Simon Corbell MLA

ATTORNEY GENERAL
MINISTER FOR PLANNING
MINISTER FOR POLICE AND EMERGENCY SERVICES

MEMBER FOR MOLONGLO

The Secretary
Rural and Regional Affairs and Transport Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Radcliffe

I refer to your letter dated 22 December 2006 to Mr Neil Savery, Chief Planning Executive of the ACT Planning and Land Authority, inviting him to provide his views in respect of three Bills currently the subject of an inquiry by the Rural and Regional Affairs and Transport Committee.

I also note Mr Savery's email to you advising that the ACT Government would most likely want to make a submission, but that it could not do so in time for the closing date of 19 January. I also understand that you indicated you would receive a late submission.

The ACT Government has now considered a position paper, the sole focus of which is the *Airports Amendment Bill 2006*. I enclose a copy of the ACT Government's submission and confirm previous email advice from Mr Savery to you indicating that I welcome the opportunity appear before the committee to further elaborate on the ACT Government's position.

Yours sincerely

Simon Corbell MLA
Minister for Planning

29.1.07

CC: Chief Planning Executive

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ACT Government Submission

to

The Senate Standing Committee on Rural and Regional Affairs and Transport

on

Airports Amendment Bill 2006

January 2007

1. Introduction

This is a submission to the Senate Standing Committee's inquiry into three Bills, but specifically the Airports Amendment Bill 2006 (the Bill).

The submission contends that the Bill -

- does not adequately deal with the major planning issues arising out of non-aviation related development activity at those airports that have been leased by the Commonwealth Government, fails to put in place appropriate regimes to ensure that Airport operators finance the cost of surrounding infrastructure to support the level of development occurring at these Airports and
- that Canberra Airport in particular should remain the subject of National Capital Authority planning controls in the absence of other safeguards being put in place.

The submission also highlights the competitive advantage being enjoyed by Airport operators through the avoidance of scrutiny under local planning systems, whilst having the opportunity to take advantage of those same systems to potentially frustrate their commercial rivals as they seek to expand their non-aviation based activities in a manner inconsistent with the spatial planning intentions of urban planning jurisdictions. The Canberra Airport's behaviour in this regard will be used to illustrate this argument, which is contrary to the aspirations that the Commonwealth Government has under the National Reform Agenda and Productivity Commission findings in respect to national competition policy, as well as the principles and outcomes encouraged in the concept of competitive neutrality.

2. The Issues

From the outset it is acknowledged that the nation's major airports are essential to the economy of the country and are key ports for national and international trade, communication and access.

The Commonwealth's decision to lease the Airports to the private sector is not contested here and it is recognised that some diversification of activity at the airports is appropriate and can operate to the mutual benefit of those airports and the cities and centres in which they co-exist.

There are, however, a number of significant serious implications arising out of developments at the major airports, which the Bill does not adequately address. In particular the pursuit of increasingly substantial non-aviation related development, largely in the form of commercial office and retail, is distorting the spatial distribution of these activities within host cities. This in turn having significant impacts on the established centres and the infrastructure around the major airports, in particular transport.

No one is under any illusion as to the premium paid by airport operators to undertake developments outside the normal jurisdictional planning regimes, which must require an examination of the external impacts of each proposal against the appropriate

planning policies for the host city and the capacity of the local infrastructure. This does not, however, make the extraordinary scale of some developments justified on sound planning principles, which are applied universally throughout Australia to ensure that urban development proceeds in an orderly fashion and in a way that appropriately accommodates the interests of the whole community.

The Federal Airports Act, which was unsuccessfully contested in the courts by other parties, affords a level of protection to developments at the major airports. This however, falls well short of accepted benchmarks when set against the requirements that every other development must face under the proper processes established by State and Territory laws.

These concerns have been the subject of intense debate within the Local Government and Planning Ministers' Council (LGPMC). On two separate occasions has considered papers prepared by the NSW Government, with the input of all State and Territories (Attachments A and B, which it is noted are for the use of members only and not for publication).

