under the current zoning of the site. One component of this review is therefore to provide Central Coast Council with a summary of the permissible/prohibited land uses under the current land use zoning. Further advice is included to provide Council with an understanding of the implications of rezoning the subject site to enable the proposed development, as envisaged by the Central Coast Aviation Hub Master Plan, to be permissible (i.e. either pursuant to WLEP 2013 or State Environmental Planning Policy (Infrastructure) 2007).

The table below summaries the permissibility of the envisaged land uses under the existing zoning and what may be permissible if the site was rezoned to a 'Special Uses' zoned.

Land Use	Permissibility under WLEP 2013		Additional permissibility under ISEPP 2007		Permissibility under potential zoning SP2 Infrastructure (Air Transport Facility)
	IN1 zone (existing)	E2 zone (existing)	IN1 zone (existing)	E2 zone (existing)	
Air transport facility	YES	NO			YES
Airport	YES	NO			YES
Recreation Facility (outdoor)	NO	NO	YES *1		YES *3
Aviation Club (if defined as ancillary to an airport or air transport facility)	YES	NO			YES *3
Passenger Transport Facility	NO	NO	YES *1		YES *3
Freight Transport Facility	YES	NO			YES *3
Depot	YES	NO			YES *3
General Industry	YES	NO			YES *3
Heavy Industry	NO	NO	YES *1		YES *3
Light Industry	YES	NO			YES *3
Service Station	YES	NO			NO



Warehouse or distribution centre	YES	NO			YES ^{*3}
Commercial/retail premises	NO	NO	YES ^{*1}		YES ^{*3}
Residential accommodation	NO	NO	YES ^{*1}		YES ^{*3}
Roads	YES	YES	YES ^{*2}	YES ^{*2}	YES ^{*2}

Figure 3: Land use and permissibility table

^{*1} Assumes that the Central Coast Airport is an "existing air transport facility" and that the proposed development is ancillary to the airport transport facility pursuant to Clause 23 of the ISEPP

^{*2} Development for the purpose of a road or road infrastructure facilities may be carried out by or on behalf of a public authority without consent pursuant to Cause 94 of the ISEPP

^{*3} Under the WLEP zoning table it is assumed that the proposed development is incidental or ancillary to an "air transport facility"

4.3 Definitions under Wyong Local Environmental Plan (WLEP) 2013

In terms of definitions, it is understood that the proposed use of the site would be defined as an 'air transport facility' and 'airport' within the Wyong LEP 2013. These uses are defined as:

- **air transport facility** means an airport or a heliport that is not part of an airport, and includes associated communication and air traffic control facilities or structures.
- **airport** means a place that is used for the landing, taking off, parking, maintenance or repair of aeroplanes, and includes associated buildings, installations, facilities and movement areas and any heliport that is part of the airport.

The existing aviation club, while ancillary to the use of the site as an airport, may also be separately defined as 'recreation facility (outdoor)'. This is defined as:

- **recreation facility (outdoor)** means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).

It is noted, however, that the aviation club may also be seen as 'ancillary' to an 'air transport facility' and therefore becomes permissible under this use. It is also noted that if the Aviation Club was not seen as 'ancillary' to the use of the airport (which is permissible with consent), the Aviation Club may enjoy 'existing use rights', but this would require a detailed assessment of historical development approvals and proof of continuous land use which is beyond the scope of this reporting. Generally in order to establish existing use rights, however, the development consent (if consent was required) or other evidence that the 'Aviation Club' was lawfully occurring at the time that the WLEP 2013 came into place would be required. Records of activity would also be required to show that the Club had been operating within the last 12 months, continuously. It is important to note that if existing use rights is obtainable, these rights would only apply to the Aviation Club and would not make the whole development permissible.

Within the definition of 'airport' certain ancillary facilities associated with the operation of the airport are included as permissible uses. It is noted that some of the uses proposed under the Central Coast Aviation Hub Master Plan may fall under different definitions such as 'passenger transport facility', 'freight transport facility', 'depot', 'general industry', 'heavy industry', 'light industry', 'service station' or 'warehouse or distribution centre.' These and other relevant land uses are defined below:



- **passenger transport facility** means a building or place used for the assembly or dispersal of passengers by any form of transport, including facilities required for parking, manoeuvring, storage or routine servicing of any vehicle that uses the building or place.
- **freight transport facility** means a facility used principally for the bulk handling of goods for transport by road, rail, air or sea, including any facility for the loading and unloading of vehicles, aircraft, vessels or containers used to transport those goods and for the parking, holding, servicing or repair of those vehicles, aircraft or vessels or for the engines or carriages involved.
- **depot** means a building or place used for the storage (but not sale or hire) of plant, machinery or other goods (that support the operations of an existing undertaking) when not required for use, but does not include a farm building.
- **general industry** means a building or place (other than a heavy industry or light industry) that is used to carry out an industrial activity.
- **heavy industry** means a building or place used to carry out an industrial activity that requires separation from other development because of the nature of the processes involved, or the materials used, stored or produced, and includes:
 - (a) hazardous industry, or
 - (b) offensive industry.
 It may also involve the use of a hazardous storage establishment or offensive storage establishment.
- **light industry** means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:
 - (a) high technology industry,
 - (b) home industry.
- **service station** means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:
 - (a) the ancillary sale by retail of spare parts and accessories for motor vehicles,
 - (b) the cleaning of motor vehicles,
 - (c) installation of accessories,
 - (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration),
 - (e) the ancillary retail selling or hiring of general merchandise or services or both.
- **warehouse or distribution centre** means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made.

4.4 Other relevant statutory provisions and definitions

In terms of other relevant provisions under the applicable environmental planning instruments, the proposed use of the site as envisaged by the Central Coast Aviation Hub Master Plan has the potential to be defined as 'state significant development' or 'designated development'. These forms of development require a DA to be accompanied by an Environmental Impact Statement (EIS). These categories of development are defined as:

- **State Significant Development** is development specified in Schedule 1 of State Environmental Planning Policy (State and Regional Development) 2011
- **Designated development** is development described in Part 1 of Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (unless it is declared not to be designated development by a provision under Part 2 or 3)

In term of State Significant Development, Schedule 1, Clause 17 of SEPP (State and Regional Development) 2011 specifies that any 'air transport facility' with a capital investment value (CIV) of more than \$30 million is SSD. The Minister is the consent authority for SSD. SSD is discussed further in this report.

In terms of Designated Development, Schedule 3, Part 1, clause 2 of the Regulations lists "aircraft facilities" (including terminals, buildings for the parking, servicing or maintenance of aircraft, installations or movement areas) for the landing, taking-off or parking of aeroplanes, seaplanes or helicopters as designated development if they meet the following criteria:

- (a) in the case of seaplane or aeroplane facilities:
 - (i) that cause a significant environmental impact or significantly increase the environmental impacts as a result of the number of flight movements (including taking-off or landing) or the maximum take-off weight of aircraft capable of using the facilities, and



- (ii) that are located so that the whole or part of a residential zone, a school or hospital is within the 20 ANEF contour map approved by the Civil Aviation Authority of Australia, or within 5 kilometres of the facilities if no ANEF contour map has been approved, or
- (b) in the case of helicopter facilities (other than facilities used exclusively for emergency aeromedical evacuation, retrieval or rescue):
 - (i) that have an intended use of more than 7 helicopter flight movements per week (including taking-off or landing), and
 - (ii) that are located within 1 kilometre of a dwelling not associated with the facilities, or
- (c) in any case, that are located:
 - (i) so as to disturb more than 20 hectares of native vegetation by clearing, or
 - (ii) within 40 metres of an environmentally sensitive area, or
 - (iii) within 40 metres of a natural waterbody (if other than seaplane or helicopter facilities).

However, as indicated above a proposed development is declared not to be designated development if it is captured by a provision within Part 2 or 3 under Schedule 3 of the Regulations. Specifically Part 3, Clause 37A indicates that an "aircraft facility" is not designated development if:

- (a) it is ancillary to other development, and
- (b) it is not proposed to be carried out independently of that other development.

It is considered that any aircraft facility would not be an "ancillary" use (i.e. it would be the primary land use on the site) and as such, the development has the potential to be classified as designated development thereby requiring a DA to be supported by an Environmental Impact Statement (EIS).

4.5 Potential zoning under Wyong LEP

The brief from Central Coast Council requires that the benefits of rezoning the land as 'Special Uses' be investigated. A review of other regional airports has found a majority have a SP2 Infrastructure (Air Transport Facility) designation. Under Wyong LEP, SP2 Infrastructure is defined as:

Zone SP2 Infrastructure

1 Objectives of zone

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.
- To recognise existing railway land and to enable future development for railway and associated purposes.
- To recognise major roads and to enable future development and expansion of major road networks and associated purposes.
- To recognise existing land and to enable future development for utility undertakings and associated purposes.

2 Permitted without consent

Nil

3 Permitted with consent

Roads; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

4 Prohibited

Any development not specified in item 2 or 3

As such, if a special uses zone was implemented, it is recommended that an SP2 Infrastructure (Air Transport Facility) be proposed. This zoning would allow all land uses that fall within the definition of an 'air transport facility'. It is noted, however, that it is typical for a regional airport to have an associated industrial zoning to facilitate other ancillary land use activities not strictly associated with the air transport facility. This is because the SP2 zoning is restrictive in its permissibility of land uses and there is some uncertainty with regard to what may be defined as 'ordinarily incidental or ancillary to development for that purpose'.



An investigation of the permissibility of the proposed uses, as envisaged by the Central Coast Aviation Hub Master Plan, under a SP2 Infrastructure zoning is provided under section 4.2 above at Figure 3. Alternative planning pathways are also investigated in the remainder of this report.

