

Chapter 5 Statutory context

This chapter provides an overview of the relevant planning and legislative framework that applies to the project. It explains the relationship of the legislation that regulates the Australian airspace, the Airport Plan and the environmental assessment process for the project under the *Environment Protection and Biodiversity Conservation Act 1999*.

5.1 Overview

The Australian airspace is governed by Commonwealth legislation, specifically the *Airspace Act 2007* (the Airspace Act) the *Civil Aviation Act 1988* (the Civil Aviation Act), and their associated regulations, whereas the on-ground development of certain airports and protection of the airspace is primarily governed by the *Airports Act 1996* (the Airports Act) (and its regulations, in particular the *Airports (Protection of Airspace) Regulations 1996*).

In the case of WSI, the approval provisions of the EPBC Act do not apply, and the approval for construction was given by the approval of Part 3 of the Airport Plan. The Airport Plan was approved in 2016 by the then Australian Minister for Urban Infrastructure under the Airports Act. The Airport Plan authorised the construction and operation of the Stage 1 Development, being single runway operations and facilities capable of handling up to 10 million annual passengers. It also set the requirements for the further development and assessment of the preliminary airspace design for WSI (being Condition 16 of the Airport Plan), which must be satisfied before regular operations can commence at WSI.

The Australian Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) is leading the development of the flight path design for WSI in close collaboration with Airservices Australia and the Civil Aviation Safety Authority (CASA) to satisfy Condition 16 of the Airport Plan alongside the regulations and standards that apply to airspace design in Australia. Airservices Australia, as the relevant Air Navigation Service Provider (ANSP), will ultimately be responsible for the detailed design, implementation and management of the proposed airspace and flight paths. CASA, as the regulator responsible for the administration of airspace under the Airspace Act, will be responsible for the approval of the proposed airspace management arrangements through the approval of an Airspace Change Proposal (in its role as the Office of Airspace Regulation).

Condition 16 of the Airport Plan sets out the various requirements for development and assessment of airspace design and, as a consequence, governs the project. Condition 16 provides that the project is to be progressed pursuant to the process set out in sections 160 and following of the EPBC Act by making clear that, once the airspace design is developed, it is to be progressed as a plan for aviation airspace management under section 160 of the EPBC Act.

Consequently, and in accordance with Condition 16 and Section 160 of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), the project has been referred to the Minister for the Environment and Water for advice. In doing so, the delegate for the Australian Minister for the Environment and Water has determined that the DITRDCA is the nominated proponent and that an EIS would be required that addresses the EIS Guidelines issued for the project. This Draft EIS has been prepared to address these requirements.

Following the public display of this Draft EIS, the DITRDCA will consider the submissions received and finalise the EIS. Once finalised, the Final EIS will be provided to the Australian Minister for the Environment and Water who will then provide advice to the DITRDCA under section 163 of the EPBC Act, Airservices Australia and CASA, including any recommended conditions, before any approval is given for the airspace design. Airservices Australia will be responsible for submitting the Airspace Change Proposal that will be submitted to CASA for approval. This would need to consider the advice provided by the Australian Minister for the Environment and Water.

The finalisation of the EIS will also enable the detailed design phase of the project to progress. The detailed design phase will include further evaluation and refinement of the proposed selected airspace design for implementation based on feedback received from the community and other technical stakeholders such as airlines and industry bodies on this Draft EIS.

Once the Airspace Change Proposal has been approved, the procedures associated with the flight paths and changes to the Sydney Basin airspace will be published. A process of training and testing the procedures would occur before runway operations commence. Further detail on detailed design and implementation of the airspace changes is provided in Section 6.4.

A flow chart of this assessment, approvals and implementation pathway is provided in Figure 5.1. Further detail is provided in Section 5.2.1.



Figure 5.1 The assessment, approvals and implementation pathway for the project

5.2 Legislation

5.2.1 Commonwealth legislation

This section describes the legislative context under the following Acts and related Regulations:

- Airports Act
- Airspace Act
- Civil Aviation Act
- EPBC Act
- *Air Services Act 1995* (Air Services Act).

