

3 Airport Environs Overlay Provisions

Key Directions

- 3.1 That the purposes of the Airport Environs Overlay be amended to clarify the differing planning controls intended for Schedules 1 (AEO1) and 2 (AEO2).

The Report

The Steering Committee found that the operation of the Overlay provisions require clarification of policy intent in how they apply to the two Schedules. The original intent was to have two levels of planning control based on Australian Standard 2021. These planning controls would prohibit defined sensitive uses in Schedule 1 and enable a permit to be obtained for sensitive uses in Schedule 2. The current Overlay includes the following purpose:

"To limit the number of people residing in the area or likely to be subject to significant levels of aircraft noise".

As the Overlay purposes apply to both Schedules, a level of uncertainty has emerged in relation to how the purpose of limiting the number of people exposed to significant levels of aircraft noise should be applied to Schedule 2. The report considered the original intended controls for the Schedules (recommended by Melbourne Land Use Study Committee 1992). The original intention was to restrict uses within Schedule 1 which may limit airport operations, while sensitive uses could occur within Schedule 2 areas provided that noise attenuation measures be applied where appropriate.

In practice, the intention of having two levels of planning controls has been undermined by a reliance on the purpose of limiting the number of people residing within both Overlays. A number of decisions have been made by the Victorian Administrative Appeals Tribunal against permitting sensitive uses within Schedule 2 areas on the basis that it would be contrary to the Overlay purpose of limiting the number of people residing in noise affected areas.

Discussion

The principle of making a distinction in the purposes of the Airport Environs Overlay, as it applies to Schedule 1 and Schedule 2 would be based on sound planning policy. The recommendation of amending the purpose of the current Airport Environs Overlay would however extend well beyond the Melbourne Airport Environs areas, which have not been the subject of the detailed review (the Airport Environs Overlay affects 23 planning schemes).

Government Response

The Government supports an amendment to clarify the purposes of the Airport Environs Overlay, as it applies to Schedule 1 and Schedule 2. An amendment to the AEO would apply only to Melbourne Airport at this time.

Amendments to the Airport Environs Overlay, which impact on other airport environs, is beyond the scope of the Melbourne Airport Environs Strategy Plan. Nevertheless, the principle may be appropriate for lower order airports and should be considered as part of future reviews of the general Airport Environs Overlay provisions.

Actions

Government will undertake the following actions:

5. That a distinction in the purpose of the Overlay, as it applies to Schedule 1 and Schedule 2 be made in the case of Melbourne Airport.

4 Melbourne Airport Environs Overlay

Key Directions

- 4.1 That a separate Airport Environs Overlay be introduced for Melbourne Airport.

The Report

The report recognised that the amendments proposed to the general Airport Environs Overlay in the current Victoria Planning Provisions (VPP) would impact on planning policy on airport environs for all Victorian airports. The Melbourne Airport Environs Strategy discusses issues which are unique to the environs of Melbourne Airport. The development of appropriate planning control measures would be unduly constrained by the need to conform to the standard VPP Overlay. Incorporating specific provisions relating to Melbourne Airport in the standard Airport Environs Overlay would be inconsistent with the generic purpose of that Overlay. For these reasons a separate Melbourne Airport Environs Overlay is recommended, based broadly on the standard Airport Environs Overlay.

Discussion

The introduction of an additional overlay is generally not consistent with the general principles of VPP based planning schemes which seek to provide a consistent set of Statewide planning scheme controls and provisions. However, the establishment of a specific overlay related to the environs of Melbourne Airport is justified by the strategic importance of the airport. The development of a specific overlay would also enable the development of a transparent and user friendly set of planning controls.

Government Response

Managing aircraft noise issues within the Melbourne Airport environs has been the subject of on-going deliberations since the 1980s. The extent of investigations is considerable and the Ultimate Capacity ANEF for Melbourne Airport provides sound, conservative data on the noise impacts generated at the airport at its ultimate capacity in 2051. The amount of data for Melbourne Airport is more comprehensive and covers a longer forecast than that prepared for other airports. Importantly, Melbourne Airport is recognised as the major airport infrastructure for Victoria and South East Australia. Its role in the Victorian economy and its competitive advantages compared to other airports is paramount.

The proposal to introduce a Melbourne Airport Environs Overlay is supported.

Actions

Government will undertake the following actions:

6. An amendment will be made to the Victoria Planning Provisions to introduce a Melbourne Airport Environs Overlay. A Ministerial amendment will introduce new Overlay schedules.

5 'Deemed to Comply' Provisions

Key Directions

- 5.1 That the State Government formulate 'deemed to comply' construction standards as an alternative to full assessment of noise exposure and attenuation requirements.

