Statement of reasons: Determination under the *Airports Act 1996* of the *Western Sydney Airport: Airport Plan*

INTRODUCTION

1. The *Airports Act 1996* (Airports Act) provides for the Infrastructure Minister to determine an airport plan for Western Sydney Airport (referred to in the Act as 'Sydney West Airport') as a transitional planning instrument for the initial development of the airport as a greenfield site.

2. I am the 'Infrastructure Minister' within the meaning of the Airports Act. I determined the *Airport Plan for Western Sydney Airport* (Airport Plan) under s 96B(1) of the Airports Act on 5 December 2016.

3. This statement sets out the findings that I made on material questions of fact in reaching that decision, refers to the evidence or other material on which those findings were based, and gives my reasons for the decision to determine the Airport Plan.

4. In this statement, 'Stage 1 Development' means the developments described in Part 3 of the Airport Plan.

LEGISLATION

5. Section 96B of the Airports Act sets out the steps that must be taken in determining an airport plan for Western Sydney Airport (WSA). Section 96C of the Act deals with the contents of an airport plan. The objects of the Airports Act are set out in s 3 of the Act. Each of these provisions is described further below.

6. The land that makes up the site for Western Sydney Airport is ascertained in accordance with the definition of 'airport site' in s 5(1) of the Airports Act. I note that the determination of an airport plan cannot affect the location or dimensions of the airport site.

Section 96B: Steps in determining the airport plan

7. Section 96B(1) of the Airports Act provides for the Infrastructure Minister to determine an airport plan for Western Sydney Airport.

8. Subsections 96B(2) and (7) establish three preconditions to any such determination. These are:

   - that an environmental impact statement is finalised under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)
   - that the Infrastructure Minister gives a draft of the airport plan to the Environment Minister, and
   - that the Environment Minister gives a notice to the Infrastructure Minister under s 96B(3) in response to the draft airport plan.

9. Subsection 96B(3) requires the Environment Minister, within 30 business days of receiving a draft airport plan from the Infrastructure Minister, to give the Infrastructure Minister a notice that states one of the following:

   - the Environment Minister considers that the airport plan should not be determined (s 96B(3)(a)(i))

- the Environment Minister considers that one or more specified conditions or provisions should be included in the airport plan for the purpose of protecting the environment (s 96B(3)(a)(ii)), or
- the Environment Minister is satisfied with the airport plan (s 96B(3)(a)(iii)).

10. Subsection 96B(5) requires the Environment Minister, in exercising the power conferred by s 96B(3), to have regard to the finalised environmental impact statement and any other environmental matters that the Environment Minister considers relevant.

11. If the Environment Minister has given the Infrastructure Minister a notice under s 96B(3)(a)(ii) in response to a draft airport plan, s 96B(9) prevents the Infrastructure Minister from determining an airport plan unless the requirements in one of s 96B(9)(c), (d) and (e) are satisfied. The requirement in s 96B(9)(c) is that the conditions or provisions specified in the Environment Minister's notice are included in the airport plan. The requirements in s 96B(9)(d) or (e) can only be satisfied if the Infrastructure Minister gives a further draft airport plan to the Environment Minister, and the Environment Minister gives a notice in response to that further draft.

12. Subsection 96B(10) provides that, in determining an airport plan for Western Sydney Airport, the Infrastructure Minister may have regard to such matters as the Infrastructure Minister considers relevant.

Section 96C: Contents of the airport plan

13. Section 96C(1) of the Airports Act requires that an airport plan for Western Sydney Airport be divided into 3 Parts.

14. Part 1 of the airport plan is to provide a title for the plan (s 96C(1)(a)).

15. Part 2 of the airport plan is to deal with the 'Concept design' for the airport (s 96C(1)(b)). Subsection 96C(2) provides that Part 2 of the airport plan may specify development objectives for the airport, proposals for land use and related development of the airport site, a map showing contours of projected aircraft noise for the areas surrounding the airport, and indicative flight paths at the airport.

16. Part 3 of the airport plan is to deal with 'Specific developments' (s 96C(1)(c)). Subsection 96C(3) provides that Part 3 of the airport plan may set out details of developments that may be carried out on the airport site and are consistent with Part 2 of the airport plan. Subsection 96(4) provides that Part 3 of the airport plan may set out details of ancillary developments that may be carried out on associated sites for the airport. By operation of s 96C(3)(b) and (4)(b), Part 3 of the airport plan authorises the carrying out those developments, subject to the Airports Act.