5.2.1.1 Airports Act 1996

The Airports Act establishes the regulatory arrangements that apply to certain federally-leased airports, including the requirements for land use planning, building approvals, environmental management and airspace protection. These arrangements require the approval of master plans and major development plans, which are submitted by an Airport Lessee Company (ALC).

As WSI was a 'greenfield' development with no appointed ALC at the time of developing and assessing the proposal for WSI, the statutory process at that time did not appropriately cater for WSI. As such, the Airports Act was amended to provide an alternative approvals pathway for the initial development of the WSI through the approval of an Airport Plan and to exclude the approvals pathway under Part 9 of the EPBC Act. This amendment provided a transparent mechanism to approve the Stage 1 Development through the authorisation of the Airport Plan. The Airports Act amendment also required:

- the advice from the then Australian Minister for Environment and Energy to be sought before the approval; and
- the then Australian Minister for Urban Infrastructure to considers any recommended conditions from Australian Minister for the Environment and Water when approving the Airport Plan.

In seeking the then Australian Minister of the Environment and Energy's advice, a Draft EIS was prepared and publicly exhibited in 2015. The Airport Plan was approved on 15 September 2016 with conditions following the finalisation of the 2016 EIS.

The Airport Plan will ultimately be replaced by a master plan, and any major airport by the ALC not covered by Part 3 of the Airport Plan (e.g. Stage 1 Development) will require the preparation of a major development plan by the ALC. Since its approval in 2016 the Airport Plan has undergone 2 variations relating to utility works in Badgerys Creek and Oaky Creek, and inclusion of the airport section of the Sydney Metro – Western Sydney Airport.

The project, does not need an additional Airport Plan, a master plan or a major development plan as it does not involve any physical works. However, Condition 16 of the Airport Plan sets out what requirements must be addressed or followed before the WSI airport operator can permit regular aircraft operations to commence at WSI.

DITRDCA is leading the design of the WSI airspace arrangements for single runway operations at WSI that will address Condition 16 of the Airport Plan in close collaboration with Airservices Australia, CASA and the ALC. Table 5.1 sets out these requirements and where these have been or will be addressed.

Table 5.1 Condition 16 of the Airport Plan

Condition 16	Comment
<p>1. The ALC must not permit regular aircraft operations to commence at the Airport unless the requirements of this condition have been satisfied.</p>	<p>This Draft EIS documents how these requirements have been or will be met through future engagement.</p>
<p>2. The airspace and flight path design are to be developed by a steering group led by the Infrastructure Department and involving Airservices Australia and the Civil Aviation Safety Authority. After an Airport Lease is granted the ALC will also be invited to participate in the steering group. The Infrastructure Department must establish a community and stakeholder reference group (Forum on Western Sydney Airport) which will operate until the end of the detailed design stage identified in Table 10 in Part 2 of the Airport Plan.</p>	<p>The Expert Steering Group, which includes Airservices Australia and CASA is responsible for the development of the preliminary airspace design.</p> <p>Matters relating to the preliminary airspace design has been subject to discussions at the Forum on Western Sydney Airport. The forum continues to operate.</p>
<p>3. In developing the airspace and flight path design, the steering group must conduct public consultation with stakeholders who include the aviation industry, the community and state and local government authorities.</p>	<p>Refer to Chapter 6 (Project development and alternatives) and Chapter 9 (Community and stakeholder engagement). In addition to the engagement completed to date, feedback received during the exhibition of this Draft EIS will be considered before the design is finalised.</p>
<p>4. The airspace and flight path design, once developed, is to be referred as a plan for aviation airspace management, to the Environment Minister under section 161 of the EPBC Act.</p>	<p>The project was referred to the (then) Australian Minister for the Environment and Water in 2021 and EIS Guidelines were issued in January 2022 (EPBC 2022/9143). This Draft EIS has been prepared to address these requirements.</p> <p>Once finalised, the Final EIS will be provided to the Australian Minister for the Environment and Water who will then provide advice to the DITRDCA, Airservices Australia and CASA.</p> <p>Further discussion on the EPBC Act is provided in Section 5.2.1.4.</p>
<p>5. The airspace and flight path design must take account of the following principles, in addition to the principles in section 2.2.5 of the Airport Plan:</p> <ul style="list-style-type: none"> a. airspace and flight path design must explicitly consider the Aircraft Overflight Noise mitigation options presented in chapters 7 and 10 of the [2016] EIS b. airspace and flight path design must have regard to the social and economic impacts on existing airspace users in the Sydney basin c. airspace and flight path design must explicitly consider whether arrangements are required for managing Aircraft Overflight Noise at night; and 	<p>The development of the airspace and flight path design as presented in this Draft EIS has taken into account a range of requirements, principles and guidelines, including the principles outlined in section 2.2.5 of the Airport Plan and Condition 16(5) of the Airport Plan.</p> <p>Refer to Chapter 6 (Project development and alternatives) for details on the phases of development that have led to the current airspace and flight path design.</p>

