Master Builders Australia

Submission to the Department of Infrastructure and Regional Development

on

Modernising Airspace Protection

Public Consultation Paper

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MASTER BUILDERS AUSTRALIA

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1 Introduction

1.1 This submission is made on behalf of Master Builders Australia Ltd.

1.2 Master Builders Australia ('Master Builders') is the nation's peak building and construction industry association which was federated on a national basis in 1890. Master Builders Australia's members are the Master Builder State and Territory Associations. Over 127 years the movement has grown to over 32,000 businesses nationwide, including the top 100 construction companies. Master Builders is the only industry association that represents all three sectors, residential, commercial and engineering construction.

1.3 The building and construction industry is an extremely important part of, and contributor to, the Australian economy and community. It is the second largest industry in Australia, accounting for 8.1 per cent of gross domestic product, and around 9 per cent of employment in Australia. The cumulative building and construction task over the next decade will require work done to the value of $2.6 trillion and for the number of people employed in the industry to rise by 300,000 to 1.3 million.

2 Background

2.1 The Australian Government has asked the Department of Infrastructure and Regional Development ('the Department') to provide policy advice on airspace protection arrangements for leased federal airports, other airports, and for communications, navigation and surveillance equipment. This request was made in response to a recommendation of the Aviation Safety Regulation Review (ASRR) Panel that the Department undertake a review of airport infrastructure and the impact of planning and land-use decisions in relation to same.

2.2 The Department has released a public consultation paper ('the Consultation Paper') with three proposals which it claimed were designed to modernise airspace protection at airports and surrounding areas. Within the Consultation Paper, the Department suggested a number of regulatory gaps existed due to what it considered outdated regulation in need of review.

2.1 To address these apparent 'regulatory gaps' the Department has made three Reform Proposals. Reform Proposal 1 – *Modernising Airspace Protection*

under the Airports Act 1996 is pertinent to the building and construction sector and it is reference to this item that the comments in this submission are directed.

2.2 In summary, while Master Builders understands the policy outcomes sought by Reform Proposal 1, there are genuine and important practical consequences were it to be implemented as proposed. These consequences largely arise from:

- the removal of existing flexibilities;
- the unpredictable nature of building work and the use (and availability) of specialist equipment (such as tower cranes) on building sites; and
- the tightening of existing timeframes.

2.3 Any proposed amendments to the relevant legislation need to be considered in light of the complexities associated with airspace protection and, in particular, the real commercial and practical constraints faced by proponents making controlled activity applications.

3 Reform Proposal 1 – *Modernising Airspace Protection under the Airports Act 1996*

3.1 The Consultation Paper seeks to make amendments to the *Airports (Protection of Airspace) Regulations 1996* (Cth) (APAR) and states that the Policy Objective of Reform Proposal 1 is *'To create a modern, nationally consistent and transparent airspace protection regime at our major airports'*.

3.2 A summary of the Key outcomes sought as outlined in the Discussion Paper, in relation to Reform Proposal 1, is to:

1) Prescribe criteria for the establishment of prescribed airspace to clarify what volumes of airspace require protection for the purpose of the safety, efficiency and regularity of aircraft operations.

2) Strengthen the declaration process by establishing a legislative framework to support a transparent and consultative pre-declaration-making process;

3) Streamline the handling of applications for intrusions into prescribed airspace to clarify roles and responsibility and avoid any unnecessary administrative steps; and

4) Avoid regulatory overlap by repealing legacy regulations under the CA Act, given the operation of the APAR and CASR Part 139 'Aerodromes' (CASR Part 139).

4 Strengthening transparency and communications

4.1 Master Builders notes proposed amendments to the regulatory framework that enhance accountability and transparency and require the clear identification and communication of airspace boundaries, by airport operators, within a prescribed airspace.

4.2 The Department has recommended that the APAR be amended to require airport operators to apply for a Declaration of Designated Airspace ('Declaration') in accordance with prescribed criteria and in consultation with the Civil Aviation Authority (CASA) and Airservices Australia. The effect of such a declaration would be that airport operators would now be required to clearly identify the lowest boundary of the prescribed airspace so that the information is easily understood by State/Territory planning agencies as well as other non-government stakeholders.

4.3 We also note in the Consultation paper that, prior to submitting the application for a Declaration, airport operators would be required to undertake consultation with government agencies and other stakeholders to consider any issues that might arise if the Declaration were to be made.

4.4 Master Builders considers this to be an important amendment, which would ensure that applications seeking a Declaration take into consideration all potential matters, either in support or against, of the declaration being made.

4.5 Master Builders recommends that representatives of each State and Territory branch of our organisation be consulted by default as a standard part of this process. This will ensure that, as the only representatives of residential,

commercial and civil sectors, the building and construction industry can be appropriately consulted.

5 Submission timeframes

5.1 Master Builders notes the recommendation that a proponent of a controlled activity should be required to submit an application 90 days prior to the lodgement of a Development Application ('DA').

5.2 This recommendation is a significant departure from the existing regulatory regime and is *opposed* by Master Builders.

5.3 The basis for this opposition is that it creates a situation that is simply impractical. Applicants are genuinely unlikely to be able to have such documentation drafted and completed so far in advance of lodgement of the DA.