On both occasions the Commonwealth declined to support the resolutions, which were in turn adopted by the State and Territory Planning and Local Government Ministers and the Australian Local Government Association, as follows:

4 August 2005:

1. *Noted that State and Territory Ministers were concerned about many of the elements of airport master plans approved under the federal Airports Act 1996, particularly relating to non-aviation related land-use and activities.*
2. *Noted that the Australian Transport Council has recently requested that the Standing Committee on Transport (SCOT) report on the operation of the federal Airports Act 1996;*
   State and Territory Planning Ministers:
3. *Direct State and Territory Planning Officials, in liaison with the Standing Committee on Transport (SCOT), to report on the range of issues for further consideration (as outlined in the agenda paper) arising from the current operation of the Airports Act 1996 and report on what actions Ministers can take (both collectively and individually) to address these issues.*
4. *Agreed that the report in Recommendation 3 should address in particular:*
   a) *The outcomes of the Commonwealth's Review of the Act;*
   b) *Options for improving the consideration of broader strategic issues and local impacts in the approval of non-aviation developments on airport land;*
   c) *Whether non-aviation developments on land subject to the Act compromises future aviation uses;*
   d) *Any other relevant matters including any inconsistencies with State and territory planning laws and policies that are not adequately addressing strategic infrastructure issues and local impacts.*

4 August 2006 (draft):

That the State and Territory Ministers and the Australian Local Government Association:

1. *noted the actions undertaken by Planning Officials, in response to the request from State and Territory Ministers (at the 2005 LGPMC) to report on the range of issues for further consideration arising from the current operation of the Airports Act 1996;*
2. *endorsed the following position and actions in respect of non-aviation airport development:*
   - *2.1 that all airport non-aviation development (excluding defence or airport ancillary developments inside of terminal buildings) be planned as part of the region within which it is located and be subject to relevant State and Territory Planning laws, policies and procedures;*
   - *2.2 that 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;*
   - *2.3 that 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;*
   - *2.4 whilst 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 (ALC's) and what role State and Territory Government's are expected to play in relation to these conditions; and*
   - *2.5 in light of the COAG Agreement of November 1997, that these recommendations be referred to COAG for reconsideration.*

Two matters that require clarification from the draft decisions of 4 August 2006 are firstly that the actions undertaken by Planning Officials under Item 1 relate to a request to the Australian Transport Council that the issues of concern being raised by the jurisdictions, particularly in respect to proper planning process and transport planning in and around the airports be the subject of more intense consideration as part of the review of the Airports Act (Attachment C1). The response to this, at Attachment C2, was advice that the Commonwealth Government would put in place a more rigorous set of consultation guidelines, a topic that will be returned to further in this submission.

Secondly, that the NSW Government has raised the prospect that the manner in which some developments are continuing to occur at the major airports may be in contravention of, if only in spirit, a November 1997 Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment (Attachment D), which if the NSW Government has made a submission the ACT will leave it to expand on.

The ACT Government does not intend to re-compose the words contained in both of the LGPMC papers, as those speak for themselves. However, the ACT remains gravely concerned, as it understands all State and Territory Governments' and the Australian Local Government Association are, that the Commonwealth Government

has paid such scant regard to the issues raised through the legitimate processes of the Ministerial Council, to the point where it is understood that the Government of NSW intends having these matters raised at the Council of Australian Governments. The Territory comment will be supporting this more.

There are several particular matters that need to be highlighted, albeit briefly, in respect to the concerns that the States and Territories have, which in the case of the ACT are also relevant to non-aviation development at the Canberra Airport.

Airport Development Consultation Guidelines

Following the resolution of State and Territory Ministers in August 2005, the Planning Officials Group conveyed the concerns about airport planning to the Standing Committee of Officials for Transport (Attachment C1), who in response advised that new consultation guidelines were to be prepared (Attachment C2). This has occurred as the one apparent concession to the very serious issues that have been raised, which as the Planning Officials Group letter highlights, is much more than a simple issue of being consulted.

The guidelines do not and cannot address the fundamental issues that are outlined in the material produced by the NSW Government for the LGPMC, which involves the undermining of integrated transport and land use planning at a metropolitan level. The guidelines provide a more rigorous environment for respective jurisdictions and members of the community to express these concerns in response to master plans and major development plans, but that is as far as they go. Beyond this point, as has been demonstrated on numerous occasions in the past in almost every State and Territory, non-aviation developments continue to be approved that have detrimental impacts beyond the boundaries of airport leases.

In the case of Canberra Airport, the development of the Brindabella Office Park has proceeded contrary to the wishes of the ACT Government. Whilst the Territory has acceded to changes to the National Capital Plan, which are also reflected in the airport master plan, the scale of development represents the equivalent office floor space of Woden Town Centre, at 120,000m2 GFA, without adequate recognition of the potential impact this can have on the planning for the City's other town centres and the surrounding transport infrastructure.

