

**McMahon, Rosalind (SEN)**

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**From:** Tony Williams [tony@eir.com.au]  
**Sent:** Monday, 12 February 2007 12:01 AM  
**To:** RRAT, Committee (SEN)  
**Cc:** Rockdale Assistant General Manager; Marrickville Director Corporate Services  
**Subject:** RRA&T Inquiry - Airports Bill 2006: Submission from Rockdale City and Marrickville Councils - with attachments

Ms Jeanette Radcliffe  
Committee Secretary  
Senate Rural and Regional Affairs and Transport Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Ms Radcliffe

Further to my email to you on Friday 9 February 2006, may I now inform you that the entire 28 MB joint submission, including Attachments, from Rockdale City and Marrickville Councils, may be downloaded from the following FTP address:

[http://home.exetel.com.au/aden/RRA&T\\_Airports\\_Amendment\\_Bill\\_2006\\_-\\_Rockdale\\_&\\_Marrickville.pdf](http://home.exetel.com.au/aden/RRA&T_Airports_Amendment_Bill_2006_-_Rockdale_&_Marrickville.pdf)

This URL includes an underscore between each word, so I suggest that you copy the text above rather than re-typing what appears.

I will contact you by telephone early Monday morning to confirm that the Committee is prepared to receive the submission and to discuss any preferences which you may have in making it available to both Committee Members and the Public.

May I also suggest that the most recent version of Adobe Acrobat Reader be utilised in accessing the document.

Regards

Tony Williams  
Executive Director  
Environmental Impact Reports Pty Ltd

2007-02-12 00:00 Monday

**McMahon, Rosalind (SEN)**

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**From:** Tony Williams [tony@eir.com.au]  
**Sent:** Friday, 9 February 2007 3:19 PM  
**To:** RRAT, Committee (SEN)  
**Cc:** Rockdale General Manager; Marrickville General Manager  
**Subject:** RRA&T Inquiry - Airports Bill 2006: Submission from Rockdale City and Marrickville Councils

Ms Jeanette Radcliffe  
Committee Secretary  
Senate Rural and Regional Affairs and Transport Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Ms Radcliffe

Attached is a joint submission to the Senate Rural and Regional Affairs and Transport Committee Inquiry into the Airports Bill 2006 which has been prepared and is presented on behalf of Rockdale City Council and Marrickville Council by Mr A G Williams, Executive Director, Environmental Impact Reports Pty Ltd.

Please note that this submission has been authorised by the Mayor and General Manager of each Council and this is confirmed by the Introduction on page 2 which is signed and dated by both General Managers. A summary of Submissions appears at page 4. The PDF is bookmarked and may readily be navigated.

The complete submission includes all references in their entirety comprising 2,367 attached PDF pages which are all hyperlinked to the submission so that all quotations and other material which is referred to may be seen in its context. The complete document is some 25 MB and therefore too large to transmit by email. It is being forwarded to you as a 'credit card' sized CD of which there will initially be 6 copies. As many copies as you may require will be provided on request. Arrangements can be made to put this document onto a FTP site if you wish. However, all quoted material appears in full in the submission and the 23 pages without attachments may be seen as standing alone if you wish and the attachments may be regarded as being only for the convenience of Committee Members.

Please contact me if I can be of any further assistance.

Regards

Tony Williams  
Executive Director  
Environmental Impact Reports Pty Ltd  
PO Box 24 Vaucluse NSW 2030 ph (02) 9337-6777      2007-02-09 15:18 Friday

Attached:      Rockdale & Marrickville Submissions to Senate Inquiry - Airports Bill 2006 (no attachments).pdf

Rockdale City Council

Marrickville Council

SUBMISSIONS

to

Senate Rural and Regional Affairs and Transport  
Committee

INQUIRY

AIRPORTS BILL 2006

The Council of Rockdale City and the Council of Marrickville jointly support the submissions made by the Australian Mayoral Aviation Council #16 and the Southern Sydney Regional Organisation of Councils #50 of which both Councils are members. This is particularly so with respect to land use planning and opposition to a reduction in the times allowed for comment on proposals.

Mindful of the additional influence which any observations or conclusions of the Committee may have on Regulation and Implementation, the two Councils further submit that the Senate Rural and Regional Affairs and Transport Committee inquiring into the Airports Amendment Bill 2006 make eight recommendations to Parliament with particular emphasis on rate-equivalent payments and charges:-

Mr A G Williams, Executive Director, Environmental Impact Reports Pty Ltd has been authorised by the Mayor and General Manager of both Councils to present these submissions jointly on behalf of both Councils and to give evidence to the Senate Committee if invited to do so.



2007-02-09

Chris Watson  
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2007-02-09

Candy Nay  
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MARRICKVILLE



ROCKDALE

BOTANY  
BAY

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## SUMMARY OF SUBMISSIONS

### 1 **Government Policy**

That the *Airports Act 1996* be amended to require the Administering Government Department to perform its functions in a manner that is, to the extent permitted by the Act, in accordance with the policies of the Commonwealth Government.

### 2 **Airport Lease Agreements**

That the Senate Committee determine whether the equitable basis of the Commonwealth's Policy on payments equivalent to general rates has been defeated by the framing of Airport Lease Agreements to exclude a component for the cost of rates which is in full compliance with all elements of the Commonwealth's Policy – and if so, what legislative, regulatory or administrative action can now be taken and should now be recommended to rectify this.

### 3 **Concurrent operation of State/Territory laws**

That the *Airports Act 1996* be amended to specify the intention of Parliament that Part 2 of the Act is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Part.

