Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION

[2015] AATA 489

Division	**GENERAL DIVISION**
File Number	**2012/3556**
Re	**Archerfield Airport Chamber of Commerce Inc**
	APPLICANT
And	**Minister for Infrastructure and Regional Development**
	RESPONDENT
And	**Archerfield Airport Corporation Pty Ltd**
	JOINED PARTY

DECISION

Tribunal	**Deputy President P E Hack SC**
Date	**8 July 2015**
Place	**Brisbane**

The decision under review is affirmed.

.....[Sgd].....

Deputy President P E Hack SC

CATCHWORDS

AVIATION – Airports – decision by Minister to approve draft master plan – application by airport chamber of commerce for review of decision – compatibility of commercial and non-aviation developments with aviation needs – whether re-alignment would limit aviation useability – consistency of draft master plan with planning laws – provision for further development and growth of aviation – whether increase risk to air safety – airport design requirements of ICAO and US FAA – consistency with lease obligations – needs of existing users – sufficiency of consultation process – re-alignment will likely improve useability – satisfies present and future requirements of users – process of consultation appropriate – applicant's witnesses lack objectivity – applicant's witnesses demonstrably partial – no substance in applicant's criticisms – decision under review affirmed.

LEGISLATION

Airports Act 1996 (Cth), ss 3, 32, 67, 68, 70, 71, 72, 76, 77, 79, 80A, 81, 91, 112
Airport Regulations 1997 (Cth), regs 5.01A, 5.02
Air Navigation Act 1937 (Qld), ss 5, 6, 10
Air Navigation Regulations 1920 (Cth)
Civil Aviation Safety Regulations 1998 (Cth), Manual of Standards Part 139 – Aerodromes

CASES

Re McLaughlin & Minister for Infrastructure, Transport, Regional Development and Local Government & Anor [2010] AATA 266
Brisbane Airport Corporation Ltd v Wright [2002] FCA 359; (2002) 120 FCR 157
Westfield Management Ltd v Brisbane Airport Corporation Ltd [2005] FCA 32

SECONDARY MATERIALS

Convention on International Civil Aviation, done at Chicago 7 December 1944, 15 UNTS 295 (entered into force 14 April 1947)

REASONS FOR DECISION

Deputy President P E Hack SC

8 July 2015

Introduction

1. Archerfield Airport is Brisbane's major general aviation airport, located some 10 km to the south-west of the Brisbane Central Business District. It is operated by the joined party, Archerfield Airport Corporation Pty Ltd (the Corporation) by virtue of a lease for a term of 50 years granted by the Commonwealth in 1998. The applicant, Archerfield Airport Chamber of Commerce Inc (the Chamber), represents the interests of sub-lessees from the Corporation and other users of Archerfield Airport.

2. The Chamber and the Corporation are at odds about the way in which the Corporation proposes to develop the airport. Put somewhat broadly, the Chamber says that the Corporation proposes to commercialise unduly the airport at the expense of the aviation users and aviation uses.

3. The setting for the contest is the Corporation's draft master plan, the document required by the *Airports Act 1996* (Cth) to be prepared every five years, and to be approved by the respondent Minister. The former Minister decided on 24 May 2012 to approve the Corporation's draft master plan. The Chamber seeks a review of that decision. It contends in these proceedings that the Minister's decision to approve the draft master plan ought be set aside and a decision made instead refusing to approve the draft master plan. Additionally, the Chamber submits that the Tribunal ought direct the Minister to consider the Corporation's alleged non-compliance with its lease from the Commonwealth and to consider the issue of a written notice under s 81(8) of the *Airports Act* requiring the provision of a new draft master plan taking into account a plan prepared by the Chamber.[1]

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[1] Applicant's submissions of 20 February 2015, page 7, paragraph [2.3].

4. It is not necessary to consider at any length whether the Tribunal has power to make the directions sought; I very much doubt that it does.[2] For the reasons that follow I am satisfied that there is nothing of substance in the Chamber's criticism of the Minister's decision. I am satisfied that the decision was correct. It will be affirmed.

The legislative setting

5. The submissions of the Chamber placed particular emphasis on paragraphs (a) and (b) (insofar as it referred to the interests of airport users) of the objects of the Act set out in s 3 of the Act in these terms:

> *The objects of this Act are as follows:*
>
> *(a) to promote the sound development of civil aviation in Australia;*
>
> *(b) to establish a system for the regulation of airports that has due regard to the interests of airport users and the general community;*
>
> *(c) …*

6. Part 5 of the Act, which applies to Archerfield Airport by virtue of s 68(1)(b) of the Act together with reg 5.01A of the *Airport Regulations 1997* (Cth), is headed "Land use, planning and building controls". The overall operation of Part 5 is explained by s 67 in this way:

> *The following is a simplified outline of this Part:*
>
> - *For each airport, there is to be an airport master plan.*
> - *Major development plans will be required for significant developments at airports.*
> - *Building activities on airport sites will require approval.*
> - *Buildings and structures on airport sites must be certified as complying with the regulations.*

It is important, given the way in which the arguments for the Chamber were presented, to stress the planning hierarchy in Part 5 of the Act. A master plan is the most general document in the scheme of planning documents. At the next level is a major development

