

SHOPPING CENTRE

COUNCIL OF AUSTRALIA

BANKSTOWN AIRPORT PRELIMINARY DRAFT MASTER PLAN 2004/05

Submission by the Shopping Centre Council of Australia

1. Executive Summary

This submission by the Shopping Centre Council of Australia (SCCA) focuses on the non-aviation related land use proposals contained in the Bankstown Airport draft master plan, particularly proposals to permit major retail development.

Our key concerns with the draft master plan are that it:

- provides for development that is prohibited by section 32 of the Airports Act because it is not relating to, or incidental to the operation of the airport;
- is inconsistent with state and local government planning instruments - specifically, the NSW EP&A Act, the Right Place for Business & Services, draft SEPP 66 and Bankstown LEP – and fails to address the extent of this inconsistency as required by s. 71 of the Airports Act;
- fails to describe proposals for land use in the amount of detail required by s.71 of the Airports Act and clause 5.02(2) of the Airport Regulations 1997;
- proposes development that would have a significant adverse impact on the use of land in areas around the airport, including surrounding retail centres; and
- provides an unfair advantage to retail development at the airport over retail development on non-airport land.

For these reasons, the SCCA considers that the Bankstown Airport draft master plan fails to meet the requirements of the Airports Act and should not be submitted to, or approved by, the Minister for Transport and Regional Services.

2. Background

The SCCA represents the owners and managers of shopping centres. Our members are: AMP Capital Investors, Centro Properties Group, CFS Gandel Retail Trust, Deutsche Asset Management (Australia), FPD Savills, Intro International, Jones Lang LaSalle, Leda Holdings, Lend Lease Retail, Macquarie CountryWide Trust, McConaghy Group, McConaghy Properties, Mirvac, Perron Group, QIC, Stockland, Westfield Group and the Yu Feng Group.

Our members have a clear interest in ensuring there is a level playing field between retail developments on airport land and those on non-airport land and the SCCA has lodged a number of submissions on individual airport master plans and major development plans as well as to a review of the Airports Act. We consider that non-aviation development on airport land should be subject to the same level of scrutiny,

community consultation, planning assessment, and developer contributions as similar developments under state or local planning laws.

3. Development contrary to Section 32 of the Airports Act

Section 32 prohibits an airport operator from carrying on substantial trading or financial activities other than activities relating or incidental to the operation and/or development of the airport.

The Bankstown Airport draft master plan provides for a range of commercial and retail developments on up to 160 hectares of land. It is absurd to argue that this is development that relates, or is incidental to the operation and/or development of the airport.

4. Inconsistency with State and Local Planning Instruments

Section 71(6) of the Airports Act states that a draft master plan must address the extent (if any) of consistency with planning schemes in force under a law of the state or territory in which the airport is located.

As outlined below, the draft master plan fails to adequately address this issue in relation to a number of state and local planning instruments including the NSW Environmental Planning & Assessment (EP&A) Act, the Right Place for Business and Services planning policy, draft State Environmental Planning Policy (SEPP) 66 and Bankstown Local Environmental Plan (LEP) 2001.

4.1 Inconsistency with State Planning Instruments

The zoning proposed in the draft master plan involves up to 160ha of land that could be used for a wide range of industrial/commercial/retail uses. Even at a moderate floor space ratio of 1:1 and reducing the area by 10% for infrastructure requirements, this equates to 1,440,000sqm of gross floor area. This is comparable to the largest business parks in Sydney, such as Norwest, which includes a full range of facilities including a major shopping centre. Further, the proposed Business Zone of 98.9ha permits 'shops' and entertainment uses such as cinemas, which provides the potential for the creation of a regional shopping centre. Such implications are clearly contrary to a number of state planning laws and instruments.

Although Appendix C of the draft master plan provides a brief consideration of NSW planning requirements, it is a fairly rudimentary assessment and fails to properly consider a number of state planning laws and instruments, as outlined below.

4.1.1 Inconsistency with Environmental Planning & Assessment Act

There is no consideration in the draft master plan of the objects of the EP&A Act (s.5). Given the scope of the proposed zones and permitted uses and the lack of detailed information, it is considered that the draft master plan is inconsistent with the following objects of the Act:

- “(a) to encourage:
- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*

- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) *ecologically sustainable development"*

The draft master plan does not encourage proper management or orderly development by proposing a potentially massive increase in intense industrial/commercial/retail development without proper consideration of the implications. There is no detailed assessment of the potential for impact on the environment and no details to demonstrate that the principles of ESD have been considered. There is also no assessment of the potential for impact on threatened species etc. as referred to in Section 5A of the Act.

