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Mr Michael Taylor
Department of Infrastructure, Transport,
Regional Development and Local Government
111 Alinga Street
CANBERRA, ACT 2600



To Mr Taylor,

Re: Aviation Green Paper

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 land use planning in areas subject to aircraft noise.

Since 2000, Canberra Airport has manipulated input data to create progressively larger 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, following a Federal Court action brought by VBC against Airservices Australia. 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 and the recently released 2009 Preliminary Draft Master Plan.

VBC is supportive of the development and implementation of a National Aviation Policy. The policy must include the preservation of Australian Standard 2021-2000 (AS2021) and its applicability to greenfield land developments. VBC strongly believes that a more rigorous assessment and endorsement process for 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 Australia, rather than being subject to perversion by airport lessees for commercial gain.

Within the National Aviation Policy Green Paper, two distinct issues are identified relating to aircraft noise, which can be easily confused and in some cases their use can be manipulated by airport lessees: the forecasting of future noise contours for informing planning authorities; and the provision of noise information to the wider community. These two issues can not be addressed through a single system, thus separate tools need to be utilised to provide information for each issue. It is important to recognise that the tools used to address one issue can not be directly translated to address the other issue. The *Airports Act* requires the development of ANEF contours for a regulated Airport, and these contours are adopted by all States and Territories as the relevant guidance for land use planning strategies around these Airports.

The ANEF System

The ANEF system is the most stringent 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 airport lessees, 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.

As the Green Paper acknowledges, new noise information frameworks need to be developed “to ensure information on noise exposure patterns is readily available in a form that is easily understood by a broad audience” (page 196). This however does not necessitate the removal or changing of the current ANEF system, nor its role in relation to providing guidance in the land use planning decision making processes.

Application of ANEF to greenfield developments

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 often 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, and 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 any development commences.

Improving the ANEF endorsement process

Improving the 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 input data 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 flight paths that will never be approved, 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 Airservices Australia 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)

In the recently released 2009 Preliminary Draft Master Plan, the Canberra Airport optimistically indicates that the practical ultimate capacity will not be reached until between 2050 and 2060. The attached reports by expert consultants indicate that the flight numbers upon which the Canberra Airport Practical Ultimate Capacity ANEF is based on will never be reached. Airservices Australia endorsement of an ANEF produced for such a long range time horizon must be considered highly inappropriate, given the high level of uncertainty about all the input data used in its preparation. The *Airports Act* specifies a planning period of 20 years for a Master Plan; therefore it appears inconsistent to allow the preparation of an ANEF for any period greater than 20 years. The Airservices Australia guidelines for checking ANEFs need to be revised and strengthened to require that the ANEF endorsement process requires a thorough assessment of the underlying assumptions used in the contour development.

VBC has made submissions on the 2008 Canberra Airport Preliminary Draft Master Plan, and the 2007 Practical Ultimate Capacity ANEF for Canberra Airport, which contain reports from a number of leading aviation and acoustic expert consultants that indicates the assumptions behind Practical Ultimate Capacity ANEF are unachievable. To date, VBC has received no reply from the Canberra Airport or Airservices Australia to acknowledge the receipt of these submissions or indicate that these submissions have been considered in any serious way.

Currently, the Commonwealth legislation relating to when an ANEF comes into force is unclear. State and Local Governments currently assume that an ANEF becomes operational upon the endorsement by Airservices Australia. However, the Preliminary Draft Master Plan that contains the underlying assumptions for this ANEF has not yet approved by the Federal Minister. In an appeal to the full bench of the Federal Court, Justice Graham formed the opinion that *“subject to paragraph (4) of Direction No. 12 of the New South Wales Minister for Planning’s s 117(2) Direction of 30*

September 2005, it was not open to the Queanbeyan City Council to propose the rezoning of any parts of Tralee which were located between contours 25 and 30 on any Australian Noise Exposure Forecast for Canberra International Airport, endorsed by AA (Airservices Australia), as completed by paragraph (x) of the Schedule to the Ministerial Determination of 3 May 1999, for residential purposes” (Paragraph 177 of Judgement ACD 37 of 2007) As a result, an ANEF becomes fully operational in influencing off-airport land use planning decisions as soon as it is endorsed by Airservices Australia, despite the fact that no assessment or validation of the underlying assumptions has been conducted.