In representations made by the ACT Government (Attachment E) it raises several matters that reflect the broader concerns being expressed by the States and Territories and local governments. What these representations cannot identify is the potential for yet further expansion of office development once the Brindabella Office Park is completed and with the controls of the National Capital Plan removed, as proposed by the Bill. Whilst it is recognised that this would be the subject of changes to the airport master plan, the experience in the past has been that little regard is paid to the issues raised by the relevant jurisdictions, which should be better attended to through this Bill.

In the case of the establishment of the Brands Depot (a discount factory outlet) at the Canberra Airport, which it can be assumed is the forerunner to a raft of other retail facilities being contemplated, the ACT Government's submission to the major

development proposal (Attachment F) resulted in no acceptance of the concerns raised, particularly as they applied to the potential implications for the retail centres hierarchy and the surrounding road network. Yet if these predictions of further retail and other development prove to be true, it is the ACT Government that will wear the financial and other consequences of this unrestricted development.

A recent Transport Taskforce established by the ACT Government to examine traffic conditions on roads in the vicinity of the airport concluded that while not the sole cause of the traffic congestion in the vicinity of Canberra Airport, the development at the airport contributed to this traffic congestion and would continue to do so as it expanded its airport operations, its business park and the discount factory outlet.

The Canberra Spatial Plan, the Government's overarching strategic policy for the future development of metropolitan Canberra, does not envisage the Canberra Airport as an activity node equivalent to that of a Town Centre on the basis:

- that its primary purpose is that of an airport,
- that the potential to undermine the economic well-being of those centres,
- the impacts on surrounding infrastructure, particularly transport, and
- the inability to meet certain sustainability principles that typically have a centre of that nature associated with surrounding residential populations.

The weakness of the guidelines and the absence of the accountability measures that the State and Territory Ministers have sought are made apparent by the following statement within the Bill's explanatory memorandum:

> *"The key areas in which the Bill amends the Act are as follows:*
>
> - *permitting non-aeronautical development at leased airports, provided such development is consistent with the airport lease and approved master plan, to make clear the Australian Government's intention at the time of privatisation of the airports."*

Given this and that the Commonwealth has provided the commercial enterprises at the major airports with a 'regulatory advantage', with little regard to surrounding transport infrastructure, how can anyone have confidence that the Federal Transport Minister, as the notional Planning Minister under the Act, can and will act impartially and transparently? Nor is this approach consistent with the Development Assessment Forum's Leading Practice Development Assessment Model discussed below), promoted by the Commonwealth under the National Reform Agenda, to distance the decision making process from political interference and vested interests.

National Charter of Integrated Land Use and Transport Planning

In 2003 the National Charter of Integrated Land Use and Transport Planning was endorsed nationally by both Ministers for Transport and Ministers for Planning (Attachment G). This Charter is cited as; *"....a high level agreement between committing to an agreed set of good planning practices and committing to working together to achieve better outcomes for land use and transport planning."*

The Charter's objective is to facilitate effective and sustainable urban and regional development across Australia through the application of nine aims. The planning and development of airports in isolation of the strategic planning for the metropolitan centres in which they are encompassed, ignores several of these aims because much of the non-aviation development that is taking place is adversely shaping the pattern of development through inappropriately influencing the broader transport and land use system.

This includes the aims of integrated and inclusive processes; linked investment decisions; and making better use of existing and future infrastructure and urban land. The scale and nature of non-aviation development at the major airports is often inconsistent with the strategic planning principles of the metropolitan strategies of the major cities, impacting on the transport and land use systems, and often with limited investment in the local infrastructure outside of the airport leases upon which the airports depend to provide access to their customers.

At the same time, the Commonwealth, which netted significant revenue from the sale of the major airports, has put limited funding towards supporting the surrounding infrastructure, leaving the burden to local governments. Through the increasing reliance on non-aviation activity to derive revenue, the major airports now contributed significantly to an infrastructure conflict, particularly at peak hours, as patrons seeking to access flights have to compete on congested traffic networks with office workers, employees of retail outlets and customers of these new facilities.

