

# Submission to the Aviation Green Paper

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23 NOVEMBER 2023

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## **Introduction**

1. The City of Kingston (Kingston) welcomes the announcement of the White Paper and a commitment for more robust planning for aviation in Australia.

## **Background**

2. In preparing this submission, Kingston has had regard to:
  - The provisions of the ***Airports Act 1996 (the Act)*** and the ***Airports Regulations 1997 (the Regulations)***.
  - The **Second Reading** of the *Airports Act 1996* by the Hon. John Sharp (23 May 1996).
  - Determinations which have occurred more recently on Airport land, specifically at Moorabbin Airport including the **Moorabbin Airport Masterplan 2021** and recent decisions from the Victorian Civil and Administrative Tribunal (**VCAT**).
  - **Melbourne Airport Environs Safeguarding Standing Advisory Committee (MAESSAC)** (both Issues and Options Paper and the final report dated 15 November 2021).
  - The ATSB report dated 30 June 2023 titled '**Aerodrome design standards and the Bulla Road Precinct development at Essendon Fields Airport, Melbourne Victoria**.'
  - The **Aviation Green Paper Towards 2050**.
  - The **2022 Rural and Regional Affairs and Transport Legislation Committee (RRAT) Senate Inquiry into the Current State of Australia's General Aviation Industry**.
  - **Kingston New Format Planning Scheme- Report of the Panel and Advisory Committee** - June 1998.
3. Kingston has a strong interest in aviation due to the significant national infrastructure asset that is Moorabbin Airport, which is situated in the centre of our municipality on a 294-hectare parcel of land. The site is owned by the Commonwealth Government and is located approximately 21 kilometres southeast of the Melbourne CBD. Moorabbin Airport is recognised as one of the nation's busiest airports due to its many flight movements, mainly related to pilot training, but results in concentrated aircraft activity within the vicinity of the airport with approximately 300,000 movements each year. It provides for approximately 28% of Australia's pilots per year and provides important connections for emergency/medical responses into rural and regional Australia. The critical role that Moorabbin Airport plays as a vital part of the nation's transport infrastructure, must be elevated.

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4. The airport lessee company (ALC) is the Moorabbin Airport Corporation (MAC), a private company, which in 1998 was granted a 50-year lease with a 49-year renewal option. Since deregulation the Airport has created, potentially, Australia's largest non-aviation commercial area on any airport and in doing so has, heavily compromised the potential for yet unforeseen needs of the aviation sector. Council has regularly raised the inconsistencies between the legislative requirements that require the site to function as an airport, as required by the **Act**, with the continual expansion of its non-aviation development activities.

### **Legislative context**

5. The **Act** sets out the regulatory arrangements between airports formerly operated on behalf of the Commonwealth by the then Federal Airports Corporation (FAC). It requires, as set out in Part 1, Section 3 that airports "*promote sound development of civil aviation in Australia*". The Moorabbin Airport is also subject to Part 5 of the **Act** and the corresponding **Regulations**. As per Part 5, '*Obligation to use airport site as an airport*', the Airport is declared to be an airport site within the meaning of Section 5 of the **Act** and **Regulations**.
6. The Lease agreement by the Commonwealth to the MAC over the Airport states that the MAC "*must provide for the use of the [Airport] as an airport*" and may "*permit the [Airport] to be used for other lawful purposes that are not inconsistent with its use as an airport*". The legislation that underpins the role of the Airport clearly seeks to ensure that an efficient and fully functioning airport is provided for, which gives priority to its core aviation function. Council acknowledges that non-aviation development has some role to play in providing sufficient income for the ALC to ensure sufficient resources are available to maintain the airport. Consideration must however be given to the appropriate balance being struck between development and the risk of directly undermining aviation both now and into the longest of possible planning horizons.
7. When the then FAC, (now known as the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the **Department**)), privatised airports in 1996, from the readings of the Act and the justification for selling off the leaseholds, it was never the intention of the Federal Government to place greatest priority into maximising commercial returns if they came at a cost to the advancement and long term future of the aviation industry.
8. There is very significant tension between ALC roles in managing and future proofing general aviation airports/aerodromes as an aviation asset, whilst advancing lucrative non-

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aviation related commercial endeavours. This is not an issue specific to Moorabbin Airport but an Australia-wide issue, however Moorabbin provides a context for why airport planning needs tighter control. The key issue of balancing land uses at airports, as per the legislative process that currently exists, will be explored as an overall theme but separated into the following areas:

**A) General Aviation**

- a. Definition
- b. Providing greater focus to General Aviation

**B) Masterplan processes**

- a. Deficiencies with the process (role of independent advice to the Minister)
- b. Masterplan process
- c. Fresh draft masterplan
- d. Aviation Works infrastructure
- e. Inconsistencies with State and Local Planning Provisions

**C) Major Development Plans**

- a. Thresholds

**D) Lease arrangements**

- a. Head Lease
- b. Aviation Leases

**E) The Role of Government**

- a. Federal Government
- b. Regulation/Compliance
- c. State Government

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## **A. GENERAL AVIATION**

9. The International Civil Aviation Organisation (ICAO) classifies General Aviation (GA) as covering a range of operations that are not commercial air transport services. This includes aerial work (such as agriculture, photography, surveying, search and rescue), instructional flying and recreational flying. It relates to small to medium aviation, private, sport, recreational, private aviation for businesses (single engine) across Australia with our regional and rural areas heavily reliant on GA. Without GA our regions would face unique and additional challenges due to the broad role that GA plays in ensuring the viability of regional/rural communities. GA encompasses airport maintenance companies, flying schools, charter businesses, and aerial firefighting. Kingston believes that there are several areas that the Green Paper has failed to appropriately address. Firstly, not defining GA, and secondly recognising the importance of GA. Without GA, our aviation industry would struggle to exist.
10. The critical role that GA plays for the entire aviation sector within Australia, must be elevated in the White Paper beyond its current theme. It is the backbone of aviation and should be identified in the White Paper as a cross-cutting theme which forms a vital part of the national transport system and aviation ecosystem.
11. The safe, efficient, and effective operation of all federally leased airports should be a paramount policy goal. Protecting GA airports from inappropriate development is critical to the protection and growth of the industry. This is where the masterplan process is so important and is discussed further in the submission.
12. Throughout Australia, many regional and rural communities, especially those underpinned by mining, tourism, and agriculture, are highly dependent on aviation. Aviation is fundamental in delivering both critical and ongoing health services into regional communities and without aerodromes to support these industries, future generations will face extreme challenges. It is essential to maintain connectivity to remote and regional communities from Melbourne, which is forecast to become Australia's most populated Capital City.
13. The Covid-19 pandemic further highlighted how important aviation is to Australia. It is crucial as a sector, contributing to social development, economic growth (from the tourism economy through to cargo such as medical supplies, food and other essential goods on a global scale), facilitating human and goods movement.

