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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

Airports Amendment Bill 2006

This submission is made by the Australian Mayoral Aviation Council (AMAC) which represents the interests of Local Government Councils throughout Australia which have major airports located within their areas or which are effected by the activities of those major airports. AMAC member Councils represent approximately 3.2 million residents.

Since the privatisation of the major airports in Australia it has become apparent that there are some anomalies in the regulatory processes of the Act which have unintended consequences as effective ownership of the airports passed from government to private hands. The chief concern is that while some provisions may have been acceptable to the community when the airports were operated as airports for the common good those same provisions are entirely unacceptable for the non-aeronautical, commercial exploitation of those airports for private gain.

The Parliamentary Secretary to the Minister for Transport and Regional Services said, in her second reading speech on this Bill on 30 November 2006, "The Australian Government will continue to control planning and development on the airport sites, which remain Commonwealth land." The problem with that is that, when it comes to Land Use Planning and development, the Commonwealth has no effective control over the planning and development on the airports. Those two functions are effectively under the control of the airport lessee companies who prepare airport Master Plans and who then advise the Minister if he should approve them. There is no independent advice available to the Minister because neither his Department nor any other Commonwealth Department has any legislative power covering Land Use Planning and development.

The Parliamentary Secretary goes on to say "The planning scheme includes consideration at various levels: the broad strategies for land use are considered in the approval of airport Master Plans….." When one looks at what is included in the Sydney Airport Master Plan to see how this sentiment is specifically expressed in practice one finds, as an example, that the Master Plan has as its sole objective for "Mixed Use 2 – Mixed Business" zone the following – "The objective of this zone is to identify land for business development". That objective hardly fits in with the "broad strategies for land use" to which the Parliamentary Secretary refers. This Master Plan does not match the expectations of the broader community nor, apparently, of the Parliamentary Secretary.

The Airports Act 1996 specifically excludes the application of the relevant State legislation relating to Land Use Planning to the development of airports.

There **may** be some merit in excluding State Land Use Planning Legislation from the aeronautical development on airports, although there would be considerable opposition to that, there is no real justification for excluding that legislation from applying to non-aeronautical commercial developments on airports.

If the Government is determined to allow widespread and extensive non-aeronautical commercial developments on airports then it is imperative that the Government's policy of competitive neutrality should be applied and all such developments should be subject to the same constraints as apply to similar developments off airport.

It has been said that non-aeronautical commercial developments on airports are subject to a very rigorous assessment before approval is granted. The actuality is somewhat less than rigorous. All such developments are assessed by the airport lessee company and only those developments which are covered by Major Development Plans are subject to final approval by the Minister. A Major Development Plan is currently one which involves work of more than $10million, or $20million if this Bill is passed, will only require approval by the proponent.

The assessment of the developments takes place against the approved Airport Master Plan but when one takes a look at the specific provisions of the Master Plans it very quickly becomes apparent that there is nothing in the Master Plans which can be used to assess the Land Use Planning merits of any proposed development.

As an example The Sydney Airport Master Plan sets out in detail many State Planning instruments which do not apply to developments on the airport. The Airport is "zoned" for various purposes including non-aeronautical purposes and a table is provided of the uses which may be permitted with Sydney Airport Corporation Limited's (SACL) consent. Those uses are expressed in similar language as is used in similar other planning instruments but the difference is that other planning instruments prohibit the land being used for any other purpose than that specified for the zone. Not only does the Airport Master Plan not prohibit anything at all it also includes a 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 with that particular zone".

In other words **any** use can be permitted if SACL thinks it appropriate. Every use would comply with the provisions of the Master Plan.

There is nothing in the Master Plan which would, for instance, prevent an oil refinery being built on the airport. Similar provisions apply to other airports and other Master Plans and the recent approval of a brickworks on Perth Airport is evidence of what can and will be approved by the airport lessee companies without any Land Use Planning legislation.

It is noted that the Airports Amendment Bill 2006 includes provisions to ensure that airport Master Plans and Major Development Plans are not legislative instruments thereby further isolating the airports from any legislative control over Land Use Planning.

Where else in urban Australia can major commercial developments be conceived, approved and built by the developer without the need for approval by any other body or person and all without public scrutiny or knowledge – a developer's nirvana!

The airport lessee companies may argue that all Master Plans and Major Development Plans have to be approved by the Minister but that is a hollow claim without substance. The Commonwealth has no Land Use Planning legislation so the relevant Department, in this case, the Commonwealth Department of Transport and Regional Services (or any other Department) is not in a position to advise the Minister. The Commonwealth has explicitly excluded the application of the relevant State Legislation so neither the State Government nor the relevant Local Government can advise the Minister. The actual position is that the Minister is forced to rely upon the airport lessee companies' advice about what developments to approve on airports.

The position is even more compromised by the current Airports Act 1996 which provides that if the Minister neither approves, nor refuses to approve every development submitted to him before the period of 90 days it is automatically approved, thereby relieving the Minister of the responsibility of having to make a decision.

It is noted that the Airports Amendment Bill 2006 proposes to decrease this time limit from 90 days to 50 business days. This reduction of one month seems to be yet another benefit extended to the airport lessee companies to make their position even more competitively advantaged than other developers.

That is not a very satisfactory position and puts the airport lessee companies in a very substantially advantaged position compared to every other person or company developing land off airports.

The airport lessee companies already enjoy a privileged position where they are not subject to any accountability in a highly non-transparent process.