5.4 Under section 183 of the existing *Airports Act 1996* (Cth) ('the Airports Act') controlled activities must not be carried out without the approval of the Secretary of the Department. Section 182 states that, amongst other things, a controlled activity includes the construction or alteration of a building that intrudes upon a prescribed airspace.

5.5 Further, regulation 7(4) of the APAR states that the proponent of a proposed controlled activity must provide details of the application to either the airport-operator or the Secretary at least 28 days before its intended commencement.

5.6 The scope of an application for a controlled activity is very much dependent upon the type of development to which the application pertains. It is highly unlikely that the height parameters of a construction project (including the type and number of cranes to be engaged on site) will be settled 3 months prior to the DA being lodged. Confirmations of these details have a direct impact on whether or not an application is even required.

5.7 There are a number of practical difficulties caused by this recommendation. First, it is not uncommon for State and Local planning authorities to approve developer applications for projects that are at their 'maximum' height in the relevant region without having regard to the equipment used to construct such

a project. In most projects, a tower crane is a necessary part of construction and this is necessarily higher than the finished project.

5.8 Further, the increasing prevalence of design and construct contracts, specifically in the high-rise building sector, means that critical elements of design and construction of a building are only determined *after* DA, when the tender is awarded to a building contractor. Even then, the construction methodology is subject to change due to factors often outside of the developer and building contractor's control, including availability of tower cranes, the willingness of neighbouring properties to grant over sailing rights and so forth.

5.9 Further, the type of equipment used on a building site may vary and is often difficult to predict accurately in advance. For example, a crane used on a project may be one of several available in a state or region that will be utilised once it is no longer required on other projects. The exact type and specifications are often different and as such it cannot be known what the exact height of such equipment will be until it becomes available.

5.10 Lastly, the nature of work undertaken in the building and construction sector is such that it is commonly the subject of delay. There can be many reasons for this but the most common sources of delay is inclement weather and industrial disputation arising from the activities of building industry unions, including the CFMEU. Delays are costly, often outside of the builder's control, and therefore requires flexibility and the ability to adjust the building program to ensure a profitable outcome for all parties.

5.11 The Department has also recommended that applications include a safety case (to be drafted in accordance with the International Standard for Risk Management, ISO 31000) and an aviation impact statement based on the Airservices Australia template. Master Builders *does not support* this recommendation.

5.12 It is Master Builders' view that this recommendation would add additional complexity to the preparation of applications. The type of work involved in drafting applications is highly technical and would require the engagement of architects, engineers and/or other specialised consultants. The requirement

to provide 3 months in advance of a DA does not take into consideration any practical limitations associated with the engagement of third parties.

5.13 The recommendation also places the onus on a developer to undertake the safety case and we question whether such a party is best placed to consider crucial matters involving specialised air safety.

5.14 A developer is not the same as a builder and there are distinct differences between the ways these parties undertake work in the sector and their primary considerations.

5.15 Given the proposed obligations on the developer for such an important task, it is likely that developers will shift this obligation (by default or otherwise) to the builder responsible for their project. Such a shift will impact the liabilities of builders and this will have an adverse impact on the cost of construction and increase prices for clients and consumers.

6 Short-term intrusion permits

6.1 Although proponents will continue to be able to make an application for a short-term intrusion permit, the Department has made a recommendation that they will no longer be able to be 'rolled-over'. This recommendation is *strongly opposed* by Master Builders, once again for practical reasons.

6.2 The consequences of such an amendment are numerous.

6.3 First, the proposal notes that once a short-term intrusion permit has expired, the proponent would only be eligible to apply for a permanent intrusion permit. This recommendation disregards the potential for unforseen delays, an unfortunate but often inevitable feature of the building and construction sector and should be reconsidered.

6.4 Second, there is only a highly remote chance that a construction project of a size that requires a tower crane will be completed in 3 months or less. By default, most projects of even a smaller size will take a minimum of 12 months to complete. There are several projects of high-rise buildings in Brisbane, for example, that have had to roll over the temporary permit numerous times to ensure the project could be completed.

6.5 Third, if a 3 month temporary permit cannot be extended then a project using a tower crane can not be completed. Conventional construction methodology requires a tower crane to be erected on site when the above ground building work starts. Due to costs, the complexity of erecting a tower crane, health and safety risks and construction requirements, tower cranes are usually only erected *once* on a high-rise project, stay up for the duration of the building work and will only be dismantled at the completion of a project.

6.6 In essence, restricting short-term intrusion permits to one, three-month permit, will require that local authorities not issue DAs for any project that will require penetration by tower cranes into protected airspace during the construction program.

7 Conclusion

7.1 It is crucial that any amendments to airspace regulation take into consideration the commercial limitations and complexities associated with the preparation and lodgement of controlled activity applications. In addition, in providing its delegation to airport operators to make Declarations, the Secretary must ensure that applications are assessed in a transparent manner and without any potential conflicts of interest.

7.2 In the event that the amendments within the Consultation Paper are progressed, it is essential that they be appropriately transitioned to provide sufficient time for local authorities, developers and the building and construction sector to make the necessary adjustments to contractual and operational arrangements.

7.3 We have attached hereto additional information prepared by Master Builders Queensland for additional background.

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