

Submission
No 33

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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The Director
Standing Committee on State Development
Legislative Council
Parliament House, Macquarie Street
SYDNEY, NEW SOUTH WALES, 2000



12 February 2009

Dear Sir or Madam,

Re: Inquiry into the NSW Planning Framework

The Village Building Co. (VBC) is the registered proprietor of Tralee and a proponent for the development of South Jerrabomberra to the south of Canberra Airport. Our comments relate to Term of reference 1(f), regarding Regulation of land use on or adjacent to airports.

Since 2000, Canberra Airport has manipulated input data to create successive Australian Noise Exposure Forecast (ANEF) contours in order to effect the sterilisation of large tracts of land from residential development. This has culminated with the endorsement of the Practical Ultimate Capacity ANEF for Canberra Airport by Airservices Australia in mid 2008. The Practical Ultimate Capacity ANEF has not yet been included in an approved Master Plan, although it was included in the rejected 2008 Draft Master Plan for Canberra Airport.

VBC is supportive of the continuation of the Section 117(2) Direction 3.5 *Development near licensed aerodromes* which applies Australian Standard 2021-2000 (AS2021) and we are supportive of its continued application to greenfield land areas.

VBC strongly believes that an increase in the rigor of the assessment and endorsement of proposed ANEFs is certainly required. This will enable greater reliance to be placed on the ANEF because it will be uniform in the way that it applies across the State, rather than being subject to perversion by airports for commercial gain.

The ANEF System

The ANEF System is the most strict land use planning tool for areas in the vicinity of airports in the world. As a land use planning system, it is unsurpassed. It provides certainty to airports, the public, and planning authorities and provides confidence to industry to invest in the infrastructure required for development.

The ANEF System was not however designed for describing the effects of aircraft noise to a layperson. This issue was considered at length in the *Expanding Ways* paper produced by the Department of Transport and Regional Services as it was then called. This paper considered metrics in addition to the ANEF for describing the effects of aircraft noise, whilst retaining the ANEF system as a land use planning system. Recently, endorsed Master Plans have included plans that use these additional metrics to assist the lay person to understand the impacts of aircraft noise. The continued use of these metrics seems appropriate.

Recent federal government initiatives, such as WebTrak, have been introduced to provide information about aircraft movements, including noise levels at monitoring stations, in a format understandable by the lay person.

ANEFs and greenfield areas

Airservices Australia's policy document "*The Australian Noise Exposure Forecast System and Associated Land Use Compatibility Advice for Areas in the Vicinity of Airport*" states that, "*it is considered that the public interest is best protected by ensuring that the long-term viability of the aerodrome is preserved wherever possible by planning in accordance with the guidance material contained in this document. The land-use recommendations in Appendix B are most readily applicable to new development on undeveloped land around aerodromes.*" This document specifies that the ANEF system is most appropriate for dealing with greenfield development sites and was designed for this purpose. No change should be made to the system in this regard.

Badgeries Creek is occasionally raised as an example for adopting the 15 ANEC as the limit for residential development in greenfield areas. Dr Rob Bullen of Wilkinson Murray was involved in the assessment of aircraft noise at Badgeries Creek. He advises that the 15 ANEC was used to assess population projections but was never considered as a proposed restriction for residential development.

The impact of aircraft noise in greenfield areas will be similar to existing developed areas. Background noise in greenfield areas will increase from rural levels to urban levels as soon as development commences.

Improving the ANEF endorsement process

Improving the ANEF endorsement process would improve the application of the ANEF system to land use planning. The serious impact of an ANEF on surrounding land use planning necessitates the full and independent examination of the underlying assumptions utilised in the development of ANEF contours. As it currently stands the review of the technical data input for the creation of ANEF contours is superficial at best. This gives airports a carte blanche to set either inadequate or excessive controls on the development that occurs in areas outside the airport lease.

According to acoustics expert, Dr Rob Bullen, "*land use planning using AS2021 depends on the production of accurate and reliable ANEF charts. It is submitted that the current process for the production and approval of ANEF charts for airports should be amended, because too much of the input into the chart is at the discretion of the Airport.*" (Wilkinson Murray, June 2008) Airports are in a position to manipulate the ANEF process in order to achieve their commercial interests in relation to land use planning in the area irrespective of broader public policy concerns.

In the case of Canberra Airport, airport management have chosen to produce an ANEF based on an Ultimate Capacity scenario, with ludicrously high flight numbers flown by older, noisier planes on unapproved flight paths, far exceeding any realistic expectation of development at Canberra Airport. This has resulted in the production of inordinately large noise contours which have no logical reference to current actual noise occurrences and demonstrates that airports are achieving planning control extending far beyond the airport boundary.

