

6 August 2010

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

Dear Committee Secretary

### **Submission to the Senate Inquiry on the Airports Amendment Bill 2010**

Bankstown City Council acknowledges with thanks the opportunity to make a submission to the Senate Inquiry on the Airports Amendment Bill 2010.

As a Council having a major general aviation airport within its boundaries, Council has significant issues and concerns that need to be taken into consideration by the Senate Committee, prior to enactment of the Bill.

Council recognises the major contribution of Bankstown Airport to the City's economy. However, significant ongoing development and expansion, both aviation and non-aviation, must occur in a way that is consistent with state and local planning regimes and effectively consider and mitigate the impacts of airport development on local communities, infrastructure and existing businesses.

Although the Bill appears to be a move in the right direction, Council is concerned that in certain key areas (e.g. airport master planning; consistency and integration of on-airport developments with state and local government planning laws and surrounding zones; and funding infrastructure upgrade and environmental mitigation), the policy statements are likely to result in little intended outcomes. In fact, they have the potential for status quo - as formal mechanisms to make them effective are missing.

In 2008 and 2009, Council made two comprehensive submissions to the National Aviation Policy Issues Paper and the Green Paper. Although the Green Paper had taken on board some of the important issues and Council's recommendations on these, subsequently some of these either failed to find their way into the National Aviation Policy White Paper or were inadequately addressed. As a result, these inadequacies persist in the Bill.

Council strongly advocates that, as part of its review of the Bill, the Senate Inquiry recommends necessary amendments to the Bill to address the significant outstanding issues and concerns raised in the attached submission from Council, including the need to statutorily:

- Enhance and ensure the level of state, local government and community involvement in the airport planning process and better integration of on-airport developments with state and local government planning laws and schemes.

- Further strengthen the airport master planning process, particularly to address the current overly flexible, and accommodating land use zoning.
- Make provision for the airport-lessee operators to contribute to the infrastructure upgrade and environmental mitigation costs arising from large scale commercial developments in airports. A provision similar to developer contributions used by the state and local governments could be the solution.
- Ensure that the general aviation character of major secondary airports such as Bankstown will be retained and regular passenger services from airports such as Bankstown will be excluded on safety and other grounds.
- Prevent excessive land use for retail/commercial development at the expense of future aviation infrastructure or aviation business needs.

Given the significant issues raised in this submission, Council requests that the matters raised by Council receive a fair hearing.

If you wish to discuss any of the issues raised in the attached submission, Sayed Chowdhury, Council's Senior Policy Analyst, may be contacted on 02-9707 9539 or by e-mail: [sayed.chowdhury@bankstown.nsw.gov.au](mailto:sayed.chowdhury@bankstown.nsw.gov.au)

Yours sincerely

Luke Nicholls  
**General Manager**

Attached: Submission



Submission to

Senate Rural and Regional Affairs and Transport  
References Committee

Inquiry into the Airports Amendment Bill 2010

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## **Introduction**

Bankstown City Council acknowledges with thanks the opportunity to make a submission to the Senate Inquiry on the Airport Amendment Bill 2010. As a Council having a major general aviation airport within its boundaries, Council has significant issues and concerns that need to be taken into consideration by the Committee and prior to enactment of the Amendment Bill.

As the Bill presents a rare and valuable opportunity to ensure that appropriate provisions are made to sustainably manage the growth and development of the nation's aviation infrastructure and facilities, it is considered an appropriate time to review and amend some of the major provisions in the Bill relating to planning and development control, transport and other infrastructure needs and mitigation of environmental impacts in privatised airports.

## **Background**

The 313 hectare Bankstown Airport site, which is situated wholly within the City of Bankstown, was first earmarked in 1929 for development as a second or training aerodrome for Sydney. During World War II, it was used as an RAAF station and then as a base for the US Army Air Corps. In November 1948, after the selection of the present Mascot site as the site for Sydney's International Airport, the Department of Civil Aviation took control of the Bankstown site for use by training and charter aircrafts and for private flying and aircraft manufacture. Since then Bankstown Airport has progressively grown to become today one of the largest general aviation airports in Australia and the second busiest by number of aircraft movements.

The Federal Government's announcement in December 2000 about upgrading aviation activities at the airport for use as an overflow airport for Sydney Kingsford Smith Airport met with strong opposition from Bankstown Council and the community. Council and community groups organised protests and made representations against the proposal and the plan was subsequently shelved.

Under the 1996 Airports Act, airport lands are federal territory. As such neither State Governments nor local councils have any planning control over airport land. Since December 2000, Bankstown Council has made several unsuccessful representations to the former Federal Government on various issues including the right for Council to determine non-aviation development proposals in airport land. This remains Council's preferred position.

Bankstown Airport's steady growth over decades has obviously had an impact on the amenity of our City suburbs. Nevertheless, there has been a general level of community acceptance of the Airport in its current form. The Council itself has been committed to a policy of supporting the existing general aviation (GA) nature of Airport operations. In October 2003, Bankstown Airport, together with Camden and Hoxton Airports, was leased to a private consortium. The post privatisation changes now unfolding are being keenly followed by Council and the Bankstown community.

In August 2004, complying with the Airports Act 1996, a draft Master Plan was exhibited by the Bankstown Airports Ltd (BAL), who had purchased the Airport in 2003. Although the key objectives and aviation development concept proposed in the Plan included a commitment to retain Bankstown Airport's role as the premier GA (general aviation, including pilot training) facility in NSW, much of the actual focus of the Master Plan was on the 160 hectares of commercially developable land within the total site of 313ha. The Master Plan also clearly detailed the intention of the private owners to make Bankstown Airport a regional distribution, logistic and retail hub, well apart from general aviation.

### *Strategic Council Policy on the Airport*

Council's comprehensive 2004 and 2009 submissions on the Bankstown Airport Draft Master Plans included, among others, a reiteration of its long-maintained policy that the general aviation character of the Airport should be retained, a request that the change in aviation mix proposed be reviewed and minimised, and that large-scale commercial development on airport land with impacts on local amenity, economy, infrastructure, traffic and environment be discarded. Other than gaining some minor concessions on noise management, flood control and consultation issues, most issues raised by Council and also by the NSW Government, who made a separate submission, in relation to commercial development and resulting excessive demand on existing infrastructure have largely remained unaddressed in the Airport Master Plan approved by the Federal Minister in 2005. The 2010 Master Plan is currently awaiting the Minister's approval.

The privatisation of Bankstown Airport and its 20-year Master Plan approved in 2005 poses an ongoing challenge for Council and its community to ensure that the growth and evolution of the Airport follows a path consistent with the objectives of the City.

Notwithstanding the above, it has been Council's policy to continue and build upon the mutual consultative arrangements that existed with the Airport prior to privatisation. Since 2004, Council and the Airport have maintained an effective working relationship. Bankstown City Council is the only council to conclude a memorandum of understanding (MOU) with the privatised airport within its local government area. This exemplifies an overall commitment on the part of both parties for cooperation and consultation on issues of importance between us.

Council representatives also participate in the quarterly deliberations of the Bankstown Airport Community Consultative Forum (BACCF), established as part of the Airport's master plan process and continuing since then. While this is a positive step, but the forum's effectiveness remains questionable for a number of reasons, which have been outlined in the following submission.

Council recognises the contributions of Bankstown Airport to the City's economy. However, significant ongoing development and expansion, both aviation and non-aviation, must occur in a way that is consistent with state and local planning regimes and effectively consider the wider effects of airport development on local communities, infrastructure and existing businesses.

### **Comments on specific provisions in the Airports Amendment Bill 2010**

#### **Part 1 - Master Plan amendments**

##### **1 Paragraph 71(2) (h)**

##### **Comment:**

While the provision in (ga) for a ground transport plan is supported, mere requirements in 71(2) (h) (iv) for detailing "arrangements for working with the State or local authorities..." is likely to achieve very little or nothing, without any formal mechanism in place to ensure that this will occur, once the master plan is approved and implemented.

s. 71(2) (h) (iv) needs to be amended making consultation with the State and local council mandatory and provision included in the Bill to meaningfully and effectively use the input received and the outcome of such consultation is included in the master plan.

Re 71(2) (h) (vi) - the provision for unilateral assessment of the likely effect of the proposed developments should be replaced with a provision for assessment of the effects in conjunction with the state and local authorities. Alternatively, any such assessment included in the master plan need to be accompanied with comments or agreement from the State or local authorities, including measures to be implemented to address the impacts.

Re 71(2) (h) (gc) (ii) - Supported.

Re 71(2) (h) (vi) - Should be amended to read:

the specific measures to be carried out by the airport-lessee company *in consultation with the state or local authorities* for the purpose of.....reducing the environmental impact

Re 71(2) (h) (viii) - Should be amended to read:

details of the consultations undertaken *with the State and local authorities* in preparing the strategy (including the outcome of the consultations);

### **27 After section 71**

Re 71A (2) (a) - Should be amended to read:

(a) a residential dwelling.

The exception allowed to "accommodation for students studying at an aviation educational facility at the airport" has the potential for significant residential development at the airport. Bankstown Airport has nearly 20 aviation educational facilities or flying schools, including a university's flying school. Use of dwellings initially approved for students can in future be used by others or mixed tenants. Most airports have residential suburbs in close proximity, therefore there is no justification for allowing this incompatible development, at the expense of safety.

71A (2) should be amended to add:

(f) a childcare facility including a long day care centre and a pre-school

### **33 Subsection 81(5)**

Re 81(5) (b) - the last part should be amended to read: ....the Minister is taken, at the end of that period, to have refused to approve the plan under Section (2) (b).

The current provision in the Bill gives rise to serious concerns. Potentially, in an unforeseen circumstance, a master plan significantly in breach of the Act may get approved unintentionally, without any recourse to reverse it.

### **34 At the end of section 81**

Re Section 81 (10) - Supported. However, to enhance, should be amended and read:

The Minister's approval of a draft master plan that contains an incompatible development or a development which in subsequent assessment is considered to be incompatible does not stop the Minister from refusing to approve.....for the incompatible development.

### **36 Subsection 84(3)**

Re Subsection 84(3) (b) - the last part should be amended to read:

...the Minister is taken, at the end of that period, to have refused to approve the plan under subsection (2).

The current provision in the Bill gives rise to serious concerns. Potentially, in an unforeseen circumstance, a master plan significantly in breach of the Act may get approved unintentionally, without any recourse to reverse it.