The airport lessee companies may also argue that their own internal development assessment processes are rigorous and extensive but since no one knows what those processes are it is impossible for anybody outside the airport lessee company to form an opinion. In any event it is improper for the airport lessee company to deal with, assess and approve its own developments.

A claimed feature of the Airports Amendment Bill 2006 is to refine and clarify the public consultation process. It is of little benefit to the public to change the consultation process if the public is precluded from any knowledge of what rules apply to any development on the airports.

It is similarly difficult to make an informed comment about any proposed development on an airport if one does not know or have access to the rules that apply or do not apply to that development.

The farcical situation which has developed with the proposed shopping centre at Sydney airport illustrates how unsatisfactory the whole position has become. Two alternative proposals were published by SACL and public comment was invited. The City of Botany Bay responded with a considered and detailed submission but indicated that in respect of a number of matters that there was insufficient information available to make a comment on some issues and asked for further information. Many other individuals and bodies made submissions including the State Government. SACL has, it is understood, made a decision to reduce the scope of one of the proposals and has submitted it to the Minister for approval without ever disclosing the specific details of what is being proposed.

The Minister is placed in the invidious position of having to approve a highly contentious development of which only he and SACL have any detailed knowledge. So much for accountability and transparency.

The Master Plan and Major Development Plan process must be amended so that it serves the purpose it was intended to serve as set out in the Airports Act 1996, that is that it must effectively control the Land Use Planning of all the airports in such a way that every non-aeronautical commercial development does not enjoy a competitive advantage over similar developments on non airport land.

In the further interests of the policy of competitive neutrality, the Commonwealth has included in the airport leases a clause which requires the airport lessee companies to pay to the relevant local authority an amount equivalent to rates for those parts of the airport site which are leased or on which financial or trading operations take place.

The lease provisions are very clear and specific but the Department of Transport and Regional Services has continued to administer the lease in such a way, contrary to the lease provisions, as to encourage the airport lessee companies to expect that they are entitled to some sort of discount on the amount payable. Such action clearly puts the airport lessee companies in a privileged position compared to other similar ratepayers and is clearly contrary to the competitive neutrality principles the clause seeks to impose.

It would be appropriate to include in the Airports Amendment Bill 2006 some additional details to control the making of such payments and to assist in the administration of the lease.

All the land at each airport must be declared as either aeronautical or non-aeronautical in the Master Plans. The following provisions would then apply to all non-aeronautical land.

All Planning Zones in the Master Plans must be expressed in similar terms as used by the surrounding cities or failing that, in terms as used in the relevant State "model provisions". The resulting Zones must then be only used for the purposes so specified and all other uses shall be prohibited.

This is the same restriction which applies to all other non-airport land and would ensure that airport lessee companies do not enjoy any competitive advantage over non airport ratepayers.

Some vacant land on airports may be described as reserved for future aviation purposes and be restricted to that use. All other vacant land shall become subject to rate equivalent payments at the same time as it is "zoned" for those purposes in the same manner as surrounding land off airports.

If, during the life cycle of a Master Plan, it is proposed to change the status of any vacant land it can only be achieved by the preparation of a new Master Plan and not by an amendment to the current Master Plan.

Airports control many thousands of hectares of prime developable land and the airport lessee companies should be required to participate as good corporate citizens subject to the same limitations as apply outside the "chain wire fencing".

No developmental works that would add value to the land shall be undertaken unless it is for the purposes for which the land is "zoned".

Where vacant land is not to be used for the purposes for which it is "zoned" within the current Master Plan cycle it should, in the meantime, be made available to Councils or appropriate community bodies to relieve the load on current playing and sporting field facilities. If the land is made available to a community body on a commercial basis the land shall be immediately subject to rate equivalent payments.

Rate equivalent payments shall be due and payable, in the same way as rates are payable, on all land except for the land which is currently exempted under the lease.

Where an airport lessee company gives itself Development Approval for a commercial activity and there has been an objection by an affected party, citizen or land holder affected by such development and the land was not appropriately "zoned" by the Master Plan then it shall be reviewable by the Commonwealth Ombudsman and such review must be completed within one month of lodging the complaint during which time the approval cannot be acted upon.

Where an airport lessee company gives itself any approval for undertaking development works then the assessment and the terms of the consent must be readily available to any person who can reasonably claim to be affected by that decision. No other body or person can give themselves approval without State or Local Government scrutiny and this abuse of the "shield of the crown" should be conducted in a transparent manner and the Minister and the airport lessee companies shall be held fully accountable for their actions.

The Department of Transport and Regional Services must include in its annual report on the operation of the airport leases whether or not rate equivalent payments have been paid.

In those States where the rating system is based upon income streams, rather than land value, the airport lessee companies shall promptly make available their rental records to the relevant Valuation Authority, for valuation purposes only, in the same manner as other ratepayers are required to do.

In all cases the airports lessee companies shall be required to make available all relevant information in a timely fashion to enable the relevant Valuation Authority to prepare valuations to be used to calculate the rate equivalent payments.

Local Councils, in respect of rate equivalent payments, will treat all airport lessee companies in exactly the same manner as all similar ratepayers so that airport non-aeronautical commercial users do not enjoy any unfair competitive advantage by being located upon the airport.

This submission covers the major issues but the writer would appreciate the opportunity of addressing the Committee and expanding upon the matters raised and clarifying any points and answering any questions which members of the Committee may have.

Yours faithfully

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EXECUTIVE DIRECTOR

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