Senate Rural and Regional Affairs and Transport Committee

Submission to the Inquiry into the Airports Amendment Bill 2006

The Airports Act 1996, an example of its application to non aviation developments and the limitations of the Airports Amendment Bill 2006

January 2007

Introduction

The Hobart City Council is pleased that the Australian Government has proposed to amend the *Airports Act 1996*. The Council's recent experience with the draft major development proposal (DMDP) for a large retail facility at Hobart International Airport has prompted this submission.

The Council believes that its recent experience may provide a working example to committee members of some of the perceived deficiencies in the way the Airports Act 1996 currently operates and the adequacy of the proposals outlined in the Airports Amendment Bill 2006.

It is noted that the Council's views are limited to amendments related to airport developments of a non aeronautical nature.

To assist the Committee in its consideration of the Airports Amendments Bill 2006 this submission is structured in 3 parts:

1. Issues arising in responding to a major development plan under the current Airport Act provisions.

2. Comments on the Airports Amendment Bill 2006 as they relate to the issues identified.

3. Matters that still require consideration in a review of the Airports Act 1996

By way of background, the proposal at Hobart International Airport is for a retail development of approximately 77,000 square metres and parking for over 2000 cars. The proposal comprises a direct factory outlet, Bulky goods retail centre and a DIY centre. The nature of the tenants is unknown except that Austexx Pty Ltd will operate the direct factory outlet component under their brand, "DFO".

It is noted that the Hobart International Airport is not located in the City of Hobart Municipal Area but in a neighboring municipal area and therefore our comments are in response to the impacts the development will have on the city and metropolitan region.

Issues such as rates equivalents and contributions to infrastructure have not been considered in this response to the Inquiry, although the submissions of the Council of Capital City Lord Mayors and the Australian Local Government Association in this regard are fully supported.

Issues in working with the Airports Act 1996

Hobart City Council has three primary concerns with the process:

1. The information to be provided by a proponent of a major development on airport land is inadequate to make an informed assessment or comment about particular aspects of the development.

   It is our view this represents a denial of natural justice.

2. There is no acknowledgment in the Act that development could have an impact on the surrounding region, and therefore a considered approach by the proponent to what the economic, social, environmental impacts may be, is not undertaken.

   It is our view this will not provide for sustainable development of the region but have major long term detrimental impacts.

3. Submissions to a major development plan are made to the proponent of the development. The proponent has the opportunity to summarise all submissions received before forwarding that summary to the Federal Department along with the draft major development plan.

   It is our view that this represents a conflict of interest, denial of natural justice and introduces concerns of bias.

Each of these will be elaborated upon.

1. Inadequate information.

Hobart City Council's concern with the development, given its large size (3 times the size of the Hobart CBD central block) is its impact on the regional economy. The DMDP gave scant detail on the likely impact of the development on existing retailing from an economic perspective.

The reference section of the DMDP cited a study by *Essential Economics*. When a copy of this study was requested, the Council was advised that it was commercial in confidence and would not be released. It was thus difficult for interested parties to test the assertion by the proponents that the development would be good for the regional economy.

It may well be that the study undertaken (assuming one was undertaken) was an economic viability study of the development and not an economic impact assessment.

As a result the Council and at least one other party had to commission their own economic impact assessments at considerable cost, which, as it turned out, demonstrated that the development would have major adverse and long term impacts on the surrounding regional economy.

Not all parties with an interest in airport developments are able to commit resources to undertake their own assessment.

In reaching their conclusions Council's experts used well accepted models. However, they were unable to test or examine the model used by the proponents.

How can interested parties make informed comment when they are not provided with all the relevant information?

It seems a denial of natural justice that the proponents are able to rely on expert advice yet not make that advice available publicly.

2. Impact of development

There is no requirement in the current legislation for proponents to look at their development in the context of the region where it is proposed. They are by definition "major developments" and are bound to have some impact. The question is "what is that impact?"

In the case of the Hobart International Airport proposal, it is the singularly largest retail development ever proposed in Tasmania (almost 20 acres), and yet there was no requirement to make an assessment of its fit within the region.

Our economic analysis, prepared by respected consultants, SGS Economics and Planning concludes that this development, on a minimum viability basis, has the potential to have a negative impact on department stores, clothing and soft goods and household goods retailers in the Greater Hobart area by between 22 – 26%.

Combined with development already approved in the area it has been determined that it will take 17 years for the retail demand in the region to catch up with this over supply.

Were the same proposal put forward under the Tasmanian legislation, it would be required to demonstrate its impact on the surrounding region.

A recent case in the Tasmanian Resource Planning Appeals Tribunal, during 2006 made this very point on a similar out of town development proposed in the North of the State – the development was refused because of its potential impact on the regional economy and that no sound reason was given for not building the development in an existing retail area.

3. Process of forwarding submissions

Under the Act all submissions are forwarded to the Airport Lessee – who reviews the submissions and is required to summarise them before sending that summary to the Federal Department of Transport and Regional Services along with the DMDP. It is understood that the Airport lessee must make comment about each of the submissions received.

This seems a most odd process and in our view represents a clear conflict of interest. What other jurisdiction provides a developer with the role of assessor of third party comments about their own development? The separation of these roles is fundamental to removing any bias, or perception of bias from the process.

The proponent for the development is able to view all submissions and make comment about them - presumably refuting or accepting those submissions. The parties that have made submissions have no way of knowing what comment the Airport Lessee has made and what value has been placed on the content of that submission.

There is no requirement to forward original submissions to the Minister, hence in our case a campaign of lobbying and hand delivery of our submission to relevant Ministers, local Senators and the department. Through a transparent and independent process in which we have confidence, this would not be required.

