
STATE GOVERNMENT OF VICTORIA

Response to

COMMONWEALTH GOVERNMENT DISCUSSION PAPER

***SAFEGUARDS FOR AIRPORTS
AND THE
COMMUNITIES AROUND THEM (JULY 2009)***

September 2009

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1. Introduction

The Commonwealth Government's discussion paper *Safeguards for airports and the communities around them* (July 2009) seeks to further inform the proposed development of a national aviation policy, through a potential risk-based safeguarding policy framework.

The discussion paper notes that the issues and options outlined in the paper have the potential to apply to all aerodromes in Australia but that the risks are greater for airports in densely populated urban areas. However, the discussion paper appears to focus only on those civil aviation airports subject to the *Airports Act 1996* which, in Victoria's case, are located within metropolitan Melbourne. The discussion paper does not address future policy regarding development at Victorian Defence airports also currently used for civil aviation, namely Avalon Airport, RAAF Williams Point Cook and RAAF East Sale. This is a policy gap which should be addressed by the Commonwealth.

Victoria has made a submission to each of the five-yearly master plan reviews for its metropolitan airports (Melbourne, Essendon and Moorabbin) and various major development plan proposals for Melbourne Airport. These recent submissions have highlighted the importance of Melbourne and Moorabbin airports in particular, and the aviation industry more broadly, to the State's economy.

The State Government acknowledges that while Melbourne, Moorabbin and Essendon Airports are on Commonwealth land and provisions of the *Airports Act 1996* preclude the application of State planning controls, planning provisions for airport master plans and major development plans should align with and build upon relevant State land use and transport planning and development requirements. This includes a responsibility held by the Commonwealth, its regulators and where applicable, airport operators, to ensure that airport operations do not adversely impact upon the amenity of surrounding residential and other sensitive uses.

The Government's submissions to airport master and major development plans have noted the clear need for the Commonwealth, its regulators and airport operators to be cognisant of airport impacts on surrounding land uses and communities, just as airports ask State and local governments to be of their (Commonwealth) requirements.

2. Victorian planning and development context

The discussion paper outlines the need for an agreed, enhanced national framework for planning and development, to address the need for compatible new development around airports and under flight paths, and for the

protection of airspace (including) from tall structures and vegetation on and off airports.

Victoria's planning and building systems have established mechanisms for implementing the requirements of Commonwealth legislation and regulations for airports. The planning and building systems can only ever respond to the technical requirements of the relevant airspace protection legislation.

The *Victoria Planning Provisions*, through the Airport Environs Overlay and Design and Development Overlay tools, are a good example of the role that planning schemes can play in the management of land surrounding airports. Melbourne Airport, as the State's premier, curfew free airport and the country's second international gateway, is protected under State planning legislation, through the *Melbourne Airport Environs Strategy Plan* and Melbourne Airport Environs Overlay planning scheme provisions. These provisions provide certainty to land use and development around the airport.

Defence force activity ceased at Avalon Airport over two years ago. Consistent with other inactive Defence-owned sites in Victoria, State planning law has been applied to Avalon Airport, through the Greater Geelong Planning Scheme. The Victorian Government is continuing discussions with Avalon Airport and the Greater Geelong City Council regarding further refinement of the existing planning controls.

While sufficient mechanisms exist, Victoria considers that significant work needs to be done by the Commonwealth, the Civil Aviation Safety Authority and Airservices Australia, in consultation with State and local government to ensure that modelling and forecasts continue to be sufficiently robust, in order to justify the application of controls or buffer areas through the planning system to protect airports and residents, and other sensitive uses in the vicinity for airport operations.

Ultimate responsibility for the accuracy and modelling of the Australian Noise Exposure Forecast system, Obstacle Limitation Surfaces and Procedures for Air Navigation Systems Operations however, and the regulation and protection of airspace, rests with the Commonwealth. Victoria's position was re-stated at the recent discussion with the Commonwealth department representatives. The current Commonwealth legislative framework provides for the protection of airspace on and around airports by requiring notification and approval of applications in the vicinity of airports to the relevant federal authorities and airport operators.

2.1 Existing permit and notification requirements

The building system and the Building Code of Australia are best placed to implement the broad requirements of the *Airports (Protection of Airspace) Regulations 2006* as any class of proposed development likely to intrude on airspace (for example, as a result of building heights) requires a building permit and not necessarily a planning permit. Including the planning process as an intermediate point in the overall approvals process would be impractical, and add an unnecessary regulatory burden and time delays. This is not

supported by Victoria and would be inconsistent with the commitment to regulatory reform and removing duplication of process.

The Melbourne Airport Environs Overlay and the Airport Environs Overlay are applied in the relevant planning schemes. Individuals acquiring or developing property would be made aware of the requirements of these overlays as this information appears in the relevant planning schemes, and on planning certificates or a section 32 vendor statement under the *Sale of Land Act 1962*.

The existing Airport Environs Overlay in the *Victoria Planning Provisions* provides protection by outlining requirements which aim to ensure that the community is not exposed to any undue level of risk or amenity impacts from aircraft operations or noise. The State Government could review this overlay in the future to respond to the outcomes of the White Paper, to ensure best practice in this area is maintained.

Certain aviation uses are already subject to planning controls in the planning system through the *Victoria Planning Provisions*, for example:

- the requirement for a planning permit to be issued for development or use of land for a heliport or helipad.
- wind energy facilities, which require a responsible authority to consider the views of the Civil Aviation Safety Authority if within a 30 kilometre radius of an airfield and *the Policy and Planning Guidelines for Development of Wind Energy Facilities in Victoria, 2003*.

The Victorian Department of Planning and Community Development is working closely with the Australian Government and Civil Aviation Safety Authority in preparing appropriate safety measures for the design and siting of wind energy turbines.

3. Regional and new airports

The discussion paper does not deal with regional airports, focussing only on Commonwealth leased airports. The Victorian Government considers that federal policy and guidance needs to be applied consistently across all airports, including regional airports.

The discussion paper does not make any reference to new airports or airport extensions and the role that appropriate location and orientation plays in arranging flight path corridors to reduce potential for any future conflict with development. These matters should be addressed by Commonwealth airport policy.

4. Requirements on land outside of airports

The discussion paper outlines a number of potential options which could be considered in the context of a national policy framework. These options are discussed in the following section of the Victorian Government response.

4.1 Referrals

The discussion paper proposes mandatory referral of residential development applications within a defined buffer area by the States to the Commonwealth Transport Minister or Secretary for approval.

The Victorian Government does not support a blanket referral requirement for development applications as proposed in the discussion paper. This would be impractical and add to regulatory burden for the planning system and its users. The Government could support a control with a clear set of specific criteria or thresholds, similar to the Civil Aviation Safety Authority's existing approach which targets developments that may impact on aeronautical airspace. The criteria could include proposals which create visibility issues due to smoke or plumes, and electromagnetic interference to airport communications systems.

Discussion of any referral arrangements needs to be balanced and should involve the State and Commonwealth in the decision and approvals process.

4.2 Modelling

The discussion paper notes the limitations of existing modelling for aviation purposes. Victoria considers that substantial work needs to be done by the Commonwealth and airspace regulators on noise and airspace modelling and capacity measures. This should be in addition to the cooperative, all tiers of government, agencies and airport operators approach proposed in the discussion paper on the protection of airspace and principles for compatible development. The Victorian Government's submission to the *Moorabbin Airport Preliminary Draft Master Plan 2009* provides the State's most recent comment on these matters.

The Australian Noise Exposure Forecast system of noise contours does not provide a high degree of certainty over time, given the variation within the five-yearly master plan review period; nor does it indicate a gradation in noise impact which planning controls can meaningfully implement in planning schemes. The Airport Environment Overlay is therefore the best tool that can be applied to respond to noise impacts based on the best noise modelling available.

The State Government will continue to work with the Commonwealth, airport operators and local government to progress the Commonwealth's national aviation policy work in this area.

