AMAC Australian Mayoral Aviation Council

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

Dear Sir/Madam

Response to Senate Committee after hearing on Tuesday 30 January - Airports Amendment Bill 2006

There were a number of questions asked by Senators during the Senate hearing on Tuesday 30 January and the representatives of AMAC indicated that answers would be provided later by letter. This letter provides those answers.

In particular, Senator Heffernan asked if AMAC would provide details of how the Airports Amendment Bill ought to be amended in relation to the consultation period or the way in which the consultation takes place.

Option 1

The position advanced by AMAC is that the development of aviation uses on airports can be argued that they are a matter for Commonwealth control but that non-aeronautical commercial developments should be subject to the same rules and controls as similar developments as apply to properties off – airports.

The method of achieving that objective would be to amend section 112 of the Airports Act 1996 so that aeronautical developments on land shown in the Airports Master Plans as "*zoned*" for aviation uses shall be excluded from the operation of State or Territory law relating to Land Use Planning but that all other development for commercial purposes on all other land on an Airport shall be subject to the relevant State or Territory Land Use Planning laws.

This would have the effect of allowing aeronautical development to be controlled by the Commonwealth but non-aeronautical commercial development on the airports would be subject to the same controls as land off-airport.

Option 2
In the event that the Commonwealth was not prepared to amend the Act in this way, AMAC would suggest that all non-aeronautical commercial developments on airports should be administered by an appropriate Commonwealth Department (other than the Department of Transport and Regional services) to ensure that such developments comply with the adjoining State or Territory legislation. Such Department should be required to have Town Planning Assessment skills.

A similar regime applies to the control of the construction of Buildings on airports where all buildings are required to comply with the Building Code of Australia.

Option 3
In the event that the Commonwealth is not prepared to amend the Act in either of the two ways already mentioned a third alternative would be to amend the Act to require the Airport Lessee Companies to lodge all their major development plans with the appropriate Local Government Council, for the area in which the airport is located, as well as the Department of Transport and Regional Services and give that Council 60 days in which to prepare a full Town Planning assessment of the proposal to be lodged with the Commonwealth Minister and the Minister will be required to take due account of the matters therein when reaching his decision on the proposal.

Master Plans
Many submissions to your Committee and much of the discussion at the hearing was focused upon the Land Use Planning control, or lack of control, of non- aeronautical commercial developments.

It is very interesting to look at how the current position has developed and why the much lauded "*Commonwealth Control*" of Land Use Planning is ineffective or, indeed, non existent.

The Parliamentary Secretary, in her second reading speech on this Bill indicated that the "*Australian government will continue to control planning and development on the airport sites, which remain Commonwealth land.*" In fact, in respect of Land Use Planning, the **Commonwealth does not exercise any control** over commercial developments on airport land. The Master Plan process does not work as the legislation and the Parliamentary Secretary and the Commonwealth Government expect that it will work.

The Chairman of the Australian Airports Association, in his verbal submission to the Committee makes the point that the Leases of the Airports were the subject of a tender process and the prices paid for those leases proceeded on the basis "*that the lessees' companies would operate under the Commonwealth planning of the Airports Act 1996. This was clearly explained and documented to the bidders for the airport at the time as part of the sale and purchase agreement.*"

This confirms AMAC's contention that the Commonwealth "*sold*" the "***shield of the Crown***" for non-aviation purposes. The airport land was acquired for aviation purposes and not for non-aeronautical commercial purposes.

All of the major leased airports earn less than 50% of their revenues from aviation activities and in some cases less than 20% comes from aviation.

By his own evidence there was clearly an obligation, fully understood by the Airport Lessee Companies that they would have to comply with the Airports Act1996. Making the Master Plan process work properly would not change the reasonable expectations which the bidders had when preparing their bids.

The problem arises with the administration of that Act.

The Airports Act 1996, Section 71, requires each Airport Lessee Company to prepare a Master Plan which, amongst other things includes, "*the airport-lessee company's proposals for land use and related developments of the airport site, where the proposals embrace airside, landside, surface access and land planning/zoning aspects*".

In addition, the Airports Regulations1997, at 5.02 (2), includes the provision that "an airport master plan must, in relation to the landside part of the airport, where possible, describe proposals for the land use and related planning, zoning or development in an amount of detail equivalent to that required by, and using terminology (including definitions) consistent with that applying in, land use planning, zoning and development legislation in force in the State or Territory in which the airport is located"

If it was the intention of the Commonwealth to control Land Use Planning of Airports through the Master Planning process it has failed dismally by approving the current Master Plans which give to the Airport Lessee Companies the **sole** control of what will be approved on their airports.

The Master Plans for the various airports were poorly written by the Airport Lessee Companies and they were couched in such vague generalities that they are completely ineffective. There is no development which would be prohibited by any of the Master Plans. The Master Plans invariably contain a list of the types of development which could be approved within the "*zonings*" on the airport but they also have provision to approve any other type of development if the Airport Lessee Company is of a mind to do so.

Because the Department of Transport and Regional Services has no expertise, skill or legislative base from which to work, it recommended that the Minister approve the Master Plans in those forms. The Master Plans do not comply with the Act and regulations.

The Airport Lessee Companies subsequently claim that their developments are subject to rigorous examination and control in respect of Land Use Planning is completely without foundation.

There is no Land Use Planning development which would be prohibited under any of the approved Airport Master Plans.