4.6 Implications of rezoning the E2 zoned land

As demonstrated in the table at Figure 3, any development on land currently zoned E2 would require a Planning Proposal to rezone land to facilitate a development outcome. In determining whether an IN1 zoning or SP2 zoning would be preferable on the site, it should be noted that:

- The existing IN1 zone permits all of the envisaged land uses under the Central Coast Aviation Hub Master Plan pursuant to either WLEP 2013 or the ISEPP 2007. This assumes, however, that the Central Coast Airport is an “existing air transport facility” and that the additional permitted uses listed under Clause 23 of the ISEPP are ancillary to the airport transport facility.
- A rezoning of the E2 land to IN1, however, would not permit the additional ancillary uses listed under Clause 23 of the ISEPP (i.e. recreation facility (outdoor), passenger transport facility, heavy industry, commercial/retail premises and residential accommodation) over this portion of the site, as Clause 23 of the ISEPP specifically relates to the “existing air transport facility” (which is assumed to be the existing IN1 land only).
- The issue with rezoning to an SP2 zone (either over the entire site or a portion of the site) is that it requires that the proposed development is ‘incidental or ancillary’ to an air transport facility and as such, this requires additional tests of permissibility to be included in any DA lodged.

In this respect, maintaining the existing IN1 zoning and rezoning the E2 zone to IN1 may afford Council greater flexibility moving forward as the range of uses envisaged under the Central Coast Aviation Hub Master Plan appear to be permissible with consent pursuant to either the WLEP 2013 or the ISEPP 2007 (with the exception of some uses on the existing E2 zoned portion of the site). The prohibited uses, however, could be dealt with by way of a Planning Proposal to enable ‘additional permitted uses’ on the site as part of the proposed rezoning. In considering an LEP amendment, consideration could also be given to removing the requirement for a DCP over the airport land.

4.7 Other relevant Clauses under Wyong LEP

Clause 5.2 Classification and reclassification of public land: For the purpose of this assessment, it is assumed that the land owned by Council zoned IN1 is classified as ‘operational land’ and the land zoned E2 Environmental Conservation is classified as ‘community land’. In this respect, it is assumed that any rezoning of the E2 Environmental Conservation land would require a reclassification to ‘operational land’.

Part 6 – Urban Release Areas: The subject site is identified as being within an ‘urban release area’ under Wyong LEP. It is recognised that the boundaries of the ‘urban release area’ extend beyond the boundaries of the existing IN1 zone.

Clause 6.1 Arrangements for designated State public infrastructure: This clause requires that satisfactory arrangements be made for the provision of designated State public infrastructure to service the subject site prior to subdivision of the land. This is only triggered when subdivision is proposed.



Clause 6.2 Public utility infrastructure: This clause requires the consent authority to ensure that essential services (water, sewer, electricity, telecommunications) can be made available to the site prior to issue of development consent.

Clause 6.3 Development Control Plan: Clause 6.3 requires a Development Control Plan (DCP) to be developed for the site prior to the Council granting development consent on the subject land. As the subject site falls within an urban release area, the provisions of this clause apply.

While the requirement to prepare a DCP exists in clause 6.3 of the LEP, it is possible to override this provision through the application of Section 83B of the Act, which applies to Concept Development Applications (previously known as "Staged Development Applications" or "Masterplans").

83B Concept development applications

(1) For the purposes of this Act, a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.

(2) In the case of a staged development, the application may set out detailed proposals for the first stage of development.

(3) A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.

(4) If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:

(a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or

(b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.

The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.

(5) The consent authority, when considering under section 79C the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.

Note. The proposals for detailed development of the site will require further consideration under section 79C when a subsequent development application is lodged (subject to subsection (2)).

83C Concept development applications as alternative to DCP required by environmental planning instruments

(1) An environmental planning instrument cannot require the making of a concept development application before development is carried out.

(2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.

Note. Section 74D (5) also authorises the making of a development application where the relevant planning authority refuses to make, or delays making, a development control plan.

(3) Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations. **(our emphasis)**

As such, given 'air transport facilities' are permissible in the IN1 zone, it would be possible to lodge a concept development application over the part of the subject site zoned IN1 to begin implementation of the proposed Central Coast Aviation Hub Master Plan. Noting that any DA for an 'air transport facility' with a CIV of more than \$30million is declared to be State Significant Development (SSD). It is noted, however, that those parts of the site currently zoned E2 would not be able to be included in any DA submitted under the Wyong LEP as it is not permissible in the zone.



5 Other Considerations

5.1 Warnervale Airport (Restrictions) Act 1996

The Warnervale Airport (Restrictions) Act 1996 provides for restrictions on aircraft movements, and on the length and site of any runway at the Warnervale Airport site. In accordance with Part 2, Clause 4(1) the curfew and limit on the number of daily take offs and landings, however, do not apply to take offs and landings of aircraft on any existing runway.

Under Part 3, the maximum length for any runway is 1200 metres. The maximum permitted length, however, can be increased to 1800 metres if approved by the Minister. Pursuant to Part 4 Council may only make one request in writing to extend the length of the runway.

A person must also not carry out any work for the construction of a runway at Warnervale Airport, unless the site of the runway has been approved in writing by the Minister prior to the commencement of the work. It is understood that this may also include maintenance work and that Council is seeking separate legal advice to confirm this.

While the restrictions on aircraft movements currently do not apply to the existing airport, it is recognised that any new works approved and constructed under the Central Coast Aviation Hub Master Plan would trigger these restrictions and could significantly limit the operations of the airport.

The State Significant Development (SSD) Application pathway would provide the opportunity for the Minister to concurrently consider a request to repeal/amend the Warnervale Airport (Restrictions) Act. The ability to concurrently consider this request is not available via any other pathway. Refer to the SSD Planning Pathway Option 3 below for further details.

5.2 Biodiversity Conservation Act 2016

Any rezoning of the land (either the entire site or the portion zoned E2 Environmental Conservation) would be subject to detailed environmental studies. It is understood that ELA have been engaged to undertake these investigations.

TPG discussed this process with ELA and it was determined that the process of biobanking the site has commenced, with a draft for review being submitted. It is anticipated that the final request will be submitted toward the end of 2017 subject to addressing the requirements of the new Biodiversity Conservation Act 2016, which has established a new regime for offsetting biodiversity impacts called the 'Biodiversity Assessment Method'. Essentially this legislation requires that the loss of any biodiversity (i.e. as a result of new development) be offset. ELA has estimated that the biobank scheme will take approximately 6 months to 1 year to finalise. Any application lodged on the E2 zoned land will require the biodiversity offsets and biobanking to be undertaken in accordance with this new legislation.

5.3 Determining Authorities for DA's under Part 4 of the Act

It is recognised that Council will not be the consent authority for all applications determined under Part 4 of the Act. Council is the determining authority for any DA with a CIV less than \$5 million.

The Hunter/Central Coast Planning Panel is responsible for determining any Council related DA with a CIV over \$5 million, while the Minister is responsible for determining any development declared to be of State Significance (i.e. over \$30 million in the case of an 'air transport facility').



6 Planning Pathway

The planning pathway to facilitate development of the Central Coast Aviation Hub Master Plan under Wyong LEP would involve:

PLANNING PATHWAY OPTION 1A – ‘Concept DA’ under Part 4 of the Act (under \$30 million) and concurrent LEP amendment

- Lodge a ‘concept DA’ over the portion of the site already zoned IN1 to facilitate partial implementation of the Central Coast Aviation Hub Master Plan, noting that while the DA may be seeking approval for uses permissible under WLEP 2013, any DA may also seek approval for additional uses permissible under ISEPP 2007 (e.g. passenger transport facility).
- A DCP is not required for a concept DA.
- It is estimated that this DA would take up to 2 years to achieve approval depending on complexity of the DA and whether it requires an EIS or not (i.e. designated development).
- Concurrently rezone the land zoned E2 Environmental Conservation to IN1 General Industrial. The LEP amendment may also propose additional permitted land uses on the site (due to the additional permitted uses under the ISEPP being limited to the boundaries of the existing air transport facility only). It is estimated that the rezoning process will take a minimum of 2 years.
- Lodge a further ‘concept DA’ once the land currently zoned E2 is rezoned to IN1. It is estimated that this DA would a further 12-24 months to achieve approval depending on the complexity of the DA and if an EIS is required.
- The ‘concept DA’s’ would require subsequent detailed DA’s to be lodged following approval of the first stage of the proposal. The first stage of the DA could include essential infrastructure (runways, roads, parking) and subdivision of superlots to create development parcels. The timeframe on these subsequent DA’s would depend on the complexity and type of DA proposed (i.e. anywhere between 6-18 months).

7 Alternative Planning Pathways

7.1 SEPP (Infrastructure) 2007

The Infrastructure SEPP facilitates the development of essential infrastructure in NSW. Clauses 21-23 of this SEPP apply to the subject site as they deal with the permissibility of ‘Air Transport Facilities’. It is considered that these provisions of the SEPP, however, will not achieve the implementation of the overall Central Coast Aviation Hub Master Plan.

Clause 21 provides a list of relevant definitions which include:

- **air transport facility** means an airport, or a heliport that is not part of an airport, and includes associated communication and air traffic control facilities or structures.
- **airport** means a place used for the landing, taking off, parking, maintenance or repair of aeroplanes (including associated buildings, installations, facilities and movement areas and any heliport that is part of the airport).
- **heliport** has the same meaning as it has in the Standard Instrument.



7.2 SEPP (Infrastructure) 2007 – Approval under Part 4 of the Act

Clause 23 relates to development permitted with consent and states:

23 Development permitted with consent

Development for any of the following purposes may be carried out with consent on land within the boundaries of an existing air transport facility, if the development is ancillary to the air transport facility:

- (a) passenger terminals,*
- (b) facilities for the receipt, forwarding or storage of freight,*
- (c) hangars for aircraft storage, maintenance and repair,*
- (d) premises for retail, business, recreational, residential or industrial uses.*

Although recreation facilities (outdoor), passenger transport facilities, heavy industry, commercial/retail premises and residential accommodation are prohibited in the IN₁ zone under WLEP 2013, Clause 23 of the ISEPP permits these uses within the boundaries of an existing air transport facility, provided these uses are ancillary to the airport transport facility.