### 4 **Exclusive Powers of the Commonwealth**

That the *Airports Act 1996* be amended to acknowledge that airport expansion land subsequently acquired by the Commonwealth for lease as an airport site, is not a place acquired by the Commonwealth for public purposes.

### 5 **Payments to Local Authorities - Taxes**

That the *Airports Act 1996* be amended to specify the intention of Parliament that State or Territory taxes in the form of Local Council Rates apply to each Airport Site and that consequential amendment be made to the *Commonwealth Places (Mirror Taxes) Regulations 2000*.

### 6 **Payments to Local Authorities - Charges**

That the *Airports Act 1996* be amended to provide for the assessment by relevant Local Councils of an amount to be applied for public purposes with respect to a development on an Airport Site and for either the actual or equivalent payment of that amount, to the relevant Council, in circumstances where such a charge or fee, not being a tax, would otherwise be precluded by the exclusion of a State/Territory law.

### 7 **Aircraft Flight Paths**

That the *Airports Act 1996* be amended to place a responsibility on airports to obtain and disclose to the public, detailed information on current and proposed flight paths within 30 nm of an airport, sufficient to facilitate land use planning by State and Local Governments together with property location and construction choices by the wider community.

### 8 **Australian Noise Exposure Forecasts**

That the *Airports Act 1996* be amended to provide for Regulations covering the production, authorisation and public access to source information and computation of Australian Noise Exposure Forecasts (ANEF).

## Submission 1 Government Policy

That the *Airports Act 1996* be amended to require the Administering Government Department to perform its functions in a manner that is, to the extent permitted by the Act, in accordance with the policies of the Commonwealth Government.

### 1.01 The proposed provision is similar to s 7(2)(a) of the *Federal Airports Corporation Act 1986* (repealed).

7.(2) *The Corporation shall endeavour to perform its functions in a manner that -*  
 (a) *is in accordance with the policies of the Commonwealth Government; ...*

### 1.02 Successive Commonwealth Governments have all held the same Policy on payments to State Local Authorities for many decades.

The Policy, as it applied to Commonwealth-owned airports on 1 July 1980 was expressed in Finance Direction, Section 13 – Special Classes of Claims [19800701 FIN]:

### 1.03 The Policy, as it applied to Commonwealth-owned airports in November 1989 and has continued to do so ever since that date, was last expressed in Finance Circular 1989/24 [20030819 DOFA] in reply to [20030704 EIR]

#### GENERAL RATES

13.24 *Section 114 of the Constitution precludes the States from imposing any tax on the property of the Commonwealth without the consent of the Commonwealth Parliament. This means that the Commonwealth is immune from legal liability for general rates levied by local authorities in accordance with State Legislation. Notwithstanding this Constitutional immunity, the Commonwealth has had, for many years, a policy based on equity grounds that allows the gratuitous payment to local authorities of amounts equivalent to an appropriate amount of rates in certain circumstances. Those circumstances - which are intended to preserve the Commonwealth's Constitutional immunity - arise where such payments will be demonstrably passed on (over time, if necessary) to third parties through the rentals collected by the Commonwealth on the property or in the structure of charges or prices to clients or customers in connection with the Commonwealth's commercial use of the property. In other words, the burden of such payments will not ultimately rest on the Commonwealth. The following Direction reflects this policy; any necessary practical advice on its application, including first time claims, unusual or substantial increases in claims, or disputes on the valuation of properties, should be obtained from the Australian Property Group.*

#### DIRECTION 13G

*Payments equivalent to General Rates shall be made to Local Authorities for property (or the relevant portion of it) owned or leased by the Commonwealth where:*

(a) *A Lessee or Tenant pays a charge or rental for the property to the Commonwealth which expressly or implicitly includes a component for the cost of Rates. (Note: Departments must not attempt to defeat the equitable basis of the Commonwealth's Policy by framing Leases or Tenancy Agreements to exclude this component);*

(b) *The property is used for a Departmental commercial undertaking the substantial part of whose activity is in providing goods and services to other than Commonwealth Departments. (The presumption is that payments the equivalent to Rates will be taken into account in undertaking the pricing structure);*

(c) *The Commonwealth is recovering from third parties its costs of providing facilities and services, (payments for Rates can be accepted as a cost to be recovered from third parties); or*

(d) *A Department's property is used principally for residential or domestic purposes and for which the occupants are charged rent or fees based on the cost or outgoings of maintaining this property.*

#### **1.04 The repeal of the *Audit Act 1901* did not change the Policy of the Government.**

While the former Finance Direction 13G under the *Audit Act 1901* expressed the Policy, it did not make the Policy and the Policy continued unchanged following the repeal of the *Audit Act 1901* by the *Audit (Transitional and Miscellaneous) Amendment Act 1997*. [19980812 DOFA] in reply to [19980810 EIR]

#### **1.05 All interested parties were given to understand that the airport privatisation process would ensure that Local Council Rates would be paid in full (directly or indirectly) with respect to all Commonwealth-owned Airports.** [19970411 MIN] in reply to [19970128 EIR]

- the Senate Rural and Regional Affairs and Transport Committee inquiring into the Airports Act 1996 was provided with this advice; [19960800 RRAT Pars 4.15 to 4.16] [19970411 MIN]
- Parliament was informed by the Committee Report; [19960800 RRAT]
- Airport Tenderers were told to allow for the payment of all State Taxes and Charges [19970411 MIN]
- Local Councils, through their Consultant, were assured by the Minister's Aviation Adviser that this would be the case [19970411 MIN].
- Lease Agreements all contain two appropriate provisions: [19980630 DOTARS]

