

**IN THE ADMINISTRATIVE APPEALS TRIBUNAL
GENERAL ADMINISTRATIVE DIVISION**

Registry: Brisbane
Number: 2012/3556

Applicant: **ARCHERFIELD AIRPORT CHAMBER OF
COMMERCE INCORPORATED**

AND

Respondent **THE FEDERAL MINISTER FOR
INFRASTRUCTURE AND TRANSPORT
[MR ANTHONY ALBANESE]**

AND

Second Respondent: **ARCHERFIELD AIRPORT CORPORATION
PTY LTD ACN 081 619 123**

FACTS ISSUES AND CONTENTIONS OF THE APPLICANT 8 MARCH 2013

FACTS

Legislative Framework and the Intention of the Australian Parliament

1. Archerfield Airport land was vested in the Commonwealth by compulsorily acquisition pursuant to the *Lands Acquisition Act 1906 – 1936*:
 - a. In 1929 (Commonwealth Gazette 2010 dated 26th September 1929) for public purposes, namely Defence purposes, at Rocklea Queensland);
 - b. In 1930 (Commonwealth Gazette 62 dated 24th July 1930) for public purposes, namely Defence, at Archerfield;
 - c. In 1936 (Commonwealth Gazette 1905) for public purposes, namely Defence, at Archerfield; and
 - d. In 1942 (Commonwealth Gazette 2621-2622) for the public purposes of the Commonwealth, at Archerfield, the land of Archerfield Airport being a Commonwealth Place.

2. The Federal Government commenced steps to lease certain Commonwealth Airports in 1996.

FACT AND CONTENTIONS
Filed on behalf of the Applicant

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3. The Minister for Transport and Regional Development, (the Honourable John Sharp MP) during his second reading speech on 23rd May 1996 released the Explanatory Memorandum to the *Airports Bill 1996* which became the *Airports Act 1996* (Cwlth) .
4. The Minister for Transport and Regional Development, (the Honourable John Sharp MP) during his second reading speech on 23rd May 1996 released the Explanatory Memorandum to the *Airports (Transitional) Bill 1996* which became the *Airports Transitional Act 1996* (Cwlth).
5. One of the airports affected under the proposed legislation was Archerfield Airport.
6. The Explanatory Memorandum to the Airports Bill 1996 specified the following:

OUTLINE

The purpose of the Bill is to establish the regulatory arrangements to apply to the airports currently owned and operated on behalf of the Commonwealth by the Federal Airports Corporation (FAC), and Sydney West Airport, following the leasing of those airports. The Bill also includes some provisions which can be applied to other airports.

In respect of airport leases, the Bill provides that:

- an airport lease will have a term no longer than 50 years, with or without an option to renew for up to 49 years;
- each airport will be operated by a separate company, which must not undertake substantial trading or financial activities other than activities relating to the development and/or operation of the airport, or activities incidental to these purposes; and
- restrictions will apply to the transfer of airport leases, primarily to ensure the integrity of the public interest regulatory controls set out in the Bill.

...

Division 6 - Restrictions on lessees

This Division contains three principal provisions related to the activities of airport lessee companies and airport-management companies:

- Neither an airport-lessee company nor an airport-management company may carry on substantial non-airport business;

Clause 32 - Airport-operator company must not carry on non-airport business.

Subclause (1) prohibits an airport-operator company for an airport (other than a joint-user airport) from carrying on substantial trading or financial activities other than: activities relating to the operation and/or development of the airport; activities incidental to the operation and/or development of the airport; or activities that, under the regulations, are treated as activities incidental to the operation and/or development of the airport.

Subclause (2) makes an analogous prohibition in respect of a joint-user airport (Canberra, Townsville or Darwin), while recognising that control of the runways might be retained by the Commonwealth through the Department of Defence.

These provisions are intended to ensure that the airport-operator company's only core business is the airport. This will enhance the transparency of the operation of that business and quarantine airport operation from the outcomes of other unrelated business activities.

Subclause (3) provides that an intentional or reckless failure to comply with subclauses (1) or (2) is an offence.

7. The Explanatory Memorandum to the *Airports (Transitional) Bill 1996* stated:

GENERAL OUTLINE

There are 22 airports which are currently owned and operated by the Federal Airports Corporation (FAC) and referred to as Federal airports. This Bill puts in place a framework which gives effect to the Government's decision to lease all the Federal airports effectively as ongoing businesses with staff and management in place.

The airport lease will provide for each of the relevant airport-lessee companies to operate an airport under certain terms and conditions. The airport-lessee companies will also be subject to the provisions of the Airports Act which will provide an airport regulatory regime for their operations covering service levels, limits on foreign ownership, demand management environmental, planning and other regulatory measures.

Clause 4 Definitions

The term "Instrument" includes a document which under the Acts Interpretation Act has a very broad meaning. For example, it could include memoranda, correspondence both formal and informal, waivers, notices and other writings.

...

Clause 24 - Transfer of contractual rights and obligations

29. Subclause 24(1) provides for the section to apply where the rights and obligations under a contract (other than a contract of employment) were transferred to the Commonwealth under clause 13.

Subclauses 24(2), 24(3), 24(4) and 24(5) provide for the Minister to declare that after the grant of an airport lease under clause 21 or 22: the Commonwealth's rights and obligations under a specified contract pass to the company; a contract continues to have effect as if a reference in the contract to the Commonwealth or the FAC is a reference to the company; an instrument relating to a contract continues to have effect as if a reference in the instrument to the Commonwealth or the FAC is a reference to the company; and the company is the Commonwealth's successor in law in relation to the rights and obligations under a contract.

Subclause 24(6) provides that a declaration under the clause will have effect.

Subclause 24(7) provides that the clause does not limit clause 23.

Clause 25 - Transfer of Liability to company

30. Subclause 25(1) provides for the clause to apply to liabilities transferred to the Commonwealth pursuant to clause 14. In the event a specified company is granted an airport lease under clause 21 or 22, subclause.

25(2) provides that the Minister may declare that a specified liability becomes a liability of the company.

Subclause 25(3) provides that the Minister may declare that, when a specified liability is transferred to the company, a specified instrument relating to that liability continues to have effect as if a reference in the instrument to the FAC or the Commonwealth is a reference to the company.

Subclause 25(4) provides that after a liability transfers to the company the company becomes the Commonwealth's successor at law in relation to that liability if the Minister so declares. Subclause 25(5) provides that a declaration under the clause will have effect.

Clause 26 - Airport lease granted subject to existing interests in the land

31. Subclause 26 (1) provides that where an airport lease is granted by the Commonwealth under clause 21 or 22, it will be granted subject to all existing leases in relation to the land.
 32. Subclause 26 (2) provides that, unless the Minister otherwise determines: all obligations and benefits of the Commonwealth under or connected with such existing leases will pass to the airport-lessee company; an instrument relating to such an obligation or benefit continues to have effect as if a reference in the instrument to the Commonwealth were a reference to the company; and the company becomes the Commonwealth's successor in law in relation to such an obligation or benefit.
 33. Subclause 26 (3) provides that an airport lease granted under clause 21 and 22 is subject to all other existing interests in the land (such as easements etc). In effect, leases and other interests granted by the FAC in relation to airport land before revesting of the land in the Commonwealth will pass to the airport-lessee company. The clause is to ensure that, unless the Minister determines otherwise, no obligations or benefits will remain with the Commonwealth and all will pass to the relevant airport-lessee company.
8. On 15th September 1997 at conference for the purpose in Sydney concerning Phase II Airport Sales The Honourable John Sharp MP Minister for Transport and Regional Development stated in his “Objectives and Regional Opportunities in Phase II Airport Sales” address:
- “Our sales objectives are clear – develop the airport; provide access; price reasonably; balance user interest with the environment. All these relate to an operating airport. If we wanted to see airports close we could do it ourselves and dispose of the property for real estate development for taxpayers’ benefit. So we are very up front. Do not buy an airport in the hope that you can close it down. The airport site will be protected by conditions set out in the sale contract, by the Commonwealth placing a restrictive covenant on the title and by the necessary commitments from the states that their planning zoning and environmental laws will enable the airport to continue to operate. ...the plan is and must be that each airport is always an airport at the end of the day.”
9. Section 32(3) of the *Airports Act 1996* states:
- “A company commits an offence if:
- (a) the company is subject to a requirement under subsection (1) or (2); and
 - (b) the company engages in conduct; and
 - (c) the company’s conduct contravenes the requirement.
- Penalty: 2,000 penalty units.
10. Section 32(3A) states
- “Strict liability applies to paragraph (3)(a).
Note: For strict liability, see section 6.1 of the Criminal Code.”
11. The *Commonwealth of Australia Constitution Act* contains no specific power over air navigation and aircraft.
12. Federal Airports Corporation Policy Manual Volume 8 [Issue A section 3 dated October 1994, 3.1.3 REVERSION OF LESSEE IMPROVEMENTS – Reversion Policy] states at clause 3

“The Corporation, in reviewing its overall property policy recognises the difficulties encountered by lessees in financing improvements and as a general rule waives its rights to reversion”

13. Section 51(xxxi) of the *Commonwealth of Australia Constitution Act* states:

“The acquisition of property on just terms from a state or person for any purpose in respect of which the Parliament has the power to make laws”

Commonwealth Airport Lease “Sale” Documents

14. On 18th June 1998 the Commonwealth entered into various agreements effecting a lease of Archerfield airport to the second respondent.

15. The documents related to the lease sale of Archerfield Airport with the Commonwealth include:

- a. The Archerfield Airport Sale Agreement;
- b. A lease (the “Commonwealth Lease”);
- c. A Sale Transition Deed;
- d. A Tripartite Deed.