If we assume the Central Coast Airport is an “existing air transport facility” for the purposes of the ISEPP, the provisions of this clause apply and development for these purposes is ‘permitted with consent’. This clause provides for a greater range of land use permissibility and would potentially permit all of the land uses envisaged as part of the Central Coast Aviation Hub Master Plan, provided the uses are located within the boundaries of the existing airport and are ancillary to an air transport facility. The key factor to determine therefore, is the extent of ‘land within the boundaries of an existing air transport facility’. For the purpose of this exercise, this is taken to be the land currently zoned IN₁.

A rezoning of the E2 land to IN₁, therefore, would not permit the uses listed under Clause 23 of the ISEPP, as this clause specifically relates to the “existing air transport facility”. Any rezoning of the E2 land to IN₁ would therefore need to consider if the LEP amendment should also include any ‘additional permitted uses’.

Prior to rezoning the E2 land, a DA could still be lodged for a range of land uses within the land currently zoned IN₁ (either pursuant to the ISEPP or WLEP) that would enable the implementation of the proposed Central Coast Aviation Hub Master Plan within all land currently zoned IN₁. In the event a DA seeks permissibility pursuant to Clause 23 of the SEPP only, this would override some of the provisions in the Wyong LEP, including the requirement to create a Development Control Plan (DCP). Any DA, however, would still require the resolution of key environmental issues and the provision of appropriate services and infrastructure to support the development.

The planning pathway to facilitate development of the Master Plan for the Central Coast Aviation Hub utilising these provisions of SEPP (Infrastructure) would be:



PLANNING PATHWAY OPTION 1B – DA under Part 4 of the Act (under \$30 million) and concurrent LEP amendment

- Lodge a DA over the portion of the site already zoned IN1 to facilitate partial implementation of the Central Coast Aviation Hub Master Plan, noting that while the DA may seek approval for uses permissible under Clause 23 of ISEPP 2007, any DA may also seek approval for uses permissible under WLEP 2013 (e.g. service station).
- This pathway allows a range of uses and affords flexibility in terms of land use planning outcomes. It is estimated that the DA would take 6-18 months to assess and determine depending on complexity of the DA.
- If the uses being proposed are permissible entirely under the ISEPP, a DCP is not required. If any of the uses being proposed seek consent under WLEP and the DA is not a 'concept DA', then the requirement for a DCP will be triggered. This could add a further 6 months to the DA process.
- Lodge a concurrent Planning Proposal to rezone the part of the site zoned E2 to IN1. The LEP amendment may also propose additional permitted land uses on the site. It is estimated that the rezoning process will take a minimum of 2 years.
- Any further DA over the rezoned portion of the site may then be limited to an approval under the Wyong LEP as this portion of the site may not be considered part of the 'existing air transport facility' and therefore Clause 23 of the ISEPP would not apply. These DA (if not a 'concept DA') will trigger the requirement for a DCP. Noting the LEP amendment may be able to remove the requirement for a DCP over the site.

7.3 SEPP (Infrastructure) 2007 - Approval under Part 5 of the Act

Clause 22 relates to development permitted without consent and states:

22 Development permitted without consent

(1) Development for the purpose of an airport may be carried out by or on behalf of a public authority without consent on land in any of the following land use zones or in a land use zone that is equivalent to any of those zones:

- (a) RU1 Primary Production,
 - (b) RU2 Rural Landscape,
 - (c) IN4 Working Waterfront,
 - (d) SP1 Special Activities,
 - (e) **SP2 Infrastructure, (emphasis added)**
 - (f) W2 Recreational Waterways,
 - (g) W3 Working Waterways.
- (2) ...

Clause 22(2) facilitates the operation of an air transport facility for the purpose of a 'heliport' only and therefore does not apply in this instance.

Given the subject site is currently zoned IN1, development cannot be undertaken 'without consent' for the purpose of Clause 22(1). Clause 22(1) would only apply, and allow development to be undertaken by or on behalf of a public authority 'without consent', if the land was rezoned to SP2



Infrastructure. Therefore, if the subject site was rezoned SP2 Infrastructure (Air Transport Facility), development for the purpose of 'airport' may be carried out by a public authority (being Central Coast Council) without the need to obtain development consent under Part 4 of the Act. Rezoning the land to SP2 therefore has the potential to streamline the approvals process. However, it is noted that a Planning Proposal to rezone the land to SP2 may take 2+ years, depending on political and community support for the proposed development.

While development consent would not be required for an 'airport' pursuant to Clause 22(1) of the ISEPP, it should be noted that the public authority (being Council) is still required to assess the environmental impacts of the activity under Part 5 of the Act (as a 'determining authority'). When assessing a Part 5 activity, the authority must fulfil its duty under section 111 of the EP&A Act and address the environmental factors listed in clause 228(2) of the EP&A Regulation.

A Review of Environmental Factors (REF) must be prepared as part of this assessment. If the REF determines that the proposed activity "is likely to significantly affect the environment" then an EIS will be required and the proposed activity can no longer be assessed under Part 5. Instead it becomes classified as State Significant Infrastructure (SSI) under Item 1 of Schedule 3 of *State Environmental Planning Policy (State and Regional Development) 2011* and the approval of the Minister for Planning (or delegate) is required. This is regardless of the monetary value of the project.

Part 5.1 of the EP&A Act sets out the assessment process for SSI. Any initial benefit of rezoning the land to SP2, to streamline the development approvals process, would then be lost. However, this is not to say that the Part 5 approvals process would not be a legitimate pathway for elements of the Central Coast Aviation Hub Master Plan if undertaken by a public authority in the SP2 zone.

Any work not undertaken by a public authority (i.e. if Council sold the site to a private company or individual) would also not benefit from the Part 5 pathway and would be required to lodge a DA for assessment under Part 4 of the Act. If the site was rezoned to SP2, additional tests of permissibility would be required as part of any DA to ensure the proposed uses are ancillary to the use of the site as an airport as discussed in Section 4.6 above.

It is further noted that under Clauses 93-97 of the ISEPP, Council may develop road infrastructure facilities. Specifically, Clause 94(1) permits development for the purpose of a road or road infrastructure facilities to be carried out by or on behalf of a public authority without consent on any land. The public authority (being Council), however, would still be required to assess the environmental impacts of the activity under Part 5 of the Act (i.e. via an REF). These clauses may be used by Council to construct the road infrastructure within the site, however, there would need to be some certainty with regard to overall planning of the site. This clause has no restriction with regard to the zoning of land and therefore, roads may be constructed within both the IN1 land and E2 land under the provisions of this clause by a public authority. However, as noted above, the REF process may establish that the proposed activity "is likely to significantly affect the environment" thereby triggering the need for an EIS and approval from the Minister.

The planning pathway to facilitate development of the Master Plan for the Central Coast Aviation Hub utilising these provisions of SEPP (Infrastructure) would be:



PLANNING PATHWAY OPTION 2 – LEP amendment and subsequent approvals under Part 5 of the Act

- Rezone the entire site to SP2 Infrastructure (Air Transport Facility). Noting that the LEP amendment may be able to remove the requirement for a DCP over the site. It is estimated that this process will take a minimum of 2 years.
- Once the site is zoned SP2, carry out 'development without consent' under Clause 22 of the SEPP. Noting that the development would need to be carried out by a public authority and that there is a risk that the REF process could determine that the proposed activity "is likely to significantly affect the environment", thereby requiring an EIS and the approval of the Minister for Planning (or delegate). It is estimated that an application under Part 5 would take 6-9 months. If an EIS and consent of the Minister is required this could add an additional 12+ months to the process.

NOTE: Once the site is zoned SP2, any work not being carried out by or behalf of a public authority would require development consent under Part 4 of the Act. Any DA under Part 4 and subject to WLEP 2013 would need to demonstrate that the activity is ancillary to the use of the site as an "air transport facility". This assumes that the Central Coast Airport is an existing air transport facility. If the requirement for a DCP has not been removed (i.e. via an LEP amendment), any DA (other than a concept DA) under WLEP would trigger the requirement for a DCP.

Any DA seeking approval purely under Clause 23 of the ISEPP would eliminate the requirement for a DCP, but would be limited to the boundaries of an existing air transport facilities and would need to be ancillary to the air transport facility.

7.4 State Significant Development - State Environmental Planning Policy (State and Regional Development) 2011

State Significant Development is development that is declared to be of State Significance. This is declared either through an existing Environmental Planning Instrument or 'Ministerial Call-in'. Division 4.1 of the Environmental Planning and Assessment Act deals with these provisions and outlines the procedure for the determination of applications that relate to state significant infrastructure.

State Significant development is assessed by the Department of Planning and Environment and determined by the Minister for Planning. While Council is consulted throughout the process, they are not the determining authority for the development.

Section 89C of the Act states:

89C Development that is State significant development

(1) For the purposes of this Act, State significant development is development that is declared under this section to be State significant development.

(2) A State environmental planning policy may declare any development, or any class or description of development, to be State significant development.

(3) The Minister may, by order published in the Gazette, declare specified development on specified land to be State significant development, but only if the Minister has obtained and made publicly available advice from the Planning Assessment Commission about the State or regional planning significance of the development.



(4) A State environmental planning policy that declares State significant development may extend the provisions of the policy relating to that development to State significant development declared under subsection (3).'

Importantly in the context of the current investigation, Clause 89E states the following:

89E Consent for State significant development

(1) The Minister is to determine a development application in respect of State significant development by:

(a) granting consent to the application with such modifications of the proposed development or on such conditions as the Minister may determine, or

(b) refusing consent to the application.