### **Subdivision C - Approval process**

47 After paragraph 91(1) (g)

Re 91(1) (g) (ga) (iii) - Should be amended to read:

The local and regional economy and community, including an analysis, *developed in conjunction with the State and local authorities*, of how the proposed developments.....in the adjacent area;

### **53 After subsection 92(1)**

Re subsection 92(1) (2B) -

It should be omitted, as this has the potential to erode the rationale behind the major development process and the outcomes it is meant to ensure. It will also be inconsistent with standard norms of requirement for meaningful public consultation.

A major development always has the potential to have significant impact on the amenity, natural and built environment and the community. It therefore cannot be exempted from standard public consultation on any ground. Potentially, projects with significant impact may be canvassed for this exemption.

Re 92(1) (2B) (a) (ii) -

It is not understood who could be this proxy for the airport-lessee company and what is the justification for this.

## **Significant Outstanding Issues and Concerns**

The following significant issues have remained unaddressed or ineffectively addressed through the 2008-09 National Aviation Policy development process and consequentially in the Airports Amendment Bill 2010.

### **1. Airport Planning and Development**

Bankstown City Council remains concerned that, while during the last decade or so 22 major airports throughout the country including the Bankstown Airport have moved from public ownership to management by private lessee operators – the issues of land use, and planning control of non-aviation commercial development at these airports had not been seriously considered or appropriately addressed prior or subsequent to the privatisation of these airports.

It is Council's considered opinion that the fundamental problems with the current airport planning regime include:

- The continued exemption of commercial development at airports from assessment under the state and local planning laws— resulting in developments which may be inconsistent or incompatible with surrounding developments or local growth strategies.
- The absence of any developer contributions regime to ensure that Airport Lessee Companies (ALCs), and not the local ratepayers, pay for the enhanced infrastructure costs of their developments.
- The inadequate community consultation, lack of transparency and public accountability in the development approval process for developments worth less than \$20 million. Unlike other development control authorities, the Airport Building Controller is not required to give any public notice of such approvals sought and approved.
- The inadequate planning assessment, which fails to consider impacts of airport development on environment, amenity, infrastructure, properties and business in surrounding areas. The only requirement to publish these on the airport's website appears to be tokenistic and not likely to result in any tangible outcome.
- Ineffective master planning and development approval process resulting in unrestrained retail development at airports at the expense of future aviation expansion needs.
- The inadequate time given to the public (around 14 days) to consider and comment on major developments.
- Lack of transparency as to whether the Airport Lessee Company or Airport Building Controller takes into consideration the issues raised in submissions, and how this process is documented for the public's information.

#### **Airport Master Planning Regime: Exclusion of State and Local Laws and Controls**

The Airports Act 1996 expressly excludes the application of State, Territory, and local planning laws and controls to development on airports. The 2006 amendments to the Airports Act had presented an opportunity to address the issue but did not do so. In fact, the amendments reduced opportunities for consultation and input from the local communities in the airport development approval process.

#### *Airport Planning Arrangements Contrary to that Adopted by COAG*

The current arrangement for non-aviation developments on airport land is not only often inconsistent with state and local government planning regimes and having serious and adverse consequences, they are also inconsistent with an agreed national policy. The NSW Government in its January 2007 submission to the Airports Amendment Bill 2006 noted:

*In 1997, the Council of Australian Governments (COAG) signed a Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment. Under this agreement, all parties agreed that tenants and persons undertaking activities on Commonwealth land would be subject to State environment and planning laws. The only exception to this in relation to airports is aviation airspace management and on-ground airport management (see Appendix 1). The Commonwealth's failure to regulate the planning of non-aviation developments in a manner consistent with State Government planning regimes is therefore contrary to the position agreed by COAG.*

Because of the deficiencies in the Airport Amendments Bill 2010, the risk is that airport master plans and major development proposals prepared with no effective requirement to comply with state planning legislation or local development control regimes can still

result in status quo, and continue to allow an unrestrained inappropriate developments on airport sites. This can then make them inconsistent or incompatible with off-airport developments surrounding the airports.

Council believes there is no public interest justification for exempting non-aviation development on airport land from assessment under the state and local planning laws that apply to every other development surrounding an airport.

While, given their national significance, Commonwealth control of aviation development at airports is justified and warranted, there is no similar justification for exempting non-aviation development from local planning laws and not subjecting these to the same rules and controls as applied to similar developments on off-airport properties.

It is also not in the public interest that rate payers must meet the cost of any significant transport and other infrastructure (e.g. flood mitigation) maintenance or upgrade required as a result of these commercial developments going into airport land because state and local government cannot make airports pay rates or development contributions as in other cases to fund the mitigation of impacts of those developments.

Economic or financial imperatives appear to be the principal driving factor for development proposals in the master plans for leased airports. Unfortunately, although a number of previous submissions raised this issue, there are no provisions in the Bill to allow review or appeal mechanisms in relation to decisions on these development proposals. The only attempt so far to challenge this through legal proceedings in the Federal Court was undertaken by the owners of Westfield and Centro against a major retail development proposal at Brisbane Airport, which was unsuccessful on constitutional grounds. Clearly, it is not a practical or affordable option for local councils or community groups to take similar proceedings involving constitutional issues to resolve their concerns.

Bankstown Airport occupies a huge tract of land in the middle of built-up suburbs. Council along with its community, especially those who reside in proximity to the Airport, are of the opinion that the community should be permitted to have an effective say in relation to land use proposals – particularly the non-aviation use of land and those that might result in further affectation on local living conditions and neighbourhood amenity. This is also consistent with Ecologically Sustainable Development (ESD) and Local Agenda 21 principles, both enshrined in various Commonwealth legislation and policies. These principles support the assumption that local government, with its grassroots understanding of local communities, is best equipped to deal with development decisions for local areas. The only way to effectively implement this is to allow local Councils the right to determine non-aviation development proposals on airports within their jurisdiction.

