NSW Government

Submission to the

Rural and Regional Affairs and Public Transport Committee

Inquiry into the proposed *Airports Amendment Bill 2006*

January 2007

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1. SUMMARY

The NSW Government strongly opposes the current arrangements whereby the Commonwealth Government is responsible for control of planning and development on airport sites. It is extremely disappointing that the ***Airports Amendment Bill 2006*** does not propose a change to these arrangements, despite significant work undertaken by States and Territories on the impact of the Commonwealth's regulation of airport masterplanning.

The submission outlines specific areas where the current arrangements for non-aviation development within airport boundaries is having serious and adverse consequences and/or is inconsistent with agreed national policy. These include:

1. Contradicting the 1997 COAG Heads of Agreement where the parties agreed, in-principle, to the intention to respect State and Territory planning rules;
2. Undermining State/Territory planning regimes – resulting in inappropriate development and weakening well planned, sustainable metropolitan growth strategies;
3. Sterilising airport land for future aviation expansion – limiting future economic benefits for the nation as well as the city and State;
4. Depriving State and local government of the funding needed to provide the infrastructure required to service the development – maximising operator profit at the cost of public benefit and creating an uneven playing field;
5. Contradicting national policies aimed at delivering social, economic and environmental sustainability such as the *National Charter of Integrated Landuse and Transport Planning* - resulting in development that contributes to road congestion, noise, poorer air quality and greenhouse gas emissions;
6. Undermining existing or planned commercial centres chosen for their good public transport linkages and planned in an overall metropolitan context, for example, with development proposals explicitly at odds with the centres policy and the vision for Sydney Airport outlined in the NSW Government's *Metropolitan Strategy*; and
7. Exposing critical infrastructure to potentially increased safety and security risks, often without adequate risk assessment.

The submission recommends the same positions and actions in respect of non-aviation airport development as unanimously agreed by all State and Territory Ministers and the Australian Local Government Association at the Local Government and Planning Ministerial Council meeting on 4 August 2006 that:

1. all airport non-aviation development (excluding defence or airport ancillary developments inside of terminal buildings) be subject to relevant State and Territory Planning Laws, policies and procedures;
2. any land the Commonwealth may subsequently acquire and lease to an airport lessee that is put to non-aviation use be also subject to relevant State and Territory Planning Laws, policies and procedures;
3. all master plans and major planning proposals on airports be subject to a review by an independent panel which assesses the non-aviation proposals, including their impact on surrounding land uses, relevant local government planning schemes and infrastructure; and

4. if non-aviation development control at airport remains with the Commonwealth, it should provide clarification as to how it will enforce conditions of development approval placed on airport lessee companies and what role State and Territory Government's are expected to play in relation to these conditions.

2. INTRODUCTION

Airports are inextricably linked to the cities they serve and the growth of airports must be coordinated and undertaken in a manner consistent with the orderly and planned growth of the rest of the metropolis. In Sydney, the NSW Government's *Metropolitan Strategy* sets the framework for how growth and development will be managed over the next 25 years to ensure that it is economically, socially and environmentally sustainable.

Obtaining this consistency is important for maximising the airport's economic benefits and minimising impacts on both the city's environment and its residents. However, the NSW Government views the leasing of airports to private companies / consortiums as severing this consistency because the leasing (rather than sale) of the airport sites created a planning loop hole that allows seemingly unrestrained development on airport sites shielded from State legislation. This approach undermines the objectives of *Metropolitan Strategy* and maximises benefits for the operator at the expense of any public benefit.

3. BACKGROUND

For a number of years, States and Territories have been concerned about many of the elements of airport master plans approved under the Commonwealth *Airports Act 1996*, particularly relating to non-aviation related land-use and activities.

In August 2005, State and Territory Local Government and Planning Ministers directed State and Territory Planning Officials, in liaison with the Standing Committee on Transport (SCOT), to report on the range of issues for further consideration arising from the current operation of the *Airports Act 1996* and possible actions to address these issues.

In November 2005, the Planning Officials Group (POG) agreed to take this matter forward by writing to the Standing Committee on Transport (SCOT) outlining key areas where constructive steps could be taken to improve management of responsibilities under existing legislation. These included:

- Use of independent advisory panels;
- Improved community consultation guidelines; and
- Clarification of enforcement of conditions of approval.

In February 2006, COAG noted concerns raised by the WA Premier regarding implications of some development on Commonwealth property (not including Defence) and agreed to refer the issue to the Australian Transport Council (ATC) to examine.

On 2 June 2006, the ATC endorsed a full and proper consultation process for the development of airport land involving airport-lessee companies, State/Territory and Local Government.

The ATC agreed that the airport development consultation guidelines should include a requirement for consultation with State and Local Government and consideration of the impacts of proposals on regional developments and planning, including infrastructure outside the airport.

The States and Territories welcome some aspects of the planning guidelines that reflect reforms they have previously requested. These include:

- Stronger direction that airport-lessee companies (ALCs) should initiate discussions with key groups (including State and Local Government) regarding development well before entering into the public comment process;
- ALC's encouraged to seek out and adopt best practice to meet consultation requirements including: independently chaired consultative committees; organising public meetings; and exhibitions;
- ALC's required to advise the Minister that they have had due regard to the public comment provided and how it had due regard to such comments;
- The ALC's package to the Minister to include copies of the comment provided by significant stakeholders; and
- Requiring Major Development Plan applications to describe proposals for land use in equivalent detail to that applying in the host State or Territory.

Notwithstanding the above positive developments, the guidelines fall far short of the position that the NSW Government ultimately seeks, that is non-aviation development at airports to be subject to State and local planning law. They also fall short of the sought interim position of shared responsibility in areas including:

- Use of Independent Review Panels (IRP) for evaluation and assessment of issues raised during consultation and alignment with surrounding planning schemes;
- Clarification of enforcement of conditions of approval; and
- Ensuring a more effective role for State and Local Government in assessing proposals.

4. DISCUSSION OF KEY ISSUES ARISING FROM CURRENT ARRANGEMENTS

There are a number of particular areas where the current arrangements are having significant and adverse impacts and/or are inconsistent with agreed national policy.

