

**Submission
No 13**

**INQUIRY INTO WESTERN SYDNEY SCIENCE PARK AND
AEROTROPOLIS DEVELOPMENTS**

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PUBLIC ACCOUNTABILITY AND WORKS COMMITTEE INQUIRY INTO THE WESTERN SYDNEY SCIENCE PARK AND AEROTROPOLIS DEVELOPMENTS

Submission from the Independent Community Commission for the Western Sydney Aerotropolis, Professor Roberta Ryan

1. INTRODUCTION

Thank you for the opportunity to contribute to this inquiry. My role as the Independent Community Commissioner in the Western Sydney Aerotropolis does not include works related to the Science Park. This submission reflects my experience and observations on the development of the Aerotropolis.

The background to the establishment of the Independent Community Commissioner role is that in the early stages of the Aerotropolis rezoning planning process, small landowners were calling for a community advocate who could represent their issues and concerns to the Government, and help them navigate the planning and delivery of infrastructure processes.

I was appointed to the role of Independent Community Commissioner for the Western Sydney Aerotropolis in May 2021 by the then Minister for Planning and Public Spaces, the Hon. Rob Stokes, and reappointed by the Hon. Paul Scully when he took office.

The landowners living in the Western Sydney Aerotropolis are distinct from other communities in Greater Sydney. Many have owned their land for decades, and for others ownership has been in their family for generations.

The community is culturally diverse where English is not the first language spoken in a good proportion of homes. Some have come to Australia to escape turmoil and war in their country of origin, which makes this cohort particularly sensitive to the actions of government and to significant change.

Many in the community have not engaged in the workforce in a 'traditional' sense and therefore have not built superannuation nor diversified their assets. The land that they own is likely to be their single largest – if not only – asset. This makes the development of the Western Sydney Aerotropolis particularly challenging if they are not able to sell or to move on their own terms.

In August 2021 I provided my first report *A fair and equitable way forward*¹ to the NSW Government. It comprised 40 recommendations, which the Government accepted in full, noting a small number would be subject to available funding.

¹ *Recommendations for a fair and equitable way forward for small landowners in the Western Sydney Aerotropolis*, Professor Roberta Ryan Independent Community Commissioner, August 2021, <https://www.planning.nsw.gov.au/sites/default/files/2023-03/western-sydney-aerotropolis-report-independent-community-commissioner.pdf>

The recommendations were framed around three key areas that were having the greatest impact on the community:

1. Communication and engagement – ways for government to communicate and engage with the community at the centre of its efforts
2. Granular responses to specific landowner impacts – zoning and proposed acquisitions
3. Ongoing support – potential mechanisms to address fragmentation and uneven impacts, articulation of future pathways, and ongoing governance.

To date, 37 recommendations have been either addressed or work is ongoing. This represents steady progress over the course of planning and delivery of a complex, at-scale project.

While there has been good progress in addressing the recommendations from my first report and my ongoing advice to the Government, there are a number of unresolved, persistent problems that continue to have major consequences for the community, and for the overall achievement of the objectives for the Aerotropolis.

2. EXPERIENCE FOR SMALL LANDOWNERS IN THE AEROTROPOLIS TODAY

My work with the community in the Aerotropolis has shifted from support during the land use planning process in 2021, to ongoing support for small landowners as the Government's rezoning progresses to the land delivery stage and the land uses move from rural/residential to industrial.

There are now impacts on fewer people, but these issues are more complex, often involving multiple agencies.

Many landowners whose property was 'upzoned' through the planning process are preparing to sell or have already left the area. The population of Badgerys Creek, the suburb where the new international airport is located, decreased from 225 people in 2016 to 168 people in 2021 according to Australian Bureau of Statistics census data. In Luddenham, the population dropped from 1,828 residents to 456 residents over the same period.

Among those who remain in the Aerotropolis, some are small landowners who would like to move from the area but are unable to sell their properties. This is due to a range of reasons, the most common being constraints placed on their land for its use for a public purpose (e.g., yet to be gazetted roads and transport corridors, yet to be funded social and community infrastructure, stormwater infrastructure etc).

A number of landowners have also been impacted by the Cumberland Plain Conservation Plan (CPCP) which is a constraint placed on properties by the Government but not deemed for a public purpose. This has significantly devalued properties meaning those landowners cannot afford to sell.

A further group of landowners who are unable to sell their properties are those located in a non-initial precinct. These areas include Kemps Creek, Rossmore, and Dwyer Road which are within the Aerotropolis area but were not included in the first stage of the Government's rezoning. Without a timeframe for rezoning the non-initial precincts, the value of these properties is uncertain, and many landowners are struggling to sell. These landowners are living in an industrial zone, with many amenity impacts, and will shortly be living alongside an international airport that operates 24/7.

