



**THIRTY-EIGHTH PARLIAMENT**

**REPORT 60**

**JOINT STANDING COMMITTEE ON DELEGATED  
LEGISLATION**

***METROPOLITAN REGION SCHEME MAJOR  
AMENDMENT 1221/41 – BANJUP URBAN  
PRECINCT***

Presented by Mr Paul Miles MLA (Chairman)

and

Hon Sally Talbot MLC (Deputy Chairman)

November 2012

## JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

### Date first appointed:

28 June 2001

### Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### **“3. Joint Standing Committee on Delegated Legislation**

- 3.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 3.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chairman must be a Member of the Committee who supports the Government.
- 3.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 3.4 A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.
- 3.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 3.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –
- (a) is authorized or contemplated by the empowering enactment;
  - (b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
  - (c) ousts or modifies the rules of fairness;
  - (d) deprives a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review;
  - (e) imposes terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable; or
  - (f) contains provisions that, for any reason, would be more appropriately contained in an Act.
- 3.7 In this clause –
- “**adverse effect**” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;
- “**instrument**” means –
- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
  - (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
- “**subsidiary legislation**” has the meaning given to it by section 5 of the *Interpretation Act 1984*.”

### Members as at the time of this inquiry:

Mr Paul Miles MLA (Chairman)  
Hon Helen Bullock MLC  
Hon Jim Chown MLC  
Hon Alyssa Hayden MLC

Hon Sally Talbot MLC (Deputy Chair)  
Mr Vincent Catania MLA  
Ms Janine Freeman MLA  
Mr Andrew Waddell MLA

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## **Government Response**

This Report is subject to Standing Order 191(1):

*Where a report recommends action by, or seeks a response from, the Government, the responsible Minister or Leader of the House shall provide its response to the Council within not more than 2 months or at the earliest opportunity after that time if the Council is adjourned or in recess.*

The two-month period commences on the date of tabling.



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## REPORT OF THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

### IN RELATION TO THE *METROPOLITAN REGION SCHEME MAJOR AMENDMENT 1221/41 – BANJUP URBAN PRECINCT*

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#### 1 REFERENCE AND PROCEDURE

- 1.1 The *Metropolitan Region Scheme Major Amendment 1221/41 – Banjup Urban Precinct (Banjup Major Amendment)* was gazetted on 14 September 2012 and tabled in the Legislative Council on 19 September 2012.
- 1.2 The Banjup Major Amendment came before the Joint Standing Committee on Delegated Legislation (**Committee**) for scrutiny as a disallowable instrument pursuant to Term of Reference 3.7(b) which defines such instruments in Term of Reference 3.6 as: “*an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law.*” Section 56(1) of the *Planning and Development Act 2005 (Act)* permits the Parliament to disallow a scheme or amendment.<sup>1</sup>
- 1.3 The Banjup Major Amendment rezones 151.75 hectares from a Rural-Water Protection Zone to the Urban and Urban Deferred Zones and the Primary Regional Roads reservation (and inclusion in the Water Catchments reservation) in the Banjup locality (which is between Armadale Road and Jandakot Airport). The area is being developed by the proponent for housing on what was a 30 year old sand quarry, extensively mined and degraded. The quarry was closed three years ago.
- 1.4 The explanatory materials accompanying the Banjup Major Amendment reveal it to have been a controversial proposal for various reasons including Aboriginal heritage, the change in water priority classification from P2 to P3,<sup>2</sup> environmental issues, regional roads matters and airport noise pollution.<sup>3</sup>

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<sup>1</sup> It states: “(1) A copy of the scheme or amendment and a copy of the report of the Commission on the submissions referred to in sections 48 and 52 are to be laid before each House of Parliament within 6 sitting days of that House next following the date of the publication of the scheme or amendment in the Gazette. (2) Either House of Parliament may, by resolution of which notice has been given within 12 sitting days of that House after the scheme or amendment has been laid before it under subsection (1), pass a resolution disallowing the scheme or amendment. (3) As soon as the scheme or amendment is no longer subject to disallowance under subsection (2), the scheme or amendment has effect as if it were enacted by this Act. (4) If either House of Parliament passes a resolution disallowing the scheme or amendment, notice of the disallowance is to be published in the Gazette within 21 days of the passing of the resolution.”

<sup>2</sup> Priority 2 (P2) areas are declared over land where low intensity development (such as rural) already exists. Priority 3 (P3) source protection areas are defined to manage the risk of pollution to the water source. P3 areas are declared over land where water supply sources need to co-exist with other land uses such as residential, commercial and light industrial developments.

<sup>3</sup> Three submissions were in support, six objected and there were 19 commentary submissions.

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## **2 AIRCRAFT NOISE**

- 2.1 The focus of the Committee's Report is the impact of aircraft noise from Jandakot Airport on future Banjup Urban Precinct residents' health and well-being.
- 2.2 The Committee was alerted to this issue when it scrutinised *Submission 23* made by the Department of Environment and Conservation (**DEC**) as its contribution to the Western Australian Planning Commission's (**WAPC**) proposal to re-zone the old sand quarry. DEC's *Submission 23* is reproduced in **Appendix 1**.
- 2.3 On the following page is a contour Map of the Banjup Urban Precinct provided by the Banjup Residents' Group Inc.<sup>4</sup> The contour Map shows a system of Australian Noise Exposure Forecast (**ANEF**) contours ranging from 20 to 30 in both areas at intervals of five units.<sup>5</sup> The ANEF is a cumulative measure of aircraft noise exposure which amongst other things, takes into account:
- the forecast frequency of aircraft types and movements on the various flight paths; and
  - the average daily distribution of daily aircraft arrivals and departures.
- 2.4 The ANEF contours are the official forecasts of future noise exposure patterns around an airport and constitute the contours on which land use planning authorities base their controls. The contour Map shows both a 'Frame' and 'Core' area within which Jandakot Airport noise flows into the areas.