VBC challenged Airservices Australia endorsement process in the Federal Court, where they confirmed their role was not to check the validity of the underlying assumptions. *“40 Kenneth Owen, the senior environment specialist of Airservices’ Environment Branch, has responsibility for overseeing and undertaking the review of ANEFs for technical accuracy. ... 41 ... He said that in performing this function, his practice of determining whether an ANEF may be endorsed under the s 16 direction is not to assess any of the data in a qualitative way or to seek to determine the likelihood of the assumptions behind the relevant data actually occurring. Nor does he undertake an audit of the business plan of the airport operator which stands behind the assumptions used in a draft ANEF application.”* (Federal Court Ruling – 15 August 2007)

VBC has made a submission to the Commonwealth Government in the development of a National Aviation Policy regarding the need for greater rigour in the assessment and endorsement of ANEFs. Additionally, VBC has made submissions on the 2008 Canberra Airport Preliminary Draft Master Plan, and the 2007 Practical Ultimate Capacity ANEF for Canberra Airport. These submissions contain reports from a number of expert consultants which indicate the assumptions behind the newly endorsed ANEF are unachievable.

Currently, the Commonwealth legislation relation to when an ANEF comes into force is unclear. It is being interpreted that an ANEF is in operation following the endorsement by Airservices Australia. However, the Preliminary Draft Master Plan that contains underlying assumptions for this ANEF was not approved by the Federal Minister. Dr Rob Bullen from Wilkinson Murray recommends that *“endorsement of a Draft ANEF by Airservices Australia should be based on the principles as currently applied, but should not involve any component of consultation. After endorsement, the “endorsed Draft ANEF” should be regarded as having been checked as accurate, given the input assumptions, but should NOT yet be regarded as the official ANEF for the relevant airport, and should have no status in planning decisions. Consultation with respect to the Master Plan should include comments on the ANEF and its underlying assumptions. Response to these comments should be presented with a final Draft Master Plan to the Minister. If comments have required changes to the Draft Master Plan, these changes should be reflected in the Draft ANEF, which would then need to be re-endorsed by Airservices Australia. Finally, the Draft Master Plan, including the endorsed Draft ANEF, should be presented to the Minister. The Department of Transport would then fully evaluate the proposed Plan, and may approve or reject it. If rejected, the accompanying Draft ANEF would remain a draft only, and would not come into force for planning purposes until the Master Plan is approved.”* (Wilkinson Murray, 2009)

Public Consultation

Although the Minister produced guidelines on Public Consultation in December 2005 requiring Airports to engage in more rigorous consultation processes, we have seen no evidence of this in the case of Canberra Airport. VBC has made many submissions to Airservices Australia and Canberra Airport and received extremely limited response from either organisation. Although required by the Guidelines to demonstrate the consideration of public comment, there has been no evidence that VBC’s submission has in any way been considered.

Canberra Airport does have an Airport Consultation Committee. Participation is by invitation only and VBC has been deprived participation. Canberra Airport control the agendas and control the meeting, so effective public consultation is limited.

In November 2008, the Federal Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon. Anthony Albanese, rejected the Canberra Airport's 2008 Preliminary Draft Master Plan. One of the reasons for the rejection was "*matters raised during public consultation have not been adequately addressed by Canberra Airport.*" Furthermore, in the Aviation Green Paper released in December 2008, concerns were raised about the effectiveness of the informal community consultation process currently in place.

VBC believes that effective public consultation, including making public submissions freely available, and requiring the airport to respond to the issues raised in the submissions made will ensure lead to more robust and transparent outcomes. Such changes would ensure that airports and their proposals are treated in a similar manner to that used for Major Projects and Environmental Assessments in NSW.

Avoiding system collapse

Whilst VBC strongly supports the continued use of the ANEF system and the Australian Standard as the land use planning control around airports. We are concerned that the consistency of ANEFs developed for the land use planning systems now faces a collapse primarily due to the failure of Airservices Australia to adequately check airport produced ANEFs.

This view was also expressed by the then NSW Minister of Planning, Frank Sartor, when on 11 July 2007, he wrote to the then Federal Minister for Transport, Mark Vaile detailing his concerns about the current system. In this letter former Minister Sartor stated "*given my concerns about the deficiencies in the process under which the ANEF for Canberra Airport has been developed, as well as the lack of testing of what appear to be unrealistic assumptions that underpin the ANEF, I have strong concerns as to the suitability of continuing with the section 117 Direction in its current form.*" Note: ANEFs apply to land use planning by virtue of Ministerial Direction 3.5 made under s117 of the *Environment Planning and Assessment Act 1979*.