Condition 16	Comment
<p>d. airspace and flight path design must minimise to the extent practicable the impact of Aircraft Overflight Noise on the following:</p> <ul style="list-style-type: none"> i. residential areas ii. Sensitive Receptors iii. the Greater Blue Mountains World Heritage Area – particularly areas of scenic or tourism value; and iv. Wilderness Areas. 	<p>Additionally, the consideration of these principles is documented as part of the relevant impact assessment within this Draft EIS including:</p> <ul style="list-style-type: none"> • aircraft overflight noise (Chapter 11 (Aircraft noise)) • social and economic impacts on existing airspace users in the Sydney basin (Chapter 18 (Social) and Chapter 19 (Economic)) • impact to the Greater Blue Mountains Area and other wilderness areas (Chapter 16 (Biodiversity) and Chapter 17 (Heritage)).
<p>6. The airspace and flight path design for the Airport, once developed, must include or be accompanied by noise modelling of a range of realistic airport capacity and meteorological scenarios.</p>	<p>This is documented in this Draft EIS (refer to Chapter 11 (Aircraft noise) and Technical paper 1).</p>
<p>7. The Infrastructure Department must develop a noise insulation and property acquisition policy in relation to Aircraft Overflight Noise for buildings outside the Airport Site, having regard to the 24-hour nature of operations at the Airport.</p>	<p>The draft noise insulation and property acquisition policy is discussed in this Draft EIS (refer to Chapter 11 (Aircraft noise)). Further information on the development of the draft policy is provided in Appendix F of this Draft EIS.</p>
<p>8. Any referral(s) of a plan for aviation airspace management, in accordance with section 161 of the EPBC Act, must explain how all matters in this condition 16 have been addressed in developing the plan.</p>	<p>This was supplied at the time of the referral (EPBC 2022/9143).</p>

Protection of the airspace

Part 12 of the Airports Act provides the framework for the protection of airspace surrounding an airport. The associated regulations provide for airspace to be declared 'prescribed airspace' if it is in the interests of safety, efficiency and regularity of existing or future air transport operations for the airspace to be protected. Activities that protrude into this prescribed airspace are called 'controlled activities' and require approval. The prescribed airspace would include the airspace above the Obstacle Limitation Surfaces (OLS) and Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surfaces.

The OLS for WSI was initially declared on 19 October 2017 under the provisions of the Airports Act and Airports (Protection of Airspace) Regulation 1996 for the long-term development of WSI (including parallel runways). A revised OLS was subsequently declared on 16 June 2023 to reflect the 'as built' runway parameters.

The PANS-OPS for WSI will be declared once the flight paths have been approved.

Noise regulation

Under the Airports Act, airports regulated by the Act are required to have an Australian Noise Exposure Forecast (ANEF) that has been endorsed for technical accuracy by Airservices Australia. The ANEF is a tool that is used to inform land use planning around an airport site and assessing the effects of aircraft noise.

An Australian Noise Exposure Concept (ANEC) for WSI is provided in the Airport Plan and has been reflected in State Environmental Planning Policy (Precincts – Western Parkland City) 2021 (NSW) (Western Parkland City SEPP). This was generated based on the runway direction and indicative flight paths as presented in the 2016 EIS and the ANEC presented in Western Parkland City SEPP represents the long-term development of WSI (including parallel runways). An updated ANEC is presented in this Draft EIS for single runway operations (refer to Chapter 11 (Aircraft noise)).

An ANEF is a more refined ANEC and will be generated for WSI based on the final approved flight path design and the long-term development of WSI. Until the ANEF contour is approved, the ANEC contour presented in the Western Parkland City SEPP will continue to be used to inform land use planning.