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14. In 2005, a judgement in the Federal Court was handed down (*Westfield Management Ltd v Brisbane Airport Corporation Ltd*) which permitted non-aviation commercial development at Brisbane Airport. This decision set a precedent that the Federal regulator and ALC's have relied upon for permitting non-aviation development at all federally leased airports, particularly at GA airports. Kingston maintains that this decision was a crucial turning point and speaks to the deficiency of the **Act**. There is a distinct difference between a major airport such as Brisbane, Melbourne, Adelaide, Sydney etc) to a GA aerodrome like Archerfield, Moorabbin, Bankstown and Jandakot. Retail at a major airport will always be a secondary activity as people are there to get on a plane, to travel to a destination. Commercial/industrial uses at our major airports are developed in a way so as not to constrain the aviation component now or into the longest-term future.
15. From the points made above, Kingston believe that the **Act** is deficient in that it does not recognise the importance of GA and its contribution to the Australian economy. At all federally leased GA airports across Australia, the destruction of airside land, with the increase in non-aviation development is seen as a critical issue post the *Westfield* decision.
16. In the context of capital city GA airports, the economic output is often held up as a basis for validating the extent of non-aviation investments. This needs to be very carefully considered against the medium to longer term needs of protecting Commonwealth Land for its intended purpose. Kingston acknowledges that some non-aviation uses should be permitted at GA airports, however Moorabbin presents a useful case study into the need for legislative reform to ensure Commonwealth Land is able to be effectively managed so that it can be preserved for its intended purpose.
17. Over the last three years, the aviation industry has been significantly impacted by Covid-19 with large scale job losses during the period of border closures, and with significant skills and labour shortages the industry is still struggling to recover. The Government's 2022 Skills Priority List identifies a number of occupations in the aviation industry that are in shortage including engineering and ground handling positions. Protecting and enhancing GA through policy measures are desperately needed for the long term to ensure that there is a sustainable channel of workers for the aviation industry.

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18. Replacing and building a new airport is not a feasible solution. Finding a suitable site, designing and finalising flight paths and airspace arrangements for a new airport is a large and complex task that takes many years to complete, in some cases decades (using Western Sydney as an Australian example). Based on the urban development for Melbourne, an airport such as Moorabbin could never be recreated within any reasonable proximity to Melbourne CBD.

19. The classifications of the runways at Moorabbin have recently been reduced in the latest iteration of the masterplan (approved September 2023), which according to those in the industry will continue to deplete the core number of aircraft based at Moorabbin. Due to rules administered by CASA it is understood that certain types of businesses can no longer operate there, something the Department should formally seek to understand. Kingston firmly believes that general aviation ALCs require more explicit regulation and oversight that not only ensures the safety of the airport environs but makes clear that aviation is the intended purpose of the land and should always be prioritised over non-aviation activities.

20. The White Paper process must make recommendations for changes to ensure that effective planning and regulation occurs as we move forward into the future particularly to protect the backbone of Australian aviation.

**21. Recommendations:**

- **General aviation to be clearly defined.**
- **General aviation to be separated out within the Act and Regulations.**
- **Prioritise improvements to General Aviation at federally leased airports, over non-aviation land use activities.**

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## **B. MASTER PLAN PROCESS**

22. Within the Master Plan process as per Part 5 of the Act, key themes discussed in this section are as follows:

- Background of the Moorabbin Airport Master Plan (2021)
- Master Plan process
- Fresh draft Master Plan process
- Aviation Works Investment.

23. The journey experienced with the latest iteration of the Moorabbin Airport Master Plan has highlighted several issues with the process.

24. The privatisation of federal airports was presented as a way in which to bolster the aviation industry. It remains an exceptional situation where privatised airport leaseholders are able to hold unique and often unregulated monopoly powers which negatively impact the aviation industry whilst sidestepping State and Local planning powers. Developments can disregard existing residential neighbours and pose serious negative amenity outcomes with no checks or balances that would otherwise be available in the relevant State jurisdiction.

### **Background to the Moorabbin Airport Master Plan**

25. In March of 2022, the then Deputy Prime Minister, the Hon. Barnaby Joyce, refused the draft Moorabbin Airport Master Plan 2021.

26. The Moorabbin Airport Corporation (MAC) then committed to the 'fresh' draft Master Plan process whereby, as per the **Act**, they were to submit a 'fresh' draft Master Plan within 180 days. An extension by the MAC was sought in order for further and more detailed consultation to occur, which Council supported with a fresh draft to be submitted by March 2023. The new Minister for Infrastructure, the Hon. Catherine King, outlined explicitly, expectations for the MAC to 'engage constructively with aviation tenants and key stakeholders such as the City of Kingston'.

27. The Department advised both the Minister and the ALC that no exhibition was required. It was a significant point of contention that no stakeholder ever saw the 'fresh' draft Master Plan.

28. Council sought its own legal advice around the process as set out in the **Act** and conveyed this formally on three (3) separate occasions to the ALC, the Minister and the Department (in their role as regulator).



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29. Our view was that there is no ambiguity or uncertainty and that the literal and grammatical meaning of a 'fresh draft Master Plan' could only mean that another draft Master Plan be submitted, and the public consultation provision of the **Act** be followed. Compliance with the public notice and consultation process (required by sections 79 and 80 of the **Act**) is a mandatory pre-condition of submitting a draft Master Plan to the Minister.
30. The Department provided advice to some stakeholders (including the City of Kingston) through an update via the Community Action Consultation Group (CACG) to advise *'there is nothing under the Act which would prevent MAC from sharing a preliminary version of the fresh draft Master Plan (in part or in full) with stakeholders ahead of submission to the Minister if they chose'*.
31. Council met with the MAC in early of 2023, where it was reiterated by MAC that the document would not be publicly released. Council Officers reinforced frustration with the process the MAC were choosing to take, which misrepresented the explicit intent of the legislation, and what any level of Government would consider to be constructive engagement. There was no targeted engagement with any stakeholder on the 'fresh draft Master Plan', as no one sighted the material that was the subject of the engagement.
32. The fresh draft was put on hold whilst a further information request from the Department to the MAC was obtained. Once the information was submitted the clock commenced with a new decision date to be made by mid-July. Council was then notified that the fresh draft was withdrawn by the MAC on 7 July 2023. The MAC then submitted another 'fresh draft' to the Minister for approval in late July 2023 with a decision to be made by 6 September 2023. Council continued to make representations that we disagreed with the lack of consultation and sought clarity on why certain parts of the **Act** were adhered to, such as requesting further information, whilst others (namely public consultation) were not.
33. On the 6 September 2023 the Master Plan for Moorabbin Airport 2021 was approved by the Minister and was finally released for the community to view it. Having reviewed the document, a key concern for Council had been addressed, which was the protection of the western aviation precinct. Other Council concerns were not addressed and there continues to be a lack of consistency between the approved document and State and Local planning provisions.

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34. On the 7 September 2023, the Aviation Green Paper was released by the Commonwealth Government.

