



20 May 2013

Proposed Planning Policy - Canberra Airport
Department of Planning and Infrastructure
PO Box 5474
Wollongong NSW 2520

Our Reference
130871

To whom it may concern

Submission on Draft Ministerial Section 117 Direction "Development near Canberra Airport"

We are writing on behalf of Mr and Mrs Stoeckel who are landowners within the Yass Valley Council Local Government area. This is a submission on the proposal by the Minister for Planning and Infrastructure to make a direction ("Proposed Direction") under s.117 of the *Environment, Planning and Assessment Act 1979 (EP&A Act)*.

Proposed Direction

We have considered the information contained in an undated letter from the Department of Planning and Infrastructure, which was received by our client's on 26 April 2013, and purports to be a consultation letter.

We understand from that letter that the Proposed Direction will prevent land within and above the ANEF 20 contour being rezoned for the purpose of:

- a. residential accommodation;
- b. increased residential density; and
- c. childcare centres, educational establishments, health services facilities, respite day care centres, serviced apartments or other noise sensitive uses.

We also understand that your rationale for the Proposed Direction is to protect Canberra Airport's 24 hour curfew free passenger and freight operations, its ability to grow new aviation markets and its potential value as an 'overflow' airport to Sydney Airport.

We have also considered additional information in a letter from the Department dated 10 May 2013. We understand from that letter that the ANEF contours are developed by Canberra Airport (and not the Department), including the underlying assumptions upon which they are based (ie, the airport's anticipated flight numbers, aircraft type, number of movements, time of movements and other variables).

Background

Mr and Mrs Stoeckel own approximately 420 acres and are one of the larger affected landholders in the Yass Valley Council Local Government area. Their land, which is immediately to the north of Canberra airport, falls within the ANEF 20 contour on the map that was supplied with the first letter.

Our clients purchased this land in 1980, close to Canberra, recognising its potential for subdivision and for residential use and to fund their retirement.

Submission Summary

We submit that the Proposed Direction should not be made for the following reasons:

- The Proposed Direction does not conform with the current Australian Standard AS 2021 which permits residential use within ANEF20
- The Proposed Direction is unnecessary since existing planning policies and statutory controls with respect to rezoning applications near airports are sufficient.

20 May 2013

- The impacts of the Proposed Direction are not equitable as the interests of the affected NSW residents are subordinated to the interests of Canberra Airport and residents of the ACT.
- The Proposed Direction will have a significant adverse impact on affected landholders, including our clients.
- The consultation process **fails to provide independent objective information or canvass alternatives** and our clients have not been afforded natural justice.
- We are concerned that the Proposed Direction is a political decision and makes the proper use of the planning process superfluous.

The Proposed Direction does not conform with the current applicable Australian Standard AS 2021

The Australian Standard AS 2021 considers residential development to be appropriate in areas within the ANEF 20 contour, which is where our client's land is situated. Our clients have not been provided with any information about why AS 2021 should not continue to apply to their land or the planning need for a Proposed Direction which excludes residential development within the ANEF 20 contour.

We understand that a formal review of AS 2021 is being undertaken to determine whether the standard is still appropriate, including whether it is the right measure to represent problems with airport noise. Meanwhile, Standards Australia has confirmed that it intends to maintain the current status of the existing AS 2021. It is quite possible that the current AS 2021 covering residential land will continue in its current form, as it is already one of the strictest noise standards in the world¹¹. Moreover, as noted below, there is no detailed justification for why residential development is not appropriate in the ANEF 20 contour. In this regard, the Proposed Direction is presumptive and, by seeking to make it now, is prejudicial to the AS2021 review currently underway.

The Proposed Direction is unnecessary since existing planning polices and statutory controls with respect to rezoning applications near airports are sufficient

There is no planning rationale or justification for the Proposed Direction. Direction 3.5 ("Development Near Licensed Aerodromes") applies to all land in NSW in the vicinity of a licensed aerodrome, including our client's land, and permits rezoning for residential purposes up to the ANEF 25 contour consistent with the current Australian Standard AS 2021. There is no sound planning basis to adopt a different standard in relation to land in NSW in the vicinity of Canberra Airport. We note that the Department came to similar conclusions in its *Planning Report: Draft Queanbeyan Local Environmental Plan (South Tralee) 2012* (September 2012) ("**Planning Report**"), in which it stated:

"Both Queanbeyan City Council and the Department reviewed the strategic context and exhibition drafts of the LEP to ensure that the draft Plan was consistent with existing NSW planning policies and statutory limitations on development in areas impacted upon by aircraft noise. However, the concern expressed by the Commonwealth in calling for a new set of statutory considerations for aircraft noise has not been justified in any detail, raising issue with any need to change the status of existing NSW aircraft noise planning polices" (at p.16 – emphasis added).