DITRDCA has also prepared a draft noise insulation and property acquisition policy in relation to the management of aircraft noise from WSI. This is discussed in Chapter 11 (Aircraft noise).

5.2.1.2 Airspace Act 2007

The object of the Airspace Act is to ensure that Australian-administered airspace is administered and used safely, taking into account the protection of the environment, efficient use of that airspace, equitable access to the airspace for all users of that airspace, and national security.

CASA is the regulator responsible for the administration of Australian airspace architecture under this Act and the Airspace Regulation 2007. The Office of Airspace Regulation (OAR) is an independent body that sits within CASA. The OAR will ultimately be responsible for approving the proposed changes to the existing airspace (referred to as an Airspace Change Proposal) to introduce the control zone, including validating the flight procedures, before the commencement of operations. In approving changes to the airspace, the Office of Airspace Regulation will consider the capacity of Australian-administered airspace to accommodate the proposed changes, national security, the safety and environmental implications of the proposed changes, consultation outcomes, alignment with government policy and how it promotes and/or fosters civil aviation.

In accordance with the Airport Plan, CASA and Airservices Australia have been involved in the development of the preliminary airspace design, as presented in this Draft EIS. Following the exhibition of the Draft EIS and the finalisation of this EIS, Airservices Australia will be responsible for the detailed design and implementation of the airspace. Airservices Australia will seek the approval from OAR on the detailed design of the airspace architecture.

The assessment by the OAR consider the advice of the Australian Minister for the Environment and Water provided under Section 160 of the EPBC Act, as well as the safety case that would be undertaken as part of the detailed design. It is intended that the detailed airspace design as submitted to the OAR will be generally consistent with the preliminary design and assessment considered by the Australian Minister for the Environment and Water and their advice. Any significant differences may require an additional EPBC Act referral or assessment.

5.2.1.3 Civil Aviation Act 1988

The Civil Aviation Act is the primary legislation relating to aviation safety in Australia and is administered by CASA. Requirements relating to the safety of all aspects of civil aviation are set out in the Civil Aviation Regulations 1988 and the *Civil Aviation Safety Regulations 1998*. The Regulations implement the standards and recommended practices of the International Civil Aviation Organization (ICAO), which govern international civil aviation world-wide, and are closely aligned with the Federal Aviation Regulations of the United States of America.

As a contracting State under the 1944 Convention on International Civil Aviation, Australia has an obligation to adopt these ICAO standards. Licensing of aerodromes in accordance with these technical standards ensures that airports such as WSI provide safe environments for the operation of the types of aircraft that they are intended to serve. Further regulations apply to the operation of aircraft and to air traffic management services to ensure that all elements of the system provide for safe and efficient air transport.

Manuals of Standards (MOS) are legislative instruments that provide the technical requirements, standards and specifications that complement the requirements of the Civil Aviation Safety Regulations 1998. Key MOS that are applicable to airspace design are:

- MOS Part 172 – Air Traffic Services
- MOS Part 173 – Standards Applicable to Instrument Flight Procedure Design.

As detailed throughout the Draft EIS, the project has been designed in accordance with the relevant provisions and safety standards.

Under Part 175 of the Civil Aviation Safety Regulations 1998, Airservices Australia is authorised to publish the Aeronautical Information Package (AIP) for Australian airspace. The AIP will detail the flight paths (SIDs and STARs) and associated procedures for WSI once approved by CASA.

5.2.1.4 Environment Protection and Biodiversity Conservation Act 1999

The EPBC Act provides the national framework for protecting and managing designated 'matters of national significance', such as nationally (and internationally) important flora and fauna, ecological communities and heritage places (including World heritage). In particular, the EPBC Act is Australia's main legislative instrument for implementing its obligations under the World Heritage Convention. The EPBC Act also confers jurisdiction over actions that have the potential to make a significant impact on the environment where the actions affect Commonwealth land or are undertaken on behalf of Commonwealth agencies.

Under Section 160 of the EPBC Act, an Australian agency (or employee) must obtain and consider advice from the Australian Minister for the Environment and Water before a plan for aviation airspace management is adopted or implemented where the aircraft operations will have or is likely to have a significant impact on the environment. The preliminary airspace design for the project is a plan for aviation airspace management within the meaning of the EPBC Act.

