

Chapter 2

Key provisions

2.1 The amendments proposed by the bill are a result of consultation that commenced in July 2014, with the release of a discussion paper by the Department of Infrastructure and Regional Development (DIRD).¹ The paper sought stakeholder views on options to streamline the administrative arrangements for MPs and MDPs.

2.2 After a second discussion paper was released in 2015, DIRD found that airport lessees 'favoured proposed reductions in regulation while other stakeholders largely supported the status quo or a tightening of existing regulatory provisions'. The bill therefore 'seeks to strike a balance between these competing views'.²

2.3 During the presentation of the bill to the House of Representatives, the Minister noted that the bill could be considered in three parts. The three key areas of the bill involve:

- (i) amending the existing MP process;
- (ii) changing the monetary trigger for an MDP; and
- (iii) amending regulatory processes involved with MDPs.³

2.4 This chapter provides detail on the amendments made by these three parts of the bill and the consequences of these changes.

The Master Plan process

Airport Master Plans

2.5 An airport MP provides for the future coordinated development of an airport and should 'establish the strategic vision for the economic and efficient use of the airport over the planning period'.⁴

1 The Department of Infrastructure and Regional Development is now known as the Department of Infrastructure, Regional Development and Cities. The committee has chosen to identify the Department by its former designation, reflecting the fact that the presentation of the bill, the submissions made to the committee and the presentation of other evidence occurred under that title.

2 Department of Infrastructure and Regional Development, *Submission 22*, pp. 3-4.

3 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, pp. 5134-5136.

4 Department of Infrastructure and Transport, *Master Plan Amendments – Guidelines*, January 2012, p. 2, https://infrastructure.gov.au/aviation/airport/planning/files/Master_Plan_Amendment_Guidelines_2012.pdf (accessed 9 February 2017).

2.6 The Act sets out the required content of each airport MP. MPs contain information about, among other things, development objectives, land use intentions, the ANEF, flight paths and environmental issues.⁵

2.7 The MP covers a forward period of 20 years, and must be renewed every five years. The MP also incorporates an Environment Strategy, detailing the airport's plans to manage environmental issues in the next five years, and beyond.⁶

2.8 The Minister noted that the five year MP process can be burdensome on airport lessees, as 'the current legislative process requires an airport lessee company to expend significant resources and it can take the company two years on average to develop each plan'.⁷

2.9 Further, DIRD advised that since the MP process was introduced, the cost of compliance had increased significantly and, depending on the airport, was estimated at between \$500 000 and \$2.5 million for each MP.⁸

2.10 To address these concerns, Item 9 of the bill amends section 76(1)(a) of the Act to extend the five year MP renewal period to eight years, for those airports listed in Table 1.1. The bill makes a number of consequential amendments throughout the Act to implement the eight year timeframe for applicable airports. The Brisbane, Melbourne, Perth, Sydney (Kingsford Smith) and Sydney West airports will continue to require a new MP every five years.⁹

2.11 The amendment acknowledges the long-term implementation timeframes of many airport infrastructure projects, with the Minister stating that MPs are currently required:

irrespective of the operational, administrative, resourcing and financial capacity of individual airports or the level of impact their operations have on the community. Implementing an eight-year master plan cycle for secondary and general aviation airports, will minimise the impact of these factors.¹⁰

5 *Airports Act 1996*, ss. 71 and 79.

6 'Airport Planning and Regulation', Department of Infrastructure and Transport, February 2017, <https://infrastructure.gov.au/aviation/airport/planning/index.aspx> (accessed 21 February 2017).

7 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5134.

8 Department of Infrastructure and Regional Development, *Submission 22*, p. 4.

9 Airports Amendment Bill 2016, schedule 1, item 9.

10 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5134.

2.12 The five year timeframe for major airports was retained in recognition of the higher level of activity at these airports, their forecast passenger numbers, and their impact on the environment, economy and surrounding communities.¹¹

Australian Noise Exposure Forecast (ANEF)

2.13 An ANEF is defined as:

a contour map showing the forecast of aircraft noise levels that is expected to exist in the future. It is based on expected aircraft movement numbers, type of aircraft and forecast route structures, daily distribution by time period of arrivals and departures, configuration of runways, air traffic control procedures and flight paths, etc.¹²

2.14 An ANEF must be included in all MPs, and be prepared by airports prior to the release of the draft MP for public consultation. ANEFs are produced with a forecast of 20 or more years, or the ultimate practical capacity of the airport. ANEFs are endorsed by Airservices Australia.¹³

2.15 ANEFs are used by governments and land use planning agencies for long-term planning of developments around airport sites. However, as noted by DIRD, predictions in an ANEF are limited by the data available at the time the forecast is prepared and do not incorporate, for example, technological improvements to aircraft.¹⁴

2.16 The current law provides that an ANEF must be included in an MP, but it does not specify that the ANEF must be renewed for each new plan.¹⁵ Item 11 of the bill inserts a new subsection 76(1A) into the Act, requiring airports to obtain a new ANEF for each renewal of its MP, and to include this in the draft MP given to the Minister for approval. Further, the provision provides that the ANEF must be endorsed within the last 180 days of the period specified by section 76(1) of the Act, relating to draft MP timeframes. As detailed in the EM:

This amendment will ensure each final master plan comprises an up-to-date representation of the potential noise impacts of airport operations. The amendment also facilitates integrated and coherent land use planning

11 Department of Infrastructure and Regional Development, *Submission 22*, p. 4.

12 Department of Infrastructure and Regional Development, *Submission 22*, p. 5.

13 Airservices Australia, *Factsheet: Airport Master Plans*, p. 2, http://www.airservicesaustralia.com/wp-content/uploads/13-087FAC_Airport_Master_Plans_WEB.pdf (accessed 6 December 2017).