Airport planning arrangements contrary to that adopted by COAG

In 1997, the Council of Australian Governments (COAG) signed a Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment. Under this agreement, all parties agreed that tenants and persons undertaking activities on Commonwealth land would be subject to State environment and planning laws. The only exception to this in relation to airports is aviation airspace management and on-ground airport management (see Appendix 1). The Commonwealth's failure to regulate the planning of non-aviation airport developments in a manner consistent with State Government planning regimes is therefore contrary to the position agreed by COAG.

Undermining State and Territory planning regimes

The majority of Australian States have planning policies and urban strategies based on a hierarchy of centres focussing services, facilities, business and commerce in nodes connected by corridors and public transport. This is entirely in accord with National Charters such as Integrated Landuse and Transport Planning Policy.

NSW does not dispute that bona fide aviation-related development should be subject to the *Airports Act* nor that this should include ostensibly non-aviation activities such as retail opportunities within airport terminal buildings to serve passengers and their meeters and greeters.

What NSW does object to is the pattern of airport-lessee companies (ALC's) using the master planning process to determine the absolute minimum quantity of land they require to undertake aviation activity, constraining this particular part of the airport site and seeking to develop the remainder for maximum commercial gain. This is typically by developing inappropriate commercial activity on the site which significantly undermines the NSW Government's strategic planning and regulatory regimes.

This pattern of inappropriate development (mega malls, cinemas and even brickworks) sends mixed signals to commercial development interests about the worth of their investments in existing activity centres. This is likely to weaken the Metropolitan Strategy objectives for centres because the effective approval of profit-driven development in state regulation free zones within airports commercially undermines other facilities which adhere to state policy. This diminishes the likelihood of whole-of-metropolitan planning strategies achieving their goals in respect to creating well serviced, mixed-use, higher density and vibrant activity in appropriate centres.

Sterilising airport land for future aviation expansion

The approach of developing land for maximum commercial gain also serves to sterilise any opportunity for legitimate growth in bona fide aviation-related activities on the site. This places in jeopardy future economic growth that may be derived from this increase in legitimate activity.

The leased core privatised airports are collectively Australia's gateways for arriving passengers and air freight and are pre-eminent national economic assets. Dedicating core aviation land for non-aviation uses, especially exacerbated in a constrained position such as Sydney Airport, exposes the State or Territory to risks of lost aviation-related economic growth including tourism, employment and regional access.

The NSW Government analysis of the proposed Sydney Airport Masterplan indicated that the ALC 2024 forecast of growth could occur up to 10 years earlier. This brings forward the need for additional aircraft parking and increases the likelihood that regional airlines may be displaced from Sydney Airport because of apron space limitations.

Limiting the potential future aviation expansion is a short-sighted approach which reflects poor economic management with impacts not just for NSW but for all of Australia.

Unmitigated impact on State and local infrastructure

Standard practice for State planning regimes is for developers to be levied in proportion to the impact of their development with the levies being invested in compensatory works and/or the provision of public services and community facilities.

Failure to apply similar contributions to ALC's provides a windfall gain to them at the expense of the public benefit, leaving State and Local governments unable to provide for the cost of infrastructure required to service the proposal. This windfall for operators becomes starker in the knowledge that non-aviation development is already generating significant revenue for airport operators. A Productivity Commission Report estimated that around 69 percent of total revenue earned by privatised airports was from non-aviation activities.[1]

Preliminary modelling of the proposed Sydney Airport retail development shows the development would add an additional 20,000 to 25,000 vehicle kilometres travelled (2 hour, Thursday evening peak) by 2011. The cost of road network improvements required to maintain existing levels of service would be substantial.

There are examples from other States where concerns have been expressed that proposed non-aviation development at airports would increase road congestion without the requirement for operators to contribute to infrastructure. For example, in Western Australia where airport developments add congestion to a major intersection already identified as one of the State's worst black spots.

If the proposed Sydney development was subject to the State planning regime, provisions under the *Environmental Planning and Assessment Act* would ensure that development contributions or works in kind for this and other impacts on State and Local Council infrastructure would need to be provided before development consent could be obtained.

As a point of comparison, Rockdale Council (bordering Sydney Airport) is levying a competing retail development already well serviced by public transport for contributions for infrastructure and public domain improvements.

This discrepancy between development on airport land and other development creates an uneven playing field especially when compared with other similar developments often in close proximity that are subject to State planning legislation and expected to fully fund the mitigation of development.

It is acknowledged that the Commonwealth has gone some way to address this issue. The conditions of consent attached by the previous Minister on 18 April 2005 for extended car park and commercial facilities at Sydney Airport required the airport-lessee company (ALC) to develop a Ground Travel Plan and fund a reasonable share of traffic management works associated with airport growth.

However, these conditions appear to be unenforceable on the ALC in practice and have led to the current call for the Commonwealth to detail how it will ensure conditions of development consent are enforced.

[1] Productivity Commission 2002, *Price Regulation of Airport Services*, Report no. 19, AusInfo, Canberra, p.xx

It is considered that a "Public Benefit Test" type approach should be applied to non-aviation development proposals to identify net community benefit or cost of the impacts and mitigation arrangements. These considerations would naturally occur if the proposals were subject to State planning requirements. Alternatively, the Commonwealth should consider possible options such as specific 'top-up' payments to mitigate the impact of its development approvals or charging ALC's and passing on the payments to the States and Territories.

Discord with *National Charter on Integrated Land Use and Transport Planning*

The *National Charter of Integrated Land Use and Transport Planning* agreed to in 2003 by all Local Government and Planning and Transport Ministers inter alia promotes:

- reducing the length of journeys;
- reducing the impact of transport on communities;
- improving freight access to key terminals and improved freight flows; and
- providing a choice of travel modes.

The current position on non-aviation development at Sydney Airport for example is discordant with these principles, such as:

Outcome 2 – reducing the length of journeys

The proposed retail development at Sydney Airport will cause flow-on congestion for major surrounding arterial routes (General Holmes Drive, Southern Cross Drive, Millpond Road and Foreshore Road) increasing the length of journeys taken for purposes unconnected with the development (see map at Appendix 2).

Outcome 4 – reducing the impact of transport on communities

The proposed retail development at Sydney Airport is predicted to generate adverse consequences for the community including air quality, greenhouse emissions, noise and road capacity issues.

