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Director, Aviation White Paper Project Office  
Aviation White Paper  
Department of Infrastructure, Transport, Regional Development, Communications and the Arts  
GPO Box 594  
CANBERRA ACT 2601

[aviationgreenpaper@infrastructure.gov.au](mailto:aviationgreenpaper@infrastructure.gov.au)

### FEDERAL AVIATION GREEN PAPER – MORNINGTON PENINSULA SHIRE SUBMISSION

Officers from the Mornington Peninsula Shire's Strategic Planning team have considered the Federal Aviation Green Paper and provide this submission in response.

Our submission is relevant to Chapter 6 (Airport development planning processes and consultation mechanisms), Chapter 7 (General Aviation) and Chapter 8 (Fit-for-purpose agencies and regulations) of the Green Paper. As our submission is limited in scope, we provide a single recommendation at the end of this submission in lieu of responding to questions listed in Appendix A.

Please note that this submission is the opinion of officers only and has not been considered or endorsed by Council.

### BACKGROUND

The Mornington Peninsula Shire (the Shire) is the local government for the municipal district of Mornington Peninsula (the Peninsula). The Peninsula is located in central Victoria, approximately 50km south of Melbourne's CBD. While the Peninsula legally forms part of Metropolitan Melbourne, over 70% of its land is rural. The Peninsula is commonly considered a peri-urban or fringe-metropolitan region.

The Peninsula contains a single, privately operated airport, commonly known as the Tyabb Airfield (the Airfield), which was first developed in the early 1960s. Within the context of the *Civil Aviation Act* (1988), it operates as a non-controlled aerodrome. The Airfield is primarily used for recreational flying and training purposes. In 2019 the estimated number of aircraft movements at the airfield was approximately 18,500.

The first planning permit that allowed the site to be used as an 'authorised landing ground for aircraft' was issued in 1965, and further planning permits were issued in 1972 and 1991 that extended the originally permitted use. All three permits continue to have effect and operate collectively to enable the land to continue be used as an 'airfield' under the Victorian planning system. The permits contain conditions restricting some operations, such as the total weight of aircraft and hours of operations, generally as originally set in each original permit decision. The permits do not contain conditions relating to noise emissions from the Airfield and associated operations.

The Airfield is located centrally within the small township of Tyabb. At its closest point, the main north-south runway is within approximately 290m from land zoned General Residential Zone land to the east. Further, Low Density Residential Zone land exists to the east, north, and west of the Airfield.

The proximity of the Airfield to residentially zoned land has caused over 35 separate and individually documented Planning Enforcement investigations undertaken by Shire officers since 2004. The complaints generally pertain to compliance with the existing planning permit conditions as they relate to the hours of

operation and weight of aircraft, and associated noise concerns. Various matters relating to the use and development of the Airfield have been heard at the Victorian Civil and Administrative Tribunal (VCAT) in recent times, involving the operators of the Airfield, the local community, and the Shire.

### DISCUSSION

Mornington Peninsula Shire officers observe an apparent legislative gap concerning the regulation of smaller, general aviation airports, particularly as they relate to amenity issues for surrounding, existing residential areas. Most relevantly, this includes the issue of noise generated by aircraft utilising general aviation airports and aerodromes.

At the State level, Victorian legislation that regulates airports is generally limited to the following acts:

- *Planning and Environment Act 1987*
- *Building Act 1993*
- *Environmental Effects Act 1978*

The Mornington Peninsula Shire is the primary decision maker for planning permit applications for the use and development of land made under the Mornington Peninsula Planning Scheme (subordinate legislation under the *Planning and Environment Act 1987*). It is also the primary authority for implementing changes to the Mornington Peninsula Planning Scheme.

The Planning Scheme contains limited, high-level policy on the use and development of airports at Clause 18.02-7S (Airports and airfields). Within this clause, the *National Airports Safeguarding Framework (NASF)* is listed as a policy document to be considered as relevant. This includes *Guideline A – Measures for managing impacts of aircraft noise*.

However, the provisions of the Planning Scheme, including reference to the NASF, are of no consequence for established uses such as the Tyabb Airfield, which benefits from the historical planning permits first issued almost 60 years ago. The Planning Scheme can only regulate proposals for new or amended land uses or developments.

Victoria's Building Act, Environmental Effects Act, and also the *Environment Protection Act 2017* do not attempt to regulate the noise from aircraft associated with an airport. The *Environment Protection Act* specifically excludes the assessment of noise from aircraft associated with commercial, industrial, and trade premises.

We also note that, NASF and Australian Standard AS2021:2015 (Acoustics - Aircraft Noise Intrusion – Building Siting and Constriction) are not intended to be used to assess noise exposure in existing areas. There is no legislative or statutory framework for assessing aircraft and airport noise on existing residential areas. The NASF and Guideline A are also designed for the noise management of major airports (such core regulated airports or leased federal airports) and not for general aviation. As the Airfield is an uncontrolled aerodrome and not a core regulated airport, it is not required to develop Aircraft Noise Exposure Forecasts as it would otherwise be required to under the *Airport Act 1996*. Therefore, even if the Airfield was applying for planning permission under Victoria's Planning and Environment Act for an extension to its existing use and flying operations, the methods referred to for measuring potential noise impact in the NASF and the Mornington Peninsula Planning Scheme are not necessarily suitable for the purposes of general aviation.

We understand that the regulation of aviation (including noise generated from aircraft) and to a large extent, airports, is generally the jurisdiction of the Commonwealth Government, and this has historically been the case since the beginning of the aviation industry in Australia. The observation that there is limited State

legislation pertaining to aviation confirms this. Within this context, we expect the regulation of aviation, aircraft, and airports (excluding some elements of land-use planning) to continue to be regulated at the federal level.

While regulations such as the Air Navigation (Aircraft Noise) Regulations 2018 control the noise emitted from individual aircraft ex-situ, there is no existing legislative framework that sets out the reasonable level of noise exposure from aircraft and airports on existing residential areas. Acoustic consultants previously engaged by Council to consider the ongoing issue at the Airfield have also provided such advice, based on their own correspondence with authorities such as CASA, the Aircraft Noise Ombudsman, and Airservices Australia.

To address the noise-amenity issues generated by the Airfield, a 'Fly Neighbourly Advisory Notice' has been developed by the operators of the Airfield in consultation with the Shire, the local community, and Airservices Australia. While this voluntary code of practice is made in good faith, it is non-enforceable and does not deliver certainty of amenity-outcomes for the local community.

Finally, we also note that the Greenpaper observes the general ambiguity of responsibility for handling complaints pertaining to aircraft and airport noise related matters, particularly as they relate to cumulative impacts at individual locations. The issue seems to be compounded for general aviation and may contribute to noise related complaints being lodged with the Shire despite its limited capacity to take action specifically related to aircraft noise associated with the Airfield.

### RECOMMENDATION

- **Develop and implement a legislative framework for managing the amenity impacts of general aviation airports and aerodromes. The framework should set the standard for reasonable and unreasonable amenity impacts, including the issue of nuisance noise. It should be applicable to existing general aviation airports.**

Yours faithfully,

Mornington Peninsula Shire officers