



Environmental Defenders Office

Western Sydney International Airport

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the Western Sydney International Airport Project. It does not replace the need for professional legal advice in individual cases.

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

This factsheet was last updated on 14 December 2023

Overview

The Western Sydney International (Nancy-Bird Walton) Airport is an infrastructure project proposed by the Commonwealth Government (**Project**).

The Project is being delivered by a Commonwealth company, Western Sydney Airport Corporation (**WSA Co**) with a view to open in 2026.

Visit: [Western Sydney International \(Nancy-Bird Walton\) Airport brochure](#) for an overview of the Project.

This factsheet provides information in relation to:

1. The environmental assessment and approvals processes for the Project;
2. How and when you can have your say including on the proposed flight paths which are currently open for public comment; and
3. What you can do if you are impacted by the Project.

Environmental Assessment and Approval Process

The assessment of the Project is complex and requires approval under multiple pieces of legislation, including:

- *Airports Act 1996 (Cth) (**Airports Act**) & Airports Regulations 1997(Cth) (**Airports Regulations**);*
- *Airspace Act 2007 (Cth) (**Airspace Act**) & Airspace Regulation 2007 (Cth) (**Airspace Regulations**);*
- *Civil Aviation Act 1988 (Cth) (**CA Act**) & Civil Aviation Regulations 1988 (Cth) (**CA Regulations**);*
- *Civil Aviation Safety Regulations 1998 (Cth) (**CAS Regulations**); and*
- *Environment Protection and Biodiversity Conservation Act 1999 (Cth) (**EPBC Act**).*

Environmental impacts are assessed through a number of major processes that require approval during the development of the Project, namely:

1. Airport Plan;
2. Changes to airspace (including flight path design);
3. Airport Major Development Plan; and
4. Airport Master Plan.

1. Airport Plan

The Airport Plan is the authorising document for the design and development of the airport and will provide the planning framework for the airport until the first Master Plan is in place.

In 2015, the *Airports Act 1996* (Cth) (**Airports Act**) was amended to exempt the Project from requiring assessment and approval under Parts 3 and 9 of the EPBC Act and instead provided an assessment process under Part 5 Division 4A of the Airports Act.

The Airport Plan was approved pursuant to section 96B of the Airports Act on 5 December 2016. It has been varied twice.

Visit: Read the Airport Plan for the Western Sydney International Airport [here](#)

View the original EPBC Act referral summary for Project (2014/7391) [here](#)

Having Your Say

The consultation period on the 2016 EIS for the Airport Plan and Construction was held in 2015. There are no further opportunities to comment on this process.

There will only be an opportunity to comment on the Airport Plan if there is a further proposed variation, as this may require further assessment and approval.

Varying the Airport Plan

The Minister for Infrastructure may vary the Airport Plan in writing,¹ but it will need to be referred and considered by the Minister for the Environment as to whether the variation requires assessment and advice under Subdivision A of Division 4 of Part 11 of the EPBC Act.²

Challenging the Airport Plan

The Minister for the Environment issued the notice under s 96B of the Airports Act on 10 November 2016. The Airport Plan was determined by the Minister for Infrastructure on 5 December 2016 with the Statement of Reasons published on 22 November 2017.

The limitation date to challenge any of these decisions has expired.

¹ *Airports Act 1996* (Cth) (**Airports Act**), s 96D(1).

² *Airports Act*, s 96D(7).

2. **Flight Paths & Airspace Management**

The Civil Aviation Safety Authority (**CASA**) is responsible for administering and regulating Australian-administered airspace.³ This means that CASA can determine, and impose conditions, on the air routes including flight paths.

To make changes to airspace, including flight path design, an Airspace Change Proposal (**ACP**) must be submitted to the Office of Airspace Regulation (**OAR**). OAR has the sole responsibility for approving or refusing ACPs.

Visit: See more information about the airspace change process [here](#)

The ACP application form requires the proponent to include an EPBC Act protected matters search report. The adoption or implementation of a plan for aviation airspace management involving aircraft operations that will or are likely to have a significant impact on the environment must be considered under the EPBC Act.⁴

The Department submitted a referral under the EPBC Act in relation to the plan for aviation airspace management for the Project under s 160(2)(b) in January 2022 (**2022/9143**). On 28 January 2022, a delegate of the Minister for the Environment determined that advice was required and that it would be assessed by an EIS (**2023 EIS**).

Visit: View the EPBC Act referral summary for 2022/9143 [here](#)

Current Consultation Opportunity – Proposed Flight Paths

There is an opportunity for the public to provide comments in relation to the draft EIS, including the proposed flight paths, during the invitation to comment period.⁵

Visit: View the draft EIS [here](#)

[Chapter 5](#) of the 2023 EIS provides more information about the assessment and approval process for airspace and flight path design.

N.B: The draft EIS is open for comments until **31 January 2024**.

Submissions can be lodged:

- online through the flight paths community portal at wsiflightpaths.gov.au
- by email to eis.submissions@infrastructure.gov.au
- by mail to the WSI Flight Path Team at GPO Box 594, Canberra ACT 2601.

³ *Airspace Act 2007* (Cth), s 11.