4.3 Boundaries

The discussion paper proposes a number of safeguarding requirements and guidelines including buffers on land outside airports and under flight paths, and Public Safety Zones for land adjacent to runways. A boundary or buffer, however physically defined or spatially represented, within which development may be prohibited to protect airspace will have an impact on State and local economies and their strategic planning.

This presents difficulties for the State Government for federally leased metropolitan airports in Victoria. An immediate issue requiring resolution would be the delineation of the boundary itself. As the discussion paper points out, the current contour system and modelling – the Australian Noise Exposure Forecast system, Obstacle Limitation Surface and Procedures for Air Navigation Systems Operations – either have several limitations or are 'notional'.

4.4 Public Safety Zones

The discussion paper proposes application of Public Safety Zones, buffers or additional restrictions on airspace. This would require extensive consultation with the State and local governments. The proposal could have significant implications for the achievement of Victoria's planning policy objectives, including Activity Centres policy, in terms of population density, and freight-related policy in terms of encouraging the location of manufacturing industries that generate significant volumes of freight to locate close to air, rail and road freight terminals. The matters of liability, risk and retrospective application would also need to be considered.

A 'unified risk-based' approach would also need to consider safety in its broader spatial context. The discussion paper's references to 'undue levels of risk' is vague and while it is referred to in the context of Public Safety Zones, should be more specific, as should the discussion of a 'reasonable level' of amenity. Discussion of Public Safety Zones does not fully recognise the subjective aspects of what is 'acceptable' or otherwise. The methodologies do not necessarily provide an 'objective basis'. The discussion paper notes the risk to public safety from an air crash can be quantified. The Commonwealth should be able to fund and develop modelling and contours to support this, and to implement any requirement through guidelines or other means.

The delineation of a Public Safety Zone encounters the same known limitations as the Australian Noise Exposure Forecast system. If the Commonwealth seeks to restrict development through the State's planning system, the Commonwealth needs to first ensure the accuracy of its modelling and data, and then provide it to the State so the State can implement the Commonwealth's requirements. The Commonwealth otherwise must continue to rely on existing mechanisms – that is, in the case of Victoria, 'best fit' Airport Environs Overlays and Design and Development Overlays and the building system.

Melbourne's airports are in built up urban areas and this must be recognised. These assets are not in greenfields where planning for buffers can occur in advance. The State Government welcomes discussion on possible advisory notes and planning guidelines. New and emerging guidance material is produced for the *Victoria Planning Provisions* as part of best practice implementation of the Victorian planning system.

5. CASA directions

The Victorian Government notes the Civil Aviation Safety Authority issued directions on 21 July 2009, effective immediately, for all airports operating under general aviation aerodrome procedures, including Moorabbin Airport. The directions limit the number of aircraft in a circuit for one controlled runway to six.

That these directions have been issued without consultation as a matter of urgency regarding aviation safety is noted, although it is also noted that matters contained in those directions also reflect issues that are raised in the discussion paper. While Victoria welcomes such legal directions as a mechanism for ensuring a higher degree of safety for urban airports, it would have been useful for these directions to be considered in terms of matters being addressed in the discussion paper.

The implications of these recent directions for these airports need to be further explored, including for flight training operations and schools, which provide economic benefits for the local economies. Victoria considers that a clear Commonwealth policy is required for urban airports.

6. Conclusion

The Victorian Government considers that the policy impacts and extent of delineation of any safeguarding measures need to be examined carefully and in consultation with the State, local government and the community.

The Commonwealth needs to fund and develop appropriate modelling systems to inform the development of appropriate safeguarding controls, before discussion on implementation of such controls can occur.

The Victorian Government is pleased to note that responses to the discussion paper will form the basis of ongoing dialogue for progression of the initiatives outlined in this discussion paper. The Government also notes that dialogue is already occurring between the Commonwealth department and stakeholders, including the relevant State Government departments, and welcomes further opportunities for engagement on these and related matters.