Outcome 5 – improving freight access to key terminals and improved freight flows

30 per cent of Australia's containerised trade is shipped through Sydney's ports with virtually all these containers moved through Port Botany. Currently the Port generates 2,913 truck movements per day, much of which is routed by Foreshore Road adjacent to the Airport. It is an economic necessity for the State and the nation that the Port expands. Access to Port Botany and freight flows generally will be hampered by the increased congestion and intersection treatments on Foreshore Road if the current proposed retail development at Sydney Airport is permitted (see map at Appendix 3). It is not practicable to move Port Botany but it is entirely possible not to construct the proposed airport retail development.

The States share the social, economic and environmental sustainability goals the Commonwealth espouses in Charters such as that governing Integrated Land Use and Transport Planning. Making ALC's non-aviation developments subject to State Planning Law would be a tangible step in demonstrating the Commonwealth's commitment to these principles.

Undermining existing and planned retail centres

Retail development at airports send mixed signals to significant retail development interests about the profitability of their investments in existing activity centres, which are chosen in part for the availability of public transport. The Sydney *Metropolitan Strategy* has a clear "centres" policy which aims at prohibiting large scale retail developments occurring away from centres not served by public transport facilities.

The NSW submission on the Sydney Airport proposed retail development noted one of the key shortcomings of the ALC report was its failure to recognise that there are other nearby retail centres that are very well advanced, consistent with local planning regimes, and well serviced by rail and bus transport. The principal examples are the nearby centres of Wolli Creek and Green Square. The cost of providing additional bus services to the proposed airport retail site is estimated to be at least $150,000 per annum and would result in significant journey time increases for through passengers on existing routes.

Once again this is inconsistent with the *National Charter of Integrated Land Use and Transport Planning.*

Safety and security implications

Protecting the security of these critical components of national infrastructure is also paramount. At Sydney Airport, the proposed retail development is a literal stones throw to a number of taxiways and close to the third runway. There is no indication in the ALC major development plan of any serious consideration of potential safety and security issues associated with increased public access in these areas. It is presumed that the Commonwealth Minister for Transport will give this issue detailed attention when considering the development application.

5. RECOMMENDATIONS

Given the impacts of current arrangements, the NSW Government supports the recommendations unanimously agreed by all State and Territory Ministers at the Local Government and Planning Ministerial Council on 4 August 2005 that:

1. all airport non-aviation development (excluding defence or airport ancillary developments inside of terminal buildings) be subject to relevant State and Territory Planning Laws, policies and procedures;
2. any land the Commonwealth may subsequently acquire and lease to an airport lessee that is put to non-aviation use be also subject to relevant State and Territory Planning Laws, policies and procedures;
3. all master plans and major planning proposals on airports be subject to a review by an independent panel which assesses the proposals, including their impact on surrounding land uses, relevant local government planning schemes and infrastructure; and
4. if non-aviation development control at airport remains with the Commonwealth, it should provide clarification as to how it will enforce conditions of development approval placed on airport lessee companies and what role State and Territory Government's are expected to play in relation to these conditions.

Use Independent Assessment Panels for Master Plans and Major Development Proposals

It is currently difficult for the Commonwealth to assess Master Plans and MDPs against each of the jurisdictions' planning schemes and/or undertake detailed studies of the impact of these plans/proposals on surrounding infrastructure.

The use of independent panels (comprising, in this instance an aggregate of Commonwealth and relevant State selected appointees) would facilitate provision of expertise in relation to local planning laws. It would also better facilitate:

- review of claims made by Airports in the Plans and Proposals regarding impact on surrounding developments and commercial activities;
- review of claims made by Airports in the Plans and Proposals regarding impact on the extent of infrastructure required to support development; and
- independent advice on how such infrastructure should best be supported – in particular, what levies or charges might have applied if the state planning scheme was applied.

Independent Panels are regarded as best practice in these instances and are increasingly used by all State and Territory planning administrations.

Enforcement of conditions of development approval placed on airport lessee companies (ALC's)

Conditions of approval for Major Development Plans are being increasingly used by the Commonwealth as a way of addressing issues not satisfactorily addressed in ALCs' development proposals. In many instances, these conditions require the ALC to work with the relevant State or Local Government to address concerns.

The practical experience has been that the conditions of consent are so vaguely worded they are unenforceable on the ALC. For example, in April 2005 the Commonwealth approved a car park and office development at Sydney Airport. One part of the conditions of consent was for the ALC to negotiate in good faith with the NSW Government on funding a fair and reasonable share of the works associated with the traffic increase generated by the development. NSW initiated a meeting with the Sydney Airport ALC to discuss the conditions of consent and agreement was made to work together on a 'without prejudice' basis to examine a methodology to fund the ALC's share of works. NSW started this methodology as agreed but the ALC has not continued to undertake any work in this regard, despite the agreement to do so. There are no apparent statutory avenues for the State Government to enforce the ALC to work with authorities, as required by the conditions of consent.

These are serious issues that should be determined prior to approval being given.

It is therefore requested that the Commonwealth:

- provides greater clarity on how conditions of approval are to be enforced and, where conditions are not met, what redress will occur;
- direct ALCs on the role they are expected to play and what objectives are expected to be achieved when they work with other levels of Government; and
- require ALCs to reach agreement with other layers of Government on mitigating the impacts of development before planning approval is given.

Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment

In November 1997, the Council of Australian Governments (COAG) agreed in principle to the Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment. Subsequently, all heads of governments and the Australian Local Government Association signed the agreement.

In the agreement, the States and Territories and the Commonwealth agreed that reform in the following five areas was needed to develop a more effective framework for intergovernmental relations on the environment:

- matters of national environmental significance;
- environmental assessment and approval processes;
- listing, protection and management of heritage places;
- compliance with State environmental and planning legislation; and
- better delivery of national environmental pro grammes.

