



Submission to the Senate Standing Committee on Rural Affairs and Transport

Airports Legislation Amendment Bill 2010

*October 2010*

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# 1 About us

## 1.1 Corporate structure

Australia Pacific Airports Corporation (APAC) has a controlling interest in two airport lessee companies (ALCs) – Australia Pacific Airports (Melbourne) Pty Ltd (APAM) and Australia Pacific Airports (Launceston) Pty Ltd (APAL).

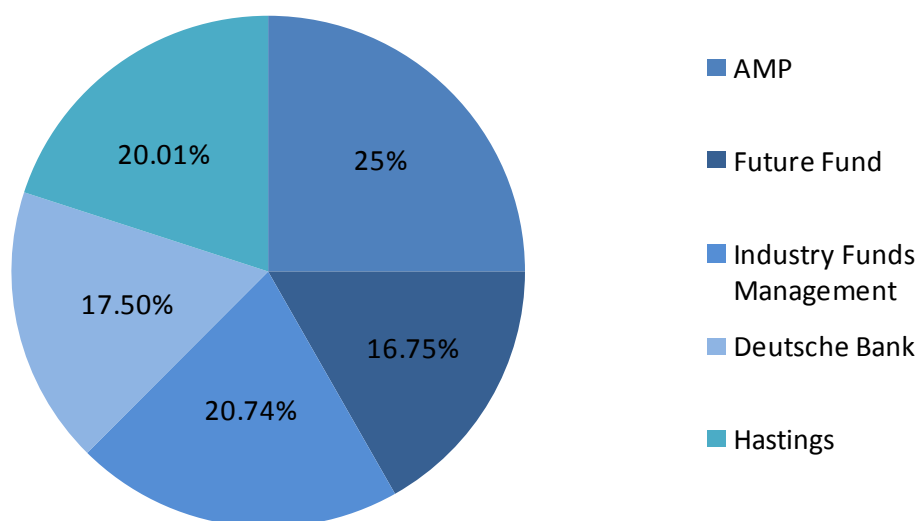
Melbourne Airport is the trading name of APAM. APAM is a wholly owned subsidiary of APAC and holds the airport lease acquired for \$1,307 million for Melbourne Airport granted by the Commonwealth Government on 2 July 1997 under the *Airports Act 1996 (Cth)* (*Airports Act*) and several similar leases that have been subsequently granted over land for airport use.

APAC also has a 90% interest in APAL, the company that holds the airport lease for Launceston Airport granted by the Commonwealth Government on 28 May 1998. The City of Launceston has the remaining interest in APAL. This lease was acquired for \$17 million.

APAC had the same four shareholding entities from 1997 until 2007 when BAA Ltd, the United Kingdom airport company sold its interest in APAC to the remaining three shareholders. These shareholders are major Australian funds managers. They invest on behalf of their clients through both listed and unlisted vehicles.

This year the Future Fund and Industry Funds Management joined APAC's shareholder mix, joining AMP, Hastings Funds Management and Deutsche Asset Management.

Table 1.1 shows the distribution of equity in APAC:



## 1.2 Melbourne Airport

Melbourne Airport is Australia's second largest airport in terms of international and domestic passengers and freight. In addition to around 3,800 passenger flights per week that service Melbourne, there are currently 76 dedicated freight services both international and domestic arriving and departing from Melbourne each week. Since privatisation on 2 July 2007, total passenger numbers have grown by an average of 5.4% per annum.

Domestic passengers have grown at an annual rate of 5.1% since 1997. Despite the collapse of Ansett in 2001, a number of new carriers have entered the market leaving Australia with a stronger, more sustainable diversified domestic aviation environment.

The success of Melbourne Airport's international passenger business has been based on its ability, in partnership with successive Victorian Governments, to work with international carriers to establish new services to Melbourne. Since privatisation in 1997, international passenger numbers have grown at an average of 6.6% with the number of international flights, now provided by 25 carriers, growing from 185 a week to 306 a week.