Lease clause 4. *RELEASE AND INDEMNITY*

*Notwithstanding any other provision of this Lease, as and from Grant Time, the Lessee takes and is subject to the same responsibilities with regard to person and property and otherwise to which the Lessee would be subject if during the Term the Lessee were the owner of the freehold of the Airport Site and the Lessee: ...*

Lease clause 26. *RATES AND LAND TAX AND TAXES*

*26.1 Payment of Rates and Land Tax and Taxes*

*The Lessee must pay, on or before the due date, all Rates, Land Tax and Taxes without contribution from the Lessor.*

#### **1.06 However clauses 4 and 26.1 of the Airport Lease Agreement (quoted above) are treated as inoperative due to relevant provisions of the Australian Constitution:**

52 *Exclusive powers of the Parliament (emphasis added)*

*The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to:*

- (i) *the seat of government of the Commonwealth, and all places acquired by the Commonwealth **for public purposes**; ...*



109 *Inconsistency of laws*

*When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.*

114 *States may not raise forces. Taxation of property of Commonwealth or State (emphasis added)*

*A State shall not, **without the consent of the Parliament of the Commonwealth**, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.*

**1.07 Some Commonwealth legislation is also relevant:**

- *Commonwealth Places (Application of Laws) Act 1970*
- *Commonwealth Places (Mirror Taxes) Act 1998*
- *Airports Act 1996*
- *Financial Management and Accountability Act 1997*

**1.08 Rate-equivalent payments with respect to Sydney Airport (and probably most if not all other Commonwealth-owned Airports) are currently not being made in accordance with the current Government Policy as it was most recently expressed in Finance Direction 13G and has remained unaltered since.**

- It may be that current legislation and/or Airport Lease Agreements prevent this – in which case Submission 6 proposes that any necessary legislative amendments be made.
- If the power to comply with current Government Policy does exist, then it may just be the absence of any legislative provision imposing such a duty on the administering department which is lacking – which is the reason for this Submission 1.

## Submission 2      Airport Lease Agreements

That the Senate Committee determine whether the equitable basis of the Commonwealth's Policy on payments equivalent to general rates has been defeated by the framing of Airport Lease Agreements to exclude a component for the cost of rates which is in full compliance with all elements of the Commonwealth's Policy – and if so, what legislative, regulatory or administrative action can now be taken and should now be recommended to rectify this.

### 2.01 Government Policy recognises that Departments may be tempted and specifically prohibits such action:

*FORMER FINANCE DIRECTION 13G (in part) [19891100 FIN]*

*Departments must not attempt to defeat the equitable basis of the Commonwealth's Policy by framing Leases or Tenancy Agreements to exclude this [cost of rates] component.*

### 2.02 Less than 15% of airport land within Rockdale is subject to rate-equivalent payments.

- the area of airport land within Rockdale City LGA is 254.27 ha
- of this area, for the 2006-07 rate year, payments covered only 36.97 ha.
- the same calculation cannot be made for Marrickville because the areas of some sites for which 2006-07 payments were received, are not known.

### 2.03 The current basis for rate-equivalent payments by the Airport Lessee to Local Councils with respect to Sydney Airport, is sub-clause 26.2(a) of the Airport Lease Agreement: [19980630 DOTARS]

26.2 *Ex Gratia payment in lieu of Rates and Land Tax*

(a) *Where Rates are not payable under sub-clause 26.1 because the Airport Site is owned by the Commonwealth, the Lessee must promptly pay to the relevant Governmental Authority such amount as may be notified to the Lessee by such Governmental Authority as being equivalent to the amount which would be payable for rates as if such rates were leviable or payable in respect of those parts of the Airport Site:*

(i) *which are sub-leased to tenants; or*

(ii) *on which trading or financial operations are undertaken including but not limited to retail outlets and concessions, car parks and valet car parks, golf courses and turf farms, but excluding runways, taxiways, aprons, roads, vacant land, buffer zones and grass verges, and land identified in the airport Master Plan for these purposes,*

*unless these areas are occupied by the Commonwealth or an authority constituted under Commonwealth law which is excluded from paying rates by Commonwealth policy or law. The Lessee must use all reasonable endeavours to enter into an agreement with the relevant Governmental Authority, body or person to make such payments.*

## **2.04 The end result is that most of the airport land is exempted from rate-equivalent payments by the Airport Lessee.**

Local Councils have great difficulty in establishing what parts of the airport are subject to rate-equivalent payments by the Airport Lessee, in obtaining the information required for the valuation of those parcels and in receiving payment from the Airport Lessee by the due dates or indeed at all. Airport Lessees suffer no penalty for failure to comply with this provision of the Airport Lease. The Department of Transport and Regional Services asserts that it has no responsibility to mediate and even though Councils were denied access to this agreement for many years and are not a party to the Airport Lease Agreement – the Department maintains it is entirely a matter for Councils to reach a separate agreement with the Airport Lessee and the Department confirms, in its response to Marrickville Council [20030703 MMC] is not responsible for any payments not required to be made under the Airport Lease or for payments which are required to be made by the Airport Lessee but are not made.

*The amount of payment in lieu of rates is therefore a matter for negotiation between SACL and Council, and the Airport Lease does not give the Department a role with respect to formal mediation, in the event that SACL and Council cannot reach agreement on the payable amount.* [20030911 DOTARS]

A new Finance Circular has yet to be issued by the Department of Finance and Administrative Services [20030819 DOFA] and it is unknown if an equivalent to the Working Arrangements under Finance Direction 13G will be produced. DOFA seems reluctant to become involved to the same extent as the formerly separate Department of Finance and Department of Administrative Services.

*I refer to your letter of 3 February 2004, submitting a claim for payment equivalent to general rates, on behalf of the Marrickville Council. Your letter refers to this Department being responsible for the Commonwealth's policy on payment to local councils in lieu of rates. While that is correct, the Department of Finance and Administration is not normally directly involved in particular applications of that policy, and in this case, in matters relating to the Commonwealth ownership and leasing of airports.* [20040213 DOFA] in reply to [20040203 EIR]

## **2.05 Shortcomings in the Airport Lease Agreements remained undiscovered for some considerable time due to their treatment as confidential by the Commonwealth.**

The Government has consistently maintained that Airport Lease Agreements are confidential and has refused to provide a copy to Local Councils of the original sale/privatisation airport lease or any subsequent airport leases which may have been entered into.

*As per standard commercial practice, the terms of the airport lease between the Commonwealth and the bidders is confidential.* [19970411 MIN] in reply to [19970128 EIR]

In New South Wales, Councils have received extracts of Airport Leases which comprise only clause 26 and not the boarder obligations of clause 4 - in correspondence from the Airport Lessee. More recently, Councils have been able to obtain copies of leases which were deposited with the NSW Registrar General.

**2.06 The Department of Transport in reply to Marrickville Council [20030703 MMC] does not accept responsibility for any payments not made in accordance with Airport Lease Agreements.**

*In relation to Council's understanding that the Department "is responsible for the payment to Council of an amount equivalent to rates on all land to which government policy requires the payments to be made", and that the Department should be liable to pay any shortfall between the payments made by the ALC and the amount claimed by Council, you may wish to note that, for constitutional reasons, the Australian Government is not subject to state taxes, and hence is under no liability in respect of council rates. Any policy promulgated by the Australian Government does not change this, and the policy to which Council refers does not provide a basis for any liability on the Government in respect of council rates.*

*In addition, the Airport Lease for Sydney Airport, in particular Clause 4 (Release and Indemnity), has been drafted to ensure that SACL takes full responsibility for any claims made in relation to the airport site, and that the Commonwealth has no residual liability.*

*The amount of payment in lieu of rates is therefore a matter for negotiation between SACL and Council, and the Airport Lease does not give the Department a role with respect to formal mediation, in the event that SACL and Council cannot reach agreement on the payable amount. However Clause 26.2(a) of the Lease requires the ALC to promptly pay the Council the amount which Council notifies to be the appropriate payable amount, and I am writing to SACL reminding them of this Lease obligation. I attach a copy of that letter for your information.*

[20030911 DOTARS] (emphasis added)

**2.07 The Department of Transport has encouraged Airport Lessees to seek a reduction in the limited rate-equivalent payments which are required to be made to Local Authorities by Airport Lessees under Airport Lease Agreements and this is consistently, but without foundation, reflected in correspondence from Sydney Airport Corporation Ltd to Councils.**

*It is generally anticipated that in making these payments the airport lessee could expect the councils to provide services normally funded from rates on a similar basis to those provided to off-airport rate payers. Where it can be shown that the services normally funded through rates are not provided at Sydney Airport we would expect a reasonable approach by local governments is to make an appropriate adjustment to rate assessments. [20000526 DOTARS]*

Neither Rockdale City nor Marrickville Council is aware of any instance in which a Council service which would be provided to freehold land - has ever been or might ever be withheld from Sydney Airport. No basis has ever existed for the Department to raise this possibility.

In 1986 the then Department of Aviation unilaterally imposed a 20% reduction on payments to Local Councils on these same unfounded grounds. Following the intervention of the then separate Departments of Finance and of Administrative Services at the request Environmental Impact Reports Pty Ltd on behalf of all affected Australian Councils, a Direction was issued to the Department of Aviation requiring payment in full. [19870709 DOA]

*I refer to the meeting which you attended on 16 February 1987 regarding payments in lieu of rates at airports. The Department of Finance has subsequently advised that they agree with the arguments put by local government representatives at that meeting...*

*Government policy regarding payments in lieu of rates on airports is now outlined in Department of Finance memorandum 86/1401 of 19 May 1987. The Department of Local Government and*

*Administrative Services also issued working arrangements for payment of rates on airport properties in a memorandum P87/315 of 4 June 1987. Copies of these memoranda are attached.*

*The major outcome of this change in policy is that 100% of rates assessed by local government authorities will now be payable for rating periods commencing on or after 30 June 1987, where airport property has been leased to tenants other than the Commonwealth. The reduction of assessments for Commonwealth expenditure on services normally provided by local government authorities will no longer apply. [19870709 DOA]*

## **2.08 The Australian National Audit Office has been critical of the Management of Airport Leases by DOTARS.**

While this Report does not mention rate-equivalent payments, it is critical of other aspects of the management of Airport Leases by DOTARS.

ANAO Report No.50 2003-04      *Key Findings – Resourcing 9.*

*While giving priority to regulatory responsibilities, we found that, over the period since the first sales were completed in 1997, DOTARS has given insufficient attention and resources to important aspects of managing the Airport Leases and Sale Agreements. With limited budget-funded resources currently available for both the regulatory and contract management functions, DOTARS needs to identify other means of appropriately resourcing its contract management responsibilities. This includes considering the merits of exercising the power provided by the lease for DOTARS to recover its reasonable lease administration costs from the lessees. [20040604 ANAO]*

## **2.09 The Commonwealth's obligations under the Competition Policy Agreement with the States and Local Governments would in large part be met if the terms of Airport Lease Agreements were to be consistent with Commonwealth Policy.**

**Submission 3            Concurrent operation of State/Territory laws**

That the *Airports Act 1996* be amended to specify the intention of Parliament that Part 2 of the Act is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Part.

