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03 March 2017

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam

Perth Airport submission to the Airports Amendment Bill 2016 [Provisions]

Perth Airport appreciates the opportunity to respond to the inquiry into the provisions of the Airports Amendment Bill 2016.

As highlighted in our submissions to the Department of Infrastructure and Regional Development during the consultation periods, Perth Airport commits extensive financial and human resources to the production of high quality master plans and major development plans and supports any initiative that will streamline the regulatory processes and reduce the cost and resource impact.

While Perth Airport welcomes some of the proposed changes, such as the increased threshold amount for major development plans and the mechanism to allow a major development plan to be withdrawn, we are disappointed that Perth Airport has been excluded from the proposed change to the master plan submission cycle and will therefore not realise the regulatory cost savings being made available to other airports.

Details of Perth Airport's submission are provided in the pages attached.

Perth Airport would welcome the opportunity to present to the Committee.

Yours sincerely

Kevin Brown
CHIEF EXECUTIVE OFFICER

PERTH AIRPORT SUBMISSION TO THE AIRPORTS ACT AMENDMENT BILL 2016 [PROVISIONS] INQUIRY

Part 5, Division 3 - Airport master plans

Differential master plan submission cycle

Perth Airport does not support a differential submission cycle, with five years retained for Sydney Airport, Sydney West Airport, Melbourne Airport, Brisbane Airport and Perth Airport, but amended to an eight year cycle in the case of any other airport.

The process to prepare and develop a master plan presents a significant impost on airport resources and finances. Perth Airport has identified that the development of the Master Plan 2014 took two years to complete and incurred expenses in the millions of dollars.

It is noted that the primary statutory purpose of a master plan is to provide the Government and community confidence that the airport lessee is properly planning for the ultimate development and provision of aviation and non-aviation services. The operators of Perth Airport, going back to the Department of Civil Aviation in 1985, have developed master plans which clearly set out the ultimate development of airport estate and essential airfield infrastructure. Over the 30 year period of developing master plans for Perth Airport there has been only incremental and marginal change at the high level presented in master plans. Given the considerable expense and resources required to produce a master plan and noting that the changes are at best defined as incremental or marginal, it is difficult to justify the constraint of reviewing the master plan every five years continuing to apply to only five of the 20 federally leased airports required to have an approved master plan.

Perth Airport believes that an eight year cycle for all airports is sufficient review at a timeframe that provides confidence to the Minister and the community that the plans for Perth Airport are appropriate having regard to providing suitable airport services and compatibility of Perth Airport's plans with surrounding urban planning and development. Should there be a requirement to substantially change direction or consider significant amendments, then an airport lessee has the opportunity to request and prepare an amendment or seek the approval of the Minister to bring forward the review of the master plan.

Perth Airport is not aware of any airport for which the planning or development is so dynamic that it would warrant a master plan review more frequently than 8 years.

Mandated inclusion of a new ANEF in each new master plan

Perth Airport supports the requirement to have the Australian Noise Exposure Forecast (ANEF) provided in the master plan, as a means of informing the community and providing a clear direction for the application of State and local government based land use planning regulations, but does not support the requirement to update the ANEF with each new master plan.

Unless there is a planned material change in the airfield layout, concept of operations of the airfield and associated airspace, or a significant change from the previous estimated pattern of aircraft types and movements, the ANEF will not significantly change. Endorsement of an ANEF is a lengthy and costly process, and incurring an expense in the hundreds of thousands of dollars for no apparent benefit of either the Minister, the regulators, or importantly the community, is unfounded.

Perth Airport recommends that it should be a matter of discretion for an airport lessee to determine whether an update of the ANEF is required. Should events materially change and an update of the ANEF outside of the master plan be necessary, an airport lessee should be able to submit such an update as part of a master plan minor variation to be considered by the Minister.

Part 5, Division 4 – Major development plans

Monetary trigger

Perth Airport supports the intent of the change to the major development plan (MDP) monetary threshold and the provision for the threshold to be reviewed and revised every three years, however, considers the proposed threshold amendment to be insufficient for achieving any meaningful benefit to airports.

While the proposed increase of the threshold from $20 million to $35 million is an improvement, it is not of a sufficient value for most airports to achieve any benefit through a reduction in the amount of development triggering the requirement for a MDP. To reduce the administrative, cost and time impost of preparing a MDP, Perth Airport believes that the monetary trigger should be increased to $40-$50 million, noting the considerable construction price increases since the Airports Act was first introduced.