Melbourne Airport handles more than 200,000 tonnes of international air freight per annum - giving it 35% of Australia's international freight market. In 2008/09, export airfreight through Melbourne Airport was valued at \$3.8 billion and imports at \$8.8 billion. The international freight airlines currently servicing Melbourne are Toll, Australian Air Express, Malaysia Airlines, Cathay Pacific, Qantas and Singapore Airlines.

In recent years Melbourne Airport has embarked on the most significant investment in airport infrastructure since the airport was opened by Prime Minister Gorton in 1970. Since privatisation, APAC has spent in the order of \$1.1 billion on new infrastructure and infrastructure upgrades for key public infrastructure including security assets, runways, aprons, terminals, roads, car parks and other essential airport infrastructure. Approximately 98% of the capital invested by Melbourne Airport has been on core public infrastructure. This will continue, over the next five years, APAC will be investing over \$1 billion in core public infrastructure.

## 1.3 Launceston Airport

Since the airport was acquired in 1998, passenger numbers at Launceston Airport have grown at an annual rate of 7.2% per annum as compared to the national average of 5.4%. The resilience of this market, and perhaps the Australian domestic market as a whole, is perhaps best shown by the fact that in the year that Ansett collapsed, passenger numbers still grew by 1.7%.

The largest upgrade of the passenger terminal building since the terminal was constructed and opened in 1965 was opened by the Premier of Tasmania in March 2010. The upgrade cost \$20 million, more than what was paid for the airport when it was privatised in 1998.

There were three key objectives for the upgrade:

- Provide full check bag screening to 100 percent of bags as required by federal legislation;

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- Provide additional space within the terminal to allow acceptable passenger movement and waiting areas; and
  - Upgrade the baggage system through the provision of a common user check in and baggage reclaim with carousels.

## 2 Planning at major airports

### 2.1 Aeronautical development

It is no secret that it is non-aeronautical rather than aeronautical development that gives rise to the greatest debate in the regulatory sphere. However in relation to a range of aviation developments there is scope to significantly reduce regulatory burdens whilst at the same time improving transparency and public confidence in the planning framework.

In the United Kingdom, when airports seek approval to undertake major aviation capacity expansions they typically seek permission to expand up to a certain level of capacity, expressed as an annual passenger throughput and/or aircraft movement figures. Where this does not involve new runways, this typically will give them an “as of right” approval to develop terminals, aprons and associated aeronautical assets to support the published level of throughput. The nature and scope of supporting ground access facilities arises from a detailed surface access strategy.

Melbourne Airport recommends that consideration be given to incorporating such aeronautical development consent into the master planning process in the *Airports Act*, with the caveat that major runway projects (with the exclusion of maintenance projects) remain subject to the Major Development Plan (MDP) provisions (which in any event require an assessment under the *Environment and Biodiversity Conservation Act 1999*).

The large majority of aeronautical facilities being developed are predominantly extensions of existing terminals, aprons and related facilities or are located within the general vicinity of existing aeronautical assets and at reasonable distances from surrounding residential areas. Any impacts that effect surrounding residential areas or supporting infrastructure are the result of the growth in aviation traffic rather than the specific development proposed.

This can be achieved through the amendment of s71 of the *Airports Act* to require the Master Plan to contain a list of projects that are necessary to facilitate a certain level of activity (ideally the upper level passenger forecast) and stretch objectives relating to freight and general aviation over the five-year period of the Master Plan. This published project list would require specific approval by the Minister and would therefore be exempt from the MDP provisions, provided the Secretary was satisfied the project in question was appropriately specified in full in the Master Plan (deemed approval in 14 days in the absence of a decision is an appropriate timeframe).

The specification of projects should also be flexible, for example:

- The construction of new, and increases in floor areas of existing, passenger and freight terminals, hangars, flight kitchens and similar aeronautical buildings;
- Development of new buildings as above up to a certain size in predetermined general locations identified in the Master Plan, especially those primarily supporting aviation activities;

- Development of taxiways and parking aprons to facilitate developments described above;
- Additional aircraft parking aprons up to a specified number;
- Taxiway infrastructure (new or extensions) and projects that the airport lessee and Airservices Australia believe will improve the efficiency of airfield operations but not impact flight paths around the airport;
- Facilities agreed between the airport lessee, Airservices Australia and other government agencies for use of those agencies; and
- Road and car park projects set out in the Ground Transport Plan (see below).

