



COUNCIL OF CAPITAL CITY LORD MAYORS

Senate Rural & Regional Affairs and Transport Committee

Inquiry into the Airports Amendment Bill 2006

**Non-aeronautical development at Australia's Leased
Federal Airports and its impact on Capital City Councils**

**Submission 1/07
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1. Overview

All capital city councils are members of ALGA and endorse its submission to the Inquiry and agree that while improvements in the consultation requirements for non-aeronautical developments on airport land are welcomed they do not address the fact that large tracts of land located within or near our urban developments on which major commercial developments are taking place remain outside state and local planning requirements.

Consultation

Community access to development plans through the internet and the stop clock provisions for Ministerial consideration of development plans are steps forward but the proposed reduction in the statutory consultation period from 90 calendar days to 45 working days is not. While the Bill and consultation guidelines make more explicit the expectation that operators clearly demonstrate that due regard has been given to public comments on master plans, major development plans and airport environment strategies, it is just that - an expectation. Will it be fulfilled?

Planning

CCCLM does not propose that the aeronautical capacity of airports be subject to state and local planning provisions. Commercial developments however, such as shopping facilities and hotels, which are no different to developments elsewhere, should not be exempt from the same planning requirements.

Further, CCCLM agrees with ALGA's proposal that the Minister be required to state in any planning decision under the legislation whether a proposed development is, or is not, consistent with state and local government planning and, if not consistent, why agreement has been given.

Financial

Given that councils rely for their finances to a large extent on raising rates from land owners and businesses and seek developer contributions when approving major facilities to help pay for necessary upgrading of associated infrastructure, the anomaly that currently excludes commercial developments on airport land must be addressed. In terms of competitive neutrality, CCCLM encourages the Committee to consider the matter of charging commercial developments on airport land the equivalent of rates and developer charges, which would then be passed on to those councils affected by the development. Given the impact on local government of non-aeronautical development, such an arrangement is only fair and just.

Local Impact

Developments on airports do not take into account the impact on existing businesses or the region, as council and state development approvals do; failing to do so can severely affect the local economy.

For example, the proposal at Hobart International Airport is the single largest retail development ever proposed in Tasmania (almost 20 acres) and there was no requirement to make an assessment of its fit with the region. The economic analysis conducted by the Hobart City Council concludes that on a minimum viability basis, the potential negative impact on department stores, clothing and soft goods and household goods retailers in the Greater Hobart area is between 22-26%.

2. The Inter-governmental agreement establishing principles guiding inter-governmental relations on local government matters

The Council of Capital City Lord Mayors looks to the Inter-governmental Agreement establishing principles guiding inter-governmental relations on local government matters, which was signed by Federal, State and Territory governments and ALGA in April 2006, to precipitate a review of the current arrangements where non-aeronautical commercial developments on airport land are concerned.

In the ground-breaking Agreement, the Parties are committed to an open relationship between the three spheres of government and acknowledge the need for services and functions to be provided to communities in an efficient and effective manner. The Council of Capital City Lord Mayors is committed to working with, not against, all governments and other parties to this end. Resolution of this issue would encourage confidence in the Agreement.

PART I - Fundamental Principles of This Agreement

1. The Parties are committed to achieving an open and productive relationship between the three spheres of government.
2. The Parties acknowledge the need for services and functions to be provided to communities in an efficient and effective manner.
3. The Parties agree in principle that where local government is asked or required by the Commonwealth Government or a State or Territory Government to provide a service or function to the people of Australia, any consequential financial impact is to be considered within the context of the capacity of local government.
4. The purpose of this Agreement is to:
 - i) encourage the conduct of positive and productive relations between the three spheres of government in a spirit of respect with an emphasis on partnership and co-operation through the adherence to the broad based principles as outlined in Part III; and
 - ii) provide an overarching framework as outlined in Part IV from which further agreements covering specific services and functions should be developed.
5. The achievement of the Agreement's purpose will result in:
 - i) improved relationships between the three spheres of government by facilitating an open exchange of information and by encouraging greater co-operation;
 - ii) the promotion of more effective and efficient government;
 - iii) greater transparency in the financial arrangements between the three spheres of government in relation to local government services and functions;
 - iv) effective consultation with local government, through local government peak representative bodies where appropriate, on the delivery of services and functions.

Part II - Existing Arrangements

6. This Agreement does not override, or detract from, or add to any legislation or commitments entered into as part of existing arrangements between local government and other spheres of government.