16. Clause 3.1 of the Commonwealth Lease states :

“3.1 Lessee must give access

The Lessee:

(a) must at all times:

- (i) subject to sub-clause 19.5, provide for the use of the Airport Site as an airport;
- (ii) subject to sub-clause 19,5, provide for access to the airport by interstate air transport;
- (iii) provide for access to the airport by intrastate air transport;
- (iv) not use, or permit to be used, the Airport Site for any unlawful purpose or in breach of legislation; and
- (v) not use any name other than Archerfield Airport for the Airport Site without the prior written consent of the Lessor;

(b) may:

- (i) permit the Airport Site to be used for other lawful purposes that are not inconsistent with its use as an airport;”

17. Clause 9.2 of the Commonwealth Lease states:

“The Lessee must maintain the runways, taxiways, pavements and all parts of the airport for safe access by air transport to a standard no less than the standard at the commencement of the lease”

18. Clause 13.1 of the Commonwealth Lease states:

“13.1 Development of airport site.

Throughout the Term the Lessee must develop the Airport Site at its own cost and expense having regard to:

- (a) the actual and anticipated future growth in, and pattern of, traffic demand for the Airport Site;
- (b) the quality standards reasonably expected of such an airport in Australia; and
- (c) Good Business Practice”

19. “Airport Site” is defined in the Commonwealth Lease to mean:

“the site (including the Structures thereon) which at Grant Time is named Archerfield Airport and the boundaries of which are as specified in regulations made pursuant to the Airports Act, being the land described in the following Title References: 17127063; 16735170; 15700048.

20. The *Airport Regulations 1997* Part 1, clause 1.03 [T Document 487] state:

“(1) For the definition of airport site in section 5 of the Act, each of the following places (to the extent it is a Commonwealth Place) is declared to be an airport site

- (c) Archerfield Airport – that is the place made up of land described in Part 1.3 of that Schedule”¹

21. Part 1.3 states:

“Part 1.3 Archerfield Airport, the land in the following Queensland Certificates of Title

- (a) 17127063;
- (b) 16735170;
- (c) 1570048”;

Archerfield Airport

Title Reference	Description
17127063	Lot 5 on Registered Plan No. 179578 County of Stanley, Parish of Yeerongpilly
16735170	Lot 2 on Registered Plan No. 196230 County of Stanley, Parish of Yeerongpilly
15700048	Lot 1 on Registered Plan No. 148342 County of Stanley, Parish of Yeerongpilly

22. As at the 8th March 2013 The *Airport Regulations 1997* have amendments such that the title reference and description is:

Archerfield Airport

¹ T Document 529.

Title Reference	Description
17127063	Lot 5 on Registered Plan No. 179578 County of Stanley, Parish of Yeerongpilly
50686739	Lot 1 on Survey Plan 200283, County of Stanley, Parish of Yeerongpilly
50686740	Lot 2 on Survey Plan 200283, County of Stanley, Parish of Yeerongpilly

The Master Plan

23. The Second Respondent submitted a Master Plan (“T” Documents 5344 to 5654) to the Minister on 7 May 2012 (T Document 5655) pursuant to the *Airports Act 1996*.
24. The First Respondent approved the plan on 24th May 2012 [“T” Document Reference 5724].

The Airport at Privatisation

25. The Commonwealth of Australia Phase 2 Federal Airports General Information Memorandum November 1997 overview on Archerfield Airport stated:

“Archerfield airport is a general aviation airport situated approximately 12 kilometres southwest of the Brisbane CBD, close to the Ipswich Freeway. The airport is an important general aviation centre in Queensland. In the year to 30 June 1997, there were over 250,000 aircraft movements at Archerfield airport. Over the five years to 30 June 1997, the average annual growth rate in total revenue was 8.1% per annum. In the year to 30 June 1997, approximately 76% of total revenue was derived from non-aeronautical activities. The airport occupies an area of 259 hectares. There are four runways, a passenger terminal and various associated facilities on the airport site.”

26. The Commonwealth of Australia Phase 2 Federal Airports Archerfield Airport Information Memorandum November 1997 states on page 5:

“Financial Results ARF’s revenue has grown over the past five years as a result of its property management activities. The operating loss for the year to 30 June 1994 can be primarily attributed to a significant increase in maintenance expense during this year, combined with only marginal growth in revenue. Earnings before Depreciation, Interest and Tax (EBDIT) performance is shown in figure 3 below. The Decrease in EBIT in the year 30 June 1997 is attributed to eviction and no-recovery of rent from two tenants, and associated legal costs.

Year to 30 June	1993	1994	1995	1996	1997
EBDIT \$'000	75	-59	80	131	97

27. The Commonwealth of Australia Phase 2 Federal Airports Archerfield Airport Information Memorandum November 1997 Section 5: Property Management and Development states:

“ 5.3.1 Aviation Related Property.

The 67 hangars are situated adjacent to taxiways and aprons. Nine additional sites have been developed along the northern edge of the western end of runway 28R/10L.... Some of the most significant revenue generating aviation related tenants at the airport are involved predominantly in aircraft maintenance operations. Other aviation related tenants include flying schools, aircraft charter, spare parts sales and installation.”

“5.3.3 Non-Aviation Related Property.

Land (in terms of area) leased by non- aviation related tenants is situated predominantly in the northwest zone of the airport site. Approximately 11 hectares of land is currently leased to non-aviation related tenants. This land is being used by tenants for a range of purposes such as computer sales, vehicle storage and steel fabrication. The more significant of ARF’s tenants include the recently opened BP truck stop, one of the largest of its kind in Australia and which is designed to service trucks. Adjoining land is occupied by a motor vehicle auctioneer. The area along Mortimer Road includes property maintenance, fibreglass manufacturer and car rental. Land in the southeast corner of the airport site includes land adjoin the neighbouring speedway, which uses ARF land for parking and part of the speedway’s go kart track. There is currently no lease agreement in place for this land.

28. The Draft public statement attached to the sale agreement for the Archerfield Airport stated:

“The Managing Director of Miengrove, Gavin Bird, said that the company was grateful to have been entrusted with oversight of the future development of Archerfield, “We look forward to unlocking the potential of a strategic land bank which is at the hub of S.E. Qld transport," he said. "Fifty hectares of prime industrial and commercial land which is surplus to aviation needs will be progressively developed to underpin the viability of the airport itself. Major corporations will be involved in best practice developments of the calibre of the recently completed BP Truckstop" "Archerfield will always remain the focus of general aviation in Queensland" Mr. Bird said, "and its surrounding infrastructure will be upgraded to reflect the importance of the site.”

29. Immediately prior to privatisation in 1998 Archerfield Airport was a “Licensed facility” with all runways of classification Code “3C”.

AIP Australia lists the Aerodrome Reference codes Table 1 as follows:

Column 1 <u>Code Number</u>	Column 2 Aerodrome Reference Field Length	Column 3 <u>CODE LETTER</u>	Column 4 Wing Span	Column 5 Outer Gear Span Main Wheel
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1	Less than 800 Metres	A	less than 15M	less than 4.5M
2	At least 800M, but less than 1,200M	B	At least 15M, but less than 24M	At least 4.5M, but less than 6M
3	At least 1200M, but less than 1,800M	C	At least 24M, but less than 36M	At least 6M, but less than 9M
4	At least 1800M	D	At least 36M, but less than 52M	At least 9M, but less than 14M
		E	At least 52M, but less than 65M	At least 9M, but less than 14M
		F	At least 65M, but less than 80M	At least 14M, but less than 16M

AIP Australia lists the Minimum Runway Widths Table 2 as follows:

Code	Code						Letter
Code Number	A	B	C	D	E	F	
1	18M	18M	23M				
2	23M	23M	30M				
3	30M	30M	30M	45M			
4	-	-	45M	45M	45M	60M	

30. The classification of aerodromes as part of changes to CASR part 139 in 2004 changed the classification of aerodromes from “Licensed Facility” to either “Certified Aerodromes” or “Registered Aerodromes”. Archerfield Airport became a Registered Aerodrome on 28 April 2006. All other Australian Secondary Airports became Certified Aerodromes. “Certified” is an equivalent standard to “Licensed Facility”. Registered Aerodromes compared to Certified Aerodromes under CASR Part 139 as compared by CASA as published on their website:

	<u>Certified Aerodromes</u>	<u>Registered Aerodromes</u>
Maximum Level of Service Provided	RPT or frequent charter with more than 30 Passengers	Same Physical Standards as a Certified Aerodrome
Who is responsible for certification registration?	CASA	Approved Person
Is an Aerodrome Manual required	Yes	No
Is a Safety Management System Required	Yes	No
Is an Aerodrome Technical Inspection Required	Yes	No
Is an Aerodrome Safety Inspection Required	No	Yes (if RPT or Charter operations with more than 9 passenger seats)
Can Instrument approach procedures be made available?	Yes	Yes

31. As a Registered Aerodrome Archerfield Airport became restricted to use by aircraft used in RPT or charter operations which have a maximum passenger capacity of not more than 30 seats or a maximum carrying capacity of not more than 3,400 kilograms.
32. Part 139 of the Manual of Standards, Aerodromes at paragraph states:
- "12.1.8.1 CASR Part 139 requires a registered aerodrome used by aircraft, with more than 9 passenger seats, to prepare and submit to CASA annually, or at a periodicity as agreed by CASA, a safety inspection of the aerodrome."
- An airport not meeting these requirements is limited to aircraft of no more than 9 passenger seats.
33. Since at least 1965 development on the State Land abutting and surrounding the airport has been planned by the Brisbane City Council and State Government Planning (and land owners have constructed buildings and structures based upon) the current runway alignment.
34. The Federal Airports Corporation's:
- a. Drawing number FAP 91/167 Sheet 3 B1 - Obstacle Limitation Surfaces including PAN-OPS Surface (Surveyor JE Bain 8-1-1996); and
 - b. Department of Aviation Drawing No BS 9703 Sheet B1 "Archerfield Airport and Environs";

provisioned as instrument runways, Runway 10L Runway 28R, Runway 04L and Runway 22R. Existing runways are aligned at 040 degrees and 220 degrees magnetic and 097 degrees and 277 degrees magnetic. Runway 22R threshold is displaced 290 metres [as published by Airservices Australia in Aeronautical Information Publication En-route Supplement Australia– Runway Distance Supplement dated 15 November 2012] and confirmed in T Documents 1034, 1300, 2098, 4356, 5064, 5405.