Note.

Section 380AA of the Mining Act 1992 provides that an application in respect of State significant development for the mining of coal can only be determined if it is made by or with the consent of the holder of an authority under that Act in respect of coal and the land concerned.

(2) Development consent may not be granted if the development is wholly prohibited by an environmental planning instrument.

(3) Development consent may be granted despite the development being partly prohibited by an environmental planning instrument.

(4) If part of a single proposed development that is State significant development requires development consent to be carried out and the other part may be carried out without development consent:

(a) Part 5 does not apply to that other part of the proposed development, and

(b) that other part of the proposed development is taken to be development that may not be carried out except with development consent.

(5) A development application in respect of State significant development that is wholly or partly prohibited may be considered in accordance with Division 4B of Part 3 in conjunction with a proposed environmental planning instrument to permit the carrying out of the development. The Secretary may (despite anything to the contrary in section 54) undertake the functions of the relevant planning authority under Part 3 for a proposed instrument if it is initiated for the purpose of permitting the carrying out of the development (whether or not it contains other provisions).

(6) If the determination under section 56 (Gateway determination) for a planning proposal declares that the proposed instrument is principally concerned with permitting the carrying out of State significant development that would otherwise be wholly prohibited:

(a) the proposed instrument may be made only by the Planning Assessment Commission under a delegation from the Minister, and

(b) the development application for the carrying out of that development may be determined only by the Planning Assessment Commission under a delegation from the Minister. (our emphasis)

Of particular relevance is sub - clause (3) which allows development consent to be granted despite it being 'partly prohibited by an environmental planning instrument'. Further, the Minister may also, under sub-clause (5) allow the consideration of a planning proposal by the Minister to rezone land to ensure permissibility. This is particularly relevant in the circumstances of this particular site given part of the site is currently zoned E2 and the proposed uses within this part of the site are prohibited. The Minister also has the power to initiate a planning proposal to rezone land, which could apply to the land zoned E2 Environmental Conservation. The ability to undertake a planning proposal under this pathway may significantly streamline this process.

Therefore, the ability to classify the proposal as State Significant Infrastructure is critical to this planning pathway.



State Environmental Planning Policy (State and Regional Development) 2011 identifies State Significant Development under Section 89C of the Act. Clause 8 of the SEPP states:

8 Declaration of State significant development: section 89C

(1) Development is declared to be State significant development for the purposes of the Act if:

(a) the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act, and

(b) the development is specified in Schedule 1 or 2.

(2) If a single proposed development the subject of one development application comprises development that is only partly State significant development declared under subclause (1), the remainder of the development is also declared to be State significant development, except for:

(a) so much of the remainder of the development as the Director-General determines is not sufficiently related to the State significant development, and

(b) coal seam gas development on or under land within a coal seam gas exclusion zone or land within a buffer zone (within the meaning of clause 9A of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007).

(3) This clause does not apply to development that was the subject of a certificate in force under clause 6C of State Environmental Planning Policy (Major Development) 2005 immediately before the commencement of this Policy.

Note.

Development does not require consent under Part 4 of the Act merely because it is declared to be State significant development under this clause. Any such development that, under an environmental planning instrument, is permitted without consent may be an activity subject to Part 5 of the Act or State significant infrastructure subject to Part 5.1 of the Act. Any such development that is permitted without consent may become State significant development requiring consent if it is part of a single proposed development that includes other development that is State significant development requiring consent (see section 89E (4) of the Act and subclause (2)) **(our emphasis)**

Schedule 1 of the SEPP establishes a number of uses that are automatically declared to be State Significant Development if they meet the threshold criteria established under the SEPP. The threshold criteria is generally established through the Capital Investment Value (CIV) of the project. It is understood that the upgrades required to the airport and airstrip under the Master Plan would exceed this value.

Of relevance to the subject site are the following provisions and clauses of Schedule 1 which establish the projects that are considered to be of State Significance and therefore, required to be determined by the Minister:

7 Air transport facilities

Development for the purpose of air transport facilities that has a capital investment value of more than \$30 million.'

It is understood that the upgrades required to the airport and airstrip under the Central Coast Aviation Hub Master Plan would exceed \$30 million. As such, the proposal would automatically be considered to be 'state significant development', which would enable a Development Application to be lodged over the whole site to be assessed by the State Government (Department of Planning and Environment) to achieve the desired development outcome. This would include the portion of land zoned E2, provided appropriate biobanking arrangements are in place (refer Section 89I of the Act) and the Minister agrees to a concurrent rezoning of the land under Part 3 of the Act. The DA could be staged to facilitate development that is required to be undertaken initially to generate interest in the development and growth of airport and industrial employment generating uses on the subject site.

Once the initial DA was established and in accordance with sub-clause (2) Clause 8 of the above SEPP, the Minister may declare all future DA's to be of state significance, or the development consent role



may revert to the local Council. It is worth noting that other relevant thresholds in Schedule 1 to the SEPP include:

'11 Other manufacturing industries

Development that has a capital investment value of more than \$30 million for any of the following purposes:

- (a) laboratory, research or development facilities,*
- (b) medical products manufacturing,*
- (c) printing or publishing,*
- (d) textile, clothing, footwear or leather manufacturing,*
- (e) furniture manufacturing,*
- (f) machinery or equipment manufacturing,*
- (g) the vehicle, defence or aerospace industry,***
- (h) vessel or boat building and repair facilities (not including marinas). (our emphasis)*

As such, manufacturing facilities associated with the aerospace industry would be captured as State Significant development if it met the threshold of \$30 million.

The planning pathway to facilitate development of the Master Plan for the Central Coast Aviation Hub under SEPP (State and Regional Development) would be:

PLANNING PATHWAY OPTION 3 – State Significant Development Application under SEPP (State and Regional Development) 2011 (over \$30 million)

- Lodge a State Significant Development Application under the State and Regional Development SEPP with the Department of Planning and Environment. The DA would require the applicant (Council) to obtain Secretary's Environmental Assessment Requirements (SEARs) prior to lodgement and the preparation of an Environmental Impact Statement (EIS) to support the application. It is estimated that the process would take 12-18 months from when the SEAR's are requested to determination.
- The DA would be required to satisfy the criteria for qualification as a project of State Significance (i.e over \$30M), and could be staged.
- The prohibited uses in the E2 land could be dealt with concurrently by the Minister, provided biobanking arrangements were in place.
- The Minister can initiate (if necessary) a concurrent planning proposal (PP) under Part 3 of the Act to rezone the land zoned E2 to ensure permissibility. Any PP under this pathway would significantly streamline the rezoning process.
- The Minister could consider a concurrent request to repeal/amend the Warnervale Airport (Restrictions) Act 1996.
- Removes the requirement for a DCP to be prepared for the site.



8 Rezoning/LEP amendment process

The rezoning process, also known as a Planning Proposal (PP), is a long and complex one which is heavily based on demonstrating planning merit and providing justification to allow progress of an application to the next step in the process. A PP is also referenced as an amendment to a Local Environmental Plan (LEP). A summary of this process is outlined at **Attachment B**. A flow chart of the process is provided at **Attachment C**, while the Rezoning Review process is outlined in the diagram at **Attachment D**.

As the support of Council is imperative in this Gateway rezoning process, it is vital that the Planning Proposal is acceptable to them in the first instance, that is, Council officers and elected officials. Without Council support, the Planning Proposal will not proceed to review by the DPE.

9 Third Party Appeal Provisions under the EP&A Act

9.1 Applications determined at the local level

If an objector or any person is unhappy with a determination made by Council (or their delegate) there are very limited merit appeal rights under section 98 of the *Environmental Planning and Assessment Act 1979*. These third party appeal rights, however, do apply to "designated development."

However, if there has been a breach of law in the granting of a consent, or otherwise in the administration of the *Environmental Planning and Assessment Act 1979*, a third party may bring proceedings before the Court under section 123 of the Act.

9.2 Applications determined by the Minister

There are two forms of appeal, merit appeals and judicial reviews.

Judicial review proceedings are heard by a judge of the Land and Environment Court and are a review of the legality of the decision under challenge, and not a review of the merits of a development. The decision under challenge relates to determination to approve or refuse development consent, or other actions taken under the EP&A Act.

When the Minister for Planning (or their delegate) determines a DA, a third party (objector or any person) can appeal to the Land and Environment Court (the Court) against the merits or lawfulness of the decision. Merit appeals are brought in the Land and Environment Court and generally heard by Commissioner(s) and sometimes a judge of the Court. The Court's function in a merit appeal is to remake the determination of the development application on its merits. Objectors or any person can make a merit appeal or request a judicial review against State Significant Development.

NOTE: The above is a very broad overview of the third party appeal rights. It is therefore recommended that Council seeks further independent legal advice in relation to this matter.

10 Possible Planning Pathways, Project Timeframe and Potential Risks

Essentially three planning pathway options have been identified in this report. An assessment of the advantages and potential risks associated with each pathway is provided at **Attachment E** of this report.

It is our opinion that provided the minimum thresholds can be achieved, the most appropriate and streamlined planning pathway for the site is Option 3 being a State Significant Development



Application. It is recommended that confidential discussions with the Department of Planning with regard to the ability to utilise SEPP (State and Regional Development) on this site be undertaken.

To the best of our knowledge the information and advice contained within this report is accurate and reliable as of the date of the report. The content of the report has been based on our understanding of the proposal and on current legislation. Once there is a more definitive proposal in place, TPG can provide further and more detailed planning advice.

Should you have any queries or require clarification on any matters please do not hesitate to contact the undersigned on 02 9925 0444.

Yours sincerely

TPG Town Planning and Urban Design

A handwritten signature in black ink that reads 'H. Deegan.' The signature is written in a cursive style with a period at the end.