⁴ EPBC Act, s 160(2)(b).

⁵ EPBC Act, s 103.

See our factsheet on [Submissions, Letters & Petitions](#) for tips on writing effective submissions.

Following the period for comment, the Department will provide a finalised EIS and copies of all comments received during the period for comment to the Minister for the Environment and identify how those comments were taken into consideration.⁶

The Department must publish the finalised EIS within 10 business days of providing the EIS and all comments received during the period for comment to the Minister for the Environment.⁷

The Minister for the Environment will then review the 2023 EIS and community feedback before providing advice to the Department as to:⁸

- a. whether the Department should give the authorisation of the preliminary flight paths;
- b. what conditions (if any) should be attached to the authorisation (if possible) to protect the environment; and
- c. any other matter relating to protection of the environment from the action.

Visit: The Department has published a [factsheet](#) on the Environmental Impact Statement Process.

Challenging the Decision

As the Minister for the Environment only provides advice there is no approval decision under the EPBC Act to challenge. However, it may be possible to seek review under s 6 of the *Administrative Decisions (Judicial Review) Act 1977 (ADJR Act)* in relation to conduct engaged in for the purposes of making a decision, such as the provision of advice from the Environment Minister to the Infrastructure Minister under the EPBC Act. However, the availability of this course of action will depend on a number of factual circumstances, and we **strongly** recommend seeking private legal advice as soon as possible following the provision of the Minister for Environment's advice if you are considering seeking review as strict time limits apply.

Read: EDO's factsheet on [EPBC Act, Referrals and Opportunities to Comment](#), p 7-8 for information on Judicial Review under the ADJR Act.

⁶ EPBC Act, s 104(2).

⁷ EPBC Act, s 104(4).

⁸ EPBC Act, s 163.

3. Major Development Plan

Major Development Plans are required under the Airports Act for all major airport developments.⁹

Visit: For more information on the assessment process for Major Development Plans, see [Part 5 Division 4](#) of the Airports Act.

View the preliminary Major Development Plan for the Business Precinct Stage 1 [here](#)

On 24 January 2023, a proposal for a preliminary Major Development Plan for Business Precinct Stage 1 of the Project was submitted for consideration under the EPBC Act (**2023/09458**). A delegate of the Minister determined that advice was not required under s 161A of the EPBC Act on 17 February 2023.

Visit: View the EPBC Act referral summary for 2023/09458 [here](#)

Having Your Say

The consultation period for the preliminary Major Development Plan for the Business Precinct Stage 1 has now **closed**.

Challenging the Decision

The limitation date to challenge the decision that advice was not required under the EPBC Act has expired.

4. Airport Master Plan

All airports require final Master Plans under s 70 of the Airports Act. The final Master Plan for the Project must be consistent with the Airport Plan.¹⁰

Having Your Say

Master Plans are subject to community consultation and pursuant to s 79(1) of the Airports Act, the draft Master Plan must be published in a newspaper circulating generally in NSW and on the airport's website.

N.B: The consultation period for the draft Master Plan must be at least **60 business days**.¹¹

Challenging the Decision

Where the Master Plan is consistent with the Airport Plan, approval for the final Master Plan will be given by the Minister for Infrastructure under s 81A of the Airports Act.

⁹ Airports Act, s 90.

¹⁰ Airports Act s 81A(1).

¹¹ Airports Act s 79(1)(a)(iv).

For information on options available to challenge this approval, we **strongly** recommend seeking private legal advice as this is outside the scope of EDO's expertise. This advice should be sought as soon as possible following the decision as strict time limits apply for review of decisions under the ADJR Act.

What can I do if I am impacted by the Project?

Private Nuisance

If your use and enjoyment of your land is affected by the Project, such as by unreasonable smoke, dust, or odours, you may have a cause of action in private nuisance.

Read: [Private Nuisance in NSW](#)

N.B. We **strongly** recommend obtaining private legal advice before commencing any actions for private nuisance.

Visit: Read the [Airports \(Environment Protection\) Regulations 1997 \(Cth\)](#) for the guidelines on accepted limits for air, water and soil pollution and the guidelines for excessive noise in relation to airports in Australia.

Noise

Noise pollution is excluded under sections 131B, 131C and 131D of the Airports Act, which relate to environmental offences.

Airservices Australia is responsible for managing aircraft-related noise complaints.

Visit: You can lodge a noise complaint with Airservices Australia [here](#)

Challenging the Project

This factsheet provides information relating to the environmental assessment process, including decisions made under the EPBC Act. If you have been impacted by the project and seek advice on whether there are any avenues to challenge the Project approvals, including the Master Plan or Major Development Plan, under other legislation we **strongly** recommend obtaining private legal advice. This advice should be sought as soon as possible following the decision as strict time limits apply for review of decisions under the ADJR Act. This is outside the scope of EDO's expertise.

Lobbying and Campaigning

Lobbying, petitions and campaigns are another way to voice concerns about the Project and effect change.

Read: [Submissions, Letters and Petitions in NSW](#)

Evaluate this resource

EDO welcomes feedback on this factsheet. Your feedback will help us ensure we are providing useful information.

If you have any concerns or suggestions regarding this factsheet, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:

