

Chapter 4

Essendon Airport investigations and committee views

4.1 This chapter considers the investigations into the February 2017 accident at Essendon Airport, as they relate to the bill's provisions. In particular, and as identified by the interim report, the committee considers the work of the National Airports Safeguarding Advisory Group (NASAG) and the implementation of public safety zones around airports.

4.2 This chapter also presents the committee's views and recommendation on the bill.

Essendon Airport accident

4.3 On 21 February 2017, a Beechcraft B200 Super King Air (VH-ZCR) took off from Essendon Airport and crashed into the DFO retail complex running alongside the airport, which resulted in a major fire at the shopping centre. The accident tragically killed the pilot and four American tourists on board.

4.4 Airport regulation, planning and development processes play important roles in ensuring ongoing aircraft and passenger safety. The importance of these processes was amplified by the terrible accident at Essendon.

4.5 Particular concerns in relation to airport land use and planning were raised after the accident. Some stakeholders noted that residential and commercial developments were being constructed in increasingly closer proximity to airport runways, thus reducing the space available for aircraft to take evasive action or make emergency landings when necessary.

4.6 There is considerable interaction between federal, state and local governments when determining the use of land around both major and general airports. The committee is not in a position to consider planning and approval processes at a state and local level, but has given some consideration to the intersection of the bill with federally-leased airport land use planning, in light of the tragedy at Essendon.

4.7 As noted in the interim report, the committee was advised by DIRD that following the accident, it was examining the development approval processes for land use planning at Essendon Airport.¹

4.8 The committee was further advised that the NASAG was considering the adoption of draft national guidelines, regarding runway public safety zones around

1 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, p. 179.

airports, and runway end safety zones (collectively referred to in this report as public safety zones).²

4.9 Following receipt of this advice, the committee determined that the findings and recommendations of the investigations into this tragedy, and the work of NASAG, would be taken into consideration when deliberating on the bill. Discussion on these issues follows.

Investigations into the Essendon Airport crash

4.10 On 29 March 2017, the Australian Transport Safety Bureau (ATSB) released its preliminary report into the Essendon crash. The report presented some information but did not make any findings. However, it did highlight that the continuing investigation would include a review of the approval process for the building that was struck by the aircraft.³

4.11 At additional estimates in February 2017, DIRD advised that it had:

had a look at the development approval processes involved in the land-use planning at the airport and we have compiled that information. We have provided advice to the minister in relation to both the details of the accident investigation process, along with the ATSB, and details of the development approval process for the buildings located at the DFO site. We now stand prepared to work with the ATSB in their investigation of these matters.⁴

4.12 DIRD further stated that it would await the findings of the ATSB investigation into the accident, before examining further the processes undertaken for building development approvals, and determining whether amendments were needed to those processes.⁵

4.13 In March 2017, the ATSB advised that its final report, which would contain the findings of the investigation, would be released in 'around 12 months', being March 2018.⁶ On 9 February 2018, it was announced that the investigation was

2 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, p. 182.

3 Australian Transport Safety Bureau, *Collision with terrain involving B200 King Air VH-ZCR at Essendon Airport, Victoria on 21 February 2017*, Investigation number AO-2017-024, https://www.atsb.gov.au/publications/investigation_reports/2017/aair/ao-2017-024/ (accessed 5 December 2017).

4 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, p. 179.

5 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, pp. 179-180, 181.

6 Australian Transport Safety Bureau, *Statement on update: Essendon accident*, 29 March 2017, <https://www.atsb.gov.au/newsroom/news-items/2017/update-essendon-accident/> (accessed 5 December 2017).

complete and a draft report was in the final stages of completion. It was anticipated that the final report would be released in late May or early June 2018.⁷

4.14 It has since been announced that the ATSB will undertake a separate investigation into building approval and planning processes, from an aviation perspective. This would include:

any airspace issues associated with the [DFO] development, to determine the transport safety impact of the development on aviation operations at Essendon Airport.⁸

4.15 The ATSB stated that this separate investigation into building approvals was due to the 'specialist nature of the approval process and airspace issues attached to the retail centre development'.⁹

Committee view

4.16 The committee notes with some concern the significant amount of time that will have lapsed between the accident, and the final report being issued by the ATSB, should the May 2018 deadline be achieved.