Whilst removing the need for a significant number of uncontentious MDPs it would ensure more robust focus on those issues that relate to the aviation growth of an airport by bringing immediacy to the consideration of supporting land transport infrastructure and providing greater certainty for both airlines and airports when negotiating long term pricing agreements.

## 2.2 Ground access planning

Land transport issues are an important area that is not properly addressed in the current planning framework. This can be rectified by introducing a statutory requirement for Master Plans to contain a Ground Access Strategy that:

- Demonstrates how the airport's road traffic will impact on supporting public road infrastructure and the measures that have been agreed with providers of that infrastructure to ensure adverse impacts, if any, are minimised;
- Identifies any future off-airport infrastructure and the commitment of the relevant level of government to provide it as and when required;
- Details the airport lessee's approach to airport accessibility by all modes of transport;
- Identifies on-airport roads from a land use planning perspective; and
- Demonstrates that the airport has planned projects to meet future on-airport traffic and parking demand including specific proposals for the five-year period of the Master Plan (such projects would be exempt from MDPs, refer s2.1).

Such a strategy would be integrated with the urban and regional transport strategies of the jurisdiction in which the airport is located. The MDP provisions could potentially require an MDP to specifically address how the proposed development relates to the objectives set out in the Ground Access Strategy approved by the Minister.

## 2.3 Non-aeronautical development

Ultimately the *Airports Amendment Act 2010* fails to consider the impact on the economic contribution of airports to their regions, states and nation as a whole brought about by a lack of certainty in future development.

The Bill acknowledges that a more rigorous assessment process for non-aeronautical developments in the form of a wider category of developments requiring major development plans may lead to higher development costs and reduced investment certainty, however does not reflect any quantification of these impacts or their flow through effect on the strength of the regional economies in which airports are situated.

Airports are indeed, as the Issues Paper notes, not islands. It is essential that airports and surrounding communities grow consistently and responsibly in line with State and Local planning regimes. Conversely, it is also equally important that they are allowed the room to grow appropriately as a key contributor to and supporter of local economy.

It is important that previous contentious non-aeronautical developments are assessed objectively and that regulations be formed on the actual, current environment rather than past climates.

Following privatisation, some Australian airports adopted an aggressive position on property development to support their acquisition financing arrangements as the Asian Financial Crisis, SARS, a heightened security environment and the collapse of Ansett had adversely affected revenues.

Robust consultation practices by airports were still being developed. Local and state authorities were learning how to be an important consultee rather than a decision maker in planning issues in which they had legitimate interests and; competing land owners had to confront a source of competition from organisations that were, to a large extent new entrants, into quite concentrated and often non-competitive property markets.

In the case of Melbourne Airport, non-aeronautical property development complements aviation development, general urban planning arrangements in the north-west of Melbourne and the Metropolitan Planning Strategy, providing local employment and the all important physical buffer between 24-hour airport operations and residential areas surrounding the airport. This buffer role is also performed by commercial developments beyond the airport boundary and is a key factor in the preservation of Melbourne Airport's sound relationship with the community.

Many activities located on the airport have a substantial logistics component. By locating these close to the airport, the Western Ring Road and the Tullamarine Freeway, the level of urban congestion and emissions is lower than what it might be if these activities were located elsewhere in metropolitan Melbourne. Additionally, if the regulatory burden becomes so onerous that it severely limits non-aeronautical tenants ability to access sites on airport, it is likely sites would be sought elsewhere that might otherwise be available for higher and better uses such as, for instance, residential, increasing the price of already scarce residential land.



Many misperceptions, outlined below, are held about the nature of non-aeronautical development at airports. It is important that these are considered objectively as the legislation is developed:

- *Airports have an advantage in the property market over other developers.* If this were the case, given the scale of property development in Melbourne in the past ten years, Melbourne Airport would not still have cattle grazing on undeveloped industrial land.

Airports are in fact, significantly disadvantaged as property developers. This centres around their inability to offer freehold title and the restraints imposed by leasehold title technicalities.

Beyond that, the types of developments that can occur in such proximity to the airport are limited by considerations relating to operational aircraft – most notably noise, lighting, security and potential wildlife hazards such as birds.