The proposed changes include an additional legislative instrument to clarify the type of construction activities that should and should not be included when calculating the monetary threshold. While the type of construction costs are yet to be defined in the separate legislative instrument, the Second Reading Speech on the Airports Amendment Bill 2016 on 01 December 2016 indicates that base building fit-out, which includes the internal cladding to finish off the base building prior to tenancy fit-out, is to be included. Perth Airport does not support the proposal to include base building fit-out when considering the monetary trigger as there is a high degree of uncertainty at the time of preparing a MDP. The base building fit-out cost can only be determined through detailed construction design, and given that it takes, at earliest, nine months to prepare and obtain approval on a MDP, the assessment of whether a MDP is required will be based on estimated costs. This places an airport at risk of under-estimating the value and thereby significantly delaying and potentially jeopardising development if the detailed design costing then exceeds the monetary trigger, or over-estimating the development costs and wasting resource time and money on preparing a MDP that is ultimately not required.

In State and local planning legislation, fit-out costs are always excluded from the approval process for this very reason. The inclusion on base building fit-out costs may significantly increase the amount of developments that would need an approved MDP and therefore increase the administrative and financial impost on an airport.

Ministerial decision time-frame on applications for reduced consultation periods

Perth Airport supports the proposed change to provide a 15 business day decision timeframe for the Minister to consider applications for reduced MDP consultation time frame.

Substantial completion of MDP developments

Perth Airport supports the proposed amendment to remove the restriction on the number of times that the Minister can extend the period for approved developments to be completed. However, Perth Airport does not believe that it is appropriate to maintain the current condition of 'substantial completion', even with the removal of the limit on the number of times an airport can apply to the Minister. Perth Airport believes that this should be changed to substantially commenced. Precedence in State planning law, as confirmed by various court cases, has consistently defined the measure of enabling an approval (substantial commencement) which generally is defined as being approximately 20 per cent of the total works approved. This change allows greater certainty to complete the developments in accordance with market demand for the works.

Cessation of MDP approval

Perth Airport supports the inclusion of a MDP retraction mechanism. However, Perth Airport does not support the proposed withdrawal clause 96AA(1)(b) which states that an MDP can only be withdrawn if there is not already a building activity approval in force for an element of the MDP. There are many circumstances outside of an airport lessee's control which may result in the development becoming unviable after site works have already commenced, such as the withdrawal or bankruptcy of a developer or investor. To prevent the retraction of a MDP in these circumstances will cause the airport lessee to contravene the Airports Act and impose additional and unnecessary administrative and resource costs.

In State and local planning legislation, withdrawal of approval is a simple administrative process. This long standing and legally accepted practice reflects the reality that project circumstances may change due to market, economy, or investment reasons. Additionally such changes may occur after initial approvals or works such as early investigation works (such as geotechnical testing and survey), clearing and site preparation. As it stands the condition may ironically compel an airport lessee to only build a project which has no financial support, purely on the basis the airport lessee obtained a permit to do a soil test.

The inclusion of the restriction defined in 96AA(1)(b) only serves to create a barrier to investment and development and critical flexibility that an airport lessee needs.

Additional Matters for Consideration

Perth Airport previously made submissions on both *Airports Act 1996* Regulatory Streamline Package, Efficiency Proposals: Master Plan and Major Development Plan discussion papers (released July 2014 and July 2015). The submissions detailed a number of recommendations which have not been included in the proposed Airports Act amendments. Perth Airport believes that this is a missed opportunity for significant red tape reduction and cost efficiencies to be realised by airports, particularly considering the lengthy period between initial consultation and legislative amendments and the unlikelihood of another review being undertaken in the near future. The recommendations from Perth Airport are reiterated below.

Recommended Better Regulation Proposal No 2: maintaining current requirements for the contents of master plans

The current requirements under Section 71 of the Airports Act clearly defines the requirement of an airport lessee in preparing a Master Plan. Perth Airport believes that the requirement

and elements to be included and addressed are reasonable and provide a good framework for outlining the future development and protection of an airport.

However, it is clear that over the period of the application of the requirements of the Act there has been considerable “scope creep” in the expectations of contextualisation, supporting material and essentially marketing filler in preparing a master plan document. This additional material does not materially improve the plan or its legibility and understanding in the community. Further, given its considerable addition of red tape and expense, it does not proportionately yield any benefit.

Over time master plans have evolved from State based land use planning legislation, which serve the purpose of providing a statutory framework for the development and protection of core uses. Having regard for this purpose, it pays to compare the form and function of metropolitan region scheme and town planning schemes. These documents are general, concise and matter of fact. They provide no ambiguity to the community or the regulator in the purpose and intent for development. Without the gloss or surplus contextualisation, they can be produced at a materially lower cost and resource demand, yet yield exactly the same outcome for the community.

To assist in ensuring consistency between jurisdictions, the Western Australian planning legislation and regulations provide for the development and application of a ‘Model Scheme Text’, which provides the detailed framework of the document that each local jurisdiction applies. Such a document ensures the same standard regulatory compliance and consist application of definitions and as such enables the community to compare and translate the intent from local jurisdiction to local jurisdiction.