Finally, as the draft master plan essentially provides for the rezoning of the land, there should be consideration of its consistency with the rezoning process under the Act. The proposals in the draft master plan equate to the rezoning of a significant area of land. Under the EP&A Act, a rezoning of this magnitude would require the preparation of a detailed Local Environmental Study. The information provided in the draft master plan is totally inadequate in this regard.

4.1.2 Inconsistency with Centres Policy and draft SEPP 66

The draft master plan is also inconsistent with the Right Place for Business and Services, and draft SEPP 66 which represent current State Government policy in regard to 'centres'. (We would point out that under s.79C of the EP&A Act, draft planning instruments such as draft SEPP 66 still have to be taken into consideration by consent authorities if they have been public exhibited.)

This policy seeks to reinforce the status of a network of identified centres across the Sydney metropolitan area by discouraging large retail and commercial developments outside these centres. Bankstown Airport is not identified as part of the network of metropolitan centres.

Yet if this draft master plan is approved, Bankstown Airport will become a centre by stealth. Unlike other centres which have been identified only after intensive assessment and widespread consultation and debate over many years, Bankstown Airport through its master plan will have effectively sidestepped this process, regardless of the impact on the viability or future capacity of surrounding centres.

The draft master plan is considered to be contrary to the aims and objectives of this planning policy, as for a development of the size that could be potentially achieved, the links to major transport infrastructure (road and rail) is poor. More specifically, the draft master plan is contrary to the following provisions:

"Shops typically generate high trip levels and those serving more than a neighbourhood catchment should always be located in centres and be provided with pedestrian, cycling and public transport access....."

When it is not realistic for bulky goods outlets to be in centres, they should be located in one or two regional clusters to help moderate travel demand and allow for public transport accessibility. Existing clusters should be reinforced. If justified, new clusters should be in areas that would indirectly support major centres and link to public transport corridors....."

Leisure and entertainment facilities include cinemas, theatres, bowling alleys, gymnasiums, clubs, hotels and amusement centres. They support the viability of centres, extend their hours of activity and generate high trip levels. They should always be located in centres with suitable accessibility....."

Offices, where not ancillary to industry, should be located in existing centres where they can benefit from proximity to services, be accessible by public transport and provide for more equitable access to employment opportunities.

Major office facilities must be aligned with the existing or committed future metropolitan transport system to ensure that a reasonable mode share to public transport and non-car modes can be achieved and be concentrated in major centres."

The draft master plan states that it "supports the aims of this Draft SEPP by enhancing the Airports position as a major transport and employment hub and integrating a variety of land uses in one location." This comment would have some validity if it were about airport related uses. Both Liverpool CBD and Bankstown CBD are close to Bankstown Airport and both would be significantly affected by retailing or commercial office development on the Bankstown Airport site. A conservative estimate of traffic generation of additional potential uses on the Bankstown Airport site is 80,000 to 100,000 vehicles per day. The existing road infrastructure could not handle this amount of traffic, which would include significant industrial traffic. The draft master plan gives no adequate consideration of the cumulative impacts of traffic generation.

4.1.3 Inconsistency with other NSW SEPPs and Planning Instruments

The draft master plan is also inconsistent with the following planning instruments:

SEPP 11 Traffic Generating Developments – given the relatively limited vehicular access to the site and the potential floor space involved, the draft master plan has the potential for significant adverse impact on the local and regional road network. These impacts have not been adequately assessed;

SEPP 19 Bushland in Urban Areas – no analysis has been provided regarding the location or quality of existing bushland on the site;

SEPP 32 Urban Consolidation – the draft master plan states that this is not relevant yet this SEPP specifically relates to land which is no longer required for the purposes for which it is zoned. This is clearly the case here. Whilst the airport use may be incompatible with residential uses, this matter needs to be addressed in more detail by the draft master plan;

SEPP 34 Major Employment Generating Industrial Development – the draft master plan provides the potential for uses to which this policy applies. The lack of detail in the draft master plan means that the objective of this SEPP to provide adequate planning controls for such development is not complied with;

SEPP 59 Central Western Sydney Economic and Employment Area – the draft master plan states that this is not relevant however it specifically relates to land which is zoned for similar purposes to those proposed and is in the same general area. The implications for land zoned under this SEPP need to be considered in the draft master plan;

Regional Environmental Plan (REP) 2 Georges River – there is inadequate consideration of this document and insufficient detail to allow a assessment of the effects of the draft master plan on the Georges River.