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[2] In *Re McLaughlin & Minister for Infrastructure, Transport, Regional Development and Local Government & Anor* [2010] AATA 266 at [42], I concluded that, as a consequence of the wording of s 81(2) of the *Airports Act*, the Minister's power, and thus that of the Tribunal, was limited to approving or refusing to approve a plan.

plan, dealt with by Division 4 of Part 5 of the Act, also requiring Ministerial approval. Finally, particular building activities require individual approval.[3]

7. The focus of these proceedings is on Division 3 of Part 5 of the Act, "Airport master plans". For each airport there must be a final master plan. The purposes of a final master plan are explained in s 70(2) of the Act in this way:

> *(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.*

The contents of a master plan are prescribed by s 71 of the Act.[4] By virtue of s 71(2), the draft master plan must specify:

> *(a) the airport-lessee company's development objectives for the airport; and*
>
> *(b) the airport-lessee company's assessment 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; and*
>
> *(c) the airport-lessee company's intentions for land use and related development of the airport site, where the uses and developments embrace airside, landside, surface access and land planning/zoning aspects; and*
>
> *(d) an Australian Noise Exposure Forecast (in accordance with regulations, if any, made for the purpose of this paragraph) for the areas surrounding the airport; and*

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3 Division 5 of Part 5 of the Act.

4 Amendments were made to s 71 of the Act by the *Airports Amendment Act 2010* (Cth). By operation of the transitional provisions of that amending Act the Minister considered the draft master plan by reference to the Act before the amendments. No party suggests that the Act in its current form is not the appropriate focus for the Tribunal's consideration.

(da) flight paths (in accordance with regulations, if any, made for the purpose of this paragraph) at the airport; and

(e) the airport-lessee company's plans, developed following consultations with the airlines that use the airport and local government bodies in the vicinity of the airport, for managing aircraft noise intrusion in areas forecast to be subject to exposure above the significant ANEF levels; and

(f) the airport-lessee company's assessment of environmental issues that might reasonably be expected to be associated with the implementation of the plan; and

(g) the airport-lessee company's plans for dealing with the environmental issues mentioned in paragraph (f) (including plans for ameliorating or preventing environmental impacts); and

(ga) in relation to the first 5 years of the master plan—a plan for a ground transport system on the landside of the airport that details:

(i) a road network plan; and

(ii) the facilities for moving people (employees, passengers and other airport users) and freight at the airport; and

(iii) the linkages between those facilities, the road network and public transport system at the airport and the road network and public transport system outside the airport; and

(iv) the arrangements for working with the State or local authorities or other bodies responsible for the road network and the public transport system; and

(v) the capacity of the ground transport system at the airport to support operations and other activities at the airport; and

(vi) the likely effect of the proposed developments in the master plan on the ground transport system and traffic flows at, and surrounding, the airport; and

(gb) in relation to the first 5 years of the master plan—detailed information on the proposed developments in the master plan that are to be used for:

(i) commercial, community, office or retail purposes; or

(ii) for any other purpose that is not related to airport services; and

(gc) in relation to the first 5 years of the master plan—the likely effect of the proposed developments in the master plan on:

(i) employment levels at the airport; and

(ii) the local and regional economy and community, including an analysis of how the proposed developments fit within the planning schemes for commercial and retail development in the area that is adjacent to the airport; and

(h) an environment strategy that details:

(i) the airport-lessee company's objectives for the environmental management of the airport; and

(ii) the areas (if any) within the airport site which the airport-lessee company, in consultation with State and Federal conservation bodies, identifies as environmentally significant; and

(iii) the sources of environmental impact associated with airport operations; and

(iv) the studies, reviews and monitoring to be carried out by the airport-lessee company in connection with the environmental impact associated with airport operations; and

(v) the time frames for completion of those studies and reviews and for reporting on that monitoring; and

(vi) the specific measures to be carried out by the airport-lessee company for the purposes of preventing, controlling or reducing the environmental impact associated with airport operations; and

(vii) the time frames for completion of those specific measures; and

(viii) details of the consultations undertaken in preparing the strategy (including the outcome of the consultations); and

(ix) any other matters that are prescribed in the regulations; and

(j) such other matters (if any) as are specified in the regulations.

Paragraphs (a) to (h) do not, by implication, limit paragraph (j).

*Note 1: **Airside** means the part of the airport grounds, and the part of the airport buildings, to which the non-travelling public does not have free access.*

*Note 2: **Landside** means the part of the airport grounds, and the part of the airport buildings, to which the non-travelling public has free access.*

8. Subsections (4) and (5) of s 71 of the Act are also relevant. They provide:

Matters provided by regulations

(4) The regulations may provide that the objectives, assessments, proposals, forecasts and other matters covered by subsection (2) or (3) may relate to one or more of the following:

(a) the whole of the planning period of the plan;

(b) one or more specified 5-year periods that are included in the planning period of the plan;

(c) subject to any specified conditions, a specified period that is longer than the planning period of the plan.

*Note: **Planning period** is defined by section 72.*

(5) The regulations may provide that, in specifying a particular objective, assessment, proposal, forecast or other matter covered by subsection (2) or (3), a draft or final master plan must address such things as are specified in the regulations.