A number of key aspects of the Heads of Agreement have been implemented by the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

HEADS OF AGREEMENT

ON

COMMONWEALTH/STATE ROLES AND RESPONSIBILITIES FOR THE ENVIRONMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA

THE STATE OF NEW SOUTH WALES

THE STATE OF VICTORIA

THE STATE OF QUEENSLAND

THE STATE OF WESTERN AUSTRALIA

THE STATE OF SOUTH AUSTRALIA

THE STATE OF TASMANIA

THE AUSTRALIAN CAPITAL TERRITORY

THE NORTHERN TERRITORY OF AUSTRALIA, AND

THE AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION

Preamble

The Parties acknowledge that, subject to the resolution of outstanding issues, it is desirable for the matters set out in this Agreement to be reflected in amendments to the Intergovernmental Agreement on the Environment (IGAE). However, the Parties agree that implementation of this Agreement should not be delayed by the formal process of amending the IGAE.

For the purpose of this Agreement, "State(s)" means a State or Territory named as a party to this Agreement.

The Parties:

1. ***Agree*** on the need for reform in the following five areas to develop a more effective framework for intergovernmental relations on the environment:
    - matters of national environmental significance;
    - environmental assessment and approval processes;
    - listing, protection and management of heritage places;
    - compliance with State environmental and planning legislation;
    - better delivery of national environmental programmes.
2. ***Agree*** that a national partnership between all levels of government on environment issues must be based on the following principles:
    - co-operation -
      the achievement of environmental goals should be enhanced by increased co-operative efforts between the different levels of government and with stakeholders;
    - effectiveness -
      policy and programme development and implementation should be undertaken to achieve improved environmental outcomes on the ground;

- efficiency -
  unnecessary duplication and overlap between governments should be minimised;
- seamlessness -
  policies and programmes within and between governments should be designed and administered to ensure that clients experience integrated processes and interfaces;
- simplicity -
  administrative and legislative systems should be simple to understand and designed to minimise
  compliance costs; and
- transparency -
  decision-making processes, accountability for decisions and delivery of policy and programme outcomes should be clear and public.

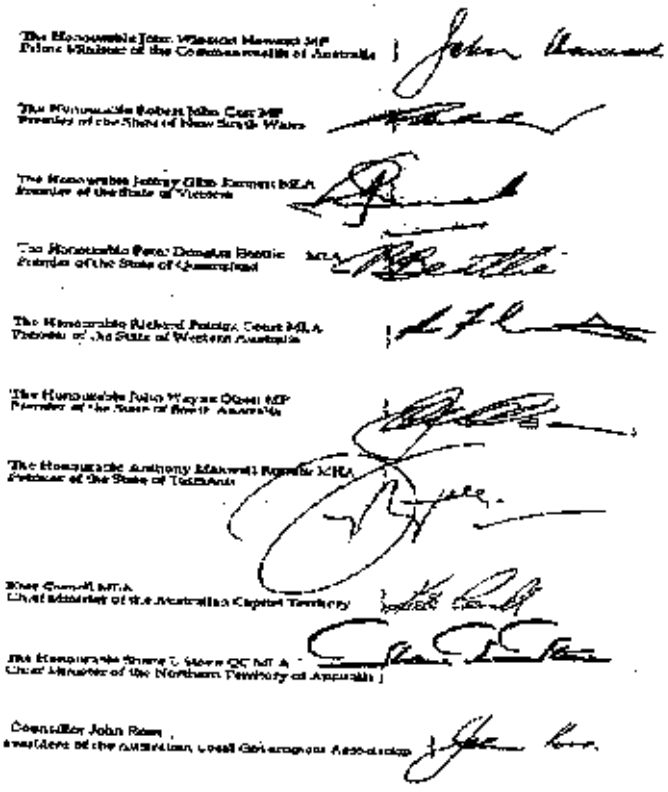
Policy development, programme delivery and decision-making should be the responsibility of the level of government best placed to deliver agreed outcomes.

3. ***Agree*** that the Commonwealth's involvement in environmental matters should focus on matters of national environmental significance as identified in Attachment 1 to this document.
4. ***Agree*** that, in relation to proposals in which the Commonwealth and a State(s) have an interest, the Commonwealth's environmental assessment and approval processes should only be triggered by proposals which may have a significant impact on matters of national environmental significance as identified in Part I of Attachment 1.
   - ***Note*** that there is disagreement on how the triggers will operate in relation to nationally endangered and vulnerable species and endangered ecological communities, and places of national heritage significance.
   - ***Note*** the intention of the Commonwealth to introduce legislation to remove the existing ad hoc and indirect triggers and replace them with triggers based on national environmental significance and to consult the States in the development and amendment of this legislation. This legislation will not come into effect prior to 1 July 1998.
   - ***Note*** that the triggers for national environmental significance will require further definition through the Commonwealth's legislative review process.
   - ***Note*** that the Commonwealth may apply its assessment and approval processes to meet its own obligations on the matters of national environmental significance identified in Attachment 1.
   - ***Note*** that the Commonwealth also has interests and obligations for a range of other matters of national environmental significance in Part II of Attachment 1, but these are not triggers for the purpose of this clause.
   - ***Note*** that the Commonwealth undertakes that it will not vary or add to the matters identified in Part 1 of Attachment 1 other than in consultation with the States.
5. ***Agree*** that the environmental assessment and approval processes relating to matters of national environmental significance should be streamlined with the objectives of:
   - relying on State processes as the preferred means of assessing proposals;
   - limiting Commonwealth decisions to only those aspects of proposals concerning matters of national environmental significance;
   - establishing a timely, efficient and co-operative process for dealing with proposals; and
   - providing for the development of Commonwealth/State bilateral agreements which will enable accreditation of State processes and, in appropriate cases, State decisions (for example, agreed management plans) under Commonwealth legislation (and vice versa), noting that the Commonwealth legislation will not come into effect before 1 July 1998.

The agreed framework for reform is set out in Attachment 2.