4.1.4 Inconsistency with Sydney Metropolitan Strategy

Metropolitan planning strategies are generally not part of planning legislation but are crucial to the overall manner in which the development of the region occurs over time. The draft master plan states that the proposed land development concept will "integrate and benefit the sustainable development of Sydney in line with the NSW Government's Metropolitan Strategy for Sydney." It refers to the new, yet to be finalised strategy and the existing strategy documents. The proposal is considered

to be contrary to the existing strategy which relates specifically to Western Sydney – ‘Shaping Western Sydney’ (DUAP, 1998).

This strategy states, in relation to industry and warehousing, the importance of the SEPP 59 employment areas. The draft master plan has the potential to affect the viability of these areas which are far more accessible than the subject site. Scattered employment nodes are discouraged due to the need for increased vehicle movements – the proposal is an isolated site. The site is not noted as one of the developing employment areas.

In regard to centres, the strategy states that intensive commercial activity should be located in centres. The draft master plan has the potential to allow a massive amount of commercial and retail development in an out of centre location. Intensive commercial development needs to be planned having regard to existing and proposed transport infrastructure – given its potential size and location, there are likely to be far more accessible areas in this region for development of this type (such as SEPP 59 lands).

In relation to environmental outcomes, a range of environmental outcomes are stated in the Strategy but the information provided in the draft master plan does not adequately demonstrate that the environmental outcomes can be achieved. In regard to accessibility outcomes, major employment areas are required to have excellent access to major road and rail networks for freight movement – given the potential size of the development area and the resulting traffic generation, the Bankstown Airport site does not have excellent access to the road and rail network.

4.2 Inconsistency with Local Planning Instruments

The principal planning instrument governing land use activity within the airport area is Bankstown LEP 2001. The airport site is zoned Special Uses (Aerodrome) under the LEP.

The draft master plan provides some consideration of the LEP but not at the level of detail required by the Airports Act. The draft master plan states that the proposed uses are inconsistent with the uses permitted in the Special Uses zone *“if a narrow view is taken of what an ‘aerodrome’ purpose is”*. This comment is contrary to other parts of the draft master plan where it is clearly acknowledged that the proposal involves vast areas of ‘non-aviation’ uses. There are no controls requiring the non-aviation zones to be related to the ‘aerodrome’ use in any way. As previously noted we contend that in proposing non-aviation related uses, the draft master plan is not only contrary to the zoning of the land but also the objects of the Airports Act and section 32.

The draft master plan is also considered to be contrary to:

- the following objectives of the LEP:

“(ii) remnant bushland, natural watercourses and threatened species should be protected, and

(iii) intensive trip generating activities should be concentrated in locations most accessible to rail transport, and

(iv) new development should not diminish the role of the Bankstown central business district (CBD) as a sub-regional centre.”

In regard to (ii) the draft master plan does not contain adequate information to allow proper assessment of these matters. In regard to (iii) the draft master plan allows for significant and intensive trip generating uses in a location well removed from rail services. In regard to (iv), the proposed uses

and the amount of development possible under the draft master plan will adversely affect the function of Bankstown city centre.

- the information provided is inadequate to make an assessment of the environmental impacts of the proposal as required by Clause 17;
- the information provided is inadequate to make an assessment of the compliance with Clause 19 relating to ecologically sustainable development;
- the objectives for the Special Uses zone in which the airport site is located are:
 - “(a) to identify land owned, used or required to be used by, or under the authority of, a public authority or for other semi-public purposes, and
 - (b) to permit a range of uses which are compatible with the locality.”

The proposed non-aviation uses are not permitted in this zone and therefore must be considered to be incompatible with the locality.

The draft master plan is clearly inconsistent with Bankstown LEP 2001.

5. Insufficient Detail on Land Use Proposals

Regulation 5.02(2) of the *Airport Regulations 1997* provides that a master plan must:

- describe proposals for land use and related planning, zoning or development in an amount of detail equivalent to that required by planning, zoning and development legislation in force in the State or Territory in which the airport is located; and
- use terminology (including definitions) consistent with that applying in land use planning, zoning and development legislation in force in the State or Territory in which the airport is located.

The draft plan does not describe proposals for land use in an amount of detail equivalent to that required by land use planning, zoning and development legislation in force in NSW, or use terminology (including definitions) consistent with that applying in land use planning, zoning and development legislation in force in NSW.

