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Enquiries to: Micheal Wells  
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22/01/2021

Tasmanian Planning Commission  
Level 3, 144 Macquarie Street, Hobart  
via Email

Dear Sir/Madam

### **ADDITIONAL INFORMATION REQUEST RESPONSE – CIRCULAR HEAD DRAFT LOCAL PROVISIONS SCHEDULE**

Thank you for your additional information request for the above Local Provisions Schedule. In response to your request please find the following:

- *EnviroPlan is directed to provide a submission clarifying how the proposed zoning change at 347 Montagu Road is consistent with the covenant on the land requiring the continued operation of the airport including runways, taxiways and potential conflict of the use of the airport with agriculture. Also clarify how the proposed split zoning would apply to the property in accordance with Practice Note 7. EnviroPlan is directed to send a copy of the submission to the Department of State Growth and the planning authority.*

### **Covenant Details**

Section 3.1(a) of the Deeds require that “the Owner must use the Land as an Airport” whilst the Interpretation defines “Land” as:

**Land** means the land situated at 347 Montagu Road, Smithton in Tasmania known as the “Smithton Aerodrome” comprised in folios of the Register:

- (a) Volume 127685 Folio 1; and
- (b) Volume 121332 Folio 1.

A reference to Land includes the whole of the Land and any part of the Land.

Figure 1 – Screen Grab Airport Covenants (p.2)

The proposal seeks to split the zoning of the land it does not prohibit the existing use of the land as an ‘Airport’ in the Utilities zone or the proposed Agriculture zone. Even with a new zoning applied the property enjoys the benefit of existing use rights over the land and any part of the land.

Further, the new State-wide Planning Scheme does not prohibit Agriculture zoning from being used as an airport as it is defined under Table 6.2 as “Transport Depot and Distribution” which means:

*use of land for distributing goods or passengers, or to park or garage vehicles associated with those activities, other than Port and Shipping. Examples include an airport, bus terminal, council depot, heliport, mail centre, railway station, road or rail freight terminal and taxi depot.*

The proposed Agricultural Zoning of the land means that any development application in the future would be a Discretionary Application and that the area in question would be limited to the Qualification of Use as seen in Table 21.2 which is:

*If for the transport and distribution of agricultural produce and equipment.*

The area proposed to be zoned as Agriculture Zone is intended to be used for grazing purposes in order to eliminate maintenance costs through mowing and grass care whilst returning a profitable enterprise back to the operations of the airport.

Given that both the proposed zonings are complementary and compliant to the Use Tables of the Planning Scheme as “Transport Depot and Distribution” they cannot conflict with the covenants listed on the Titles that contain the airport operation.

Contrary Use as listed in the Covenants requires that:

- (b) **(contrary use)** the Owner must not do any act, matter or thing which is contrary to the use of the Land as a Airport without the prior written consent of the Crown, such consent being entirely within the discretion of the Crown;

Figure 2 – Screen Grab Airport Covenants (p.5)

As part of the proposed rezoning the airport Landowner is seeking written consent from the Crown through this consultation process and is therefore acting compliantly with the Covenant.

The Covenants require the landowner to maintain the property in good repair and condition as seen under 3.1(c):

- (c) **(maintenance)** the Owner must maintain the Land as an Airport in good repair and condition and in accordance with:
  - (i) all Laws; and
  - (ii) any Civil Aviation Safety Authority requirements; and

Figure 3 – Screen Grab Airport Covenants (p.5)

The landowner is seeking to comply with the maintenance (which includes grounds) in a cost-effective manner as this is a commercial enterprise not a public one. As such, cost implications are a consideration in maintenance where fuel, labour and machinery outlays and associated costs are depressing the financial capabilities of the site. The proposed complimentary zoning rectifies this cost impost by turning a negative cost in maintenance to a positive cost in maintenance.

The proposed zoning provides for *Resource Development* where as the Utilities zone prohibits such use and thereby places an undue cost impost on a commercial operation that is bound by restrictive covenants.

The covenants do not describe or restrict the process of achieving compliances to the covenant clauses and the proponent seeks to comply with maintenance capabilities that are profitable and further the community infrastructure viability.

With the proposed zonings over the land – it makes the airport operations more diverse into the future as both Utility and Agriculture zone tables would apply to the land. Further as State Growth must be notified, and written consent obtained for any “contrary use” as seen in the restrictive covenants; it complies with the requirements of the Deed.

### **Split Zoning Details**

The proposed split zone boundaries are to be concrete trafficable pads that feature survey points (by a registered surveyor) that plot the boundary intersection point/s which is derived from setbacks from the main runway, taxiway that also comply with setbacks required by CASA.

As such the survey points (being trafficable) do not present a hazard nor interfere with the operations of the airport on the land and are in compliance with Practice Note 7 seen in s. 2.4 Other Zone Boundaries (figure 1 setback line from street frontage), CASA requirements and the restrictive covenants.

### **Copy of Submission to State Growth and planning authority.**

Both the Department of State Growth and the planning authority have been Cc'd to the email submission that is being sent to the Planning Commission.

I trust that the above information satisfies the Council's request and that the application can continue its progression.

Yours sincerely



Micheal Wells

**Town Planning & Development Consultant**

*Bushfire Accreditation No: BFP-128*