

Planning and Environment Act 1987

Melbourne Airport Environs Safeguarding Standing Advisory Committee

Referral 1: VCAT Call in Reference P1040/2019

Private helipad at 78 to 82 Freight Drive, Somerton

30 October 2020

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Report pursuant to section 151 of the Act

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Private helipad at 78 to 82 Freight Drive, Somerton

30 October 2020



Lester Townsend, Chair



Elizabeth Hui, Member

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Appendix A Document list

Appendix B Committee preferred version of the Permit

Glossary and abbreviations

The Act	<i>Planning and Environment Act 1987</i>
Airservices	Airservices Australia
APAM	Australia Pacific Airports (Melbourne)
ATC	Air traffic control
Council	Hume City Council
Helo	Helicopter
HLS	Helicopter landing site
LOA	Letter of agreement
VCAT	Victorian Civil and Administrative Tribunal
VHF	Very high frequency radio – 30 to 300 megahertz (MHz)

1 Overview

Summary	
The referral	Referral 1: VCAT Call in Reference P1040/2019
Common name	Private helipad at 78 to 82 Freight Drive, Somerton
Brief description	Construct a Helicopter Landing Site on a recently permitted Warehouse and Caretaker's House
Subject land	78 to 82 Freight Drive, Somerton
The Proponent	Metcalf Investments Pty Ltd
Responsible Authority	Hume City Council
Date of referral	19 April 2020 (received by Planning Panels Victoria 1 May 2020)
Directions Hearing	30 June 2020
Hearing	5 October 2020
Parties to the VCAT proceeding	<p>Hume City Council represented by Kate Piskuric of Harwood Andrews</p> <p>Airservices Australia represented by Sarah Porritt of Counsel, calling evidence in:</p> <ul style="list-style-type: none"> - Aviation from Blair Henderson of Airservices Australia <p>Australia Pacific Airports (Melbourne) Pty Ltd represented by Adrian Finanzio and Nicola Collingwood of Counsel instructed by Stephanie Mann of Minter Ellison, calling evidence in:</p> <ul style="list-style-type: none"> - Aviation from Matt Shepherd of To70 Aviation Australia - Planning from Stuart McGurn of Urbis <p>Metcalf Investments Pty Ltd represented by John Rantino and Charlie Wurm of Maddocks, calling evidence in:</p> <ul style="list-style-type: none"> - Aviation from Colin Weir of Flight Safety - Planning from John Glossop of Glossop Town Planning
Members	Lester Townsend (Chair) and Elizabeth Hui
Date of this report	30 October 2020

This matter relates to an objection to a private helipad. Australia Pacific Airports (Melbourne) Pty Ltd (APAM) and Airservices Australia objected to the grant of a permit.

Following consideration of the issues, in particular the statutory framework under which a permit is required, the objectors decided not to pursue an objection to the use of the land for a helicopter landing site.

The parties agreed that the permit as shown in Appendix B, with minor corrections was appropriate.

This is not an issue of the parties coming together in a compromise position – the proposal remains unchanged – but rather the objecting parties forming the view that:

- it was not possible to sustain their objection under the current statutory framework
- the impact of this specific proposal was manageable.

The broader issue of airport safeguarding relating to helicopter landing sites will be dealt with by the Committee as part of its Part B proceedings. It is worth noting that a permit is required for a helicopter landing site within 200 metres of a shipping channel, but not in proximity to the airport.

Recommendation

Based on the reasons set out in this Report, the Committee recommends:

- 1. The Minister for Planning recommend the Governor in Council issue amended planning permit P20352.01 for the Use and Development of a Trade Supplies Warehouse and Caretaker's House and Development of a Helicopter Landing Site in accordance with the Endorsed Plans subject to the permit conditions contained in Appendix B.**

2 Background

About this report

This is a report of the Melbourne Airport Environs Safeguarding Standing Advisory Committee. The Committee consists of Lester Townsend (Chair), Nick Wimbush (Deputy Chair), Elke Cummins, Peter Edwards and Elizabeth Hui.

The Terms of Reference for the Committee provide:

The Committee may meet and invite others to meet with it when there is a quorum of at least two members one of whom must be the Chair or the Deputy Chair.

The Committee conducted this matter with a quorum consisting of Lester Townsend (Chair) and Elizabeth Hui.

