



Our Ref: DVZ/avdl
Your Ref:

7 March 2011

Mr Anthony Albanese
Leader of the House: Minister for Infrastructure and Transport
P O Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Mr Albanese

**RE: Archerfield Airport Unapproved Works within runway 28R/10L
Clearway**

We act on behalf of the Archerfield Airport Chamber of Commerce Inc (the Chamber) who has instructed us to bring the issue as referred to below to your attention for urgent action and/or reply.

We have been instructed by the Chamber AACC to inform your office of possible illegal aerodrome works that took place within the clearway area of runway 28R/10L (the two main instrument approach runways at Archerfield Airport). The works involved the construction of a plant and storage area by the Pickles Auction business in area east of runway 10L/28R as set out in a comprehensive technical report prepared by Graham Banks Airport Consultancy (the works).

We have been instructed that:

1. After becoming aware of the building activities on the clearway the Chamber contacted the Airport Building Controller for Archerfield (appointed the Federal Government), Mr Tait, on 11 January 2011. Mr Tait confirmed that the Airport Building Controller:
 - a. Was aware of the activity of Pickles Auctions;
 - b. That there was no approval issued by him for the Pickle Auctions on-airport works on the clearway; and
 - c. Enquiries would be made.
2. A capture of the website of AAC on 11 January 2011 confirms that no application for this development was made or approved by any relevant authority by 11 January 2011 by which time the work had already been completed. The website capture is attached.

3. On 18 January 2011 the Chamber took another website capture of AAC's website. By this time, the Pickles Auction development had been added to the website with a notification that AAC's consent was granted on 25 November 2010.
4. Our client is of the belief that this grant of consent was backdated by AAC as evidenced by the website capture attached. We submit this is highly irregular.
5. The Chamber again contacted Mr Tait by telephone on 18 January 2011.
6. The Chamber forwarded a letter dated 8 February 2011 to Mr W Tait (the 8 February Letter). The 8 February Letter enclosed Mr Banks' report
7. Subsequent to the sending of the 8 February Letter the Chamber received an email acknowledging receipt of the letter and the confidential report (see the email dated 10 February 2011).
8. The works have been completed and occupied by Pickles Auctions.
9. Despite the 8 February Letter, the Airport Building Controller has not taken any steps in relation to the works.
10. No building approval has to date be issued as evidenced by the capture of AAC's website dated 7 March 2011.

11. The works interfere with the clearway at the airport and:

- a. Are in breach of the *Civil Aviation Safety Regulations 1998*, as set out in the attached report.
- b. Were not at any time approved by the Airport Building Controller contrary to regulation 2.11 of the *Airports (Building Control) Regulations 1996*.
- c. Are in breach of the *Airports Act 1996* and the *Airports (Building Control) Regulations 1996*.

The works constitute a "major airport development" within the meaning of section 89(1)(ba) of the *Airports Act 1996*. A major airport development must be approved by the Minister (section 94 of the *Airports Act 1996*). To the best of our client's knowledge, no major development plan has been lodged or received ministerial approval. That being so the works could not be:

- i. Carried out as they were not in accordance with a major development plan (section 90 of the *Airports Act 1996*).
- ii. Authorised by the Airport Building Controller until the approval of a major development plan (regulation 2.11(1A)).

12. Further:

- a. Archerfield Airport Corporation (AAC) did not give notification of the works on their website as required by regulation 2.04A and 2.04B of the *Airports (Building Control) Regulations 1996*.
- b. The application for approval was not publicised as required pursuant to regulation 2.04A and regulation 2.04B of the *Airports (Building Control) Regulations 1996*.

We have therefore been instructed by the Chamber to demand action from you, namely confirming that you will require AAC to take immediate steps to remove the works from the airport.

We have furthermore been instructed that unless a satisfactory reply is received from your offices within 14 days from the date of this letter that our client may have no alternative but to commence legal proceedings.

Yours faithfully

Dolf Van Zyl
Van Zyl Lawyers

ARCHERFIELD AIRPORT CHAMBER OF COMMERCE INC.

Registered Office: 2nd Floor 380 Queen Street Brisbane
Postal: GPO Box 2511 BRISBANE QLD 4001

President: Mr Lindsay Snell Ph 07 32741477

8th February 2011

Mr W Tait
Building Control Officer
Philip Chun and Associates Pty Ltd
Building Control Officer
For Department of Infrastructure and Transport
Unit 7, 35 Qantas Drive
EAGLE FARM QLD 4009

Dear Mr Tait,

**RE: ARCHERFIELD AIRPORT – UNAPPROVED WORKS
WITHIN RUNWAY 28R/10L CLEARWAY**

We confirm our telephone conferences with you on 11th January and 18th January.

On the morning of 11th January we informed your office of possible illegal aerodrome works near Pickles Auctions and that there was no notification of works on Archerfield Airport Corporation's website as required by regulation 2.04A and 2.04B of *Airports (Building Control) Regulations 1996*.

You, Mr Tait, left a telephone message at our office during the day and then phoned Mr Steele's mobile phone around 3.00 pm on that date. You advised that the Airport Building Control Office was aware of activity near Pickles Auctions but there was no approval issued in the capacity as the Airport Building Control Officer for the Pickles Auctions on-airports works, that you were investigating the matter and that appropriate persons in Archerfield Airport Corporation (AAC) could not be located.

We telephoned you on 18th January requesting an update on the outcome of the Airport Building Control Office's enquiries. We asked whether you were aware of the amendments to the *Airport Act 1996* made on the last day of sitting of Parliament last year and you confirmed that you were.