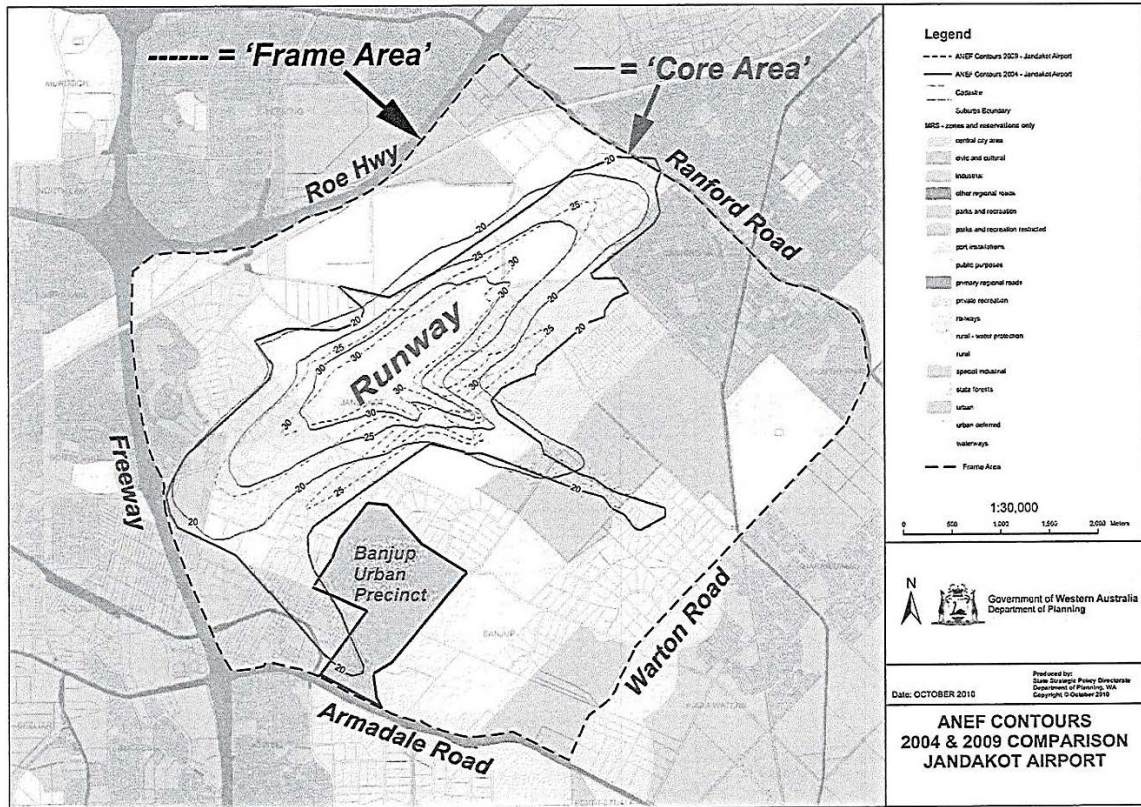
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<sup>4</sup> It comprises 245 residents on 126 properties who gave 'qualified' support to the proposal.

<sup>5</sup> The established ANEF system is documented in Australian Standard AS2021.

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2.5 The WAPC used Draft State Planning Policy 5.3 titled – *Land Use Planning in the Vicinity of Jandakot Airport October 2011 (Draft SPP 5.3)* to plan the sub-division. It provides that, for example, a house:

- in the Frame area up to 20 ANEF is conditionally acceptable. (The southern part of the Banjup Urban Precinct is ANEF 20, thus acceptable); but
- in the Core area, for anything greater than 20 ANEF a dwelling there is not acceptable. (The southern part of the Precinct is 20 ANEF thus acceptable.)

2.6 Draft SPP 5.3 notes that while a band of the surrounding land is zoned Rural under the Metropolitan Region Scheme, rural residential subdivision and development has taken place in parts of this area.

2.7 Housing has been developed to within 750 metres of the southern end of the main runway, while the closest housing to the north west of the main runways is some 1.5km away. The closest urban residential development is situated approximately 2.5 km to the north east of the main runways.<sup>6</sup>

<sup>6</sup> Draft State Planning Policy 5.3 – *Land Use Planning in the Vicinity of Jandakot Airport October 2011*, p2.

