



CANADIAN AVIATION REGULATION ADVISORY COUNCIL (CARAC)

NOTICE OF PROPOSED AMENDMENT (NPA): RESPONSIBLE AERODROME DEVELOPMENT

EXECUTIVE SUMMARY

- In order to provide aerodrome development proponents and affected stakeholders with greater certainty with respect to aerodrome development and operations, to clarify the role of the Federal Government, and in light of an increasing number of complaints from the public and land-use planning authorities, Transport Canada has initiated a review of its policy framework with respect to aerodrome development.
- In January 2014, the Department published a Preliminary Issue and Consultation Assessment (PICA) to notify industry of its intent to propose new regulatory requirements pertaining to the construction of aerodromes.
- Transport Canada is proposing to introduce mandatory consultation with affected stakeholders for aerodrome proponents in advance of specified proposed developments.
- The objective of the proposed regulations is to improve the transparency surrounding aerodrome development by establishing parameters for consultation, to strengthen the public's awareness of local aerodrome construction projects, and to provide greater regulatory certainty regarding aerodrome development.

BACKGROUND

- The Government of Canada has exclusive jurisdiction over aeronautics and has established a legal framework through the *Aeronautics Act* (the Act) and the *Canadian Aviation Regulations* (CARs), which set robust safety requirements for the civil aviation industry. The Act provides the Governor in Council with the authority to make regulations with respect to the location, inspection, certification, registration, licensing, and operation of aerodromes. In addition, recent amendments to the Act provide the Governor in Council with the authority to make regulations with respect to consultations.
- The Minister may only prohibit the development of an aerodrome for safety reasons or if it is in the public interest.
- Currently, the CARs distinguish between three types of aerodromes; certified, registered, and non-registered. Under the current regulatory framework, only aerodromes seeking certification are required to consult with local land use authorities and the local community. Through the certification requirements for heliports and aerodromes, Transport Canada advises proponents to consult with local land use authorities before undertaking any substantial commitments. There is no guidance material on what constitutes consultation.

STATEMENT OF THE PROBLEM AND POLICY CONSIDERATIONS

- It is understood and recognized that aerodromes are engines for nearby communities and that they are vital to the growth of a number of Canadian industries. Urbanization and densification of communities around aerodromes have resulted in an increase of noise complaints about aerodrome operations. As such, there is a need for a balanced approach that respects responsible aeronautics, the needs of the local



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community, and the interests of local residents and stakeholders.

- The dynamics of aerodrome development and operations, as well as the needs and expectations of Canadians, have evolved considerably due to economic and socio-political factors including increased urbanization, the demand and availability of cheaper passenger air travel and a growing air cargo industry. These factors, coupled with the need for a strong aviation transportation system, require a balanced approach to consultation that will help alleviate the public’s concerns around aerodrome development, such as land use, noise, and environmental considerations, while promoting Canada’s aviation sector and satisfying the need for aerodromes to move people and goods safely and securely.
- Because the federal government retains jurisdiction over aerodrome development in Canada, proponents of aerodrome developments are presently not subject to existing provincial and municipal laws and processes – which often include prescriptive consultation mechanisms – that would otherwise offer transparency and certainty to affected stakeholders. Certified aerodrome operators are required by Transport Canada to consult in advance of development and expansion and owners and operators of other non-certified aerodromes are encouraged to consult, yet industry and stakeholders do not have a federal standard to guide them on what a meaningful consultation process looks like.
- That the Minister of Transport is receiving an increasing number of complaints from provinces, municipalities and Canadians with respect to the construction of new aerodromes and the operation of existing aerodromes illustrates the limitations in the current regulatory framework (CARs Part III – Aerodromes, Airports and Heliports).
- The overarching objective of this regulatory proposal is to encourage responsible aerodrome development and operation by engaging the community and other affected stakeholders in advance of aerodrome development. Secondary objectives are to strengthen the public’s awareness of aerodrome construction projects and, for proponents of aerodrome developments, to introduce clarity and predictability into the consultation process and reduce the potential of unnecessary delay.

ANALYSIS SUMMARY

- The proposed amendment will require the proponents of specified aerodrome developments to engage affected stakeholders prior to commencing work. The consultation process is intended to provide information to stakeholders with respect to the proposal, create an opportunity for public comments, and to identify and mitigate legitimate safety concerns raised. The goal is to encourage timely dialogue between the proponent and affected stakeholders in advance of development and, in turn, to identify and mitigate concerns to facilitate development.