The Report

The report considers that the provisions of Schedule 2 are not effective in requiring noise abatement measures being applied to sensitive land uses. The general Airport Environs Overlay enables the responsible authority and the airport operator as the referral authority, to place noise abatement requirements on defined uses which require a planning permit. However, Schedule 2 applies only to uses which require a permit subject to the underlying zone. Therefore, sensitive uses such as 'dwelling' located within a residential zone would not require a permit and therefore not be subject to the provisions of Schedule 2.

The Overlay Schedules are based on ANEF zones of Australian Standard 2021-2000. In considering those provisions, the Steering Committee concluded that all land uses deemed 'conditionally acceptable', should be subject to an assessment of the level of noise exposure and required noise attenuation measures. If the Overlay controls are to remain consistent with AS 2021-2000 then uses deemed 'conditionally acceptable' between the 20-25 ANEF (which falls within the area identified in Schedule 2), should be subject to acoustic assessment in accordance with the Standard.

The report recommends that a practical approach to noise attenuation measures for Schedule 2 be explored. The desirable level of noise attenuation depends on a range of factors including actual noise exposure and building construction materials. Traditional construction materials may achieve a noise reduction to accord with AS 2021-2000. The report therefore recommends the formulation of minimum development standards which, if met, would be 'deemed to comply' with the Australian Standard and not require further acoustic assessment.

Discussion

The concept of developing minimum construction standards for the purposes of noise attenuation has been raised for consideration by the Aviation Working Group of the Standing Committee on Transport. It is expected that this matter will be reported to the Australian Transport Council, Planning Officials Group and the Australia New Zealand Environment Council. If this initiative is supported the Commonwealth would have lead responsibility. A program for this initiative could be developed by the Aviation Working Group.

Government Response

The Government supports the initiative of exploring the merits of 'deemed to comply' construction standards as an alternative to full assessment of noise exposure and attenuation requirements. The efforts of Aviation Working Group on this initiative is supported.

Actions

Government will undertake the following actions:

7. The Minister write to the Commonwealth Minister for Transport and Regional Services requesting that the 'deemed to comply' initiative include consultation with and reporting to the Australian Transport Council, Planning Officials Group and the Australian New Zealand Environmental Council.

6 Referral Authority

Key Directions

- 6.1 That the 'referral authority' status of the Melbourne Airport lessee be replaced with a requirement to notify the lessee on planning applications.
- 6.2 That a set of prescriptive standards be used to guide the implementation of the Overlay provisions.

The Report

A referral authority is an organisation formally recognised under the *Planning and Environment Act 1987* (s. 55) and is given the opportunity to comment, and veto, planning applications that may impact on the activities of that organisation. Under the provisions of the initial Melbourne Airport Area Overlays in 1992, the referral authority was the Federal Airports Corporation, a wholly Commonwealth Government-owned enterprise. With the privatisation of the Melbourne Airport in 1997, the Commonwealth sold the long-term lease for the operation and management of the airport to Australia Pacific Airports (Melbourne) Pty Ltd. The current Airport Environs Overlay provides that for the purposes of applications being referred to the airport owner, the owner is the lessee of the Melbourne Airport in accordance with the *Commonwealth Airports Act 1996*.

The Steering Committee considered that operators of private airports have interests that go beyond those of many referral authorities. These interests include the commercial development of airport land, potentially in competition with similar commercial uses located within the Airport Overlay. It was considered that a potential conflict of interest could exist in the roles of the airport lessee as a private operator of a commercial portfolio, and as a referral authority for land uses within the Overlay environs, which includes commercial uses.

Most other referral authorities' interests are limited to their core business such as the provision of water, sewerage or major roads. In the case of the airport lessee, the report

emphasises that there is no suggestion of inappropriate action; rather it is a matter of perception and principle.

The report recognises that Australian Standard 2021-2000 provides the basis for implementing the airport overlay controls. In particular, the Australian Standard provides the guidance to assess planning permit applications. The interpretation and application of the Australian Standard can be carried out by the responsible authority and therefore the need for a referral authority is questioned.

The Steering Group considered the merits of preparing decision guidelines for the assessment of applications made under the overlay in the interests of providing clarity and certainty to both the airport lessee and permit applicants. The use of a local policy is thought to be the most suitable planning tool to introduce these decision guidelines. However, the preparation of local policies for the number of municipalities involved would require considerable time and resources. An alternative approach is the introduction of prescriptive standards, such as those developed by the airport lessee. Those standards have been in practice for some time and have withstood public scrutiny and review. The report recommends the use of these standards as part of the proposed Melbourne Airport Environs Overlay.

The prescriptive standards restrict subdivision for accommodation within Schedule 1, limits the number of dwellings per lot in Schedule 2, provides a minimum size for residential lots, and sets a maximum site coverage for residential lots involving two or more dwellings.

Discussion

The recommendation to replace the 'referral authority' status of the airport lessee with a requirement of responsible authorities to notify the lessee on relevant planning applications involves a change to the Victorian Planning Provision through a new overlay (the Melbourne Airport Environs Overlay). The details of instances where notification is required will be clarified.