6. ***Agree*** to the rationalisation of the existing Commonwealth/State arrangements for the identification, protection and management of places of heritage significance through the development, within twelve months, of a co-operative national heritage places strategy which will: (i) set out the roles and responsibilities of the Commonwealth and the States; (ii) identify criteria, standards and guidelines, as appropriate, for the protection of heritage by each level of government; (iii) provide for the establishment of a list of places of national heritage significance; and (iv) maximise Commonwealth compliance with State heritage and planning laws.
    - ***Note*** that indigenous heritage issues are being addressed in a separate process and are not covered by this Agreement.
7. ***Agree*** to increased compliance by Commonwealth and State departments, statutory authorities, agencies, business enterprises and tenants with the relevant State's environment and planning laws in accordance with Attachment 3.
8. ***Agree*** to establish more effective and efficient delivery mechanisms and accountability regimes for national environmental programmes of shared interest in accordance with Attachment 4.
9. ***Agree*** that the parties will seek to resolve, out-of-session, the outstanding issues on how the triggers for the Commonwealth's environmental assessment and approval process will operate in relation to nationally endangered and vulnerable species and endangered ecological communities, and places of national heritage significance, and the scope of these triggers.
    - ***Note*** that these triggers will not come into operation before 1 January 1999.
10. ***Agree*** that nothing in this Agreement will affect any arrangements entered into, at any time, as part of a Regional Forest Agreement.
11. ***Note*** the 1996 COAG endorsement of the outcomes of the Review of the Intergovernmental Agreement on the Environment (IGAE) which required examination and reporting on ways to ensure that the role played by Local Government in environmental management receives increased recognition and better implementation in terms of the IGAE and that Local Government's role and involvement in processes to progress the objectives of the IGAE are clarified.

SIGNED by:



ATTACHMENT 1
MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE

For the purpose of this Attachment -

> "Commonwealth responsibility" relates to meeting the obligations of those international agreements referred to and/or the administration of relevant Commonwealth legislation. Those responsibilities may be discharged in co-operation and/or consultation with the other parties to this Agreement.
>
> "Commonwealth interest" relates to initiating or participating in the development of co-operative approaches for dealing with environmental problems, the establishment and delivery of programmes, and the provision of funding. Commonwealth interests may vary, from time to time, in relation to the particular matters of interest and the level of Commonwealth involvement.

PART I

1. World Heritage properties

The Commonwealth has a responsibility and an interest in relation to meeting the obligations of the *Convention for the Protection of the World Cultural and Natural Heritage*.

2. Ramsar listed wetlands

The Commonwealth has a responsibility and an interest in relation to meeting the obligations of the *Convention on Wetlands of International Importance especially as Waterfowl Habitat* (Ramsar Convention).

3. Places of national significance

Commonwealth and State Heritage Ministers (and relevant Environment Ministers) have agreed to develop a co-operative national heritage places strategy. This strategy will: (i) set out the roles and responsibilities of the Commonwealth and the States; (ii) identify criteria, standards and guidelines for the protection of heritage by each level of government; and (iii) provide for the establishment of a list of places of national heritage significance. The Commonwealth's responsibility and interest will be defined thereafter.

4. Nationally endangered or vulnerable species and communities

The Commonwealth has a responsibility and an interest in relation to meeting the obligations of the *Convention on Biological Diversity* and the objectives of the *Endangered Species Protection Act 1992* to promote the recovery of species and ecological communities that are endangered or vulnerable, and prevent other species and ecological communities from becoming endangered.

5. Migratory species and cetaceans

The Commonwealth has a responsibility and an interest in relation to meeting the obligations of the *Convention on the Conservation of Migratory Species of Wild Animals* (Bonn Convention), the Australia/Japan *Agreement for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment* (JAMBA), the Australia/China *Agreement for the Protection of Migratory Birds and their Environment* (CAMBA), the *International Convention for the Regulation of Whaling* (International Whaling Convention) and the *Whale Protection Act 1980*.

6. Nuclear activities

The Commonwealth has a responsibility and an interest in relation to the assessment and approval of mining, milling, storage and transport of uranium and the development and implementation, in consultation with the States, of codes of practice as provided under the *Environment Protection (Nuclear Codes) Act 1978* for protecting the health and safety of the people of Australia, and the environment, from possible harmful effects associated with nuclear activities.

7. Management and protection of the marine and coastal environment

Commonwealth responsibility involves meeting obligations contained in international agreements and in Commonwealth legislation in relation to waters outside those waters under State control pursuant to the Offshore Constitutional Settlement, except where formal Commonwealth/State management arrangements are in place (eg. specific fisheries) or where waters are under Commonwealth direct management (eg. the Great Barrier Reef Marine Park). The Commonwealth has responsibility for control of sea dumping in Australian waters.

Commonwealth interest involves co-operation with the States to develop strategic approaches to ensure the management and protection of Australia's marine and coastal environment.

Part II

8. Reducing emissions of greenhouse gases and protecting and enhancing greenhouse sinks

The Commonwealth has a responsibility and an interest in relation to meeting the obligations under the *United Nations Framework Convention on Climate Change*, in co-operation with the States, through specific programmes and the development and implementation of national strategies to reduce emissions of greenhouse gases, and to protect and enhance greenhouse sinks.

9. Regulation of ozone depleting substances

The Commonwealth has a responsibility and an interest in relation to meeting obligations contained in the *Vienna Convention for the Protection of the Ozone Layer* and the *Montreal Protocol on Substances that Deplete the Ozone Layer* to take appropriate measures to help control, limit, reduce or prevent human activities likely to have adverse effects on the ozone layer.

Commonwealth regulation involves any proposal to import/export or manufacture substances which may result in depletion of the ozone layer. Commonwealth interest relates to the implementation of the national strategy for ozone protection in co-operation with the States.

10. Conservation of biological diversity (recognising that nationally endangered or vulnerable species and communities are covered under item 4 of this Attachment)

The Commonwealth has a responsibility and an interest in relation to meeting obligations contained in the *Convention on Biological Diversity* in co-operation with the States, including under the National Strategy for the Conservation of Australia's Biological Diversity and through relevant programmes.

11. Protection and management of forests

The Commonwealth has a responsibility and an interest in relation to the development and implementation of Regional Forest Agreements and the National Forest Policy Statement, and under relevant international instruments including the Rio Statement of Forest Principles,

the International Tropical Timbers Agreement, the Report of the UN Intergovernmental Panel on Forests and Agenda 21.

As indicated in paragraph 10 of the body of this Agreement, nothing in this Agreement will affect any arrangements entered into at any time as part of a Regional Forest Agreement.

12. Genetically modified organisms which my have an adverse impact on the environment

The Commonwealth has a responsibility to regulate the import and export of genetically modified organisms under the *Quarantine Act 1908* and associated Commonwealth legislation. Any Commonwealth regulatory role in relation to the development, release or use of genetically modified organisms is subject to the development of nationally agreed arrangements.