National Reform Agenda

On 10 February 2006, the Council of Australian Governments (COAG) agreed to a new National Competition Policy reform agenda as part of the National Reform Agenda. In this context, COAG, under item 5.9, decided amongst other things:

> *"....to request the Local Government and Planning Ministers' Council (LGPMC) to recommend and implement strategies to encourage each jurisdiction to systematically review its local government development assessment legislation, policies and objectives to ensure that they remain relevant, effective, efficiently administered and consistent across the jurisdictions."*

In this regard the Leading Practice Development Assessment Model (the Model), developed by the Development Assessment Forum (Attachment H), provides the basis for responding to the COAG decision. The Model is the result of several years of collaboration between the States, Territories, Local government, the Commonwealth, industry and other key players to establish a national approach to streamline and harmonise development assessment procedures in Australia.

At its meeting on the 4 August 2005, the LGPMC acknowledged the work undertaken by the Development Assessment Forum and agreed each jurisdiction would take up the report findings in a way appropriate to that jurisdiction.

In line with this resolution and in the absence of the Commonwealth Government either assigning the responsibility for major airports development control to State and

Territory jurisdiction or adopting a system entirely parallel with those jurisdictions, it would not be unreasonable for it to nonetheless implement those principles that feature in the Model that are appropriate to its jurisdiction and which respond to the concerns of the jurisdictions.

This would include:

- Effective policy development, which must have regard to broader spatial, transport and infrastructure planning for the host metropolitan cities;
- Objective rules and tests against which Airport Master Plans and Major Development proposals are to be assessed;
- Notification that provides for third party involvement where assessment involves evaluating against competing policy objectives of major airport planning and metropolitan planning;
- Professional determination for most applications, which distances the process from political interference and vested interests; and
- Third party appeals in the circumstances contemplated by the Model.

If the Commonwealth Government considers that the Model is a sound basis upon which planning jurisdictions should be benchmarking their systems then the same should apply to the planning system established for major airport planning and development.

Australian Competition and Consumer Commission

The ACCC has, in its words, been monitoring the quality of services at airports since privatisation began in 1997, along with reporting of airport financial accounts and prices monitoring. This is amongst other things, to increase the transparency of airport performance and discourage them from providing unsatisfactory service standards.

In its quality of service report 2005/06, the ACCC states as a key finding that: "On a rating scale ranging from very poor to excellent, the overall ratings of the seven major airports have ranged from below satisfactory to good over the four-year period from 2002-03 to 2005/06. At the same time there has been a significant turn around in the financial fortunes of the major airports since the 11 September 2001, which should have resulted in a significant improvement in services and facilities".

The ACCC has instead found that at most of the seven major airports monitored, despite increased revenue in 2004/05 from both aeronautical and non-aeronautical activities, investment in aeronautical infrastructure, which is the rationale for allowing the diversification into all manner of non-aviation development to occur, has not been maintained to the service standards expected. In the case of Canberra airport, its rating continues to decrease to between poor and satisfactory (Source: ACCC Quality of service monitoring report 2005/06).

In fact in the case of four of the seven major airports, non-aeronautical activity provides a greater source of revenue than aeronautical activity, with Canberra being the highest, despite average revenue per passenger and aeronautical related revenue, such as taxi fees and car park charging, increasing in the range of 10 per

cent at Sydney airport to 28 per cent at Darwin airport. Even after accounting for increased security costs, in all cases except Perth, airport operating margins showed healthy increases as a result of revenue greatly outstripping moderate increases in operating expenses (Source: ACCC Airport price monitoring and financial reporting: 2004/05).

Yet it is in this environment that the Commonwealth, through the Bill, proposes to provide even greater protection to permit the major airports to conduct non-aviation developments that can have adverse consequences for the administrators of surrounding communities, without the expected investment in new infrastructure and improved services.

Fair Competition

There is a clear and distinct advantage that has been built into the sale by the Commonwealth Government of leases to the private sector for the major airports. Indeed the Commonwealth makes no secret of the fact that the airports were sold at a premium on the basis that non-aviation development in particular would occur outside of the planning controls of State and Territory planning jurisdictions. This is reinforced in the explanatory statement for the Bill (see below).

This would attract a premium because it places those non-aviation developments at a distinct advantage over their competitors. Not only are they not subject to the same level of scrutiny against the policy and regulatory settings of those who operate outside of the airports, but the airport operators, who are so adamant that they should remain outside of the framework that the rest of the community must adhere to, and which in their often stated view retards development, exploit these same planning systems to frustrate and impede their competitors.