Ensuring that Melbourne Airport operations are protected from incompatible land uses is a clear policy position of the Melbourne Metropolitan Strategy, *Melbourne 2030*. The Strategy aims to maintain the 24-hour curfew-free status of Melbourne Airport. It seeks to ensure that land-use decisions affecting airports are integrated and that appropriate land-use buffers are put in place.

The recommendation to restrict the subdivision of residential lots within Schedule 2 would require a change to each planning scheme. Each amendment should be prepared using a minimum lot area of 300 m² as a baseline then accommodate other considerations and include a complementary local policy.

Government Response

The Government endorses the principle of replacing the referral authority status of the airport lessee with a mandatory notification requirement.

The recommendations to limit subdivisions within Schedule 1 for accommodation purposes, and restricting the size of residential lots within Schedule 2 are supported. Applying the prescribed standards in Schedule 2, is also supported.

Actions

Government will undertake the following actions:

8. The replacement of the referral authority role of the airport lessee with a requirement to notify the lessee will be facilitated through the new Melbourne Airport Environs Overlay. The instances where notification is required will be resolved as part of the new overlay.
9. The additional subdivision controls, the need for a permit for a dwelling in Schedule 2, and the introduction of prescribed development standards will be facilitated through the new Melbourne Airport Environs Overlay.

7 Compensation

Key Direction

- 7.1 That compensation in relation to noise attenuation measures is further investigated following the adoption of the Strategy.
- 7.2 That compensation relating to 'injurious affection' or loss of development rights not be supported.

The Report

The report recognises earlier support for compensation in the case of noise attenuation treatment to bring existing properties into compliance with Australian Standards AS 2001-2000 and supports further investigation for this type of compensation. This suggestion was initially made by the Melbourne Airport Land Use Study Committee in 1992 and then supported by the Independent Panel in 1993.

The Steering Committee considered the matter of loss of amenity and property values occurring within the airport environs, caused by the operation of the airport. This type of impact is known as 'injurious affection' and in Victoria no compensation is payable for injurious affection. Similarly, the Commonwealth makes no provision for compensation for injurious affection (this matter has been the subject of Commonwealth enquiries: the reports of the House of Representatives Select Committee on Aircraft Noise [HORSCAN] and the report 'Falling on Deaf Ears'). It was noted that the Commonwealth does provide for noise amelioration programs for the Sydney and Adelaide airports, funded through a levy on aircraft landings.

The third type of compensation relates to loss of development rights through the imposition of planning controls. The Steering Committee noted that the *Planning and Environment Act 1987* does not provide compensation for loss of development rights and that such compensation for Melbourne Airport is not appropriate.

Discussion

The position of the Independent Panel of 1993 which supported compensation to facilitate noise attenuation treatment for affected properties is noted. Support for this compensation may require a State Government policy position. The noise amelioration program operated by the Commonwealth, in other States, could be considered for Melbourne Airport. While the Steering Committee did not specifically suggest that the applicability Commonwealth program be explored, enquiries to the Commonwealth could be made.

The concept of injurious affection has wide implications if the principle was applied to Melbourne Airport. It would have significant implications for the development of other public uses such as freeways and sewerage plants. It is considered to be outside the scope of the Melbourne Airport Strategy.

In relation to compensating for loss of development rights, the *Planning and Environment Act 1987* is clear where compensation can apply and it does not extend to the loss of development rights. The Act provides that compensation can be considered, particularly where land is reserved for a public purpose. The Act sets out the objectives for planning in Victoria and the planning framework. The Act does not provide inherent development rights. It should be noted that changes to planning controls often enhance development rights for property owners, providing windfall gains. In the case of the proposed controls for Melbourne Airport, the amendment would see additional controls in some instances within the Overlay and reduced controls through a smaller sized Overlay.

Government Response

The Government supports the recommendation to further investigate compensation to facilitate noise attenuation treatment. The Government agrees that compensation for injurious affection is outside the scope of the Melbourne Airport Strategy and that compensation for loss of development rights is inappropriate.

Actions

Government will undertake the following actions:

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| 10. Monitor the issue of compensation in relation to noise amelioration measures, particularly at the national level. |
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Approval and Implementation

The Melbourne Airport Environs Area Strategy Plan has been approved the Minister for Planning. It sets out proposed planning policy and other initiatives relating to the Melbourne Airport environs. The Strategy is required to be presented to both Houses of Parliament for approval by resolution.

It is proposed that the Minister will prepare revised planning controls, contained within the Victoria Planning Provisions.

Other initiatives for airport environs management, falling outside the planning system, require investigation and partnership with interested groups. The Minister, through the Department of Sustainability and Environment, will lead the work on further initiatives.