



11 March 2022

TO WHOM IT MAY CONCERN

**Re: City of Kingston Submission on Stage 1a into the Airports Act 1996 and Subordinate Regulations**

The Department of Infrastructure, Transport, Regional Development and Communications ('the Department') are seeking comment through a staged approach into the Airports Act 1996 ('the Act').

The Act and subordinate regulations provide a comprehensive regulatory regime for privately-leased airports located on Commonwealth-owned land. Six of the subordinate instruments that originally came into force in 1996 and 1997 are set to sunset on 1 April 2024. On 24 August 2018, the Attorney General agreed to align the sunset date for the following instruments to 1 April 2024 to facilitate a thematic review:

- Airports Regulations 1997 (Airports Regulations)
- Airports (Ownership—Interests in Shares) Regulations 1996 (AOISRs)
- Airports (Building Control) Regulations 1996
- Airports (Environment Protection) Regulations 1997
- Airports (Control of On-Airport Activities) Regulations 1997
- Airports (Protection of Airspace) Regulations 1996

The City of Kingston welcomes the opportunity to make this submission which is specifically focused on subleases, licensing and ownership in the Airports Regulations. This first review 'Stage 1a' includes consideration of the following areas:

- Leasing and sublicensing.
- Streamlining reporting timeframes relating to ownership and aligning reporting with processes across government.
- Clarifying and simplifying language and structure of the regulations. The Airports Regulations 1997 contain diverse requirements across a range of subject areas.

Our Council believe that prioritisation must be given to some of the later phases of the staged of the thematic review where significant reform is urgently required. We consider that 'red tape' for the purposes of Stage 1a inappropriately frames a discussion on issues of leasing associated with Airports.

## **Background**

Council has made several submissions recently on aviation issues including submissions to the draft Moorabbin Airport Masterplan and to the Senate Committee on General Aviation. Kingston has a particular interest in general aviation specifically given the role the industry plays in supporting our regional and rural areas.

The draft Moorabbin Airport Masterplan is a live example which illustrates the many shortfalls of the Act and Regulations. The review of the Act and subordinate regulations has a conclusion date of 2023-2024 before any changes occur. Within that timeframe, it would be prudent to carefully review the extent of draft masterplans that are due to be submitted for Ministerial consideration. Council believe an urgent legislative review on the entire Act and regulations should be prioritised before any further masterplans are submitted in order to ensure the future of our general aviation industry is not irreversibly compromised. We wish to flag a number of examples of weaknesses of the Airports Act and Regulations, that will be of interest to our Council and the aviation community at Moorabbin and we suspect many others. These include:

- A distinctive imbalance between the rights of the Airport Lessee Company to pursue non-aviation commercial endeavours vs. the rights of occupation presented to those who have occupied what is Commonwealth land, purposed for and which is to conduct aviation related endeavours.
- The need for a robust appraisal process to be established to critically review Airport Head Lease extension(s) against the original intentions of privatisation (discussed further below).
- Ensuring the broadest possible breadth of issues can be placed forward for critical assessment / analysis at the time of a draft masterplan submission.
- Poor engagement of aviation stakeholders and surrounding communities including the limitations imposed on third party involvement in decision making.
- The lack of regulatory oversight of urban planning issues that has consequently led to expedient decisions that lack strategic planning rigour. Practical examples include:
  - non-aviation related commercial developments built within the airfield thresholds creating a safety risk;
  - non-aviation developments built within metres of residential boundaries creating outcomes that would not occur on non-Commonwealth places;
  - no minimum standards being provided on airport sites with regards to mitigating any impacts on adjoining residential properties or the rights of these parties to review these matters;
  - critical and independent engagement and appraisal of what constitutes a Major Development Plan based on the provisions of the Act for example Section 89 (1)(na) of the Act.
- Genuine compliance with State and Local Planning laws or a process which provides for their independent appraisal providing for 'competitive neutrality' with the relevant State Planning jurisdiction.
- Any form of robust financial acquittal / audit of the stated commitments of an Airport Lessee Company (ALC) through its identified master planning process when compared with what is actually physically delivered to facilitate the primary aviation purpose of the land.
- Whether any substantive regime exists through the Act or Regulations to actually allow the Minister to 'impose' / 'direct' an ALC regarding land use and/or development outcomes. In the Victorian system the power of the Minister to intervene or impose an alternate planning/development outcome over land is a critical component of regulating the land use system. The consequence is a much greater collaboration on critical strategic planning principles.
- The criticality of appraising work by the ATSB on incidents such as that at Essendon Airport to ensure they are used to inform a much more heavily scrutinised building approval process. In a similar vein to climate mitigation policies around building retreat for bushfire or coastal inundation, we directly question the role the Act or Regulations must now play to facilitate the safeguarding of airfields.