Master Plan process

35. There are several deficiencies within the airport Master Plan process including:

- No transparency throughout the process.
- No compliance or regulation post approval process.
- Lack of assessment against State/Territories/Local planning schemes.
- Lack of scrutiny of non-aviation development.
- Inability to appropriately identify non compatible land uses.
- Lack of consideration of the impact of non-aviation activities on metropolitan planning.
- The lack of clarity of reinvestment in aviation infrastructure, despite the availability of significant income generated from non-aviation development.
- Until 2019, no safety assurance framework plan between CASA/ASA and the Department.

36. Kingston believes there are fundamentally two issues. Firstly, the way the **Act/Regulations** were drafted mean they are no longer fit for purpose in the 21<sup>st</sup> century. Secondly the lack of effective resourcing, to ensure that the **Act/Regulations** are appropriately applied and enforced to ensure their intent is delivered.

37. In the 2009 Green Paper, there was a suggested recommendation that the Minister be given the power to establish expert **Airport Planning Advisory Panels** for airport Master Plans and Major Development Plans. The use of expert and independent assessment panels for all airport Master Plans and Major Development Plan proposals is something Kingston strongly recommend that the White Paper implements. This would, in essence, be a parallel process already established in Victoria under the *Planning and Environment Act 1987*.

38. On issues of major land use change, it is common practice for expert independent panels to be established to advise the Local Planning Authority and the State Planning Minister. Kingston believe that it is only through a public panel process such as this that the community, State and Local Government, will have confidence that the Federal Minister has ensured that a sufficient and rigorous assessment of airport Master Plans has occurred.

39. Submissions considered by an Airport Advisory Panel would then be transparently reported back to the Minister with recommendations, essentially mirroring the existing process that

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is followed within Victoria. The commencement of exhibition of any draft Masterplan, to the reporting by the Airports Panel to the Minister, could be completed within a 4-month period, which would not create any additional burden on the Airport Lessee. Airport Advisory Panels could be administered by the State Government's existing Planning Panels area through an agreement between State and Federal Government. A Panels process would test the validity of the draft planning work that the proponent is putting forward in a transparent manner. This would remove some of the difficulty faced by the Commonwealth Department to have an in-depth understanding of the land-use planning regimes in each State and Territory.

40. Legislative reforms are required around powers for the Minister to 'call in', 'impose considerations' or make explicit content changes. The current legislation does not appear to allow the Minister to make specific changes to a resubmitted Master Plan. State/Territory Planning Ministers routinely change planning provisions to address emerging policy needs - for example the evolving requirements to adapt to the implications of current climate. The Act must give the Minister 'effective powers' to specify what must be changed in a draft Master Plan or make changes to the Master Plan when it is approved. This power is more critical at a Commonwealth level given the limited statutory regime governing land use planning decision making, when compared to State / Territory jurisdictions.
41. The significant impact of airport development on metropolitan planning remains an ongoing point of tension. Without proper, consultative strategic planning being undertaken, with buy-in from State and Local Government, the impacts of non-aviation development on airport land will continue to distort the pattern of spatial planning in cities and pose challenges for existing planning strategies. Ultimately this threatens the viability of activity centres, which is not an area of focus for either the ALC or Federal regulator and is often, in the case for the City of Kingston, left for Local Government to try to address. An Independent Aviation Planning Panel for Master Plans and Major Development Plans (as required) would allow such matters to be considered 'transparently and holistically.'
42. Other ways to enhance the transparency for the masterplan process is around the submissions made by the community. At this stage, airports do not have to publicly release their assessment of submissions which is a report they must provide the Minister to specify how they have responded to submissions made. Nor is there a requirement to make public their final draft Master Plan which is submitted for approval illustrating the changes made. A Planning Panel on the other hand would generally deliver an outcome whereby an

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Appendix would be created with the requisite 'tracked changes' following its objective assessment of matters presented before it.

43. The assessment of the Master Plan undertaken by the Department remains shrouded in secrecy. The overall lack of transparency creates the unfortunate perception of potential collusion and is not the manner in which such decisions should be made. . Without an Airport Planning Panel process that would provide both a framework for participation and process to independently assess Master Plans, it leaves all interested parties with the only available option being to take concerns directly to the Commonwealth Department and/or Ministers Office, as the ALC cannot be relied upon to appropriately represent concerns which are often at odds with its interests. In the Victorian system, the Planning Minister and Department can rely on Independent Planning Panels to assess proposals and make recommendations transparently.
44. It is a requirement of the **Act** that airports must demonstrate consistency with the relevant planning provisions at State and Local level. Kingston, as the local planning authority believe once again, that an Independent Airport Planning Panel would ensure that the Department can satisfy the Commonwealth Minister that an objective, open and transparent assessment has occurred in accordance with the Act.
45. Due to the lack of transparency, there appear to be no formalised mechanisms whereby the Department completes an assessment against the accuracy of what is provided in the draft Master Plan, noting again it is provided by the entity who derives the direct commercial benefit with the outcome. It is unclear whether the Department has properly critiqued the accuracy of information and details provided in draft Master Plans and undertaken a robust assessment of consistency with relevant planning provisions. With respect to the Moorabbin Masterplan, there are several inconsistencies with the Kingston Planning Scheme and broader Victorian Planning Provisions. Kingston can demonstrate outcomes that would not be permitted in other locations and are routinely occurring to the detriment of the adjacent community. Parity and consistency in planning practice is critical, particularly when the land in question is Commonwealth owned land intended for a critical infrastructure purpose.

#### Fresh draft Master Plan process

46. Throughout the fresh draft Master Plan process at Moorabbin that followed the refusal of the initial draft Master Plan, Kingston provided correspondence to the Department, the Minister and the ALC that affirmed our view *'that there is no ambiguity or uncertainty that*

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*the literal and grammatical meaning of a 'fresh draft Master Plan' could only mean another draft Master Plan submitted and the provision of the Act followed as it related to public comment/consultation. Compliance with the public notice and consultation process (required by sections 79 and 80 of the Act) is a mandatory pre-condition of the submitting of a Master Plan to the Minister'.*

47. As previously mentioned, Kingston remains strongly of the view that the intentions of the Commonwealth Parliament in introducing the Act was to ensure critical long-term strategic aviation planning to protect the needs of general aviation, both to recognise current needs and to plan for future needs.
48. At the Second Reading of the Airports Act 1996, the Hon. Bill Sharp discussed land use, planning and building controls. He stated **'There needs to be clarity and certainty on processes which allow government and community input, and a greater compatibility between on and off airport development... The bill ensures that the airport-operator company undertakes a 'public comment' process providing the opportunity for all interested parties to comment on master plans, major development plans and environment strategies.** *The views of airport users, such as the airlines and other tenants, state and local governments, will be a significant part of the comment process...The Airports Bill provisions require ministerial approval of airport master plans, which relate to a period of 20 years. These provisions are designed to provide a very high level of public consultation. There is a provision, too, which will allow the new airport operator to adopt an FAC master plan for the airport as its own draft master plan, but this plan cannot be approved without complying with the public comment provisions of the bill'* (emphasis by Kingston).
49. During this 'fresh draft Master Plan' process, the interpretation of the Act undertaken by the MAC, who seemingly relied on the Departments advice, was not to undertake any consultation of any substantive material that resembled the final form of the approved Master Plan. Even if one were to set aside the differing legal opinions, a logical tactical proposition for an ALC would be to submit a 'half baked' draft Master Plan with a view of having it refused, so as to avoid any genuine public scrutiny of a new plan then submitted to the Minister for approval. With the previous Master Plan remaining operable in the interim, the Act must be changed to avoid any doubt and remove the possibility of an ALC bypassing scrutiny of its actual intended plan. This cannot be left unaddressed as it presents a highly problematic interpretation of the current legislation, which is counter to the spirit in which it was drafted.