Perth Airport submits that a significant review of the expectations and additional red tape cause by excessive contextualisation and supporting material beyond the requirements stipulated in the Airports Act and the Regulation, demanded by the Department with no regulatory basis, is implemented. Further it is recommended that a Model Airport Master Plan template is developed, which has a simple form based on a local planning scheme format, and applied for use by all airports which operate under the Airports Act.

Recommended Better Regulation Proposal No 4: the inclusion of noise metric charts, other than an ANEF, in master plans remain voluntary

Noise events above metrics are a valuable tool and should be included in master plans. Perth Airport has provided the additional noise event above contour metrics in both the Master Plan 2009 and Master Plan 2014 and associated supporting material.

Perth Airport believes the inclusion of the noise events above contours provide an essential metric in informing the community of aircraft noise impacts. It is believed that through the provision of information through an open and transparent process that communities will become better informed in their lifestyle and investment choices and in determining where they purchase their home or move or rent. In being informed, there is a clear opportunity to reduce community concerns that arise from members of the public who move into an area, and simply due to there being no notice on the title and being outside of the ANEF designated contours, that they didn’t expect aircraft noise.

In addition to these, there needs to be a greater effort, through the COAG process, to have a consistent standard approach to land use policy and regulations across Australia, based on

the NASF guidelines. This would improve community understanding and certainty and also protect the future viability and operations of airports.

Inconsistency of definition of environmental significance between the Airports Act 1996 and the Environmental Protection and Biodiversity Conservation Act 1999

Both the Airports Act and the EPBC Act provide definitions of matters of environmental significance. Section 71(2)h of the Airports Act defines environmental significance as areas within the estate which the airport lessee, in consultation with the State and Federal conservation bodies, identify as significant. No other clarity or definition is provided.

Under the EPBC Act, Chapter 2 Part 3 Division 1 sets out the relating to matters of national environmental significance. In doing so its sets out the clear expectations of matters relating to world heritage, national heritage, wetlands of international importance, listed threatened species and communities, listed migratory species, protection of environment from nuclear activity, marine environment, great barrier reef marine park, protections of water resources from coal seam gas developments and large coal mining development; and finally matters of national environmental significance.

There is a prima facie case to consider adopting the EPBC Act standard which was developed after the adoption of the Airport Acts and has a considerable and specific focus on environmental matter.

Inconsistency between the assessment and approval processes between the Airports Act 1996 and the Environmental Protection and Biodiversity Conservation Act 1999

Under the Airports Act matters of environmental significance are identified in a MDP and are ultimately referred using the section 160 referral powers of the EPBC Act by the Department of Infrastructure and Regional Development to the Minister for Environment. It is noted the assessment by the Department of Environment and the conditions required by the Minister for Environment do not have any application to an airport lessee in this process and that the determination and application of conditions is actually by the Minister for Infrastructure and Transport.

Under the EPBC Act there are opportunities to refer matters directly for assessment to the Minister of Environment. The Department of Environment provides and assessment and recommended conditions which are either applied under delegation by the Department or set by the Minister for Environment. This process is direct and relatively streamlined.

However, a key issue occurs where there are matters of national environmental significance. In these cases the MDP process through the Airports Act and the associated s160 can provide an approval. However, because this process does not ‘switch off’ the Part 13 Permit to Destroy provisions of the EPBC Act, there is effectively a huge uncertainty to the value and validity of an MDP ministerial approval. Whereas an application done through the EPBC Act under Parts 7-9 effectively switch off the Part 13 requirement. It is understood that this discrepancy was an oversight in the drafting of the EPBC Act with respect to s160 referrals.

Perth Airport strongly recommends a minor amendment to the EPBC s160 to bring it in line with Parts 7 to 9 of the EPBC Act so as to enable an approved MDP to switch off the requirement for a Part 13 Permit. Such a minor amendment would provide certainty to MDPs.

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Opportunities for streamlining and 'red tape' reduction

There is a significant concern with the current process, which in cases where a project may have some impacts on environmentally significant areas will trigger a MDP requirement solely on the environmental grounds. In these cases an airport lessee is required to undertake a lengthy and expensive process addressing the multiple matters required under a MDP assessment. On the environmental assessment, the Department of Infrastructure and Regional Development will refer the environmental component to the Minister for Environment under section 160 of the EPBC Act for a recommendation.

Work permits to allow feasibility studies related to a future MDP to be completed prior to the approval of a MDP

Currently a works permit cannot be issued for any works that are related to a major development prior to the approval of an MDP. However, certain studies are required to complete feasibility and impact assessments for the MDP. For example, geotechnical studies that provide information on water levels and dewatering cannot be completed if they are related to the major development. The removal of this provision would streamline the assessment process and reduce red tape without pre-empting the Minister decision to approval or reject the MDP.