4.17 The committee's concerns are exacerbated by reports that an investigation into a near-collision of two aircraft at Mount Hotham, Victoria, in September 2015 has yet to be completed. As of 9 February 2018, the draft report into the Mount Hotham incident was in the final stages of completion, as the completion date had been extended due to 'a number of factors'.¹⁰ Of particular significance is that the pilot allegedly at fault in the September 2015 incident, was the pilot involved in the Essendon Airport crash in February 2017.¹¹

4.18 The committee is of the view that investigations by the ATSB should be completed in a timelier manner. Doing so would allow serious safety issues to be addressed soon after serious incidents occur, and may prevent such incidents from happening in the first place.

7 Australian Transport Safety Bureau, *Collision with terrain involving B200 King Air VH-ZCR at Essendon Airport, Victoria on 21 February 2017*, Investigation number AO-2017-024, Updates, 9 February 2018, https://www.atsb.gov.au/publications/investigation_reports/2017/aair/ao-2017-024/ (accessed 20 February 2018).

See also Aleks Devic, 'New probe to focus on airport planning', *Herald Sun*, 17 February 2018, p. 10.

8 Aleks Devic, 'New probe to focus on airport planning', *Herald Sun*, 17 February 2018, p. 10.

9 Aleks Devic, 'New probe to focus on airport planning', *Herald Sun*, 17 February 2018, p. 10.

10 Australian Transport Safety Bureau, *Near-collision and Operational Event involving Beech Aircraft Corp. B200, VH-OWN and Beech Aircraft Corp. B200, VH-LQR, Mount Hotham Victoria on 3 September 2015*, https://www.atsb.gov.au/publications/investigation_reports/2015/aair/ao-2015-108/ (accessed 20 February 2018).

11 Ean Higgins, 'Why was Essendon crash pilot at controls?', *The Australian*, 8 November 2017.

4.19 The committee notes that the ATSB's investigation into building planning and approval processes may make findings in relation to the construction approvals for the DFO building alongside Essendon Airport.

4.20 If so, the committee encourages the Minister, DIRD and the Senate to be aware that such findings could directly impact on the provisions of this bill. It seems logical to the committee that any such findings are considered in future as airports develop MPs and MDPs.

4.21 In developing its legislative agenda, it would be prudent for the government to give careful consideration to whether the findings of the ATSB investigation will necessitate further amendments to airport planning legislation.

4.22 This would also give some assurance to stakeholders that the safety concerns around airport land use have been given serious consideration in the development of airport planning laws.

National Airports Safeguarding Advisory Group

4.23 The National Airports Safeguarding Framework (NASF), established in 2012, is a national airport land use planning framework. NASF aims to improve the safety outcomes at airports by 'ensuring aviation safety requirements are recognised in land use planning decisions', with guidelines adopted by jurisdictions on various safety issues.¹²

4.24 The NASAG, which developed the NASF and is consulted on amendments to the NASF guidelines, is comprised of Commonwealth, state and territory government planning and transport officials, the Civil Aviation Safety Authority (CASA), Airservices Australia, the Department of Defence, and the Australian Local Government Association.¹³

4.25 The NASF currently contains seven guidelines (Guidelines A to G), which cover a range of airport planning requirements.¹⁴ Of particular importance to the committee is NASF and NASAG progress on the implementation of guidelines for public safety zones around airports. These zones provide safety areas at the ends of

12 Department of Infrastructure and Regional Development, *The National Airports Safeguarding Framework*, 1 December 2016, https://infrastructure.gov.au/aviation/environmental/airport_safeguarding/nasf/ (accessed 5 December 2017).

13 Department of Infrastructure and Regional Development, *The National Airports Safeguarding Framework*, 1 December 2016.

