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The Hon Bill Heffernan
Chair Senate Rural and Regional Affairs and Transport Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator Heffernan

I wish to raise with the committee a number of concerns in relation to the Airports Amendment Bill 2006. Particular concerns are in relation to the fact the Bill will not ensure non-aviation related development is assessed against local and regional controls, will not ensure adequate contribution to regional infrastructure and reduces opportunity for public input.

Key issues are summarised in this cover letter. Individual elements of the Bill are addressed in the attached document, with recommended changes. The attachment also comment on existing deficiencies with the Act, recommending that the Bill encompass further amendments in order to address these existing deficiencies. The comments are restricted to Part 5 – land use, planning and building controls - of the Act, and specifically to the Bill as it relates to sections 70 – 96 of the Act.

A fundamental component of land use and strategic planning systems in Australia, at least at local and State/Territory level, is the provision of information and public involvement associated with major strategic projects and developments. This public and stakeholder involvement ensures transparency and objectivity in decision making.

Local and State rules regarding land use and planning do not apply to the Commonwealth owned and leased federal airports. As a result there is potentially a great deal more opportunity and flexibility for non-aviation based development on the airport sites – because there are no local and State legal constraints, particularly in relation to land development.

These circumstances mean that there needs to be in place clear and transparent rules and processes, enshrined in legislation, that:

- provide the reasonable opportunity for local communities, local authorities and State and Territory governments to consider proposals and provide comments,
- ensure master plans and non-aviation based development, while occurring on Commonwealth land, is nonetheless assessed against the same local and regional strategies, plans and controls that master plans and major developments in the areas surrounding the airports are measured against.

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Detailed and meaningful consultation with State/Territory and local government should be a critical component of the consultation process associated with master plans and major development plans on federal airports.

There is a need for these governments, which provide complementary off-airport infrastructure, to be fully aware of an airport-lessee company's proposals, have an opportunity to provide comments and options and be engaged in the consultation process. Development on airport land can affect broader regional planning and have an impact on infrastructure outside the airport. Therefore, before a master plan or major development plan can be approved, consultation on these matters must take place with State/Territory and local governments to obtain consistency with their planning strategies. For these very reasons, the requirements for engagement and consultation should be embodied in the Airports Act.

The existing Airports Act lacks the necessary force to ensure that airport-lessee companies and the Minister properly take into account local and State/Territory land use and planning strategies, plans and controls. The current Airports Amendments Bill 2006 does not address this current deficiency. It is the Council's submission that the Bill should be amended to address these deficiencies, as outlined above.

It is also the City's submission that the amendments contained in the Bill regarding reduced community consultation periods are unjustified and unacceptable. Historically there has been a very high level of community, state and local government interest in the master plans and major development plans – which in turn arises from the demonstrable environmental and economic impacts. The major development plans for Sydney Airport, outlined in the body of this submission, are an example of this.

The Bill, in raising the dollar threshold for major airport development from \$10M to \$20M, also significantly reduces the capacity for community and local and State government to be informed and to make comment on non-aviation based development that may directly impact on the areas and region surrounding the airports. For example a \$19M non-aviation based development, incorporating major retail development could potentially have a significant impact on surrounding businesses and the local economy, probably most pronounced in regional locations. Under the amendments contained in the Bill such a proposal would not be notified.

The recently released Airport Development Consultation Guidelines address some of the above mention concerns in relation to consultation with state and local governments. However, guidelines are not enforceable and should be made mandatory through the bill to ensure they are effective.

As an example of the destructive impact of development that is inconsistent with state and local planning laws I've include a copy of the City of Sydney submission on recent preliminary major development plans for non-aviation related development at Sydney Airport.

I would sincerely appreciate all issues raised in this submission be given serious consideration.

Yours sincerely



Garry Warding
Acting Chief Executive Officer

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1.0 Airports Amendment Bill 2006

The Explanatory Memorandum to the Bill states that the purpose of the Bill "is to improve the land use planning system in place at the leased federal airports through increasing the focus on strategic planning, simplifying planning controls and improving development assessment processes."

These are worthy purposes to pursue, although, based on the content of the Bill, unlikely to be achieved to the extent necessary, as described in the subsequent sections of this submission.