DOMESTIC AND INTERNATIONAL FACTS

- The Canadian aviation industry has existing guidance material that promotes but – with the exception of certified aerodromes – does not require consultation between aerodrome proponents, land use authorities and local residents. Existing guidance material highlights the importance of engaging local residents



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prior to construction to discuss the planned aerodrome and promotes the use of voluntary guidelines designed to mitigate concerns raised by local residents. The material also promotes early dialogue prior to construction with local land use authorities, such as municipal officials, to discuss the planned development. No prescribed consultation process standard is defined.

- Certified aerodromes are required to undertake public consultations prior to making changes to their levels of service or operations or use and they have largely undertaken them with great success. Airport master plans are often the vehicle used to report on the outcomes but they rarely contain the details of the process they followed.
- Australia has comprehensive material available which outlines their approach to aerodrome development. All leased federal airports are subject to a planning framework prior to commencing a new development and/or making changes to an already existing one. The decision to approve or refuse aerodrome development is made by the Minister. A key component included in the prescriptive planning framework is a mandatory though undefined consultation process with key stakeholders and the community. An integral part of Australia's consultation process is the effective and on-going interaction with stakeholders.
- The United States, the United Kingdom and the European Union's approaches to aerodrome development also require consultation with affected stakeholders. However, the processes to be followed are also not defined.

TRIAGE

- The impact level of this proposed regulation has been preliminarily estimated to be low, according to the Treasury Board Triage Statement criteria. A low impact is considered less than 10 million dollars present value over 10 years.
- The cost-benefit analysis only takes into account the costs and benefits of the changes attributed to the proposed regulations compared to what is presently taking place in industry, be it mandatory or on a voluntary basis.
- Proponents of larger certified aerodrome developments likely already have statutory consultation processes in place and that these are managed by consultant firms typically hired by the proponents to undertake all steps in the preparation of the planning justification report, from pre-consultation to public record, as described in this NPA. The range of the cost for these aerodromes to undertake the public consultation as part of the larger development application process is estimated as a onetime cost per project of between \$25 000 and \$60 000.
- It is assumed that public consultation is not new for the majority of large aerodrome proponents. Should the proponent not regularly incorporate aspects of the consultation steps as described in this NPA, it is assumed that the steps will be conducted in parallel to other preliminary planning work and will not contribute to costs due to delay of operations.
- It is estimated that the range of cost for a small certified or otherwise affected registered or unregistered



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aerodrome development consultation will be a onetime cost per project of \$6 000 to \$15 000. The costs are attributed to printing and delivering the public notification package, newspaper fee, rental of public consultation location and audio-visual equipment, time for management to attend the information session and respond in writing to comments.

Note: for the purposes of the Triage, small is considered to be 100 employees or less and has a gross annual revenue of between \$30 000 and \$5 million.

RECOMMENDED CONSULTATION STREAM

Recommended Consultation Stream

- As per the CARAC process, Transport Canada published a Preliminary Issue and Consultation Assessment in January 2014. Following the publication of the PICA, Transport Canada held a one day focus group with stakeholder representatives to have a policy-level discussion regarding the regulatory proposal.
- The Focus Group was held in June 2014 to share ideas and propose recommendations or alternative approaches. The Focus Group created a consultation applicability matrix as part of their feedback to the department. Additionally, the participants made a series of recommendations pertaining to the roles of Transport Canada and NAV CANADA, consultation requirements, and identifying a need to further define standards and guidelines that stem from the regulatory proposal. These recommendations have been incorporated in this NPA.
- As per the new CARAC process, stakeholder comments will be sought through this Notice of Proposed Amendments. Comments will be considered as Transport Canada proceeds with drafting the amendments to the regulations and standards.
- Transport Canada will then proceed to publication in the *Canada Gazette* Part I, where stakeholders and Canadians will have the opportunity to provide additional comments.

RECOMMENDED SOLUTION

- Based on the feedback received from stakeholders on the PICA and at the Focus Group, Transport Canada is proposing regulatory amendments that will require proponents of new aerodrome developments to consult affected stakeholders within a defined area prior to commencement of work.
- The requirement to consult will also apply to existing certified and non-certified aerodromes when proposed development results in changes to the existing level of service or operations or usage.
- Transport Canada is determining the parameters of the following:
 - the circumstances under which the requirement to consult are applicable;
 - the mechanics of the consultation process including all steps to be taken;



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- the duration of the consultation process; and,
- a defined dispute resolution process in the event parties have reached an impasse.
- In the interest of providing transparency and certainty for industry and affected stakeholders, Transport Canada will prepare guidance material on the public consultation process.