14 Department of Infrastructure and Regional Development, *Submission 22*, p. 5.

15 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5135.

outcomes; in particular, to manage incompatible and sensitive land uses from encroaching too close to airports.¹⁶

Monetary triggers for Major Development Plans

2.17 The Act provides a number of circumstances whereby the requirement for an MDP is triggered, for example, constructing a new runway or extending an existing one, constructing new passenger terminals, or if the development is likely to have a significant environmental or community impact.¹⁷

2.18 In some instances an MDP will be required where the major development reaches a monetary trigger, determined since 2007 as \$20 million. Examples of major developments with a monetary trigger include construction of new access roads, buildings or taxiways.¹⁸

2.19 DIRD noted that the monetary trigger is ancillary to the existing triggers in the Act for an MDP. As a consequence, the monetary trigger is only considered after the other triggers are considered first.¹⁹

2.20 The bill, at Items 18 and 19, makes amendments to section 89 of the Act to increase the monetary trigger threshold amount for an MDP to \$35 million, with the increase based on 'changes and conditions in...construction industry costs' and 'economic and marketplace conditions'. The new threshold will only apply to MDPs given to the Minister after commencement of the bill.²⁰

2.21 In addition, the bill determines that the threshold can be reviewed and increased via legislative instrument, every three years. If a new threshold is determined this way it:

- must remain the same or be higher than the previous determined amount;
- must take into account changes in construction activity costs since the last determination to keep pace with economic conditions; and
- may take into account changes in an index on construction activity costs as published by the Australian Statistician.²¹

16 Explanatory Memorandum, Airports Amendment Bill 2016, p. 4.

17 Department of Infrastructure and Regional Development, *Submission 22*, p. 6.

18 *Airports Act 1996*, ss. 88 and 89.

19 Department of Infrastructure and Regional Development, *Submission 22*, p. 6.

20 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5135; Explanatory Memorandum, Airports Amendment Bill 2016, p. 8.

21 Airports Amendment Bill 2016, schedule 1, item 19; Explanatory Memorandum, Airports Amendment Bill 2016, p. 6.

Cost of construction

2.22 The bill further legislates that the Minister can determine, through legislative instrument, what should be included or excluded in determining the 'cost of construction' when airport lessees prepare an MDP. This would include, for example, the cost of the base building fit-out, such as internal cladding.²²

2.23 As detailed by the EM, the instrument will set out:

the costs that must be included and excluded in an airport-lessee company's calculations when determining if the construction cost of a major airport development triggers the requirement for a major development plan. This amendment is necessary to remove any confusion for industry and ensure a consistent costing application across all federal leased airports.²³

MDP processes

2.24 While an MDP must include development objectives and show its consistency with the MP, it must also take into account public comments. The Act prescribes the public consultation process that an airport lessee must undertake before an MP and MDP plan is submitted for ministerial consideration.²⁴

Consultation periods

2.25 Airport lessees are required to engage in ongoing and regular consultation with 'airport users, state/territory governments, local authorities, and the community to improve information sharing and strengthen planning and development outcomes'.²⁵

2.26 Before giving an MDP to the Minister for approval, the airport lessee is required by the Act to consult on the draft with the relevant state Minister. The airport lessee must also notify the public that a draft MDP has been prepared and is available for inspection. Copies of any comments received by the public must be provided to the Minister when submitting the draft for approval.²⁶

2.27 The consultation period for public comment on a draft MDP is 60 days (or a lesser period approved by the Minister, of not less than 15 business days). Section

22 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5135.

23 Explanatory Memorandum, Airports Amendment Bill 2016, p. 6.

24 *Airports Act 1996*, ss. 91 and 92.

25 Department of Infrastructure and Transport, *Airport Development Consultation Guidelines*, October 2012, p. 2, https://infrastructure.gov.au/aviation/airport/planning/files/FINAL_Consultation_Guidelines_2012.pdf (accessed 21 February 2017).

26 *Airports Act 1996*, s. 92.