Since 1996 when privatisation occurred, federally leased airports across Australia have embarked upon an unprecedented wave of commercially orientated development that has no relevance to the intended purpose of the land. The second reading of the Act along with the explanations to justify the privatisation, demonstrate that it was never an intention of the Federal Government to legalise business plans geared to maximising shareholder returns, at the expense of the aviation industry. The privatisation of federal airports was meant to do the exact opposite, the public were assured that the privatisation would in fact strengthen and grow the aviation industry, particularly the general aviation industry. Now over twenty-five years later, we find ourselves in a unique situation where privatised airport leaseholders able to hold exceptional and often largely unregulated monopoly powers which negatively impact the aviation industry and sidestep State and Local planning powers. Without doubt this has put at direct risk the general aviation industry.

## Issues – Specific to Stage 1a

As you will appreciate from the proceeding comments that are purposefully broad, Council believe that oversight is of the highest importance in enhancing regulations over several issues associated with the administration of Airports under the Act and Regulations.

Through the process of understanding the views of submitters to the current draft Masterplan for Moorabbin Airport, Council has heard from a range of aviation-based businesses. This feedback would indicate that the requirements on ALC's relating to the sublease or licensing of Commonwealth Land requires much tighter regulation. Although the ALC is granted a long term 'head lease' (50 years), it is now clearly apparent to Council that aviation-based businesses are seemingly at the mercy of the ALC, with no certainty as to their long-term tenure on the land parcel that is inextricably linked to their businesses.

A significant tension is apparent whereby the ALC's are ultimately seeking to pursue commercial outcomes that have no relationship with aviation to maximise the development potential of Commonwealth leased land whilst also charged with exclusively controlling the tenure of aviation based businesses. We believe at Moorabbin, this has come at a very substantive cost in terms of the aviation potential of land and even more critically the consideration of safety through additional wind shear as a consequence of non-aviation development.

It is understood the Department is proposing to remake the Airports Regulations and the AOISRs with amendments to reduce duplication, streamline reporting requirements and align them with existing processes across government. Under this option, both instruments will be remade *"to **maintain appropriate levels of Commonwealth oversight**"*, while amending aspects which are outdated and no longer fit-for-purpose. According to the documents on the Departments website, this *"will remove **unwarranted regulatory burden for ALCs and other stakeholders, particularly with respect to the clarity and legibility of the administrative processes and reporting that ALCs are obliged to follow**"* (emphasis bolded by Council).

Council contends that the Commonwealth needs much greater direct involvement in managing airports (aviation safety, security and land use) when compared with what has occurred across the last twenty-five years to the significant detriment of general aviation. Council has serious concerns on any additional changes which would 'remove unwarranted regulatory burden for ALCs'. In 2009, the Green Paper on Aviation stated the following:

*'Airport sites are scarce and valuable. The encroachment of city development around airports, particularly the secondary airports at capital cities, has increased pressures for use of airport land for other purposes, with potentially higher commercial returns. **The Government respects the right of the airport operators to a reasonable return on capital invested but will not support proposals for uses of the site which work against the realisation of the full potential of the site for a range of aeronautical uses. Planning also needs to ensure proper provision is made for the necessary aeronautical infrastructure, including air traffic facilities and fire fighting services***. (emphasis added in bold).

Further depletion of this 'oversight' will continue to erode the trust of the community that the right thing (ensuring an airport functions as an airport) will happen on Commonwealth land with the correct checks and balances occurring. Continuing suspicion and distrust by aviation tenants/users and the broader community regarding the conduct of ALC's will not help grow the general aviation industry nor does it provide a confidence that 'red tape' reform around leasing is a beneficial objective. Critical to any regulatory review is considering how are the Department proposing to ensure that "appropriate levels of Commonwealth oversight" occur to ensure the intent of the Green Paper is actually realised through mechanisms including leasing. Council do not think the Airports regulations should be allowed to sunset and instead would seek changes and updates more in line with Option 3.

To summarise, changes are required to the Act and Regulations. We submit that the Department needs to overhaul the Act in a holistic way and it is urgently required. If the tools are not available to ensure the safety of our critical national aviation infrastructure, then this needs to be urgently addressed.

The issues raised throughout this submission are broad and we submit that the review needs to shift promptly from a focus on the 'red tape' reforms sought by ALC's to the more critical components identified in stages 2,3 and 4 of the review.

Council would like to thank the Department for the opportunity and respectfully request the consideration of our submission.

Yours sincerely

A handwritten signature in cursive script that reads "Steve Staikos".

**Cr Steve Staikos**  
MAYOR