We informed you that Section 89 (1) ba of the amended Act in our opinion applied and that pursuant to that section and other provisions the Building Control Officer now did not have the lawful authority to issue a permit for the works as they were in the clearway of the main runway and that was now within the new legislation.

We informed you we would provide the reasons why we considered the Building Control Officer cannot issue any permit. You advised that you needed the information quickly as there was a statutory period for the Building Control Officer to make a decision. We requested you to confirm that period which you advised was 28 days after receipt of the application from AAC. We asked you to advise the date of the application but you then refused to provide that date advising that it was "confidential".

During the telephone call on 18th January we:

- reminded you that on 11th January you informed us that you did not have an application from Archerfield Airports Corporation for the works; and
- advised that in the intervening period of time after that telephone call the detail of the Pickles works was posted on AAC's website.

Clauses 6.2.34.1 and 6.2.34.2 of the Manual of Standards (Part 139) Aerodromes ("MOS") about objects on Clearways were read to you. They state: "*A clearway must be free of fixed **or mobile objects** other than visual or navigational aids for the guidance of aeroplanes or vehicles. All fixed objects permitted on the clearway must be of low mass and frangibly mounted.*"

You asked if there was a definition of a "Clearway". Clause 6.2.30.1 was read to you. This states: "*A clearway, consisting of an obstruction free rectangular plane, must be provided at the end of a runway so that an aeroplane taking off may make a portion of its initial climb to 35ft (10.7m) above the ground at the end of the clearway*".

We informed you that Queensland State Planning Policy required a one kilometre Public Safe Area at the end of the runway and therefore no Brisbane City Council Approval to Pickles Auctions could lawfully be made.

We informed you that interference with the clearway constituted a "major airport development" pursuant to the amended Act and could only be made with Ministerial approval. We refer you to regulation 2.11(1A) of the amended regulations.

Regulation 2.11 (1A) of the *Airports (Building Control) Regulations 1996* states "*If the proposed building activity is, or comprises part of, a major airport development, the airport building controller must not make a decision on the application for its approval before the major development plan has been decided, or taken to be approved, by the Minister under section 94 of the Act.*"

Enclosed is an extract of a report prepared by our Aerodrome Standards sub-committee engineers to assist you in making your decision. This is confidential information and issued to you to assist you in arriving at your decision. The report must be kept confidential.

Unless there is prompt and correct application of the *Airports Act 1996* and *Airports (Building Control) Regulations 1996*, including either:

- refusing the application and requiring the clearway be reverted to its pre-existing condition; or
- referring this matter to the Minister for his decision;

we will seek legal advice and take such action as may be advised.

Yours faithfully
Archerfield Airport Chamber of Commerce Inc.



Ross Steele - Executive Officer
encl.



An occupier of Archerfield Airport is obligated under the Airports Act to gain all necessary approvals for building and construction work prior to the commencement of the work. Both the Government Airport Building Controller (ABC) and Archerfield Airport Corporation (AAC) must be notified. This process ensures all works are consistent with the Airport Master Plan, the future planning objectives of AAC, the current infrastructure and operations of the airport and the Building Code of Australia.

This includes all building activities and other construction activities including alterations to hangars or buildings. Minor alterations and repairs do not require formal application but must be brought to the attention of the ABC. An approval to commence works from AAC and a Certificate of Compliance from the ABC must be gained prior to the occupation and/or use of a building following any works.

For more information or to obtain a building application form, please download these [guidelines](#).

Below is a list of the current building applications for Archerfield Airport published in accordance with the requirements of r2.04A and r2.04B of the *Airports (Building Control) Regulations 1996*.

Name of applicant	If AAC is the applicant, date of submission to ABC	If AAC is not the applicant, date AAC received the application	Description of proposed building activity	Location on Airport	AAC decision (consent, refusal)	Date	ABC decision (consent, refusal, deemed refusal, withdrawal)	Date
V Squared Helicopters	N/A	15/03/2010	interior offices & amenities	Hangar 219, Qantas Drive	consent granted	15/03/2010	Building Approval issued	18/04/2010
AAC	03/06/2010	N/A	sanitary & water services	Hangar 219, Qantas Drive	N/A	N/A	Building Approval issued	22/06/2010
Flight Training Aust	N/A	22/07/2010	chainwire fence installation	Building 25, Qantas Drive	consent granted	22/07/2010	Building Approval issued	8/08/2010
AAC	26/07/2010	N/A	fire damaged shed & office block demolition	Site 508, Boundary Rd	N/A	N/A	Demolition Approval issued	16/08/2010

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AAC	09/08/2010	N/A	stormwater installation	Taxiway Hotel	N/A	N/A	Building Approval issued	11/11/2010
AAC	23/08/2010	N/A	chainwire fence installation	Site 511, Boundary Rd	N/A	N/A	Building Approval issued	15/09/2010
AAC	01/10/2010	N/A	demolition of existing buildings	Sites 111 & 112, Ditchmen Ave	N/A	N/A		
Pickles Auctions	N/A	23/11/2010	construction of hardstand and chainwire fence installation	Site 700, Beatty Rd	consent granted	25/11/2010		
Worrels	N/A	15/12/2010	demolition of existing buildings	Boundary Rd	consent granted	15/12/2010	Demolition Approval issued	03/02/2011
Bond Air Charters	N/A	15/02/2011	tencancy fitout to form offices	Hangar 411 (2) Wirraway Ave	consent granted	16/02/2011	Building Approval issued	16/02/2011

No record of Building Control Officer approval



Self Approved



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