A referral was made under Section 161 of the EPBC Act by DITRDCA, Airservices Australia and CASA in 2021 (EPBC 2022/9143). The delegate for the Australian Minister for the Environment and Water determined on 28 January 2022 that:

- the project would be assessed by way of an EIS and in doing so issued the EIS Guidelines (see Appendix C), and DITRDCA is the nominated proponent for the project.

For projects (referred to as actions) subject to Section 160 of the EPBC Act, Part 8 of the EPBC Act (except for certain provisions) continues to apply. This includes:

- addressing EIS Guidelines issued by the Australian Environmental Minister
- exhibiting the Draft EIS once the Australian Minister for the Environment and Water (or her delegate) is satisfied that the Draft EIS has addressed the EIS Guidelines
- inviting comment (in writing) on the Draft EIS during the display period, which will be set by the Australian Minister for the Environment and Water (or her delegate)
- finalising the EIS in response to the submissions received, including a summary of how these comments have been addressed in the EIS
- providing the Australian Department of Climate Change, the Environment, Energy and Water with the Final EIS and copies of the submissions received.

Following receipt of the Australian Department of Climate Change, the Environment, Energy and Water's recommendations, the Australian Minister for the Environment and Water will provide advice to DITRDCA, Airservices Australia and CASA in accordance with Section 163 of the EPBC Act as to whether:

- the project should be approved
- what conditions (if any) should be attached to the approval (if possible) to protect the environment
- any other matter relating to the protection of the environment from the project.

Under Section 164 of the EPBC Act, DITRDCA, Airservices Australia and CASA will then be required to provide the Australian Environment Minister with a report that documents the response to her advice. This report would state what action has been taken or not (including the adoption of any recommended conditions) and the justification where any of the recommendations were not given effect (in full or in part).

Figure 5.2 shows an overview of assessment pathway under the EPBC Act.



Figure 5.2 Overview of the assessment pathway under the EPBC Act

Matters of National Environmental Significance

The EPBC Act considers 9 matters of environmental significance (MNES). They are outlined below:

- world heritage properties
- national heritage places
- wetlands or international importance (listed under RAMSAR Convention)
- listed threatened species and ecological communities
- migratory species protected under international agreements
- Commonwealth marine areas
- the Great Barrier Reef Marine Park
- nuclear actions (including uranium mines), and
- a water resource (in relation to a coal seam gas development and large coal mine development).

Under Part 3, Division 1 of the EPBC Act, a project (or action) that will or is likely to have a significant impact on MNES, a significant impact on the environment generally (if carried out by a Commonwealth agency) or a significant impact on the environment on Commonwealth land, requires an approval from the Australian Minister for the Environment and Water (referred to as a 'controlled action'). However, as the project is subject to Section 160(2) of the EPBC Act, this approval is not required. While this approval is not required, the assessment of the project will still need to consider the impacts on the 'whole of the environment'. That is, the assessment will assess impacts to MNES but it will not be limited to those considerations.

5.2.1.5 Air Services Act 1995

The Air Services Act establishes and governs Airservices Australia, which is wholly owned by the Australian Government and is accountable to the Minister for Infrastructure, Transport, Regional Development and Local Government. Under the Act, Airservices Australia is to provide the facilities and services for the safety, regularity and efficiency of air navigation within Australian-administrated airspace. This includes providing air traffic services, aviation rescue fire fighting services, aeronautical information, radio navigation and telecommunications.

5.2.2 NSW legislation

NSW planning laws do not apply in relation to the management of controlled airspace and they are largely excluded from application to the Airport pursuant to section 112 of the Airports Act. They also does not apply to the assessment of a plan for aviation airspace management by virtue of Section 160(5) of the EPBC Act.

While condition 16 of the Airport Plan and the EIS Guidelines provide the primary guidance for what this Draft EIS must address, consideration has also been given to relevant NSW legislation including environmental planning instruments where considered appropriate. DITRDCA will continue to coordinate with the NSW Government and local councils to ensure integrated planning occurs.