**3.01    The suggested wording is the same wording currently used in the *Airports Act 1996*.***Concurrent operation of State/Territory laws*

*It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Part.*

The proposed wording is used in the current Act in four instances:

- Part 3   Division 8        Section 61
- Part 6   Division 3        Section 136
- Part 7   Division 8        Section 149
- Part 11

**3.02    The intention is not to alter the existing regulatory regime but to make it more clearly understood (in the same manner and consistent with other parts of the Amendment Bill) that State Laws relating to property generally apply.**

- In addition to being of assistance to Councils seeking rate-equivalent payments, the rights of sub-lessees would be protected by a clearer understanding that State/Territory laws with respect to property generally and sub-leases in particular are not excluded by any Law of the Commonwealth.
- The *Valuation of Land Act 1916 (NSW)* and similar legislation in other States or Territories must apply if, in addition to charges such as for water and sewerage, the amounts of Local Rates payable to Councils and State Land Tax payable to the Commonwealth are to be determined on an equivalent basis.
- The *Local Government Act 1993 (NSW)* and equivalent legislation in other States or Territories applies – except where provisions relate to:
  - land use planning - excluded by s 112(2)(a) *Airports Act 1996*
  - the regulation of building activities – excluded by s 112(2)(b) *Airports Act 1996*

**3.03    The Department of Transport and Regional Services has acknowledged, in evidence to the Senate Committee, that State Laws apply to Airport Sites unless specifically excluded.**

**Mr Mrdak**—*It does not change the fundamentals. The underlying principles of the Airports Act are that state law will apply to the airport side, except where the Airports Act expressly provides for it, and hence we have struck out the application of state planning and environment law...* [20070130 RRA&T 73]

**Submission 4            Exclusive Powers of the Commonwealth**

That the *Airports Act 1996* be amended to acknowledge that airport expansion land subsequently acquired by the Commonwealth for lease as an airport site, is not a place acquired by the Commonwealth for public purposes.

**4.01    The Constitution only gives the Commonwealth Parliament exclusive power to make laws with respect to all places acquired by the Commonwealth if the purpose for which a place was acquired is a public purpose.**

52                      *Exclusive powers of the Parliament* (emphasis added)

*The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to:*

*(i) the seat of government of the Commonwealth, and all places acquired by the Commonwealth **for public purposes**; ...*

**4.02    What is at issue is whether airport land which has been acquired by the Commonwealth subsequent to the *Airports Act 1996* and any airport expansion land which may be acquired in the future can be regarded as a place acquired for a public purpose, given the long term lease arrangements which have been put in place and the clearly commercial manner in which airports are now being allowed to operate.**

It is submitted that all land purchased subsequent to the *Airports Act 1996* by the Commonwealth for lease and for use for the purpose of an airport, should be treated differently to land which was previously acquired. The Commonwealth should concede that all such land which has been or may now be purchased is not a place acquired by the Commonwealth for a public purpose

**4.03    Marrickville provides an example of recent Sydney Airport land acquisitions.**

Subsequent to the *Airports Act 1996* and the original Sydney Airport Lease Agreement, a number of properties (including one stratum) covered by 10 certificates of title, have been leased to the Sydney Airport Lessee under two separate additional Airport Lease Agreements [20020621 DOTARS] and [20040407 DOTARS], with acquisition costs understood to have been borne by the Airport Lessee. Undescribed and not separately valued parts of this land are currently leased for non-airport related purposes. Sydney Airport Corporation has made its own assessment of the rate-equivalent payment for the sub-leased parts. None of this land is currently used as an airport.

In addition, the Sydney Airport Lessee has acquired 4 parcels of freehold land from a single owner in one transaction.

A small parcel of NSW Government owned land which was previously leased to the Federal Airports Corporation is also understood to remain as part of the Sydney Airport Site.



**4.04 Given the market power which Airports clearly have and the currently uncompetitive inequitable consequences of Commonwealth ownership, the Local Councils submit that all land acquisitions subsequent to the *Airports Act 1996* should actually be treated in the manner as envisaged by the standard clause 4 of all Airport Lease Agreements:**

*“... subject to the same responsibilities with regard to person and property and otherwise to which the Lessee would be subject if during the Term the Lessee were the owner of the freehold of the Airport Site ...”* [19980630 DOTARS]

**4.05 If both recent and future airport expansion land acquisitions are not to be treated the same as freehold land in every respect, then the Councils would have the following concerns:**

- Councils’ rate-base being reduced by land acquisitions in respect of which rates or rate-equivalent payments are not made;
- Use of land on either an interim or long term basis which places an increased demand on Council infrastructure without the normal contribution being required of the developer;
- Use of land for purposes which are incompatible with the Local Environmental Plan;
- Use of land for a purpose which competes with other land uses within the Local Government Area on an uncompetitive basis;
- Land uses being permitted without an equivalent assessment process by Council Staff with essential local knowledge, experience and independence;
- The possibility that land may be underutilised or allowed to remain vacant thereby degrading the local area and discouraging other development;
- Excessive land acquisitions just in case it might be useful sometime;
- Use on newly purchased off-airport land for airport-related purposes while on-airport is used for commercial non-aviation purposes.



**Submission 5          Payments to Local Authorities - Taxes**

That the *Airports Act 1996* be amended to specify the intention of Parliament that State or Territory taxes in the form of Local Council Rates apply to each Airport Site and that consequential amendment be made to the *Commonwealth Places (Mirror Taxes) Regulations 2000*.