2.8 The WAPC said:

*The amendment is located within the 'Frame Area' of draft SPP 5.3, which states that where there is a demonstrated strategic need for more intensive development, consideration will be given to appropriate rezoning.*

*In this case, based on the unique circumstances of the site being extensively cleared, its size and scale and agreement from the DoW to an Urban zoning, the proposal is considered to be of strategic significance.*

*In relation to the small intrusion within the 'Core Area' (20 ANEF contour) of draft SPP 5.3, the landowners have confirmed their awareness of this situation and no incompatible land uses (such as residential development) would be located in these areas. Therefore, there is no need to defer the finalisation of the proposed amendment pending the outcome of the review of draft SPP 5.3.*

2.9 On its face, the WAPC has applied Draft SPP 5.3 to the proposed subdivision. However, as the Banjup Residents' Association relevantly noted, the ANEF contours referred to there are a "prediction, not a certainty".<sup>7</sup> There are alternate descriptors of airport noise. This was pointed out in the *Jandakot Airport Master Plan 2009*, a plan which predicts greater numbers of aircraft movements and their accompanying noise. It states:

*Although not a statutory requirement, the [Commonwealth's] Department of Infrastructure, Transport, Regional Development and Local Government, advocates the use of alternative descriptors to depict aircraft noise impacts.*

*This is because experience has shown the ANEF to not be a particularly useful tool in explaining aircraft noise exposure to the general public.*

*Accordingly, for this Master Plan, contours have also been prepared which depict the average daily number of noise events above 60dB(A) expected in 2029/30. These are also known as N60 contours.*

*N60 has been chosen, as it is considered by the Department of Infrastructure, Transport, Regional Development and Local*

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<sup>7</sup> Metropolitan Region Scheme Amendment 1221/41, Banjup Urban Precinct, *Report on Submissions; Submissions, Transcript of Hearings*, containing the Banjup Residents' Association Submission of Qualified Support, tabled 23 April 2012.

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*Government as an appropriate indicator of the noise regime around a busy general aviation airport.*

*This is because the small aircraft involved in carrying out training circuits, normally generate outdoor sound pressure levels at houses which are around the 60dB(A) level.*

*The forecasts indicate that by 2029/30 the Airport will be conducting 514,650 fixed wing and almost 76,000 helicopter operations for a total of around 590,650 movements.*

*While the 20 ANEF is the lowest contour shown, it does not mean there will be no aircraft noise outside the contour.*

*A study has shown at 20 ANEF, approximately 10% of people consider themselves 'seriously affected' and approximately 45% 'moderately affected' by aircraft noise.*

*Generally, ANEF maps only depict down to 20 ANEF because of imprecision and uncertainties at and beyond this level. The provision of the alternative noise descriptors..., aims to provide more relevant information for these outer areas in particular.<sup>8</sup>*

- 2.10 Whilst acknowledging “*serious concerns about the suitability of the ANEF system*”<sup>9</sup> the WAPC said Draft SPP 5.3 addresses this by requiring a more conservative approach. Although not mandatory in the Frame area for example, future residents will be notified about aircraft noise on their Certificates of Title.<sup>10</sup>
- 2.11 The Committee noted the following general comment by DEC in its submission to the WAPC:

*The proposed development of the subject land would represent a new urban expansion into an area that has previously been used for non-noise sensitive purposes and would not protect airport infrastructure from encroachment.*

*There would be implications for residents living with noise impacts as the subject land lies under the main southern circuit paths used by the majority of aircraft undertaking training at the Jandakot Airport.*

<sup>8</sup> The *Jandakot Airport Master Plan 2009*, <http://www.jandakotairport.com.au/other/id.php?ID=24>, viewed on 19 September 2012, pp98 -102.

<sup>9</sup> Letter from Hon John Day MLA, Minister for Planning, 31 October 2012, p2.

<sup>10</sup> Via memorials and also noise insulation measures.

*There is now significant research regarding health impacts that may be associated with increased noise levels.<sup>11</sup>*

2.12 DEC said in its “*Additional Technical Comments*”, that the southern circuit is used in preference to the northern circuit in acknowledgment of the significant community opposition in that area to flight training.<sup>12</sup> DEC also advised the following to the WAPC:

- The potential for the whole of the subject land to receive an average of more than 200 over-flights per day at levels above 60dB(A) (compared with 50 per day in the north).
- That the contours were only plotted for up to 200 events per day and that the actual numbers may be much higher given that the Airport plans to accommodate some 470,000 movements per year by 2029/30 which is an average of 1,287 movements per day rather than 200.
- That the *Jandakot Airport Master Plan 2009* contains a discrepancy between the proposed aircraft movements and those on which the ANEF was based. DEC cite section 5.3 of the Master Plan as indicating:
  - (1) 1,618 movements per day while the number in the Runway Utilisation Table in Figure 27 of the Master Plan on which the 2029/30 ANEF was based, was only 1,042 per day total.
  - (2) That the number of helicopter movements per day is 208 compared with 73 in the ANEF Map.<sup>13</sup>

2.13 DEC concluded that the number of movements used in section 5.3 of the *Jandakot Airport Master Plan 2009*:

*are therefore significantly greater than those in the model on which the ANEF and presumably the N60 was based. The implication of this is that both the 20 ANEF and the N60 contours may underestimate the extent of the ultimate noise impact areas.<sup>14</sup>*

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<sup>11</sup> Metropolitan Region Scheme Amendment 1221/41, Banjup Urban Precinct, *Report on Submissions; Submissions, Transcript of Hearings*, containing Submission number 23, p2.

<sup>12</sup> Metropolitan Region Scheme Amendment 1221/41, Banjup Urban Precinct, *Report on Submissions; Submissions, Transcript of Hearings*, containing Submission number 23, p4.

<sup>13</sup> The Committee has checked these figures and confirms DEC’s view of their inaccuracy.

<sup>14</sup> Metropolitan Region Scheme Amendment 1221/41, Banjup Urban Precinct, *Report on Submissions; Submissions, Transcript of Hearings*, containing Submission number 23, p4.