Local Government & Planning Ministers Council, Department of Transport & Regional Services pg 4. April 2006

While *Part II Existing Arrangements* of the Agreement states that 'the Agreement does not override, or detract from, or add to any legislation or commitments entered into as part of existing arrangement between local government and other spheres of government' perpetuation of cost shifting onto local government through the current arrangements relating to DFOs on airport land sorely tests the spirit of this Agreement particularly when non-aeronautical development continues with:

- poor consultation and in some cases lack of consultation with local government
- exemption of non-aeronautical developments at airports from state/local planning provisions
- exemption from payment of council rates or developer contributions by commercial facilities on airport land and
- lack of assessment of the impact on surrounding businesses

Continuation of the current arrangements tests the commitment to, and the efficacy of, the Agreement.

3. Background

Since the privatisation of Australia's airports, the Commonwealth has retained planning authority for airport lands under the *Airports Act 1996*. During this period, Discount and Direct Factory Outlets (DFOs) have been established in the airports of most capital city regions in Australia, including:

- Adelaide
- Brisbane
- Canberra
- Melbourne (Moorabbin and Essendon Airports)
- Sydney (Proposed)
- Hobart (the largest of its kind in Australia – in proposal/development stages)

The CCCLM is of the view that, as far as planning is concerned, a DFO is a type of retail shop, which is developed as a major commercial centre without the necessary planning process being followed. The CCCLM recognises that airports are a major centre, providing airport activity and are major employment generators and providers of many other services and activities. However, non-airport related activities should be assessed under state and local government Acts, which would subject them to the same range of requirements as any other major commercial development proposal.

Issues that impact upon Capital Cities in the use of Airports for outlets of this nature are wide and varied, however, major impacts across all Cities include:

- Inability to address land planning and development matters
- Poor or limited consultation, which impacts upon road planning and environmental issues,
- Expectation of local government infrastructure and services being provided at the expense of the community (cost shifting)
- Lack of land tax or equivalent contributions and
- The impact on small businesses in Central Business Districts and capital city regions.

Whilst the proposed developments are not within some Cities' local government area, they have significant impact upon them. A great deal of opposition has been raised during the development of the DFOs by Capital Cities, as well as other affected local governments, drawing attention to the impact on the local communities that they represent.

The *Airport Development Consultation Guidelines* released with the *Airports Amendment Bill 2006* are welcomed by the CCCLM, as the current Act does not regard planning principles of state and local governments, nor does it take into consideration current zoning in surrounding areas.

The CCCLM would be keen to see cooperative working arrangements established for any future non-aeronautical Airport developments to ensure that development and planning conforms to state and local government by-laws, as well as any planning in the region by local and state governments.

We would encourage the development of a process which allows airports, state and local governments to work closely on making sure future growth in and around the airports is jointly planned.

4. Information provision and consultation

The CCCLM would like to express its concern with the level of consultation undertaken to date by airport developers, which has been very poor across all capital cities. The CCCLM also has concerns regarding the proposed reduction in the statutory consultation period from 90 calendar days to 45 business days, which essentially decreases response time by four weeks.

Brisbane

Airport proposals for DFOs have lacked effective planning, consultation and infrastructure provisions. For example, Brisbane City Council has to date raised many issues with both the Brisbane Airport Corp and the Commonwealth Government, with no significant acknowledgement of the issues being addressed. Brisbane's DFO has been poorly planned with insufficient infrastructure or clear relationship to adjoining land uses.

Additionally, the newspaper advertisement for public comment on the development measured 1cm x 3cm in *The Courier Mail* and was easily missed.

Sydney

The proposal at Sydney Airport has no regard to existing or planned centres within its proximity. It is proposed to be located in an area not serviced by public transport and includes no firm proposal to either fund or contribute to the cost of regional infrastructure required to service the development. While plans exhibited include an assessment of "ground access" impacts of the proposed development, the presented information was inadequate. The analysis did not factor the impacts of other planned developments on the existing road network and did not include the impacts of the proposed Port Botany expansion, the major Green Square redevelopment, nor any other development which is planned on the Sydney Airport site or development in the Cooks River area.

With the increase in traffic noise and air pollution that will directly result from the proposed development the existing environmental amenity of areas surrounding the site and on transport routes leading to and from the site will deteriorate.

This environmental impact has not been adequately addressed in the assessment and no measures have been proposed to mitigate this impact. Additionally, exclusion from Section 94 - Contributions under the NSW Environmental Planning and Assessment Act 1979 and other charges provides an unfair competitive advantage.

Hobart

There has been a lack of information in the draft major development plan in Hobart to properly assess the proposed development. The submission process denies natural justice to interested parties and creates issues of procedural fairness. The proposed development in Hobart is the single largest retail development ever proposed in Tasmania, and has no regard to the impact of the development with regard to Tasmania's planning system and objectives.

Should these developments have been typical development applications under state and local government planning systems the level of information provision would be far greater. The information provided has been insufficient for Councils to undertake planning assessments of the developments.