The perception that the airports' planning framework gives airports "an easy ride" is unsubstantiated. When the Department conducted a review of the *Airports Act* a number of years ago, an independent report from Parsons Brinckerhoff was provided to the Department outlining that whilst the airports' framework differed in varying respects from general state planning regimes (which themselves differed substantially from each other) it did not confer any particular advantage.

APAC is not aware of any major development in policy that would have altered this situation, however, in the name of transparency and evidence based policy development, the Department may like to consider commissioning such an analysis of the situation as it currently stands, noting it is unlikely the results of such a study would indicate an alternative result.

- *Non-aeronautical development is threatening aviation development.* The primary method of preventing such an occurrence is through the development of the Master Plan. It is clear that, in the event an airport was to act in a manner that did not provide for the necessary land for aviation services into the future, it would be immediately raised by airlines, state and local authorities. If such concerns were valid it would be expected the Minister would take corrective action if it had not already been taken by the airport in the interim. Where the issue is not so much with land allocation but impacts on aircraft in flight, the current arrangements are operating well and further regulatory burdens would only proceed to increase financial and physical costs up unnecessarily.
- *Non-aeronautical development is incompatible with surrounding off-airport land uses.* Again, to a significant extent, this should be dealt with in the Master Plan. Airports in developing their Master Plans are required to use the land-use definitions contained in the planning law of the states in which they operate. Whilst accepting the historical reality of an airports location, proposals brought forward by airports for non-aeronautical developments that are incompatible with surrounding uses should be easily identified and rejected by the Minister in the first instance.

This is not to say that appropriate zoning is all that is required. The majority of land-use planning definitions are broad and the impacts of individual projects need to be fully assessed via the MDP process, focussing clearly on impacts such as traffic generation and nuisance to surrounding residential areas consistent with the way these issues are addressed under state-based planning schemes. The 2007 Amendment Act supports this approach, allowing ample capacity for the Minister to seek further information on such issues, consult with relevant third parties, place conditions on approval and ultimately reject the proposal.

There are some non-aeronautical projects that have been approved at other airports (with or without conditions) which may not have been appropriate. Whilst clearly the conduct of some airports is an issue, this lack of confidence is also a result of the decision making of previous Ministers and a failure on the part of some stakeholders, including some state and local governments, to avail themselves of the extensive consultation provisions already provided to them in the *Airports Act*, particularly following the proclamation of the *2007 Amendment Act*.

Whatever the cause and merits of these concerns, it is vital the community have confidence in airport planning arrangements and the conduct of airport lessee companies. These isolated examples do not therefore make a case for substantial amendment of the *Airports Act*.

- *Non-aeronautical developments are affecting the commercial viability of off-airport competitors.* Such is the nature of competition. One might equally say that commercial activities of off-airport competitors such as Westfield are affecting the commercial viability of airport operators.

Whilst it is appropriate that the development of the airport site is consistent with and mindful of wider metropolitan planning considerations it is not the purpose of the airports' planning framework, or indeed any planning framework, to restrict competition or favour one class of land owners over another. As a general principle, competition in this regard can be expected to lead to increased employment and lower prices for working families.

The available land-uses on leased airports have been abundantly clear since the first Master Plans were made available for public consultation in 1997 and indeed, some of these reflected the continuation of the land development policies of the FAC – there has not been a sudden flooding of the land market with airport land. Indeed a number of metropolitan planning schemes, such as Melbourne 2030, clearly recognise the importance, availability and potential uses of land that have been set out in airport Master Plans.

- *Airports are not required to consult, or do not consult adequately, with local and state authorities.* This is neither our practice nor our experience. The *Airports Act* places considerable consultation obligations on airport lessee companies in relation to Master Plans and MDPs. These were strengthened by the 2007 Amendment Act and in some cases go further than what is required of other developers.

The issue in this regard is that some party's, perhaps the majority in certain cases, views expressed in Master Plan and MDP consultations by these authorities have not been acted on by the airports concerned – the Commonwealth can of course examine this in more detail. As noted above, this might be due to the entities involved adjusting to being consultees and not decision makers.