**5.01    The purpose of this particular submission is to cover the possibility that apparent shortcomings in existing Airport Lease Agreements cannot be corrected by any means other than Legislation.**

**5.02    The effect of this submission would be to clearly make operative Clause 4 and Sub-clause 26.1 of the current Sydney Airport Lease Agreement, and identical provisions (but possibly with different clause numbers) in all other Airport Lease Agreements:**

Lease clause                      4.            *RELEASE AND INDEMNITY*

*Notwithstanding any other provision of this Lease, as and from Grant Time, the Lessee takes and is subject to the same responsibilities with regard to person and property and otherwise to which the Lessee would be subject if during the Term the Lessee were the owner of the freehold of the Airport Site and the Lessee: ... [19980630 DOTARS]*

Lease clause                      26.           *RATES AND LAND TAX AND TAXES*

26.1    *Payment of Rates and Land Tax and Taxes*

*The Lessee must pay, on or before the due date, all Rates, Land Tax and Taxes without contribution from the Lessor. [19980630 DOTARS]*

**5.03    The provisions which would be required in order to achieve this objective are less complex than provisions which were implemented in order to make State Sales Tax payable. The inclusion of Council Rates can be achieved by Regulation.**

*The four State taxes named in the Bill are stamp duty, payroll tax, debits tax and financial institutions duty.(2) Other State taxes may be added by regulation (3)*

2. *Schedule 1.*

3. *Definition of 'State taxing law', paragraph (b). [19980311 PARL]*

Section 4 of the *Commonwealth Places (Mirror Taxes) Regulations 2000* prescribes State Land Taxes generally and specifically, with respect to New South Wales, the *Land Tax Act 1956* and *Land Tax Management Act 1956*.

## Submission 6 Payments to Local Authorities - Charges

That the *Airports Act 1996* be amended to provide for the assessment by relevant Local Councils of an amount to be applied for public purposes with respect to a development on an Airport Site and for either the actual or equivalent payment of that amount, to the relevant Council, in circumstances where such a charge or fee, not being a tax, would otherwise be precluded by the exclusion of a State/Territory law.

### 6.01 The *Airports Bill 2006* excludes State/Territory laws relating to building activity and land use planning which provide for the funding of infrastructure and community services where an increased demand is considered to have been created by a development as determined by the Local Council with consent power.

The relevant provision of the *Airports Act 1996* as amended by the 2006 Bill would read:

#### *112 Exclusion of State/Territory laws*

- (1) *It is the intention of the Parliament that this Part is to apply to the exclusion of a law of a State or Territory.*
- (2) *In particular, it is the intention of the Parliament that this Part is to apply to the exclusion of a law of a State or Territory relating to:*
  - (a) *land use planning; or*
  - (b) *the regulation of building activities.*

In New South Wales, the relevant Legislation is:

*Environmental Planning and Assessment Act 1979 (as at 15 January 2007)*

*Part 4 Development assessment*

*Division 6 Development contributions*

*Subdivision 1 Preliminary (ss 93C-93E)*

*Subdivision 2 Planning Agreements (ss 93F-93L)*

*Subdivision 3 Local infrastructure contributions (ss 94-94EC)*

*Subdivision 4 Special infrastructure contributions (ss 94ED-94EH)*

*Subdivision 5 Establishment of Special Contributions Areas Infrastructure Fund (ss 94EI-94EM)*

Contributions “from developers to be applied for public purposes” [20050218 NSW] is now a widely recognised and applied planning principle and most, if not all, other States/Territories are understood to have enacted similar legislation or may be expected to do so in the future.

### 6.02 It is understood to be the intention of Parliament that all appropriate State/Territory charges or their equivalent should be payable by Airport Lessees.

The Competition Policy Agreement between the Commonwealth, States, and Local Governments requires that Competitive Neutrality exist and be maintained between trading and financial enterprises on and off airport.

The justification for the Commonwealth establishing a separate regulatory regime which excludes State/Territory laws relating to building activities and land use planning has been that the Commonwealth regulatory regime is the equivalent in every material respect. Clause 4 of the Airport Lease Agreements appears to have this purpose and effect.

## Submission 7      Aircraft Flight Paths

That the *Airports Act 1996* be amended to place a responsibility on airports to obtain and disclose to the public, detailed information on current and proposed flight paths within 30 nm of an airport, sufficient to facilitate land use planning by State and Local Governments together with property location and construction choices by the wider community.

### 7.01    The Bill addresses this issue in 2 instances

26      Paragraph 71(2)(d)

*Repeal the paragraph, substitute:*

*(da) flight paths (in accordance with regulations, if any, made for the purpose of this paragraph) at the airport; and*

30      Paragraph 71(3)(d)

*Repeal the paragraph, substitute:*

*(da) civil flight paths (in accordance with regulations, if any, made for the purpose of this paragraph) at the airport; and*

### 7.02    The Amendments contained in the Bill are unacceptable in their current form due to the following concerns:

- whether ‘close in’ or ‘outer’ flight path information will be required to be provided;
- the exclusion of military operations.

### 7.03    It should be a requirement that flight path information should be ‘detailed’ not just ‘indicative’ and it should extend for at least 30 nautical miles from the centre of an airport not just ‘close-in’ to the extent that these flight paths have a bearing on what is presumably the 20 ANEF contour level.

- The Senate Committee Report on the Inquiry into the Development of the Brisbane Airport Corporation Master Plan recommended:

*Recommendation 6*

*1.28    That the Airports Act 1996 be amended to place a responsibility on airports to disclose draft flight path information prepared by AirServices Australia to the public as part of draft master plans. [20000600 RRA&T]*

- In the Government’s response to the Recommendations of the Senate Committee with respect to the Brisbane Airport Master Plan, the Minister stated: [20020516 MIN]

*To provide a clear picture of aircraft noise exposure patterns, flight path information extending well beyond the Australian Noise Exposure (ANEF) contours would have to be provided.*

...

