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Proposed Planning Policy-Canberra Airport
Department of Planning & Infrastructure
P.O. Box 5474
WOLLONGONG NSW 2520

Dear Sir/Madam,

**RE: P.R MOORE, L. MORE & S.A FALLA- SUBMISSIONS REGARDING DRAFT
PLANNING PROPOSAL-CANBERRA AIRPORT;**

We refer to the above matter.

We act for P.R Moore, L. Moore and S.A Falla.

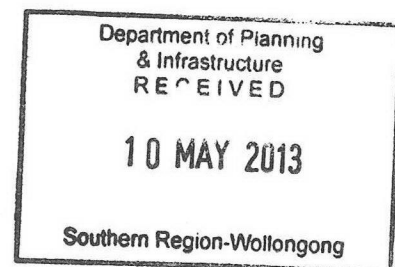
Please find **attached** our clients' submissions regarding the Draft Planning Proposal-Canberra Airport.

Should you wish to discuss or have any queries please do not hesitate to contact us.

Yours sincerely,

HEDGES BHATTY SOLICITORS

Encl.



SUBMISSIONS RE: DRAFT PLANNING PROPOSAL-CANBERRA AIRPORT

1. With respect to the Draft Planning Proposal- Canberra Airport currently on exhibition, we act for Mr P.R Moore, L. Moore and S.A Falla ("our clients").
2. These submissions concern the proposed s 117 Direction ("the Direction") preventing Local Council, in the future, from rezoning land owned by our clients, being 11 Mariners Court Jerrabomberra NSW 2619 and 21 Mariners Court Jerrabomberra NSW 2619 ("our clients' land"), as residential nor permitting zoning for the purposes of child care centres, educational establishments, health services facilities, respite day care centres, serviced apartments or other noise sensitive uses where the ANEF for Canberra Airport Exceeds 20.
3. Our clients submit the following to you in response to your call for submissions. These submissions should be properly considered by you in considering any decision as to whether our clients' land should be subject to the Direction.

Residential and/or Industrial Zoning

4. Our clients' land should not be subject to the Direction and should have the potential in the future to be zoned as residential and at the very least as industrial land.
5. The argument put forward by NSW Planning and Infrastructure ("the Department") for the restriction on our clients' right to develop their land in the future is that it falls within the ANEF 20 area and will encroach upon the Canberra Airport if our clients' land is developed into a residential area in the future.

6. Our clients' land, in particular, 11 Mariners Court, Jerrabomberra NSW, is immediately neighboured to the left and right by residential dwellings on the same street. It is prejudicially inconsistent to allow residential dwelling on the left and right hand side of this property but not to permit 11 Mariners Court, Jerrabomberra to have the potential to be zoned as residential.
7. The argument put forward by the Department that further residential development will encroach upon the Canberra Airport is quite trivial, noting that, as mentioned in paragraph 6, there are already residential dwellings surrounding our clients' land. The development of a few more residential dwellings, on our client's land, is we submit, not going to have a significant impact on the Canberra Airport.
8. Our clients' land is also further surrounded by the suburbs of South Tralee which is currently zoned as residential and North Tralee which is currently zoned as Industrial with the majority of land in those two areas also falling under ANEF 25 and parts of same falling under ANEF 20 similar to our clients' land.
9. Our clients' cannot understand why their land has been targeted in respect of restrictions on zoning under the Direction when the surrounding areas, as mentioned above, fall within the ANEF 20 and 25 areas and are currently zoned as either residential or industrial and when 11 Mariners Court Jerrabomberra is neighboured by residential dwellings.
10. If the Direction is to apply, this will create incompatible development in the vicinity and inconsistencies which is contrary to objective 1 of the Direction. There must be consistency with these principles (*Westfield Developments Pty Ltd v Sutherland Shire Council* (1987) 28 APA 376; *Lainson v Sutherland Shire Council* (1998) 108 LGERA 1).

11. Furthermore, there is a history in the area of permitting the development of land as residential and/or industrial which falls under flight paths and is also subject to the ANEF.
12. There has been a long term policy of zoning land under flight paths as industrial and which has also been shifting to a policy of zoning it instead as residential which is evident in the Queanbeyan City Draft 2003 Structure Plan ("Structure Plan"):
- "The 1994 Structure Plan identified the land known as Tralee near the Hume industrial estate as being suitable for urban or industrial purposes. In 2001, Council resolved to further investigate Tralee for future industrial purposes; however with a change in ownership of the land, Council has since resolved to commence rezoning the land for residential purposes."*
13. Furthermore, the ACT and Sub-Region Planning Strategy 1998 ("Planning Strategy") identified areas such as Jerrabomberra, including Tralee, as the only area in NSW to the south of the ACT suitable for residential developments. Subsequent endorsed planning strategies have confirmed this status for South Jerrabomberra.
14. The Planning Strategy includes a map which shades a number of properties, including Jerrabomberra, as "Indicative areas with potential for long term future urban development". The Planning Strategy therefore endorses the rezoning of these lands to residential.
15. If the land is not permitted to be zoned residential in the future, it should be, at the very least, permitted to be zoned as industrial.
16. As mentioned above, there is a historical approach of zoning land under the flight paths as industrial. North Tralee is currently zoned as industrial and falls within the ANEF 20 area as does our clients' land.

17. The Structure Plan also proposed that industrial and commercial land can exist under aircraft flight paths:

"The flight path of the aircraft approaching Canberra Airport [will be] generally over the town centre [commercial property] and industrial areas" Queanbeyan Structure Plan, August 1974.