92(2B) of the Act allows the Minister to approve a shorter consultation period if a written request is made by the airport lessee.²⁷

2.28 A shorter consultation period can only be approved if the Minister is satisfied that the draft MDP aligns with the details of the proposed development set out in the final MP, and does not raise any issues likely to have a significant impact on the airport community.²⁸

2.29 Currently, there is no legislated timeframe within which the Minister must determine a request for shorter consultation. Item 22 of the bill will insert a new subsection 92(2BA) into the Act to provide a 15-business-day statutory timeframe for the Minister to consider a request for a reduced consultation period. If no Ministerial decision is made within this period, the request will be considered approved. The EM argues that this:

will not impact the prescribed requirements for public consultation, however it will provide industry with certainty regarding the Ministerial decision timeframe, which could then be accounted for in the airport's planning process.²⁹

Substantial completion of an MDP

2.30 The Act allows the Minister to approve (or refuse) an MDP. Unless an approval states otherwise, the development proposed by the MDP must be substantially completed no more than five years after the approval. The Act currently allows the Minister to extend this five-year period only once, for up to two years.³⁰

2.31 The bill, at Item 23, substitutes section 94(7B) and proposes to amend the extension approval process by removing restrictions and allowing the Minister to extend the completion date as many times as required. An extension is only possible if the initial five year period, or the further extended period, has not expired. As is currently the case, the Minister can impose conditions on an approval.³¹

2.32 In presenting the bill, the Minister argued that:

on rare occasions some larger or more complex developments, such as a new runway, may be subject to unforeseen delays and exceptional circumstances beyond airports' control. As a result, achieving a substantially complete status may require more than the standard seven-year time frame.

27 *Airports Act 1996*, ss. 92(2A) and 92(2B).

28 Department of Infrastructure and Regional Development, *Submission 22*, p. 8.

29 Explanatory Memorandum, Airports Amendment Bill 2016, p. 7.

30 *Airports Act 1996*, ss. 94(7A) and (7B).

31 Explanatory Memorandum, Airports Amendment Bill 2016, p. 7.

Where an airport is committed to substantially completing an approved major development plan, the airport should be given the opportunity to do so without penalty.³²

2.33 DIRD submitted that circumstances beyond an airport's control could include a change in economic conditions or market circumstances, or other 'exceptional or unforeseen circumstances' beyond the airport lessee's control that impact on the viability of the development.³³

Ceasing an MDP approval

2.34 Item 24 of the bill inserts a new section 96AA into the Act, allowing an airport lessee to withdraw from an approved MDP, in exceptional circumstances beyond its control. Withdrawal can only occur if there are no building approvals in place (that is, the project has not commenced). The airport lessee must provide the Minister with a withdrawal notice, at least 50 business days before the statutory date of substantial completion, detailing the exceptional circumstances and why the development is no longer viable.³⁴

2.35 The Minister must acknowledge the withdrawal notice, and the MDP ceases from the date the Minister makes this acknowledgement. The airport lessee must then, within 20 business days, publish a notification with information about the exceptional circumstances, and why it is unviable for the development to proceed. This aims to ensure that stakeholders remain informed.³⁵

2.36 The Minister noted these amendments 'recognise that airports would have already expended significant financial and administrative resources to have a major development plan approved'. The new provisions are expected to reduce regulatory uncertainty, and 'ensure an efficient and streamlined process'.³⁶

2.37 DIRD emphasised that airport lessees were unlikely to seek a withdrawal from an MDP, given that an MDP approval was likely to cost approximately \$300 000 to \$1 million per project.³⁷

32 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5136.

33 Department of Infrastructure and Regional Development, *Submission 22*, p. 9.

34 Airports Amendment Bill 2016, schedule 1, item 24.

35 Explanatory Memorandum, Airports Amendment Bill 2016, p. 7.

36 The Hon Darren Chester MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 1 December 2016, p. 5136.

37 Department of Infrastructure and Regional Development, *Submission 22*, p. 9.

Appeal rights

2.38 As the bill introduces new Ministerial decisions it also, at Item 25, determines whether some of these decisions should be subject to review by the Administrative Appeals Tribunal (AAT).

2.39 The new legislative instruments in relation to MDPs which determine cost of construction, and the monetary trigger threshold, are not subject to AAT review. Likewise, a decision of the Minister in ceasing an MDP (under new section 96AA) is not a reviewable decision.³⁸

Transitional provisions

2.40 The bill contains a number of transitional provisions, in acknowledgement of the various stages that airports may be at in the MP or MDP process, prior to commencement of the bill.

2.41 In relation to MPs, the EM explains that the amendments to the MP timeframe 'only apply to draft master plans given to the Minister on or after commencement' so that 'any master plan approved prior to commencement will expire five years from the day on which it was approved'.³⁹

2.42 However, the EM notes the transitional provisions recognise:

there is typically a significant consultation process leading up to the lodgement of a master plan. Where a master plan is submitted and consultation notice is published within 12 months of commencement [of the bill], the airport-lessee company can elect to not have the amendments apply to that master plan without penalty. Therefore, an airport...may elect to submit a 5 year master plan within 12 months of commencement.⁴⁰

2.43 Beyond this 12-month period after commencement, it appears all new draft MPs will be subject to the new eight year timeframe.

38 Airports Amendment Bill 2016, schedule 1, item 25; Explanatory Memorandum, Airports Amendment Bill 2016, p. 7.

39 Explanatory Memorandum, Airports Amendment Bill 2016, p. 8.

40 Explanatory Memorandum, Airports Amendment Bill 2016, p. 8.