

OUTCOMES SUPPLEMENTARY REPORTS

Meeting Date 22 September 2020

Item Number. 95

SUBJECT: State Environmental Planning Policy (SEPP) (Western Sydney Aerotropolis) **(SUPPLEMENTARY)**

FILE NUMBER: 20/13715

PREVIOUS ITEMS: 64 - Aircraft Noise Restrictions - Potential Impact of State Planning Controls on Residential Development of Land at Horsley Park - Outcomes Committee - 14 Jul 2020 7.00pm

REPORT BY: Andrew Mooney, Acting Manager Strategic Land Use Planning

RECOMMENDATION:

That the report be received and noted.

SUPPORTING DOCUMENTS:

AT-A	Western Sydney Airport - OLS & ANEC Areas	1 Page
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CITY PLAN

This report is linked to *Theme 2 Places and Infrastructure* in the Fairfield City Plan.

SUMMARY

In July 2020, Item 64 to the Outcomes Committee identified concerns about controls that were being considered for the future aircraft noise affected area in Horsley Park and lack of notification and consultation with residents. The Mayor subsequently wrote to the Premier and relevant Ministers stating Council's concerns.

The NSW Department of Planning, Industry and Environment (DPIE) has recently issued formal notification on the NSW Legislation Website, that a new State Environmental Planning Policy (SEPP) – Western Sydney Aerotropolis (WSA) will come into force on 1 October 2020. This is despite Council's strong representations.

The SEPP will have significant impacts on landowners in Horsley Park affected by the 20-25 Australian Noise Exposure Concept (ANEC) associated with the Western Sydney Airport (WSA).

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As from 1 October 2020, landowners in this area will not be able to submit an application for construction of a dwelling on a vacant parcel of land unless the parcel already existed (ie. was part of an approved subdivision) prior to 1 October 2020.

After 1 October 2020, other forms of 'noise sensitive development', including residential accommodation (dwellings, secondary dwellings and dual occupancy) currently permitted in Zone RU4_Primary Production Small Lot, will be prohibited throughout the affected section of Horsley Park regardless of whether or not land had already been subdivided.

The SEPP contains savings and transitional provisions that allow development applications (DA) for 1ha subdivision which include an application for construction of a dwelling, or for a secondary dwelling on an existing 1ha lot in addition to a dwelling house, to be submitted to Council prior to the above date. Similarly, applications for construction of a dual occupancy on a 2ha lot can also be submitted before 1 October 2020.

Other categories of 'noise sensitive development' including child care centres, schools, places of worship and hospitals as listed in the SEPP will also be prohibited on land affected by the 20-25 ANEC/ANEF area.

In addition to the above provisions, the SEPP will introduce a requirement that any DA submitted for residential development under the WSA Obstacle Limitation Surface (OLS), (see Map at Attachment A), extending approximately 13km from the WSA, will require compliance with the indoor design sound levels in Australian Standard 2021:2015 Acoustics – Aircraft Noise Intrusion – Building Siting and Construction.

Under the current provisions of the SEPP and associated WSA Development Control Plan, the assessment of the extent of acoustic measures required in a building located under the OLS is subject to preparation of an acoustic report by a qualified consultant.

This requirement affects a number of residential suburbs in the western part of the City. This will add significant costs to development that is not in locations that will be affected by aircraft noise.

The SEPP also includes provisions meaning that DAs within 13km of the WSA that have the potential to create 'wildlife hazards' (eg. attract large gatherings of bird life) will need concurrence from Federal agencies.

Since the release of the SEPP, the Mayor has again written to the NSW Premier, relevant State and Federal Ministers highlighting Council's concerns regarding the impacts of the above restrictions on development rights of the community (in Horsley Park) and unjustified costs for including acoustic measures for future housing in the residential suburbs located under the OLS. Both Mayoral letters have previously been circulated to Councillors.

The following report provides further information in relation to the above.