Table 5.2 provides a summary of the key elements of the NSW planning framework. How these Acts have been taken into consideration can be found in the relevant EIS chapters and technical papers.

Table 5.2 Summary of NSW Acts

NSW legislation and planning instruments	Overview
<i>Environmental Planning and Assessment Act 1979</i> (EP&A Act)	The EP&A Act (and its regulation) establishes a framework for the assessment and approval of developments in NSW. They also provide for the making of environmental planning instruments, including state environmental planning policies (SEPPs) and local environmental plans (LEPs), which include land use controls.
<i>National Parks and Wildlife Act 1974</i> (NPW Act)	This NPW Act provides for the protection and reservation of certain lands, the protection of Aboriginal objects and places, the protection of fauna and the protection of native vegetation.
<i>Biodiversity Conservation Act 2016</i> (BC Act)	The BC Act provides for the conservation of NSW-listed threatened species, populations and ecological communities of animals and plants.
<i>Heritage Act 1977</i> (Heritage Act)	The Heritage Act makes provisions for the conservation of NSW's non-Aboriginal (built and historic) heritage.

5.3 National Airports Safeguarding Framework

The National Airports Safeguarding Framework (NASF) provides guidance on planning requirements for developments that could potentially affect aviation operations. The framework aims to improve community amenity by minimising aircraft noise-sensitive developments near airports; and improve safety outcomes by ensuring aviation safety requirements are recognised in land use planning decisions through guidelines being adopted by jurisdictions on various safety-related issues.

The NASF currently comprises 9 guidelines:

- Guideline A: Measures for Managing Impacts of Aircraft Noise
- Guideline B: Managing Risks of Building Windshear and Turbulence at Airports
- Guideline C: Managing Risks of Wildlife Strike in the Vicinity of Airports
- Guideline D: Managing Risks Associated with Wind Turbines
- Guideline E: Managing Risks of Distractive Lighting in Vicinity of Airports
- Guideline F: Managing Risks of Intrusion into Protected Airspace
- Guideline G: Protecting Aviation Facilities – Communications, Navigation and Surveillance
- Guideline H: Protecting Strategically Important Helicopter Landing Sites
- Guideline I: Managing the Risks in Public Safety Areas at the ends of Runways.

The NASF guidelines are used by relevant planning authorities to help inform land use planning decisions and by proponents to prepare applications on land impacted by aviation safeguarding controls. The NASF has been implemented primarily through the land use controls provided in the Western Parkland City SEPP.

The NSW Department of Planning and Environment's (DPE) Aviation Safeguarding Guidelines – Western Sydney Aerotropolis and surrounding areas (October 2021) (NSW DPE, 2022a) also provides guidelines for managing land use impacts related to aircraft noise and were developed with input from DITRDCA. The guidelines seek to ensure planning authorities consider the aircraft noise guidelines and noise exposure contour maps when undertaking land use planning for the Aerotropolis and surrounding areas of influence.

The NSW Government supports the NASF with the exception of Guideline A and uses the existing policy of DPE which relies on ANEF contours and *Australian Standard AS 2021:2015 Acoustics – Aircraft Noise Intrusion Building Siting and Construction*. The NSW Government has endorsed the use of ANEF for land use planning, not the N-above contours. Further discussion on these matters is provided in Chapter 14 (Land use).

5.4 Related actions and proposals

Key actions or proposals/projects that have been, or are being taken, on the Airport Site are detailed in Table 5.3, which are in addition to the facilitated changes to airspace detailed in Chapter 8 (Facilitated changes). There are a number of other actions or proposals/projects in Western Sydney that could lead to cumulative impacts, which are considered further in Chapter 22 (Cumulative impacts).

Table 5.3 Related actions and proposals

Relation action or proposal	Overview
Stage 1 Development (WSI)	The project relates directly to the Stage 1 Development of WSI, including the airfield, terminal and landside layout and facilities approved under Stage 1 (refer to Section 4.2.1).
Sydney Metro – Western Sydney Airport	A proposed new metro line that will serve WSI and the surrounding area. Two of the 6 metro stations will be provided within the Airport Site – a station at the integrated international and domestic terminal as well as the on-airport business park. Major construction has commenced on this project and will be completed by 2026 (refer to Section 4.2.1).