14 See Department of Infrastructure and Regional Development, *Factsheet: National Airports Safeguarding Framework*, https://infrastructure.gov.au/aviation/environmental/airport_safeguarding/nasf/framework_factsheet.aspx (accessed 6 December 2017).

runways, on and off airport, to minimise the risk of damage by aircraft during take-off or landing.¹⁵

4.26 Mr Mike Mrdak, then Secretary of DIRD, updated the committee on the progress of public safety zone areas:

Since [2012], the Commonwealth and Queensland have been working on a guideline for public safety areas for aerodromes. There is no such guideline in place in Australia at this time. There is very limited guidance available from the International Civil Aviation Organisation on such runway safety zones, and we have been looking and researching examples...in the UK and the United States.

The current situation is that a draft guideline is being prepared and finalised by the Commonwealth and Queensland, which is due to shortly go out to the other jurisdictions for consideration. There has been some resistance by some jurisdictions to having such a land-use planning requirement; however, we are working this through. This has been prompted by concerns over many years...around this issue of the lack of such guidance to Australian land-use planners, both on and off airport.¹⁶

4.27 DIRD advised that progress has been slow on the development of the public safety zone guidelines, given the disparities between the Commonwealth's role, and that of state and local governments off airport, and the need to have a consistent approach through all states and territories. Further issues were identified by Mrs Kerryn Macaulay, Aviation and Airports Division, DIRD, who stated that:

There are two different issues [with public safety zones]. If it is a greenfields arrangement where you are building a new airport then it is a much easier thing to deal with. But obviously we are going to be dealing with airports that already exist, that already have developments around them. And some of those are housing developments. That is where some of the sensitivities are in terms of getting the messaging out that this is an important thing to have, and future developments would take these things into consideration to reduce the number of people who are living in or are concentrated in those zones so that we can protect them into the future.¹⁷

4.28 In response to questions on notice, CASA advised on the progress NASAG was making on the implementation of public safety zone guidelines:

15 Department of Infrastructure, Transport, Regional Development and Local Government, *Discussion Paper: Safeguards for airports and the communities around them*, June 2009, p. 14, https://infrastructure.gov.au/aviation/environmental/files/Safeguarding_Discussion_Paper_Jun09.pdf (accessed 6 December 2017).

16 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, p. 167.

17 Mrs Kerryn Macaulay, Department of Infrastructure and Regional Development, *Estimates Hansard*, 27 February 2017, p. 183.

At the most recent NASAG meeting on 14 March 2017, members agreed to brief their respective Ministers on a draft Public Safety Zones Guideline that has been developed by the Commonwealth and Queensland Governments in consultation with other NASAG members. Subject to Ministers' agreement, NASAG will conduct targeted stakeholder consultation on the draft Guideline in the second half of 2017. The draft Guideline would then be released for wider public consultation prior to being presented to the Transport and Infrastructure Council for endorsement.¹⁸

4.29 The committee was advised at additional estimates in February 2017 that Queensland was, at that time, the only jurisdiction to have implemented public safety zone legislation.¹⁹

4.30 It appears that a draft guideline in relation to public safety zones has still yet to be released for public consultation, or finalised.²⁰ The committee has been unable to determine whether any further work has been progressed on the implementation of nation-wide public safety zones, in line with the Queensland legislation.

4.31 CASA was of the view that, with regard to the accident at Essendon Airport, a public safety zone would not have played any role in the accident, as the aircraft did not enter what would be considered a public safety zone area.²¹

4.32 CASA further advised that it would not have objected to the location of the shopping complex in relation to the Essendon Airport runway, as the building location adhered with current regulations.²²

Committee view

4.33 It is apparent to the committee that the development of public safety zone guidelines should be progressed as a matter of priority. Notwithstanding the sensitivities around differences in jurisdiction and presenting a clear message on the

18 Civil Aviation Safety Authority, answers to questions taken on notice, 27 February 2017 (received 19 May 2017).

19 Mr Andrew Tiede, Civil Aviation Safety Authority, *Estimates Hansard*, 27 February 2017, p. 164.

20 There are indications that draft guidelines (Guideline H) for public safety zones have been in development; see for example ACT Government, *Airport planning matters*, <http://www.planning.act.gov.au/customer-information/airport-planning-matters> (accessed 6 December 2017) and Adelaide Airport Consultative Committee, Minutes, 19 August 2016, <http://www.adelaideairport.com.au/corporate/wp-content/uploads/2016/11/AACC-Minutes-19-August-2016-DRAFT-1.pdf> (accessed 6 December 2017).