Ideally, the privatisation of airports should have been accompanied by a legislatively mandated and effective planning, management and regulatory regime to ensure developments on airports are consistent with developments in surrounding areas, however unfortunately this has not been the case. Notwithstanding a litany of well-argued submissions, including a number of previous submissions from Bankstown Council, to the 2006 Airports Amendment Bill and the 2008-09 National Aviation Policy process, the Airports Amendment Bill, although a move in the right direction, also fell short of addressing this issue.

It may be argued that the Commonwealth in passing on their privileged powers to the private lessee companies have effectively allowed a significant deviation from the original intent and purpose and may have exceeded the purpose for the compulsory acquisition of the airport sites.

### **Inadequate Community Consultation**

The present regime of controlling development on privatised airports such as Bankstown Airport – as provided for in the Airports Act 1996 and as proposed in the current Bill – only allows limited public input during master planning and major development approval processes. For other development proposals, the Airport Building Controller administers the development approval process without any reasonable exposure to local community wishes and often without the benefit of utilising in such decisions detailed local environmental knowledge available with local councils.

Developments costing less than \$20 million (or staged to present as <\$20M) can now be undertaken at airports without the need for a major development plan and associated public exhibition and opportunity for public comment. This has the potential to strip communities of their right to have a say about development decisions that affect their amenity and life. Although the current bill provides for Ministerial intervention in some cases requiring a major development plan, it is not clear what will actually trigger such a decision.

Notwithstanding the fact that some sort of tokenistic consultation occurs, it seems submissions lodged by State and Local Government, community groups or individuals receive superficial or at best little consideration. Issues raised on individual planning proposals are rarely if ever assessed in a comprehensive and transparent manner or result in material changes to proposed developments.

Council recognises that the Airports Amendment Bill 2006 and the Airport Development Consultation Guidelines 2006 made some new requirements to make development plans more readily available to the community and councils, and made more explicit the expectation that ALCs demonstrate how they have given due regard to public comments on master plans, major development plans and airport environment strategies but there is no formal mechanism specified as to how the improved consultation should happen and how positive outcomes from this consultations will be ensured.. The Guidelines are voluntary and do not have the force of law required to balance the position of an Airport in controlling the master plan process, against that of members of the community.

The effectiveness of non-legislatively established Community Consultation Committees/Forums established in some airports including Bankstown has remained questionable and a review could reveal as to whether they simply act as a conduit for the airport to disseminate information about decisions already taken or about to be taken by the Airport or whether they constitute an effective two way consultation and communication process between the airport and stakeholders. In some cases at least, their meeting frequency results in many issues discussed subsequent to or towards the end of the decision making process, when the development is so far advanced that neither Council nor resident input is likely to influence the outcome.

### **Inadequate Planning Assessment and an Ineffective Master Planning Process**

As a planning instrument the 1996 Airports Act has significant inadequacies and the master planning process under it is fundamentally flawed. Commonwealth control of land use on leased airports have practically become ineffective because master plans approved so far give airport lessee companies the sole control of what will be approved on their airports. The current provision for deemed approval of an airport master plan or major development plan if the Minister does not make a decision within the maximum time allowed to him tends to substantiate this concern.

#### *Flood Management*

Bankstown Airport is situated within the floodplains of the Georges River. A significant part of the site is already a flood hazard area susceptible to riverine and local flooding,

which has been exacerbated by a number of developments such as the Bunnings Warehouse, heavy equipment auction yards, and recent fillings on Airport land to market the land as flood-free, with off-site flooding implications.

The flooding implications of the proposed development in Bankstown Airport are of major concern to Council. Although modelling carried out by the Airport showed that filling within the Airport will result in an increase in peak flood level along an approximate 16 km stretch of the Georges River, the Airport chose to absolve itself simply by making qualitative statements in its Stormwater and Flood Management Strategy, including that this increase in peak flood level is insignificant.

A review by an independent consultant (LACWE 2007) of the Airport's Stormwater and Flood Management strategy document in conjunction with the Milperra Catchment Flood Study report and the NSW Floodplain Development Manual concluded that increase in flood levels will have an impact upon more than 500 existing residential properties that currently experience above floor inundation in a 1 in 100 year flood event. The potentially increased annual flood damage to these hundreds of properties, as a result of the proposed developments at the Airport, has been estimated to be in the range of millions of dollars.

#### *Threat to Biodiversity*

Several parts of the Bankstown Airport site have been identified as areas with threatened plant species and threatened vegetation communities listed under the Threatened Species Conservation Act 1997 (NSW) and there is also a potential biodiversity corridor along the eastern edge of the Airport site. Yet the Airport Master Plan only states that environment impacts "will be determined and assessed during the development approval process for individual projects."

Council considers that this is not the most suitable process for assessing or addressing environmental impacts given the significant volume of development that would be made permissible on more than half of the 313ha Airport site under the approved Master Plan and that a development costing below \$20 million can now be approved without any public consultation.

Council considers that a detailed environmental assessment of impacts, including cumulative impacts, should have been essential as part of the master plan process.