35. The Master Plan proposes:

- c. Closure of runway 04L/22R however proposed runways 18L/36R or 18R/36L (T Document 5369) are not similarly provisioned as instrument runways and can only be used for visual flight.
- d. runway 36R but it does not disclose any displaced threshold.

36. Archerfield Airport at privatisation, consistent with other Capital City secondary airports, was classified as a GAAP airport (General Aviation Airport Procedures). It had dual parallel runways of code 3C standard. Parallel runways permit two concurrent circuit operations counter rotating, one for circuits and the other for arrivals and departures and is an effective configuration solution for airports with high levels of ab initio pilot and other training operations and with departures and arrivals from the regions.

37. Aircraft Movements at Archerfield Airport during tower hours as derived or stated in the 2000 and 2005 Draft Master Plans or Air Services data referenced against the 1996/1997 financial year were in accordance with the following table:

Year	90/91	91/92	92/93	93/94	94/95	95/96	96/97	97/98
Movements	285827	241389	243813	247382	229300	261168	254,494	238768
% of 96/97	112.31	94.85	95.80	97.21	90.10	102.62	100.00	93.82

Movements at Archerfield Airport post privatisation during tower hours (sourced from Airservices Data) referenced against the 1996/1997 financial year were in accordance with the following tables:

Year	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06
Movements	186652	167584	187728	151442	130272	122960	137,530	135400
% of 96/97	73.34	65.85	73.77	59.51	51.19	48.32	54.04	53.20

Year	06/07	07/08	08/09	09/10	10/11	11/12	Dec 12
Movements	119,644	135,272	122,828	133,260	122,522	129,488	56,748
% of 96/97	47.01	53.15	48.26	52.36	48.14	50.88	22.30

Non – Aviation Industrial Development on the Airport - Post Sale

38. Archerfield Airport Corporation has permitted non-aviation industrial or extractive industries on Archerfield Airport land for example:

Extractive Industries	Concrete Crushing Plant Operation	Alex Fraser Pty Ltd Resource Recovery Site 670 Beaufighter Avenue
	Concrete Crushing Plant Operation	Veolia resource recovery Site 674 Beaufighter Avenue
General Industries	Trucking Logistics Estate	Transition Archerfield Logistics Estate – Stage 1 34.85 Hectares (approx.) [In-ground services commenced]
	Storage of Heavy Plant and Equipment and auctions	Pickles Auctions 400A Beatty Road
	Storage and Sales of Heavy Plant & Equipment	Topline Machinery – Site 205
	Industrial Machinery Parts supplier	Forklift Generator Sales Site 659
	Paving supplies Business	Australian Paving Services Site 667
	Car bulk storage yard	Zupps Car Storage
	Tattoo Parlor	Mimsy’s Trailer Trash Tatto 621 Lores Bonney Drive
General Industries cont’d	Truck Body Business	Ultimate Specialised Bodies and equipment Site 653
	Diesel Truck Repairs Facility	Transport Engineering and Trucking Services Site 665
	Administrative Headquarters for non- aviation industrial group	NQ Group Heavy Haulage and Cranes. Site 020 (Note this is within the Beatty Road Aviation Precinct)
General Industries cont’d	Business Magazine Printing	Business Acumen Site 107 Note this is within the Beatty Road Aviation Area)
	Kitchen manufacturing and Sales	Koala Koast Kitchens Site 008 (Note this is within the Beatty Road Aviation Precinct
	Commercial Hose fittings supplier or manufacturer	Australian Hose and Fittings site 640
	Automotive Electrical Repair Workshop	Coopers Plains Auto- Electrical Site 633
General Industries cont’d	Automotive Repair Workshop	KTC Automotive Site 633
	Heavy Excavating and Earth Moving Equipment Sales Yard	JFJ Earthmoving Equipment 112 Ashover Road Archerfield

	Truck Sales Yard	Queensland Wholesale Trucks
	Industrial Warehouse	Transcity Tunnel Industrial Warehouse
	Rental Business	WRS Worldwide Rental Services
	Storeage of Heavy Equipment	Shamrock Civil Construction and Project Management.
	Storeage of Cranes and Components	Tutt Bryant Crane Yard
	Construction equipment storage	SBH Trench support systems

The total of the Commonwealth's land area of the airport comprised at 8th March 2013:

<u>Airport Land And Real Property Description</u>	<u>Area (Hectares)</u>	<u>Area %</u>
Airport Land West of Beatty Rd being Lot 2 on SP 200283	251.92	97.7%
Airport Land East of Beatty Rd being Lot 5 on RP 179578	5.88	2.3%
Airport at NE corner of Ashover Rd and Balham Rd being Lot 1 on Survey Plan 200283	.02	0%
TOTAL	257.82	100.0%

Airport Zoning – 2005-2025 Master Plan

39. Surveyor's reports held by the Applicant calculated the 2005 - 2025 Master Plan Zoned approximately 142.4 hectares (55.2%) of the airport as SP-6 Airport Zoning for the operational area of the airport including runways, runway strips, taxiways, aprons, and tarmac areas.
40. Of the remaining approximately 115.2 hectares (44.8%) of the 2005 Master Plan Airport Site, 4.6 hectares is green space (1.8%) and the remainder (approximately 111 hectares) was zoned General Industry or Light Industry.
41. Former Minister for Transport and Regional Services Hon Mr Warren Truss directed in late 2005 that the 2005 draft Master Plan be changed such that the Beatty Road Precinct remain for aviation users, however the second respondent did not alter the 2005 Master Plan Zonings. The Beatty Road Precinct in the 2005 Master Plan was approximately 12.1 hectares. The industrial land percentage use of the useable airport in the 2005 Master Plan was 89.1% leaving only 10.9% for aviation use.

Airport Zoning -2011-2031 Master Plan

42. Surveyor's reports held by the Applicant calculate that the 2011 - 2031 Master Plan reduces the operational area (SP-6) zoning (compared to the 2005 Master Plan) down to 130.2 hectares (50.5%) of the airport – being a reduction of aeronautical operations area facility by approximately 12.2 hectares (4.7% of the entire Airport Site). Green areas are reduced to approximately 3.8 hectares.
43. Areas Zoned Industrial in the 2011- 2031 Master Plan have increased from approximately 111 hectares in 2005 – 2025 Master Plan to approximately 124 hectares in the 2011 – 2031 Master Plan. Industrial zonings comprise approximately 87% of the airport (exclusive of operational areas and excluding green space).
44. Only 13%, of the airport (exclusive of operational areas and excluding green space) which are existing aviation use areas has been reallocated from “industrial-but is not-exclusively aviation, that is, it could be used for industrial The result is no further land is available for future aviation requirements.

Department of Infrastructure and Transport

45. The Secretary of the Department of Infrastructure and Transport Mr MrDack was one of the only two members from DoTARS on the Tender Evaluation Committee that decided the successful bidder of Archerfield Airport in 1997/98.
46. At a meeting between Department heads and the Committee of the Applicant on the 22nd October 2009, Mr John Doherty (Executive Director Aviation and Airports), Karen Gosling, General Manager – Airports, and Luke Osborne (Section Head Queensland and Territories – Airports Branch) each stated when introducing themselves that they were career public servants and they had no aviation qualifications.
47. At the 22nd October 2009 meeting the Applicant warned the aforementioned persons that they needed to be careful that they were not running their department unlawfully.
48. Senate Hansard of 18th October 2011 commencing at page 92 states

“Mr Doherty: The decommissioning of the cross-runway at Bankstown occurred in March 2005. It was identified in the master plan as a change of the layout of the aeronautics and that is provided for in the Airports Act. The new master plan was approved in 2005, so that was the basis for the action that then followed.

Senator FAWCETT: The changes were also opposed by operators at the airfield and MOPS 139 requires operators be consulted. Also with the cross-runway, particularly where there is ab initio training involved which here is—in fact the minister just in the last 12 months has reported the number of training operations at Bankstown is increasing—means the useability factor for a runway and cross-wing operations in particular should be 99.5 per cent. Was it actually established prior to that plan being approved and were the opinions of the users taken into account? The users certainly still believe that whilst they put forward contrary positions they were not considered nor in fact available publicly to see who opposed it.

Mr Doherty: I can only speak broadly. I understand that there were submissions from two of the tenants at the time which were taken into account and, I think before the decision was made, advice was sought from both CASA and Airservices. The essential advice was that the cross-runway was used very rarely, that it was inappropriate to use it while the main parallel runway system was in operation and the requirement to use the cross-runway occurred on maybe a couple of days a year for part of a day, so it was used to a very small extent, and there was no objection raised from CASA on safety grounds.

Senator FAWCETT: Mr Doherty, how often do you use the airbags or seatbelts in your car?

Mr Doherty: I use the seatbelts all the time.