21 Mr Andrew Tiede, Civil Aviation Safety Authority, *Estimates Hansard*, 27 February 2017, p. 164.

22 Mr Shane Carmody, Civil Aviation Safety Authority, *Estimates Hansard*, 27 February 2017, p. 175.

need for these guidelines to stakeholders, such guidelines would be an invaluable part of the airport land use planning process.

4.34 The consideration of public safety zones should be incorporated into the development of future MPs and MDPs, in accordance with the adopted guidelines. Such a process would be of great importance to the safety of aircraft and passengers, and to the commercial and residential developments built in close proximity to airports.

4.35 The committee encourages NASAG to release the draft guideline for public consultation as soon as possible, which should be followed by the prompt endorsement of the guideline and its application across the nation's airports.

Submissions relating to land use planning

4.36 In commenting on the bill, some submitters took the opportunity to voice their concerns about broader planning and development risks and safety issues around airports. Many of these concerns were amplified by the events at Essendon Airport and also highlighted the need to better assess the risks associated with land use on and around airports.

4.37 For example, Perth Airport was of the view that there needed to be a 'greater effort, through the Council of Australian Governments process, to have a consistent approach to land use policy and regulations across Australia, based on the NASF guidelines'.²³

4.38 The Melbourne CACG submitted that it:

strongly supports the existence [of] a robust land use planning framework around airports to protect existing and future residents, and ensure the important economic and social roles performed by airports are sustainable.²⁴

4.39 In its submission, AIPA stated that it did not support the bill in its current form, and argued new provisions should be inserted into the Act to address operational risk management.²⁵

4.40 AIPA was most concerned with buildings and structures near runways creating 'dangerous turbulent wakes in strong winds', and changing light sources and in-flight visibility. Land use near airports could result in the 'hazardous wind disturbance of aircraft'. AIPA suggested that:

The existing legislative framework does not provide a uniform management scheme for these operational risks. The Airports Amendment Bill 2016

23 Perth Airport, *Submission 6*, pp. 5-6.

24 Melbourne Airport Community Consultation Group, *Submission 10*, p. 1.

25 Australian and International Pilots Association, *Submission 3*, p. 1.

potentially makes the situation worse by excluding more projects on the basis of cost being treated as "major" developments that require appropriate risk treatments.²⁶

4.41 AIPA called for a provision requiring an MDP to properly consider developments 'likely to have significant impact on operational risks to aircraft using the airport' and that may 'compromise the efficient operation of airports'. Such a provision would require operational risks to be assessed, regardless of development costs. AIPA argued that the bill should not proceed without this emphasis on safety.²⁷

4.42 CASA expressed its concern that the increase to the MDP monetary trigger in the bill could have an effect on aviation safety. However, CASA argued that risks could be:

remediated by continued monitoring by the Department of Infrastructure and Regional Development as the relevant agency and advice to all federal leased airport managers that any construction (even below the current or proposed dollar trigger) should be discussed with CASA for possible safety implications prior to proceeding.²⁸

4.43 CASA did highlight that the issue of building-generated wind shear and turbulence had emerged in recent years, given the increased prevalence of buildings constructed at heights just below the prescribed airspace at the site. CASA was able to provide advice based on the NASF and additional criteria by the Netherlands Aeronautical Research Laboratory (NLR). CASA argued that:

NASF and NLR criteria are used because CASA, like every other aviation safety regulator, does not have standards relating to this matter.²⁹

Committee views

Essendon Airport accident

4.44 As the investigations continue into the tragedy that occurred at Essendon Airport in February 2017, the committee observes that such a terrible event may trigger reinvigorated discussions at all levels of government on broader airport land use planning and development issues, to improve the safety for all those who engage with airports.

4.45 The recently announced ATSB investigation into the building approval process for buildings around Essendon Airport, resulting from the Essendon crash, will play an important role in progressing discussions about aviation safety in relation

26 Australian and International Pilots Association, *Submission 3*, pp. 2-3.

27 Australian and International Pilots Association, *Submission 3*, pp. 3-4.

28 Civil Aviation Safety Authority, *Submission 11*, p. 1.

29 Civil Aviation Safety Authority, *Submission 11*, Attachment A, p. 2.

to urban development. As previously noted, the findings of this investigation should be carefully considered in the context of legislative changes to airport planning laws.