Assuming that the current inadequate procedures of Airservices Australia continues, Dr Rob Bullen recommends that “After endorsement [by Airservices Australia], 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 (ref 2))

Potential Alterations to the ANEF System?

The National Aviation Green Paper indicates that “[n]oise complaints are no longer limited to those living close to major airports. Many residents tens of kilometres from airports are disturbed by aircraft noise.” (page 19) Noise complaints come from virtually every suburb in every Australian city, it would therefore be inappropriate to modify a system developed for land use planning purposes, purely based upon a pattern of noise complaints at a specific period in time, when complaints can come from such a wide area and distance.

Furthermore, the Green Paper comments that “[w]hile Australian Standard 2021 provides guidance for construction standards and building zones in the vicinity of airports, there is no national mandate to prevent councils and state governments from locating noise-sensitive developments ... near airports, or under flight paths.” (page 191) Dr Rob Bullen comments that “[i]n my experience the recommendations of AS 2021 are effectively taken up in all relevant planning instruments throughout Australia, although in practice these instruments are not always followed due to local considerations. ... However, I would have thought it may be difficult to allow the Commonwealth power to override State planning decisions on non-Commonwealth owned property, and if it were possible there would be no guarantee that local considerations would not again influence the Commonwealth’s decisions in specific cases.” (Wilkinson Murray, 2009 (ref 1))

Given that practically all jurisdictions within Australia have adopted AS 2021 to control development around major airports, it is puzzling that the Green Paper suggests that the Council of Australian Governments and other forums consider implementing a national land use planning regime. Dr Rob Bullen suggests that “[i]f the intention is that this regime would involve implementation of the recommendations of AS 2021, I suggest this would be relatively straightforward, and is effectively in place now, although enforcement may be a relevant issue.

However if the intention is to formulate a new set of guidelines, I believe this is both unwarranted and dangerous, for the following reasons.

- *There is good evidence to support the guidelines in AS 2021, and in particular the 20 ANEF cut-off for areas that are “acceptable” for residential development. This value represents the point where aircraft noise becomes only one of a number of issues of importance for residents, and hence should be considered in a planning context along with these other issues in determining planning policy, not as a “killer” issue requiring exclusion.*
- *I know of no basis on which new guidelines could be formulated. There is no alternative measure of noise exposure that would give a better indication of residents’ reaction to aircraft noise. A regime that explicitly allowed for “local factors” in decision-making runs the risk of manipulation and abuse by local interests – developers, airports or others – and would not deliver the desired outcomes of uniformity and transparency.” (Wilkinson Murray, 2009 (ref 1))*

Review of Submissions on Issues Paper

VBC has reviewed all public submissions received by the Department of Infrastructure, Transport, Regional Development and Local Government on the *Towards a National Aviation Policy – Issues Paper 2008* to gauge the level of support for the retention of the ANEF system. Nearly 80% of the public submissions made no reference to the ANEF or off-airport land use planning issues; therefore there does not appear to be significant community concern with the current systems to warrant changes. The overwhelming majority of the Government/Government Department submissions that referred to the ANEF system were supportive of its retention; whilst of the Airport and Airline submissions that commented on the ANEF, around 50% were supportive of the current approach. Attached to this submission is a table of the public submissions and their comments in relation to the ANEF and off-airport land use planning controls.

This information highlights that the ANEF system is not fundamentally flawed, as portrayed by Canberra Airport, but an appropriate and effective system that is adopted by the vast majority of planning authorities throughout Australia. Furthermore, the introduction of new tools to articulate information about aircraft noise to the wider community has not resulted in a viable alternative land use planning controls.

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. This is primarily due to the failure of Airservices Australia to adequately check ANEFs produced by airport lessees, who are private development companies.