Senator FAWCETT: To prevent injuries in an accident. How often are they required?

Senator FAWCETT: Minister, my point is that the process in terms of transparency around the relationship between the department, regardless of the flavour of government, and the aviation operators is not effective in terms of actually preserving the utility of airports for their primary purpose which is aviation. To quote the current minister: 'Nothing, I repeat, nothing is as important in aviation as safety.' I have no further questions.

49. The Applicant has provided detailed technical and other evidentiary reports to successive Federal Ministers of the Department of Infrastructure and Transport (or former iterations thereof) and successive Governments of both the Coalition and the Labor Party over the 14 years since privatisation and concerning the downgrading of airport facilities and infrastructure, non-enforcement of the Federal Government's own rules and documents, departures from aerodrome standards, lease non-renewal, and airport safety issues, without resolution.
50. Departmental standard responses to lessees complaints about lease non-renewal and industrial development is as represented by letter of 12 January 2006 from Peter Marchi the aviation advisor of former Minister Warren Truss in response to Mr Robert Seymour AM's letter of complaint to former Prime Minister Howard, and being the former Regional Director for Queensland of the Department of Civil Aviation and states "Negotiation over airport sub-leases and other airport management issues are commercial matters between tenants and Archerfield Airport Corporation, and it would not be appropriate for the Minister to become directly involved in such matters. The provisions of the Trade Practices Act 1974 apply to all such negotiations and parties can seek to refer matters to the Australian Competition and Consumer Commission should they feel misuse of market

power is involved. Given the limited scope for increasing aeronautical revenue at the Airport from general aviation activity, the ability of the Airport owner to provide a return on its investment and meet requirements to maintain and expand a viable airport is dependent upon growing the non – aviation commercial revenue streams”. Such standard departmental responses have not since changed.

51. Meingrove Pty Ltd, the parent company of the Second Respondent, being the chosen tenderer for the lease of Archerfield Airport, paid only \$3.1 million dollars for the lease of the airport including acquisition of Commonwealth Buildings on the airport, and was the lowest sum paid for any Phase 2 secondary airport and whose owner’s background is not airports but child care centre and nanny service industry. The carrying value of Property Plant and Equipment Assets of the airport as disclosed in the Archerfield Airport Special Purpose Financial Report as at 30th June 1997 was \$14.609 million. Bidding processes related to Archerfield Airport were irregular. Meigrove Pty Ltd did not submit the required deposit to accompany its bid and was not summarily excluded from further bidding. Miengrove Pty Ltd was accepted in spite of other aviation related and financially capable bidders..

52. The Australian National Audit Office report on “Phase 2 of the Sales of Federal Airports” states at paragraph 3.7:

“A preferred purchaser was identified at the end of Stage 2 for Archerfield airport. However, this was subject to confirmation of this bidder’s ability to fund the bid; a condition which was not satisfied. As a result, the two Archerfield bidders were invited to re-bid (Stage 3).”

53. Other potential bidders, being persons who registered expressions of interest to purchase interests in the Phase 2 sales of Archerfield Airport were advised in writing by the Australia Government Office of Asset Sales:

“that the Commonwealth has decided to invite a reduced number of parties to proceed to the next stage of the tender process. This letter confirms that your consortium has not been shortlisted for the next stage of the tender process. This decision will not be reviewed.” made Managers of the sales process for the Office of Asset Sales and Information Sourcing, ABN AMRO / BZW Australia Limited wrote in a letter dated 8th April 1998 to a short listed bidder advising “..all written material supplied to you by the Commonwealth in relation to Archerfield Airport be destroyed. Written confirmation of such destruction should be sent to Mr Paul Lang Australian Government Solicitor”.

CASA

54. Mr Gerard Campbell the former General Manager of Archerfield Airport Corporation is Acting Executive Manager Operations of CASA.

Brisbane Airport Capacity and Flow-On Issues

55. Aeronautical Information Circular H04/13 states Brisbane Airport Corporation Pty Ltd introduced a Brisbane Airport Runway Demand Management Scheme (RDMS) that applies to all airlines and aircraft operators wanting to use Brisbane Airport. Paragraph 3.4 states:

“Aircraft operating into and out of Brisbane Airport are required to obtain an ACA slot in advance of the operation. Paragraph 3.5 states: “In addition to the requirement to obtain an ACA slot arriving domestic flights are also required to obtain an air traffic management slot which may vary the ACA slot”.

The RDMS system commenced 2 January 2013.

56. The RDMS version 1.3 classifies Non RPT Operations as operations other than RPT operations. This includes Scheduled Charter Operations, general aviation and Ad Hoc operations. The allocation of Non – RPT slots for aircraft of fewer than 50 seats are only allocated after the bi-annual IATA slot conference and then prioritised to scheduled Charter firstly.

57. NOTAM C1396/12 terminated the availability of all Instrument Landing System Training availability at Brisbane Airport Monday to Friday from 2nd January 2013 to 31st March 2013 denying its use for CASA’s pilot approach currency every 35 days requirements currency and affecting instrument flight training schools at Archerfield ability to conduct assessment flights for the initial issue or renewal tests of pilots IFR instrument ratings.

58. CASA requires that pilots undergoing tests for the initial issue of ILS on their instrument ratings must have a test performed on a real ILS system, not a simulator. This is proving problematic for flight training at Archerfield given the general unavailability of the Amberley RAAF base ILS and Royal Australian Army Airbase Oakey ILS. Archerfield airport does not have an ILS. Similar airports such as Essendon Airport have an ILS.

59. Archerfield Airport has no slot system, is Brisbane’s only secondary airport, has previously been used by Metroliner and other Turbine Aircraft for extensive airfreight operations and can take some Non – RPT operations from Brisbane Airport, subject to appropriate aeronautical facilities being provisioned.

60. IFR Aircraft arriving at Archerfield require an alternate airport that itself does not require an alternate at night or in marginal weather conditions (that is with forecasts of Broken cloud [5 to 7 OKTAS] or worse and of cloud base of 1417 ft or lower or visibility of less than 4.4 kilometres) with Brisbane Airport usually being the nearest suitable airport due to

its lower alternate cloud base requirement and night runway lighting manual switching capability. The Brisbane RDMS and ACA slot system is therefore impacting on flight planning to and ability to conduct IFR and Night flights into Archerfield.

Prior Draft Master Plans and Prior Master Plans for Archerfield Airport

61. The 2000 Draft Master Plan stated:

“Runways 22R/04L and 22L/04R

These runways are grassed and unrated. There are three options with respect to their future layout.

- Option 1 - To reduce the length of the runways so that the 04L and 04R threshold are moved in a north-easterly direction. The purpose of this is to remove the crossover points on the primary taxiway Bravo. Refer drawing "Alternate Runway Layout with the Southern Thresholds of Both Runways Moved North ...".
- Option 2 - Remove runway 22R/04L and relocate the threshold of 04R as per option 1. Refer drawing "Alternative Runway Layout with 22R/04L Removed".
- Option 3 - Remove both grass runways and provide a new crosswind runway that will pass through both runways 28R/10L

62. The 2000 Draft Master Plan further stated:

“4. CONSULTATION

With the preparation of this document there has been an extensive consultative process to ensure that all interested groups have been given the opportunity to comment or contribute to this document. Those groups or individuals who have been involved include: Archerfield Airport Chamber of Commerce.

63. The 2005-2025 preliminary draft master plan stated:

“These runways are grassed and unrated. The runways are only used in dry weather conditions, as they are not useable following wet weather. There are two options with respect to their future layout.

Option 1—Remove runway 22R/04L and relocate the threshold of 04R in a north-easterly direction. The purpose of this would be to remove the crossover points on the primary taxiway Bravo. This will facilitate aircraft movements on the taxiway, and will allow AAC to optimise the utilisation of Runway 28R/10L. Figure 10 shows how this could be implemented.

Option 2—Remove both grass runways and provide a new crosswind runway that will pass through both runways 28R/10L and 28L/10R. There would also be the need to develop a new sealed parallel taxiway system to accommodate the new runway. This option is shown in Figure 11”.

64. The 2005 - 2025 preliminary draft master plan further stated “The following organisations and representatives will be approached as part of the consultative process: Archerfield Airport Chamber of Commerce”.

65. On 5th December 2005 former Minister Warren Truss wrote to the then President of the Applicant, Mr Humphrey Maltman, and stated:

“At my request, amendments have been made to the original Master Plan (MP) making it clear that the Beatty Road Precinct will remain available for aviation users and also removing all references to future runway configurations options including the possible closure of runway

22R/04L. Should any configuration of runways be considered in the future it must be done in full consultation with all airport users and Government.

66. The 2005 - 2025 Master Plan stated:

“11.4.3 Other Stakeholders AAC Chamber of Commerce.

During the exhibition period further consultation was undertaken with Airport Users, tenants, the local community and other stakeholders to assist with the refinement and finalisation of the Master Plan”

67. On 8th August 2005 the applicant’s President Humphrey Maltman wrote to Mr Gavn Bird, Director of Archerfield Airport Corporation, that: “Certain public representations have been made by in both your 2000 and 2005 draft master plans. Please advise the names of persons, dates, times and places you consider any consultation to have actually occurred, between Archerfeld Airport Corporation Pty Ltd and Archerfield Airport Chamber of Commerce, the matters consulted and the outcomes of such alleged consultation.”

68. The Applicant has never received a reply from the second respondent.

Consultation in relation to the 2011 - 2031 Draft Master Plan

69. The second respondent appointed Shac Communications to run a “Campaign” for the 2011 - 2031 Draft Master Plan for the second respondent.