Further, that in summarising those submissions the proponent has the benefit of examining our expert advice – and presumably accepting or refuting it. Hobart City Council as an interested party had no opportunity to examine the expert advice received by the proponents.

Also alarming, in the Hobart City Council's particular case, is that when its submission was personally delivered to the Airport lessee, an employee of that company noted that the Council's submission would be forwarded to the economic experts engaged by Austexx (the proposed sub-lessee) for their scrutinising.

Again, this seems a patent misuse of information and a denial of natural justice considering that the economic analysis undertaken by *Essential Economics* was not made publicly available.

Comment on the Airports Amendment Bill 2006

As noted in the introduction, our submission relates only to non-aviation developments, therefore so far as the actual amendments are concerned the Council's comments are limited to the following sections:

S 92 (1)(a)(iv) - The Council does not support the proposed change to the period for public comment from 90 calendar days to 45 business days.

The justification for this response is that in the Hobart situation, the critical document required to make an informed comment about the development was not made available to the public (the *Essential Economics* report).

As a result the Council had to commission its own independent studies of the development.

This is a time consuming and costly process. It is submitted that 45 days would have been insufficient time for the Council to consider the DMDP, engage the appropriate expert advice, allow time for the experts to reach a position, for the Council to consider that advice and then make a written submission.

Airport lessees can't have it both ways in limiting the information available and shortening the timeframe for intelligent, informed comment.

This is also relevant with the proposed increase in the threshold limit for a development to be considered a major development from $10 million to $20 million. The amendments effectively reduce the time available for comment (with limited information) by over one third and double the development size before that opportunity to comment is available.

92 (2)(c) – The Council supports this amendment. It is clearly logical that the lessee company should demonstrate how it has had due regard to public comments.

The Council submits that this amendment should be extended to require lessees to advise all those making a submission as to how it has due regard to their comments simultaneously to advising the Minister.

93A – The Council supports the proposed amendment to allow for the Minister to request further information and to 'stop the clock'.

This approach is consistent with State planning requirements.

Matters that still require consideration

Based on the Council's experience outlined in section one of this submission, it is submitted that there are still a number of outstanding issues that could be considered in amending the Airports Act 1996.

There should be an explicit requirement for proponents to clearly demonstrate the impacts of their development proposals on the region where the airport is located –socially, environmentally and economically. This assessment should be provided to the Minister and made publicly available.

Obviously not all developments will have an impact on the surrounding region, but clearly the scale of most of the recent non-aeronautical developments proposed at Australia's airports will have an impact on existing retail districts in nearby areas.

In Hobart's case the proposed development is the equivalent of another CBD being developed in a remote location with no regard to the existing retail fabric of the region or the associated social, environmental impact of the development proceeding.

In relation to non-aviation developments, there should be a requirement that a planning assessment be made of the development using the appropriate local government planning scheme in force at the time.

Both the Act and Regulations currently state that Airport master plans must use *language that is consistent* with local State planning laws – this is not the same as saying that a master plan and major development plans *must be consistent with* State Planning laws.

There should be a requirement that the proponents are required to demonstrate how the proposal is consistent with the surrounding planning scheme.

Similarly in making a decision for approval, the Minister should be required to demonstrate how the proposal is consistent with the surrounding planning scheme, and if it is not, why a decision for approval has been made in any event.

Indeed the Hobart City Council presented evidence to suggest that the proposal was inconsistent with the surrounding planning scheme and were the proposal assessed under the State planning system it may well be refused, as was a recent similar proposal (not as large) in the North of the State.

The Act should provide that developers are to provide precise information on all aspects of the proposed development, in the same way that a developer would if making a development application under a State planning system.

For example Part 2 of Schedule 1 of the *Tasmanian Land Use and Planning Approvals Act 1993* explicitly states:

> *The objectives of the planning process established by this Act are, in support of the objectives set out in Part 1 of this Schedule ...*
>
> ***(c)*** *to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;*

There are numerous other references in this Act noting that proponents and local government assessment should take into account all aspects of a development.

The Council further submits that all such information prepared by a proponent should be accessible to the public as part of the consultation process.

There should be clear separation of roles of assessor and proponent.

There is no local government process in Australia where the public must lodge its submissions about a development with the developer and then have the developer view and summarise all submissions before forwarding that summary to the responsible local government.

If this were the case how would the public have any confidence that their submission was being treated fairly?

Such a system is clearly open to perceptions of bias and claims of denial of natural justice.

All submissions received on a proposal should go directly to the responsible Australian Government department for consideration, in the same way that the public lodges submissions with the appropriate local government authority across Australia.

Conclusion

The Hobart City Council appreciates the fact that the Australian Government has undertaken a review of the Airports Act 1996. The Council trusts that the Committee in dealing with the Airports Amendments Bill 2006 will find the Council's comments useful.

The Council believes that because of its direct and recent experience with the process for a major development proposal under the Act, that it is in a strong position to be able to offer timely and accurate advice to the Committee.

The Council believes there is a strong case for the Act to strengthen the requirement for development proponents to make more and better information available to the community about proposals. In particular non-aviation developments should have a requirement to demonstrate whether they comply with the relevant local planning scheme – or not.

Further, there are a number of procedural issues that should be addressed to eliminate perceptions of bias and denial of natural justice.

Finally the Council wishes to note, that it fully supports the positions of the Council of Capital City Lord Mayors (of which Hobart is a member) and the Australian Local Government Association, in terms of the wider principles and concerns for local government through non-aviation airport developments.

The Council would be pleased to send representatives to appear before the Committee in further explanation of its submission or to answer any questions the Committee members may have.