9. Further matters are specified in reg 5.02 of the Regulations in this way:

(1) For paragraphs 71 (2) (j) and (3) (j) of the Act, the following matters are specified:

(a) any change to the OLS or PANS-OPS surfaces for the airport concerned that is likely to result if development proceeds in accordance with the master plan;

(b) for an area of an airport where a change of use of a kind described in subregulation 6.07 (2) of the Airports (Environment Protection) Regulations 1997 is proposed:

(i) the contents of the report of any examination of the area carried out under regulation 6.09 of those Regulations; and

(ii) the airport-lessee company's plans for dealing with any soil pollution referred to in the report.

(2) For section 71 of the Act, an airport master plan must, in relation to the landside part of the airport, where possible, describe proposals for land use and related planning, zoning or development in an amount of detail equivalent to that required by, and using terminology (including definitions) consistent with that applying in, land use planning, zoning and development legislation in force in the State or Territory in which the airport is located.

(3) For subsection 71 (5) of the Act, a draft or final master plan must:

(a) address any obligation that has passed to the relevant airport-lessee company under subsection 22 (2) of the Act or subsection 26 (2) of the Transitional Act; and

(b) address any interest to which the relevant airport lease is subject under subsection 22 (3) of the Act, or subsection 26 (3) of the Transitional Act.

(4) In subregulation (1):

***OLS** and **PANS-OPS surface** have the same meanings as in the Airports (Protection of Airspace) Regulations.*

10. It is also necessary to note s 71(6) of the Act which has particular relevance to one of the Chamber's arguments about the operation of town planning laws. It provides:

(6) In specifying a particular objective or proposal covered by paragraph (2)(a), (c), (ga), (gb) or (gc) or (3)(a), (c), (ga), (gb) or (gc), a draft or final master plan must address:

(a) the extent (if any) of consistency with planning schemes in force under a law of the State in which the airport is located; and

(b) if the draft or final master plan is not consistent with those planning schemes—the justification for the inconsistencies.

11. An airport-lessee company (and the Corporation is one) is required by s 76 of the Act to prepare a draft master plan and submit it to the Minister for approval before the expiry of

the old master plan. Whilst a draft or final master plan is required to relate to a "planning period" of 20 years,[5] a final master plan remains in force for five years.[6] There is a process of consultation required with State and local authorities and a requirement that public comment be sought on the draft master plan.[7] Once the airport-lessee company gives the Minister the draft master plan the Minister must either approve the plan or refuse to approve the plan;[8] but if the Minister believes, on reasonable grounds, that there is not enough material to make a decision that Minister may request the airport-lessee company to provide specified material relevant to making the decision.[9]

12. The matters to which the Minister must have regard in deciding whether to approve the plan are described in s 81(3) of the Act in this way:

> *(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));*
>
> *(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.*

Section 81(4) provides that s 81(3) of the Act does not, by implication, limit the matters to which the Minister may have regard.

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5 See s 72, *Airports Act.*

6 See s 77, *Airports Act.*

7 See s 79, *Airports Act*.

8 See s 81(2), *Airports Act.*

9 See s 80A (2), *Airports Act.*

13. Division 4 of Part 5 of the Act deals with major development plans. Such plans are required for every major development at an airport. The term "major development" is defined as including, relevantly for present purposes, altering a runway in any way that significantly changes flight paths or the patterns or levels of aircraft noise. A major development plan is required to be consistent with the airport's final master plan.[10] Public consultation and Ministerial approval is required for major development.

14. It is necessary, finally, to make reference to s 32(1) of the Act on which the Chamber places considerable reliance. It reads:

> *(1) An airport-operator company for an airport (other than a joint-user airport) must not carry on substantial trading or financial activities other than:*
>
> *(a) activities relating to the operation and/or development of the airport; or*
>
> *(b) activities incidental to the operation and/or development of the airport; or*
>
> *(c) activities that, under the regulations, are treated as activities incidental to the operation and/or development of the airport; or*
>
> *(d) activities that are consistent with the airport lease for the airport and the final master plan for the airport.*

Some uncontroversial background

15. Archerfield Airport occupies some 257 hectares in a predominantly industrial area some 10 km south-west of the Brisbane Central Business District. There is open space to the south-west of the Airport, adjoining part of its western and southern boundaries, in the flood plain of Oxley Creek. Eagle Farm Airport, now Brisbane's major domestic and international terminal, was in use as an airport from the early 1920s; however Archerfield Airport was developed as Brisbane's civil aviation airport from 1930 as it was better suited than Eagle Farm for aircraft use in wet weather. That situation changed in 1949 following redevelopment of Eagle Farm for defence purposes during World War II.

16. The Department of Civil Aviation and then the Federal Airports Corporation operated Archerfield until 1998 when it was privatised. That privatisation was effected by the grant of a lease to the Corporation for a term of 50 years from 18 June 1998 with an option to renew for a further term of 49 years.