3. KEY ISSUES FACING SMALL LANDOWNERS IN THE AEROTROPOLIS

3.1 Acquisition

The greatest emotional and financial impacts I see among the community are a direct result of proposed government acquisition.

Prior to the rezoning, some landowners intended to stay or to capitalise on their properties (which for many is their only asset) to fund their retirement. As development proceeds, many are keen to move out of the area. However, they now cannot sell their property because of the constraints on their land brought about by Government zoning, biodiversity, amenity, and/or infrastructure affectations. Their only option is acquisition by the Government.

3.1.1 Longstanding challenges for acquisition: funding and coordination

Acquiring agencies do not have the funding, mechanisms for prioritisation, or cross-agency systems in place to assist these often-vulnerable people.

Despite best efforts to assist small landowners, agencies are working within legislative requirements and processes and with funding constraints that are at best slowing acquisitions, and at worst stopping them altogether.

Of concern is that the lack of funding is contributing to agencies not meeting obligations under the *Land Acquisition (Just Terms) Act 1991*, particularly those related to early acquisition due to hardship. Processes to move through these cases are regularly taking longer than the 90 days stipulated in the Act.

Ungazetted corridors pose a further challenge for landowners with constraints for a public purpose. Transport for NSW, for example, has no statutory obligation to proceed with an acquisition if a corridor has not been gazetted and rezoned, as the gazettal is dependent upon the agency having the funding to acquire. This means that the landowner needs to wait for gazettal, which may be months or decades in the future, before funds are allocated and their land will be acquired.

Case study

This property in the Aerotropolis is owned by two families, one of whom is elderly and English is a second language.

The property has major land reservations: almost all of the site is covered by an ungazetted Outer Sydney Orbital (OSO) corridor and the Cumberland Plain Conservation Plan.

The owners would like to sell the land but are unable to due to the constraints. They were advised to submit a hardship application but have since been told that acquisition is not possible because the OSO corridor hasn't been gazetted and there are no available funds.

They are stuck for the foreseeable future and experiencing rising emotional and financial distress as a direct result.

Compounding the distress for a number of landowners are constraints on their land that span multiple acquiring authorities requiring the need to negotiate with different agencies for different parts of their land. The community needs a central contact point who can provide information on the relevant acquiring agency or agencies, and who then maintains a relationship manager role with the landowner.

Also needed for landowners where there are multiple acquiring authorities on one lot, is a governance arrangement that enables whichever agency needs the land first, to acquire the entire lot on behalf of others and be reimbursed, or alternatively there needs to be a single designated acquiring authority. This scheme should also apply where there is only one acquiring authority. This would not only enable landowners to sell and move on as needed, but it is a more cost-effective approach for government, over the medium term.

3.1.2 New challenge for acquisition: Goldmate decision by the Land and Environment Court

The April 2024 decision by the Land and Environment Court (LEC) in the *Goldmate Property v TfNSW*² has led to a high level of distress for small landowners who are waiting to be acquired.

Prior to this decision, public purpose was deemed to be the constraint that the Government had placed on a property that might devalue the land (e.g. a road, stormwater infrastructure). This was designed to ensure that the landowner was not disadvantaged by the constraint on their property that was a result of Government policy or requirements for infrastructure.

Under the new ruling of the *Land Acquisition (Just Terms) Act 1991*, the ability to consider the rezoning of the Aerotropolis as a public purpose and thereby disregard this in the valuation means properties revert to their original rural zoning.

Now, small landowners with constraints for a public purpose on their land are significantly disadvantaged compared to their unencumbered neighbours; and the long-held premise that landowners are compensated at 'market value' as prescribed in the Just Terms Act is no longer being observed.

Case study

The owners of this property are elderly and in very poor health, with one facing a terminal illness and the other requiring high level residential care.

Their property is zoned Enterprise. Half of the land is reserved for stormwater infrastructure, and open space and drainage. A third of the remaining available land is constrained by a transport corridor the purpose for which is yet to be determined and gazetted.

Without realising the asset of their property, they do not have the financial means to fund their care which is costing their family thousands of dollars per month.

Following 12 months of dealing with different acquiring authorities to map a way forward, they are currently going through a hardship acquisition process to be acquired by one of the agencies.

Despite requirements under the Just Terms Act, this process has not been straight forward and has had extensive delays. The land is now being valued under the old rural zoning even though their hardship application was accepted six months before the Goldmate decision was handed down. The rural zoning valuation is 60% less than the value under the Enterprise zone.

² Land and Environment Court of NSW, <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWLEC/2024/39.html>, accessed 16 August 2024

3.2 Funding and cross-agency coordination for infrastructure delivery

The Western Sydney Aerotropolis has been designed to support the new international airport and the creation of high-quality jobs for Western Sydney. Coordinated infrastructure delivery is imperative so that investment by the private sector can occur to deliver the required supporting land uses for the new airport, and also the job creation that the Government is seeking.