Background

In response to a request from Australia Pacific Airports (Melbourne) Pty Ltd, on 15 October 2019 the Minister for Planning called in proceeding P1040/2019 under Schedule 1 Clause 58(2)(a) of the *Victorian Civil and Administrative Tribunal Act 1998*.

In accordance with the Terms of Reference for the Melbourne Airport Environs Safeguarding Standing Advisory Committee, the Minister decided to refer this matter to the Committee for advice.

In the letter of referral, the Minister requested the Committee in providing its advice to:

... address the potential impact the proposed use and development would have on the ongoing operation of the Melbourne Airport and its environs.

The Committee was provided with the VCAT file.

Procedural matters

At the Directions Hearing Mr Rantino raised the issue of what ‘rules’ the matter would be considered under. The Committee advised that broadly speaking, the rules will be the current rules in terms of proceedings before VCAT with the addition of the specific matter the Minister for Planning requested the Committee provide advice on quoted above.

The Committee advised that this matter was not an opportunity to progress the separate and distinct task of the Committee, which is to review the safeguarding arrangements for the airport. The Committee considered that it would be inappropriate for this matter to morph into a broader discussion of what planning controls should be for the airport environs.

3 Planning issues

Is a permit required for use?

Clause 73.03 of the Hume Planning Scheme defines:

Helicopter landing site

Land used for the take-off and landing of a helicopter, with or without a permanent landing pad, but without permanent facilities for the assembly and distribution of goods or passengers.

The clause lists ‘Heliport’ without a definition and nests it under:

Transport terminal

Land used to assemble and distribute goods or passengers. It includes facilities to park and manoeuvre vehicles. ...

Clause 52.15-1 provides:

A permit is required to use or develop any land for a heliport or a helicopter landing site even if it is ancillary to another use on the land, unless the table to this Clause specifically states that a permit is not required.

The table relevantly provides an exemption for a Helicopter landing site where:

The landing point is located more than 1000 metres from a building used for a sensitive use that is not associated with the helicopter operation and more than 200 metres from a shipping channel in the Port of Melbourne.

APAM advised (Document 11) that:

3. A finding that a permit is required for the use of the helipad could not be based upon the plain language of the provisions, but would instead depend upon the acceptance of elaborate legal argument, about which there would be considerable room for debate. On balance, the better view is that no planning permit is required for the use of a helipad in a situation such as the present. This is supported by the additional material provided by the planning witnesses (which is directed to establishing the circumstances in which a permit is not required under the current control).

The Committee accepts APAM’s submissions on this issue.

Are the works controversial?

While a planning permit is required for the construction of the concrete pad required to facilitate the use, those works are, by themselves, uncontroversial. This was agreed by all parties.

If no permit is required for use, what can be considered?

Arguments relating to the scope of a planning inquiry and whether the ambit of discretion permits consideration of use related issues where no use permission is required are complex and nuanced.

Importantly, the particular provisions that deal with helipads are concerned with residential amenity. Those provisions do not expressly contemplate the possibility of disruption to airport operations, leaving the matter, in the words of APAM:

... to highly complex legal argument and nuanced considerations as to the ambit of discretion concerning development applications.

APAM contended that this situation is unsatisfactory and represents a considerable deficiency in the planning framework.

APAM advised:

14. In light of the Committee's directions ... concerning the scope of the Part A hearing, and after discussion with the other parties, the Airport has come to the view that:
 - (a) It will not oppose the grant of a permit for the development required to construct the helipad in this individual case.
 - (b) As a permit is, on balance, not required for use under the current planning controls, it will not mount the argument that a permit should be opposed on policy grounds.
 - (c) Given that any disruption to the operation of Melbourne Airport caused by this this single helipad, taken in isolation, is unlikely to be significant, the Airport would not resist a recommendation by this Committee to the Minister that the permit sought be granted in this case.
 - (d) The current planning controls do not adequately address the risks to the achievement of Melbourne Airport's strategic objectives.
 - (e) The broader strategic questions go beyond the scope of the Metcalf proposal, and it would be unfair, in all the circumstances, to force Metcalf to be the principal contradictor on matters that go well beyond its discrete application.
 - (f) The Part B hearing, which will concern itself with a review of the planning framework for safeguarding Melbourne Airport, will pick this issue up.