70. On 19 June 2011 the Applicant wrote to Minister Albanese regarding concerns with several key concerns with the key proposals of the preliminary Draft Master Plan including Safety, Runways, expert experience, the opposition of the plan by AOPA and the unacceptable cost to the aviation industry of the plan, a plan the aviation industry does not want. [T Documents 9 to 35].

71. On 25th August 2011 the Applicant wrote to Minister Albanese regarding “No-consultation – Archerfield Airport 2011-2031 Draft Master Plan”. [T Documents 3354 and 3355]. The letter stated:

“We are aware that pursuant to section 80A of The Airports Act 1996 you have sought further information from Archerfield Airport Corporation (“AAC”) in relation to the Archerfield Airport 2011-2031 Draft Master Plan (“DMP”) and that this effectively “stops the clock” on the Ministerial decision period until those questions are answered.

We represent all major users of Archerfield Airport yet your department never calls us or consults with us.

Despite your directive as Minister that effective consultation committees should be set up to act as an interface between users, the community, other agencies and leaseholders this has not occurred. Further, requests to your department to provide copies of letters between yourself as

Minister, your department and Archerfield Airport Corporation in relation to the DMP and have been denied and our requests of your department for us to be kept informed ignored. The interests of all aviation users are currently being ignored at this critical phase. The processes occurring are clearly not transparent, the representations of Archerfield Airport Corporation to your department have no input by airport users nor have our members been given opportunity to comment on any proposed changes to the master plan. This is unacceptable.

The last so called "Aviation Consultative Meeting" of AAC was 16th April 2010. These are in name only:

- There is no independent chairman of so called aviation consultative meetings
- Matters raised by our Chamber are ignored and never implemented
- Proper meeting procedure is not followed
- Archerfield Airport Corporation records in the minutes matters not discussed at the meetings

This is contrary to what you told the Australian People in Parliament on 30th September 2010, the second reading speech of the Airports Amendment Bill 2010 in the House of Representatives.

We request that the Archerfield Airport 2011-2031 Draft Master Plan be rejected in its entirety (unless we consent otherwise in writing) as consultative processes have not been followed by the Airport Leasing Company, or your department and other agencies"

72. On 4th October 2011 Minister Albanese wrote to the Applicant and stated:

"Thank you for your letter dated 25 August 2011 about Archerfield Airport's 2011-2031 draft Master Plan. Under the Airports Act 1996 airports are responsible for conducting public consultation processes for their Master Plans. The consultative phase in the development of Master Plans provides an important opportunity for all interested parties to participate in the planning process.

As you are aware, Archerfield Airport invited public comment on its preliminary draft Master Plan from 15 December 2010 to 18 March 2011. The airport received a significant number of comments from a range of stakeholders, including airport user and community members. I note your Chamber submitted comments to Archerfield Airport on the preliminary draft Master Plan during the public consultation period. I take the matter of public consultation seriously and, in making my decision on the draft Master Plan, will have regard to how Archerfield Airport Corporation has addressed concerns raised during the consultation period.

The 2009 National Aviation Policy White Paper also establishes clear expectations about how airport-lessee companies should interact with surrounding communities on planning arrangements. These include Community Aviation Consultation Groups and Planning Coordination Forums. I understand Archerfield Airport is in the process of establishing both of these groups. I trust this information will be of assistance."

73. On 14th October 2011 the Second respondent wrote to the Applicant about the Archerfield Community Aviation Consultation Group, stating:

"In accordance with the Aviation White Paper, each of the federally leased airports is required to set up a Community Aviation Consultation Group (CACG). ...Accordingly I am in the process of setting up the CACG for Archerfield. Due to numbers, only a single person can be nominated from AACCI"

The 2011-2031 Master Plan

74. The runway distances of 04L/22R as reported in ERSA 7th March 2013 (and T Document 5405) are:

RWY	TORA	TODA	ASDA	LDA
04L	1245	1305	1245	1245
22R	1245	1305	1245	955

Threshold Runway 22R displaced 290 metres (951 feet)

75. Proposed runway distances of 01L/19R [refer T Document 3135 and T Document 5505] (which has not deducted any allowance for likely displacement) are:

RWY	TORA	TODA	ASDA	LDA
01L	1020	1020	1020	1020
19R	1020	1020	1020	1020

76. The distances of 04R/22L as reported in ERSA 7th March 2013 (and T Document 5405) are:

RWY	TORA	TODA	ASDA	LDA
04R	1100	1160	1100	1100
22L	1100	1160	1100	1100

77. Proposed runway distances of 01R/19L [T Document 3135 and T Document 5505] (Note AAC states 900m in pDMP and 920 in MP):

RWY	TORA	TODA	ASDA	LDA
01R	920	920	920	920
19L	920	920	920	920

78. Runway losses for take-off run available (TORA) based upon the proposed runway distances and those recorded in ERSA dated 7th March 2013 may be summarised as:

Runways	Existing 04/22's TORA	Proposed 01/19's TORA	% change
04L vs 01L	1245M	1020M	-18.1%
04R vs 01R	1100M	920M	-16.36
22L v 19L	1100M	920M	-16.36

22R vs 19R	1245M	1020M	-18.1%
TOTALS	4690Metres	3880Metres	-17.27% Net Runway Loss 810 metres

79. The Master Plan, paragraph 14.7.2, page 162 [T Document 5505] states “The final length will be resolved through the investigations and further consultation that will be undertaken as part of the MDP process”. The threshold of Runway 22R is displaced 290 metres. Proposed Runway 19R is not disclosed on the MP Figure 2 as displaced [T Document 5369]. If runway 19R threshold is displaced to the same latitude south as the 22R runway, as can be measured on figure 16 of the MP [T Document 5444], that displacement is approximately 250 metres. The available landing distance available (LDA) for landing on runway 19R is therefore reduced from 1020 metres, by 250 metres to 770 metres.

80. Runway losses of landing distance available (LDA) based upon the proposed runway lengths reduced by the displacement referred to in the previous paragraph and those recorded in ERSA dated 7th March 2013 may be summarised as:

Runways	Existing 04/22's LDA	Proposed 01/19's LDA	% change
04L vs 01L	1245M	1020M	-18.1%
04Rvs 01R	1100M	920M	-16.36
22L v 19L	1100M	920M	-16.36
22R vs 19R	955M	770M	-19.37%
TOTALS	4400Metres	3630Metres	-17.5% Net Runway Loss 770 metres

81. The Master Plan does not mention or include implementation of the requirements of CASA's PBN Implementation Plan dated March 2010. This document applies to Archerfield Airport by reason of Australia signing ICAO resolution 36-23 for the Implementation of Performance Based Navigation and Approaches with Vertical Guidance.

82. The current and immediate past usability of the cross runways has been severely restricted due to the fact that the drainage trenches across the cross runways when not mown or raked causes a restriction in the flow of water, thus increasing the period of time that the cross runways remain wet.
83. The Master Plan mixes uses including industrial with aeronautical (e.g. multi-purpose hangar and industrial tenancies [T Document 5471]).
84. The Master Plan states and the practice of the airport as advised in ERSA is to limit aircraft to no greater than 5700kgs Maximum Take Off Weight for no permission required access to the airport. For aircraft greater than 5700kgs Maximum Take Off Weight their operator must apply for a concession from the aerodrome operator with 24 hours prior notice.
85. The second respondent relies upon past airport useage data, instead of future growth projections in justifying the downsizing of the cross runways.
86. Historically, C130 Hercules, DC3's and other heavy aircraft have landed and taken off on the 04/22 cross runways. When dry they are capable of landing heavy aircraft and a runway of similar direction during WWII was used by aircraft bombers.
87. The Master Plan (T Document 5428) states "Runway 10L/28R (the main runway) will be extended around 160 metres to the east, while retaining the 28R threshold in its current location (at the eastern end of the runway), a displacement of 212 metres. The runway extension is assumed to occur by about 2021". The 160 metres referred to is already physical runway, having been constructed by the Federal Airport Corporation to facilitate Metroliner Freight aircraft to achieve required take-off lengths and having been informally used for the past 20 years. There is no construction required as the runway is already in existence, and could be made available expeditiously, that is, well prior to 2021.

Scouts' Ministerial Agreement

88. In 1985 the Scouts approached Former Federal Aviation Minister Peter Morris for a ground lease site on the airport to construct a Scout Air Activities Centre. Minister Morris, acting in accordance with his powers in the Airports (Business Concession) Act 1959 ordered the Department of Civil Aviation to provide a land lease on the airport at un-serviced land rates for successive 20 year terms renewable continuously provided the Scouts paid their rent and without reversion. This arrangement was a continuing obligation in relation to Archerfield

Airport and attached to that land and enforceable pursuant to the *Airports Transition Act 1996* against the Airport Leasing company. The second defendant after privatisation failed to carry out the Ministerial agreement to charge lease rentals at un-serviced land rates, did not renew the lease at the end of the first twenty year term, and ordered the Scouts to remove their leasehold improvements (demolish their air activities centre).

89. On 26th June 2009 The Scout Association Of Australia Queensland Branch Incorporated (“the Scouts”) wrote to the member for Moreton Hon Mr Graham Perrett enclosing a Statutory Declaration of Mr Manfred Cross (a former Federal Member for Brisbane) the President of the Scouts confirming the representations in relation to the lease of the site formerly occupied by the Scouts made to him by former Aviation Minister Peter Morris, which was then forwarded by Mr Perrett to Minister Albanese. On 4th September 2009 Mr Perrett wrote to the Scouts informing them of correspondence received by Minister Albanese and attaching the letter dated 28 August 2009. The letter stated “The community contribution of the Scouts over a number of years and its ongoing commitment to the Air Activities Centre is recognised. I note the proposal for a more permanent base for the scouts across the road from the airport.” Mr Perrett informed the Scouts that the Minister required the post codes of the youth members that used the Air Activities centre for courses.

