



City of
KINGSTON

27 July 2010

Committee Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir / Madam

Re: Airport Amendments Bill 2010

The purpose of this submission is to provide some suggestions in relation to the Committee's review of the Airports Amendments Bill 2010 related specifically to the nature of the proposed Amendments.

- 1. The City of Kingston remains of the view that an Independent Planning Panel Process should be established formally under the Airports Act that 'directly' advises the Federal Minister in relation to submissions on Draft Master Plans or Major Development Plans as defined in the Airports Act.**

Council has consistently maintained that an independent expert review process should occur upon receipt of submissions to a Draft Master Plan or Major Development Plan whereby an expert body is appointed by the Minister to provide advice on the detailed matters contained within submissions. Such a process would parallel that which is routinely required for Planning Scheme Amendments in Victoria through the Planning Panel process identified in Part 3 of the Victorian Planning and Environment Act 1987. The establishment of such a process would provide the Minister and his/her Department with the ability to engage professionals with planning, environmental, retail economic and transportation expertise to report back to the Minister on significant airport planning initiatives.

- 2. The City of Kingston believes that it is important that the provisions at Section 81 and 94 of the Airports Act which relate to what the Minister 'must have regard to' in deciding whether to approve a draft Master Plan or Major Development Plan should explicitly include the provisions of State and Local Planning Schemes.**

A minor related issue is that it would seem pre-emptive to title Section 81 and 94 with 'Approval of draft by Minister' or 'Approval of major development plan by Minister' when these sections provide the Minister with ability to either approve or refuse the plan.

Council believes that without being explicit in these specific locations within the legislation it is not clear that the Minister must have regard to State and Local Planning Scheme in his/her decision making to refuse or approve (or as we recommend below amend) a draft Master Plan or Major Development Plan.

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3. **In addition to the above comments made relating to specifically Sections 81 (2) and 94 (2) it remains apparent that the Minister may not have the power to formally make an ‘Amendment’ to a Master Plan or Major Development Plan as a condition of its approval.**

Council believe that a provision similar to that in the Victorian Planning and Environment Act that provides the State Planning Minister with an ability to modify Planning Scheme Amendments, is necessary so as to give the Federal Minister rights to amend a Master Plan rather than determine to refuse an inappropriate draft Master Plan or Major Development Plan. Without such a provision the Airport Lessee Company seems able to continue to operate based on an earlier approved Master Plan or Major Development Plan which may result in the continuance of a fundamental inconsistency with the intentions of State or Local Planning Policy which appears inconsistent with the intentions of the Airports Amendments Bill 2010.

4. **Further modifications are recommended to ensure that compliance is achieved in relation to following the approved Master Plan and / or a Major Development Plan through a component of the legislation that creates strict financial penalties for non compliance.**

In addition it is not clear despite jurisdictional considerations why the Airport Lessee Company or ‘a person’ as defined in the draft legislation cannot be charged with an offence and be subject to a monetary infringement for a breach to the environment strategy in a final master plan based on the drafting of the suggested new provision at Section 83A.

Given the subjectivity of many of the planning / development related decisions made by the Airport Lessee Company it is considered that a substantive penalty should be available if non compliance with a Master Plan / Major Development Plan can be demonstrated. The basis for recommending this modification is due to the substantial subjectivity still involved in determining complex questions around how a land use may be defined. Council believe that if a substantive penalty could be triggered for a decision that could be proven to be inconsistent with an Airport Master Plan / Major Development Plan clarity as a minimum would be sought by the Airport Lessee Company from the Federal Minister prior to risking a financial penalty for non compliance.

5. **It is considered that a Gaming Premises / Gaming Venue should be included as an activity listed under the proposed provision at Section 71A that lists ‘incompatible development’.**

Acknowledging that the intent of the draft revised legislation is to cover the Airport Master Planning process for all designated airports it is recognised that the list of ‘incompatible development’ activity could not be substantially expanded. At present the draft legislation seeks to identify residential dwelling, community care facility, pre-school, a primary, secondary, tertiary or other educational institution (except an aviation educational facility) and hospital (except for emergency medical treatment to persons at the airport) as a incompatible developments.

Kingston do, however, consider that substantive public policy arguments could be advanced for including gaming related activities as an ‘incompatible development’ on airport land.

We hope that the above suggestions are beneficial in relation to the review being undertaken by your committee and would be pleased to expand upon the basis for the above submission should this assist the committee.

Yours sincerely

John Nevins
CHIEF EXECUTIVE OFFICER

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