



## **Aero Club of South Africa**

*National federation for Sport and Recreational Aviation*

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Date 12 April 2006

Dear Aero Club of South Africa member,

### **GENERAL RELEASE – PROTECTED AREAS ACT**

#### **Short Summary**

The Department of Environmental Affairs and Tourism enacted a law which seeks to lay claim to various portions of airspace. This was done with no consultation to the recognized stakeholders such as CAA, NASCOM, ATNS, Aero Club, CAASA and others. A draft bill was published for comment. Comment was made but it had no real effect.

#### **Background**

During 2003 the Department Environmental Affairs and Tourism (DEAT) published the draft bill "Protected Areas Bill" in Government Gazette No 24151. They called for comment, and the Aero Club did so citing a variety of impracticalities. The original bill called for a 1000 meter ceiling over certain areas, and the act now requires 2500 ft. (1000m = 3280 ft)

The areas under discussion are classified in section 9 as:

- (a) Special nature reserves, nature reserves (incl. wilderness areas) and protected environments.
- (b) World heritage sites.
- (c) Specially protected areas in terms of National Forests Act 1998.
- (d) Mountain catchment areas in terms of Mountain Catchment Areas Act 1970.

The Aero Club raised this issue with NASCOM (National Airspace Committee), of which the Aero Club is a member, at the time. The Commercial Aviation Association, as well as the Chair of NASCOM, responded to the draft Bill as a result. No Response from the DEAT was obtained.

This Bill was however amended in certain instances before being finally accepted and passed by the National Legislature.

Following the subsequent Act's promulgation I contacted the DEAT and spoke to various individuals. They informed me that the same author/coordinator, Dr. Cowan, deals with this issue. I am still waiting for a response from him.

The corresponding Regulations were developed and accepted by the Minister of the DEAT. An amendment act was issued to complete outstanding issues in the original act, and the legislation took effect during November 2005.

It has been brought to our attention that, notwithstanding the submissions made, the issues objected to at in the first instance were discounted. The detail of the appropriate provision is contained in Section 47 of the Act as well as the corresponding regulations.

### **The Current Situation**

The Aero Club has now requested the intervention of the Commissioner for Civil Aviation to assist in determining whether the Department of Transport or the Department of Environmental Affairs and Tourism has jurisdiction over airspace management. The Act goes as far as saying that "A special nature reserve or world heritage site includes the airspace above the reserve or site to a level of 2500 feet above the highest point of the reserve or site". How is this for appropriation?

A further problem is that of enforcement. It is seemingly indicated by the Act that "if they catch you they will evict you, except if your landing was necessitated by emergency".

It would seem that this piece of legislation constitutes a breach of entrenched Constitutional rights, alternatively is ultra vires.

A further question to the Commissioner pertains to the enforceability of the said act 57 of 2003. This issue may involve the amendment of the Civil Aviation Regulations, subject to the enabling Act providing for this. This question relates to the possible conflict between these two acts, and the depth of impact must be assessed vis a vis the amendment of aeronautical charts and the continuous annual amendment of the register contemplated in section 10 of the Act.

The Act also refers to a register of such sites and reserves but upon enquiry it was established that this will only take effect 6 months after the financial year end and then only once all Provincial registers has been received.

The Aero Club will be doing all in its power to overturn this legislation which can have the effect of removing and chopping enormous amount of usable airspace available for the use of sport and recreational pilots. Rest assured that we will not leave any stone unturned!

Regards

Neil de Lange  
GENERAL MANAGER