The Commonwealth has an interest in relation to the development of an agreed national approach concerning the control of genetically modified organisms to ensure that they do not adversely impact on the environment.

13. Agricultural, veterinary and industrial chemicals

The Commonwealth has a responsibility and an interest in relation to environmental safety assessment and registration of agricultural and veterinary chemicals, and notification and environmental safety assessment of industrial chemicals under the national notification and assessment schemes.

14. Matters requiring national environment protection measures

The Commonwealth has a responsibility and an interest in the development of national environmental protection measures (NEPMs) jointly with the States through the National Environment Protection Council and a responsibility to implement NEPMs in relation to Commonwealth activities and places.

15. Management of hazardous wastes relating to Commonwealth obligations arising from the Basel Convention

The Commonwealth has a responsibility in relation to meeting the obligations contained in the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention)* as implemented by the *Hazardous Wastes (Regulation of Exports and Imports) Act 1989* concerning the regulation of activities or proposals involving the international transboundary movement and disposal (including storage) of hazardous wastes.

The Commonwealth has an interest in relation to the development and implementation of co-operative approaches to minimise the risks and adverse impacts arising from the movement and disposal of hazardous wastes.

16. Access to biological resources

The Commonwealth has a responsibility in relation to meeting the obligations of the *Convention on Biological Diversity* and to regulating the import and export of biological resources under the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*, the *Quarantine Act 1908* and other relevant Commonwealth legislation. Any additional future Commonwealth regulatory role will be subject to the development of nationally agreed arrangements governing access to Australia's biological resources.

The Commonwealth has an interest in relation to the development and implementation of a national approach to manage access to Australia's biological resources.

17. International trade in wildlife arising from obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Commonwealth has a responsibility in relation to meeting Convention obligations including regulation of the import or export of species covered by the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*.

18. Development and maintenance of national environmental and heritage data sets arising from intergovernmental arrangements and international obligations

The Australian Bureau of Statistics has a statutory responsibility for the national collection of statistics.

The Commonwealth's interest includes the identification, development, maintenance and interpretation of national environmental and heritage data sets in co-operation with the States.

19. Applying uniform national emissions standards to motor vehicles

The Commonwealth has responsibility for the development and implementation of uniform national standards for vehicles when they are first used in transport in Australia. Regulation through the *Motor Vehicle Standards Act 1989* has the objective of applying standards which meet the safety and environmental quality expectations of the community. The Commonwealth will exercise its responsibilities through the mechanisms provided by the National Environment Protection Council and the Ministerial Council on Road Transport.

20. Policies and practices of a State resulting in potentially significant adverse external effects in relation to the environment of another State, where the States involved cannot resolve the problem

The Commonwealth has an interest in relation to resolving interjurisdictional differences on the environment where States do not agree and the proposal is referred through mutual agreement to the Commonwealth.

21. 'National interest' environmental matters as covered by the Telecommunications Act 1997

The Commonwealth responsibility is to ensure that telecommunications infrastructure is established and maintained having regard to matters of national interest specified in the Act including matters requiring special environmental consideration by the Commonwealth.

22. Quarantine matters

The Commonwealth responsibility is in relation to the regulation of the import and export of animal and plant material into and out of Australia as provided *inter alia* by the *Quarantine Act 1908*.

The Commonwealth interest involves co-operation with the States to avoid or minimise risks to the environment arising from the import and export of animal and plant material that could contain anything that could threaten Australia's native flora or fauna and their natural environment.

23. Aviation airspace management including assessment of aircraft noise and emissions

The Commonwealth has sole responsibility for all aspects of aviation airspace management and regulation including implementation of resolutions emanating from the International Civil Aviation Organisation.

24. Natural Heritage Trust Programmes

The Commonwealth has a responsibility and an interest in implementing programmes under the Natural Heritage Trust in accordance with the *Natural Heritage Trust Act 1997* and the Partnership Agreements entered into with the States and Territories.

25. Implementation of the National Strategy for Ecologically Sustainable Development

The Commonwealth has an interest in relation to implementation of the *National Strategy for Ecologically Sustainable Development*.

26. Nationally significant feral animals and weeds

The Commonwealth has an interest in relation to the development and implementation of measures and agreed programmes to control feral animals and weeds identified in national strategies, agreements, policies and control plans.

27. Conservation of native vegetation and fauna

The Commonwealth interest involves taking programme and co-operative measures with the States and other interested parties to conserve and manage native vegetation and fauna.

28. Prevention of land and water degradation

Commonwealth interest is in the development of agreed strategies and programmes to prevent and ameliorate land and water degradation particularly in relation to transboundary problems.

29. Matters that are from time to time agreed by the Commonwealth and the States as being matters of national environmental significance

30. The Commonwealth also has a responsibility and an interest in relation to proposals on Commonwealth lands and waters and proposals which are beyond the jurisdiction of States and Territories (eg. foreign aid proposals)

ATTACHMENT 2
ENVIRONMENTAL APPROVAL PROCESSES

1. The Commonwealth and States will seek to establish bilateral agreements which will replace, wherever possible and appropriate, the case-by-case assessment and approval process. Where an activity or proposal ('proposa') is within the scope of a bilateral agreement, the environmental assessment and approval process will be dealt with by the relevant State and the Commonwealth in accordance with the provisions of that agreement.

2. For proposals other than those subject to a bilateral agreement, the case-by-case assessment and approval process will be streamlined to achieve more certain, timely and open decisionmaking.

Bilateral agreements

3. Bilateral agreements will provide for Commonwealth accreditation of State processes and, in appropriate cases, State decisions (for example, agreed management plans). Bilateral agreements will also provide for State accreditation of Commonwealth processes and, in appropriate cases, Commonwealth decisions.

4. In particular, bilateral agreements will:

a. detail the level of Commonwealth accreditation of State practices, procedures, processes, systems, management plans or other approaches;
b. as appropriate, codify decisionmaking criteria and provide for delegation or recognition of decision-making, dispute resolution, reporting, public notification, information exchange, monitoring, auditing and review of the agreements based on their operation and effectiveness; and
c. detail the level of State acceptance and accreditation of Commonwealth processes and decisions.