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[10] See s 91(1A) (b), *Airports Act.*

17. It is necessary to refer to some of the provisions in that lease. First, clause 3.1 provided:

> ***3.1 Lessee must give access***
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> *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; and*
>
> *(ii) subject to sub-clause 5.10 and clause 14, construct, alter, remove, add to or demolish the Structures.*

The Chamber also relies on clause 9.2. It reads:

> ***9.2 Maintenance of runways and pavements***
>
> *The Lessee must maintain the runways, taxiways, pavements and all parts of the airport essential for safe access by air transport to a standard no less than the standard at the commencement of the Lease.*

18. Airport runways are identified by numbers that represent the runway's magnetic headings in decadegrees. Thus a runway described as 09/27 (90°/270°) runs east/west. Where there are parallel runways, they are distinguished by letter, L (left), R (right) or C (centre). It is also relevant to note the concept of runway displacement. A displaced threshold is one where the point at which planes may land is a point other than the actual start (or end) of the runway. It signifies an area that may be used for departing aircraft for take-off but not by landing aircraft and has the effect of shortening the available distance for landing aircraft. A displaced threshold may result from deficiencies in surface with the result that the surface is unable to withstand the impact of landing aircraft, or to allow landing clearance over an obstruction. The result is that both runway length and the length of displaced thresholds need to be known.

19. Archerfield has two sets of parallel runways. They are described in the draft master plan in this way:[11]

> *Archerfield Airport has two sets of parallel runways. The 10/28 parallel runways (approximately east-west) and full-length parallel taxiways have sealed pavements. Runway 10L/28R and the supporting taxiway are equipped with pilot activated lighting.*
>
> *The secondary direction 04/22 parallel runways (approximately north-east/south-west) and taxiways are unsealed except for the runway thresholds.*
>
> *The runway facilities are summarised as follows:*
>
> - *runway 10L/28R is sealed, 1481 m long, 30 m wide and has a Pavement Classification Number (PCN) of 6;*
> - *runway 10R/28L has an unrated pavement, 1100 m long and 30 m wide, the central 18 m of which is sealed with 6 m of gravel on either side;*
> - *runway 04L/22R has an unrated natural surface, 1245 m long and 30 m wide; and*
> - *runway 04R/22L has an unrated natural surface, 1100 m long and 30 m wide.*
>
> *Runway thresholds are displaced as follows:*
>
> - *10L by 10 m;*
> - *28R by 51 m; and*
> - *22R by 290 m.*

20. It will be a sufficient introduction to one of the issues of controversy to say that the draft master plan contemplates that the 04/22 runways will be re-aligned to 18/36 "to improve overall runway usability, particularly for flying training".[12]

Some uncontroversial legal principles

21. The operation of the Act, and the role of a master plan, has been considered by the Federal Court. In *Brisbane Airport Corporation v Wright*,[13] and in the context of a dispute about standing in the Tribunal to challenge a master plan decision of a Minister, Dowsett J said this of the nature and functions of a master plan:

> *[28] The "objects" of [the Airports] Act. as set out in s 3, focus on the provision of airport services. Section 3(b) refers to the interests of the "general community" but that seems to refer to collective, rather than individual interests. This is of some importance, given that the Airports Act assumes*

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11 Exhibit 5, page 2098.

12 Exhibit 5, page 5370.

13 [2002] FCA 359; (2002) 120 FCR 157 at [28].

> *the continuing commercial operation by lessees of airports at existing locations. Inevitably, some, perhaps many people will be affected by the existing operation. They, and others, may be affected, favourably or otherwise, by any change in the mode of operation. In some cases, the effects of any change will be minor; in others, those effects will be extreme. It is of the nature of a major airport operation that it is likely to affect many people in varying degrees. A master plan is part of a business plan for an existing airport. It is not a town planning document.* [emphasis added]

22. In *Re McLaughlin and Minister for Infrastructure, Transport, Regional Development and Local Government and Anor*,[14] I expressed the view, in a context similar to the present, that the role of a master plan was for the airport lessee company to identify its development objectives, not those of other parties. I remain of that view, accepting that sometimes the development objectives of the airport lessee may be identical to those of sub-lessees.

23. Reference should also be made to the decision of Cooper J in *Westfield Management Ltd v Brisbane Airport Corporation Ltd.*[15] The case concerned a challenge to the capacity of the Brisbane Airport Corporation to lawfully construct and lease buildings on the airport land to be used by Direct Factory Outlets Pty Ltd as a retail sales outlet. The applicants, who had interests in large retail shopping centre within a reasonable distance from the Brisbane Airport, alleged that the approval by the Minister of the 2003 draft master plan was of no force and effect because it included provisions for development of the airport site which were not related to, or incidental to, the operation and development of Brisbane Airport as an airport and which development was contrary to the provisions of the *Airports Act*. In passing, I note that clause 3.1 of the Brisbane Airport lease was identical[16] to clause 3.1 in the Archerfield Airport lease with the addition of "international air transport" to clause 3.1(a) (ii).

24. The challenge was rejected. It is desirable to set out, at some length, what Cooper J said of s 32(1) of the *Airports Act*:

> *[63] In my view the object of s 32, in the context of the rules about airport leases contained in s 14(5), is clear. It is that for each core regulated airport there will be one airport-lessee company which may acquire only one airport lease (ss 16, 17, 19 and 20), which must satisfy the ownership provisions of*

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14 [2010] AATA 266 at [40].

15 [2005] FCA 32.