"The Commonwealth has used the NASAG process to argue that the existing accepted planning approach to aircraft noise (AS2021 and the accompanying ANEF mapping process) does not adequately capture all noise sensitive areas. The Commonwealth believes that additional aircraft noise metrics are needed to complement the ANEF system. Unfortunately the Commonwealth has not put forward any evidence to justify this position" (at p.20 – emphasis added).

¹¹ Department of Transport and Regional services 2000, Discussion Paper: Expanding ways to describe and Assess Noise
130871_015.docx v2

20 May 2013

"The NSW Government has consistently advised the Commonwealth that until evidence is provided to the contrary, it does not support the introduction of alternative noise metrics as a basis for land use planning. However, it does support their use as a basis for informing the public about potential aircraft noise impacts they may experience at the time of purchase of land/property. The Commonwealth had proposed the use of new alternative noise metrics to regulate land use near airports however these were largely discredited by industry and councils during the consultation process" (at p.21 – emphasis added).

There is no information in the first letter from the Department that makes any case or provides any detail for the proposed change to NSW planning policies and controls contained in the Proposed Direction, except for protecting the interests of Canberra Airport.

Further, existing planning controls allow rezoning applications around airports in NSW, including rezoning for residential purposes up to the ANEF 25 to be assessed on their merits. Such a process allows the positions of all stakeholders to be taken into account at the time the rezoning application is made, including the position of the Canberra Airport. This adequately facilitates flexibility in land use planning and enables land use to adapt to demand, and meets the objectives of the EP&A Act. It also recognises changes and improvements in building design and construction and the ability for such improvements to provide new development opportunities. The adoption of the Proposed Direction, without any detailed justification as to its need, will in effect sterilise the potential land uses of our client's land.

If Canberra Airport considers this land to be integral to its operation then it is open to Canberra Airport, like any other person or business, to make an offer to purchase the land it needs on commercial terms. Aviation interests paying for land that they consider likely to be polluted by noise from their operations would be consistent with the "polluter pays" principle, and provides an incentive for airlines to invest in modern quieter aircraft.

We also note for the sake of completeness that a more flexible approach than the Proposed Direction is contained in Direction 5.8, which applies to the proposed second Sydney airport site at Badgerys Creek. This Direction allows planning proposals to be assessed on their merits having regard to the capacity of the development to hinder the potential for development of a Second Sydney Airport.

The impacts of the Proposed Direction are not equitable as the interests of the affected NSW residents are subordinated to the interests of Canberra Airport and residents of the ACT

In this regard, the Proposed Direction creates a situation that does not exist anywhere else in NSW. It is clear that the principal beneficiaries of this Proposed Direction are Canberra Airport (a private profit making commercial enterprise), and ACT residents. This is demonstrated by the fact that the land immediately adjacent to the Canberra Airport runway and which is owned by the Airport is developed for a broad range of uses – including a childcare and medical centre, both specific developments proposed to be prohibited by the Proposed Direction. The Canberra Airport Master Plan 2009 also reveals that the Airport plans to build a hotel/motel adjacent to the Airport. It is therefore questionable to what respect the Proposed Direction is in the interests of residents of NSW.