Archerfield Airport Corporation’s Attitude To Aviation Users Costs and Airport Investment

90. Archerfield Airport was classified by the Brisbane City Councils “Growing Brisbane’s General Aviation Industry Survey” as a high cost airport.
91. Aviation users of Archerfield Airport were excluded from the benefit of the Airservices “Light Aircraft Option” (Refer para S.1.1 of Airservices Standard Contract Terms 1.7.05) increasing their costs during the term of their unique agreement with Archerfield Airport Corporation.
92. Archerfield Airport Corporation charged a fee for “out of hours” landings when the tower was not open and equivalent to the Airservices fee in tower hours.
93. On termination of the Airservices agreement Archerfield Airport Corporation increased charges substantially for most aircraft. The following table is an example for a Twin Comanche.

Example Twin Comanche - 1633 Kg

	AAC	AIRSER	TOTAL
Day			
B4 Jan	\$ 9.88	\$ 20.71	\$ 30.59
After Jan	\$ 22.51	\$ 20.71	\$ 43.22
Increase	\$ 12.63	\$ -	\$ 12.63
Percentage Increase	128%	0%	41%
Night			
B4 Jan	\$ 30.59	\$ -	\$ 30.59
After Jan	\$ 22.51	\$ -	\$ 22.51
Increase	-\$ 8.08	\$ -	-\$ 8.08
Percentage Increase	-26%	0%	-26%

AAC Charges from Jan 2010\$0.138 per Kg Min Charge \$8

Airservices Charges both Before and after Jan remain at \$12.69 per tonne

94. It costs more to land a King Air B200 aircraft at Archerfield than Brisbane Airport.
95. Archerfield Airport Corporation zoned in its 2005 Master Plan SP6 airport purposed land “general industry” increasing lease costs to tenants.
96. A newsletter of Archerfield Airport Corporation states:
- “ I have received several comments that some clients use their improvements as their future superannuation. It should not be views as a long term investment as it is only as good as the tenure remaining”*

CONTENTIONS

General

1. Section 81 of the *Airports Act 1996* provides:

SECT 81

Approval of draft by Minister

- (1) This section applies if an airport-lessee company gives the Minister, in writing, a draft master plan.
- (2) The Minister must:
 - (a) approve the plan; or
 - (b) refuse to approve the plan.
- (3) In deciding whether to approve the plan, the Minister must have regard to the following matters:
 - (aa) the extent to which the plan **achieves the purposes of a final master plan** (see subsection 70(2));

[Section 70(2) provides:

(2) *The purposes of a final master plan for an airport are:*

(a) *to establish the strategic direction for efficient and economic development at the airport over the planning period of the plan; and*

(b) to provide for the development of additional uses of the airport site; and

(c) to indicate to the public the intended uses of the airport site; and

(d) to reduce potential conflicts between uses of the airport site, and to ensure that uses of the airport site are compatible with the areas surrounding the airport; and

(e) to ensure that all operations at the airport are undertaken in accordance with relevant environmental legislation and standards; and

(f) to establish a framework for assessing compliance at the airport with relevant environmental legislation and standards; and

(g) to promote the continual improvement of environmental management at the airport.]

- (a) the extent to which carrying out the plan would meet **present and future requirements of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport concerned;**
 - (b) the effect that carrying out the plan would be likely to have on the use of land:
 - (i) within the airport site concerned; and
 - (ii) in areas surrounding the airport;
 - (c) the consultations undertaken in preparing the plan (including the outcome of the consultations);
 - (d) the views of the Civil Aviation Safety Authority and Airservices Australia, in so far as they relate to safety aspects and operational aspects of the plan.
- (4) Subsection (3) does not, by implication, limit the matters to which the Minister may have regard. ...**

2. The Master Plan does not satisfy the requirements of section 81 in that it does not achieve the purposes of a final Master Plan as it:
- a. Increases conflicts between uses of the airport site with areas surrounding the airport.
 - b. Permits the downgrading and non-aviation industrial development on Archerfield Airport Commonwealth land to the detriment of general aviation.
 - c. Does not meet present and future requirements of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport in that the plan downgrades current aviation facilities at the airport, damages and destroys current and existing aviation infrastructure including runways, taxiways, aviation fuel storage and refueling facilities, helipads, aircraft hangars and aviation businesses in favour of commercial development.
 - d. Permits removing or relocating or realigning cross runways, the sole purpose of which is not to benefit aviation but to enable the second respondent to gain access

to further prime land for industrial development to the detriment to aviation use or future aviation use of the airport.

- e. Did not adequately address issues that arose during consultation.
- f. Will result in the removal and/or forced closure of current aviation businesses, helipads, aircraft parking areas, shortening and realignment of the existing cross runway in a less favourable direction, (taking the most prevailing wind directions over time into consideration), removing of the existing control tower without any provision in the Master Plan for its replacement, removal of the current aviation fuel farm without any plans for its replacement and reducing the area of land that may be used in the future for further aviation purposes. This has the effect of preventing current and future aviation activities which will hinder or otherwise limit air operators from taking part in trade and commerce by air both within Queensland and Australia.
- g. Is not in accordance with best practices quality standards such as not developing in the 80 percent GA accident arrival and departure accident zones identified in General Aviation Airport Safety Research as aviation is a low occurrence high consequence activity.

Closing of current cross runways 04L/22R & 04R/22L and replacement with downgraded 18L/36R) & 19R/01L (renamed 18R/36L) runways

3. The Master Plan proposes re-aligning the cross runways (T Document 5459), that is, closure of the 04L/22R & 04R/22L unsealed grass runways of respectively 1245 and 1100 metres in length and replacing them with shorter, narrower, 19L/01R (renamed 18L/36R) & 19R/01L (renamed 18R/36L) unsealed grass runways of respectively 920 and 1020m (T Document 5369 and 5459) making the new runways in effect 17.7% shorter. The 022R runway displacement of 290 metres is because of the proximity of the Brisbane Airport Outer Horizontal Lower Approach Surface for the Brisbane 01 Runway ILS.
4. The Master Plan is severely flawed in not displacing the proposed 19R (renamed 18R) runway, which will be in direct alignment to Brisbane Airport 01/19 Runway. When required displacement is applied the 19R (renamed 18R) runway for landing is further reduced by at least 250 metres the effective runway length for landing is reduced to approximately 770 metres.
5. Both of these cross runways exclude most larger aircraft that currently use the cross runways.

6. The demands of users and future users for the use and operations to be conducted on the runways have not been taken into account in that the plan, gives preference to the development of a large portion of current airport land for commercial development (T5568).
7. The Master Plan provides for code A, B and C aircraft only on runway 10L/28R and replaces the presently existing code 3C cross runways with downgraded code 1B or 2B cross runways. ["T" Document 2780 refers].
8. The proposed 01/19 (renamed 36/18) runways results in an overall downgrade by the loss of 810 metres of runway for take-off run and loss of 770 metres for landing distance available:
 - a. Runway 22R is reduced from 995 metres for landing and its proposed replacement runway 19R down to 770 metres (taking into account required displacement on both runways).
 - b. Runway 22L & 04 R is reduced from 1100 metres for landing and take-off and its proposed replacement runway 19L & 01R down to 920 metres for landing and take-off.
 - c. Runway 04 L is reduced from 1245 metres for landing down to 1020 metres for runway 01L.

The shorter lengths of the proposed new runways mean that a higher proportion of larger aircraft types would require the use of Runways 10/28 when 01/19 are the duty runways.

9. Pilots, in assessing their aircraft's accelerate stop requirements must take objects beyond the runway into account (in that they may hit them in an aborted take-off) and must correctly apply correction factors of CAO 20.7.4 or the former ANO 100. In addition:
 - a. They must comply with their CASA approved company's operations manual;
 - b. If an aircraft that intends carrying out training and simulated emergencies, such as touch and go landings, asymmetric engine emergency landings, go-arounds, landings without reverse thrust.

This means that pilots that could have used the longer current 04/22 cross runways will not be able to use the proposed 01/19 cross runways. The result is therefore a more dangerous traffic configuration, loss of cross runway use and increased danger and inconvenience to all concerned and delays to these aircraft types.

10. In approving the Master Plan the Minister has not ensured that the Commonwealth land that comprises Archerfield Airport is being retained for aviation purposes.
11. The Second Respondent, in the Master plan T5367 Par 2.1.3, envisages growth in the aviation needs of Brisbane and regional Queensland but at the same time the Master Plan makes no provision for cross runways to be available for larger aircraft. Certain types of aircraft operations presently using the 04/22 runways would not be able to use the proposed 01/19 runways because of operational and aircraft performance limitations or considerations, as set out above.
12. Section 81(3)(a) of the *Airports Act* requires a determination of the extent to which carrying out the plan would meet present and future requirements of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport. The Master Plan does not do so because:
 - a. Assessment of runways has not been based on appropriate criteria such as the United States FAA AC 150 which outlines the process for making a decision about runways. More specifically, the current Runways 04/22L and 04/22R which favour the best wind directions for airport operations will be destroyed in favour of commercial development to the detriment of aviation operations at the airport by the Master Plan.
 - b. The Master Plan reduces the land within the airport presently being used for aviation purposes and no adequate provision is made for helicopter training which can only take place above open land. Helicopter Training Area "A" used by air operators will not be available anymore due to commercial development over the present area below Helicopter Training Area A.
 - c. The Master Plan does not meet established best practice for design of airport plans in both subject matter and content. For example upgrades of visual and navigation aids for the airport including provisioning areas for ILS's and category I lighting are omitted. There is no Control Tower study showing analysis of CASA's rules in relation to location of the tower. There is no analysis of the influence of State Planning Policy 1/02 on the airport. It does not reflect the actual growth requirements for the airport for users nor meet the basic requirements of planning and designing in airports such as the United States Federal Aviation Administration ("FAA") AC 150 which explains how

to design an airport or “Planning and Design of Airports, Fifth Edition by Robert Horonjeff, Francis McKelvey, William Sproule and Seth Young (May 17, 2010)

- d. The airport lessee company’s assessment [section 71(2)(b) of the Act] of the future needs of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport, as set out in the Master Plan, is flawed in that reasonable diligence and inquiry of the civil users and use of publicly available information has not occurred or the second respondent has misstated user requirements to support further downgrading of the airport. Further, historical use has been inappropriately represented as demand. There are known major capacity issues in Brisbane Airport that need to be addressed. Additionally, the second respondent has not assessed non- civil requirements for the use of the airport.

