

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 118

Subject - *Airports Act 1996*

Airports (Building Control) Amendment Regulations 2009 (No. 1)

Section 252 of the *Airports Act 1996* (the Act) provides that the Governor-General may make regulations prescribing matters required, or permitted by the Act to be prescribed or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The *Airports (Building Control) Regulations 1996* (the Principal Regulations) provide for the approval of building activities and other works at leased airports by the Airport Building Controller (ABC).

The Regulations amend subregulation 2.11(7) in the Principal Regulations to clarify the status of building applications when there is an approved major development plan (MDP), in particular when the ABC is deemed to have refused such an application. This rectifies an unanticipated outcome of previous amendments to the Principal Regulations.

The Regulations also insert a new subregulation 2.11(8) into the Principal Regulations to clarify that the ABC cannot consider a building application if it involves a building activity that is, or is part of, a major airport development and there is no approved MDP. Once the MDP is approved under the Act, the ABC has 28 days to consider an application or request further information.

These Regulations also make amendments to provide that the decisions by the ABC under subregulation 2.11(7) and (8) may be subject to a merits review by the Administrative Appeals Tribunal (AAT).

Details of the amended regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the amended Regulations may be exercised. A comprehensive consultation process was undertaken when the Act was amended in 2007. The amendments to the Principal Regulations are consequential to the 2007 amendments to the Act and their regulatory impact on business, individuals or the economy is nil or low.

These Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

These Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Minute recommends that Regulations be made in the form proposed.

Authority: Section 252 of the *Airports Act 1996*

ATTACHMENT

Details of the Airports (Building Control) Amendment Regulations 2009 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Airports (Building Control) Amendment Regulations 2009 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after registration.

Regulation 3 – Amendment of Airports (Building Control) Regulations 1996

This regulation provides that the *Airports (Building Control) Regulations 1996* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Subregulation 2.11(7), including the notes

Item 1 amends subregulation 2.11(7) and inserts a new subregulation 2.11(8). The item clarifies that subregulation 2.11(7) applies to a situation where an applicant has lodged an application for approval of building activity which is, or comprises part of, a major airport development for which an MDP has been approved or taken to be approved pursuant to section 94 of the Act.

Paragraph 2.11(7)(a) provides that the ABC is deemed to have refused the application for approval of the building activity if the ABC has not given the applicant notice of its decision before the end of 28 days after receiving the application and the ABC has not requested further information.

Under paragraph 2.11(7)(b), if the ABC has requested further information regarding the application but has not given the applicant notice of its decision before the end of 28 days after receiving the information the application is deemed to be refused.

New subregulation 2.11(8) applies to situations where an applicant has lodged an application for approval of building activity which is, or comprises part of, a major airport development for which an MDP has not been approved or taken to be approved pursuant to section 94 of the Act.

The ABC cannot make a decision, pursuant to subregulation 2.11(1A), regarding such applications until the MDP is approved, or taken to be approved. The application is effectively frozen until the MDP is approved or taken to be approved. The application revives once this occurs and the ABC is able to make a decision regarding the application.

New paragraph 2.11(8)(a) provides that the application for approval of building activity is deemed to be refused by the ABC if the ABC has not given its decision to the applicant before

the end of 28 days from the time the MDP has been approved and the ABC has not requested further information from the applicant.

New paragraph 2.11(8)(b) covers situations when the MDP has been approved or taken to be approved and further information is requested by the ABC regarding the application. In this case, the application is deemed to be refused if the ABC has not given the applicant notice of its decision before the end of 28 days after receiving the information.

Item [2] Regulation 6.01, table, Part 1, item 1, second column

Item 2 amends the table in regulation 6.01 to include subregulations 2.11(7) and (8). This means that decisions by the ABC in relation to subregulations 2.11(1), (6), (7) and (8) may be subject to a merits review by the AAT upon the application of the applicant for the building approval.