OBJECTIVES

- The primary objective of this regulatory proposal is to encourage responsible aerodrome development and operation by requiring the proponent to engage affected stakeholders in advance of building a new aerodrome or before making certain modifications to an existing one.
- Secondary objectives are to strengthen the public's awareness of aerodrome construction projects and introduce certainty in aerodrome developments by way of a transparent, meaningful, predictable and efficient consultation process.

PROPOSED CHANGES

Applicability

1. The public consultation process will apply to:
 - a. A new aerodrome development
 - i. Within a built-up area of a city or town;
 - ii. In non-built up areas if
 1. It is within 4000m of a built-up area of a city or town;
 2. It is in or within 4000m of a protected area; or
 3. It is within 30 nautical miles of a registered or certified aerodrome.
 - b. An existing aerodrome development if
 - i. modifications result in changes to existing level(s) of service or operation; or
 - ii. modifications result or could reasonably result in change(s) to existing usage.
2. The public consultation process will not apply in the following circumstances:
 - a. A new aerodrome development in a non built-up area if the new aerodrome development represents an *ad hoc* aerodrome, which in this instance means a facility not set apart for the operation of aircraft and at which take-offs and landings occur on no more than a combined 30 days per calendar year.
 - b. An existing aerodrome development if



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- i. modifications do not result in change(s) to existing levels of service or operation; or
- ii. modifications do not result or could not reasonably result in change(s) to existing usage.
- c. Emergency temporary aerodrome operations – In instances where the needs of the public will be met by the rapid and temporary installation of an aerodrome for emergency services, for example, a base for forest fire suppression, search and rescue operations, medical necessity.
- d. Agricultural operations – The aerodrome is used solely for agricultural operations.

Pre-Consultation

3. Proponents must notify NAV CANADA and Transport Canada of their proposal regardless of the requirement to conduct a public consultation.

Public Notification and Notice of Community Information and Comment Session

Public Notification

4. Where public consultation is deemed to be a requirement, local public, land-use authority(s) and nearby registered and certified aerodromes must be notified of the proposed aerodrome development by way of a public notification package.
5. The public notification package of an upcoming consultation must be clearly marked, making reference to the proposed aerodrome development, so that it is not misinterpreted as junk mail. The notice must be sent by mail or be hand delivered. The face of the package must clearly reference that the recipient is within the prescribed notification radius of the proposed aerodrome development.
6. It is the proponent's responsibility to ensure that the public notification provides at least **30 days** for written public comment.
7. Public Notification must include, but it not limited to:
 - a. a general description of the proposed aerodrome development's purpose and the reasons why existing facilities are either insufficient or cannot be used;
 - b. the proposed location within the community, including the civic address, geographic coordinates and a visual representation of where the development will be undertaken;
 - c. information on the environmental status of the project, including any requirements under the *Canadian Environmental Assessment Act, 2012*;
 - d. a detailed description of the proposed aerodrome development including
 - i. scope of the development and/or work to be undertaken, including the proposed start and end date of the work; and
 - ii. description of change(s) to service or activity at existing facility or, in the event of a new aerodrome, the new service or activity to result from the development.
 - e. an attestation that the installation will adhere to local building and fire codes;



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- f. an attestation that Transport Canada, NAV CANADA, and, as applicable, that land-use authority(s), nearby certified and registered aerodromes (listed) and the local public are being engaged in the consultation process;
 - g. notice that general information relating to the Transport Canada Aerodrome Development Consultation Process is available on Transport Canada's website (http://www.tc.gc.ca/_____); and
 - h. closing date for submission of written public comments (not less than 30 days from receipt of notification).
8. In areas of seasonal residence or business, the proponent is responsible for determining the best manner to notify such residents to ensure their engagement.

Newspaper Notice

9. In addition to public notification requirements, the proponent of an aerodrome development must place a notice in a local newspaper circulating in the proposed area. The notice must be synchronized with the distribution of the public notification package. It must be legible and placed in the public notice section of the newspaper. The notice must include:
- a. a description of the proposed installation;
 - b. its location and street address;
 - c. the date and location of the Community Information and Comment Session;
 - d. how to get more information on the proposal and the Transport Canada consultation process;
 - e. proponent contact information and mailing address; and
 - f. an invitation to provide public comments to the proponent within 30 days of the notice.
10. In areas without a local newspaper, other effective means of public notification must be implemented, including but not limited to radio and social media.