Helen Deegan
Director of Planning



Attachment A - Concept Master Plan for the Central Coast Aviation Hub





Attachment B - Summary of Rezoning/LEP amendment Process

Stage 1 – Preliminary Investigations

- Consider all planning pathways to achieve desired outcome to ensure a PP is the best approach.
- Investigate options to rezone and/or amend a development standard within the applicable LEP.
- Undertake a due diligence to determine if the rezoning/LEP amendments have merit and could be considered by Council.
- Identify potential constraints/opportunities and determine the suitability of the site for the proposed use and/or zoning/development standard changes.
- Obtain and review any historical documentation.
- Review relevant planning controls and strategies relating to the site and the surrounding area.
- Collect data and identify any additional information needed to justify the proposed change to the land use or LEP controls.
- Undertake site inspection.
- Liaise with and seek inputs from other specialists as required.
- Develop a broad concept/proposal.
- Undertake preliminary consultation with relevant authorities (e.g. Council, DPE, RMS, etc.).

OUTCOME: At the end of this process, a decision can be made as to whether the proposal has planning merit and should proceed to the preparation of a PP. If this is determined to be the best approach, planning investigations will continue to Stage 2.

Stage 2 – Prepare Planning Proposal Documentation

- Confirm parameters of the PP (i.e. zoning, permitted land uses, Floor Space Ratio (FSR), height, etc.). This will be based on the preferred development outcome for the site.
- Before preparing the PP, determine if additional specialist inputs are required and seek sub-consultant's advice (e.g. traffic, architecture, flooding, biodiversity, site contamination, archaeological, etc.).
- Liaise with any appointed specialist consultants and gain any clarifications necessary to support the preparation of a Planning Proposal (PP).
- Prepare a written document (i.e. PP) seeking to change the planning controls/zoning relating to the site in accordance with NSW Department of Planning and Environment (DPE) guidelines and requirements.

NOTE: A PP relates only to the proposed LEP amendment/s. It is not a development application (DA), nor should it consider specific detailed matters that should form part of a future DA. However often the determining authority (usually Council) are increasingly seeking more detail and significant information at this stage.

- Organise and attend pre-lodgement meeting with Council.



- Consider the overall requirements for a Voluntary Planning Agreement (VPA) and investigate opportunities for items to be included in a VPA (noting that a separate scope and fee can be provided for the preparation of a VPA). In most circumstances, a VPA letter of offer will accompany the lodgement of a PP.

Note: A VPA process while now statutory runs parallel to the planning proposal and it is desirable to exhibit it at the same time as the planning proposal.

Stage 3 – Lodge Planning Proposal with Council

- Submit PP document and supporting material to Council.
- Council's planning officers undertake an assessment of the PP and decide whether the proposal contains sufficient information. Additional information may be requested from the applicant at this stage.
- The project team, including any required specialist consultants, responds to any matters raised by Council.
- Council planning officers prepare an assessment report with a recommendation as to whether or not to proceed with the proposal and send the proposal to Gateway. The Council planning officer's report is considered firstly at an Independent Hearing and Assessment Panel (IHAP) meeting and then possibly at a full Council meeting. The IHAP/Council resolves whether to send the PP to the Department (Gateway) for consideration (i.e. whether the Council is supportive of the proposal).
- Terms of any VPA may be negotiated/discussed with Council.

NOTE: Each Council has a separate policy in relation to assessment, exhibition and reporting of PP's and as such, this process may vary slightly. For example, some Councils may choose to conduct a non-statutory public exhibition process to gauge the community's initial response to the proposal. This would be in addition to the statutory public exhibition required at stage 6 below.

Stage 4A – PP proceeds to NSW Department of Planning and Environment (DPE) Gateway

- If the IHAP/Council recommends that the PP proceeds, it is submitted by Council to the Department (i.e. for a Gateway determination).
- This submission will include evidence of any pre-lodgement discussions, negotiations and agreement between the parties on the key issues and scope of work to be completed is provided in the PP that is submitted for a Gateway determination.
- PP is assessed by the Department and in some instances the LEP Review Panel.

Stage 4B – Rezoning Review (if applicable)

- If the Council gives notification that it does not support the PP, or does not make a decision within 90 days of the PP being lodged, or does not submit the PP for a Gateway determination within a reasonable time after indicating its support, there is the option to submit a request with the DPE for a rezoning review.



- The PP submitted for a Rezoning Review must be the same as that submitted to Council. The DPE offices conduct their own assessment and in some cases, seek planning panel inputs. A recommendation will be made as to whether the proposal proceeds.
- If the rezoning review is supported then the PP can proceed to Gateway. If the PP is not supported by the DPE, then there are no further rights of review/appeal.

NOTE: The Rezoning Review process is outlined in the diagram at **Attachment D**.

Stage 5 – Gateway Determination

- Following assessment of the PP by the Department (i.e. Stage 4A above), the Minister (or delegate) issues a Gateway determination specifying whether the planning proposal can proceed (with or without variation) and if so, in what circumstances.
- Gateway determination will confirm:
 - the information (which may include additional studies) required before the LEP amendment/PP can be finalised
 - whether to proceed to the exhibition
 - which authorities to consult
 - the timeframe in which the required steps are to be carried out.
- PP to be updated to reflect the requirements specified in the Gateway determination prior to the proposal being publicly exhibited.
- If an applicant is dissatisfied with the Gateway determination, there is the option to submit a request for a Gateway review before community consultation on the proposal has commenced. The review allows decisions in relation to proposed amendments to LEPs to be reconsidered.
- The PP or LEP amendment then returns to Council to finalise in accordance with the conditions imposed by the Gateway.

Stage 6 – Exhibition of Planning Proposal

- The proposal is publicly exhibited as required by the Gateway (i.e. usually a minimum of 28 days).
- Consultation is undertaken with government authorities (e.g. RMS, NSW Department of Primary Industries, Heritage Council, EP & A etc.) or any other nominated stakeholder.
- If there is a VPA accompanying this matter, then it will also be exhibited.
- PP documentation to be amended as required.
- There is usually a period of further assessment response to issues, provision of additional information that occurs at this stage. Any matters raised during the exhibition or from referral agencies must be addressed.
- VPA negotiations continue to the point where both parties reach an agreement.



Stage 7 – Recommendation

- Council planning officers review any submissions made during the exhibition, finalise their assessment and prepare a final assessment report recommendation and draft local environmental plan (LEP).
- Matter referred back to IHAP / Council.

Stage 8 – Making the Plan

- The plan is finalised by Council (noting that sometimes the Gateway Determination may specify that the matter is to be returned to DPE to make the plan) and is sent for gazettal.
- With the Minister's (or delegate's) approval the LEP is published on the NSW legislation website and becomes law.

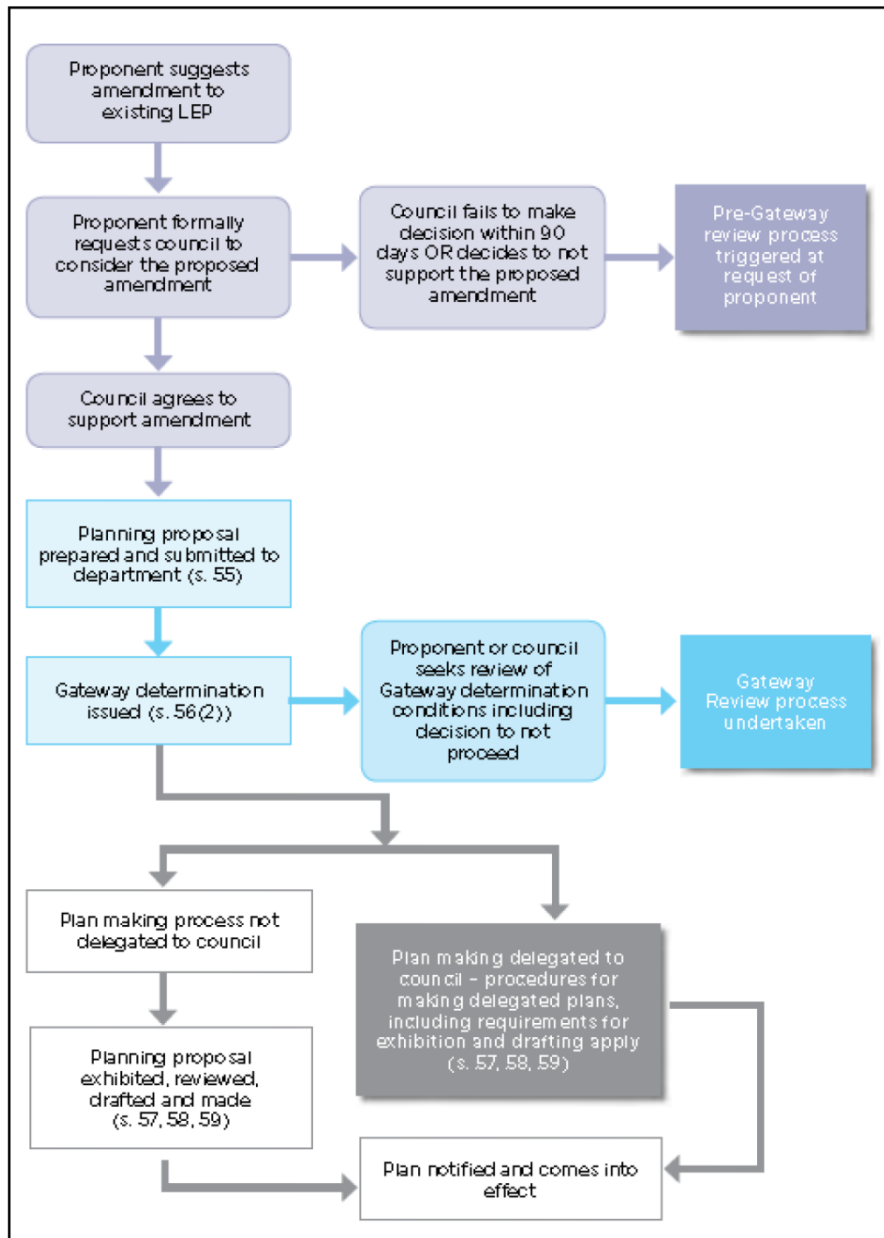
Stage 9 – Post Gazettal of the Plan

- Development can now be determined in accordance with the new legislation.