17. Subsection 96C(5) provides that Part 3 of the airport plan may set out conditions to be complied with in relation to a development covered by that Part. Subsections 96C(6)-(8) deal with the kinds of conditions that may be included.

18. Subsection s 96C(9) provides that the airport plan may also contain other material, whether in Part 1, 2 or 3 or otherwise.

Section 3: Objects of the Act

19. Section 3 of the Airports Act provides:

3 Objects

The objects of this Act are as follows:

(a) to promote the sound development of civil aviation in Australia;

(b) to establish a system for the regulation of airports that has due regard to the interests of airport users and the general community;

(c) to promote the efficient and economic development and operation of airports;

(d) to facilitate the comparison of airport performance in a transparent manner;

(e) to ensure majority Australian ownership of airports;

(f) to limit the ownership of certain airports by airlines;

(g) to ensure diversity of ownership and control of certain major airports;

(h) to implement international obligations relating to airports.

PROCESS FOR DEVELOPING THE AIRPORT PLAN

20. The Department of Infrastructure and Regional Development (Infrastructure Department) prepared a draft airport plan for the airport with technical expert advice.

21. The draft airport plan was exhibited for public comment as a companion document to a draft of the *Western Sydney Airport: Environmental Impact Statement* (EIS) between 19 October and 18 December 2015.

22. Consultations on various aspects of the draft airport plan also took place with Commonwealth, state and local government stakeholders, utilities, and airlines. Consultations also took place with Southern Cross Airports Corporation (SCAC) under the consultation process which forms part of its right of first refusal in relation to WSA.

23. In addition to the consultations already mentioned, I have had the benefit of extensive discussions with the chief executives of Sydney Airport, Melbourne Airport, Brisbane Airport, Incheon Airport (Korea), Gatwick Airport (London, UK), Luton Airport (London, UK), Heathrow Airport (London, UK), Schiphol Airport (Amsterdam, The Netherlands), as well as many other subject matter experts on aviation, air transport, urban planning and the economics of airports.

24. The EIS was finalised by the Infrastructure Department on 15 September 2016 and a revised draft airport plan was published as a companion document to the finalised EIS on that day. The EIS assesses impacts of the construction and operation of Western Sydney Airport under the EPBC Act. Volume 5 of the EIS includes an outline of the public submissions received during the exhibition period mentioned in para 21, including submissions on the draft airport plan.

25. On 30 September 2016, I provided a draft of the Airport Plan the Hon Josh Frydenberg, Minister for the Environment and Energy, who is the 'Environment Minister' within the meaning of s 96B(2) of the Airports Act.

26. On 10 November 2016, Minister Frydenberg gave me a notice under s 96B(3) of the Airports Act, in response to the draft of the Airport Plan (Environment Minister's

Notice). The Environment Minister's Notice stated that he considered that certain conditions specified in the notice should be included in the Airport Plan.

27. I determined the Airport Plan on 5 December 2016.

EVIDENCE OR OTHER MATERIAL ON WHICH MY FINDINGS WERE BASED

28. The following material was before me in reaching the decision to determine the Airport Plan:

- the 2012 Joint Study on Aviation Capacity in the Sydney Region (Joint Study)
- the Final Business Case: Western Sydney Airport, July 2016 (WSA Business Case), a summary of which is available on the Western Sydney Airport website
- the EIS
- a brief provided to me by the Infrastructure Department, dated 28 September 2016, on the process for giving a draft of the Airport Plan to the Environment Minister
- the Environment Minister's Notice, and
- a brief provided to me by the Infrastructure Department, dated 17 November 2016, Attachment C to which was a draft of the Airport Plan with the conditions specified in the Environment Minister's Notice included in it.

FINDINGS OF FACT AND REASONS FOR DECISION

29. In determining the Airport Plan, I concluded that the three preconditions established by the Airports Act were met. These preconditions are listed at para 8 and addressed at paras 24-26, above.

30. I also concluded that:

- there is a need for Western Sydney Airport to be developed (see **1. The benefits of a Western Sydney Airport**)
- the development and operation of the airport, in accordance with the Airport Plan, would be consistent with the objects of the Airports Act (see **2. Objects of the Act**), and
- taken as a whole, the concept design for the airport set out in Part 2 of the Airport Plan, the specific developments detailed in Part 3 of the Airport Plan, and the conditions to be complied with in relation to those developments, were appropriate (see **3. Contents of the Airport Plan**).

These conclusions are explained further below.

