BRISBANE AIRPORT CORPORATION PTY LTD (BAC) SUBMISSION TO SENATE COMMITTEE ON RURAL & REGIONAL AFFAIRS AND TRANSPORT – *AIRPORTS AMENDMENT BILL 2010*

INTRODUCTION

- This document is provided in response to the invitation by the Senate Rural & Regional Affairs and Transport Committee to make submissions on the proposed *Airports Amendment Bill 2010* (**Bill**).

- BAC is generally supportive of the outcomes intended by the Bill, which largely reflect the intended policy intents of the Australian Government's *National Aviation Policy White Paper* released in December 2009.

- BAC, as a member of the Australian Airports Association (**AAA**), is also aware that the AAA is making a submission to the Senate Committee on Rural & Regional Affairs and Transport. BAC supports the AAA submission, in particular the concerns expressed about the possibility of the Commonwealth Minister for the Environment seeking to impose conditions on the broader master plan document when an airport environment strategy is referred to that Minister for comment.

- This response is in 2 parts – Part 1 contains the more significant issues that BAC considers should be addressed in reviewing the Bill; Part 2 contains less significant matters, such as typographical, grammatical or interpretation issues that warrant consideration.

- The acronym "ALC" is used throughout this document to refer to "airport lessee companies" and "Act" refers to the *Airports Act 1996*.

- In the interests of making this submission as concise as possible, BAC has not commented on all items in the Bill. Rather, the approach has been – with a few exceptions – to only highlight those issues which are of concern to BAC.

- BAC thanks the Committee for the opportunity to comment on the Bill, and any queries about this response can be directed to:

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DETAILED RESPONSE

PART 1 – SIGNIFICANT ISSUES

Item No.	Section amended/added	BAC comment
1	71(2)(gb)	We note the requirement to include "*detailed information on the proposed developments*" that are to be used for the purposes set out in this paragraph. BAC is concerned at the breadth of this new requirement. A master plan should be the overarching planning document for the airport, rather than a document which sets out in detail what an ALC proposes to undertake (or permit to be undertaken by others). Such an approach is consistent with the purpose of a master plan, as described in s70 of the Act. When a master plan is prepared, ALCs should be reviewing and assessing the land uses intended for particular precincts across the airport. In many (if not most) cases, it is not possible to give "detailed information" about developments that might happen over time (beyond, say, 1 – 2 years), particularly those types of development that are responsive to prevailing economic conditions and emerging market trends. ALCs will inevitably receive development proposals throughout the 5-year "life" of a master plan, and some of the specific activities in those proposals may not even have been contemplated at the time the master plan was prepared. The rigid requirements of this new subsection should not remove the flexibility of ALCs to respond to such proposals. At worst, in the absence of such flexibility, ALCs could be forced to undertake frequent minor variations to their master plans to accommodate these proposals. Finally, in some cases, there may be commercial sensitivities associated with particular information that an ALC – or a third party the ALC is dealing with – may not wish to disclose at the time a master plan is prepared.

1 & 47	71(2)(gc)(ii) & 91(1)(ga)(iii)	BAC notes the requirement to describe how a proposed development "fits within" the planning schemes for commercial and retail development in areas adjacent to the airport. This term is potentially ambiguous. BAC suggests that it is more appropriate to use existing language in the Act, such as "extent of consistency". In addition, as not all proposed developments will be for "commercial or retail development", we suggest that the words "in the case of a commercial or retail development" be inserted after the word "including". Accordingly, the subparagraph could read: *"the local and regional economy and community, including, in the case of a commercial or retail development, ~~an analysis of how the proposed developments fit within~~ the extent of consistency with planning schemes for commercial and retail development in the area that is adjacent to the airport; and"*
9, 70, 71	4, 215, 216(1)(a)(ii) & (b)(ii)	BAC notes that the term "aerodrome" is to be inserted into the Act for the first time, although the term has not been defined. We also note that the term is, however, defined in the *Civil Aviation Act 1988*, in section 3 as follows: *"**aerodrome** means an area of land or water (including any buildings, installations and equipment), the use of which as an aerodrome is authorised under the regulations, being such an area intended for use wholly or partly for the arrival, departure or movement of aircraft."* Is it the Government's intention to apply this definition in interpreting that term as is appears in the Act? If so, we assume that the Government intends it to include runways, taxiways, aprons, passenger terminals, hangars and other airside buildings (such as freight facilities). It would be of assistance if the interpretation of this term was clarified in the Act.
27	71A(1)	This proposed amendment requires ALCs to identify "*any proposed incompatible development*".