NOTE: While a Development Application (DA) can be lodged before the Plan is gazetted, many Council's prefer a DA to be submitted following gazettal.

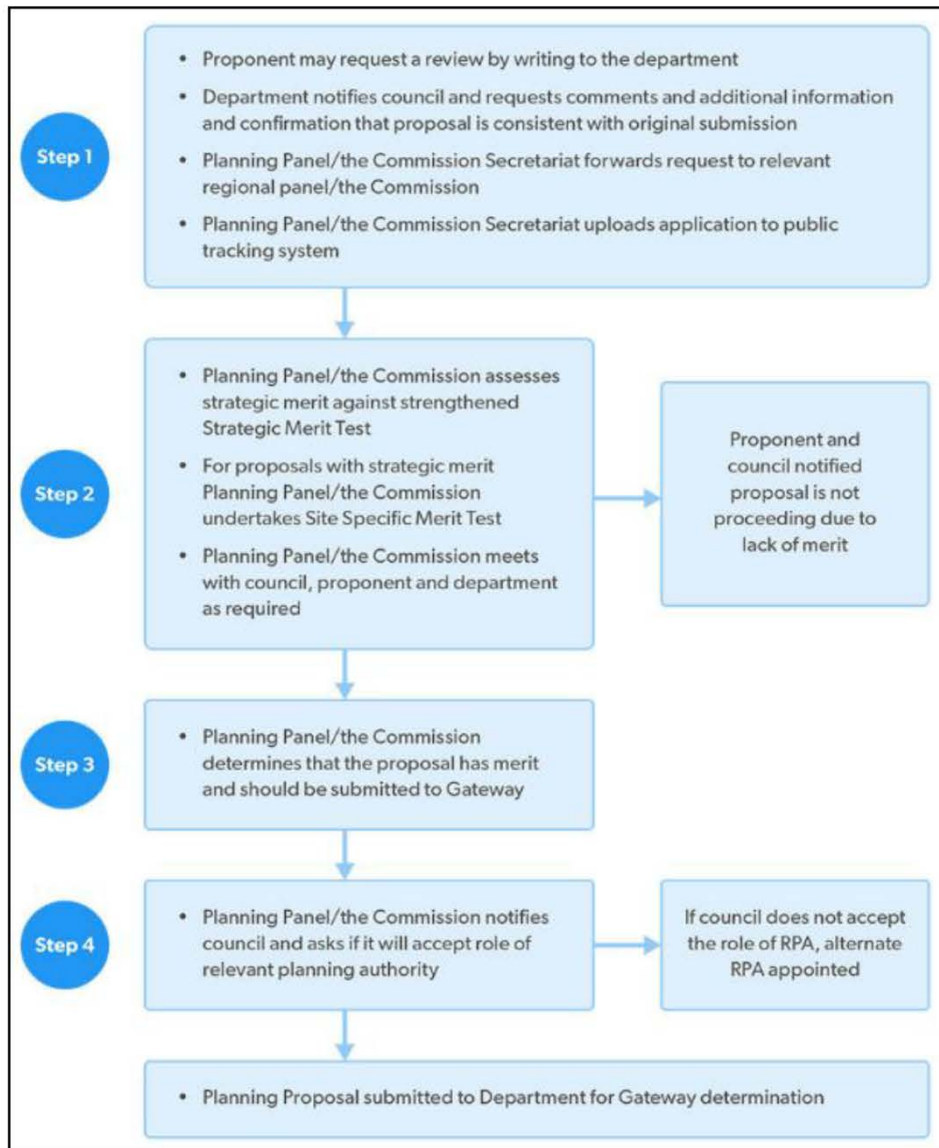


Attachment C – Planning Proposal Process Flow Chart





Attachment D – The Rezoning Review Process





Attachment E – Possible Planning Pathways, Project Timeframe & Potential Risks

The table below illustrates the various planning pathways that may apply to a variety of land uses that may be sought on the Central Coast Airport land and the expected timeframe for each project, noting that the land is currently zoned IN1 and E2 under the Wyong LEP 2013. As discussed within the accompanying detailed report, it is considered that Pathway 3 (being a State Significant Development (SSD) application) is the most effective option that will deliver the full intent of the Central Coast Aviation Hub Master Plan in the most efficient timeframe.

Planning pathway	Processes	Timing	Pros	Cons
<p>PATHWAY 1A</p> <p>Development Application (DA) under Part 4 of the EP&A Act, but limited to the existing IN1 zone. Noting that a DA could take many forms including:</p> <ul style="list-style-type: none"> • A DA (with or without the need for an EIS) where the use is permissible pursuant to Clause 23 the Infrastructure SEPP (ISEPP) • A DA (with or without the need for an EIS) where the use is permissible pursuant to WLEP 2013 with the requirement for a DCP 	<ul style="list-style-type: none"> • Prepare and confirm preferred development concept and type of DA (i.e. being less than \$30M) • Request SEARs (if the proposed development is classified as 'designated development' and an EIS is required) • Prepare EIS (if required) • Prepare DA documentation (including overall 'Masterplan' and details of the first stage of the proposal if a 'Concept' DA is proposed) • Prepare and lodge DCP in parallel to the DA process (where required) • Lodge DA • DA exhibited and referred to various internal sections of 	<ul style="list-style-type: none"> • DA could take 6 to 24 months depending on the nature and complexity of the DA. • Timeframe of any subsequent DA would also depend on the complexity and type of DA being proposed. 	<ul style="list-style-type: none"> • A DA can be lodged immediately for permissible uses over the land zoned IN1 without the need to rezone the land. • The existing IN1 zone allows a diverse range of permissible land uses under WLEP 2013, and provides Council considerable flexibility. • Uses (such as passenger terminals, retail, business, recreation and residential uses) that are prohibited under WLEP 2013, may be permissible in the existing IN1 zone pursuant to Clause 23 of the ISEPP. • Appears all uses envisaged as part of the preliminary Central Coast Aviation Hub Master Plan would be permissible with consent in the 	<ul style="list-style-type: none"> • Works must not exceed \$30M. Noting that if works exceed \$30M then the DA is automatically declared to be State Significant Development (SSD) and pathway 3 below must be followed. • The monetary value of \$30M places limitations on any DA/'Concept' DA, thereby potentially requiring that multiple DA's be lodged to achieve the full intent of the Central Coast Aviation Hub Master Plan. • The current IN1 zoning does not specifically identify the site as an airport facility. • There is no guarantee that the full intent of the Central Coast Aviation Hub Master Plan can be delivered if



<ul style="list-style-type: none"> • A 'Concept' DA without an EIS which seeks approval under the ISEPP and/or WLEP • A 'Concept' DA that requires an EIS and which seeks approval under the ISEPP and/or WLEP 	<p>Council and relevant external authorities</p> <ul style="list-style-type: none"> • DA assessed by Council and where necessary additional information is requested • Recommendation prepared • Notice of determination (NOD) issued. <p>NOTE: Regardless of what form the DA takes, it is likely that multiple DA's will be needed to develop the IN1 zoned land and deliver the full intent of the Central Coast Aviation Hub Master Plan. For example, any 'Concept' DA would be for the overall Master Plan and stage 1 only. The following stages of the Master Plan would then need separate DA consent.</p>		<p>existing IN1 zone, pursuant to either the WLEP 2013 or the ISEPP.</p> <ul style="list-style-type: none"> • Lodgement of a 'Concept' DA or any DA seeking consent under the ISEPP would not trigger the need to prepare a DCP for the site. • Pursuant to Clause 94 of the ISEPP roads may be constructed within both the IN1 and E2 zones, if the works are undertaken by a public authority (i.e. in this case Council). • There are very limited merit appeal rights under section 98 of the Environmental Planning and Assessment Act 1979 for third parties. (Noting, however, that third party appeal rights would apply if the development was classified as "designated development". Third parties may also bring proceedings before the Court under section 123 of the Act if there has been a breach of law in the granting of a consent, or in the administration of the Act). 	<p>multiple DA's are required. This planning pathway is a staged process.</p> <ul style="list-style-type: none"> • A DA (except in the case of a 'Concept' DA or a DA seeking consent under the ISEPP) would trigger the requirement for a DCP to be prepared for the site • Any proposal satisfying the definition of 'designated development' would require an EIS to accompany the DA. Third party appeal rights also apply to "designated development". • Any DA seeking consent for a permissible use listed under Clause 23 of the ISEPP (e.g. retail, business, recreation, a passenger terminal) must be located within the boundaries of the existing airport. This clause therefore would not apply to the E2 zoned land, even if the E2 land was rezoned. • Any DA is currently limited to the IN1 zoned land only. A LEP amendment/planning proposal is required to rezone the E2 zoned land before a DA can be lodged over this portion of the site.
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A large rectangular area on the left side of the table is completely redacted with a solid red fill.				<ul style="list-style-type: none">• There is the potential for Council to act as both the applicant and the determining authority which creates significant probity and transparency issues to be managed. Noting that the Planning Panel is responsible for determining any Council related development with a capital investment value (CIV) over \$5 million.