Perth Master Plan

An example from one Master Plan is the Perth Airport Master Plan which enumerates its planning objectives as follows:-

> *"Structures sustainable development that enhances the airport's overall economic viability"*
> *"Leverage the key strengths of the market and location"*
> *"Design a development program that provides a strong and sustainable image for the commercial properties"*
> *"Maximise the strategic value of airport land"*

It would be very difficult to find any development which could not be said to fall within one or other of these objectives. The definitions used are not the definitions nor the language used in the Planning documents of the surrounding zones.

All of the zoning precincts at the airport, except for those which are for conservation areas, include "*Industrial*" uses which are permitted on those precincts. "*Industrial uses*" are defined as "*These uses are activities which may involve manufacturing, distribution and assembly*"

This definition is so broad that it is difficult to imagine any activity which would not fall within its scope.

It is sufficiently broad that a brickworks can and has been approved at Perth Airport.

Sydney Master Plan

Similarly, Sydney Airport Master Plan has specified a list of uses which may be approved within its various "*zones*" but it 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 as to whether that use is consistent with the Master Plan as a whole, as well as the other uses permitted within that particular zone*" This provision is without parallel and does not comply with the Act and Regulations

In other words SACL can approve any use on any land.

Perth Airport has not been quite so transparent but it achieves the same result by including in its Master Plan the following "*The land uses are intentionally broad to provide an overall vision for the airport's property whilst accommodating flexible resolutions to future opportunities*".

State Land Use Planning legislation should be applied as the Commonwealth has no Land Use Planning legislation with the regime of an Act and it is not appropriate that there should be a vacuum instead.

Does Local control work?

The development of Canberra Airport's Brindabella Business Park has been under the control of the National Capital Development Commission and appears to have worked satisfactorily up to date.

Similarly, Schiphol airport, in Amsterdam, is often cited by airports as the leading example of the "*Aerotropolis*", or airport city, and its development is controlled by the surrounding local authority.

Schiphol airport does not to be facing insurmountable difficulties in its commercial development because it is under Local authority control. On the contrary, it is quoted as the glowing example to which Australian airports might aspire.

The company which owns part of Schiphol Airport is also a part owner of Brisbane Airport and in that capacity seeks, with its partners, to be exempt from local authority control in Australia.

Senator McEwen asked the Department of Transport and Regional Services representatives "*How many proposals for development have been rejected*". The reply from the Department was that no proposals were rejected. How could they be rejected – they were prepared by the Airport Lessee Companies based on the Master Plans written by the Airport Lessee Companies, on land controlled by the Airport Lessee Companies and for the ultimate benefit of the Airport Lessee Companies. Even **gross incompetence** by the Airport Lessee Companies in the preparation of the proposals would not have been sufficient for any proposal to be rejected because there is no provision in any of the Master Plans under which it could be rejected.

It is contended that the reason why no proposals have been rejected is because there is no proposal which would not comply with the extraordinarily, accommodating Land Use Planning provisions of any 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.

Senator Sterle raised the question of how the brickworks on Perth Airport were approved under the Master Plan and the answer is that the definitions are so broad in the Master Plan that the brickworks falls within the definition and there is no provision in the Master Plan under which that proposal could have been rejected.

Senator Hefferman and Senator O'Brien both raised a number of questions about the deemed approval of Master Plans and Major Development Plans which had been with the Minister for 90 days and on which he had not made a decision.

The result of those provisions is that the Minister is taken, at the end of the period, to have approved such a plan perhaps without having ever seen it or having any idea of what might be included in it. How absurd.

If no other amendment is made to the Airports Act 1996 it would be highly desirable that this provision be changed so that after 90 days the Plan is deemed refused. It could be that a method of appealing by the Airport against such a decision would be a more rational way of dealing with such a matter.

Senator McEwen also asked the Departmental representatives who had been consulted about the content of the Airports Amendment Bill and she was informed, eventually, that the leased airport operators and the Airports Association were made aware of the contents but that "*courtesy was not extended to the Local Government Association and the Mayoral Aviation Council*".

It has been AMAC's contention that the Airport Lessee Companies have a competitive advantage over other ratepayers because they are not subject to the requirements of the State Land Use Planning legislation in respect to non-aeronautical commercial developments.

It would seem that the Airports enjoy a privileged position in respect of many other matters because of the close relationship they have with the Department of Transport and Regional Services.

Notwithstanding, the prior notice the Australian Airports Association did not get its submission into your committee on time and every other body was deprived of the opportunity of reading it before attending the hearing. That Association was not disadvantaged by not having the opportunity of reading the other submissions.

It is clear that Airport Lessee Companies enjoy a substantial competitive advantage and the Airports Amendment Bill presents an ideal opportunity to correct this unfair advantage for the benefit of the wider community who all have to play by the rules.

It is also appropriate that the provisions of the Leases requiring the payment of Rate Equivalent amounts should also be included in the Airports Amendment Bill so that the administration of this provision can be carried out with full transparency and public accountability as Department of Transport and Regional Services does not enforce the current Act.

One way of achieving this objective may be to introduce a new Regulation which requires Airport Lessee Companies, in complying with their current obligations under their leases, to pay rate equivalent payments in exactly the same basis as every other ratepayer. This would mean paying on time and incurring interest on amounts outstanding.

Your assistance in achieving those results would be appreciated.

Yours faithfully

PETER FITZGERALD
EXECUTIVE DIRECTOR

cc. to All Committee Members.

AMAC/Mail/2007/Senate 2Feb07