My final recommendation in my 2021 report to the Government reflected the need for coordinated infrastructure delivery:

The framework for investment and delivery of future infrastructure in the Aerotropolis is to be developed, coordinated, and communicated by the Western Parkland City Authority.

This will require multi-agency governance arrangements to be established or adapted from existing arrangements such as the Western Sydney City Deal and the Greater Sydney Commission's Infrastructure Delivery Committee.

It is essential to address the ongoing uncertainty experienced by the community, that this is laid out going forward and effectively communicated to enable landowners to understand the processes involved in the development of the Aerotropolis. This includes elements such as sequencing of infrastructure delivery and market demand forecasts for development.³

The Government's June 2024 announcement of increased responsibilities for Infrastructure NSW (INSW) as Infrastructure Coordinator General in Western Sydney was welcome progress to address issues related to infrastructure coordination and delivery.

A clear priority for INSW will be to move rapidly to coordinate cross-agency infrastructure delivery and associated communication to landowners and the market. Partly filling the gap in communication to date is the Aerotropolis Community Consultative Committee (CCC)⁴ – members represent their communities very well – which provides a key communication mechanism between the community and relevant agencies.

As noted in 3.1.1, an equally important priority for INSW will be to establish an appropriate forward funding mechanism to expedite the infrastructure that brings land to market. This can succeed by securing high-level, cross-government commitment to combining land use and infrastructure delivery, by working with agencies and councils with agreed mechanisms and timeframes.

³ *Recommendations for a fair and equitable way forward for small landowners in the Western Sydney Aerotropolis*, Professor Roberta Ryan Independent Community Commissioner, August 2021, <https://www.planning.nsw.gov.au/sites/default/files/2023-03/western-sydney-aerotropolis-report-independent-community-commissioner.pdf>

⁴ Western Sydney Aerotropolis Community Consultative Committee, <https://www.planning.nsw.gov.au/plans-for-your-area/priority-growth-areas-and-precincts/independent-community-commissioner>

3.3 Cumberland Plain Conservation Plan

The Cumberland Plain Conservation Plan (CPCP) is an ambitious and important policy introduced by the NSW and Federal governments to protect vulnerable vegetation and biodiversity. In Western Sydney, it also plays a key role for the NSW Government to realise its vision of building a green parkland city.

However, the impacts on small landowners of the policy guiding the CPCP were not adequately considered. My work sought to address this issue, and an agreement was secured to voluntarily acquire smaller landowners with more than 50% of their land impacted by CPCP. However, there is more to do here.

When land is required for a public purpose (such as a park or a road), the affectation does not impact the value of the property for acquisition purposes, and the value of the land is assessed at the underlying zoning i.e. as if the constraint did not exist. This is not how the presence of CPCP is treated for valuation and acquisition purposes for small landowners.

Rather than a valuable asset (which many residents have cared for over the years to preserve), the presence of CPCP on their land is deemed a constraint (similar to a flood affectation). This results in a significant reduction in the value of their land while neighbours who may have cleared their property over the years are able to benefit from upzoned land values.

The fairest and most equitable way to value these properties needs to be resolved. The landowners who protected and cared for the vegetation on their land are now being financially penalised for doing so, while some of their neighbours who cleared their properties (at times illegally) are reaping the financial rewards of the rezoning.

Many of these landowners feel stuck. Their land is their greatest asset. With the CPCP being treated as a constraint rather than an asset, they cannot afford to accept the land value acquisition offer from the Government. Soon they will be living on isolated lots in an industrial zone very close to a 24/7 international airport. This also leads to many isolated lots, without management planning or funding in place to protect the biodiversity. This outcome will not lead to sustainable bio-diversity preservation.

Smaller landowners are very distressed by the impact of the CPCP on the value of their properties. They question the validity of the mapping and feel that – if the Government has placed such a high value on the Cumberland Plain Woodland and a ‘green city’ – small landowners should be compensated fairly and at market value.

Case study

A 10-hectare property in the Mamre Road Precinct with 90% CPCP is surrounded on three sides by industrial development. This small, isolated lot is owned by an elderly gentleman and his brother who – like many others – had planned to leverage the property to fund their retirement.

The landowners had registered for voluntary acquisition and received the valuation for their land. While the underlying zoning is Industrial (Goldmate decision notwithstanding), the constraints of the CPCP meant that the land's value is now 65% less than the market price of nearby properties.

3.4 Transport corridors and roads

Since November 2021, the community through the Western Sydney Aerotropolis Community Consultative Committee⁵ (CCC) and I have been raising strong concerns about the worsening state of the roads in the area, and the increased risk to safety and amenity impacts.