REPORT

The SEPP (WSA) will represent the principle statutory planning framework for governing future development within the Western Sydney Aerotropolis (WSA) located within Penrith and Liverpool City Councils.

In addition, the SEPP includes planning controls that extend beyond the boundaries of the WSA and impact on significant areas of Fairfield City as detailed below.

1. Horsley Park - Area affected by the 20-25 ANEC

Under the SEPP, 1ha subdivision of land will still be permitted in areas of Horsley Park affected by the 20-25 Australian Noise Exposure Concept (ANEC) area (Attachment A). However, under Part 3(19) of the SEPP, all forms of residential accommodation (including dwelling houses, secondary dwellings and dual occupancy) will be prohibited in the RU4_Primary Production Small Lot Zone (covering the majority of Horsley Park), located under the 20-25 ANEC area.

This is subject to the following exemption that provides for construction of a dwelling house only on an existing vacant lot that existed before 1 October 2020 as follows:

“immediately before the commencement of this Policy —

- (i) there were no dwellings on the land, and*
- (ii) development for the purposes of dwelling houses was permitted on the land”*

In addition, under Clause 53(1) of the SEPP, the following savings and transitional provisions apply:

“a development application for development on land to which this Policy applies that was lodged and not finally determined before the commencement of this Policy is to be determined as if this Policy had not commenced”.

This means that any applications for subdivision with an associated application for construction of a dwelling house and/or secondary dwelling, already lodged with Council or submitted before 1 October 2020 can still be considered.

The DPIE have advised that the above provisions and restrictions also apply to the SEPP (Exempt and Complying Development Codes).

2. Aircraft Obstacle Limitation Surface (OLS) Map

The OLS is a height control map that identifies the maximum height for major structures (eg. telecommunication masts, construction cranes) under aircraft flight paths to minimise the interference of these ‘obstacles’ on aircraft movements.

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Under the SEPP the OLS Map (Attachment A – area shaded light green) affects both the rural areas of Horsley Park and Cecil Park, as well as western sections of the residential areas of the City including Abbotsbury and sections of Bonnyrigg, Bonnyrigg Heights, Bossley Park and Edensor Park.

Clause 19(5) of the SEPP requires that DAs for residential development or alterations to existing residential development will be required to submit an acoustic consultant report that details measures to be included in residential development to mitigate against the impacts of aircraft noise.

The DPIE has advised that the above provisions also apply to applications for Complying Development for new housing or alterations to existing housing under the Codes SEPP.

No explanation has been provided by the DPIE as to why expensive noise treatment measures and acoustic reports are required across such large areas that is not affected by future aircraft noise and why they have chosen to apply it using the OLS map which defines height of buildings/structures and not noise affectation.

3. Wildlife Hazards

Under Clause 21 of the SEPP Wildlife hazards - development consent must not be granted to relevant development on land in the 13km wildlife buffer zone unless the consent authority:

- (a) *has consulted the relevant Commonwealth body, and*
- (b) *has considered a written assessment of the wildlife that is likely to be present on the land and the risk of the wildlife to the operation of the Airport provided by the applicant*

Clause 21 will only likely be relevant to the rural lands for uses that have the potential to generate a wildlife hazard eg. agricultural uses, landfill sites that can attract large gatherings of bird life.

CONCLUSION

The above provisions (particularly the ANEC restrictions and OLS requirements), will have a major impact on landowners in the affected areas of the City.

Since notification of the SEPP, the Mayor has also written to the NSW Premier, relevant State and Federal Ministers again expressing Council's major dissatisfaction with the provisions of the new SEPP, the implications for the community and asking for a review of the controls.