Airservices Australia (Airservices) advised that it understood that:

- (a) Australia Pacific Airports (Melbourne) Pty Ltd will not oppose the grant of a permit for the development required to construct the helipad, as set out in its letter to the Committee dated 30 September 2020.
- (b) Council will also not oppose the grant of a permit for the proposed development.
- (c) the parties are conferring with respect to proposed permit conditions and we understand these conditions will be circulated to the Committee for consideration ahead of the Hearing next week.

Airservices provided the following for the purpose of properly articulating its position with respect to the proposed development:

- (a) Airservices accepts that the concerns that Airservices has with respect to the proposed development cannot be fairly put forward in the Part A hearing because a permit to use the land for a helipad land site is not required by the Planning Scheme.
- (b) Airservices accepts that the risks associated with the use of this particular development can be managed and has proposed particular permit conditions to assist in this regard.
- (c) Airservices has significant concerns about the cumulative impact of the safety and efficiency of the airport operations that may arise if subsequent developments like the kind proposed are approved in proximity to controlled airspace. However, it accepts that the appropriate forum to raise those concerns and advance how they may be addressed is in the Part B Hearing convened by the Committee.

For these reasons, Airservices did not maintain its objection to this permit application.

4 Impact on Melbourne Airport

Introduction

The principal concerns about the proposal arose from the proposed use of a helipad site in close proximity to controlled airspace, and in particular, the potential for disruption to the operation of Melbourne Airport.

Evidence

At the Direction of the Committee the aviation experts met and produced an Expert Witness Conclave Report (Document 9). This report included:

In what ways might the facility impact on the operation of Melbourne Airport?

All witnesses agree that:

- Without a prescriptive [formal letter of agreement] LOA and agreed procedures. There may be additional delays issued to the Helo [the aircraft].
- In the arriving phase, management of a missed approach and the allocation of additional spacing to manage this process would require a larger than normal spacing in the traffic.
- Up to 3 minutes/ 6NM (12KM) separation would be required in the arriving sequence.
- A missed approach conducted by the Helo, when inserted into a gap, may trigger a missed approach at Melbourne also.
- A LOA to manage demand for use of the helipad would assist to mitigate the likelihood of these events occurring.
- When clearing an aircraft for final, [Air Traffic Control] ATC is required to include a clearance and provide separation for a missed approach until the aircraft reports on the ground by VHF.

Is it agreed that whatever is applicable to this proposed helipad, from a design and operational perspective will apply equally to all other similar helipads in the immediate area?

All witnesses agree that:

- The proposed [Helicopter landing site] HLS should be managed in the same way as similar helipads within the context of priorities, and the ability of ATC to provide visual separation between aircraft.
- ATC cannot be expected to visually sight and separate aircraft beyond 5nm (10km) from the ATC Control Tower.
- When HLS are within 5nm (10km) of an ATC Control Tower, the ability for ATC to visual separation can facilitate easier management of aircraft operating at them with fewer restrictions.
- In all cases, established ATC procedures apply.

How would any delay to operation be managed?

All witnesses agree that:

- On departure or arrival, the issuing of an ATC clearance would be withheld until it is able to be given.
- If a LOA were in place, the pilot would be expected to provide an alternate destination for arriving operations if an airborne delay was required.
- If an LOA was not in place, the aircraft may be required to, in the case of arriving, remain airborne for periods that could exceed 30 min or divert and in the case off departing, hold on the ground for similar periods of time.

Submissions

APAM submitted that:

- The only control in relation to the use of a helipad activity arises under airspace regulations, which would permit the production of letters of agreement on a case-by-case, site-by-site basis.
- In planning terms, there is no tool to regulate or control the impact of one, or the cumulative impact of a proliferation of, helipads within Melbourne Airport's controlled airspace.
- The important planning question that arises is whether the current planning controls properly implements the strategic intention of the policy framework, and whether the use of Melbourne Airport's controlled airspace by private operators, with the risk of disruption and the potential for a cumulative effect upon airport operations, should be managed solely by air traffic controllers, properly reflects the State's policy aspirations for the airport.
- According to the directions made by the Advisory Committee on 10 July 2020, this broader planning question is a matter for the Part B Hearing.

APAM maintained that the absence of any planning control in relation to this use in controlled airspace is problematic and should be addressed.