The above are examples of issues that will potentially remain unaddressed due to the deficiencies in the Airports Amendment Bill 2010

#### *Federal Planning Approval*

Currently, the primary focus of the Airports Act is on regulating aeronautical matters, runways and terminals and this has resulted in a very inadequate land use planning and assessment regime for non-aviation development. This perhaps reflects the fact that planning assessment and development control usually has not been a Federal responsibility, which does not have a historical track record of expertise in this area. Apparently, the Department which undertakes the planning assessment of master plans and major development plans has little expertise in land use planning and very little local knowledge.

To achieve improved local area planning and environmental outcomes, it is essential to utilise available knowledge of ecosystems, site opportunities and constraints. Therefore, a reform of the current planning regime to put in place a statutory obligation for the ALCs to use a joint approach with the local government in the master planning and impact assessment of development seems to be the solution.

### **Overly-flexible and Accommodating Land Use Provisions in Master Plans**

The Airports Amendment Bill 2010 falls short of effectively addressing this significant outstanding issue. In most cases, zonings in the currently approved master plans of airport are characterised by such overly-flexible generalities that they are ineffective. There is almost no conceivable development which would be prohibited by any of the master plans so far approved. Additionally, often they have a provision to go for any other type of development, if the ALC intends to do so. For example, a typical example of such provision in the master plan of a major airport, whose declared planning objective is to "maximise the strategic value of airport land", states:

*"The land uses are intentionally broad to provide an overall vision for the airport's property whilst accommodating flexible resolutions to future opportunities."*

Besides its flexible long list of uses, which may be approved in various zones, the Sydney Airport Master Plan also includes the provision that, *"Development uses which are not specified in a particular zone may be permitted on a case by case basis, following consideration by SACL [Sydney Airport Corporation Limited]....."*

The 2005 Bankstown Airport Master Plan is no different in its "broad range and mix of commercial and business development" including a long list of activities such as hotel, motel, hospital, childcare, bulky goods, transport terminal, depots, industry, and retail etc that would be allowed almost identically in all three zones identified in the master plan for non-aviation development. The Plan goes on further to add, *"Other employment generating development will be permitted within the zone in locations that are compatible with this commercial activity."*

Seemingly, the reason why almost no proposals, save for a Sydney Airport one rejected by the then Minister on public safety grounds because of proximity to runways, have so far been rejected is because there is no proposal which would not comply with the extraordinarily accommodating land use planning provisions of the airport master plans. Nothing is prohibited under the master plans and there is no provision within the master plans to reject any proposal. An example substantiating this is the then Minister's approval in 2006 of a \$100 million brick works on a 32 hectare site at Perth Airport, against stiff opposition from the community already heavily impacted by pollution from several other nearby brick works.

In its comprehensive 2004 and 2009 submissions to the Bankstown Airport Preliminary Draft Master Plans, Council expressed its serious concerns that the vagueness, the lack of detail and extremely broad range of uses that would be permissible in the non-aviation zones actually provides no certainty or little indication of the actual nature of land uses in future.

Uses like bulky goods, large retail premises, transport terminals and depots may have significant impact on surrounding residential and commercial communities, including significant community and environmental costs such as increased levels of traffic on the City's road network, noise affectation and economic impacts on established commercial centres. The siting of such major trip generating development in a dispersed location such as the Bankstown Airport is also inconsistent with State and local planning regimes.

Unfortunately, the 2010 Bill falls short of addressing this.

### **Incompatible Development**

The exclusion of incompatible development on airport land is recognised and strongly supported. To further strengthen the principle of incompatible development and provide certainty to the process, the provision in the Bill may be reviewed and amended.

### **Recommendations:**

1. The definition of incompatible development must include 'child care centres'. The term 'child care centres' includes long day care centres, which are also incompatible development similar to pre-schools.
2. Special provision which allows the Minister to approve incompatible development on airport land in certain circumstances be omitted.

### **Retail/Commercial Development at the Expense of Future Aviation Need**

A look at the master plans of various privatised airports suggests a pattern of airport lessee companies (ALCs) using the master planning process to allocate the absolute minimum quantity of land they require to undertake aviation activities and develop the remainder for maximum commercial gain, in some cases even by dismantling existing aeronautical infrastructure such as runways. In the case of Bankstown Airport, the Master Plan has earmarked 160 hectares i.e. more than half (51%) of its total land (313 ha) for non-aviation commercial development.

Unrestrained large scale retail/commercial development can effectively tie up important vast tracts of airport land for long periods much of which may be required for expansion of aeronautical infrastructure in future and during the period of lease.

In this context, limiting the potential future aviation expansion at airports is inconsistent with the original purposes of compulsory acquisition of vast airport sites in the past. It is a short-sighted poor economic management approach, which is likely to impact on capacity, efficiency and viability of future air travel, training, aviation/aerospace business, and freight distribution needs.

An analysis by the NSW Government, quoted in its 2007 submission to the Senate Inquiry into the *Airports Amendment Bill 2006*, indicated that the forecast peak growth included in the Sydney Airport Master Plan could occur up to 10 years earlier. This is likely to bring forward the need for additional land for aviation purposes including aircraft parking. Council is concerned that this might rekindle the idea, once discarded in the face of strong opposition from Bankstown Council and its community, of using Bankstown as a spill over airport for Sydney Airport and also increases the likelihood that regional airlines may be displaced from Sydney Airport because of space limitations.