1.1 Part 5 of the Act deals with land use, planning and building controls. Division 3 of Part 5 deals with Airport master plans. The Bill proposes to insert a new subsection 70(2), which sets out the purposes of a final master plan as:

The purposes of a final master plan for an airport are:

- (a) to establish the strategic direction for efficient and economic development at the airport over the planning period of the plan; and*
- (b) to provide for the development of additional uses of the airport site; and*
- (c) to indicate to the public the intended uses of the airport site; and*
- (d) to reduce potential conflicts between uses of the airport site, and to ensure that uses of the airport site are compatible with the areas surrounding the airport.*

Comment:

Given a history where there has sometimes been a lack of adequate consideration given by master plans to the local and State strategies for land use and planning for regions in which the airports are located, this subsection requires further amendment.

Recommendation:

The wording of proposed subsection 70 (2) should be amended as follows:

- (a) to establish the strategic direction for efficient and economic development at the airport, within the context of the planning and economic region within which the airport is located, over the planning period of the plan; and;*
- (b) to provide for the development of additional uses of the airport site, consistent with local and State planning and land use strategies for the region in which the airport is located;*

1.2 Section 71 of the Act deals with contents of draft or final master plans. The Bill proposes a range of amendments to this section.

Comment:

In relation to section 71 (2), further amendment, in addition to those matters contained in the Bill, is required. The need for this again results from a lack of adequate consideration to the land use and planning strategies and plans in place, at both a local

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and State level, for the immediate area and region in which the airport is located. In the case of Sydney Airport, the master planning and subsequent major development proposals have been framed without adequate regard to the relevant planning strategies, particularly for future economic growth and integration of transport and development, in the wider region in which the airport sits. Effectively, the master planning allows the airport-lessee company to propose whatever it deems likely to be profitable, exploiting the fact that the Commonwealth site is not subject to local and State planning controls.

Recommendation:

Section 71 (2) should contain the following provisions:

Any non-aviation related development within any section of the airport is to be consistent with, and supported by, local and State land use, planning strategies and plans for the surrounding area and region in which the airport is located.

and;

The airport-lessee company's assessment of the need for mitigation of the effects of carrying out non-aviation based development, and in particular the need for contributions towards essential infrastructure provision and upgrades in order to adequately service non-aviation based development in the future.

- 1.3 Section 79 of the Act includes provisions relating to public involvement and comment on a draft master plan. The Bill proposes a range of amendments including a reduction in the period available for public inspection and provision of comments from 90 days to 45 days. Difficulties with public consultation are illustrated in the appendix to this submission.

Comment:

There is no adequate justification for this reduction in the time available for the public (and local and State authorities) to comment. Given the level of interest and comment that airport master plans, and amendments to master plans, generate, together with the fact that these are plans dealing with 20 year timeframes, it is unreasonable and inappropriate to reduce the comments period.

For example the master plan for Sydney Airport (and subsequent major development plans) has required extensive assessment and comment from a range of State and local authorities, including detailed technical analysis and often reporting to specialist committees and formal meetings (in the case of councils— formal Council meetings conducted on a regular meeting cycle).

Airport master plans will determine the range, scale and location of development, including non-aviation based development, over a 20 year period that will almost certainly have direct long term impacts on the surrounding area and region, and most particularly, in a region such as Sydney, on hundreds of thousands of residents. Reducing the period available to analyse and comment on these plans cannot be justified.

In addition to the above comments, it is the Council's opinion that the Bill should be used as an opportunity to address existing shortcomings in relation to the consultation process associated with master plans. It is the Council's view that Section 79 (or an

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appropriate alternative section) should specifically require that the airport-lessee company must consult local authorities and the State or Territory government to obtain consistency with their planning strategies.

The remainder of proposed amendments to section 79 of the Act (ie. those other than the change from 90 days to 45 days) envisaged in the Bill do not raise any objection. The requirements for information being available on the website and the need for the company to demonstrate due regard to public comments, are supported.

Recommendations:

- The amendment proposing to reduce the public consultation period associated with draft master plans from 90 days to 45 days should not proceed.
- The Act should be amended to require:
 - Notification in writing of the State government and surrounding local authorities of the draft master plan;
 - Invitations to these bodies to make comments;
 - The airport-lessee company to demonstrate to the Minister how the company has given due regard to these comments.

1.4 The amendments to sections 80, 81 and 84, as contained in the Bill, are supported.

1.5 Section 84A deals with public comment in relation to minor variations to master plans.

Comment:

Once again there is no justification for the reduction in time available for the public display and comment on minor variations to a final master plan. A reduction from 30 to 15 days will not allow adequate opportunity for meaningful analysis and comment, particularly for local and State authorities that have in place established timelines for reporting to committees etc.

Consistent with the comments above in relation to section 79, it is the Council's opinion that the Bill should include further amendments that will require that the airport-lessee company to consult directly with State and local government.