16 See [2005] FCA 32 at [41].

Pt 3 of the [Airports] Act (s 21) and whose sole business is the airport, meaning the whole of the airport site the subject of the grant under the relevant airport lease. So understood there is a consistency as to the rights of user under an airport lease, which an airport lessee company may exploit commercially on the land to which the airport lease relates. The construction contended for by Westfield and Centro denies to an airport lessee rights of user of land at an airport additional to its use as an airport where s 14(5)(d),(e) and (f) and the definition of 'airport site' in s 5 and s 4 of the [Airports (Transitional) Act 1996 (Cth)] specifically provide for the possibility of additional uses of an airport site being permitted under the airport lease of the airport site. In my view, it was not part of the statutory scheme that s 32(1) would be given a construction which would render otiose the role to be played by the grant of an airport lease as the median by which to sell core regulated airports in Australia to private interests in order 'to promote the efficient and economic development and operation of airports' (s 3(c)) and which would restrict the enjoyment of the common law property rights the airport lessee obtained under the airport lease, where those rights included rights of user additional to the use of an airport for aviation purposes.

…

[69] The trading and financial activities of the airport-operator company which are prohibited under s 32(1) are those which do not relate to, or are not incidental to, the operation and/or development of the airport by the airport-operator company under the applicable airport lease or airport management agreement. If a trading or financial activity is one carried on under, and in accordance with rights given by an airport lease to an airport-lessee company to engage in the activity on the airport site, then the activity is part of the activities involved in the operation and/or development of the airport to which the airport lease relates. The prohibition contained in s 32 is in respect of substantial trading or financial activities not related to or incidental to these activities.

[70] I am satisfied that on the proper construction of s 32(1) of the [Airports] Act, trading or financial activities carried on by an airport-operator company for a purpose allowed under the airport lease of an airport which is a purpose additional to the use of the land as an airport, are not trading or financial activities prohibited by s 32(1). Nor, are the activities related to or incidental to such additional user within the prohibition contained in s 32(1).

[71] I am also satisfied that there is nothing in the [Airports] Act or the [Airports (Transitional) Act] which operates to take away the right of an airport lessee company to grant a sublease of part of an airport site for a purpose allowed under the airport lease, such right to sublet being a common law incident of the airport lease: American Dairy Queen (Qld) Pty Ltd at 683. However, the right to sublet and licence, under an airport lease is subject to regulation in accordance Subdiv C of Div 6 of Pt 2 of the [Airports] Act. That is, the power to sub-lease and licence may be subject to regulation by Regulations made under the [Airports] Act.

His Honour described the relationship between the airport-lessee company's development objectives and the draft master plan in this way:

> *[52] … Because the permissible user under an airport lease controls the activities which the airport-lessee company may engage in in relation to the airport site, the airport-lessee company's development objectives for the airport (s 71(2)(a)) and the airport-lessee company's proposals for land use and related development of the airport site (s 71(2)(c)) must be limited to the range of permissible uses available to the airport-lessee company under the relevant airport lease. So understood the contents of any draft or final master plan concerning land use and related development will be specific proposals falling within the general range of permissible uses of the airport site. Where an airport lease permits uses other than as an airport those additional uses, if the airport-lessee company wishes to engage in them, must be included in a draft or final master plan and must address the extent of consistency (if any) with planning schemes in force under a law of the State or Territory in which the airport is located: s 71(6). The control of land use and related development at a core regulated airport, including the use of the airport site as an airport, lies in the power of the Minister to approve, or refuse to approve, a master plan under s 81. Once approved the final master plan controls land use and related development at a core regulated airport by limiting it to development which is consistent with what has been approved in the final master plan.*

The applicant's case

25. With that introduction I turn to the case presented by the Chamber. The kindest thing that may be said of it was that it was diffuse, in all senses in which that word is used. My distinct impression from the way in which the Chamber's case was presented and argued, by its solicitor and, unusually, by its witnesses, is that many of those who stand behind the Chamber have failed to come to grips with the reality that the airport was privatised in 1998. Contrary to the views of the Chamber, and its witnesses, the Corporation's commercial objectives and its desire to make a return on its investment are not irrelevant to the manner in which it operates, or proposes to operate, Archerfield Airport. Equally, the proceedings do not represent an opportunity for the Tribunal to sit as a *de facto* Royal Commission, investigating the vast litany of complaints that some or all of the Chamber's members seek to ventilate. By way of example, paragraphs [45] to [52] of the Chamber's Statement of Facts, Issues and Contentions are devoted to complaints about the tender process by which the Corporation became the airport-lessee company operating Archerfield Airport. These matters have nothing whatsoever to do with the task I am obliged to perform.

26. What is apparent is that whilst the Chamber was represented by a solicitor, no independent professional judgement was brought to bear on the relevance of the content of the various witness statements. That deficiency continued with the Chamber's

written submissions – 93 pages of closely typed pages included a number devoted to a discussion (without any conclusion readily apparent) of the validity of the *Airports Act*. Ultimately, the Chamber's solicitor, Mr Van Zyl, agreed that I need not concern myself with that particular issue.

27. At the outset of the hearing the Chamber's case was identified by Mr Van Zyl as comprising nine contentions as follows:[17]

(a) Some of the commercial and non-aviation developments proposed by the draft master plan are incompatible with aviation needs;

(b) The plan to re-align runways 04/22 to 18/36 would limit the aviation useability of the airport;

(c) The draft master plan is inconsistent with the planning laws of the Queensland Government and the Brisbane City Council;

(d) The draft master plan does not make provision for the further development and growth of aviation;

(e) The draft master plan will increase the risk to aviation safety;

(f) The draft master plan does not comply with the airport design requirements of the International Civil Aviation Organisation (ICAO) and the United States Federal Aviation Administration (FAA);

(g) The draft master plan is inconsistent with the Corporation's obligations under the lease from the Commonwealth;

(h) The draft master plan does not meet the needs of existing users; and

(i) The Corporation did not engage, or sufficiently engage, in the process of consultation required of it.