It may be argued that the Commonwealth in passing on their privileged powers to the private lessee companies have effectively allowed a significant deviation from the original intent and purpose and may have exceeded the purpose for the compulsory acquisition of the airport sites.

### **Development Approval Process with little Check and Balance and no appeal or judicial review: Inconsistency with National Competition Policy**

Commercial non-aviation development on airport land should be subject to the same level of scrutiny, community consultation and planning assessment as similar developments under state or local planning laws and regimes.

Currently, the Minister or the Airport Building Controller is the sole determiner of a development proposal. There is no judicial review process. The process can hardly be considered transparent or accountable.

With the exception of a single case of rejection on safety grounds of a retail development close to a runway at Sydney Airport referred to earlier, the absence of any substantial

examples and evidence of significant amendment or rejection of a development proposal by the previous Ministers substantiates the ineffectiveness of the whole process.

The self-regulating form of development approval process in airports has cocooned development in airports and businesses from the rigors applied to all off-airport business. This is not a "level playing field", and creates unfair disadvantage to off-airport businesses in a way inconsistent with the National Competition Policy and the principles of competitive neutrality. It can lead to substantially detrimental impacts on the viability of existing off-airport businesses and retail centres and act as a disincentive for potential new investments there. Land use controls and regulation for non-aviation airport development should be consistent with the regulatory controls that apply to their competitors off-airport and rest of the community.

The master plan and major development plan processes need to be reformed so that land use planning in all leased airports is dealt with in a way that no non-aviation on-airport development enjoy a competitive advantage over similar development off-airport.

Council considers the Senate Committee's Inquiry into the Airports Amendment Bill 2010 as the appropriate time for addressing this long outstanding issue by allowing Local Government the right to determine development applications for all non-aviation uses on Airports.

If the Commonwealth is not prepared to allow local and state government to determine commercial developments in airports, a new regime of comprehensive assessment by an independent panel or the local council be introduced to assess the external and overall impacts of the development proposals as well as their compliance with state and local planning regimes. This assessment could then be the basis for approval or rejection of the proposal by the Airport Building Controller or the Minister, as the case may be.

#### **Infrastructure Requirements of Development on Airport and Unmitigated Impact on Local and State Infrastructure, Environment and Properties**

When approving major facilities, State and Local Government require by law *developer contributions* to contribute to the costs of providing the new or upgraded infrastructure that might be required by the development.

The standard practice is to levy the developer in proportion to the impact or infrastructure needs of their development and the levies contributed are invested in compensatory works and/or the provision of infrastructure, public services and community facilities. Currently, this is not applicable to developments on airport land due to Commonwealth's leasing (rather than sale) of the airports the lease provisions do not override the privilege of Constitutional exclusion from state planning laws enjoyed by the Commonwealth.

While exclusion from state planning laws for airports may have been acceptable to the community in the past, when airports were operated by the Commonwealth just as airports – predominantly for aviation activities and for common good, it is entirely unacceptable that this exemption should still continue for non-aeronautical, commercial exploitation of the airports for generating lucrative gains for private operators of airports i.e. the ALCs. It also provides airport developments with an unfair cost and competitive advantage.

Exemption of ALCs from paying development contributions to state or local government provides a windfall gain to them at the expense of public benefit, leaving state and local governments to pay for the infrastructure required to service the proposal.

A 2002 Productivity Commission Report estimated that around 69 per cent of total revenue earned by privatised airports was from non-aviation activities. As reported in

Bankstown Airport's 2005 Master Plan, 80 per cent of the Airport's revenue is generated from non-aeronautical and property sources.

The 2005 Bankstown Airport Master Plan identified the necessary road infrastructure works that would be required as a consequence of full development of the Airport site. In its submission on the Bankstown Airport Preliminary draft Master Plan, the NSW Government estimated that the total cost of these road works, excluding property acquisition, will be in the tune of \$100 million and that none of these works is currently included in any State funded projects.

The 2010 Airport Amendment Bill does not include any effective statutory requirements to ensure the airports will mitigate the effect of developments on surrounding land and infrastructure or the need to contribute towards mitigation programs or infrastructure upgrades by the state or local government.

Council strongly urges that a provision be made that would require the airport operators to effectively consider the impact that developments on airport land can have on surrounding land and infrastructure and, where necessary, require contributions to infrastructure upgrades, maintenance, and effect mitigation.

Based on submissions from Council and other stakeholders, the 2008 National Aviation Policy Green Paper had taken this on board. Unfortunately, this failed to find its way in the subsequently issued 2009 White Paper and as a result did not get included in the current Bill.

### **Recommendations**

1. Council proposes Section 112 of the Airports Act 1996 which excludes State and Territory planning laws for airports be removed from the Act to allow State Governments and local Councils the right to determine development applications for all non-aviation uses on airports.
2. Airport lessee companies be required to contribute to infrastructure maintenance and upgrade requirement costs, as required under state and local planning regimes.

In the event that Commonwealth does not find this practicable, an alternative would be to amend the Act to require the airport lessee companies to lodge all their DAs (development applications) with the local council as well as the Commonwealth department administering the Airports Act and give Council 60 days to prepare a full planning assessment of the proposal vis a vis State and local planning regimes to be lodged with the Commonwealth Minister and the Minister will be required to give due consideration of the matters raised in the assessment report when making his decision on the proposal.