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50. The manner in which the recent Moorabbin Airport process has been conducted has taken significantly more time and required substantially more resources than employing an Independent Airport Planning Panel. Such a process would lead to an efficient, informed and sophisticated series of recommendations directly to the Minister and avoiding the need for time spent on a second draft process. The **Act** either needs to be modified to model other States and Territories by establishing an Independent Airport Planning Panel or it must remove any ambiguity that permits a 'half baked' draft Master Plan to be submitted to manipulate the integrity of the decision-making process.

#### Aviation Works Investment

51. It is a serious failure of the Master Plan process which allows for statements of 'intention' with no compliance provided by the Federal regulator. In the case of Moorabbin Airport, the ALC has and will continue to derive substantial commercial returns on its non-aviation commercial investments on Commonwealth Land.

52. In a similar vein to a local government producing its Budget and 5-Year Capital Works Program, the tenants of any federally leased airport across Australia, deserve to understand the extent of investment in aviation that will be undertaken. These outcomes should be clearly reflected in the Preliminary draft Master Plan and robustly enforced. There are multiple examples of proposed infrastructure in previous endorsed Master Plans for the Moorabbin Airport over the last twenty years which have not progressed, and it is not clear what, if any, accountability is in place to ensure commitments are delivered.

53. This should be compared to the substantial non-aviation development that has been rapidly completed over the same time period. It is a serious shortfall of the **Act**, and that of the master planning process, that ALCs can include multiple aviation and non-aviation proposals, yet only proceed with the developments they choose. In the case of federally leased GA airports across Australia, these are predominantly non-aviation developments, rather than the delivery of the whole plan. Non-aviation development should not be able to proceed until commitments on aviation infrastructure are delivered.

54. The aviation infrastructure often completed on site is to meet minimum safety standards such as runway lighting and resealing the runways, with limited significant investment more broadly in aviation. This is well illustrated when considering, for example the standard of infrastructure (streetscape quality and presentation), around the aviation infrastructure

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when compared to the non-aviation development. There is a need for specialist regulatory oversight to ensure that an appropriate level of capital is invested into aviation infrastructure in a timely way and could be linked to milestones in the deployment of non-aviation uses. Aviation infrastructure renewal requirements must be documented and enforceable, something the White Paper must address.

#### State and Local Planning Provisions

55. As briefly touched upon, there are elements in the Master Plan that deviate from State Planning Provisions which are likely due to a lack of expertise and oversight that an Independent Airport Panel would address. Council considers that the process and the approved contents of the Master Plan, illustrates that significant improvements are justified to ensure that State and Local Planning requirements are recognised and integrated in airport master planning.
56. The Moorabbin example also illustrates the value and one of the purposes of the requirements of the **Act** to undertake consultation, to enable local planning authorities to advise on potential factual errors or inconsistencies with the relevant planning regime. The approved document has demonstrated that failing to produce it for review in a transparent public process, has led to a number of inconsistencies with the Victorian Planning Provisions and the Kingston Planning Scheme. Kingston has continually advocated for and requested that the MAC produce a Master Plan that is consistent with Local and State planning laws as per its obligation under S79 of the **Act**.
57. An objective assessment of the evolution of non-aviation development proximity to aviation infrastructure over recent years, will illustrate how encumbered the airport approaches have now become. Council considers that Moorabbin Airport presents a useful case study into the management of federally leased airports when considering the non-aviation developments that have dominated over the past 25 years.
58. In its submission to the RRAT inquiry Council stated *'it is recommended that the enquiry critically examine the degree to which these developments comply with the relevant guidelines from the National Airport Safeguarding Framework in areas including obstacle limitations and windshear, with a particular focus on any variations to the technical requirements. Further, the enquiry should turn its mind to the level of independent technical oversight that has occurred'*.

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59. The Australian Government's failure to apply legislation in its intended form or reform airport planning processes knowing there are weaknesses, has created a serious issue across Australia's general aviation airports. These airports are vital pieces of national infrastructure that service the Australian community. As part of the White Paper, Kingston strenuously advocates for recommendations to the Minister that include legislative reforms to address:

- The lack of coordination between all levels of government.
- Inconsistency with state and local planning provisions.
- Introduction of an independent panel for the Master Plan assessment process.
- Implementation of the National Airport Safeguarding Framework (discussed in greater detail further in the submission).
- Lack of powers for the Minister to intervene.
- Aviation infrastructure requirements to be established within the Act or appropriate mechanism.
- Unfettered non-aviation development on airside land.
- Lack of transparency in Master Plan and fresh draft master planning processes.
- Inconsistency in the application of safety standards on and off airport sites.



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## **60. Recommendations:**

- **All Master Plans and major planning proposals at airports be reviewed by an Independent Airport Panel consistent with State and Territory jurisdictions to assess the proposal and provide recommendations to the Minister.**
- **The establishment of a clear demarcation (formal line) as part of the Master Plan process at General Aviation airports, where land will be clearly protected for aviation and aviation related purposes to prevent ongoing incursions.**
- **Legislative reforms including:**
  - **To require the Federal Minister to formally consider State, Territory and Local Government planning and environment policies during the assessment of airport Master Plans and Major Development Plans.**
  - **To remove the lack of clarity on the fresh draft Master Plan process and be explicit on meaningful stakeholder engagement requirements.**
  - **To ensure that State, Territory and Local Planning Schemes are amended in a timely manner to reflect any updated endorsed contours.**
  - **Powers for the Minister to call in developments/proposals.**
  - **Minimum standards and design guidelines (such as setbacks, heights for a respectful transition) for developments that abut existing residential areas.**
  - **Full disclosure of the airport Master Plan process to ensure transparency including ensuring that airports are to make public their final draft Master Plan (or major development plan) when it is submitted to the Minister for approval, and their responses to submissions.**
- **The requirement for an explicit capital works aviation renewal program linked to milestones associated with commercial development, which provides for clear commitments to ongoing investment in all forms of aviation infrastructure and provides investment certainty to aviation businesses.**
- **To remove any prospect that the 'fresh' draft Master Plan process could be used as a mechanism to prevent full scrutiny of a Master Plan.**

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### **C. MAJOR DEVELOPMENT PLANS (MDPs)**