1. The benefits of a Western Sydney Airport

31. The objectives of the Australian Government for Western Sydney Airport, stated in section 1.2 of the Airport Plan, are:

- improving access to aviation services for Western Sydney
- resolving the long-term aviation capacity constraints in the Sydney basin
- maximising the economic benefit for Australia by maximising the value of WSA as a national asset

- optimising the benefit of the airport for employment and investment in Western Sydney, and
- delivering sound financial, environmental and social outcomes for the Australian community.

32. I noted that these objectives are consistent with the objects set out in s 3 of the Airports Act, and took them into account in deciding to determine the Airport Plan. (The objects of the Act are discussed separately in section 2, below.)

33. In particular, I considered that an Airport Plan should be determined under the Airports Act to facilitate the initial development and operation of Western Sydney Airport. The airport is needed both to improve access to aviation services for Western Sydney and to resolve the long-term aviation capacity constraints in the Sydney basin.

- I considered the physical constraints of the Sydney (Kingsford-Smith) Airport (KSA) site. There is limited ability for additional capacity to be generated through better utilisation of KSA and/or operational changes and any such changes would only provide a temporary reprieve; and
- I considered the current status of infrastructure at Bankstown Airport. Bankstown Airport would require significant expansions to be able to manage traffic capable of easing the capacity issue. If such expansions could proceed, following what would be complex approval processes in such a densely populated area, they would not fully alleviate the capacity constraints. Indeed, they would have the implication of requiring the relocation of General Aviation to some other airport.

34. I considered the impacts on both KSA and Bankstown Airport of a WSA. Compared with the significant benefits that the development of WSA would bring, the impacts on these airports are not expected to be significant noting that:

- KSA is expected to remain Sydney's primary airport for some time, as well as the preferred airport for most passengers due to its proximity to the Sydney CBD and network connectivity. Concurrent with the operation of WSA, overall demand at KSA is expected to continue growing to 53 million annual passengers by 2031 and 77 million annual passengers by 2052; and
- Bankstown is predominantly a General Aviation airport and the Stage 1 Development at WSA is unlikely to impact on the current aviation market that it serves.

35. It was clear to me that there will be a significant aviation constraint problem in the Sydney basin if action on a second major airport is not taken. I considered the economic, business, tourism, trade and other impacts of such a constraint to add to the compelling proposition of a WSA. The Joint Study clearly established the need for a second Sydney airport. However, it was not specific about the time horizon, merely quantifying the losses that would accrue in the absence of any second airport. To the extent that it did make any representations about timing, it indicated that KSA capacity would be exhausted by 2033. Analysis in the WSA Business Case updated the equivalent date to 2037.

36. I concluded that the negative impacts of congestion would be felt long before capacity was reached, indeed were likely accruing already. It was also evident to me

that the detrimental economic consequences for Western Sydney, Sydney and (given some 40% of Australia's international traffic comes via Sydney) Australia, if Western Sydney Airport were not developed and in turn there was no available expansion capacity for aviation in Sydney, would be very significant, and increasingly significant over time.

37. I considered the fact that the need for additional aviation capacity to that provided at KSA in the Sydney basin has been forecasted since the 1940s. The Commonwealth had, variously, attempted to address this issue over the past 40 years. I concluded that failing to progress a WSA at this point could reasonably be expected, considering the history of the project, to result in delay that would thwart resolving this issue before capacity constraints start seriously impacting the Australian economy.

38. I assessed that the opportunity that exists now to establish WSA is rare (noting the long history of similar projects) and vulnerable to change (noting also that community support is predicated on tangible signs of progress and a reasonable timeframe for commencement). Given these factors, the lengthy construction period and the forecast rapid development in Western Sydney, it was my conclusion that the consequences of missing the current opportunity to establish WSA would be severe. In the best case, it would not be established until after capacity is otherwise exhausted and in the worst case it may not be established at all.

39. I also observed that:

- capacity and demand forecasts are inherently uncertain (as demonstrated by the difference between the Joint Study and the WSA Business Case). It is possible that realised capacity is substantially less than, and realised demand is substantially more than, forecast. This would materially alter the time at which WSA is needed, even in the narrow sense described above. Consequently, adhering strictly to the introduction of a WSA only on the day it is forecast to be required is an unnecessarily risky approach;
- while capacity constraints may only significantly emerge in the 2030s, a WSA would require some degree of ramp up to be able to effectively manage the demand at that point; and
- although 10 MAP capacity will not be immediately required it will ensure that a WSA can deal with the long term capacity constraints, thereby securing the long term economic benefits for Australia and demonstrating sound infrastructure planning.