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- 2.14 WAPC said it “*considered draft SPP 5.3 and the potential impact of light aircraft noise on future residents within the site*”<sup>15</sup> concluding that a strategic need is demonstrated as the amendment area is recognised for urban development in *Directions 2031 and Beyond*.<sup>16</sup>
- 2.15 The relevance of DEC’s commentary at paragraph 2.12 regarding aircraft movements; noise from movements; and noise contours lies in DEC’s following statements.
- Noise impacts tend to be greater during the day and on weekends when flight training is busiest and when residents are at home but outdoors.
  - There is a significant body of research data showing the health impacts from noise as being hypertension leading over time to increased incidence of heart disease and stroke; and
  - These health outcomes are evident from noise levels roughly equivalent to 15 ANEF and relevantly, the 15 ANEF contour would enclose the whole of the subject land. This would pose a significant risk to vulnerable groups such as children and the elderly.<sup>17</sup>
- 2.16 The Committee is of the view that DEC’s questioning of the fundamental basis on which the current ANEF contours were made should have been investigated further by the WAPC. This was put to the WAPC and its responses to various questions regarding DEC’s claims, is attached at **Appendix 2**.
- 2.17 WAPC said it does not “*test or otherwise critique a submission from specialist government agencies as these need to be accepted by the WAPC in good faith*”.<sup>18</sup> Further, “*it is common practice for a proponent to request a hearing to further emphasise their written submissions to a Hearings Committee [and that] DEC did not request a hearing.*”<sup>19</sup>
- 2.18 The Committee is of the view that while the WAPC accepted DEC’s submission in good faith, it did not analyse the merits or otherwise of DEC’s claims. Further, WAPC failed to test these claims directly with the Department of Health in the public

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<sup>15</sup> Letter from Hon John Day MLA, Minister for Planning, 31 October 2012, p2.

<sup>16</sup> According to the website, *Directions 2031* “*addresses urban growth needs and also takes into consideration the need to protect ... natural ecosystems.*”

<sup>17</sup> In a late submission to the WAPC, *Stockland* said it is proposing: small cottage lots; medium family sized lots; single and two storey homes; grouped housing of 1-4 stories; either 4 or 6 storey apartments and aged housing.

<sup>18</sup> Letter from Hon John Day MLA, Minister for Planning, 31 October 2012, p2.

<sup>19</sup> Letter from Hon John Day MLA, Minister for Planning, 31 October 2012, p2.

interest.<sup>20</sup> This suggests WAPC is process driven rather than focussed on analysing substantive claims, especially claims that impact the public health imperative. WAPC's comment in its report is as follows:

*The proponent has been advised of the DEC's comments which in many circumstances involve further investigation and consideration at subsequent stages of the planning process, in particular any local scheme amendments and local structure planning followed by subdivision and development proposals.*<sup>21</sup>

2.19 The Committee resolved to raise its own concerns with DEC's claims regarding health impacts of Jandakot Airport noise directly with the Minister for Health. The Minister's response is attached at **Appendix 3**.

2.20 Relevantly, the Minister said:

- The science linking noise especially aircraft noise to specific aspects of human health is complex and not well defined. There are a number of studies that show qualitative associations, but quantitative links are not as clear.
- Non auditory health effects from aircraft noise are known to occur but remain poorly defined;
- In view of the number of proposed aircraft movements and the large scale of the proposed re-zoning, the Department of Health recommends that the proponent engage appropriately qualified consultants to undertake a health risk assessment of Jandakot Airport on the proposed subdivision.
- It is recommended that both the Department of Health and DEC review the health risk assessment prior to any approval on the re-zoning.
- The health risk assessment should include determination of whether variable lot densities across the subdivision, including lower density under flight paths or in closer proximity to the Airport, might assist with managing potential impacts of noise on amenity or health.

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<sup>20</sup> However, the WAPC provided written proof that the Department of Health had been routinely asked to make a submission on 21 October 2011. The Department of Health did not respond and given WAPC's administrative practice of not critiquing matters in submissions, it is not surprising WAPC failed to follow up DEC's comments on alleged health impacts of noise directly with the Department of Health.

<sup>21</sup> Metropolitan Region Scheme Amendment 1221/41, Banjup Urban Precinct, *Report on Submissions; Submissions, Transcript of Hearings*, unnumbered page.

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- 2.21 The Minister said that if the Committee requires an immediate decision, then he supports the views of DEC and recommends the Government not expose future residents to an avoidable potential impact on health and amenity.<sup>22</sup>
- 2.22 The Committee concurs with the Minister for Health that a health risk assessment of Jandakot Airport noise on future residents is required before any re-zoning of the subdivision.

### 3 CONCLUSIONS

- 3.1 Broad powers to make a metropolitan region scheme amendment are conferred on the WAPC by the Act, with the consequence that the Committee's scrutiny is largely one of compliance with the procedural requirements. Despite this limitation, the Committee is of the view that the Banjup Major Amendment offends *Committee Term of Reference* 3.6(b). It states:

*In its consideration of an instrument, the Committee is to inquire whether the instrument –*

*(b) has an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;*

*In this clause – “adverse effect” includes abrogation, deprivation, extinguishment, diminution...;*

- 3.2 The Committee finds that future Banjup Urban Precinct residents have a legitimate expectation that the health impacts of Jandakot Airport noise will be investigated and evaluated in the planning process before re-zoning.

### 4 RECOMMENDATIONS

- 4.1 The Committee makes the following two recommendations.