61. MDPs as addressed in Division 4 of Part 5 of the *Airports Act 1996*, again, much like the previous sections, Council believes this section of the Act needs to be reviewed. There are issues with the objective and impartial interpretation of the role played by this part of the **Act**. For example, under s89(1)(e) and (na), a major airport development is '*a development that is carried out (on) an airport and that consists of...constructing a new building, where...the building is not wholly or principally for use as a passenger terminal, and the cost of construction exceeds \$25 million...or a development of a kind that is likely to have a significant impact on the local or regional community*' (emphasis added). What is meant by significant impact? Who is consulted and who is asked to determine this?
62. The Government has acknowledged that there are major flaws with the existing Major Development Plan (MDP) process with a concentrated discussion around the financial threshold, currently set at \$25 million (which has not kept pace with inflation) but is proposed to go to \$50 million.
63. For airports who are proposing development to benefit aviation, this would have a huge impact on aviation operations in relation to the expense involved, red tape and the time it takes for the MDP to be approved (up to 18 months). This is significantly different to that of an equivalent application through Council. The threshold criteria prevents investment and will be a hindrance to those that are trying to improve airports, particularly at our major airports across Australia.
64. This issue is one which again reinforces why it's important that general aviation is identified and acknowledged within the legislative framework given its specific needs. Non-aviation development generates its own type of community impacts and to date Kingston questions some non-aviation developments at Moorabbin that have been approved and constructed through the Airport Building Controller and not subject to a Major Development Plan. The role of the Airport Building Controller will be discussed further in the submission.

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65. Kingston believes the financial threshold for the MDP is much less relevant provided, a robust assessment is made by all levels of Government with respect to development under Section 89 (1)na of the Act (for example, the appropriateness of constructing buildings of significant height for non-aviation investment on Commonwealth land adjacent to an established residential area). An Independent Airport Planning Panel process established to appraise what should have been an MDP would address this issue. Approved Master Plans should flag locations on Airports where prior to development being considered MDP triggers should be actively assessed.

**RECCOMENDATIONS:**

- **That the financial threshold is less relevant.**
- **Ensure that a robust assessment of individual developments is undertaken, following consultation with the relevant State and Local Government to determine whether a Major Development Plan is triggered.**

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#### **D. LEASE ARRANGEMENTS**

66. This section will examine both the lease arrangements that tenants across Australia are facing and the Parent Lease for ALCs.
67. Kingston understands that there may be a number of requests before the Commonwealth Government from federally leased airports, who are seeking an early second option as part of their long-term lease agreement. This request is particularly relevant for General Aviation Airports, given the substantial erosion of aviation land during the early term of the current lease. This has occurred whilst recognising the nominal original amount paid to the Commonwealth for the initial lease term, when compared with more contemporary Airport lease transfers. It is likely at Moorabbin that the commercial benefit from non-aviation business and development derived through the initial period of the parent lease has been substantive. A recent example of the value of the lease, is the sale of Jandakot Airport, which was sold in 2021 to Dexus for \$1.5 billion as reported by the Australian Financial Review.
68. Kingston has observed the disproportionate investment in infrastructure (roads / landscaping / building assets) that supports commercial non-aviation precincts when compared to the aviation precinct, to see where the strongest focus on capital investment has been. Much of the civil infrastructure around the aviation precinct at Moorabbin is not at a standard that would be deemed safe, contemporary or acceptable and would likely present some risk if contained within the asset portfolio of a Local Government.
69. On 1 July 2023, the Victorian Government introduced a Windfall Gains Tax. This applies when rezoning results in a substantial value uplift. A strong case could be put that a windfall gain has occurred for a number of ALCs on Commonwealth Land and an appropriate valuations matrix should be reviewed as part of considering options available for lease extensions / renewals to ensure the Commonwealth is both receiving the appropriate revenue and reinvestments are occurring appropriately into aviation infrastructure.
70. Over the last several years, Kingston has been provided feedback regarding the at times challenging conduct of ALC's at different general aviation airports and treatment of long-established aviation tenants. Examples include substantial rental increases, limited lease terms (limiting reinvestment), removal of areas previously used to store aircraft and the inability to advance meaningful dialogue with ALC's on renewal and expansion projects.

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71. The consumer protections provided by States and Territories do not apply to airport aviation tenants on Commonwealth Land, meaning that aviation tenants can find themselves in a precarious situation with limited recourse. Ironically, the terms provided to non-aviation businesses, which are not critical infrastructure to the Airport, are likely substantially lengthier than the security the ALC is prepared to provide to the Airport's aviation tenants, who they are legislated to manage the site for. It would be useful for the Department to further explore whether this is the case.
72. As highlighted previously, the Airport master planning process is critical in providing a framework for decision making but it needs to work side by side with the appropriate mechanisms for oversight of the head lease (which has provided the ALC with a substantive commercial benefit). A focus in this area needs to be identified through the White Paper and will assist to address the imbalance in the rights of tenants and level of aviation capital investment being made on Commonwealth Land.
73. The government has recognised the potential for sustainable aviation fuels (SAF) with these earmarked as a major theme within the Green Paper, which Kingston supports. However, if lease agreements do not provide adequate security for these providers to give them confidence to invest, change will not occur. It is therefore a multi-pronged approach that needs to be implemented to allow for the practical implementation of SAFs to ensure that these providers are afforded a secure opportunity to invest on aviation land.
74. Whilst the Green Paper is looking at consumer rights, it must also consider a regulatory regime that provides consumer / tenant protections for long term aviation tenants. The need for SAF's is only one of many examples that will be driven by issues such as Climate Change that make the need for the Commonwealth to have much tighter control on activities / leases on Airports.

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75. The proposal to increase the Australian Competition and Consumer Commission's (ACCC) ability to have broader protections for General Aviation monitoring functions is supported. Providing additional monitoring abilities for the ACCC would assist tenants for the long term, whilst an Ombudsman enquiry deals with 'the now'. Kingston has heard from those within the industry that Moorabbin Airport is one of the most expensive airports in Australia. Airport access charges, that are not controlled, are an effective way of making an airport potentially undesirable to work from/land an aircraft, reducing the productivity of the aviation function. The current approach requires review to ensure it is working in a manner that protects Australian small and medium aviation businesses who are reliant on being occupants of functioning airports.

76. The ACCC should also closely examine whether or not the regulatory regimes around land use decision making on and off airport are providing a level playing field for prospective investors against the relevant planning jurisdictions.

77. Kingston advocate for a recommendation of the White Paper for an urgent Ombudsman enquiry into the lease holds of tenants across Australian airports (major and general aviation).