During the formulation of such agreements, the States will have regard to the implications for Local Government.

5. Where the Commonwealth considers that a proposal:

a. is not covered by a bilateral agreement; or
b. if covered by a bilateral agreement, is not being dealt with by the State in accordance with that bilateral agreement;

the Commonwealth may request a State to refer the proposal to it and that proposal will be dealt with under the case-by-case process.

Case-by-Case assessment and approval

Referral to the Commonwealth

6. Where the relevant State authority is formally notified of a proposal that does not fall within the terms of any bilateral agreement and:

i. involves a matter of national environmental significance as referred to in Part I of Attachment 1; or
ii. the State considers may involve such a matter of national environmental significance;

the State shall refer that matter to the Commonwealth as soon as practicable after formal acceptance of the notification.

The States shall, in consultation with the proponent, ensure that before referral, the nature and scope of the proposal is clear and that adequate information is provided to the Commonwealth for decision-making.

Where a State and the Commonwealth agree to a more streamlined process than the one above, this different process will apply.

7. Proponents may refer proposals directly to the Commonwealth for a determination of whether a matter of national environmental significance exists once a formal notification has been made to the relevant State agency. On receipt of the proposal, the Commonwealth will notify the State of the referral and, in consultation with the State and proponent, ensure that the nature and scope of the proposal is clear and that adequate information is provided.

8. Where adequate information is not available under paragraph 6 or 7, the Commonwealth may seek further information necessary for its deliberations.

National environmental significance determination

9. Within four weeks of any referral from a State under paragraph 6 or a proponent under paragraph 7, or the subsequent provision of any necessary further information by a State or a proponent under paragraph 8, the Commonwealth will:

i. determine whether or not a matter of national environmental significance exists in relation to a proposal; and
ii. where a matter of national environmental significance exists, determine the scope of Commonwealth interest in the proposal and the nature and extent of involvement that the Commonwealth wishes to have in the decision-making process, including details of the decisions the Commonwealth is required to take; and
iii. advise the relevant State and the proponent.

If the Commonwealth does not respond within four weeks of referral, or the provision of the necessary further information, then the State may proceed with decision-making on the proposal as though a determination had been made under paragraph 12 that a matter is not of national environmental significance.

As soon as practicable after the determination, the Commonwealth will produce written reasons as to why the matter is, or is not, of national environmental significance.

10. In the case of a proposal which may involve a matter of national environmental significance which is not referred to the Commonwealth under paragraphs 6 or 7, the Commonwealth may request a State to refer a proposal to it. The State will be obliged to respond within three weeks. The Commonwealth will determine, within a total of four weeks of such notification, whether there are matters of national environmental significance in relation to the proposal. The making of a determination will be subject to the nature and scope of the proposal being clear and adequate information being provided.

11. Where a difference of opinion exists about any of the matters referred to in paragraphs 9 or 10, the Commonwealth and State Ministers responsible for the matters under consideration shall use their best endeavours to resolve the issues within four weeks of the difference of opinion arising. If there is no resolution of the matter the Commonwealth Minister will, within two weeks thereafter, determine whether a matter of national environmental significance exists in relation to the proposal and:

i. produce written reasons as to why the matter is, or is not, of national environmental significance; and
ii. give public notice of the determination, the reasons for the decision, and the details of the decision-making process including the nature and extent of Commonwealth participation; and

iii. prior to such publication under (ii), advise the State and the proponent of all those matters.

12. If the Commonwealth determines under paragraphs 9, 10 or 11 that there are no matters of national environmental significance in relation to a proposal, such a determination is binding in relation to environmental considerations and the proposal will be considered in accordance with State environment approval processes.

13. The parties agree that the Commonwealth determination on national environmental significance under paragraphs 9, 10 or 11 can only be reviewed in exceptional circumstances when either substantial new information has become available or where there has been a substantial and unforseen change in circumstances which are critical, and of direct relevance, to the Commonwealth's determination. The parties agree to consult promptly in these circumstances.

Assessment and approval process

14. Where there is a determination that a matter of national environmental significance exists in relation to a proposal, the Commonwealth and the State or States concerned will, within six weeks of the determination, agree on the environmental assessment and approval process to be followed, the range of issues relating to national environmental significance matters to be addressed in the process and the timelines for the stages of the decision-making process. This will include the nature and extent to which the Commonwealth and the State(s) are to give full faith and credit to the results of these processes.

If there is no agreement within six weeks, the Commonwealth may determine, within an additional ten days, that a Commonwealth process will be followed in addition to any State process. The State(s) must be notified accordingly.

Implementation

15. The Commonwealth and the States agree to legislate, as necessary, to implement this Attachment.

Prior to such legislation being introduced, each State will consult with Local Government on the implications of the provisions of this Attachment for Local Government.

The Commonwealth will ensure that its legislation provides a framework for the recognition and implementation of bilateral agreements.

ATTACHMENT 3
COMPLIANCE WITH STATE ENVIRONMENT AND PLANNING LAWS

1. The States agree that all State statutory authorities, government business enterprises (GBEs), privatised organisations, departments and agencies will be subject to State environment and planning laws.

2. Subject to paragraph 4, the Commonwealth agrees that the following entities will be subject to State environment and planning laws:

a. all Commonwealth GBEs, non-GBE companies, statutory authorities whose primary functions are commercial, and business units;
b. all non-Commonwealth tenants and persons undertaking activities on Commonwealth land;
c. those Commonwealth departments, agencies and statutory authorities which elect to become subject to State environment and planning laws; and
d. those Commonwealth departments, agencies and statutory authorities which are required by the Commonwealth to comply, following investigation of the feasibility of making them subject to State environment and planning laws.

3. The Commonwealth will ensure that Commonwealth departments, agencies, and statutory authorities which are not covered by paragraphs 2 or 4, will operate and secure approvals in accordance with Commonwealth measures which are at least equivalent to the environment and planning laws of the State in which the Commonwealth activity or property is located. The parties agree that this would require Commonwealth departments, agencies, and statutory authorities to observe equivalent processes and procedures to those of the States. The Commonwealth will endeavour to adopt standards in managing its environmental responsibilities which reflect 'best practice' arrangements.