Planning pathway	Processes	Timing	Pros	Cons
<p>PATHWAY 1B</p> <p>LEP amendment to rezone the remaining E2 portion of the site</p> <p>Noting that any DA under Pathway 1A above would be limited to the IN1 land only and as such, a PP would be required to rezone the E2 zoned land prior to lodging a subsequent DA (as per 1A above) to develop the land.</p>	<ul style="list-style-type: none"> • Confirm parameters of the rezoning/LEP amendment • Prepare Planning Proposal (PP) documentation to rezone E2 to preferred zoning (assumed to be IN1), which is likely to require significant specialist reports and inputs especially flora and fauna • Lodge PP with Council • PP forwarded to the department • Gateway determination issued • PP exhibited • PP gazette • Lodge DA over E2 land once rezoned, noting that a DA (except in the case of a 'Concept' DA or a DA seeking consent under the ISEPP) would trigger the requirement for a DCP to be prepared for the site. Any DCP could be prepared in parallel to the DA process. • Alternatively, a rezoning of the E2 zoned land could also seek an LEP amendment to remove the 	<ul style="list-style-type: none"> • PP to IN1 is likely to take a minimum of 2 years. • PLUS • Subsequent DA/s could take 6 to 24 months depending on the nature and complexity of the DA. • The total process could therefore take 4 years. • 	<ul style="list-style-type: none"> • Applicants have a right of appeal to the State Government (i.e. Pre-Gateway Review) if the Planning Proposal is not supported or if there are unreasonable delays. This, however, takes additional time and if not supported by the Department, there are no further rights of review/appeal. • The applicant also has the right to seek a 'Gateway Review' if they are unsatisfied with the determination made by the Gateway. • 	<ul style="list-style-type: none"> • There are significant timeframes involved in the planning proposal process, especially when seeking to rezone E2 land and potentially add "additional permitted uses" (refer to attached PP process flow chart). • A PP is likely to require significant specialist inputs and reports, especially in relation to flora and fauna. • Rezoning the E2 portion of the site to IN1 would still not permit certain land uses to be carried out on the land (e.g. a recreation facility (outdoor) and passenger transport facility) as these uses are prohibited under WLEP 2013. These land uses would also not be permitted under clause 23 of the ISEPP, given this clause only applies to development within the boundaries of an existing airport. As such, the PP may need to also consider adding these as "additional permitted uses". • While a rezoning of the E2 portion of site would increase the range of uses



A large rectangular area on the left side of the table is completely redacted with a solid red fill.	<p>need for a DCP over the whole site.</p>			<p>permissible over the site, it still doesn't allow complete delivery of the Central Coast Aviation Hub Master Plan.</p> <ul style="list-style-type: none">• Council acting as both the applicant and the recommending authority has significant probity and transparency issues which would need to be managed. Noting, however, that the LEP determination would be made by the Gateway.
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Planning pathway	Processes	Timing	Pros	Cons
<p>PATHWAY 2</p> <p>Rezone whole site (i.e. the IN1 and E2 zoned land) to a Special Uses zone (e.g. SP2 Infrastructure (Air Transport Facility) and carry out development under Part 5 of the EP& A Act</p>	<ul style="list-style-type: none"> • Confirm parameters of the rezoning/LEP amendment • Prepare Planning Proposal (PP) documentation to rezone the entire site (IN1 and E2 land) to SP2 Infrastructure. This is likely to require a significant amount of specialist reports and inputs. • Lodge PP with Council • PP forwarded to the department • Gateway determination issued • PP exhibited • PP gazetted • If required, prepare DCP in parallel to the PP process • Once land rezoned, prepare a Review of Environmental Factors (REF) for a proposed "airport" and determine under Part 5 of the EP&A Act (i.e. a public authority does not need to obtain development consent under Part 4 of the Act if the proposed activity is classified as 'development without consent' 	<ul style="list-style-type: none"> • PP to SP2 is likely to take a minimum of 2 years <p>PLUS</p> <ul style="list-style-type: none"> • Subsequent approvals could take 6 to 24 months depending on whether they are determined under part 4 (as per pathway 1A) or part 5 of the Act. <p>The total process could therefore take up to 4 years.</p>	<ul style="list-style-type: none"> • Applicant has a right of appeal to the State Government (i.e. Pre-Gateway Review) if the Planning Proposal is not supported or if there are unreasonable delays. This, however, takes additional time and if not supported by the Department, there are no further rights of review/appeal. • The applicant also has the right to seek a 'Gateway Review' if they are unsatisfied with the determination made by the Gateway. • Once rezoned to SP2 infrastructure, development for the purposes of an "airport" may be carried out by or on behalf of a public authority without development consent. Noting that a public authority is still required to assess the environmental impacts of the activity under Part 5 of the Act and fulfil its duty under section 111 of the EP&A Act. • If development can be undertaken pursuant to Part 5 of the Act this would significantly streamline the 	<ul style="list-style-type: none"> • There are significant timeframes involved with a planning proposal to rezone the whole site to SP2 (refer to attached PP process flow chart). • An SP2 zoning would provide limited flexibility and would restrict use of the land to an "air transport facility". Other proposed land uses would need to demonstrate that they are 'incidental or ancillary' to the use of the site as an "air transport facility" and as such, would require additional tests of permissibility to be included as part of any DA. • An SP2 zoning would prohibit activities not strictly ancillary to an air transport facility and therefore would not permit development such as a service station. It may therefore be beneficial to retain some of the existing IN1 zoned land to accommodate other land uses and provide greater flexibility. • Development undertaken pursuant to Part 5 of the Act are limited to the



	<p>in an EPI - as is the case for an "airport". Note: The risk, however, is that the environmental impacts must still be assessed under Part 5 of the Act (as a 'determining authority') which could trigger the need for an EIS and the development could be reclassified as 'State Significant Infrastructure' (SSI) requiring consent from the Minister.</p>		<p>approval process and provide flexibility for Council. However, there are significant risks and limitations with this pathway.</p> <ul style="list-style-type: none"> • It appears there are no appeal rights for third parties under Part 5 of the Act. However, if the REF process establishes that the proposal requires an EIS and/or the development is reclassified as SSI, then third parties can request a judicial review in relation to SSI. 	<p>purposes of an "airport". Separately defined activities would require approval under Part 4 of the Act (i.e. a DA seeking approval pursuant to WLEP or Clause 23 of the ISEPP as outlined under Pathway 1A. above).</p> <ul style="list-style-type: none"> • An REF (required as part of the Part 5 process) may determine that the activity could significantly affect the environment, in which case an EIS would be required. • If an EIS is required, the proposed activity can no longer be assessed under Part 5 (as it becomes State Significant Infrastructure) requiring the approval of the Minister for Planning and Environment. This is regardless of the monetary value of the project. Any initial benefit of rezoning the land to SP2, to streamline the development approvals process, would then be lost. However, this is not to say that Part 5 approvals could not be used for future development being undertaken by a public authority in the SP2 zone.
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				<ul style="list-style-type: none">• The Part 5 approval pathway can only be undertaken if the development is being carried out by a public authority.• If the applicant is not a public authority, then approval would need to be sort under Part 4 of the Act and additional tests of permissibility would potentially need to be satisfied as outlined above and the \$30M threshold would apply.• Third party appeal rights may apply if the development is no longer being assessed under Part 5 of the Act (i.e. if approval is obtained under Part 4, then appeal rights exist as discussed under pathway 1 above).• If Council is acting as the determining authority (i.e. under Part 5), this could create significant probity and transparency issues.



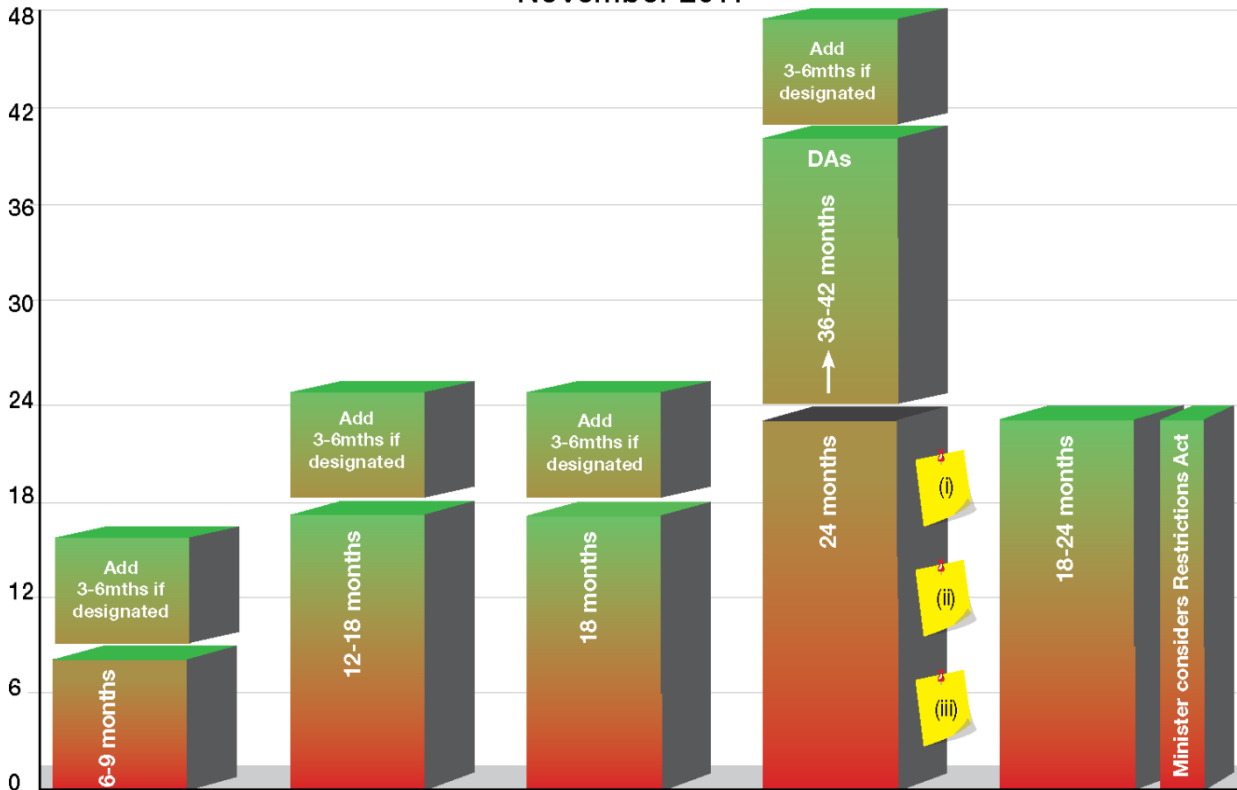
Planning pathway	Processes	Timing	Pros	Cons
PATHWAY 3 State Significant DA and potential Minister initiated Planning Proposal (PP)	<ul style="list-style-type: none"> Develop concept and confirm overall Central Coast Aviation Hub 'Masterplan' for the site Obtain input from specialists Request SEARs from the Department of Planning and Environment (DPE) Prepare DA and EIS Lodge application with DPE for assessment and determination If required, prepare a PP in parallel to the DA process to rezone the entire site or the E2 land. 	<ul style="list-style-type: none"> 12-18 months from when the SEARs are requested to determination. 	<ul style="list-style-type: none"> State Significance Development is recognised as a key matter of importance for the State. The DA is assessed by the DPE therefore separating Council as landowner and approval authority. There is flexibility in the permissibility of uses on the site. A SSD DA would allow the prohibited uses in the E2 land to be dealt with concurrently by the Minister. Allows the Minister to initiate (if necessary) a concurrent planning proposal (PP) under Part 3 of the Act to rezone the land zoned E2 to ensure permissibility. Any PP under this pathway would significantly streamline the rezoning process. The Minister could consider a concurrent request to repeal/amend the Warnervale Airport (Restrictions) Act 1996. The DA could be staged with the subsequent DA's being assessed by 	<ul style="list-style-type: none"> The proposed development must be a category of development that is listed under Schedule 1 or 2 of SEPP (State and Regional Development) 2011, and must meet the minimum threshold criteria (i.e. typically \$30 million). Community groups may object to the matter being removed from the local Council. If the applicant requests the concurrent rezoning of the E2 zoned land, the Minister must agree to the rezoning. Noting that a rezoning is not a requirement as a SSD can propose uses that are prohibited in the zone. Objectors or any person can make a merit appeal against a SSD, noting that that time limit for appeal is 28 days. Merit appeals, however, are not available to objectors in the case of a SSD application determined by the consent authority following a public hearing held by the Commission as part of its review process.