Development of the Airport for non-aviation commercial use to the detriment of general aviation and destruction of current aviation infrastructure

13. The MP specifies the promotion of business development on the airport of non-aviation industrial facilities [T Document 5370]. This is contrary to access to and use of the airport site requirements and is a breach of Clauses 3.1(a)(i) and 3.1(b)(i) of the Second Respondent’s Commonwealth lease with the First Respondent.
14. The MP “Barton Precinct” multi-purpose industrial offices and service tenancies are planned over the sites of all existing aviation lease sites north of Boundary Road (T Document 5471) and will force the removal of all aviation related entities from this part of the airport with no alternative accommodation, hanger facilities, or land for the displaced aviation business and aircraft owners.
15. At the same time, the Barton Precinct will also be under the current Helicopter Training Area A, making the use of this airspace no longer available for helicopter training (in that it would be too dangerous to do so) with no other provision for helicopter training to take place at Archerfield Airport.
16. The Master Plan enables the conversion of more airport land to industrial land. This is consistent with the conduct of the second respondent in:
 - a. refusing new leases to existing aviation business on airport land to make way for industrial development;

refusing to renew leases to airport users, like the Archer Hangers – Hangar Site 214, Sailco Pty Ltd Hangar Site 235, Scouts Queensland Air Activities Centre (Sites 613 and 603), Archerfield Refuelling Services hangar (Site 116) , Five Star Aviation Pty Ltd (Site 113) the Scouts; to remove (demolish) their Air Activities Centre building and associated facilities, and has not offered or given any compensation to the Scouts and their site has remained vacant since March 2008. As a result these businesses were forced off the airfield, AAC's refusal to renew leases except as short term or monthly tenancies, and not providing access to permit required aeronautical facilities to be constructed on the airport on reasonable commercial terms to large corporate aviation businesses such as Hawker Pacific and BAE Engineering has resulting in both of these businesses terminating their activities at Archerfield Airport.

- b. The following flying schools have closed in the Beatty Road precinct:
 - i. Flight Training Australia
 - ii. Arena Aviation
 - iii. Hemples Aviation
 - iv. Sundland Aviation
- c. The following flying schools have closed or are not longer operational in the Mortimer Road precinct:
 - i. Scouts Queensland
 - ii. QAIRTC

17. The plan supports business of property development which is in fact the primary business of Archerfield Airport Corporation Pty Ltd (AAC).² This is contrary to Division 6 Subdivision A of the Act, that is, the airport operator must not carry out non-airport business. The industrial development identified in the Master Plan exceeds activities that are incidental to the operation and/or development of the airport. The Master Plan runways and taxiways and portions of the existing aviation facilities in Beatty Road and Mortimer Road the airport are almost exclusively zoned under the approved plan for non-aviation related businesses, contrary to section 32 of the *Airports Act 1996* (Cwlth), see MP Figure 17.

18. The applicant contends that the new runway will cause the present control tower and aviation fuel farms (if code 3C) to be relocated [Refer T Document 5459, 5368,

² Refer <http://www.realcommercial.com.au/property-industrial+warehouse-qld-archerfield-500390681>.

5416,5503,5524] to comply with current legislation because the Obstacle Limitation Surface (“OLS”) is to be maintained pursuant to the Commonwealth’s obligations under the Chicago Convention and given effect by the Airports (Protection of Airspace) Regulations 1998. The Civil Aviation Safety Regulations 1998 through the Manual of Operating Standards (“MOS”) determines the compliance requirement to technical standards.

19. Buildings are not permitted to be constructed that infringe the OLS (MOS Part 139) and tower siting requirements must comply with CASA’s standards (part 172). The Master Plan does not address these requirements.
20. Users have not been consulted or advised about the tower loss and fuel farms losses with re-alignment excepting Mr Ray Maltby of Air BP who queried the OLS (T Document 2818) and was told as per T Document 2783 “11/03/2011- Called Ray. Advised that preliminary surveys had indicated that there would be no concerns with the fuel farms in their current locations”.
21. The current Master Plan makes reference to the possible relocation of the fuel farm and control tower (T 5370 Paragraph 5) without addressing the costs of the air traffic control and refuelling issues involved.

Loss of improvements on by airport users on airport land

22. The current Master Plan makes provision for commercial development on airport land and offers no compensation to current airport aviation tenants on land earmarked for commercial development.
23. The Second Respondent has a history of refusing further leases, forcing airport tenants from their premises³ with little or no compensation. The second respondent then leases the premises to tenants at inflated improved site rentals. For example, aviation tenants such as Maxwell Ernest Paynter and Miriam Grace Paynter (Site hangar 636), Gil Layts Flying School (Site 219), LW Gartshore Hangar 212, and refusing to give permission to airport users for airport developments on areas less than 3000 square metres in area.
24. Archerfield Airport's Master Plan (except in para 8.1.3 of the Master Plan) [T document 5421] does not recognize:
 - a. pre-existing lessees (except as to first term),

³ With the result that the improvements on the leased areas revert to the second respondent under the lease.

- b. the pre-existing rights of renewal being collateral agreements with the Commonwealth or the Federal Airports Corporations and or representations to lessees as to policies of renewal.
- c. the waiver by the Commonwealth of the requirement that improvements on leased sites would revert to the Commonwealth and/or compensation to tenants for their improvements on just terms or relocation of affected businesses at AAC's expense;

and therefore has not addressed the requirements of Regulation 5.02(3) in relation to obligations that have passed to Archerfield Airport Corporation Pty Ltd under section 22(2) of the *Airports Act 1996* or section 26(2) of the *Airports (Transitional) Act 1996* and interests to which the airport's lease is subject under section 22(3) of the *Airports Act 1996* or subsection 26(3) of the *Airports (Transitional) Act 1996* and as a result incorrect certificates provided to the Minister by the AAC pursuant to sections 79(1B)b, 79(2)(b) and 80(2) of the *Airports Act 1996*.

25. This conduct by the Second Respondent is contrary to the provisions of Clause 24 and 25 of the *Airports Transitional Act 1996* read with Section 51 (xxxi) of the Commonwealth of Australia Constitution Act.

Breaches of Commonwealth Legislation

26. The applicant submits that the Master Plan also fails to address breaches of Commonwealth Acts e.g. the *Airports Act 1996*, (*Protection of Airspace*) *Regulations 1998*, *Civil Aviation Safety Regulations 1998*, *Air Services Act 1995*, *Air Services Regulations* particularly related to safety issues.

27. The Master Plan is contrary to (and the current actions of AAC are contrary to) the terms of the Commonwealth Lease for the Airport and in particular, clauses 3.1 and 9. The relevant clauses read as follows:

a. 3.1 Lessee must give access

- b. The Lessee:
- c. must at all times:
 - i. subject to subclause 19.5, provide for the use of the Airport site as an airport:
 - ii. subject to sub-clause 19.5, provide for access to the airport by interstate air transport:
 - iii. provide for access to the airport by intrastate air transport:
 - iv. not use or permit to be used, the Airport Site for any unlawful purpose or in breach of legislation: and
- d. (b) may: ..
 - i. permit the Airport Site to be used for other lawful purposes that are not inconsistent with its use as an airport

28. The Master Plan stifles aviation on the airport by offering long term leases to industry, failing to provide access to aviation for needed facilities and on just terms.
29. The Commonwealth through the Secretary of the Department of Transport is not enforcing Commonwealth laws nor enforcing the Sale Documents between the Commonwealth and the Airport Leasing Company.
30. The second respondent is contravening Section 32(1) of the *Airports Act 1996*. [T Document 98 & 99] as the company's core business is not the development of the airport but industrial property development.
31. The Applicant contends that the amended Master Plan, as per the enclosed summary of major points should be approved.
32. Land, when leased for private purposes and not for the public use that the land was compulsory acquired, or used for another public purpose, but is leased for private purposes is no longer a Commonwealth Place and beyond power of the *Airports Act 1996*. Further such private leases are subject to State Planning Laws and if not zoned for the private purpose are unlawful.
33. Former Federal Aviation Minister Peter Morris made a Ministerial Agreement with the Scouts about provision of land for the Scouts' purposes. This agreement constitutes an "underlying interest" in land. The 2011 -2031 Master Plan zones the area to be provided of the Scouts as industrial.