**78. Recommendations:**

- **A review be conducted by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) into the leasing practises of ALCs and whether additional consumer protections should be afforded to Aviation Businesses.**
- **A transparent public process be implemented which ensures that prior to any lease extension options over Commonwealth land are considered, the ALC must demonstrate its credentials to further support and grow opportunities for Aviation.**
- **The ACCC be afforded additional regulatory functions to monitor and protect small to medium businesses at all federally leased airports across Australia.**

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## **E. THE ROLE OF GOVERNMENT**

79. The division of powers across the three levels of government must be addressed as part of the White Paper. Currently as it stands the Regulator of federally leased airports, the Department, appears reluctant to regulate. Further to this, State Government are hesitant and not sufficiently timely in making required changes to the Planning Provisions.
80. A more cohesive response is required from the top down. The critical role the Department has in influencing outcomes for aviation needs to be examined and its role improved for the long-term benefit of the industry. An acknowledgement that there have been failings and how to fix these, must be addressed as part of the White Paper. The Department is crucial in delivering policy goals and outcomes. They must drive the coordination between Government aviation agencies and departments, but beyond that, coordination across all three levels of Government. Kingston believes there needs to be change to see a greater degree of accountability and responsibility of actions by the Commonwealth Department.

### The Role of the Federal Regulator

81. As mentioned in Part B of this submission, there is a lack of transparency in terms of regulation and compliance when it comes to the Master Plan and Major Development Plan process. However, this extends beyond just the Master Plan process. As the Regulator they are the 'expert' that Local and State Government can rely on for information pertaining to safeguarding airports and ensuring alignment with broader planning policies. Council believes that in the case of Moorabbin Airport, the ALC is not the entity that should be afforded responsibility to undertake any significant regulatory responsibilities, given the conflicted nature of the different functions they presently perform.
82. Kingston believes a coordinated and efficient process needs to be implemented that places the Federal Government and its agencies at the centre of administering, with the states regulations that affect land around airports. Some parts of aviation are incredibly highly technical issues. Using the NASF as an example, particularly *Guideline F: Managing the risk of Intrusions into Protected Airspace of Airports*. It is a technical issue that is beyond the training of a statutory planner required to assess permit applications affected by it. Kingston is fortunate that its Statutory Planning division are aware of implications that may arise from the nearby airport but can only advise an applicant. For example, the OLS can impact both the overall built height and form but also the construction process, particularly if cranes are required through construction. Local authorities do not regulate cranes that

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impinge into the OLS, and this is one of many examples of a 'gap' in the application of intended safeguarding mechanisms.

83. On 30 December 2022, a decision was handed down by the Victorian Civil and Administrative Tribunal (VCAT), by Senior Member Bennett (VCAT reference P457/2022). This decision relates to a site at 252 Lower Dandenong Road, Mordialloc (opposite Moorabbin airport) for a proposed Convenience Restaurant and Service Station which was refused by Council based on amenity related issues and safety concerns raised by the ALC. Ultimately the VCAT also refused the grant of a permit based on an unacceptable safety risk, due to the increase in activity on a site proximate to the airport.

As part of the hearing, the MAC were required to provide a map of the Public Safety Area (PSA). Considering VCAT can refuse a land use immediately adjacent to the airport by concluding that *'Controlling the number of people on the ground by limiting development in the area at the end of a runway is a clear priority to aviation authorities and is a laudable approach deserving support in this application'*, shouldn't the same approach also be applied on the Airport site, on Commonwealth Land?

84. The ALC's role in this VCAT proceeding as reinforced in the Senior Members comments, emphasises the inherent tension that exists between the roles it currently holds with respect to planning on and around Moorabbin Airport. As evidenced through the VCAT proceedings, PSA areas and airport runways are in fact often closer to commercial warehouses that were built on the airport land when compared with the private land parcel assessed by the VCAT. Moorabbin once again provides a useful and important case study.

85. With regard to safety, Kingston continues to question the consistent approval of buildings within identified PSAs and the level of independent technical oversight which has occurred. Kingston holds the view that consideration should be given to how the PSAs are appropriately illustrated and once again the role Independent Airport Planning Panels may present. It is not clear whether the White Paper will consider whether a similar approach that has occurred across other State planning jurisdictions in relation to safety issues like coastal inundation, bushfire or flooding should be applied, creating a plan where progressive 'retreat' may be an appropriate planning position, rather than continuing incursions into PSAs for non-aviation activities.

86. The second issue stems from historic developments and the lack of compliance/regulation with regard to their approval. The recent report, released by the ATSB in June of 2023,



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titled “*Aerodrome design standards and the Bulla Road Precinct development at Essendon Fields Airport*” notes that there was no regulatory assurance framework to *assess the safety information in draft major development plans* between CASA and Air Services to the Department of Infrastructure prior to 2019. ‘*CASA could decline to provide advice to the Department on airport plans...*’ which in turn were approved by the Department.

87. With respect to this, the Department should conduct an audit and risk assessment on all structures constructed prior to 2019 on federal aviation land proximate to landing environments, to ensure compliance with the current safety standards, as these structures were approved prior to the safety assurance framework being implemented.

#### Airport Building Controller (ABC)

88. The ABC process is a further significant failing in terms of public transparency. There are fundamental concerns with regard to this section of the Act and the role of the ALC in the building approval process for development that occurs on land they hold a significant interest in. In many instances the ALC wear the hat of the applicant, regulator and financial beneficiary of decisions made on land use planning. An understanding of this significant conflict must be explored through the White Paper.

89. The consent of the ALC is required before any approval can be given by the ABC whose appointment is not made at arm’s length from the ALC. The ALC will review all applications to ensure that the proposal is consistent with the airport master plan and its planning objectives, and to assess the impact of the proposal on infrastructure and the operations of the airport. The ALC also has the power to impose appropriate conditions on building activities whilst also being the applicant for developments on site. These are fundamentally problematic conflicts in roles and responsibilities and raise a number of questions. The White Paper must address the manner in which ABCs and ALCs interact.

It is imperative that there is independent oversight of this process and that this is done in a transparent manner. As it stands, under the **Act** and **Regulations**, should one wish to inform themselves of a decision made by an ABC, the ABC as of right, can declare that certain documents are made confidential therefore inhibiting an open and transparent process (as stated below) under 4.03 of the **Regulations**. There are a series of questions that Council think should be investigated through the White Paper process including:

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- Who appoints the Airport Building Controller and what expertise must they possess?
  - Who pays the Airport Building Controller?
  - Who is the Airport Building Controller required to consult with when making decisions?
  - Who regulates the decisions made by the Airport Building Controller or who do they engage with if they wish to query a technical issue?
  - Has an audit been undertaken of the activities of Airport Building Controllers to determine the extent of applications they have refused, substantially changed or referred to a Commonwealth Department / Agency for specific advice against the NASF?
  - If the Airport Building Controller is asked to make a decision regarding a land use matter, are they required to consider whether it may fall within a matter that would trigger a Major Airport Development (e.g., Section 89 na)? In such circumstances who are they required to consult with?
  - If the Airport Building Controller is not required to determine whether a land use proposal meets the definition of a Major Airport Development, who is required to make this decision?