			<p>Council once the initial framework for the site is established.</p> <ul style="list-style-type: none">• Removes the requirement for a DCP to be prepared for the site.• The initial DA would be removed from local politics, although the Council and local community will still be able to comment on the DA. As Council would not be the determining authority, they would be kept at arms-length• The DPE has greater capacity to deal with issues that may be raised by other State Government agencies during the DA process.• Compared to the other pathway options, the associated risks are considered minimal.	

Central Coast Aviation Hub Planning Pathway Summary

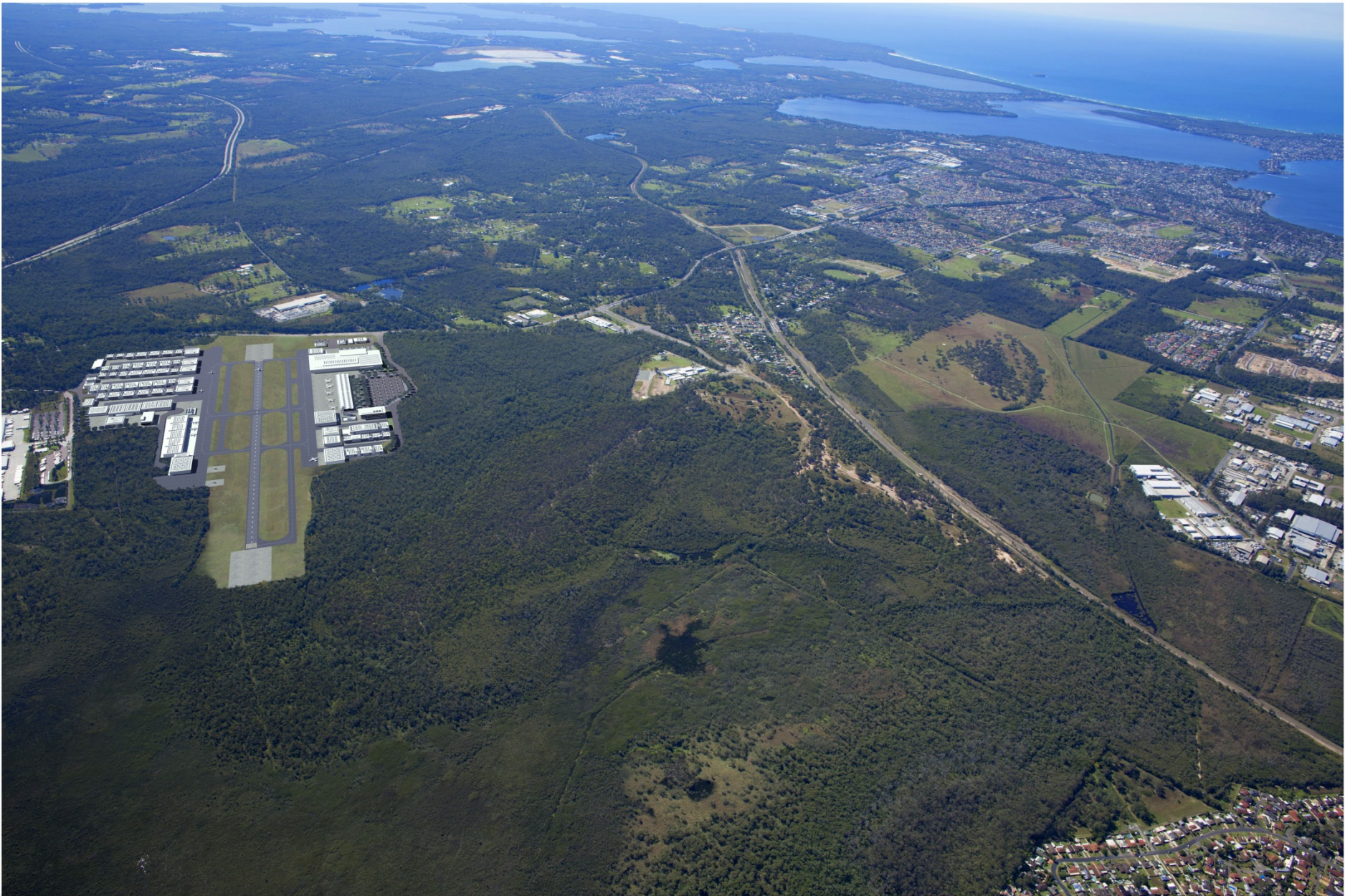
November 2017



Application under ISEPP Part 4/5 6-9 months*	WLEP + DCP Part 4 12-18 months*	Concept DA (under \$30M) Part 4 18 months*	LEP Amendment with subsequent DAs (i) (ii) (iii) 24-42 months*	State Significant Development (over \$30M) 18-24 months*
<ul style="list-style-type: none"> • Uses permissible under ISEPP • Not designated • Under \$30M • Avoids need for a DCP • Assumes existing air transport facility • Council is applicant and assessing/determining authority • Piecemeal and can't achieve desired outcome • Appeal rights by a third party <p>E.g. Ancillary uses such as:</p> <ul style="list-style-type: none"> - Recreation facilities - Passenger terminal - Business and industrial uses 	<ul style="list-style-type: none"> • Uses permissible under WLEP • Not designated • Under \$30M • Only on IN1 zoned land • Will require a DCP • Council is applicant and assessing authority therefore will require independent inputs • Piecemeal and can't achieve desired outcome • Appeal rights by a third party <p>E.g. – Airport facilities</p> <ul style="list-style-type: none"> - Warehousing - Service station 	<ul style="list-style-type: none"> • Permissible under WLEP or ISEPP • Not designated • Under \$30M • Must be able to stage/multiple applications • Only on IN1 zoned land • Avoids need for a DCP • Assumes existing air transport facility • Council is applicant and assessing authority therefore will require independent planning inputs • Piecemeal and can't achieve desired outcome • Appeal rights by a third party <p>E.g. – All uses envisaged to be located on IN1 zoned land</p>	<ul style="list-style-type: none"> • LEP is a long complex process and likely to take several years • May include IN1 and/or E2 (both or separately) • Assumes some DAs (for uses permissible) lodged while rezoning is in process. Subsequent DAs to be lodged once LEP amendments made, adding significantly to time frames. See (i), (ii), (iii) • Council is applicant and recommending authority and therefore could be heavily scrutinized. • Piecemeal and will take extensive time and much risk in achieving desired outcome. <p>NB: – Not all uses necessarily permissible because E2 land is not within boundaries of existing airport (re: C123 ISEPP)</p> <ul style="list-style-type: none"> - LEP can evoke need for VPA 	<ul style="list-style-type: none"> • Opportunity for Minister to consider removal of Warnervale Airport Restrictions Act within an appropriate context • Requires total development value over \$30M • Allows all uses on IN1 and E2 zoned land i.e. can overcome prohibitions • Can be staged • Avoids need for a DCP • Can evoke need for a VPA • Can achieve rezoning (if required by Minister) • Council is applicant but Department of Planning and Environment/Minister is determining authority • Clear, transparent process • Appeal rights by third party <p>NB: – This pathway overcomes prohibitions in land use and development standards</p>

* Estimated timing for each application





Central Coast Aviation Hub

View From South



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Date 11/19/17

JOB No 17-018

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Central Coast Aviation Hub
VIEW FROM NORTH EAST



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Central Coast Aviation Hub
VIEW FROM NORTH WEST



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