Interaction with Queensland State Acts

34. The *Air Navigation Act 1937* (Qld) came into effect on 5th May 1938. The Long Title states that it is:

An Act to provide for the application of the air navigation regulations and civil aviation regulations of the Commonwealth to and in relation to air navigation within the State, and to provide in relation to liability for certain injury, loss, damage or destruction by aircraft

35. Section 5 provides:

5 Application of regulations to air navigation etc. within State

The regulations from time to time in force applicable to and in relation to air navigation within the Territories shall (except so far as those regulations are by virtue of the Commonwealth Act and the regulations applicable to and in relation to air navigation within Queensland and except

so far as those regulations are declared by this Act or any regulation or any provision of any regulation included in those regulations is declared by proclamation made by the Governor in Council under this Act to be not applicable to and in relation to air navigation within Queensland) apply, mutatis mutandis, to and in relation to air navigation within Queensland as if those regulations as so applied were incorporated in this Act, and for the purposes of this Act those regulations shall be read and construed and take effect accordingly.

36. Section 10 provides:

10 Construction of the regulations in their application by virtue of this Act

(1) The regulations shall in their application in Queensland by virtue of this Act be read and construed so as not to exceed the purpose of this Act and in particular so as not to authorise the Governor-General, any Minister of State for the Commonwealth, or any person or authority acting for or on behalf of the Commonwealth or any such Minister to do or omit to do anything exceeding the purpose of this Act to the intent that where any provision of the regulations or any such act or omission exceeds the purpose of this Act such provision, act or omission shall to the extent to such excess be deemed to be not lawfully made, done or, as the case may be, omitted to be done and to be invalid accordingly and not applicable by virtue of this Act to or in relation to air navigation within Queensland.

(2) The following matters shall in particular, but without limit to the generality of subsection (1), be deemed to exceed the purpose of this Act, that is to say--

(a) the enabling of the Commonwealth itself or any person or body authorised or established by the Commonwealth to take part in intrastate trade and commerce by air within Queensland;

(b) the prohibiting, preventing, hindering or otherwise limiting in any manner whatsoever the Crown in right of this State, any person or body authorised or established by the Crown in right of this State, or any other person whomsoever or body whatsoever from taking part in intrastate trade and commerce by air within Queensland excepting any such prohibition, prevention, hindrance or limitation which is necessary or expedient to carry out or give effect to, or incidental to the carrying out or giving effect to, the purpose of this Act.

37. The *South East Queensland Regional Plan (2009-2031)* made pursuant to *The Sustainable Planning Act 2009 (Qld)* Zones Archerfield Airport entirely as SP6 Special Purpose Centre - Airport, not extractive industries, light industry, or general industry, whereas the Master Plan includes all of the aforementioned zones or industries.

38. The *Brisbane City Plan 2000—Volume 1 Amended 1 January 2011 Chapter 3, page 76 Definitions* defines “SP6” zoning as:

SP6—Airport: a use of premises for:

- the landing and/or departure of aircraft
- the housing, servicing, maintenance and repair of aircraft
- the assembly and dispersal of passengers/goods on or from aircraft
- any ancillary activities serving the needs of passengers and visitors to the airport, such as shopping, food outlets and tourism services

39. By approving the Master Plan it is submitted that the Minister contravened the *Air Navigation Act 1937 [Qld]* (“ANA”) including sections 10 (1) and (2) in that the removal and replacement of the current cross runways with shorter and less capable runways

prevents, hinder or limit the operations of larger aircraft from the airport when wind conditions does not favour the main 28/10 runways and therefore affect intrastate trade.

40. The Master Plan and other developments at the airport do not comply with Queensland State Planning, zoning and environmental laws. For example, the Pickles Auctions Yard directly at the end of the runway is in the runway public safety area, there is an intrusion of hanger construction in the published approach path of Runway 10L and environmentally hazardous Extractive Industry plants and their associated rubble heaps result in a hazard for aircraft taking off from Runway 22L and 22R.
41. The Master Plan does not comply with the *South East Queensland Regional Plan (2009-2031)* in that State law zones Archerfield Airport as SP6 Special Purpose Centre Airport only and does not permit extractive industries, light industry, or general industry as set out in the Master Plan. SP6 is specifically defined [refer T Documents 5454 and 5502].
42. The applicant contends that the second respondent has not carried out the “requests” of and directions of former Minister Truss in relation to the 2005 Master Plan in relation to retention of aviation in the Beatty Road precinct and has allowed industrial tenants in the precinct to the exclusion of aviation tenants.

Failure to consult with interested parties

43. The Second Respondent has failed to consult or communicate in any constructive way with airport users and when objections were received from the applicant during the “so called consultation process” reacted by vilifying the Applicant in a letter to the First Respondent dated 18th March 2011 (T Documents 1591 and 1592).
44. The 903 objections lodged in relation to the Master Plan (T5724 to T 5726 should be taken into account. Most of the 903 objections are opposed to the closure and replacement of the cross runways.
45. None of the complaints were addressed by the Master Plan. The plan does not have due regard to the interests of airport users and the general community as required by the object of the Airports Act 1996 (section 3(b)) and nor does it promote the sound development of civil aviation in Australia (section 3(a)) in that airport tenants and users who entered into agreements with the Commonwealth in establishing aviation businesses on the airport land that will be re-zoned will be displaced in the Master Plan by general industry without any or just compensation, for their assets e.g. leasehold improvements.

46. Further the limitation on the Applicant to only have one person attend the Community Aviation Consultation Group when it represents the aviation users of the airport is further evidence of insufficient compliance with the consultation processes.

General Operational Problems – Failing to maintain aviation infrastructure and meet future demand for the airport

47. A water retention basin was recently constructed by the second defendant is to protect the Transition Logistics Archerfield Industrial land. This water retention basin increases the wetness of 04/22 cross runways hindering the runway's availability.
48. The second respondent has not cut the grass or raked the drains of the cross runways for approximately a year prior to October 2012.
49. The Second Respondent denies the use of the cross runways by advising the Control Tower on a continuous basis that the cross runways are not available either due to works in progress or soft wet surface, when there was no works in progress being conducted on the runway. Further that the second respondent has represented that closures were due to rain events even though there were substantial closures for other reasons such as the previously referred to works in progress closures. The control tower has no power to overturn instructions of the second respondent in relation to airport runway and operations areas availability.
50. The Second Respondent denies use of the cross runways until the crosswind component of the main runway reaches more than 10 knots. Some aircraft such as Tiger Moths have a crosswind limit of less than 10 knots, namely 7 knots and incidents involving damage to aircraft have occurred while landing on the main runways in up to 10 knots and are attributed to this policy. Further some air operators are hindered from operating in specific circumstances because of this policy. Denying the use of the cross runways in these circumstances influences runway use.
51. Air Operators based on the airport have been denied access to the airport to carry out their lawful operations as approved by CASA in their Air Operator Certificate issued for such activities at Archerfield Airport, for example access has been denied for banner towing operations at the airport as the second respondent has denied airside vehicle driving authorities for banner towing pick up area crews and support vehicles and banner towing

areas have been zoned in the Master Plan to General Industry for industrial development leases. Failure to provide access is a breach of section 3.1 of the Commonwealth Lease which states: *“The lessee: must at all times (iii) provide for access to the airport by intrastate air transport”*.

52. The 160 metres of additional runway to the east of the runway 28R threshold is a critical factor for runway length limited air operations – particularly on take-off. It is being unreasonably withheld from official operational use in the Master Plan by the second respondent until the year 2021 [refer T Document 5428], even although:
 - a. it is needed for such critical operations now;
 - b. has informally been used for over 20 years;
 - c. the Second Responded knows of the demand for the extension.

53. The applicant contends that the second respondent is withholding lengthening the runway on the basis that after the adoption by Australia of ICAO “RESA” standards in Civil Aviation Safety Regulations Part 139 on 2 May 2003, when a runway is lengthened, compliance is then required with a minimum runway safety area measured from the end of the runway strip for a distance of 90 metres. This would require a bridge over the road cutting on the western end of the main runway.

54. The Master Plan zones as light industry the entire Airport Site land east of Beatty Road [Title reference 17127063 being Lot 5 on Registered Plan No. 179578 County of Stanley, Parish of Yeerongpilly]. This area has been lease to Pickles Auctions for industrial purposes. This area is at the end of the runway, just beyond the legal minimum runway safety area of runway 28R/10L. It is land that is needed for a simple approach lighting system for the 28R instrument main runway. [A simple approach lighting system is required over a distance of not less than].

55. The Applicant takes specific issue with the contents of paragraph 14.6.3 of the Master Plan [T document 5499 and 5500] in relation to state planning policy SPP1/02. The SPP1/02 came into existence on 3 August 2002, SPP has effect when development applications are assessed, when planning schemes are made or amended, and when land is designated for community infrastructure is not retrospective and applies to the Pickles Auctions site.

56. Each of the deficiencies in the Master Plan raised by the objector to the Master Plan at T Document 1598 to 1614.

57. The second respondent has not determined the current and future growth and demand for the airport but promulgated historical use as meeting this requirement. Use is not demand and in this regard the second respondent has failed to comply with section 13.1 of the Commonwealth Lease to adequately estimate demand.

Relief required:

1. The decision of the Minister dated 24 May 2012 to approve the Master Plan be set aside.
2. The Master Plan, amended as per the attached summary of amendments, be approved and the Second Respondent be directed to lodge a development Plan within 9 months for the implementation of the amended Master Plan, failure of which the Minister is directed to issue a Notice of Cancellation of the Lease as provided for in Clause 19.1(a) read with the Definition of Airport Site in Clause 2.1 of the Lease.
3. In the alternative, a decision refusing to approve the Master Plan be substituted for the Minister's decision.
4. Such further and or alternative relief the Tribunal may find appropriate.



Van Zyl Lawyers
Solicitors for The Applicant

Dated: 8th March 2013