40. I noted that the present opportunity to establish WSA and the value of insurance against adverse outcomes in the Sydney (and Australian) aviation market, weigh heavily in favour of the public interest in developing WSA at this time. In this regard I noted that the climate of public opinion in Western Sydney is now relatively favourable towards the development of Western Sydney Airport, but this has not been the case in the past and may not necessarily remain in the future if action is not taken now.

41. Separately, the EIS found that the construction and operation of the initial airport would result in some impacts on the environment and the community. Chapter 28 of the EIS sets out an environmental management framework, including mitigation and offset measures, to reduce these potential impacts. The Airport Plan addresses these environmental issues including through the conditions in Part 3 of the Plan. I

considered that the conditions, almost wholly provided by the Environment Minister, presented an environmentally sound framework in which the airport would be able to be developed.

42. I noted that the development of the airport in accordance with the Airport Plan would be of economic benefit to Australia regardless of who undertakes the development.

2. Objects of the Act

43. The objects of the Airports Act are set out in s 3 of the Act, which is quoted in full at para 19, above. I considered the objects stated in paras (a), (b) and (c) of s 3 to be relevant to the determination of the Airport Plan, and took them into account in my decision.

44. The object in s 3(a) is to promote the sound development of civil aviation in Australia. The Airport Plan seeks to address this object by:

- setting out a process to develop an airspace architecture for Western Sydney Airport that appropriately accounts for safety, efficiency, aviation capacity needs and the environment
- providing for an advanced design standard for instrument approach procedures
- providing for a segregated and secured air traffic control facility compound
- providing for an airport capable of safe and efficient all-weather operations and low-visibility procedures on a 24-hour basis, and
- providing for aviation support facilities that cater for domestic, international and freight needs.

45. The object in s 3(b) is to establish a system for the regulation of airports that has due regard to the interests of airport users and the general community. The Airport Plan seeks to address this object by:

- setting out the concept design for the airport, details of the initial development of the airport as a greenfield site, and conditions to be complied with in relation to the construction and operation of the initial development
- including conditions that aim to establish protection, mitigation and/or management of environmental matters such as noise, air quality, visual impact, water quality and biodiversity
- requiring community and stakeholder engagement plans to be prepared and implemented in relation to the construction and operation of the initial development of the airport, as well as consultation with stakeholders in relation to a range of other plans that must be prepared, and establishment of the Forum on Western Sydney Airport for flight path design (referred to in the Airport Plan as the community and stakeholder reference group), and
- requiring the ALC for Western Sydney Airport to establish a community aviation consultation group and a planning coordination forum before Airport operations commence.

46. The object in s 3(c) is to promote the efficient and economic development and operation of airports. The Airport Plan seeks to address this object by:

- implementing the streamlined process that Part 4A of Division 5 of the Airports Act contemplates for authorisation of the initial development of Western Sydney Airport
- providing for a Stage 1 Development that has regard to efficient and cost-effective expansion of the airport through to its long-term forecast capacity
- including specific design requirements for efficient movement of passengers and operations of the airport, and
- setting out a process for flight path design to optimise safety, efficiency, capacity and environmental outcomes, while minimising interruption to existing Sydney basin airspace arrangements.

47. In relation to the objects in both paras (a) and (c) of s 3, I considered that the development and operation of Western Sydney Airport, in accordance with the Airport Plan, would not have an unacceptable impact on other airports. See, in particular, para 34, above, about the impacts on KSA and Bankstown Airport.

3. Contents of the Airport Plan

Concept design for the airport: Part 2 of the Airport Plan

Development objectives

48. The development objectives for the airport are set out in section 2.1 of the Airport Plan. I considered that, consistently with the Government's objective of resolving the long-term aviation capacity constraints in the Sydney Basin, the development objectives for the airport should establish an initial approach to development which allows the airport to grow in stages and maximises the long-term aviation capacity of the airport site. I considered that it was important that the Plan lay out a path forward, over many decades, for capacity to increase, through both increases in terminal size (along with increases in the number of taxiways and gates) and the construction of a second runway when the necessary passenger numbers were reached.

49. I considered that adopting the runway orientation 05/23 would meet operational requirements while minimising noise to the surrounding communities relative to any other available orientations as this orientation had been assumed in state and local government planning for some years. For the reasons set out in section 2.1.5.4 of the Airport Plan, I considered that it was more appropriate for the northern runway to be constructed as part of the Stage 1 Development.