From the community's perspective, there is a shifting of responsibilities between tiers of government. For example, Council is responsible for maintaining Derwent Road however the road was damaged by the work of contractors for Sydney Metro. Contractors are only required to return the road to its condition prior to their work, which was poor. The Council is reluctant to fix the roads because of the ongoing construction work by state agencies.

The intersections of Elizabeth Drive and Devonshire and Western Roads have been of particular concern. After lengthy advocacy, \$200m funding was announced by the NSW Government in September 2023 for Elizabeth Drive safety initiatives (including signalling key intersections) and corridor enabling works. The 2024-25 Federal Budget committed \$400m and the 2024-25 NSW State Budget a further \$200m to the Elizabeth Drive upgrade, which has been welcomed by the community.

Beyond significant corridors and major route upgrades, the absence of forward budget bids by TfNSW for road maintenance in the Aerotropolis to cover the construction period has had a significant impact on the people who continue to live in the area. The condition of these roads is being degraded by heavy vehicles. Changes in traffic flows are also creating dangerous pressure points where they didn't previously exist.

Classification of the roads in these areas as 'rural' is no longer applicable. With the increasing volume of traffic, the classification of these roads should be revisited to open up additional funding pathways.

⁵ Western Sydney Aerotropolis Community Consultative Committee, <https://www.planning.nsw.gov.au/plans-for-your-area/priority-growth-areas-and-precincts/independent-community-commissioner>

3.5 Non-initial precincts

The non-initial precincts in the Aerotropolis are suffering major impacts without the benefit of their initial precinct neighbours who were rezoned.

Dwyer Rd and Kemps Creek for example are experiencing significant amenity impacts as a result of:

- infrastructure delivery in neighbouring initial precincts, and the increase in truck traffic and dust
- higher perceived land values leading to increases in land rates
- lack of market interest due to uncertainty around the future rezoning
- land banking of rural lots for industrial purposes
- soon, noise and pollution from the 24/7 international airport which for some is just a few hundred metres from their property boundary.

Continuing to stay in the area is becoming increasingly untenable – their once-rural lifestyle is fast disappearing. However, there is no choice but to stay. These landowners cannot sell their properties on the private market due to uncertainty around zoning. Anecdotally, some of these areas have been labelled a ‘dead zone’ by real estate agents.

Many also have transport corridors crossing their property but are not eligible for early acquisition due to hardship.

Given the scale of land rezoned in the initial precincts, the Government does not have any plans to rezone the non-initial precincts in the short to medium term. There are also no plans nor funding for servicing these areas which means there are people living less than three kilometres from the new airport who don’t have water or sewer services.

3.6 Land values

The Government’s rezoning of the Aerotropolis has led to sharp and sudden increases in land values. People are deeply distressed about significantly increased council rates and sizeable land tax bills. For some, they have not had to pay land tax before, while for others their bill has skyrocketed.

While these landowners will benefit financially from the rezoning once they sell their property, this may be many months or years into the future. In the meantime, they are having to service an enormous debt that was not planned, and some cannot pay. Many are struggling to meet the increased costs and need to make special payment arrangements with their council and / or Revenue NSW.

Councils and Revenue NSW have been very helpful in assisting landowners to reach agreements to meet their obligations, however for many the measures provide temporary relief only. An instalment plan with Revenue NSW for example has a six-month limit before landowners are charged 11% interest.

A further area of concern related to land values is exploitative practices by some real estate agents and valuers who are misleading landowners about the zoning and value of their land. One real estate agent has advised landowners that they are able to get their Environment and Recreation zoning (i.e., privately held land that is zoned as undevelopable) changed.

Further to this, there are mixed messages from the Government as to whether the Environment and Recreation zoned land will be purchased in the future. This is causing anxiety for some landowners, particularly those who are elderly, and uncertainty as to how the value of this land should be treated during sale or acquisition.

4. CONCLUSION

Implementing change on the scale of the Aerotropolis is a massive undertaking for the Government and is of great significance for delivering jobs and investment for NSW. There are many moving parts, constantly shifting priorities, and a multitude of stakeholders.

The experience for small landowners in the Aerotropolis through the rezoning process and the subsequent shift to mostly industrial land uses has been challenging. The area that many have called home for generations is changing rapidly and beyond their control.

In my first report and ongoing advice to the Government I highlighted that uncertainty for the future is causing deep distress in the community, and for many this remains the case. Strong governance and timely infrastructure provision is needed to provide small landowners with certainty about their future.

Crucial at this stage of development is finding a mechanism to forward fund the required infrastructure to ensure the vision for housing and jobs in Western Sydney is realised.

Professor Roberta Ryan
Community Commissioner - Western Sydney Aerotropolis and Orchard Hills

More information about the Independent Community Commissioner and the Western Sydney Aerotropolis Community Consultative Committee (including meeting minutes) is available at:
<https://www.planning.nsw.gov.au/plans-for-your-area/priority-growth-areas-and-precincts/independent-community-commissioner>