All the master plan provides is a zoning regime including a list of permitted uses. This lack of information makes it impossible to properly consider the proposal in terms of the relevant planning legislation or to undertake any meaningful assessment of environmental impact. The level of information provided is grossly inadequate considering that it equates to the rezoning of a significant area of land and involves intense commercial/industrial/retail development. As noted previously, under the EP&A Act, a rezoning of this magnitude would require the preparation of a detailed Local Environmental Study.

The terminology used in the draft master plan is not consistent with NSW planning legislation. The draft master plan states in Section 11.3 that “particular language is used in the draft master plan to comply with the Airports Act 1996 requirements only”. Appendix 4 of the master plan contains definitions of land use types that differ from those in the NSW Model provisions.

It is therefore considered that the master plan as currently drafted does not satisfy the provisions of Clause 5.02 (2) of the *Airports Regulations 1997* and could not satisfy those provisions without further extensive environmental and amenity investigations.

6. Impact on Areas Surrounding the Airport

Section 81(3)(b)(ii) of the Act provides that in deciding whether to approve a draft master plan, the Minister must have regard to the effect that carrying out the plan would be likely to have on the use of land in areas surrounding the airport.

If the Minister is to be able to make an informed decision, then the draft master plan should be accompanied by a proper needs and impacts analysis which comprehensively assesses the impact of the development on other centres within its trading catchment. For example, the Minister needs to know whether the proposed development will undermine the viability of existing commercial and retail centres in the vicinity and the public and private investment in them. The Minister also needs to be advised of the likely impact on local businesses and the local employment and services they provide.

The retail development permitted in the 98 hectare Business Zone by the master plan would allow the development of a regional scale shopping centre and there are no provisions in the draft master plan which would preclude or limit such a facility. The draft master plan does not provide sufficient information on the likely impact of this development on the viability of existing commercial and retail centres in the surrounding area. If this were any other proposed development in Sydney, the onus would be on the developer to demonstrate that the development will not cause a deterioration of existing centres. More detailed consideration and investigations would be required for the development of such a centre or the establishment of such large areas of additional retail floor space in an out-of-centre location.

Yet the draft master plan makes little or no effort to do this. Nor does the draft master plan identify the existing centres likely to be affected by its proposals, or provide a retail analysis of the effect of its proposals on the future retail capacity of surrounding centres. Such analysis is essential to justify any rezoning of land, particularly where the amount of additional land available for retail development is akin to the establishment of a new regional centre.

There is no consideration of the effect on adjacent centres such as the Bankstown and Liverpool CBDs. The SCCA contends that if such an assessment were undertaken, it would reveal that a number of centres around Bankstown Airport would be adversely affected, limiting the viability and development potential of these centres and the range of services available to the communities they serve.

7. Unfair Competition with Non-airport Development

The SCCA's 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 fact that retail development on airport land does not have to comply with the same planning rules as every other retail development.

While Commonwealth control over aviation development may be justified given its national significance, there is no public interest reason why Bankstown Airport should not be subject to state and local government planning in relation to non-aviation development. In fact, the airport's failure to comply with local planning laws in its draft master plan proposals is against the public interest by undermining existing centres and draft SEPP 66.

This is a matter that we have taken up with the Commonwealth Government in a submission to the Review of the Airports Act. In that submission we identified major flaws in the land use and planning controls in the Act. We have 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, planning assessment and developer contributions 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.

In relation to the development approval process under the Airports Act, there are no independent planning controls or assessment processes established in the public interest. The airport is the relevant authority for the assessment of proposals on its own land. There is no independent assessment of merit or review of the draft master plan. The development assessment process enables the airport to assess development that may provide significant benefit to itself, potentially to the detriment of surrounding land uses and to the metropolitan area generally.

Proposed developments at the airport are not subject to the same rigorous analysis by state and local planning authorities in respect of a wide range of urban design, environmental, traffic and parking and local context assessment, public consultation and appeal processes.

Finally, we would point out that the status of airport master plans needs to be clarified. The Federal Court stated in *Brisbane Airport Corporation Limited v Wright* that "A master plan is part of a business plan for an existing airport. It is not a town planning document." If so, this means there is effectively no planning regulation of developments on airport land which do not trigger the requirement for a major development plan, especially those worth less than \$10 million.

8. Conclusion

In summary, the SCCA considers that the Bankstown Airport draft master plan fails to meet the requirements of the Airports Act and should not be submitted to, or approved by, the Minister for Transport and Regional Services.

9. Contact

The Shopping Centre Council would be happy to discuss any aspect of this submission. Please do not hesitate to contact:

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