		Currently, the master plan for Brisbane Airport sets out a range of uses that are permitted within various precincts across the airport. For example, some precincts permit developments for use as educational and/or training facilities. It is not clear whether a general statement that a particular type of "incompatible development" is permitted – for land use planning purposes – within a particular part of the airport would satisfy the requirements of s71A(1). Certainly, given the 20-year planning period of a master plan, it is not practicable to provide detailed information about all proposed incompatible developments that might take place during the planning period, beyond describing permitted or intended uses in certain precincts across the airport. To take an example, the master plan for Brisbane Airport might indicate that educational and/or training facilities may be constructed within a particular precinct (over the 20-year planning period of the master plan). Is it the Government's intention that if a prospective tenant approaches an ALC for a *specific facility* (say, for example, a technical college to train apprentice chefs), the ALC would need to amend its master plan to disclose that particular "incompatible development"? BAC suggests that such an approach would be administratively burdensome and inconsistent with the intent of a master plan as an "umbrella" planning document.
27	71A(2)(d)	This amendment defines a series of educational institutions which constitute "incompatible development". It includes "primary, secondary, tertiary or other educational institution". BAC is concerned that the Government has sought to expand the triggers beyond what was recently introduced into the *Airports Regulations 1997* (**Regulations**) as additional types of "major airport development". The Regulations cause "a primary, secondary or tertiary educational institution" to be "major airport development". The Bill goes on to add "or other" educational institution to the list of triggers. BAC believes that this amendment does not accurately reflect what was intended in the *National Aviation Policy White Paper* (**White**

		Paper). The White Paper (on page 163) described the sorts of activities the Government considered to be incompatible with the long-term operation of an airport, including "schools". BAC can well understand and supports the policy intent of not placing schools (primary or secondary) – as sensitive noise receptors – in areas that will be subjected to higher levels of aircraft noise. However, BAC considers that it is not appropriate to cast the net so widely that <u>any</u> type of educational or training institution would require a major development plan to be prepared and approved. For example, a developer has constructed a facility within what is known as the 'Da Vinci Precinct' at Brisbane Airport. This very significant development was undertaken in the context of a well-documented and well-publicised land use intent for that precinct which included a campus-style facility that could include using the buildings for educational or training purposes, not restricted to aviation related training activities. The retrospective application of a requirement for preparation of an MDP before a particular use can be carried out (even though the building has been constructed with all appropriate approvals) is onerous and does not – in BAC's view – contribute to the desired policy outcome of the Government. In any event, the absence of statutory guidance about what constitutes an "educational institution" could also cause confusion and regulatory uncertainty. The Government has prescribed what constitutes a "community care facility" – by reference to various Commonwealth legislation. The same should apply to the way the term "educational institution" is to be interpreted under the Act. Without such guidance, every educational activity (including possibly training activities carried out by ALCs themselves) could be caught by this requirement. Speaking more broadly about the so-called "incompatible developments" that will require major development plans, BAC understands the Government's policy intent in terms of long-term community infrastructure, but the new provisions should not require major development plans for what could be considered more short-term or interim land uses. This includes the use of a building (including an existing building) in an area that may not be required for aeronautical purpose until after the initial term of the airport lease expires, if at all.

27 & 46	71A & 89A	BAC objects to the use of the term "incompatible development". BAC believes that a modern airport should be able to provide a range of amenities to meet the needs of the airport community as well as the region that the airport serves. Given, the range of sizes, locations and contexts of leased Federal airports around Australia, a "one size fits all" approach is not necessarily appropriate. From a terminology perspective, it is somewhat incongruous to include in a planning document (the master plan) a list of land uses and planning outcomes the ALC intends for a precinct, where the list might include activities that the Act requires ALCs to describe as "incompatible". This is likely to cause confusion to those reading a master plan, or indeed making submissions on a draft master plan or subsequent major development plan during a public comment period. Consideration should be given to terminology such as "assessable development", which at least conveys the sense that the activity will be subject to some further assessment (namely a major development plan) before it can be carried out.
40	89(1)(ba)	BAC is concerned that there is no assistance in the Act about how the term "altering a runway" is to be interpreted. "Constructing" and "extending" a runway are currently major development plan triggers under the Act. However, a very broad interpretation of "altering" could mean that a range of activities might trigger the requirement for a major development plan. For example, BAC queries whether it is the Government's intention that essential maintenance activities such as runway overlays (re-surfacing) would require a major development plan, where – for certain defined periods – the operating length of a runway has to be reduced. This new requirement could also compromise the ability of ALCs to undertake urgent, aviation safety-related maintenance work on runways, if such activities might be considered "alterations" because of the operational implications while that work is carried out.