APAM stated:

While no witness in these proceedings can exclude the possibility that the operation of this helipad site will not, under any scenario, cause disruption to the operation of Melbourne Airport, the Airport accepted that the disruption that might be caused by this single operator, taken in isolation, is not likely to have a material effect on the achievement of strategic planning objectives for Melbourne Airport.

Airservices foreshadowed to the Committee that it is considering what submissions it may make as part of the Part B Hearing, which will include its position that the planning scheme provisions with respect to helipad landing sites should be amended to more appropriately call for consideration of the potential impact on the safety and efficiency of air traffic operations at the airport.

Discussion

The planning framework in Victoria is concerned with ensuring that Melbourne Airport operates, to the greatest extent possible, in a way that is constraint-free, to serve higher-order planning objectives for broader benefit of the State of Victoria.

At present, the planning controls do not take any account of the risk of activities such as helipads proliferating in controlled airspace. This is a matter for the part B Hearing process.

5 The planning permit

A draft permit was circulated by Council. All parties agreed to the conditions.

The permit included expiry conditions that were related to the date of the permit. The Committee understands (from submissions) that correct practice is for an amended permit is not to change the date of the permit. In this regard these conditions should refer to the date the permit is amended (or could for clarity simply insert an actual date being sometime after the permit is amended).

The Committee recommends:

- 1. The Minister for Planning recommend the Governor in Council issue amended planning permit P20352.01 for the Use and Development of a Trade Supplies Warehouse and Caretaker's House and Development of a Helicopter Landing Site in accordance with the Endorsed Plans subject to the permit conditions contained in Appendix B.**

Appendix A Document list

No.	Date	Description	Presented by
1	5/6/2020	Letter from Committee enclosing proposed directions	Planning Panels Victoria
2	23/6/2020	Referral Letter from Minister for Planning to Committee	Planning Panels Victoria
3	10/7/2020	Directions, Distribution List and Timetable Version 1	Planning Panels Victoria
4	3/8/2020	Letter to Committee in response to Directions re documents to be relied upon at hearing	John Rantino, Maddocks on behalf of Metcalf Investments
5	3/8/2020	Letter to Committee in response to Directions re documents to be relied upon at hearing	Alex McLeish, Ashurst Australia on behalf of Airservices Australia
6	3/8/2020	Letter and Statement to Committee in response to Directions re documents to be relied upon at hearing	Kim Piskuric, Harwood Andrews on behalf of Hume City Council
7	3/8/2020	Letter to Committee in response to Directions re documents to be relied upon at hearing	Stephanie Mann, Minter Ellison on behalf of Australia Pacific Airports (Melbourne) (APAM)
8	13/8/2020	Letter with attachments of documents: Email letter to Tribunal dated 29 July 2019 Email to Tribunal with attachment of Nearmap image with 1000m radius from proposed landing point dated 6 September 2019 Email to Tribunal with attachment of map and plan dated 20 September 2019 Photographs of caretaker's residence dated 24 July 2020 Map with helicopter landing sites dated 24 June 2020	John Rantino, Maddocks on behalf of Metcalf Investments
9	16/9/2020	HLS Expert Witness Conclave Report dated 15 September 2020	Stephanie Mann, Minter Ellison on behalf of APAM
10	18/9/2020	Addendum Statement of Stuart McGurn dated September 2020	Stephanie Mann, Minter Ellison on behalf of APAM
11	30/9/2020	Letter to Committee describing revised position of APAM	Stephanie Mann, Minter Ellison on behalf of APAM
12	1/10/2020	Letter to Committee describing revised position of Airservices Australia	Sophie Westland, Ashurst on behalf of Airservices

No.	Date	Description	Presented by
13	1/10/2020	Letter to Committee describing revised position of Hume City Council with attached draft permit conditions P20352.01	Harwood Andrews on behalf of Hume City Council

Appendix B Committee preferred version of the Permit

[Tracked Added](#)

~~Tracked Deleted~~

Subject land:

78-82 Freight Dr Somerton Vic 3062
(Lot 176 Lp 219748l Vol 9989 Fol 110)

Proposed development:

Use and Development of a Trade Supplies Warehouse and Caretaker's House and Development of a Helicopter Landing Site in accordance with the Endorsed Plans