90. As per Part 4 of the **Regulations**, Regulation 4.03 'confidential information in hands of airport building controller' states *information given to, or obtained by, an airport building controller in the performance of a power or function under these Regulations must not be disclosed to any person who does not have a lawful, and proper, need to see the information.*

91. This appears to be stating that if one were to try to obtain information on a development approved by the ABC, the ABC could declare this information as confidential and it would not be made available. At this stage, Kingston do not believe that the ABC should hold such powers, and this must be addressed. The decisions made by the ABC are not only publicly relevant, they are also critically important to enhance the understanding of how the decision-making process on Airport land occurs. This would be akin to Council refusing to provide public access to planning applications or the framework that guides how its decisions are made.

#### Role of NASF

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92. In 2021, the Review of the National Airspace Safeguarding Framework (NASF) called for a national approach to airport safeguarding. There is a consistent conflict between state (and some local) governments with aviation requirements to maintain safe flight operations.
93. In November 2021, the Melbourne Airport Environs Safeguarding Standing Advisory Committee (MAESSAC) final report was released. As part of the hearing, the Committee sought submissions on safeguarding issues with an Issues and Options Paper prepared to query how the NASF would be best incorporated into planning controls with draft changes provided. The recommendations provided by the Advisory Committee have yet to be implemented at State level.
94. This responsibility and burden for implementation cannot be placed on local government for implementation but requires the Federal Government coordinating with State Governments to map and apply consistently to all impacted Planning Schemes. There is naturally a significant amount of work to be conducted once a masterplan is approved with endorsed contours, and in the State of Victoria, these changes can only be done by the State Government.
95. Ideally, endorsed contours would be mapped and be available through State Planning Maps such as VicPlan in Victoria and completed within a statutory timeframe set out under the **Act**. An integration of the OLS along with the topographical condition of an area would lead to better outcomes for strategic planning and is something quite critical for metropolitan Melbourne with recent announcements made by the Victorian Government. Trying to plan for Activity Centres is difficult without information on maximum heights and what would impinge into the OLS. It is only the Commonwealth and State Governments that can dictate construction related considerations like crane placement furthering the basis for a coordinated approach.
96. Kingston supports the implementation of the NASF and notes that beyond effective implementation careful consideration needs to be given to how it is policed by the relevant regulator. Given the potential risks, consideration must be given to the appropriate oversight and penalties for breaches to ensure they are communicated to industry.

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### Referrals/Expert Advice

97. Similar to the role that State Agencies such as the Environment Protection Authority (EPA) and Melbourne Water provide in Victoria, the Department or a Commonwealth Agency should be able to provide both expert advice and act as a referral authority when called upon to do so, and in a timely manner. A point of contention in Victoria has been around referral authorities for planning decisions with respect to federally leased airports. It has consistently been put forward that it would be inappropriate for a private company, such as an Airport Lessee Company (ALC), to be making comments as a referral authority on land use decisions. Council remains of this view that it is in no way clear how the public interest is served by a private operator acting as a referral authority.
98. Given the purpose of referrals is to ensure that the most appropriate planning decision is made, Kingston's position has not changed from 1998. It would be inappropriate for a private entity to be a determining referral authority.
99. At this stage it would be reasonable to conclude with respect of Moorabbin Airport, the Commonwealth Department or Agencies of the Government need to take a much more active role as Regulator.

### State Government

100. Kingston is advocating for changes to the legislative provisions to ensure that any masterplan is approved with endorsed contours, and these changes are reflected promptly within the Planning Schemes in which they serve. At present, only the Victorian State Government can amend the application of the Airports Environs Overlay. This overlay is incredibly restrictive on properties (allowing only one dwelling on a site with no ability for subdivision). As contours are updated, if these are removed from a site, this should be done quickly. At this stage there is no accountability or a time frame in which these are completed.

### Community Consultative Action Groups

101. With respect to the CACG, Kingston believes this process must be updated. At this stage if one wishes to be a part of the CACG you must be nominated and accepted by the ALC. The terms of reference and stakeholder participation should ensure that input beyond the ALC is sought from Local Government, when determining the membership of a CACG.

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## RECOMENDATIONS:

- **A retrospective review and detailed technical assessment be undertaken of non-aviation development on federal airports proximate to aviation infrastructure, that were approved prior to the Safety Assurance Framework 2019, to be completed as a priority.**
- **A planning practice note be prepared to explain safeguarding issues and approaches once the requisite specific changes are made to Planning Schemes (overlays etc).**
- **Legislative timeframes be imposed for State Government to implement and update Planning Schemes for endorsed contours.**
- **A review be undertaken into the operations of Airport Building Controller, including a review of its transparency.**
- **Update and modernise land use planning practices, equivalent to State/Territory/Local requirements .**
- **The Commonwealth Department / Agencies be resourced to provide expert advice when required.**
- **The OLS mapped, and planning and guidance notes developed to address when it may be triggered and referrals required, noting the interface with the construction industry via the relevant State/Territory Building Act.**
- **The Department to provide referral advice to enable Local Authorities to make planning decisions with the appropriate advice.**
- **The NASF implemented into planning schemes with appropriate guidance provided.**
- **The NASF to be reviewed and include vertiports into its guidelines.**
- **The CACG guidelines to be updated to reflect best practice guidance for community consultation and participation.**

102. Kingston wishes to be a constructive participant in the steps to formulate the White Paper and should you require any further information please do not hesitate to contact Sarah Capenerhurst at [sarah.capenerhurst@kingston.vic.gov.au](mailto:sarah.capenerhurst@kingston.vic.gov.au) or the undersigned below.



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# Supplementary- Submission to the Green Paper Aviation

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DECEMBER 2023



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## **Introduction**

1. The City of Kingston (Kingston) welcomes the announcement of the White Paper and a commitment for more robust planning for aviation in Australia. As part of ongoing discussion with aviation tenants and the Department of Infrastructure, Transport, Regional Development and Communications (the Department), this is a supplementary submission to Kingston's primary submission on the Aviation Green Paper.

## **Aviation Demarcation**

2. In Kingston's primary submission, a recommendation at paragraph 60, stated '*the establishment of a clear demarcation (formal line) as part of the Master Plan process at General Aviation airports, where land will be clearly protected for aviation and aviation related purposes to prevent ongoing incursions*'.
3. Following a welcomed discussion with the White Paper Branch of the Department, Kingston wishes to expand upon a point that was raised in our primary submission. It is noted that the State of Victoria is the only State which uses the 'Urban Growth Boundary' (UGB). The UGB is a delineation, that is used in metropolitan Melbourne (and the Mornington Peninsula), designed to limit urban sprawl. A line on planning maps demonstrates where land is designated for urban uses (housing, industry and commerce) from that which is non-urban. Non-urban land includes land for uses such as conservation, agriculture, resource development and suitable community infrastructure like airports, water supply and sewerage treatment facilities, which require large areas of open land. The UGB is a permanent line and one which is difficult to change. It requires a majority vote in both Houses of Parliament to agree to a change, usually in conjunction with the relevant local planning authority.
4. Kingston are recommending for a similar policy to be set, ideally legislated, or required through regulation, so that aviation users have much greater certainty for long term planning. This is particularly prudent for General Aviation airports. Masterplan documents are endorsed for a period of eight (or five) years, dependent on the airport. An aviation boundary, that once endorsed by the Commonwealth Government, cannot be moved without consent through Parliament or as a minimum the Department. This provides much more certainty for users on aviation sites, that regardless of the endorsed contents a Masterplan has set out, the line cannot be moved and therefore users will know that land set aside for aviation will remain. In the case of Moorabbin Airport, a line similar to what



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is illustrated in the image below, protecting the remaining areas of airside land not yet developed for commercial uses is what Kingston has advocated for.