An airport Master Plan identifies the predictions and growth aspirations of airport developers, which become the basis for the ANEF contours. In the rejection of the Canberra Airport's 2008 Preliminary Master Plan, the Hon. Anthony Albanese stated that Canberra Airport "did not provide an adequate level of detail in relation to land use planning and does not clearly establish the strategic direction for the economic and efficient use of the airport." (Press release 21/11/08)

Despite the Minister's stated concerns about a clear lack of information and evidence to support the Canberra Airport's wild growth predictions, Airservices Australia had no concerns about endorsing an ANEF based upon these fanciful flight figures.

On 10 February 2009, Canberra Airport released an amended draft Master Plan, which they purported responds to the concerns expressed by the Hon. Minister Albanese in his rejection of the previous draft. The amended draft however makes no changes to its assumptions and instead intensifies its attack on the NSW Government, with comments like "*despite ongoing consultation, it is disappointing to note that the NSW Government and Queanbeyan City Council appear to be committed to developing land under Canberra Airport flight paths for residential development, potentially impacting on the future amenity of residents across the region*" (Draft Master Plan 2009,

page 37) and “it would be incongruous and perhaps even negligent for the NSW Government to approve residential development in the High Noise Corridor” (Draft Master Plan 2009, page 169-170).

Recommendations

VBC offers the following suggestions in relation to planning around Airports in NSW:

- 1) The NSW Government to urge the Federal Government, through the Council of Australian Governments, to change the legislation relating to endorsement of Australian Noise Exposure Forecasts (ANEFs) for regulated airports. The legislative changes required are:
 - a. A regulated airport must have an ANEF that is based on flight projections 20 years into the future.
 - b. Airservices Australia must conduct a thorough and rigorous review of all information relating to the Airport produced ANEF, including the assumptions on the number of flights.
 - c. Airservices Australia’s review must include a public consultation period and result of review be made public upon finalisation.
- 2) A more robust alternative to Recommendation 1 is for the Federal Government to change the legislation such that Airservices Australia becomes the agency responsible for the production of ANEF contours for all Regulated Airports in Australia.
This would ensure a consistent approach is applied to all airports in Australia, and reduce the potential for a rogue operator to make wildly ambitious growth assumptions without justification.
- 3) The NSW Government to campaign the Federal Government, through the Council of Australian Governments, to change the legislation so that an ANEF does not have any official status until incorporated into an Approved Master Plan.
- 4) The Ministerial Guideline 3.5 be amended so that the Minister of Planning has the ability to direct the Department of Planning to prepare a “land use planning ANEF” where the Minister believes that the currently endorsed ANEF for a regulated airport is inappropriately prepared. Additionally, this power should include the preparation of an ANEF for unregulated airports (eg. Regional or military airports where an ANEF is not required by Federal legislation)
- 5) The Ministerial Guideline 3.5 be amended so that the Minister of Planning has the ability to approve prohibited development within an ANEF, where the Minister of Planning can be reasonable satisfied that the ANEF is inappropriately developed or the predicted noise exposure is unlikely to occur.

Supporting Information

Please find enclosed the reports and correspondence which may assist the Inquiry in assessing the appropriateness of the current arrangements for regulating land use near airports:

1. Wilkinson Murray Consultants, *Response to Discussion Paper "Inquiry into the NSW Planning Framework*, January 2009
2. Federal Court of Australia, *Village Building Co Limited v Airservices Australia FCA 1242*, 15 August 2007
3. Wilkinson Murray Consultants, *Response to Issues Paper "Towards a National Aviation Policy Statement*, June 2008
4. Letter from (former) NSW Planning Minister, Frank Sartor to (former) Federal Minister for Transport Mark Vaile, 12 July 2007
5. Wilkinson Murray Consultants, *Recent Sub-divisions around Australian Airports*, November 2004.
6. Wilkinson Murray Consultants, *Areas around Australian Airports with Noise Exposure similar to "Tralee"*, January 2004.
7. VBC's submission on Canberra Airport's Preliminary Draft Master Plan 2008, including the supporting documentation, as follows:
 - VBC, *Submission on the Canberra Airport Preliminary Draft Master Plan 2008, Summary Report*, February 2008.
 - Map illustrating Canberra Airport's ANEF contour expansion since it was privatised.
 - Wilkinson Murray, *Comments on the 2008 Preliminary Draft Master Plan 2008*, February 2008
 - Ambidji Consulting, *Review of Canberra Airport: Preliminary Draft Master Plan 2008*, February 2008
 - VBC, *ANEF Public Consultation Submission on the Canberra Airport Practical Ultimate Capacity ANEF*, July 2007
 - VBC, *Submission on Canberra Airport's 2004 Preliminary Draft Master Plan*, July 2004

We would welcome any opportunity to present our submission to the Standing Committee on State Development and the Inquiry into the NSW Planning Framework and respond to any questions.

Yours Sincerely,



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