**Recommendation 1: The Committee recommends that the *Metropolitan Region Scheme Major Amendment 1221/41 – Banjup Urban Precinct* be disallowed.**

<sup>22</sup> Letter from Hon Kim Hames MLA, Minister for Health, 5 November 2012, p1.

**Recommendation 2:** The Committee recommends that in preparing any future metropolitan region scheme amendment for a Banjup urban precinct, the Minister for Planning give written directions to the Western Australian Planning Commission requiring the proponent to:

- (1) engage appropriately qualified consultants to undertake and publish a health risk assessment of Jandakot Airport noise on a Banjup urban precinct; and**
- (2) have the Department of Health and the Department of Environment and Conservation review the health risk assessment prior to any approval of a Banjup urban precinct.**



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**Mr Paul Miles MLA  
Chairman**

**15 November 2012**



# APPENDIX 1

## DEPARTMENT OF ENVIRONMENT AND CONSERVATION SUBMISSION

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### Submission 23



Government of Western Australia  
Department of Environment and Conservation

Your ref: S809-2-23-18P12  
Our ref: 31050  
Enquiries: Karen Sanders  
Phone: 9423 2987  
Fax: 9423 2901  
Email: karen.sanders@dec.wa.gov.au

Neil Thomson  
Acting Secretary  
Western Australian Planning Commission  
Locked Bag 2506  
PERTH WA

Att: Anthony Muscara

#### **METROPOLITAN REGION SCHEME PROPOSED AMENDMENT 1221/41 – BANJUP URBAN PRECINCT**

In response to your correspondence of 27 October 2011, requesting comments on the above amendment, the Department of Environment and Conservation (DEC) provides the following advice.

The proposed amendment involves rezoning seven lots, located to the north of Armadale Road and east of Cockburn Central, from Rural – Water Protection Zone to Urban zone in the Metropolitan Region Scheme. The amendment area, which comprises 152 hectares and is located to the south of Jandakot Airport, is adjacent to an industrial area and within close proximity to remnant native vegetation with recognised conservation values. These issues are discussed in more detail below.

#### Noise from Jandakot Airport

*State Planning Policy 5.3: Land Use Planning in the Vicinity of Jandakot Airport* (SPP 5.3) addresses land use planning issues relating to noise from Jandakot Airport. It defines two key areas - a Core Area and a Frame Area.

The Core area is defined by the 20ANEF noise contour (Australian Noise Exposure Forecast – an annualised average noise level based on a future model incorporating all predicted aircraft movements), and is affected by significant levels of noise. In this area SPP 5.3 states that no re-zoning of land is to take place where the predominant type of development is likely to be housing.

The Frame Area is the land between the 20ANEF contour and bounded by Roe Highway, Ranford Road, Warton Road, Armadale Road and Kwinana Freeway. Within this area there is a general presumption against any re-zoning which would permit development involving an increase in residential density above one dwelling every 2 hectares.

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Phone: (08) 9423 2900 Fax: (08) 9423 2901  
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wa.gov.au

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The whole of the subject land is within the Frame Area (except where it is within the 20ANEF contour). While the land is outside of the **current** 20ANEF noise contour, the revised contours for 2029/30 show the 20ANEF contour crossing the southern part of the subject land. It is understood SPP5.3 is currently under review with a view to incorporating the 2029/30 contours. If the 20ANEF for 2029/30 is applied to the subject land, then there would be an area just north of Armadale Road where Clause 4.1.2 of the SPP would preclude re-zoning to an urban zone. The remainder of the subject land then would be subject to the provisions of SPP 5.3 as they apply to the Frame Area.

SPP 5.3 also states that "where there is a demonstrated strategic need for more intensive development, or where the area of land concerned represents a logical infill and development would complete rather than extend an established pattern of development, consideration will be given to appropriate re-zoning". The amendment document states that *Directions 2031* identifies the majority of the land as an 'Urban Expansion Area 2011 – 2013', mentioning the need for a more consolidated city and a sustainable urban transport network. Given the surrounding landuses of rural and industrial it could not be argued that the development of the land represents logical infill.

The proposed development of the subject land would represent a new urban expansion into an area that has previously been used for non-noise-sensitive purposes and would not protect airport infrastructure from encroachment. There would be implications for residents living with the noise impacts as the subject land lies under the main southern circuit paths used by the majority of aircraft undertaking training at Jandakot Airport. There is now significant research regarding health impacts that may be associated with increased noise levels (refer attachment for detail).

Should the development proceed, there would likely be a significant level of community opposition to the airport, and resulting increased pressure for its relocation. The Banjup area is being used as the primary noise buffer for Jandakot Airport, and it is likely that any urban development on the subject land will lead to a general push for urban development throughout this southern part of the Frame Area, jeopardising the viability of this infrastructure. The integrity of this buffer should be paramount.

#### Other Noise

It is noted that Armadale Road passes along the southern boundary of the subject land and that road traffic noise should be managed under *State Planning Policy 5.4 - Road and Rail Transport Noise and Freight Considerations in Land Use Planning*.

#### Air Quality

The proposed amendment will result in the establishment of residential development adjacent to the nearby industrial zone, which contains an operating "Paving Manufacturing Plant" to the south of the site. The Environmental Protection Authority's *Guidance for the Assessment of Environmental Factors No. 3 Separation distances between industrial and sensitive land uses* requires a buffer size between 300 to 1000 m for a brickworks or similar facility. This means that a minimum buffer of 1000m should be maintained around the brickworks. If the proponent wishes to reduce the size of the buffer they should undertake a robust assessment of air quality impacts. If computer modelling is required as part of the assessment, then it must be undertaken in accordance with the DEC's air quality modelling guidelines. Please note that even if an air quality assessment is undertaken, DEC's Air Quality Management Branch advises against a buffer less than 300m.