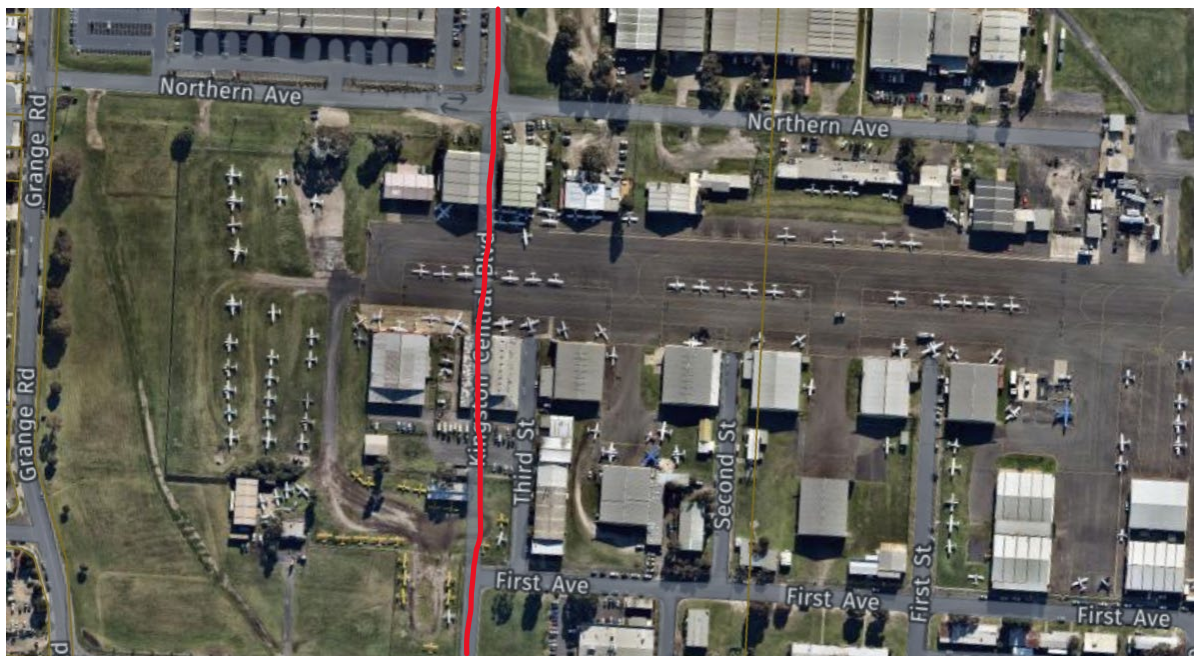
5. In our recent submission, Kingston reinforced how critical that aviation planning is required to ensure that Commonwealth Land, with a clearly purposed intent, must not only provide for the aviation needs of today but preserve land for the unforeseen needs into the long term. Noting again, that this airport is consistently amongst the busiest in the country, it was stated that this is an airport that could not be recreated in 2023, particularly with the rapid intensive urbanisation of all Australian capital cities. The substantive erosion of land at Moorabbin is unprecedented when viewed against all other Airports. The above image is deceptive around the availability of land given the significant limitations imposed on any aviation investment on the land proximate to any of the runway approaches and departures. A fixed line must be drawn to protect this critical national infrastructure noting no industry can survive, let alone prosper, without adequate land security being given to house, support and grow their operations.
6. Airports also provide Governments, both Commonwealth and State, with critical available land supply to tackle a range of climatic responses and sovereign capability (access to pilots/planes and landing capacity) needs that are increasing in both intensity and risk

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exposure. Assumed continual national population growth will speed up the needs for trained pilots, something which will in no small part influence the nation's economic future and rural prosperity. It must be made unequivocally clear to the ALC as an occupier of a unique Commonwealth asset, that "fixed" and permanent boundaries must be established in relation to the use of airport land. A clear demarcation in any future master plan must plan for and protect aviation needs seen and unforeseen for the maximum lease term.

7. The imposition of a clear demarcation for aviation also provides a fundamentally important safety tool which can prevent any non-aviation incursions in close proximity to the airfield (e.g., the southwest corner of the site). The establishment of a fixed line would have the added benefit of ensuring that all safety considerations associated with the movement of aircraft around the airfield, windshear and runway demarcations are considered as part of establishing the line where non-aviation activities are not permitted.
8. Part 3AA—*Metropolitan green wedge protection of the Planning and Environment Act 1987* sets out the obligations and requirements around the protection of Green Wedge land as part of the UGB (described in paragraph 3 of this supplementary submission). Its legislative function is clearly set out and could easily be used as a benchmark and example for the Commonwealth Government, as a way of protecting the aviation industry, particularly at General Aviation airports. Ironically the UGB surrounds the land immediately adjacent to Moorabbin Airport's northern boundary, which in part, protects its flight paths from urban uses and inappropriate building incursions. Changes to the Act could provide for the establishment of the boundary through the preliminary draft Masterplan process for consultation to the provide for resolution by the Minister.
9. During the latest Masterplan process, the proposed expansion of the 'western' precinct at Moorabbin Airport, which included the removal of nine (9) hangars to be replaced with non-aviation development, remains at 'real' risk in future Masterplans. A detailed statutory assessment, as would be the case in the Victorian system of amending a Planning Scheme, is required to very robustly critique how definitive boundaries for aviation areas are established and this task cannot be left up the ALC to submit without critical stakeholder rigour. The suggestion of a Aviation Planning Panel, as per Kingston's primary submission, coupled with a permanent line that cannot be changed, would greatly assist the aviation industry for the generations to come.


10. The aerial imagery below, demonstrates what has happened even with the intent behind the objective of the *Airports Act 1996* to “*establish a system for the regulation of airports that has due regard to the interest of airport users and the general community*”. The western precinct, that aviation stakeholders have advocated to save, is illustrated to the right of the images and will remain under threat until a serious legislative line is drawn in the sand. As the images illustrate below (the top image is from 2019 and the second October 2023) the loss of significant aviation land has continued to occur very recently (the red line illustrates where demarcation should occur- protecting the aviation land to the east). This land was utilised for aircraft parking and could have accommodated future hangars or continued to be used to store aircraft. The loss of this land cannot be readily replaced elsewhere and further constrains the potential growth of aviation businesses or any future aviation businesses at this airport.





11. Kingston wishes to be a constructive participant in the steps to formulate the White Paper and should you require any further information please do not hesitate to contact Sarah Capenerhurst at [sarah.capenerhurst@kingston.vic.gov.au](mailto:sarah.capenerhurst@kingston.vic.gov.au).



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