This is best illustrated with the current actions being pursued by the Canberra Airport, which has lodged an appeal with the ACT Administrative Appeals Tribunal and commenced legal action before the ACT Supreme Court in an effort to hinder, if not prevent, the proponent of a competing discount factory outlet centre establishing at Section 48 Fyshwick. The site at Fyshwick permits, under the Territory Plan, the establishment of a DFO.

The Canberra Airport's real motivations in frustrating a competitor through the planning laws and policies from which it is exempt, are exposed through letters and advertisements to prospective tenants provided in Attachments I1 and I2. In the meantime it seeks to remove National Capital Authority controls and proceeds with developments that run contrary to the metropolitan planning intentions of the Territory Government whilst enjoying the shield of the Airports Act.

In so doing, these actions seriously threaten to dissuade investment in the Territory, which is seeking to diversify its economy and attract new capital into Canberra, put the Government and community to great expense, undermine statutory processes put in place to meet Commonwealth and industry requests for reform, and promote anti-competitive practices.

In this respect the Shopping Centre Council of Australia, in its submission to the draft Major Development Plan for the Brand Depot, states that its;

"....planning policy is 'one rule for all types of retail development'. The policy aims to ensure there is a level playing field for competitive retail development and that development proposals are assessed on a consistent basis. In this context, we have major concerns with the fact that retail development on airport land does not have to comply with the same planning rules as every other retail development.

We outlined the flaws in the land use and planning controls in the Airports Act in a submission to a review of the Act in 2003 and argued that there needs to be a much more rigorous and professional planning approval process for non-aviation development on airport land, that provides a level of scrutiny, community consultation and planning assessment equivalent to that applying to developments under state or local planning systems, and ensures that non-aviation developments on airport land are consistent with state and local planning strategies for the area."

The current discussions between the Commonwealth, States and Territories in the COAG regulation reform context is advocating a regulatory approach, that regulation options are adopted where they have the greatest net benefit to the community. In this case it seems the Commonwealth has gone against this principle and adopted a regulatory regime that benefited itself in the first instance and subsequently, the airport owners rather than the community. Further, in the COAG context, jurisdictions (including the Commonwealth) are looking to agree to a principle where before regulation is introduced an assessment would be made of whether a regulatory model already existed that would meet desired outcomes. In the case of airports it is quite clear that local planning regulations should have been considered and agreed to as the appropriate regulatory model and that such a requirement should now be introduced into the Airports Act as this would create an appropriate level playing field for competition between businesses operated within airports and outside.

In fact there are now a number of businesses that have in effect been deliberately provided with an exclusive 'regulatory advantage'. One that was removed through national competition policy and the principles of competitive neutrality from governments to ensure that they did not have a competitive advantage over the private sector in providing certain services.

Removal of National Capital Authority controls

Whilst the ACT Government and the ACT Planning and Land Authority have not always agreed with the decisions of the National Capital Authority in respect to developments and policy applying to the Canberra Airport, they have nonetheless considered the additional scrutiny provided by the National Capital Plan as being important given the role of the Plan in safeguarding matters of national significance for the nation's capital.

In this regard it is noted that the Bill proposes to remove the application of the National Capital Plan from the airport, to 'regularise' it with the development controls for other major airports. This flies in the face of the stated purpose of the National Capital Plan, which includes the setting out of detailed conditions of planning, design and development for designated areas, "....*which are those areas that have special*

characteristics of the National Capital". Included amongst the designated areas is the Canberra Airport.

Further, in its 2005/06 Annual Report (pp41), the National Capital Authority states that the types of works that are the subject of these provisions enables the Authority to influence qualities of planning, design and development that respect and enhance Canberra's status and character as the National Capital.

In its submission to the Productivity Commission's draft report on the review of price regulation of airport services dated October 2006, the Canberra Airport argues that its characteristics, in terms of activity, passengers, revenue, etc, make it *"....fundamentally different in nature to the major airports of Sydney, Melbourne, Brisbane, Perth and even Adelaide...."* to warrant it being excluded from the list of regulated airports for pricing.

This argument over whether or not 'one size fits all' has equal relevance to the subject at hand here. It would have been understood by the company acquiring the Canberra Airport that the facility came with National Capital Plan controls because an airport in the nation's capital, a city that has been planned from the outset to protect values of national significance, needs the additional level of attention. This is also one of the principal reasons for establishing a National Capital Authority.