## Flora and Fauna

### **Declared Rare Flora**

*Caladenia huegelii* has been recorded in vegetation within and adjacent to the subject land. *Caladenia huegelii* is listed as declared rare flora (DRF) under the State *Wildlife Conservation Act 1950*. It is also listed in the Schedule to the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* as 'Endangered'.

While it is known to occur on site, the extent of the population of *Caladenia huegelii* within the subject land has not been adequately surveyed to date. In order for all plants to be protected and managed, a targeted spring flora survey should be conducted by the proponent, prior to further planning approvals, to identify occurrences of the species in all vegetated areas. Due to its known occurrence in areas of similar habitat, it is likely the species may occur more extensively than is currently mapped. Any further clearing of native vegetation has the potential to disturb the DRF species and therefore no changes to land use or clearing should occur prior to detailed flora surveys being undertaken.

### **Matters of State and National Environmental Significance**

Due to the potential for native vegetation clearing as a result of urbanisation of the subject site consideration should be given to impacts on those threatened flora and fauna species listed under State and Federal legislation and the obligations for assessment of the proposals in accordance with the *Environmental Protection Act 1986*, the *Wildlife Conservation Act 1950* and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Fauna species that may be impacted include Carnaby's Black Cockatoo (*Calyptorhynchus latirostris*) and the Forest Red-tailed Black Cockatoo (*Calyptorhynchus banksii naso*) which are listed as Endangered and Vulnerable under the EPBC Act and may also include the graceful sun moth (*Synemon gratiosa*), which is listed as Endangered under the EPBC Act. As mentioned previously the threatened flora species *Caladenia huegelii* is also listed under both State and Federal legislation.

The proponent should be made aware of their notification responsibilities under the EPBC Act and should therefore contact the Department of Sustainability, Environment, Water, Population and Communities for further information on these responsibilities.

Thank you for the opportunity to comment on this application and please contact Karen Sanders at the Swan Region Office of DEC (Ph: 9423 2987) if you have any queries regarding this advice.

Yours sincerely



David Lodwick  
Regional Leader, Land Use Planning  
SWAN REGION

3 February 2012

Att

Additional Technical comments:

Regarding the use of the southern circuit: This southern area is used in preference to the northern circuit in acknowledgement of the significant community opposition in that area to flight training. An examination of the N60 noise contours for Jandakot Airport for 2029/30 (Page 105 of the Jandakot Airport Master Plan 2009) shows that the vast majority of training circuits will be to the south over the subject land, and that the whole of the subject land would receive an average of more than 200 overflights per day at levels above 60dB(A). This compares with some 50 per day in the area to the north of the airport.

Regarding airport movements: It should also be recognised that the contours were only plotted for up to 200 events per day, and that the actual numbers may be much higher, given that the airport plans to accommodate some 470,000 movements by 2029/30 (1,287 per day on average). It also needs to be noted that the draft Master Plan for Jandakot Airport of 2009 contained what appeared to be a discrepancy between the aircraft movements proposed in the Master Plan and those on which the ANEF was based. Section 5.3 of the draft Master Plan indicated 1,618 movements per day (total including helicopters), while the number in the Runway Utilisation Table in Figure 27 of the Master Plan, on which the 2029/30 ANEF was based, was only 1,042 per day total (a difference of 55%). The number of helicopter movements differs by a factor of three (208 per day in Section 5.3 versus 73 per day in the ANEF map). The numbers of movements used in Section 5.3 of the draft Master Plan are therefore significantly greater than those in the model on which the ANEF – and presumably the N60 – was based. The implication of this is that both the 20ANEF and the N60 contours may underestimate the extent of the ultimate noise impact areas.

Regarding health impacts: The noise impacts tend to be greatest during the day on weekends, when flight training is busiest, and when many residents are at home and using the recreation areas in and around the home. Noise insulation of the dwellings is not required in the Frame Area, and while it would provide some amelioration for indoor areas, it would not benefit outdoor areas. There is now a significant body of research data showing health impacts in terms of increased blood pressure, leading over time to increased incidence of heart disease and more recently stroke. These health outcomes appear to be evident from noise levels roughly equivalent to the 15ANEF level (the 15ANEF contour would enclose the whole of the subject land). Vulnerable groups such as children and the elderly may be at greater risk. There is also good evidence of adverse impacts on childrens' educational performance. SPP5.3 does not even require a notification on title as a condition of subdivision or planning approval, and even if required, would not materially assist in terms of amelioration of long term health impacts.