Conditions

1. Before the development of the helicopter landing site starts, plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must show the helicopter landing site on the building and site to be consistent with the plans endorsed under on 1 October 2019 for P20352.
2. The helicopter landing site must not be used for commercial charter including scenic joy flights.
3. No refuelling of helicopters or storage of helicopter fuel is permitted on the land without first obtaining the necessary approvals to the satisfaction of the responsible authority.
4. The helicopter landing site may only be used twice a day (comprising two flights from the land and two flights to the land), subject to clearance from the relevant air traffic control unit.
5. The use of the helipad will only be used in connection with the activities or operations on the subject land.
6. The layout of the site and/or the size of the proposed or existing buildings and works and/or the internal layout and use of the buildings as shown on the endorsed plan/s shall not be altered or modified except with the written consent of the responsible authority.
7. The landscape area(s) shown on the endorsed plan(s) must be planted and maintained to the satisfaction of the responsible authority and once landscaped must not be used for any other purpose. Maintenance must include the removal of weeds and the replacement of any dead plants in accordance with the endorsed landscape planting schedule.
8. Before the development is occupied the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the responsible authority.
9. The stormwater management solutions shown on the endorsed plans must be installed and maintained to the satisfaction of the responsible authority.
10. The use and development must be managed so that the amenity of the area is not detrimentally affected, including through the:
 - a) transportation of materials, goods or commodities to or from the subject land;
 - b) appearance of any building, works or materials;
 - c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
 - d) presence of vermin; or

- e) in any other way.
11. External lighting must be designed, baffled and located to the satisfaction of the responsible authority so as to prevent any adverse effect on adjoining land.
 12. Goods, equipment, packaging material or machinery must not be stored or left exposed outside a building so as to be visible from any public road or thoroughfare, except with the prior written consent of the responsible authority.
 13. The external materials, finishes and paint colours of the approved building must be to be to the satisfaction of the responsible authority.
 14. All loading and unloading of goods from vehicles associated with the approved use must be carried out on the land and must not unreasonably interfere with the circulation and parking of vehicles on the land or on abutting streets.
 15. All parking bays to be line marked including disabled and associated shared area pavement marking.
 16. Stormwater from all paved area must be retained within the property and drained to the sites underground stormwater system.
 17. Any cut or fill must not interfere with the natural overland stormwater flow.
 18. No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during construction.
 19. The existing redundant vehicle crossing is to be removed. The kerb and channel and nature strip to be reinstated to Council's satisfaction.
 20. This permit will expire if one of the following circumstances applies:
 - a) the development and use are not commenced within three years of the date ~~of~~ this permit was amended.~~;~~~~or~~
 - b) the development is not completed within six years of the date ~~of~~ this permit was amended.
 - c) ~~The~~ the development of the helicopter landing site is not started within two years of the date ~~of~~ this permit was amended ~~permit~~.
 - d) ~~The~~ the development of the helicopter landing site is not completed within four years of the date ~~of~~ this permit was amended ~~permit~~.

The responsible authority may extend the periods referred to if a request is made in writing:

- e) before or within six months after the permit expiry date, where the use or development allowed by the permit has not yet started; or
- f) within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

NOTES:

1. If a request for an extension of commencement/completion dates is made out of time allowed by condition ~~45~~20, the responsible authority cannot consider the request and the permit holder will not be able to apply to VCAT for a review of the matter.
2. Any structure built over an easement requires Council and relevant service authorities approval.
3. Application for "Legal Point of Stormwater Discharge" is required to be submitted to Council prior to connection to the drainage system.
4. The internal stormwater drainage design must be approved by a Relevant Building Surveyor under the Building Regulations 2006, Reg. 610.
5. Provision of litter control at stormwater inlet points within car park and paved areas. All stormwater pits to be Channel Grated or Grated as per Council's Standard Dwg SD 210/215 or SD225 respectively.

6. An application for a 'Consent to Dig in the Road Reserve' permit for a vehicle crossing is to be submitted to Council for approval. A copy of the Council endorsed plan showing all vehicle crossing details is to be attached to the application. Any service relocations are to the approval of the Service Authority and at the owners cost.
7. Prior to commencement of any works within the road reserve or require alteration/connection to the Council's drainage assets in the road reserve, an '*Application form for Consent to work within a Hume City Council Road Reserve*' is required to be submitted to Council to obtain a permit to carry out the works.
8. No advertising, direction or identification sign shall be erected on the land (including flags, windvanes, bunting streamers or other like devices) without the consent of the responsible authority, except where in compliance with Clause 52.05 of the *Hume Planning Scheme*.