The stated rationale for the Proposed Direction, which we understand is to protect the future interests of Canberra Airport, is questionable as well as optimistic. First, we understand that while the ANEF contours have been agreed to by Airservices Australia on the basis of technical accuracy, there has been no independent review of the underlying assumptions of flight times, aircraft types and numbers of flights being forecast. Small changes to model inputs can change results significantly². And that is notwithstanding the previous point on whether the ANEF noise contour is the right concept for planning decisions about aircraft noise. Secondly, we understand that a Joint Study was released in March 2012

² In a submission by Access Economics they state, "For example, changing a daily flight from a MD80 aircraft at 6:50am to a new-generation B737 at 7:10am can change the ANRF contours significantly.....like any complex computer model the inputs can be adjusted to achieve a desired result" p2 in Appendix A of Submission on *Safeguards for airports and communities around them*, The Village Building Company, Canberra, July 2009.
130871_015.docx v2

20 May 2013

by a Steering Committee that included NSW and Commonwealth Government officials. That Joint Study concluded that Canberra Airport is too remote from Sydney to serve as a practical second airport. Thirdly, we understand that the Department also considers that the projections of growth of Canberra Airport are optimistic (see p.18 of the Planning Report).

Further, the existing flight corridors largely protect most of the ACT from aircraft noise, which places an inequitable burden on NSW residents, including our clients. Given that Canberra Airport principally exists to service the needs of the Canberra community, it would be appropriate that the impacts of that development are contained within the ACT boundaries as far as possible. This would enable the ACT Government, and not the NSW Government, to pursue the best interests of the people of the ACT.

The Proposed Direction will have a significant adverse impact on affected landholders, including our clients

We understand that the Department is not offering compensation to affected landholders, notwithstanding that the value of our clients land will be significantly reduced if the Proposed Direction is made. The ultimate best use of our client's land is for residential. The land to which this Proposed Direction is to apply is close to Queanbeyan and Canberra, a region of solid population growth. The area also has one of the highest rates of housing demand. It is in the region's social and economic interests to intensify residential occupation of rural land. This has been recognised by the region's Local Councils. For example, in August 2012 Yass Valley Council endorsed implementing smaller minimum lot sizes for rural land combined with the principle of averaging. We understand that the Minister for Primary Industry and the Minister for Planning and Infrastructure support this proposal subject to following appropriate processes. The proposed change was to be achieved through an amendment to the Yass Valley Local Environmental Plan.

The consultation process fails to provide independent objective information or canvass alternatives and our clients have not been afforded natural justice

Further frustrating our clients is the fact that, in seeking submissions on the Proposed Direction, the Department has not provided sufficient information to enable them to assess its need. As noted above, there is no information about why the existing planning controls or policies are inadequate. Moreover, there is no information about the economic or planning benefits that the Proposed Direction is intended to achieve or whether the interests of Canberra Airport are the same as NSW's interests. There is also no information or consideration on the merits of reasonable alternatives. In this regard, our clients have not been provided with sufficient information to make a meaningful submission even though our client's interests will be significantly impacted.

Moreover, proper and meaningful consultation is also important in this case where it appears that the Minister is to rely on data and maps produced by Canberra Airport, the principal beneficiary of the proposal, without independent objective assessment, verification or public analysis of that data. Our clients consider that more inclusive consultation is required so that the Proposed Direction is fully assessed and that the ends of natural justice are properly served.

There is also no information available to suggest that, in considering the merits of making the Proposed Direction, the Department intends to consider alternative options, including not making the Proposed Direction. For example, one seemingly reasonable alternative is for Airservices Australia to direct the proposed northern flight path over the adjacent ACT Nature Reserve rather than over private property. An essential component of considering whether an action advances the objectives of the EP&A Act is considering whether the same planning outcome may be achieved by alternative means.

20 May 2013

We are concerned that the Proposed Direction is a political decision, rather than a planning one

The Proposed Direction fails to comply with existing noise standards, is inequitable, as it seeks to primarily protect interests inside the ACT at the expense of residents of NSW, is premature in that the premise that there will be a future noise problem relies on growth forecasts prepared by the Airport's owner and considered optimistic by your own Department, and even if the purported problem were to arise, viable alternatives to solving the problem have not even been considered.

The Direction also constitutes poor policy because it ignores the 'polluter pays' principle: land owners who do not materially benefit from the Airport are expected to wear an additional burden with restrictions on possible future land sub-division for the Airport's gain.

The lack of any valid grounds for the Proposed Direction can only logically mean that the decision is politically driven and a direct response to interests in the ACT rather than those of NSW. We do not believe that the Direction follows the principles of the current White Paper for the new NSW planning process.

We submit, for the reasons outlined above, that the Proposed Direction should not be made.

Yours faithfully
BRADLEY ALLEN LOVE



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