APAC's experience is that there is little feedback from state or local authorities in relation to MDPs – of the nine MDPs Melbourne Airport has produced, material negative feedback has been provided on only two. Again, the Commonwealth is well placed to assess the success or failure of that consultation but we would suggest that the consultation was extensive and that the legitimate interests of all parties were appropriately addressed.

In reviewing our MDPs and Master Plans, the consultation would simply lead to additional costs with minimal benefit rather than strengthening an over-riding public policy purpose.

It was clear throughout the consultation process that the Government has considerable concerns around the planning provisions of the *Airports Act*. Regrettably, the Issues Paper, the Green Paper and the White Paper, did not make clear the specific areas causing this concern, nor did the documents provide specific examples of the types of developments that had occurred that should not have proceeded. A blanket regulatory approach is simply not practical and, in fact, only serves to create uncertainty in the future of infrastructure development on non-aeronautical sites and therefore significant loss in value.

Based on this and the above, it is APAC's strong view that the current planning framework does not have serious systemic problems, rather poor outcomes have occurred due to inconsistencies with the operational application of the *Airports Act*.

## 3 **Airports Amendment Bill 2010**

### 3.1 **Preliminary Observations**

While APAC welcomes the White Paper policy initiatives, it is disappointing that the *Airports Amendment Bill 2010* (the Bill) goes only a small way to improving airport planning arrangements, particularly in the area of non-aeronautical development.

The amendments do not serve to remove unnecessary regulatory burdens in relation to developments on-airport that are currently required to be fully laid out in the Master Plan and instead result in heightened costs of implementation and loss of revenue through value depreciation of property sites.

Such increased regulatory burdens will only serve to leave airports less competitive than on off-airport land, reducing value for shareholders, constraining airport lessees quiet enjoyment of the lease and providing a disincentive to developers to invest. Melbourne Airport is located in a key growth corridor. Such additional regulatory requirements significantly hamper the airport's ability to plan and grow for a sustainable future in line with the economic growth of the immediate area and the State as a whole.

It is also disappointing that no consultation on the content of the Bill itself prior to its introduction existed, contrary to the Government's Regulatory Best Practice Guidelines issues by the Office of Best Practice Regulation. Such an approach has resulted in serious drafting errors, or at least unintentional consequences that need to be addressed.

Option C of the Regulatory Impact Statement is the most appropriate option presented by The Bill. However, this must be considered, as outlined in the non-aeronautical development section of this paper, in the context of the additional cost of compliance which is significant for these proposed changes which are unlikely to have a substantive let alone positive impact on planning outcomes at airports.

Set out below are those issues which we consider the Committee should give specific attention to in order to ensure that the Bill is effective and sustainable, doesn't create unnecessary regulatory burdens and is successful in achieving the policy objectives the Government is pursuing.

### 3.2 **Shortened consultation periods for Major Development Plans**

There are a range of core airport infrastructure developments which must be set out in the Master Plan and justified on the basis of their contribution to the capacity of the airport as a whole, that should be able to be undertaken as of right providing the Secretary is satisfied they are consistent with the Master Plan. Sadly, this view is not shared by the Government nor did it consult on the fine detail of its proposals to reduce the planning burden for aeronautical and non-aeronautical investments.

Virtually all of the developments potentially covered by the new s89(5) (new or expanded terminals and taxiways) will only be constructed if they expand airport capacity except in those circumstances where they replace existing assets that have reached the end of their useful life or are being replaced.

As such, the Minister will not be able to reduce the MDP consultation time for most of these projects. If this is not corrected, this new approach, while a minor improvement to the *status quo*, will have little practical impact.

To ensure that the proposed s89(5) does give effect to the Government's policy objective of enabling the Minister to shorten the consultation period for some MDPs, the new s89(5) should be amended by adding after (b) ...or (c): **the Minister is satisfied that the issues set out in s89(5)(b) were adequately dealt with in the final master plan.**

The increased scope of information required in the Master Plan through the amendments contained in the Bill, particularly in relation to the requirement of the provision of roads is fair, however such inclusion should cover the need for a broader range of project types that are subject to a reduction to the MDP consultation period.