28. Regrettably, the Chamber's written submissions did not address these contentions with the necessary rigour. Those submissions are not easy to understand and range well

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[17] Transcript, page 3, line 45 – page 9, line 15; page 17, lines 14 – 16.

outside the nine points identified at the start of the hearing. I should say that my task of coming to grips with the Chamber's arguments has been considerably assisted by the analysis undertaken in the Minister's submissions. I am grateful for that assistance and that gained from the submissions for the Corporation.

Incompatible Uses

29. Two arguments come under this heading – that based on s 32 of the *Airports Act* and that which asserts reliance on the terms of the Commonwealth lease. The arguments, and the manner in which they were put, reflect the underlying unhappiness of the members of the Chamber that Archerfield Airport is now required to be operated on a commercial basis with the Corporation, not unreasonably, seeking to obtain a reasonable rate of return on what I assume was a significant outlay of capital.

30. The Chamber's argument concerning the lease appears most clearly (so it seems to me) in paragraph 13[18] of its "Contentions" in its Statement of Facts, Issues and Contentions and in paragraph 6 (on page 11 and following) of its written submissions. As to the first of these, this is said:

> *The [master plan] specifies the promotion of business development on the airport of non-aviation industrial facilities … 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 [Corporation's] … lease …*

The second point identifies clause 9.2 of the lease (set out in paragraph 17 above), the obligation to maintain facilities "to a standard no less than the standard at the commencement of the lease".

31. The Chamber's submissions on s 32 attempt to distinguish *Westfield Management* on the facts.[19] That case, it was said, related to airport land not being used for aviation purposes or not being occupied by existing aviation-related aviation users. The present case, it was said, relates to land currently being used by aviation users and occupied by existing aviation users.

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[18] See page 30.

[19] See page 26.

32. The distinction is artificial and, in any event, not supported by the evidence. There is, no doubt, a point at which the proposed "commercialisation" of an airport might compromise the operation of the airport to the extent that the Minister would be obliged to have regard to it in deciding whether to approve a draft master plan. This is well short of such a case. The Chamber's case relies heavily on the realignment of 04/22. As will appear, I do not accept that the realignment will have the effects that the Chamber's witnesses suggested. Moreover the argument overlooks the fact that before the realignment could be implemented, the Corporation will be required to obtain the approval of the Minister through the processes of Division 4 of Part 5 of the *Airports Act*.

33. In *Westfield*, Cooper J explained the operation of s 32 and expressly rejected arguments identical to those advanced by the Chamber. His Honour's decision binds me and, in any event, is plainly correct.

34. Other complaints of the Chamber appear to arise from disputes that individual tenants appear to have with the Corporation. Those disputes will need to be resolved in the conventional way with resort, if necessary, to litigation to enforce contractual rights and obligations. The approval of a draft master plan is not the occasion to resolve such disputes.

35. I thus reject the Chamber's s 32 argument.

36. Next, it is said that the draft master plan is inconsistent with clauses 3.1 and 9.2 of the Commonwealth lease. It was even suggested that it was open to the Tribunal to not only determine that the Corporation was in breach of its lease from the Commonwealth but also to provide remedies for those breaches.[20]

37. I reject the argument. Clause 3.1 of the lease permits the demised land to be used "for other lawful purposes that are not inconsistent with its use as an airport". The Chamber's argument seeks to elevate that negative stipulation to one that would allow only uses consistent with its use as an airport. That construction is contrary to the words of the lease and contrary to the conclusion of Cooper J on the relevantly identical clause in issue in *Westfield Management*.

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[20] Transcript, page 18, lines 17 – 25.

38. But beyond that I am unpersuaded that a decision about the approval of a draft master plan is the occasion for a detailed scrutiny of the Corporation's compliance with its obligations under the lease. No doubt in an extreme case where, for example, an airport lessee company had allowed the facilities to fall into such disrepair that the airport was likely to become unusable as an airport, it would be relevant for the Minister to have regard to that fact. But that consideration properly arises by reference to s 81(3) of the *Airports Act* and the requirement to have regard to, amongst other things, the extent to which carrying out the plan would meet present and future requirements of civil aviation, and other, users of the airport.

39. Section 81 sets out, non-exhaustively, the matters to which regard must be had. Whether other matters are to be considered in particular cases is to be determined by reference to "the subject matter, scope and purpose of the statute".[21]

40. I do not regard it as necessary to reach any conclusions on the Chamber's allegation that the Corporation is in breach of its lease with the Commonwealth. Those are matters for the Commonwealth as lessor to consider.

The Runway Realignment

41. Complaint about the 04/22 runway re-alignment forms an important part of the Chamber's case and is manifested in a variety of arguments. I accept that it is relevant to consider the re-alignment particularly by reference to the matters in s 81(3) (a) (present and future requirements) and (b) (effect on the use of airport and surrounding areas).

42. The Chamber's essential complaint is that the realigned secondary runways are inappropriate because they,[22]

> *(a) will not improve, and will in fact, reduce runway availability and suitability;*
>
> *(b) are not long enough for the aircraft that are likely to use them, including regular passenger transport aircraft;*
>
> *(c) are inappropriate for engine failure after take-off training;*
>
> *(d) cannot be used for instrument approaches;*

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21 *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24, 40.