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*. Minister Sartor’s concern is reflected in the current NSW Legislative Council Standing Committee on State Development’s Inquiry into

the NSW Planning Framework. One of the items identified in the terms of reference is *“State and local governments have no role in setting the noise contours (Australian Noise Exposure Forecast – ANEF) which are used as the basis for prohibiting noise sensitive types of land uses in areas likely to be affected by noise in the future. These contours are often set by the airport operator (using predictions based on the maximum aircraft movements) and approved by the Commonwealth.”* (Discussion Paper, page 10)

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 Draft Master Plan, Minister 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.”* (Media 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 preliminary draft Master Plan, which they purported responds to the concerns expressed by the Minister 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”* (Preliminary 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”* (Preliminary Draft Master Plan 2009, page 169-170). This is despite the NSW Government, through the Department of Planning applying the same standard, Ministerial Direction 3.5, as it would be applied elsewhere within the State and through similar legislation, across the entire nation! This is despite, *“[t]he Department of Planning is of the view that the growth projections in the Airport’s draft master plan are excessive. It projects that the airport will reach 282,000 aircraft movements by 2050, which is equivalent to the current flights at Sydney Airport and is three and a half times the 81,732 aircraft that currently fly to Canberra.”* (Queanbeyan Residential and Economic Strategy 2031 – Addendum Report, page 2-3)

Public Consultation

The National Aviation Green Paper discusses the issue of community and public consultation in detail. VBC supports the proposal that the Government requires the establishment of community consultation groups for major airports that have an independent chair and broad terms of reference.

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. There is currently an airport consultation committee at the Canberra Airport; however the participation is strictly controlled by airport management. VBC, as a land holder in the vicinity of the airport, has been deprived of participation, as have other land holders in the area. We are also aware that Canberra Airport strictly controls the agenda and the meetings, so effective public consultation is extremely limited.

To enable the broadest possible involvement of the community in this consultation, the Agenda and Minutes of community consultative committees should be made publicly available on the airport lessee's and the Commonwealth Department's websites.

Another important area that needs to be covered by the National Aviation Policy is that of the transparency of the public consultative periods relating to Master Plans and Major Development Plans for major airports. The *Airports Act* requires that a preliminary draft Master Plan go on public exhibition, the airport lessee have due regard to comments received and that this information must provide to the Federal Minister. The comments made during the public exhibition period are currently not made public, nor are the airport lessee's responses to these comments.

VBC has made many submissions to Airservices Australia and Canberra Airport and received extremely limited response from either Airservices Australia or Canberra Airport. Although required by the guidelines to demonstrate the consideration of public comment, there has been no evidence that VBC's submissions have in any way been considered. Furthermore, the rejection of the Canberra Airport's 2008 Draft Master Plan by the Minister Albanese was partly because "*matters raised during public consultation have not been adequately addressed by Canberra Airport.*" (Media Release 21/11/08)

To enhance the accountability of community consultative activities undertaken by airport lessee, the Government must require that the comments received during any public consultation period be made public, along with the Airport lessee's response to those comments.

Following the rejection of the Canberra Airport's 2008 Draft Master Plan, VBC wrote to Minister Albanese and the Secretary of the Department of Infrastructure, Transport, Regional Development and Local Government requesting a copy of the Draft Master Plan that was submitted by Canberra Airport to review this to see if of our comments had been considered. To date, this document has not been provided.

Flight Paths

Throughout Chapter 10, the Green Paper makes statements like "... *locating noise-sensitive developments like schools, hospitals and residences near airports, or under flight paths*" (page 191) and "... *under flight paths to avoid noise-sensitive developments being located in these areas*" (page 196). The definition of flight path provided in the Green Paper states "*areas of airspace that have been approved by governments around the world for use by commercial aviation, and are monitored by air traffic controllers.*" (page 201)

With this definition and the broad use of the term "flight path" throughout Chapter 10, this implies that development could be restricted or prohibited across most of Australia. Flight paths cross large parts of the metropolitan areas of capital cities, providing aircraft with the most direct and therefore environmentally efficient route to their destination. The majority of these flight paths are at high altitude and have no impact; therefore suggesting development should be restricted under flight paths in completely inappropriate.