*The Government will amend the Airports Act 1996 Regulations to require detailed **'outer'** flight path information to be produced for any future major development plan that could substantially affect aircraft flight paths. [20020516 MIN] (emphasis added)*

- However, the Parliamentary Secretary, in her Second Reading speech stated:

*Provision is also being made to ensure that public and local planning authorities are provided with improved information regarding aircraft noise exposure levels and **indicative** data as to the location of **close-in** flight paths used to develop noise exposure forecasts. [20061130 MIN] (emphasis added)*

- The provision of only 'close in flight paths' would provide no more information that could readily be induced from the contours – that a multiplicity of flight paths occur within the contours and they are more concentrated towards the centre than at the extremities. The objective of facilitating land use planning together with property location and construction choices by the wider community, would not be satisfied.

**7.04 Military aircraft are often more noisy than their civilian counterparts and are often flown at higher thrust levels and lower altitudes. It is therefore more important, not less so, that as much predictability as is possible is introduced into the process with respect to these aircraft. The flight paths which are to be flown should be known to the public and, within the vicinity of aerodromes, should be kept to by the Military.**

**7.05 The detailed information which is required in order to satisfy planning requirements and community expectations should include not just a two dimensional track but also:**

- altitudes at change points in profile
- extent to which aircraft will be concentrated or dispersed along the path
- types of aircraft
- load (fuel as determined by trip distance which affects thrust and noise)
- numbers of each type of aircraft
- the determinates of variability
- operational modes in which particular flight paths will be utilised
- hours of the day, days of the week and seasonal patterns
- methods of control e.g. tracking a radial or a compass bearing
- procedures such as noise abatement departure profiles
- the flight path as required to be described for input to the Integrated Noise Model (INM)
- a complete description if a Standard Instrument Departure (SID) or Standard Terminal Arrival (STAR)

**7.06 Affected Communities should be consulted in the development of Administrative Procedures which give effect to the Legislation and Regulations.**

Best practice in the past should be recognised and improved upon where possible. Expressions of community concern such as to Inquiries by Parliamentary Committees over the last half century should not be disregarded.

**Submission 8          Australian Noise Exposure Forecasts**

That the *Airports Act 1996* be amended to provide for Regulations covering the production, authorisation and public access to source information and computation of Australian Noise Exposure Forecasts (ANEF).

**8.01    The Bill addresses this issue in 4 places**

7          Section 5

*Insert:*

*Forecast endorsed in the manner approved by the Minister.*

26        Paragraph 71(2)(d)

*Repeal the paragraph, substitute:*

*(d) an Australian Noise Exposure Forecast (in accordance with regulations, if any, made for the purpose of this paragraph) for the areas surrounding the airport; and*

30        Paragraph 71(3)(d)                    [ should not be limited to just civilian uses ]

*Repeal the paragraph, substitute:*

*(d) an Australian Noise Exposure Forecast (in relation to civil uses of the airport and in accordance with regulations, if any, made for the purpose of this paragraph) for the areas surrounding the airport; and*

39        After subsection 78(2)

*Insert:*

*(2A) If a final master plan (the original plan) for an airport is in force, and a more recent Australian Noise Exposure Forecast for the airport is endorsed in the manner approved by the Minister, the airport-lessee company for the airport must give the Minister, in writing, a draft master plan that is expressed to replace the original plan. The company must give the Minister the draft master plan: (a) within 180 days of the more recent Australian Noise 10 Exposure Forecast being endorsed; or (b) if the Minister, by written notice given to the company, allows a longer period—within that longer period.*

**8.02    While the provisions of the Bill are generally acceptable, they will not, of themselves, ensure an appropriate outcome consistent with the recommendations of the Senate Inquiry Into Aircraft Noise in Sydney:**

Australian Parliament (1995). *Falling on deaf ears?, Report of the Senate Select Committee on Aircraft Noise in Sydney*. Canberra No. 345 of 1995.

- The effect of these amendments will be largely dependent upon Regulations and any Administrative Arrangements together with interpretations by agencies and individuals responsible for any action.

- All that can be asked of the Senate Committee is that the Report to Parliament clearly identify and express the objectives of Noise Exposure Forecasting and the need for any regulatory regime to ensure that these objectives are met.

### **8.03 Recent changes and some historical practices in the production of ANEFs give rise to concerns which should be addressed by the new regulatory regime:**

- The current Sydney Airport Master Plan [20040300 SACL], which has been approved by the Minister [20040322 MIN], included an ANEF as Fig 16.4. This Forecast is unusual.
- This is the first occasion on which an ANEF has been produced by an Airport Lessee (developer) rather than a Government Agency (Airservices).
- The forecast is for a much longer period than usual – 20 years in this case. Even 5 year forecasts of aviation activity and developments have been found to be unreliable in the past. In this instance, the developer has the opportunity to overstate the needs of the airport at no cost or other disadvantage to itself but with the consequence of imposing a considerable burden on the surrounding community without any provision for compensation.
- The ‘endorsement for technical accuracy’ process undertaken by the Government does no more than confirm that the Integrated Noise Model used to compute ANEFs has been run correctly but does not even take responsibility for this. The assumptions and choices upon which the result is dependent are not checked and affected communities have no right of access to this information so that they or Local Councils on their behalf can conduct their own assessments and form their own judgements. No process exists for challenging any presumption or procedure which might be considered to be unjustified.
- It is not clear that an ANEF provided by an airport developer satisfies the description of an ANEF in State Law and this casts some doubt on what is required of Local Councils in order to satisfy their statutory obligations.