Recommendation:

- The amendment proposing to reduce the public consultation period associated with minor variations to master plans from 30 days to 15 days should not proceed.
- The Act should be amended to require:
 - Notification in writing of the State government and surrounding local authorities of a variation to a master plan;
 - Invitations to these bodies to make comments;

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- The airport-lessee company to demonstrate to the Minister how the company has given due regard to these comments.
- 1.6 There is no objection raised to the amendments contained in the Bill relating to section 86.
- 1.7 Section 89 of the Act provides the meaning of major airport development. Subsequent sections then deal with the process to be followed for the public involvement, assessment and approval of major development plans.

The Bill proposes to alter one of the factors determining when a major development plan is needed – the construction cost threshold is proposed to be increased from \$10M to \$20M (S89 (1)). The justification for this increase is that construction costs have increased in the time since the Act commenced.

In conjunction with the proposed amendment to 89 (1), a new subsection 89 (2A) is proposed which is intended to clarify that the cost of construction is to include all associated building activities and a new subsection 89 (4) is included to provide that a combination of individual building projects or developments which singly do not exceed the dollar threshold, but which are consecutive or concurrent projects or extensions to existing buildings, may be determined to be a major airport development.

Comment:

While it is acknowledged that construction costs have increased in the time since the Act commenced, the Council is concerned that raising the dollar threshold to the extent proposed may result in significant non-aviation based developments, up to the value of \$20M, being approved without any consultation with local communities or adequate assessment of potential impacts by State and local government.

The potential impact of developments up to the value \$20M may be greatest in regional areas, particularly the economic impact on existing businesses and the local economy. Even in major urban areas, a major development worth up \$20M in construction costs can have a significant impact on the local area, both environmentally and economically.

Sub-section 82(A) has been included in the Bill in order to specify that constructing “a thing includes carrying out all associated building activities.” Building activities, in turn are defined in section 98 of the Act as follows:

Building activities

- (1) For the purposes of this Division, the following activities are building activities:
- (a) constructing buildings or other structures;
 - (b) altering the structure of buildings or other structures;
 - (c) undertaking, constructing or altering earthworks (whether or not in relation to buildings or other structures);
 - (d) undertaking, constructing or altering engineering works, electrical works or hydraulic works (whether or not in relation to buildings or other structures);
 - (e) demolishing, destroying, dismantling or removing:
 - (i) buildings or other structures; or
 - (ii) earthworks; or
 - (iii) engineering works; or
 - (iv) electrical works; or
 - (v) hydraulic works.

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Based on estimated construction costs for simple large floor-plate buildings, such as those commonly constructed for bulky goods and large scale retail outlets, of \$1800-\$2000 per square metre, it would be possible to construct up to 10,000 m² of floor space without the need to follow the provisions associated with major development. This would mean local businesses and communities would not be provided with relevant information or afforded the opportunity to comment. Such an approach is contrary to the fundamental principles of information provision and consultation, established in all States and by local authorities.

Rather than use the blunt approach adopted in the Bill, it is recommended that a more sophisticated and sensible approach would be to index the dollar threshold to actual increases in construction costs, as are regularly calculated and publicly available.

Recommendations:

- The proposed amendment to increase the dollar threshold for major airport development from \$10M to \$20M not proceed.
- That an alternative approach to determining the value of major airport development, based on indexed fluctuations in construction costs from this current period on (not backdated) be introduced.

- 1.8 The amendments to section 91, as contained in the Bill, and as they relate to the contents of a major development plan, do not raise objection. Notwithstanding this, it is considered that the Bill misses an opportunity to include further amendments to the Act, in order to deliver the stated purpose *to improve the land use planning system in place through increasing the focus on strategic planning, simplifying planning controls and improving development assessment processes.*

Comment:

At present section 91 does not require the content of a major development plan to properly and fully consider and assess the planning strategies and regime in place for the area around the airport and for the wider region in which the airport is located.

Recommendation:

Section 91 (4) should be amended along the following lines:

- (4) *In specifying a particular objective or proposal covered by paragraph (1)(a) or (c), or assessment in relation to 1 (h) and (j), a major development plan, or a draft of such a plan, must address the extent (if any) of consistency with planning schemes in force under a law of the State or Territory, as well as local, regional and State or Territory planning, land use and transport strategies and plans, including publicly exhibited draft documents, for the area and region in which the airport is located.*

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- 1.9 Section 92 of the Act outlines the process for obtaining public comment on a draft major development plan. The Bill proposes to reduce the period for inspection and comment from 90 days to 45 days.