42	89(1)(na) & (nb)	BAC notes the new "major airport development" triggers that have been proposed, in particular a development "*that is likely to have a significant impact on the local or regional community*". It appears from the White Paper (page 164) that the Government's concern with including this new trigger surrounded non-aviation related developments which were proceeding without the scrutiny of any public consultation process. Accordingly, BAC suggests that paragraph (na) be qualified so that it does not apply to capture aviation-related development at an airport.
45	89(5)	While this proposed section establishes a mechanism for the Minister to determine that certain activities are not "major airport developments", there is no timeframe within which such a decision should be made. BAC suggests that a period of not more than 20 business days should be considered. Further, as is the case in other parts of the Act, if the Minister fails to respond within this time, there should be a deeming provision that applies (ie. the activity is deemed *not* to be a "major airport development"). Also, consistent with other approval processes contained in the Act, if the Minister's decision is to not make the requested determination, then the Minister should be obliged to provide reasons for such a decision.
45	89(5)(b)	BAC notes the circumstances in which the Minister may decide that a development is not a "major airport development" for the purposes of the Act. It would seem that what is proposed in the Bill is not entirely consistent with what the Government outlined in the White Paper. The White Paper (on page 165) suggested the *"removal of triggers for lodgement of a Major Development Plan for aeronautical developments"*. In any event, BAC has a particular issue with subparagraph (i) of proposed s89(5)(b), which only allows the Minister to make a determination if the development will not *"increase the operating capacity of the airport;"* The reality is that most of the activities in s89(1)(c), (d), (f) & (g) will increase the operating capacity of the airport in some way. If the Government wishes to retain subparagraph (i) of s89(5)(b), then some materiality

		threshold should be introduced, such as a "significant" increase in operating capacity. This term is used elsewhere in the Act, including in s89(1)(m).
46	89A	As with the proposed s89(5), BAC suggests that: • a timeframe (of say 20 business days) be included for the Minister to decide whether an ALC may prepare a major development plan for an "incompatible development" (and a deeming provision permitting the preparation of a major development plan if the Minister does not respond within this time); and • if the Minister refuses to give approval to prepare the plan, the reasons for that decision should be provided to the ALC.

PART 2 – LESS SIGNIFICANT ISSUES

Item No.	Section amended	BAC comment
1	71(2)(ga)(iii)	BAC is comfortable with the requirement that a ground transport plan be described in a master plan, however it is important that the requirements of such a plan not be overly prescriptive or cumbersome. BAC notes the use of the phrase *"outside the airport"*, in terms of identifying road & public transport system linkages between on-airport and off-airport facilities. It is not clear from the drafting how far "outside the airport" an ALC must look in assessing the linkages. This could be cause for some confusion when the requirement is being interpreted by both the Department & ALCs, as well as State and local transport agencies.
1	71(2)(ga)(v)	The term "operations" is used in this subparagraph. We suggest that "airport services" might be more appropriate, given that it is defined at the end of the section (by new paragraph (10)).
1	71(2)(gb)(i)	This subparagraph requires detailed information about "commercial, community, office or retail" developments. Subparagraph (ii) goes on to make reference to "other purposes" not related to airport services. It is not clear whether (ii) is intended to qualify the language in (i). In other words, clarification is sought as to whether ALCs are required to give details of <u>all</u> retail or office developments at the airport, even those proposed within and around passenger terminal – such as an expansion of retail offerings within a terminal, or new or upgraded car parking facilities around a terminal.
5	71(6)(b)	BAC suggests that rather than an ALC having to provide "justification" for inconsistencies, it should provide an "explanation" for the inconsistencies. "Justification" implies a need to satisfy the Minister that it is

		acceptable for a master plan to differ from State and local government planning schemes. ALCs have no control over the planning schemes of State and local authorities, and should not have to "justify" the difference.
32	78	As a drafting matter, BAC suggests that the clause would be clearer if drafted using language consistent with s77: *"(5) For the purposes of a prosecution of an offence under subsection (3), it is irrelevant that, because of s77(1), the original plan remains in force ~~for longer than 5 years after the original plan came~~ <u>until a fresh plan comes into force</u>."*
37	86A(2)	BAC suggests that the word "final" be inserted before "master plan" in line 1. Also, for consistency with the language of the heading to s76, the term "replacement master plan" should read "new master plan". The concept of a "replacement master plan" is something contemplated by s78, and is different from the master plan that is submitted before a final master plan expires.
37	86(4)	The term "environment plan" should read "environment strategy".
47	91(1)(ga)(iii)	As not all major development plans will be for "commercial or retail development", we suggest that the words *"in the case of a commercial or retail development"* be inserted after the word "including", so that the subparagraph would read: *"(iii) the local and regional economy and community, including, <u>in the case of a commercial or retail development</u>, an analysis of how the proposed development…"*

		Please also refer to our comments for items 1 & 47 in relation the use of the term "fits within".
49	91(4)(b)	Please refer to our comments above at item 5 about the use of the term "justification".
53	92(2B)(b)(i)	BAC notes the use of the phrase *"aligns with"* in this proposed new section, which phrase does not appear elsewhere in the Act. BAC suggests that, for consistency of language, the Government consider using the phrase *"is consistent with"*.
54	94(3)(f)(i)	For drafting clarity, we suggest that the subparagraph read as follows: *"(i) whether the exceptional circumstances claimed by the airport-lessee company will justify the development of the incompatible development at the airport; and"*