### **8.04 New South Wales Councils have a statutory obligation imposed by a Ministerial Direction under section 117 of the *Environmental Planning and Assessment Act 1979* to ensure that their Local Environmental Plans incorporate appropriate provisions controlling increases in residential density and the incorporation of insulation against aircraft noise. This is currently dependent upon advice from the ‘Department of the Commonwealth responsible for aerodromes’.**

*Direction No.12 – Development near Licensed Aerodromes* (in part) [20050930 NSW]

- (1) *In the preparation of a draft Local Environmental Plan affecting land in the vicinity of a licensed aerodrome, the council shall:*
  - (a) *consult with the Department of the Commonwealth responsible for aerodromes and the lessee of the aerodrome,*
  - (b) ... (d) ...
- (2) *Draft Local Environmental Plans shall not rezone land:*
  - (a) *for residential purposes, nor increase residential densities in areas where the Australian Noise Exposure Forecast (ANEF) as from time to time advised by that Department of the Commonwealth exceeds 25, or*
  - (b) *for schools, hospitals, churches and theatres where the ANEF exceeds 20, or*
  - (c) *for hotels, motels, offices or public buildings where the ANEF exceeds 30.*
- (3) *Draft Local Environmental Plans that rezone land:*

- (a) for residential purposes or to increase residential densities in areas where the ANEF is between 20 and 25, or
- (b) for hotels, motels, offices or public buildings where the ANEF is between 25 and 30, or
- (c) for commercial or industrial purposes where the ANEF is above 30, shall include a provision to ensure that development meets AS 2021 regarding interior noise levels.

**8.05 Both existing aircraft noise and future forecasts impose a considerable financial burden on communities surrounding Sydney Airport in addition to the effect which aircraft noise has on their lifestyles.**

- The Commonwealth has an Aircraft Noise Amelioration Program which is currently suspended but has, in the past, provided some insulation (not compliant with AS 2021) to some properties (residences 30+ ANEF and some public buildings 25+ ANEF) again not consistent with AS 2021 compatibility standards. Eligibility is determined on the basis of an Australian Noise Exposure Index (ANEI) of the previous year.
- Local Councils in Sydney are currently under an obligation to restrict the rights of property owners/occupiers to increase residential density and to require insulation against aircraft noise at the cost of the owner/occupant – based on what might happen in 20 years time.
- Even if owners/occupants decide not to improve their properties over the next 20 years, the price at which they could sell will have been reduced.
- Section 117 restrictions can prevent a community from evolving. Improvements to the built environment can only occur through redevelopment and the restrictions can prevent the redevelopment from being viable. Therefore it is essential that the information on ANEF contours is very accurate and able to be scrutinised.
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## ABBREVIATIONS

ALC	Airport Lease Company
ANAO	Australian National Audit Office
ANEF	Australian Noise Exposure Forecast
ANEI	Australian Noise Exposure Index
DOA	Department of Aviation
DOFA	Department of Finance and Administration
DOTARS	Department of Transport and Regional Services
EIR	Environmental Impact Reports Pty Ltd
FIN	Department of Finance
MIN	Minister for Transport + Parl Sec + Adviser
MMC	Marrickville Council
nm	Nautical Miles
NSW	New South Wales - Government
PARL	Parliament of Australia
RRA&T	Rural and Regional Affairs and Transport Committee
SACL	Sydney Airport Corporation Ltd



**REFERENCES attached as PDFs**

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19870709	DOA	Letter to EIR – Payment in full reinstated as directed by Finance	10,11
19891100	FIN	Finance Direction 13G	8
19960800	RRA&T	Airports Bill 1996 – Senate Inquiry Report	6,9
19970128	EIR	Letter to Minister’s Aviation Adviser re Policy	6
19970411	MIN	Letter to EIR from Aviation Adviser re Policy	6,9
19980311	PARL	Commonwealth Places (Mirror Taxes) Bill 1998 - Digest	15
19980630	DOTARS	SACL Airport Lease Agreement 5305365F	6,8,14,15
19980810	EIR	Letter to DOFA – Policy following repeal of Audit Act	6
19980812	DOFA	Letter to EIR - Policy continues following repeal of Audit Act	6
20000526	DOTARS	Letter to EIR - FAS Airports – reduction in rates	10
20000600	RRA&T	Brisbane Master Plan – Senate Inquiry Report	17
20020516	MIN	Government Response to Brisbane Master Plan Inquiry Report	17,18
20020621	DOTARS	SACL Airport Lease Agreement AA503688A	13
20030703	MMC	Letter to DOTARS re Policy	9,10
20030704	EIR	Letter to DOFA re Policy – FOI Request	5
20030819	DOFA	Letter in reply to EIR – Policy remains as in Fin Dir 13G	5,9
20030911	DOTARS	Letter in reply to MMC re Policy	9,10
20040203	EIR	Letter to DOFA on behalf of Marrickville - Claim for St Peters Properties	9
20040213	DOFA	Letter in reply to EIR re Marrickville Claim and Policy	9
20040300	SACL	Master Plan Sydney Airport	20
20040322	MIN	Sydney Airport Master Plan Approval – Media Release	20
20040407	DOTARS	SACL Airport Lease Agreement AB225239F	13
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20050930	NSW	Ministerial Directions s 117 EPAA Act 1979	20
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Airports Act 1996 (Cth)

Airports Amendment Bill 2006 (Cth)

Audit Act 1901 (Cth) (repealed)

Audit (Transitional and Miscellaneous) Amendment Act 1997 (Cth)

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Commonwealth Places (Mirror Taxes) Regulations 2000 (Cth)

Environmental Planning and Assessment Act 1979 (NSW)

Federal Airports Corporation Act 1986 (Cth) (repealed)

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Local Government Act 1993 (NSW)

Valuation of Land Act 1916 (NSW)