CCCLM encourages the adoption of policy which deals more specifically with submissions received by airport developers within the consultation period. Whilst concerns are currently raised during this process, it would appear that operators are not taking action to address the concerns raised by local government. A more transparent decision making process to allow airport developments of this nature to take place would be welcomed by the CCCLM, particularly developments which are not consistent with state and local government planning requirements. Such transparency is in line with the first principle of the Inter-Governmental Agreement.

The Committee's attention is drawn to the fact that in the case of the Hobart development, the call for submissions to the Draft Major Development Plan was some 5 months after the signing of the Inter-governmental Agreement of which Principle 1 seeks

"a commitment to achieving an open and productive relationship between the three spheres of government".

We would suggest that the issues being dealt with in Hobart under current legislation do not work toward that Principle.

ACTION

In line with the Inter-governmental Agreement's first principle, non-aeronautical airport development plans to be developed in open, cooperative and productive partnership with the relevant state and local governments.

5. Impact on existing regional planning strategies

Existing planning strategies focus on business, employment, research, education, services, high density living and social interaction. A network of centres provides a community focus and helps to achieve compact, self contained and diverse communities which facilitate efficient transport systems, provide a focus for government investment in infrastructure and services and promote commercial confidence and private sector investment. Out-of-centre development activity, ie Airports, can diminish centre vitality and detract from economic growth by diluting public and private investment in centre related activities, facilities and infrastructure.

The City of Sydney notes that the DFO proposal gives no regard to existing and planned centres within proximity, is located in an area not serviced by public transport and included no firm proposal to either fund or contribute to the cost of regional infrastructure required to service the development.

Adelaide City Council notes that the *Brand Outlet Centre* is clearly contrary to the Planning Strategy for Metropolitan Adelaide.

Traffic congestion

The opening of the DFO at Brisbane Airport caused traffic chaos which directly affected the primary function of the airport and had to be dealt with in a reactive manner. Traffic delays caused many passengers to miss flights. Traffic problems in the area have been on-going, with major traffic congestion being experienced on Brisbane's Gateway arterial road in the week before Christmas, as a direct result of the Airport DFO. Brisbane City Council notes that Local Government cannot restrict development on Airport sites but airports can restrict development in the rest of the City.

A recent report entitled the *Australia Trade Coast North Road Network Strategy* concluded that in the order of \$460m would be required to be spent on roads in the area in the next 15 years to keep pace with growth. The Airport Corp advised that they saw no need for the work or to contribute to its provision.

The above demonstrates that Airports are extremely vulnerable, and the Airport corporations should actively engage in both planning and contributing funding towards necessary road works and other required infrastructure to support Airport developments of this nature.

Given that airports are typically the gateways to states/regions/major cities, it is vital that greater focus is given to:

- Urban design
- Communication of the area's identity and values, and
- Enhancement of public amenity.

ACTION

The Federal Minister for Transport and Regional Services be required to state in any planning decision under the legislation whether a proposed non-aeronautical development is, or is not, consistent with state and local government planning and, if not consistent, why agreement has been given.

6. Financial impact

It is standard practice among state and local governments for developments, similar to those proposed, to be levied development contributions (monetary or in kind) to contribute the equivalent of the development's share for the provision of infrastructure and facilities (eg, local roads, intersection upgrades etc). It is noted that as the land within Airports does not fall under the jurisdiction of state planning laws, local councils are unable to levy such contributions on proposed developments.

It is considered that should developments proceed the equivalent of these contributions (for example, Section 94 - Contributions under the NSW Environmental Planning and Assessment Act 1979) should be imposed equivalent to the percentage of the costs for the provision of such essential infrastructure and services, which is directly attributable to the proposed development. Funds should be directed to the relevant local councils to contribute to the provision of infrastructure and services.

Contributions should also be made to the state government equivalent to the cost of providing regional infrastructure and services which (in whole or in part) are attributable to the proposed development.

Without financial contributions state and local government are burdened with the costs of providing infrastructure and services generated by the development. This is an unreasonable impost which should not be borne by local ratepayers or state government.

Although perhaps an unintended consequence of original legislation, this situation amounts to a classic case of cost-shifting (albeit through a third party) and should be considered in light of the *Intergovernmental Agreement Establishing Principles Guiding Inter-governmental Relations on Local Government Matters*.

Further this situation results in inequities between the proponent and proponents of other developments in surrounding areas who have been required to pay such contributions. This situation could lead to the development having an unfair competitive advantage over other similar centres and lead to a windfall gain for Airport operators.

Particularly lacking has been information on the economic impact of these developments, with requests for further information not being provided due to "commercial sensitivity". Economic impact statements have not been undertaken by some proponents as there is no requirement under the current legislation to do so.