Signage

11. Signage describing the proposed aerodrome development must be clearly visible and installed at the site of the proposed development. The erection of the sign must be synchronized with the distribution of the public notification package so that the public has 30 days notice. It must be clearly visible and legible from the street.
12. The sign must include:
- a. a description of the proposed installation;
 - b. its location and street address;
 - c. the date and location of the Community Information and Comment Session;



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- d. how to get more information on the proposal and the Transport Canada consultation process;
- e. proponent contact information and mailing address; and
- f. an invitation to provide public comments to the proponent and closing date for submission of written public comments (not less than 30 days from erection of sign).

Notice of Community Information and Comment Session

13. Proponents must give notice of a Community Information and Comment Session to be held within the community of the proposed development. It must be convened no earlier than 14 days and no later than 20 days from the date of mailing of the notice or the publication of the notice in the local community newspaper, whichever occurs later. Details of the Community Information and Comment Session may be simultaneously included in the public notification package and in the placement of the newspaper notice.
14. Written notice of the Community Information and Comment Session must be provided to:
 - a. local public (if applicable), including nearby residences, community gathering areas, public institutions, schools, etc.;
 - b. the appropriate land-use authorities (if applicable); and
 - c. nearby registered or certified aerodromes (if applicable).
15. The notification must include the following information:
 - a. the statement: “[insert name of proponent] is/are proposing an aerodrome development at [insert address], which consists of the following: [insert description of proposed works]. Transport Canada requires [insert name of proponent] to review this proposal with the nearby public, land use authorities and nearby registered and certified aerodromes;”
 - b. a map showing the location of the proposed aerodrome development within the community;
 - c. information explaining:
 - i. the aerodrome development’s purpose; and
 - ii. the reasons why existing aerodrome infrastructure or nearby aerodrome infrastructure cannot or does not meet the needs of the proponent.
 - d. a statement that the aerodrome development will adhere to local building and fire codes and that it will comply the *Canadian Aviation Regulations*;
 - e. the statement: “[insert name of proponent] invite(s) you to attend our Community Information and Comment Session at [insert date, time and location], or within 30 calendar days of the date of this notice provide by email or letter your comments, and/or request to be informed of the outcome of the proposed aerodrome development consultation. Please contact...” followed by the name of the proponent, their mailing address, phone number and email.”; and



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- f. a statement that the proponent will respond to all reasonable and relevant concerns.

Community Information and Comment Session

16. At the Community Information and Comment Session the proponent must, in addition to addressing all reasonable and relevant concerns raised by the public, present the following information:
 - a. an explanation that Transport Canada requires proponent consultation with the public and land-use authority(s), an explanation of what that process is, and the purpose of the Community Information and Comment Session;
 - b. an explanation of the purpose of the proposed aerodrome development, the need for the selected location and development, and reasons why existing aerodromes or other infrastructure cannot be used;
 - c. a description of the aerodrome development;
 - d. a map showing the aerodrome development's location within the community;
 - i. a statement that the proponent will respond to reasonable and relevant concerns raised by the public; and
 - ii. an explanation of what Transport Canada classifies as a reasonable and relevant concern; and,
 - e. the deadline (i.e. 10 days) for bringing reasonable and relevant concerns to the proponent after the Community Information and Comment Session.
17. This information may be provided in an official language of choice but a representative of the proponent must be available at the Community Information and Comment Session to provide information and respond to comments and questions in the other official language.

Responding to the Public

18. Proponents are to address all reasonable and relevant concerns, make all reasonable efforts to resolve them in a mutually acceptable manner and must keep a record of all associated communications. If the local public, land-use authority(s) or nearby aerodrome raises a question, comment or concern relating to the proposed aerodrome development, then the proponent is required to:
 - a. respond to the party in writing within 14 days acknowledging receipt of the question, comment or concern and keep a record of the communication;
 - b. address in writing all reasonable and relevant concerns within 60 days of receipt or explain why the question, comment or concern is not, in the view of the proponent, reasonable or relevant or why the response may take more than 60 days to prepare; and
 - c. in the written communication referred to in the preceding point, clearly indicate that the party has 21 days from the date of the correspondence to reply to the proponent's response. The proponent must retain a copy of all public reply comments.