Allow Zoning and place a Curfew on the Canberra Airport

18. Although previous experience in Australia and internationally shows that residents subject to aircraft noise will demand operational restrictions, mandating curfews to be placed on Australian airports to allow residential development on land surrounding the airports or within their flight paths and reducing the noise impact on residential areas is an effective practice widely used in Australia.

19. Mandated curfews have been placed on Australian airports where houses exist under flight paths and fall within the ANEF 20 or 25 areas. These comprise of:

- (a) Adelaide Airport,
- (b) Coolangatta (Gold Coast) Airport and
- (c) Sydney (Kingsford Smith) Airport.

20. These curfews have permitted land surrounding the airports to be developed as residential and have attempted to balance competing needs of noise control and airport operations.

21. Placing a curfew on the Canberra Airport is a real possibility. Repeated calls have already been made for a curfew at Canberra Airport, including by the Queanbeyan City Council.

"[...] over the years there's certainly been a lot of concern [about future aircraft noise in Canberra and Queanbeyan], particularly from the Watson group and certainly, from Queanbeyan. We've made representation in 1994 to the Standing Committee on Tourism, pointing out that Canberra does not have curfews and that they ought to be imposed because of this very possibility." Queanbeyan Mayor Frank Pangallo, 666 ABC Canberra, 2 September 2003.

22. Other operational restrictions are also placed on airports to reduce aircraft noise exposure. For example, Sydney Airport is also slot constrained, with maximum hourly movement levels in place to prevent excessive noise. Further preferred flight paths are also in place in order to move noise from one location to another.
23. In particular, the Sydney Airport is surrounded by residential and industrial development which co-exist with the Airport.
24. If Sydney Airport, a major domestic and International airport has been, and is, coping with balancing the needs of the Airport together with the need for residential development, the Canberra Airport is also likely to do same.
25. Placing restrictions on potential further residential development on our clients' land in order to prevent further residential encroachment on the Canberra Airport, we submit, is not a valid justification which outweighs our clients' right to potentially develop their land.
26. By applying the practice of placing a curfew on the Canberra Airport, the impact of noise on future residential development is controllable.

ANEF should not be used for the purposes of Land Use Planning

27. The Direction proposes to prevent the further residential development of land within the ANEF areas based the ANEF 20 contour.

28. Australian Standard 2021 (AS2021), which incorporates the ANEF system was developed as a criterion for the acoustic insulation of buildings and not for purposes of land use planning or the assessment of aircraft noise exposure.
29. AS2021 states that “acceptability” refers to a requirement for insulation. “Acceptability” in the Standard does not refer to any land planning requirement, and the Standard does not attempt or purport to define whether land is “suitable” for residential or other uses. Rather, “suitability” of residential land use should be read in the context of a whole range of town planning measures, including whether there are more appropriate locations for residential development.
30. Indeed, AS2021 explicitly states that “Land planning authorities may have their own internal noise level requirements which may be used in place [of ANEF contours]”.
31. Whilst the Standard does not describe such other requirements, there are a significant number of measures available to authorities that can fill that role.
32. Therefore, the ANEF should not be used for land use planning and should not be used to determine whether our clients’ land can be zoned as residential or not.
33. The Department should allow the Local Council to take into account a variety of factors when considering allowing zoning, and in particular, when considering residential zoning.

Residential/industrial development- Insulation

34. As population density increases, the economic imperative to use and develop land adjacent to Australia’s (largely) inner city airports also increases.

35. If residential zoning and/or industrial zoning is permitted, future residential and/or industrial development can comply with existing standards which allow for insulation or soundproofing for residential developments under flight paths.
36. Australian Standard AS 2021 includes recommended standards for indoor design sound levels for a variety of building types and activities which allows for the development of homes and buildings on land that falls within the ANEF 20 contour.

Lack of consultation & change

37. As Justice Moffitt put it in *Parramatta City Council v Hale* (1982) 47 LGRA 319, authorities must take into account relevant matters when making a decision. We put it to the Department that all the relevant matters that should have been considered, were not taken into account. This is shown through the lack of communication that the Department has undertaken with our clients. The first time that our clients were aware of the proposed changes in zoning was through a letter from the Department.
38. The decision that the Department makes must not be "unreasonable". As stated by Wilcox J in *Prasad v Minister of Immigration and Ethnic Affairs* (1985) 6 FCR 155,

A power is exercised in an improper manner if, upon the material before the decision-maker, it is a decision to which no reasonable person could come....in a manner so devoid of any plausible justification that no reasonable person could have taken this course".

39. It is unreasonable to prevent rezoning of our clients' land which, we submit, is identical or very similar in nature, topography, use, vegetation, visual aspect, soil, land disturbance and also falls within the ANEF 20-25 areas to

the surrounding areas which have been permitted to be zoned as residential and industrial which also fit into the ANEF 20-25 areas.

Economic Impact

40. If the Direction is implemented then our clients will suffer significant potential economic impacts, including a reduction in value of their land in its present state and a significant reduction in value if re-zoning is prohibited.

41. Our clients cannot stand by and allow this to happen.

42. If the proposal is implemented then our clients will seek compensation on the basis of their land being re-zoned in the future as either residential or industrial.

Summary of submissions

43. As outlined above, our clients seek that that their land should not be subject to the Direction.

44. Our clients' land should have the potential be zoned in the future as residential and at the very least industrial.

Date: 9 May 2013

Name: Hedges Bhatti Solicitors

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