22 I am grateful to accept the Minister's summary of the complaints.

(e) will require aircraft to make an approach that is so steep that pilots will not be able to perform "touch and go" manoeuvres.

43. There are two bases of the assertion of reduced availability and suitability – ground moisture and wind direction. As to the first of these it is undoubtedly the case that the grass secondary runways are, from time to time, unavailable due to the presence of water. But that seems to be the inevitable consequence of the topography of the land and that much of the existing grass runway is in low-lying areas.

44. Mr George Lane, who has the position of Unit Tower Supervisor (Manager) at Archerfield Airport and who has nearly 40 years of operational and air traffic control experience, expressed the view that the current 04/22 alignment was not ideal due to drainage problems. The re-alignment, being considered, "should enable the grass runways to be used more often … because the revised position is located on higher ground".[23]

45. Mr Rodney Sullivan, a civil engineer with 45 years' experience in airport engineering and related operational and technical fields, advised the Corporation on the re-alignment having undertaken detailed studies on, amongst other things, runway useability. His analysis demonstrated that, in dry conditions, maximum useability would be provided by the 10/28 parallel runways in conjunction with runways aligned 020° Magnetic with 010° Magnetic as a second preference.[24] In wet conditions maximum useability would be provided by runways aligned 360° Magnetic with a second preference for 010° Magnetic. He concluded that on balance 010° Magnetic was the best compromise runway direction to optimise overall useability for smaller aircraft with a crosswind limitation of 10 knots.

46. I accept the views of Mr Lane and Mr Sullivan. I regard their evidence as sound and well-reasoned. It is enough to say of the evidence relied on by the Chamber that its witnesses generally lacked the necessary degree of objectivity; they were plainly partial and lacking in objectivity. The conclusions of Mr Sullivan, in particular, were demonstrably better researched.

47. I am then satisfied that the re-alignment of the 04/22 runways will likely improve useability; it certainly will not reduce it. I should add that neither the Civil Aviation Safety Authority

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[23] Exhibit 42, paragraph [35].

[24] Exhibit 22, paragraph [69].

(CASA) nor Airservices Australia have raised any objection to the proposed realignment. I will deal with their views in greater detail below.

48. The Chamber's next argument concerns displaced thresholds on the proposed 18/36 runways. The Chamber, in reliance on the evidence of Mr Gordon Banks, a former operations manager for Archerfield Airport, contends that the airport's secondary runways need a displaced threshold of at least 290 metres because of potential conflict between users of those runways and aircraft approaching Brisbane Airport's runway 36. It is the fact that runway 22R has a threshold displaced by 290 metres but the evidence is unclear as to why that is so. Mr Lane thought it might have been displaced because of terrain considerations. Mr Obrad Puskarica, the Chief Flight Procedure Designer for Airservices Australia, was unable to find any document in the records of Airservices Australia to explain the displaced threshold. He did, however say:[25]

> *[11] There is no proper basis for concluding that the displacement of the threshold on runway 22R at Archerfield Airport was caused by Airservices Australia's instrument flight procedure design impacts or imperatives (contrary to the assertions apparently made by Mr Banks).*
>
> *[12] Similarly, I can see no proper basis for asserting that the threshold on the realigned runways set out in the master plan Archerfield Airport would need to be displaced on account of what Mr Banks refers to as "proximity" to "Brisbane Airport's control zone" (or for any other reason relating to Airservices Australia's instrument flight procedure design impacts or imperatives).*

49. Mr Martin Chalk, employed as an instrument approach and navigation procedural specialist with CASA, rejected, with compelling logic, Mr Banks' assertion of an "enhanced risk" to aircraft using Brisbane Airport from the realignment to 18/36. Additionally he could see no need for the thresholds to be displaced.[26]

50. The Chamber's argument relied on the assertion that runways 18/36 would need to have a displaced threshold to then argue that the proposed runways would be too short. The argument must be rejected. The evidence of Mr Puskarica and Mr Chalk is to be preferred.

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25 Exhibit 44, paragraphs [11] and [12].

26 Exhibit 48, paragraph [20].

51. That disposes of the first element of the Chamber's argument regarding the length of the proposed new runways. I am satisfied that they will not be effectively shortened by the need for displaced threshold. The second aspect of the argument concerns the capacity of the 18/36 runway to deal with larger aircraft – the Cessna Conquest, the Beechcraft Super King Air 200, the Piper Chieftain, the Beechcraft Baron, the Beechcraft Duchess and the Piper PA-30 Twin Commanche.

52. Mr Sullivan undertook an analysis of the use of the existing secondary runways which showed that King Air and Conquest aircraft made up 22 out of 24,533 movements on those runways over a three-year period between 2008 and 2011 and that the Chieftain, Baron and Twin Commanche made up 341 movements from that total. The larger aircraft generally have a greater crosswind tolerance and generally would use runways 04/22.

53. But the Chamber's argument also overlooks the reality that the Corporation will require Ministerial approval for the major development plan that encompasses the runway realignment. The Chamber's objections, based on runway length, to the re-alignment of 04/22 are premature. The precise length of the re-aligned runways, and their adequacy, will need to be addressed at the major development approval stage.