Airspace management and flight paths

50. Section 2.2 of the Airport Plan sets out a process for the development of flight paths for the airport and identifies relevant airspace protection processes. I noted that Airservices Australia's analysis indicated that there are no apparent physical impediments that would prevent safe and efficient operations for aircraft arriving at or departing from the airport. The Airport Plan states that the Infrastructure Department will be responsible for delivering the flight path design for the proposed airport, working in close collaboration with Airservices Australia and CASA. Airservices Australia will undertake a comprehensive airspace planning and design process for single runway airport operations. This process will allow the final airspace arrangements to better reflect the operating environment closer to the time

the airport opens, taking account of factors such as new aviation technology and environmental impacts. I considered that the process, which will optimise flight paths on the basis of safety, efficiency, capacity, and noise and environmental considerations, while minimising changes to existing airspace arrangements in the Sydney basin, was appropriate and consistent with the objects of the Act.

51. The issue of indicative flight paths is addressed in section 2.2.4 of the Airport Plan. I considered that it was not appropriate for the Airport Plan, as determined, to specify indicative flight paths at the airport. This was because indicative flight paths developed by Airservices Australia had been published in earlier drafts of the Airport Plan and the EIS, and there are significant further regulatory and consultative processes to be completed before the airspace and flight path design for Western Sydney Airport is finalised. As noted in the paragraph above, it was important to establish the ability of the proposed airport to safely and efficiently operate within the existing Sydney basin airspace arrangements. However, to republish the earlier indicative flight paths in the final Airport Plan may have given the erroneous impression that they would be reflected in that final design. Rather, the appropriate approach in my view was to set out the process to be taken to determine flight paths, and key principles to be followed in doing so.

Noise contours and noise management

52. Indicative noise contours are set out in section 2.3 of the Airport Plan. I noted that they had been developed as part of the EIS and that an Australian Noise Exposure Forecast for the airport would be developed as part of the airspace design process.

Land Use Plan, land use zones and permitted uses

53. A land use plan governing land use on the airport site until a first master plan is approved is contained in section 2.4 of the Airport Plan. I noted that the land use plan provides for dedicated areas for aviation activity, terminal and support services, aviation logistics and support, business development as well as reserving appropriate areas for future aviation infrastructure and providing long term protection for an environmental zone. I considered that the allocation of areas for each of these various uses was appropriate and consistent with the Australian Government's objectives for the airport.

Specific developments detailed in Part 3 of the Airport Plan

54. Part 3 of the Airport Plan seeks to strike an appropriate balance between specifying the developments that it authorises to be carried out, and not pre-empting the further process of detailed design that would occur under relevant contractual arrangements. In determining the Airport Plan, I was satisfied that it struck this balance.

55. I also considered that the details of each development set out in Part 3 of the Airport Plan were consistent with the Australian Government objectives for the airport discussed earlier in this statement and appropriate as part of the Stage 1 Development. The Stage 1 Development provides suitable capacity for an airport serving approximately 10 million passengers per annum as well as freight with a single runway, related airfield developments, a terminal, roads, utilities, supporting infrastructure and necessary preparatory developments such as earthworks and drainage. I noted that infrastructure required for Commonwealth agencies (e.g. Airservices Australia, the Australian Federal Police, the Bureau of Meteorology and the Department of Immigration and Border Protection) were conceptually accounted

for. The Airport Plan allows for rail to be incorporated once a Government decision to proceed with rail is made. I noted that the detailed design of the airport within these and other overarching parameters was a matter for the developer. I considered this scale of initial development to be consistent with the Government's objectives and noted that it would accommodate anticipated demand up to around 5 years after the airport commences operations.

Conditions to be complied with in relation to the authorised developments

56. The conditions set out in Part 3 of the Airport Plan include those specified in the Environment Minister's Notice.

Conditions specified by the Environment Minister

57. The Environment Minister's Notice was given under s 96B(3)(a)(ii). Having received this notice, there were effectively 3 options open to me, consistently with s 96B(9) of the Airports Act. These were:

- not to determine an airport plan at all, or
- to give the Environment Minister another draft airport plan, or
- to determine the Airport Plan with the conditions specified in the Environment Minister's Notice included in it.

58. I noted that the conditions in the Environment Minister's Notice took into account the environmental management framework contained in Chapter 28 of the EIS. I considered that the conditions in the notice were not unworkable, that they appropriately addressed issues from an environmental perspective, and that, taken as a group, they should not prevent the Airport Plan from being determined. I considered that the terms of the Airport Plan including the conditions provided an appropriate balance between developing necessary aviation infrastructure for the Sydney Basin and management of environmental impacts of development and operation of that infrastructure.

59. I concluded that the third option listed above was preferable to the other two and I therefore determined the Airport Plan including the conditions in the Environment Minster's Notice.

Paul Fletcher

Minister for Urban Infrastructure

27 January 2017