3. Alternatively, Council proposes the Airports Act 1996 be amended to require:
  - Greater consistency between airport development policies and approval processes with the State and local government planning regimes.
  - Mandated obligation for the airport operators to use a joint approach with the local government in the master planning and impact assessment of development in privatised airports.
  - Defined consultation processes by airport operators with State, Local Government and the community.
  - Provision for referral of major development applications to an independent assessment panel, for example, a federal development assessment commission, to approve or reject any development proposal.

- Appeal mechanism for both the airport operator (as an applicant) and affected parties i.e. State or Local Government or communities where developments have a significant impact on them.
  - Land use planning control regime for leased airports that, consistent with national competition policy principles, ensure that no non-aviation on-airport development enjoy a competitive advantage over similar development off-airport.
  - Amend Section 112 of the Airports Act to allow the operation of a State law that imposes a financial impost, including local government rates, on land owned by the commonwealth but leased by a private company, as if the land was not a Commonwealth place. A provision such as this will provide better certainty to ALCs' obligation to pay Council rates and will make this enforceable by Councils.
  - Statutory obligations for funding infrastructure upgrade and impact mitigation requirements of developments on airport.
  - Statutory obligation to pay local government rates, charges, fees, including state and local government developer contributions.
3. Amend Section 112 of the Airports Act 1996 so that aeronautical developments on land shown in the master plan of airports as zoned for aviation uses shall be excluded from the operation of State or Territory laws relating to land use planning, but that all non-aviation development in an airport shall be subject to the relevant State /Territory and local land use planning laws and controls.
  4. Alternatively, all non-aeronautical development on airports should be assessed by an appropriate Commonwealth Department with town planning assessment skills to ensure that such developments comply with the State or Territory legislation.

## 2. Aircraft Noise

Due to the impact of aircraft noise on their quality of life and value of their properties, both current aircraft noise and future forecast impose a considerable burden on communities surrounding airports. Likewise, the noise impact from aircrafts using Bankstown Airport has been a significant issue for many Bankstown residents as well as Council.

According to the 2005 Bankstown Airport 20-year Master Plan, forecast aircraft movements in 2024/25 will represent a 72 per cent increase on 2003/04 levels. The Master Plan also provides for introduction of regular passenger transport (RPT) flights, a significant increase in freight activity, and an increase in night time movements – including movements between 11pm–6am (otherwise known as curfew hours). Council's investigation, carried out for its 2004 submission on the Airport's preliminary draft master Plan (PDMP), indicated that noise levels from forecast activities will result in unacceptable impacts on many residents in our City and communities further afield.

To exacerbate, the 2010 Master Plan even proposed a further expansion of the noise affected area due to the forecast growth in aviation activities.

Council in its comprehensive submission to the Draft Master Plan had pointed out lack of detail information on aviation development proposals and their noise impacts on the community and inadequate exploration and consideration of potential mitigating measures. Council also advocated for imposing a curfew or at least night time activity caps on freight and other movements but these remained unaddressed.

Unfortunately, the Airport Noise Management Plan developed by the Bankstown Airport relies only on a voluntary *Fly Neighbourly* procedure by pilots and engine ground running

recommended procedure to mitigate noise impacts on the community. These types of controls rely upon pilots complying with guidelines and the problem with these controls is that these are not enforceable and there are no sanctions for a breach of the guidelines. Flight track analysis, which uses a transponder (flight recorder) fitted to each aircraft that allows identification of pilots and aircrafts breaching noise abatement requirements. Apparently, no GA airport in Australia uses this system and introduction of it will require a decision from the Federal Government.

#### *Aircraft Noise and Shortcomings of ANEF as a Tool*

Under section 117 of the NSW Environmental Planning and Assessment Act 1979 Councils have a statutory obligation to incorporate appropriate provisions in their Local Environmental Plans (LEPs) controlling development near licensed aerodromes against increases in residential density and incorporation of insulation against aircraft noise – based on what might happen in 20 years time.

In a city like Bankstown, improvements to the existing built environment can only occur through redevelopment and restrictions like this can prevent redevelopment from being viable. Therefore, it is essential that current and future aircraft noise information (e.g. ANEFs) is accurate, able to be scrutinised, and easy-to-understand by the community.

The ANEF system was developed in Australia in the 1980s primarily as a land use planning tool, a purpose it has served well. But ANEF is not a very useful tool for the provision of noise information to residents affected by aircraft noise. Because the Airports Act 1996 requires the production of ANEF contours only, most Australian airports are still providing this as both a land use planning tool and noise information for the community. Based on experience in Sydney and other major airports, the shortcomings of ANEFs as currently used as an approach to providing aircraft noise information to the public have been identified and are outlined below:

- An ANEF map is not a suitable noise information tool for use by a non-expert noise affected resident. Usually, ANEF maps are also particularly deficient as they provide noise information based on an annual average day, which is rarely a typical day and often does not relate closely to a person's actual experience.
- Also, usually no information on noise exposure patterns beyond the 20 ANEF is provided. But impact of aircraft noise does not stop at the outer most noise contour prepared by the ALCs, which is often 20 ANEF. In fact, evidence has been mounting in recent years that most complaints about aircraft noise at Australian airports came from residents living in areas outside the conventional (ANEF) noise contours.
- For some airports, community concern and noise complaints against location of flight paths can extend up to 30–40 km from the airport. This has been a key reason behind community demands for information on the location of, and the level of activity on flight paths. This type of information has proven to be useful both because it is much more comprehensible and because it generally extends to areas well outside those covered by the conventional contours.
- Since privatisation of airports, there has been a deviation from historic practice in the production of ANEFs. ANEFs are now produced by ALCs, rather than a government agency (Airservices).
- The 'endorsement' process for technical accuracy of ANEFs undertaken by Airservices Australia reportedly does no more than confirm that the modelling used to compute ANEFs has been run correctly and does not check the assumptions and choices upon which the result is dependent. This means

Airservices only reviews ANEFs prepared by ALCs for technical accuracy in producing an accurate ANEF from ALC's assumptions deemed to be accurate. There is no opportunity for public debate or input on these. This has the potential for the ALC to overstate the needs of the airport at no cost or other disadvantage to itself but with the consequence of imposing an unnecessary burden on the surrounding community.