4. The Commonwealth and the States agree that certain matters will be exempt from compliance with State environment and planning laws on national interest grounds. This exemption shall apply to:

a. Specific matters relating to telecommunications, aviation airspace management including aircraft noise and engine emissions, and on-ground airport management.
b. Matters agreed by the Commonwealth Minister responsible for an activity or place and the Commonwealth Environment Minister after consultation with the relevant State Minister or agency where the matter:
    i. would benefit from being regulated under a single national regime; and
    ii. would be hindered significantly by differing State requirements;
    iii. for which there are no practical alternatives.
c. Matters relating to Australia's relations with other countries and international obligations, national security, national defence, and national emergencies.
d. Matters agreed between the Commonwealth and the States.

5. Where exemptions are permitted pursuant to this Attachment, Commonwealth activities will, as far as possible, be undertaken in a way that seeks to achieve at least the equivalent requirements of State legislation. The relevant Commonwealth Minister(s), in consultation with the Commonwealth Environment Minister, will be responsible for determining the means of achieving those requirements.

6. The Commonwealth and the States agree that within two years of signing this agreement they will seek to legislate as necessary to implement this Attachment and will, as soon as practicable, amend any existing tenancy agreements necessary to give effect to this Attachment. Prior to such legislation being finalised, each State will consult with Local Government on the implications of the provisions of this Schedule for Local Government.

ATTACHMENT 4
NATIONAL ENVIRONMENTAL PROGRAMMES

1. The parties agree that between the three levels of government, the existing and potential overlap and duplication in environmental programme development and administration should be minimised. To achieve the best possible practical environmental outcomes, the Commonwealth and the States will undertake consultation to establish streamlined, effective and efficient delivery mechanisms, and accountability regimes, for environmental programmes of shared interest.

2. The parties agree that programme delivery will be undertaken by the most appropriate level of government, consistent with effective, accountable and practicable delivery while achieving sound environmental outcomes.

3. The parties agree that the Commonwealth will primarily focus on matters of national environmental significance and that such programmes may warrant co-operative action by the Commonwealth and a State or States. The major role for the Commonwealth in the administration of co-operative environment programmes is in the establishment, in consultation with the States, of goals, objectives, priorities, strategies and frameworks, and ensuring performance against agreed goals and outcomes.

4. Where the Commonwealth or a State has identified a matter which it considers requires a programme of co-operative action, it will contact other governments which may have an interest. Consultation will then be undertaken between the relevant parties on the desirability of establishing a programme and the means to be used to achieve the desired environmental objectives. Where the Commonwealth has identified a need for a national programme of co-operative action which applies to all the States, the Commonwealth, after consultation with the States, will advise them of the Ministerial Council or fora in which the matter is to be considered. Where appropriate, arrangements will be made for consultation with Local Government.

5. Where it is agreed between the Commonwealth and a State or States that a programme of co-operative action is required, the Commonwealth and the State(s) will enter into an agreement or arrangement which will include -

1. overarching goals and objectives;
2. the national environmental outcomes to be achieved;
3. roles and responsibilities of participants;
4. funding and delivery frameworks (including funding to achieve the matters in (e) below);
5. the accountability regime, including performance indicators, monitoring, reporting and appraisal mechanisms (linked to performance based incentives) to be established to measure the achievement of environmental, administrative and financial outcomes; and
6. provision for the establishment, as appropriate, of subsidiary agreements between the State(s) and Local Government where it has a statutory or financial interest in the programme.

6. The Commonwealth agrees that State priorities will be taken into account in setting priorities for programmes that address matters of national environmental significance.

7. The parties agree that while the Commonwealth will retain the flexibility to provide direct funding to community groups and other organisations, such as Local Governments and Indigenous communities, the Commonwealth will first consult with the relevant States on any such proposals, and only implement such arrangements on the agreement of the State or, failing such agreement, on the decision of the relevant Commonwealth Minister. In the event of such decision, the Commonwealth will have full responsibility for project administration and accountability.

8. The parties agree that the contributions of funding sources will be properly and fully recognised.

LEGEND

Roads

Sydney Airport Surrounds

NSW GOVERNMENT
Department of Planning
16/01/2007

LEGEND

Roads

Port Botany

NSW GOVERNMENT
Department of Planning
16/01/2007

Appendix 4

CASE STUDY IDENTIFYING THE ISSUES ASSOCIATED WITH AIRPORT PLANNING AND LAND DEVELOPMENT

Proposed development at Sydney Airport

In June 2002 Sydney Airport was leased for 99 years to a private consortium, Sydney Aircraft Corporation Limited (SACL), by the Commonwealth Government for $5.58 Billion. None of the sale proceeds were directly returned to NSW. SACL released a master plan for the site in July 2003 which proposed a range of non-aviation developments.

The first non-aviation development approved under the Masterplan in April 2005 was for two 12-level carpark structures to accommodate 7,900 cars near the international terminal. Attached to this will be two nine level structures providing 18,000 sq. m of commercial space for office, hotel or retail usage.

There is a second major non-aviation development proposal currently with the Commonwealth Minister for a 50,400 sq. m proposed retail precinct including retail, office accommodation and bulky goods outlets. It should be noted that the original proposal was reduced following a significant public outcry and originally included cinemas.

The NSW Government provided a detailed submission to the Commonwealth in January 2006 on the impacts of the proposals, noting that the development is inconsistent with NSW Government planning policies and guidelines and would not be approved by the NSW Government.

The submission recommended proposed conditions of consent for Commonwealth approval in order to mitigate the negative impacts including:

- A detailed analysis of all localised and regional traffic impacts associated with the development should be undertaken by SACL who must bear the full cost of addressing any present or future upgrades;
- SACL meet costs of providing bus services to the site (estimated at $150,000 per annum);
- SACL extend the existing internal bus service between the airport terminals to the site;
- SACL redevelop the MDP in conjunction with local councils to propose only uses appropriate to an out of centre development that would not compete with existing retail precincts well serviced by public transport;
- SACL make development contributions to neighbouring Councils;
- SACL to provide assurances of the “interim use” (long term aviation) currently applied to the land;
- SACL undertake more comprehensive investigations into the environmental impacts associated with the proposal; and

SACL undertake a rigorous risk assessment of the security issues in constructing and operating the retail precinct.