The removal of the National Capital Plan diminishes the ability of an appropriately qualified planning jurisdiction to influence and monitor the nature of development regarded as one of the key entry points into the nation's capital. This point was obviously acknowledged at the time that the airport was sold and would have been reflected in the price paid, given that it was the only major airport that retained this level of planning oversight.

In the opinion of the ACT Government, no circumstance has changed to warrant the removal of the National Capital Plan and no premium has been paid by the operator of the airport, as was the case with the other airports, to have a development environment largely free from the type of planning analysis that the rest of the community is required to adhere to. This is akin to "winning Lotto 55,000 times" (see comments by the Committee Chair, p.13).

If the Commonwealth is of the view that the restrictions of the National Capital Plan should be removed in relation to the Canberra Airport then it is reasonable that the same provisions be removed from the balance of the ACT, other than National Land, so that the Territory can operate under the single planning control of the ACT Government. This would be consistent with part of the rationale for leaving airports outside of the State and Territory planning controls and COAG's decision 5.9 of 10 February 2006 to simplify and make development assessment more effective nationally.

Airports Amendment Bill 2006 Second Reading

This speech, presented by Mrs De-Anne Kelly MP, Parliamentary Secretary to the Minister for Transport and Regional Services, exposes what could only be described

as a deception that is occurring in respect to the planning and development of non-aviation activity at Australia's major airports.

The planning for aviation infrastructure and the planning for non-aviation development are two different things. The Commonwealth Government does not have nor should it have, the expertise or the appropriate level of control over the latter, as it is the nature of this development that has much broader implications than whether or not it provides a diversification of revenue to support airport operations.

The Commonwealth Government has consistently refused to participate in a discussion with State and Territory governments over the need for a national urban policy, on the basis that it is a matter for planning jurisdictions. Yet the Parliamentary Secretary states that the Commonwealth will continue to control planning and development on airport sites with no regard for the externalities that many of the non-aviation developments have upon the proper planning of cities. The Commonwealth cannot have it both ways. It either is involved in planning in which case it should actively participate in the discussion on national urban policy, or it is not and should get out of oversighting development on airports that in many cases will have a detrimental impact on the planning for the urban areas that surround them.

The Parliamentary Secretary's speech goes on to advise that development at airport sites includes non-aviation activity that is consistent with the long-term development of the airport. The Territory Government submits that many of these developments, which we see interstate now as including potentially residential care facilities and supermarkets, in addition to what we already have in the form of discount factory outlets and major office complexes having nothing to do with the development of the airport as an airport. More importantly, however, is that they do have a lot to do with the planning and development of a city, but are not expertly examined as part of the regime that assesses the impacts of development against properly considered strategic plans and policies prepared in consultation with the community.

The Commonwealth Government, contrary to the assurances of Mrs Kelly, has shown it is not genuine about consultation and the input of State and Territory governments, the Australian Local Government Association and surrounding communities continue to be ignored where the circumstances suit. This is because the Airports Act, even with the proposed amendments, fails to instil a statutory framework of community engagement, public consultation and formal review of decisions. Nor does it make provision for the appropriate recognition of a broader metropolitan planning framework within which development at airports should be examined to determine whether or not they compromise the principles and objectives for the sound and proper planning of a city as opposed to the confines of a singular site.

Given the extent which non-aviation development that is occurring in the nation's major airports and the contempt that operators have for local planning controls, it is appropriate that they in-turn not be afforded the privilege of being able to access the provisions within local jurisdictional planning systems to interfere with the aspirations and investment designs of potential commercial rivals.

Airport owners taking action against competitors in the private sector using local planning laws to have their developments approved is a breathtakingly hypocritical consequence of the manner in which the Commonwealth has dealt with the major airports. This Bill fails to address the product of this gross commercial hypocrisy.

The decision of the Federal Court in the case of Westfield Management Ltd v Brisbane Airport Corporation Ltd was more to do with the legitimacy of the Federal Airports Act excluding local planning jurisdiction from oversighting development at the airport than it was about airport development can include non-aviation uses. The latter simply follows from the decision of the Court that State-planning controls did not apply to airport land. It is therefore disingenuous of Mrs Kelly to portray the Court as sanctioning the appropriateness of non-aviation development at airports, because this was not the essence of the case.