- The inadequate technical review of ANEF contours by Airservices Australia who do not critically scrutinise the traffic assumptions on which the ANEFs are based is likely to put communities at a distinct disadvantage. The affected communities or the local council hardly have any access to the presumptions or procedures used and any effective opportunity to comment on their validity.

The long 20 year planning timeframe for forecasting aircraft movements and using these for ANEFs is also seen as a problem. There are past instances when even five year forecast of aviation activities have been found to be unreliable. But surprisingly, for example, ANEF for Perth Airport has a 50 year horizon. Given the uncertainties regarding the future situation in the aviation industry, including fossil fuel costs and security environment, forecast movement targets may never be achieved.

As a planning tool, the main purpose of ANEFs is to prevent long term residential encroachment in close proximity to airports. Therefore, its relatively longer time frame is acceptable but the noise information usually sought by public are often immediate or short term, which warrants the use of some other tools.

Aircraft noise information based on numbers and times of movements (e.g. N60 or N70 maps), location of flight paths, etc can be readily verified by an affected resident simply by keeping a log of the time each craft passes near their home, which then can be cross checked with the 'official' published data. On the other hand complex noise metrics generated by computer models, even if understood, cannot be easily verified by a member of the public.

#### *Noise Complaint Services*

It is not known whether there has been any formal evaluation of the effectiveness of the existing noise enquiry and the noise complaint services. Currently, the noise complaint services appear to be under promoted. The availability of this service needs to be promoted among communities surrounding and impacted by aircraft noise.

#### **Recommendations**

1. The Airports Act 1996 be amended to include requirements for airports, including major secondary and GA airports to:
  - (a) Review and remodel ANEF contours every five years and produce and publish revised ANEF and N60 or N70 contours every five years.
  - (b) Develop and make available to public detailed and easy-to-understand information including flight path maps, and respite charts on current and proposed flight paths within 30 nautical miles of an airport.
2. The 'endorsement' process for technical accuracy of ANEFs undertaken by Airservices Australia be enhanced and made comprehensive to also include a check for soundness of assumptions and forecasts used by airports for developing these.
3. Noise management experience gained at Sydney Airport through community and council participation and initiatives under its noise abatement and sharing regime

called the LTOP (Long Term Operating Plan), which included publishing of detailed flight path maps for the community, provision of 'respite' or break from aircraft noise, noise sharing between suburbs, and rotational use of runways should be considered for use in major secondary or GA airports including Bankstown, where practicable.

4. A curfew (11pm–6am) which effectively prohibits night time aircraft movements would be Council's preferred option for Bankstown Airport. However, if a curfew is not feasible, a night time movement cap be introduced in major secondary or GA airports like Bankstown to protect surrounding communities from excessive night time noise impact, particularly during 11pm–6am.
5. Major general aviation airports like Bankstown be statutorily required to undertake trial and use the flight tracking system in order to identify noise impacted areas and level of compliance with voluntary *Fly Neighbourly* guidelines and to generate information for future noise management plans.
6. More intensive airport–community–local government partnership approaches in noise management through provision of information in a comprehensible manner and undertaking genuine consultation.
7. Measures should be taken to promote the noise complaint service among communities surrounding and impacted by aircraft noise.

### **3. Emergency Management at Airports**

According to the Bankstown Airport Master Plan approved in 2005, forecast aircraft movements will undergo a steady annual growth to achieve a 72 per cent increase in 20 years – from 247,398 movements in 2003/04 to 424,129 in 20024/25. Passenger movement forecast included in the Master Plan due to the proposed introduction of RPT (regular passenger transport) services will generate 288,000 passenger movements per annum through the Airport during 2009/10 to 2024/25.

In its 2004 submission to the Airport's preliminary draft master Plan (PDMP), Council noted that an overall emergency management framework must be established for the Airport prior to any substantial increase in aviation traffic and introduction of RPT movements. It is understood, the Airport operator intends to rely on external agencies to assist in any emergency incident at the Airport. Nevertheless, it is considered that an on-site emergency unit should be employed to provide the initial response during an incident. An overall emergency management framework, including protocols, is needed that would provide details as to how the Airport would manage an incident and allocate roles and responsibilities to various support services (e.g. SES, Fire Brigades, Police, Ambulance Services and the hospitals) to ensure adequate preparedness, response and recovery.

#### **Recommendation**

For secondary airports with considerable forecast growth in movements, including passenger movements:

- (a) A series of protocols, under an overall emergency management framework, need to be established that would provide details as to how the Airport would manage an incident and allocate roles and responsibilities to various emergency support services to ensure adequate preparedness, response and recovery.
- (b) The feasibility of establishing an on-site emergency response unit to provide initial response during an incident may be investigated.