Rather than being limited to building new or extending passenger terminals and taxiways, as a minimum, the following development types would receive similar treatment - providing they were adequately described in the Master Plan:

- Freight and mail terminals;
- Aircraft hangers;
- Aviation maintenance workshops;
- Flight kitchens;
- Roads;
- Car parks and other vehicle storage facilities; and
- Buildings to support activities necessary or desirably located at airports (for example airline and government offices).

### 3.3 Major airport developments

APAC has a long standing history of stakeholder and community consultation in relation to developments and appreciates the importance of greater integration of state and airport infrastructure. In support of the new mechanisms it is incumbent upon State and Territory Governments to actively engage in these forums to support the economic development of airports and to provide adequate planning safeguards, and for the Federal Government to actively encourage such engagement.

### 3.4 Content of Major Development Plans

Whilst the shortened timeframes provided by the proposed s89(5) is a welcome if somewhat modest reform if properly implemented, it would have seemed appropriate in the circumstances that it would

be used for the information required in the MDP to be less than what is generally required. APAC recommends traffic flows, employment and other community assessment issues now proposed for MDPs, be waived for those MDPs given shorter assessment periods under the proposed s89(5) as such assessment must be provided in the Master Plan.

Further, it should be noted that the proposed new s91(1)(ga) that relates to these new requirements as drafted applies to all MDPs and should, consistent with policy intent, only relate to non-aeronautical developments.

It is also important to acknowledge the reference to the “significant community interest” trigger. The crafting of these guidelines (as for the 'environmental significance' test) will be critical and to date there have been no draft guidelines issued for consideration. Without such guidelines, this ambiguous reference will only serve to produce an uncertain environment for investors, developers and airport lessee companies and increased burden of compliance.

### 3.5 Runway projects and airspace changes

The Bill proposes a new section 89(1)(ba) that requires an MDP to be undertaken if a runway is altered in a way that changes flight paths, the patterns of, or levels of aircraft noise. Whilst APAC agrees that works that are undertaken that affect noise outcomes should be subject to significant public consultation, the proposed words present a number of significant issues relating particularly to regular planned and unplanned safety-critical maintenance works that may impact on runway availability for relatively short periods of time. The reason for this is that when these works are undertaken, especially at those airports which have multiple runways, there are temporary changes to flight paths and their use.

Our view is this problem could be solved by amending the proposed s89(1)(ba) to read:

- (ba) altering a runway, including altering a runway in any way that changes:
  - (i) flight paths for **a period of more than 90 days**; or
  - (ii) the patterns or levels of aircraft noise **for a period of more than 90 days**; or

An alternative approach would be to provide a definition of “altering” that does not include maintenance and repair.

If concern still remains about major projects (probably limited to runway overlays) of durations less than 90 days, it would be appropriate to make regulations requiring the airport lessee to advertise the works, expected effects and duration and advise in writing the most affected parties and local authorities.

### 3.6 Other issues

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While the concerns outlined in the previous sections of this submission are key, the following outlines additional observations that if incorporated would serve to further build the legislation as robust.

- In relation to ground transport plans (item 1)
  - The sorts of facilities described for moving people and freight should also encompass facilities necessary to facilitate aircraft operations such as the movement of fuel.
  - The notion of “ground transport system” capacity requires further definition.
  
- It is proposed that where certain proposals contained in a Master Plan are inconsistent with state planning arrangements the inconsistency be identified and explained. APAC supports this approach, however is concerned that inconsistencies that relate to the civil aviation considerations of the Master Plan do not receive a similar level of attention. These considerations should receive identical treatment so as to provide early identification of problems for civil aviation caused by inappropriate state planning arrangements and development beyond the airport boundary (item 5).
  
- Accommodation for training aviation rescue and fire fighting personnel should be added to the exemptions to educational facilities (item 27(par 39)).

### **3.7 Conclusions**

Ultimately the passage of this Bill in its current form will result in increased regulatory and financial burdens for both airport operators and the Commonwealth with limited effect on the quality of planning outcomes at airports. Consideration of the impacts of these proposed changes must be made in the broader context of airports’ role as key economic contributors to their respective states and their ability to develop in line with them.