Chapter 10 – Noise Impacts of the Green Paper should be revised so it is clearly expressed that the controls on "noise sensitive developments" only apply to the areas within defined ANEF contours and then in accordance with the Australian Standard AS 2021.

Recommendations

VBC offers the following recommendations in relation to off-airport land use planning and the control of noise impacts:

- 1) The Federal Government confirm its commitment to the retention of the existing Australian Noise Exposure Forecast (ANEF) system as the mechanism to guide land use planning decision making processes around regulated airports within Australia.
- 2) The Federal Government abolish the Airservices Australia endorsement of Australian Noise Exposure Forecasts (ANEFs) for regulated airports. Instead, the Federal Government should change the legislation such that an ANEF is a component of a Master Plan, specifying that:
 - a. A regulated airport must have an ANEF that is based on flight projections 20 years into the future.
 - b. The Department must conduct a thorough and rigorous assessment of all information relating to the airport lessee produced ANEF, including the assumptions on the number of flights and types of aircraft used. This may include seeking advice from Airservices Australia.
 - c. The Department's review of the Draft Master Plan, including the ANEF, must include a public consultation period and the result of the review be made public immediately upon finalisation. This public consultation period would be in addition to the current consultation period for the Preliminary Draft Master Plan.
- 3) The Federal Government change the legislation so that an ANEF does not have any official status until incorporated into an approved Master Plan.
- 4) In addition to the development of Community Consultative Committees with an Independent Chair and broad terms of reference, the Federal Government include in the legislation that the Agenda and Minutes of these committee meetings are to be made publicly available.
- 5) The Federal Government to require that an airport lessee make all comments received during any public consultation period publicly available, along with the Airport lessee's response to those comments.
- 6) In the preparation of the National Aviation Policy, the Department of Infrastructure, Transport, Regional Development and Local Government change reference to "noise sensitive development under flight paths" to more accurately reflect the need for State and local governments to control off-airport development in accordance with the endorsed ANEF contours and Australian Standard AS 2021.

Supporting Information

Please find enclosed the reports and correspondence which may assist the finalisation of the National Aviation Policy and assessing the appropriateness of the current arrangements for regulating noise impacts near airports:

1. Table prepared by VBC of the Public Submissions received on the *Towards a National Aviation Policy – Issues Paper April 2008*.
2. Wilkinson Murray Consultants, *Response to “National Aviation Policy Green Paper”, December 2008, January 2009*
3. Wilkinson Murray Consultants, *Response to Discussion Paper “Inquiry into the NSW Planning Framework”, January 2009*
4. Federal Court of Australia, *Village Building Co Limited v Airservices Australia FCA 1242, 15 August 2007*
5. NSW Department of Planning, *Review of Queanbeyan Residential and Economic Strategy 2031 – Addendum Report, December 2008*
6. Wilkinson Murray Consultants, *Response to Issues Paper ‘Towards a National Aviation Policy Statement, June 2008*
7. Letter from NSW Planning Minister, Frank Sartor to (former) Federal Minister for Transport Mark Vaile, 12 July 2007
8. NSW Parliament Legislative Council Sanding Committee on State Development, *Inquiry into the NSW Planning Framework – Discussion Paper, November 2008*
9. Wilkinson Murray Consultants, *Recent Sub-divisions around Australian Airports, November 2004.*
10. Wilkinson Murray Consultants, *Areas around Australian Airports with Noise Exposure similar to “Tralee”, January 2004.*
11. VBC Covering Letter to the Submission, *Towards a National Aviation Policy – Issues Paper April 2008, June 2008*
12. VBC’s submission on *Canberra Airport’s Preliminary Draft Master Plan 2008*, including the supporting documentations, 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*

If you have any queries or seek any clarification regarding the information contained in this submission or its attachment, please contact the undersigned.

Yours Sincerely,



Ken Ineson
General Manager
Special Projects and Feasibilities