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19. Responding to reasonable and relevant concerns may include contacting a party by telephone, engaging in a community meeting or having an informal, personal discussion. The proponent is expected to engage the public in a manner it deems most appropriate. A record of the communication must be made and kept.

Public Reply Comments

20. The proponent must clearly indicate to the party it has 21 days from the date of the party's correspondence to reply. The proponent must also keep a record of all correspondence and discussions that occurred within the 21-day public reply comment period. This includes records of any agreement that may have been reached and/or concerns that remain outstanding.
21. The factors that will determine whether a concern is reasonable or relevant according to this process will vary but will generally be considered if they relate to the requirements of this process and to the particular amenities or important characteristics of the area surrounding the proposed aerodrome development. Examples of concerns that proponents are to address may include, but are not limited to:
- a. A valid and substantiated safety issue;
 - b. The availability of alternate sites for the aerodrome;
 - c. Aircraft noise;
 - d. Environmental consideration, other than noise, including the impact on environmentally sensitive or protected lands;
 - e. Flights paths;
 - f. Hours of operation; and
 - g. Emergency response.
22. The following are examples of concerns that would not be considered reasonable or relevant:
- a. Environmental concerns that are not scientifically sound;
 - b. Potential effects that a proposed aerodrome may have on property values or municipal taxes;
 - c. Questions respecting whether the *Aeronautics Act*, the *Canadian Aviation Regulations*, locally established bylaws or other legislation, procedures or processes are applicable or should be amended in some manner.

Concluding Consultation Process

23. Transport Canada expects that the Aerodrome Development Consultation Process will be completed within 111 days from the issuance of the public notification process. It is Transport Canada's expectation that all parties will carry out their roles and responsibilities in good faith and in a manner that respects the spirit of this document. Proponents seeking developments in more populated or sensitive areas should expect greater engagement in the consultation process that may extend the process beyond 111 days. The process will be considered concluded when the proponent has either:



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- a. received no written questions, comments or concerns to the formal notification within the 30-day public comment period; or
 - b. if written questions, comments or concerns were received, the proponent has addressed and resolved all reasonable and relevant concerns and the public has not provided further comment within the 21-day public reply comment period.
24. In the case where the public responds within the 21-day reply comment period, the proponent should make further attempts to address the concern on their own. If the matter cannot be resolved, Transport Canada engagement can be requested (see Dispute Resolution). If a request for engagement is made at this stage, Transport Canada may review the relevant material, request any further information it deems pertinent from any party and may then decide that
- a. the proponent has met the consultation requirements of this process and that Transport Canada concurs that the installation or modification may proceed; or
 - b. the parties should participate in further attempts to mitigate or resolve any outstanding concern.

Public Record

25. A final report of the results of the public consultation process must be prepared by the proponent and made available upon request for a period of five years from the date the report is completed. The report must clearly describe the proposal and the consultation process. It must also include comments received during the consultation process and how the proponent responded. The report must include details of the final proposal.
26. The report must be completed within 60 days of the end of the consultation period and prior to the commencement of the proposed work, whichever is sooner.

Post-Consultation

27. Construction of the proposed development must commence within five years of the conclusion of the consultation. After five years, the consultation will no longer be deemed valid.

Dispute Resolution Process

28. The dispute resolution process is a formal process intended to bring about the timely resolution where the parties have reached an impasse. Upon receipt of a written request from a stakeholder or proponent asking for Transport Canada intervention concerning a reasonable and relevant concern, Transport Canada may request that all involved parties provide and share all relevant information. Transport Canada may also gather or obtain other relevant information and request that parties provide any further submissions if applicable. Transport Canada will, based on the information provided, either:
- a. make a final decision on the issue(s) in question, and advise the parties of its decision; or
 - b. suggest the parties enter into an alternate dispute resolution process in order to come to a final decision.
29. Should the parties be unable to reach a mutually agreeable solution, either party may request that



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Transport Canada make a final decision.

30. Upon resolution of the issue under dispute, the proponent is to continue with the process as required.

31. Depending on the nature of the request, Transport Canada will endeavor to complete its process within 30 days but no longer than 60 days.

UNTIL APRIL 8th 2015, COMMENTS ON THIS NOTICE MAY BE ADDRESSED, IN WRITING, TO:

CARAC contact info: carrac@tc.gc.ca

Note: after this date, comments will no longer be considered in further revisions to the regulations and standards.