## APPENDIX 2

### RESPONSE FROM HON JOHN DAY MLA, MINISTER FOR PLANNING

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**Minister for Planning; Culture & the Arts; Science & Innovation**  
**Government of Western Australia**

Our Ref: 33-19354  
Your Ref: 38100/8



Mr Paul Miles MLA  
Chairman, Joint Standing Committee on Delegated Legislation  
Legislative Council of Western Australia  
Parliament House  
PERTH WA 6000

Dear Mr Miles *Paul*

**METROPOLITAN REGION SCHEME AMENDMENT 1221/41 - BANJUP URBAN  
PRECINCT**

Thank you for your letter of 16 October 2012 regarding the Metropolitan Region Scheme (MRS) amendment for the Banjup Urban Precinct, and the Department of Environment and Conservation's (DEC) advice regarding Jandakot Airport. In relation to your questions, I provide the following responses:

**1) What consideration was given to DEC's *Additional Technical Comments*?**

The Western Australian Planning Commission (WAPC) carefully considered the DEC's submission (and additional technical comments), particularly given that the Department of Planning (DoP) is reviewing *State Planning Policy 5.3 – Jandakot Airport Vicinity* (March 2006) (SPP 5.3) and also had regard to the endorsed *Jandakot Airport Masterplan 2009*.

A consolidated response to the DEC's submission was provided in the *Report on Submissions*, and particular attention was given to draft SPP 5.3 (sections 7.2 (b), (d), (e) and (f) of the *Report on Submissions* refer).

**2) What weight was given to DEC's comment regarding the inaccuracy in the *Jandakot Airport Master Plan 2009* that the number of aircraft movements are "significantly greater" than those used in the model on which the ANEF was based?**

The DoP is reviewing SPP 5.3, and has incorporated the expanded 2029/30 Australian Noise Exposure Forecast (ANEF) contours from the endorsed *Jandakot Airport Masterplan*. Draft SPP 5.3 has been advertised for public comment, submissions have been considered and will be presented to the WAPC for final approval by the end of 2012.

It is important to note that the Federal Minister for Infrastructure, Transport, Regional Development and Local Government approved the *Jandakot Airport Masterplan* on 9 March 2010.

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In relation to the DEC's comments on the number of aircraft movements referred to in the *Jandakot Airport Masterplan*, draft SPP 5.3 states that:

*"There have been serious concerns expressed in recent years about the suitability of the ANEF system as the basis for land use planning in the vicinity of general aviation airports such as Jandakot. The thrust of these concerns is that the ANEF contours do not adequately reflect the level of noise nuisance associated with general aviation aircraft operations and that the ANEF system has not been validated for use in relation to general aviation airports. In response to the deficiencies in the ANEF system, the Commonwealth Department of Infrastructure, Transport, Regional Development and Local Government has proposed in the National Aviation Policy White Paper (Dec 2009) that a national planning regime be developed for land use planning around airports."*  
(P3)

In response to these concerns, draft SPP 5.3 advises that:

*"Pending the development of such a regime, and in light of the concerns about the application of the current ANEF system to general aviation airports, a more conservative approach is required in the application of Australian Standard 2021 Acoustics-Aircraft noise intrusion-Building siting and construction, 2000 (AS2021) at Jandakot Airport"*.

Draft SPP 5.3 proposes policy measures to reflect a more conservative approach. Of particular note, and although not mandatory, policy measures have been developed for areas located within the 'Frame Area' of draft SPP 5.3 and outside the 20 ANEF, such as noise insulation, notifications on title and advice to the public regarding the potential for noise nuisance etc.

In this regard, the majority of the proposed amendment area is located within the 'Frame Area' of draft SPP 5.3, which states that there is a general presumption against any rezoning of land which would permit development involving any increase in residential density above one dwelling for every two hectares. However, draft SPP 5.3 also states that where there is a demonstrated strategic need for more intensive development, or the area of land represents a logical infill, consideration will be given to appropriate rezoning.

The WAPC considered draft SPP 5.3, and the potential impact of light aircraft noise on future residents within the site and concluded that a strategic need is demonstrated, since the amendment area is recognised for urban development in *Directions 2031 and Beyond* and the associated draft *Outer Metropolitan Perth and Peel Sub-Regional Strategy* as an 'Urban Investigation Area 2011-2015'. In addition, the site is strategically located in close proximity to the Cockburn Central activity centre and railway station, regional road linkages (e.g. Kwinana Freeway, Armadale Road etc) and associated infrastructure. It is noted that Jandakot Airport Holdings and the City of Cockburn raised no objections to the amendment in this regard.

In relation to the small intrusion within the 'Core Area' of draft SPP 5.3, the landowner advises that no incompatible landuses are proposed to be located within these areas. Conceptual structure planning indicates the retention of existing vegetation areas or service industrial/commercial uses within these intrusion areas. Whatever the case, landuses within this area will need to comply with the requirements of draft SPP 5.3.

Although not mandatory within the 'Frame Area', the landowner advises that all future residents will be notified regarding aircraft noise through notifications on title which will be imposed as conditions of subdivision approval.

Additional building standards will be imposed, including noise insulation and double glazed glass, to minimise the effect of aircraft noise and achieve higher acoustic standards. These matters are routinely considered in the subsequent stages of the planning process, such as the local scheme amendment, structure planning and may require subdivision and development approval conditions.

**3) Why DEC's Additional Technical Comments were not responded to in the Summary of Submissions**

Section 7.2 (d) of the *Report on Submissions* includes a comprehensive response to all the DEC's comments as discussed above.

**4) What response was received from the Department of Health following the WAPC's invitation of 21 October 2011 to make a submission**

The Department of Health (DoH) did not lodge a submission on the amendment.

**5) If the Department of Health did not make a submission (and following receipt of DEC's submission), why were the DEC's claims not then actively tested with the Department of Health?**

In accordance with the *Planning and Development Act 2005*, the WAPC consults with affected landowner/s and State and local government organisations, and does not pre-empt or encourage submissions (or requests for hearings) from any proponent. The WAPC undertakes an unbiased assessment of all submissions on their merits and does not 'test' or otherwise critique a submission from specialist government agencies, as these need to be accepted by the WAPC in good faith.