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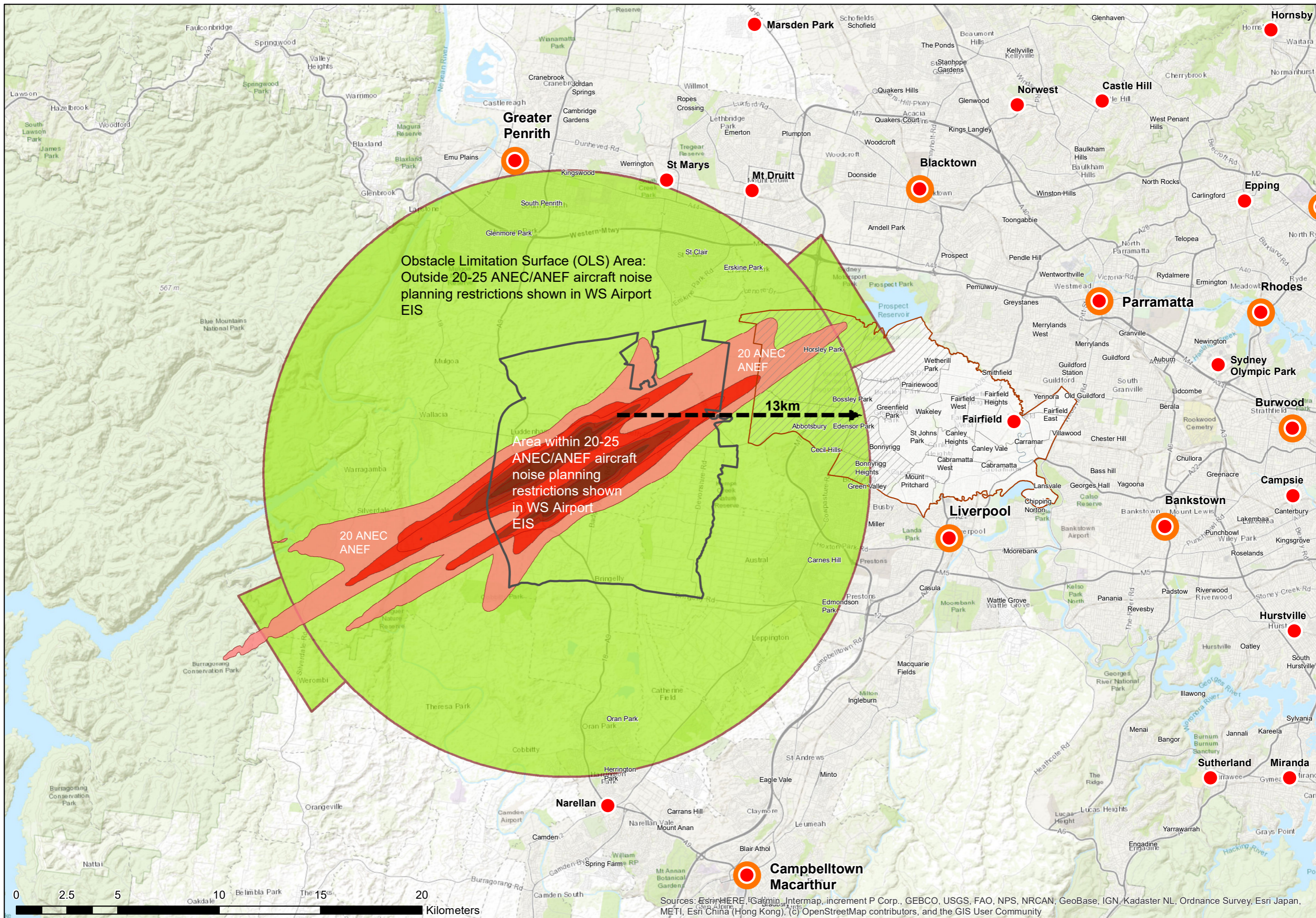
Andrew Mooney
**Acting Manager Strategic Land
Use Planning**

Authorisation:
Director Community Outcomes

Outcomes Supplementary Reports - 22 September 2020

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***** END OF ITEM 95 *****



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community