4.46 The committee hopes that the important work of NASAG goes some way to addressing the concerns of stakeholders about building and structures near runways, and the impact these have on safe aircraft operation.

4.47 It appears to the committee that the encroachment of developments, be they residential or commercial, on and near airport land presents significant safety concerns. It is essential that safety on and around airports is given proper consideration at all times, without being overridden by commercial pressures.

4.48 The committee is of the view that a holistic approach should be taken to airport planning, and this should be reflected in the MP process. It should be incumbent on all airport lessees, developers and planners to do more than the bare minimum to adhere to airport planning legislation and frameworks, in order to give proper consideration to broader safety considerations.

Master Plans

4.49 An eight year MP cycle is likely to provide considerable benefits to the airport lessees of secondary and general airports, and representatives of these airports offered considerable support for the change. The committee believes it is sensible to retain the five year MP cycle for the five major airports, given their size and complexity, and potential impact on nearby communities.

4.50 The committee understands the view of some submitters that the MP cycle could be further extended to ten years for some airports, particularly given the financial and labour costs involved with compiling such a complex document. However, as acknowledged by AAA, the amendments are a result of extensive consultation and eight years is considered by the committee to be a suitable compromise.

ANEFs

4.51 Given that the MP process has been extended from five to eight years, the committee sees it as sensible to require a new ANEF to be obtained for each MP.

4.52 Despite any extra administrative or regulatory tasks this may involve, it would appear to the committee that new ANEFs would provide better information to local communities and airport stakeholders. It is hoped this will support better planning outcomes and allow for more informed consultation with stakeholders and communities around airports during the MP process.

Monetary triggers for MDPs

4.53 The review and possible revision of the MDP monetary trigger every three years will ensure the trigger better reflects the prevailing economic environment at the

time. Utilising statistical information should help reduce large increases in the trigger amount, noting the larger the monetary trigger, the fewer large-scale airport developments will be subject to MDPs and associated public consultation processes.

4.54 The committee notes the view of some submitters that a higher monetary trigger increases the risk of some developments, as the higher threshold will exclude some significant developments from the MDP process. Given that the Act contains a number of triggers for an MDP, including if a development is likely to have significant environmental or community impacts, the committee is satisfied that appropriate protections remain in place to consider all major developments.

MDP consultation periods

4.55 It was argued that the automatically approved reduced consultation period, in the absence of a Ministerial decision within 15 business days, will provide certainty to airport lessees for their planning processes. It appeared to some submitters that consideration had not been given to the impact this amendment may have on airport community groups and other airport stakeholders.

4.56 The committee notes DIRD's advice that a shorter consultation period can only be approved if the draft MDP aligns with the final MP, and will not raise any issues likely to have a significant impact on the airport community.

4.57 The committee appreciates the complexity and detail involved in MDPs, and therefore encourages suitable public consultation wherever possible. The committee trusts that in the event a request is automatically approved under these new provisions, it does not result in any negative consultation or planning outcomes.

Substantial completion of an MDP

4.58 The committee understands the need for extending the completion deadline for major developments in certain circumstances, and the need to do so without penalty for the parties involvement. This will provide greater certainty to airport lessees when undertaking major works, especially in instances where significant time, money and resources have already been invested.

4.59 However, lengthy extensions for major development completion should consider the flow-on effects of ongoing and incomplete construction for stakeholders, such as airlines, retailers and other commercial interests, and the surrounding local residential communities.

4.60 Overall, the committee sees the bill presenting a number of common sense amendments to federal airport regulation, developed after extensive consultation.

4.61 The committee does note, however, the potential for the ATSB investigation into building approval processes to have an impact on airport planning regulation, which may require further legislative amendment. The committee encourages the government to take this into account when developing its legislative agenda.

4.62 The committee commends the bill to the Senate.

Recommendation 1

4.63 The committee recommends that the Senate pass the Airports Amendment Bill 2016.

Senator Barry O'Sullivan

Chair