Airport master plans do not constitute robust documents and in many cases would not measure up to equivalent documents under the systems operated by the States and Territories. They are loosely written so that they can be interpreted to mean many things and are frequently amended to accommodate the latest commercial opportunity that presents itself. If they are to be meaningful documents they should be required to respond directly to the strategic planning environment prepared by the appropriate planning jurisdiction and be structured to reflect use and development that is consistent with local planning policy and zone requirements.

In terms of the direct impacts of some of the more significant non-aviation developments on surrounding infrastructure, one needs go no further than refer to the Chair of the Standing Committee's own observations recorded in Hansard on the 30 October 2006 in respect to the road system around Canberra Airport:

> *"Does that avoid all the local planning? It is the greatest lurk since MISs were invented. Try it out here at bloody Canberra Airport! Try getting to the Canberra Airport at 8.30 in the morning. The Snow family won Lotto 55,000 times out there, because they avoided local environmental planning. Bugger the poor buggers that have got to drive along the road; that does not matter because they have avoided the planning! This is a repeat of that over there, I take it. Do they avoid all the local planning?"*

The answer to the question is yes and it is a scenario being played out at all of the major airports. Yet when the issue is raised legitimately through the Local Government and Planning Ministers' Council, the Commonwealth Minister declines to participate in finding solutions and leaves it to the States, Territories and the Australian Local Government Association to find alternative means of having their concerns addressed. Likewise when the planning Ministers' raise their concerns with the Australian Transport Council, its response through the Commonwealth Minister is to revamp the consultation guidelines, which provide no comfort whatsoever.

To date the relevant Ministers and agencies within the Commonwealth have portrayed the concerns being expressed as purely a transport issue because they relate to airports. They are not. By far and away the problems being experienced are external to the airport thresholds and related to metropolitan planning and development, which includes infrastructure such as transport.

Mrs Kelly's speech seeks to justify the perpetuation of a system that allows non-aviation related development at airport sites that jeopardise the planning of their host cities, largely avoid public scrutiny, impose on local infrastructure, create an unfair competitive advantage for the operators of the airport and at the same time allows those same operators to abuse the state planning systems that they are so keen to avoid in order to frustrate their competitors.

3. Recommendations

It is submitted that the Senate Standing Committee take the following recommendations into consideration:

That the Bill be amended to the extent that:

I. all airport non-aviation development (excluding defence or airport ancillary developments inside of terminal buildings) be planned as part of the region within which it is located and be subject to relevant State and Territory planning laws, policies and procedures;

II. any land the Commonwealth may subsequently acquire and lease to an airport lessee that is put to non-aviation use also be subject to relevant State and Territory Planning laws, policies and procedures;

III. all master plans and major planning proposals on airports as defined under the Act, be subject to a review by an independent panel that assesses the proposals, including their impact on surrounding land uses, relevant local government planning schemes and infrastructure;

IV. whilst 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 (ALC's) and what role State and Territory Government's are expected to play in relation to these conditions;

V. if the airport operators continue to enjoy the exclusion from review of their non-aviation related development proposals by State and Territory planning laws, policies and procedures, they be prevented from exercising a right under those same laws, policies and procedures to interfere with the business of those planning jurisdictions and frustrate the commercial intentions of potential rivals; and/or

VI. apply appropriate national competition policy, competitive neutrality and trade practices tests through the Bill to non-aviation developments at the major airports and to the access of airport operators to the planning laws and policies of the States and Territories to frustrate their competitors who must operate under those laws and policies;

VII. apply the relevant principles of the Development Assessment Forum's Development Assessment Leading Practice Model to the process for assessing major airport master planning and non-aviation development; and/or

VIII. make State and Territory Government's statutory referral authorities for major airport planning and development to operate in accordance with the Model;

IX. in the absence of Territory planning laws, policies and procedures applying to non-aviation related development activity at the Canberra Airport, the National Capital Plan continue to apply for non-aviation related proposals;

X. if the Commonwealth can justify that the National Capital Plan not apply to the Canberra Airport then equally it should not apply to designated land within the ACT so as to remove the regulatory burden of two planning systems within the Territory, consistent with the intent of COAG decision 5.9 of 10 February 2006 and the National Reform Agenda; and

XI. airport operators and the Commonwealth Government be required to make an equitable contribution to the cost of surrounding infrastructure based on an impact assessment of airport developments on existing infrastructure and non-airport users of that infrastructure.