Comment:

Consistent with the comments provided above in relation to the reduction in time for public comments on draft master plans, there is no adequate justification for a reduced period for comment on major development plans. There have been proposed some extraordinarily large non-aviation based developments on airport land, requiring detailed analysis and assessment at both a local community level and by State and local authorities.

It is unreasonable to expect the consideration of development (if the Bill proceeds – development over \$20M) to be conducted in a short timeframe of 45 days. These developments have been shown to have the potential to significantly impact on the local and regional environment and economy and they require time for due consideration. As stated above, local authorities in particular have in place established timetables for reporting and consideration of matters at committee and Council meetings.

Recent examples at Sydney Airport that demonstrate the unreasonable timeframe proposed in the Bill include: (Refer Appendix for a copy of the City submission on these proposals)

Preliminary Major Development Plan Option 1 - Aviation and Retail Business Park (including Offices)

- a retail precinct with a gross leasable floor area of 59,000m² including an outlet centre, bulky goods/homemaker centre and a discount store and parking spaces for 2,575 cars and 4 coaches;
- an office precinct with four two-storey buildings for office/commercial uses with a total gross leasable floor area of 8,840 m² and parking spaces for 233 cars.

Preliminary Major Development Plan Option 2 - Aviation and Retail Business Park - (including Cinema and Supermarket):

- an integrated retail complex with a gross leasable floor area of 62,390m² including an outlet centre, bulky goods/homemaker centre, supermarket and food specialty shops, and a cinema complex with a total capacity of 1,500 seats;
- parking spaces for 3,145 cars and 4 coaches.

These proposals required a significant amount of time and effort in technical assessment, coordination of input across a number of State authorities and local authorities, as well as time to prepare public reports for consideration at public committee and Council meetings, consideration by State Ministers etc. It is unreasonable to expect that developments of this scale can be responded to within the 45 day timeframe.

The remainder of amendments to section 92 proposed in the Bill raise no objection.

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Recommendations:

- The amendment proposing to reduce the public consultation period associated with major development plans from 90 days to 45 days should not proceed.
- The Act should be amended to require:
 - Notification in writing of the State government and surrounding local authorities of major development plans;
 - Invitations to these bodies to make comments;
 - The airport-lessee company to demonstrate to the Minister how the company has given due regard to these comments.

1.10 No objections are raised to the amendments to section 93.

1.11 The proposed amendments to section 94, contained in the Bill do not raise any objection. Notwithstanding this, the Council is of the opinion that further amendments are appropriate.

Comment:

It is considered that section 94 (3), dealing with the matters that the Minister must have regard to in deciding whether to approve a plan, should be expanded to include additional provisions. Such an inclusion would ensure the provisions in section 94 are consistent with the provisions in section 81 dealing with matters the Minister must have regard to in deciding whether to approve a draft master plan.

Recommendation:

That the Bill include an additional amendment to section 94 (3) requiring the Minister to consider:

The effect that carrying out the development would be likely to have on the use of land in areas surrounding the airport and the extent to which the proposals are consistent with state and local planning strategies

1.12 No objections are raised to the proposed amendments to section 95.

1.13 Section 95A of the Act deals with public comments relating to the minor variation of a major development plan. The Bill proposes to reduce the time available for public comment from 30 to 15 days.

Comment:

Given that the Bill proposes that the dollar threshold for major development increase to \$20M, it is quite possible that a minor variation to a major development plan could in fact have significant implications. Provision of 15 days for public comment does not relate to the magnitude and potential impact of development, even minor variations. It is a timeframe more akin to development for the purposes of minor residential development (usually a 14 day public exhibition and comment period). For the reasons already outlined in the point above, there is no justifiable reason to pull back on the opportunity for public notification and comment.

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Also consistent with the comments outlined above, local and State authorities should be specifically nominated for consultation, rather than left to be possibly included in the general public notification.

There is no objection to the remainder of the Bill amendments relating to section 95A.

Recommendations:

- The amendment proposing to reduce the public consultation period associated with minor variations to major development plans from 30 days to 15 days should not proceed.
- The Act should be amended to require:
 - Notification in writing of the State government and surrounding local authorities of minor variations to major development plans;
 - Invitations to these bodies to make comments;
 - The airport-lessee company to demonstrate to the Minister how the company has given due regard to these comments.

1.14 No objections are raised in relation to the proposed amendments to section 96, as outlined in the Bill.

Appendix

**SYDNEY AIRPORT
PRELIMINARY MAJOR DEVELOPMENT PLAN(S) -
City of Sydney Submission**