Hobart City Council was prevented from viewing the economic analysis referred to in the draft major development plan it is assumed that the proposal only has relevance as to whether or not it is feasible for a developer to proceed – this is very different from the question as to whether it will have unacceptable adverse economic and social impacts on a surrounding area.

Hobart City Council's economic impact assessment indicates that when built, in addition to the already approved development at nearby Cambridge it will take the regional economy up to 17 years to absorb the over supply of retail facility.

The impacts of the combined development on Greater Hobart are drastic. Based on results in the Hobart City Council assessment, it is expected that the development will not only hurt the existing economy of Greater Hobart, but will also impose a threat on the viability of Hobart International Airport should the development prove unable to sustain the expected level of rental income necessary to fund infrastructure investments, or even failing and closing entirely. Instead of minimising risk by diversifying its economic base, the Airport may jeopardise its economic viability.

ACTION

The Minister for Transport and Regional Services require social and economic impact statements to be conducted for non-aeronautical developments, and be considered under Section 91 of the Airports Act.

7. Major Capital City concerns

Planning

- Developments are not subject to state planning legislation thus there is no recourse to the State planning system – and therefore only token reference to it by proponents
- Lack of information provided in development plans
- Impact on the core retail in the heart of CBDs, undermines the retail primacy role envisaged for the CBD in planning strategies and schemes
- Both airport-related and commercial development on airport land must be subject to the same principles for infrastructure delivery as any other major proposal.
- Inconsistency with state and local planning
- Inconsistency with Airport Master Plans
- Compliance with Airports Act 1996

Infrastructure

- Commercial development at Airports and associated infrastructure must be effectively integrated with anticipated nearby development, for example, an effective transport plan and appropriate timing for its delivery
- Funding of infrastructure and services and in particular lack of funding from Airport Corporations and Federal Government to cover costs

Traffic management

- Implications of proposed development on traffic and road infrastructure in surrounding areas
- Lack of public transport to service the proposal

Consultation and process

- Commercial development and associated infrastructure proposals must be subject to the same level of public scrutiny as any other development proposal
- Process for submissions denies natural justice to interested parties

Sustainability

- DFOs do not foster the sustainable development of established and designated centres, or by public transport focussed on such centres, which raises long term sustainability issues.
- Environmental impacts of proposed development specifically in terms of air quality, noise impacts and environment amenity

Economic impact

- Economic impacts of proposed development on existing and planned development in surrounding areas - no requirement to undertake economic impact assessment exercises

Security

- Security and risk assessment, particularly non-secure uses in close proximity to core aviation areas and potential risk to patrons given proximity of sites to runways
- Impact of non-aviation development on core aviation uses
- Inconsistency in development of non-aviation uses adjacent to airports with trends of other airports around the world.

8. Conclusion

City Councils need to have a much greater input into non-aviation ongoing activities inside Airport boundaries. The lack of control over activities remains a grave concern as does the lack of any legal basis to impose relevant controls and charges on development within the airport boundary which is likely to cause ongoing disputation and adverse long-term impacts on both local residents and full-fee paying commercial interests.

The differences in process and planning between airport and non-airport DFOs are quite clearly demonstrated. Due to normal process during development application, information must be provided and councils have rights to approve and/or to request improvements to the planning of areas such as building facades, parking and access, pedestrian environment, signage etc. The level of information required has enabled councils to then ensure relevant transport changes are provided.

The City of Perth has control on tenancies in their non-airport DFO to ensure that they are used specifically by “brand direct” or “factory direct” outlets, therefore lessening negative impact on the viability of existing retail centres. Councils recognise that there is a requirement for this type of retailing: it is the necessary planning and development of them that requires local government involvement to ensure effective infrastructure is provided to the outlets and the effects on the neighbouring region are assessed.

Additionally, and perhaps most importantly, unlike Airport DFOs, non-airport DFOs are subject to the payment of normal rates which contribute to the provision of updated infrastructure and services as well as the improved planning to cope with additional development.

Please find attached the following City Council submissions into Airport developments for your information:

City of Sydney	January, 2006	Sydney Airport Preliminary Major Development Plan(s) Aviation and Retail Business Parks
Brisbane City Council	December 2003	Submission on Draft 2003 Master Plan to Brisbane Airport Corporation Ltd
Hobart City Council	September 2006	Submission to Hobart International Airport regarding the proposed outlet centre & bulky good/homemaker retail centre
Adelaide City Council	13 February 2002 6 December 2001	Letters to Adelaide Airport Ltd

The CCCLM welcomes this Inquiry, and looks forward to just and fair outcomes regarding non-aeronautical development in light of the *Inter-governmental Agreement establishing principles guiding inter-governmental relations on local government matters (April 2006)*, to obviate the need for unnecessary expenditure on legal advice to challenge related airport development.