It should be noted that the DEC does not object to the amendment and provides advice on a range of matters which have been considered in the *Report on Submissions*. It is common practice for a proponent to request a hearing to further emphasise their written submission to a Hearings Committee of the WAPC. The DEC did not request a hearing.

It is also noted that the DoH does routinely lodge submissions on MRS amendments.

It is further noted that the proposed amendment was considered by Cabinet, as required under the *Planning and Development Act 2005*, having regard to all the submissions received.

**6) The potential for the whole of the subject land to receive an average of more than 200 over-flights per day at levels above 60dB(A)?**

As discussed in section (2) above, the WAPC relies on the advice of specialist State Government agencies and receives this advice in good faith.

**7) The likelihood the Airport will accommodate on average 1,287 movements per day by 2029/30 rather than 200?**

As discussed in section (2) above, the WAPC relies on the advice of specialist State Government agencies and receives this advice in good faith.

**8) Whether both the 20 ANEF and the N60 contours have underestimated the extent of the ultimate noise impact areas?**

As discussed in section (2) above, the WAPC relies on the advice of specialist State Government agencies and receives this advice in good faith.

**9) Whether you agree that there is a significant body of research data showing the health impacts from noise as being hypertension leading over time to increased incidence of heart disease and stroke?**

The WAPC is not able to independently come to conclusions on matters of public health and relies on the expert advice of specialist State Government agencies such as the DoH in relation to these matters. If any verified health issues are known, the WAPC takes this information into account and, if applicable, ensures that appropriate compatible land uses are considered.

Draft SPP 5.3 is predicated on the ANEF outlined in the approved *Jandakot Airport Masterplan* and *Australian Standard 2021 Acoustics-Aircraft noise intrusion-Building siting and construction, 2000*.

**10) That if the health outcomes described in (9) above appear to be evident from noise levels roughly equivalent to 15 ANEF (and that as the 15 ANEF contour would enclose the whole of the subject land), you agree this would pose a significant risk to children and the elderly?**

Please refer to comments in section (9) above.

**11) Having now re-considered DEC's claims about noise impacts, is it appropriate to re-zone the Banjup Urban Precinct at this particular time?**

It is appropriate that the proposed amendment be finalised as it complies with draft SPP 5.3 and the associated *Jandakot Airport Masterplan*, and proposes noise mitigation measures. In accordance with the *Planning and Development Act 2005*, the proposed amendment was extensively advertised for a minimum three month public consultation period, and all submissions (and requests for hearings) were considered.

Draft SPP 5.3 proposes policy measures that take a more conservative approach within the 'Frame Area', given it is a general aviation airport. It is also noted that, although these additional measures are not mandatory, the landowner has committed to these requirements.

The proposed amendment is designated for urban development in *Directions 2031 and Beyond* and the associated draft Sub-Regional Strategy. The site is primarily cleared of vegetation, as it was a former sand quarry, and is located in close proximity to the Cockburn Central activity centre and railway station, regional road linkages and existing infrastructure. It is considered to be of strategic significance as a transitional land use area.

It is also noted that further detailed planning, for example noise mitigation measures, will occur in future stages of the planning process required under planning legislation, such as the local town planning scheme amendment, local structure planning (both of which will be the subject of additional public and State Government agency consultation) and subdivision and development approval stages, and any additional studies undertaken (if required).

I trust this information is of assistance to the Committee.

Yours sincerely



**JOHN DAY  
MINISTER FOR PLANNING;  
CULTURE AND THE ARTS;  
SCIENCE AND INNOVATION**

31 OCT 2012



## APPENDIX 3

### RESPONSE FROM HON KIM HAMES MLA, MINISTER FOR HEALTH

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Deputy Premier of Western Australia  
Minister for Health; Tourism

Our Ref: 25-30413  
Your Ref: 38100/8



Mr Paul Miles MLA  
Chairman  
Joint Standing Committee on Delegated Legislation  
Legislative Council Committee Office  
Parliament House  
PERTH WA 6000

Dear Paul

Thank you for your letter of 16 October 2012 regarding the Metropolitan Region Scheme Major Amendment 1221/41 – Banjup Urban Precinct.

The science linking noise (especially aircraft noise) to specific aspects of human health is complex and not well defined. There are a number of studies that show qualitative associations, but quantitative links are not as clear.

Non-auditory health effects from aircraft noise are known to occur, but remain poorly defined and are thought to be dependent upon a number of complex variables.

In view of the number of proposed aircraft movements and the large scale of the proposed rezoning (151 hectares), the Department of Health (DOH) recommends that the proponents engage appropriately qualified consultants to undertake a health risk assessment (HRA) of Jandakot airport, on the proposed subdivision, for DOH and Department of Environment and Conservation (DEC) review, prior to any approval on the rezoning.

The HRA should include determination of whether variable lot densities across the subdivision, including lower density under flight paths, or in closer proximity to the airport, might assist with managing potential impacts of noise on amenity or health.

If the committee requires an immediate decision, then I support the views of DEC and recommend the Government not expose future residents to an avoidable potential impact on health and amenity.

I trust the information provided is of assistance.

Yours sincerely

Dr Kim Hames MLA  
DEPUTY PREMIER  
MINISTER FOR HEALTH

05 NOV 2012