54. The Chamber called evidence from Mr Norman Appleton, an experienced commercial pilot and CASA Approved Testing Officer, to the effect that simulated engine failure at take-off training would no longer be permitted on the realigned runway 18/36,[27] although the basis of the assertion does not clearly emerge. If it is premised on the need for a displaced threshold, then it fails for that reason. Mr Michael Lewer, a Flying Operations Inspector with CASA, said of Mr Appleton's evidence:[28]

> *[10] Nothing in Mr Appleton's evidence could enable me to conclude (nor, after considering the proposals contemplated by the Master Plan is there any reason for me to believe) that any EFATO [engine failure at take off] training conducted on the realigned secondary runways would result in a level of risk which exceeds the level of risk associated with the EFATO training which is presently conducted on the existing secondary runways.*
>
> *[11] On this basis, I am not persuaded that CASA would or could have a proper basis to issue a direction prohibiting EFATO training on the realigned secondary runways.*

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27 Exhibit 7, paragraph [46].

28 Exhibit 37, paragraphs [10] and [11].

55. I accept Mr Lewer's evidence. Assuming this aspect of the Chamber's case was designed to demonstrate that the draft master plan did not meet present and future requirements, I reject it.

56. The complaint concerning instrument training is misconceived. It is said, by reference to Federal Airports Corporation drawings, that the existing runway 4L/22R is provisioned as an instrument runway but that the 18/36 runway is not "similarly provisioned".[29] The complaint is set out in the evidence of Mr Banks;[30] however I am unable to discern any conclusion drawn by Mr Banks. As it seems to me there is nothing in the complaint – the existing 04/22 runways are unsealed grass runways, very much secondary to the major 10/28 sealed runway. The Chamber's submissions do not point to any evidence that a re-alignment to 18/36 would affect instrument approaches. Mr Sullivan's evidence is to the contrary.[31]

57. Finally, at least on this aspect of the matter, it is said that the 18/36 runways are too short for "touch and go" operations, that is, landings when the pilot lands the aircraft but immediately applies power and takes off.[32] Mr Appleton's argument develops into the proposition that flying training will, for this reason, become more expensive.

58. There are many difficulties with the argument. First, and fundamentally, Mr Appleton does not explain clearly how he reaches the conclusion that the realigned runways will be too short. As best as I can make out from his evidence it seems to be premised on runways 18/36 having a considerable displaced threshold, a factual conclusion I reject. Next, the proposition is contradicted by the evidence of Mr Sullivan and by logic. It defies logic to suggest that a pilot undertaking a touch and go take-off would require a longer runway than one taking off from a stationary start.

59. Mr Appleton had an alternative argument which concerned the angle of landing approach. The immediate difficulty is that he appeared to confuse percentage gradient and degree of gradient. What is proposed is that runways 18/36 will have a gradient of 4%; a gradient presently permitted by CASA and set out in the Manual of Standards Part 139 –

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29 Applicant's Statement of Facts, Issues and Contentions, pages 10 – 11, paragraphs [34] and [35].

30 Exhibit 12, paragraph [60].

31 Exhibit 22, paragraph [168].

32 Exhibit 7, paragraph [48]; Transcript page 61, lines 18 – 34.

Aerodromes, and well within the maximum approach angle for instrument approach which is 3.7 degrees. Mr Appleton's evidence does not explain why the realigned runways will require a steeper approach than the existing runways but, even if they did, I am satisfied that the proposed angle of approach is appropriate and within an acceptable range.

60. Thus, I am satisfied that the proposed realignment caters adequately for training operations and, to that extent, the draft master plan satisfies the present and future requirements of users.

Inconsistency with planning laws

61. The next major aspect of the Chamber's argument is the asserted inconsistency between the draft master plan and Queensland's planning laws. The argument is, with respect, difficult to comprehend.

62. It starts with the *Air Navigation Act 1937* (Qld), enacted following the decision of the High Court in *R v Burgess ex parte Henry*,[33] and the failure of the referendum intended to give power to the Commonwealth to make laws with respect to air navigation and aircraft. Section 10 of that Act provides:

> *(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*

[33] (1936) 55 CLR 608.

> *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.*

The argument for the Chamber is put in this way in its Statement of Facts, Issues and Contentions:[34]

> *By approving the Master Plan it is submitted that the Minister contravened the Air Navigation Act 1937 (Qld) 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.*

63. The Chamber's associated argument is articulated in this way in its Statement of Facts, Issues and Contentions:[35]

> *[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 hangar 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 Plans 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 …*

64. The argument relying on the *Air Navigation Act 1937* is developed in paragraph 8 of the Chamber's written submissions but it rather misses the point. That Act, and similar acts enacted in each of the other states, was the consequence of an agreement in April 1937 between the Commonwealth and State Ministers where all States agreed to enact State air navigation Acts in uniform terms to enable the *Air Navigation Regulations 1920* (Cth) to be adopted as State law.[36] The mechanism for doing so, in ss 5 and 6 of the Queensland Act (and the Acts of the other States), was to treat the air navigation regulations

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34 At pages 35 – 36, paragraph [39].

35 At page 36, paragraphs [40] and [41].

36 See *Airlines of New South Wales Pty Ltd v New South Wales* (1964) 113 CLR 1, 35; *Heli-Aust Pty Ltd v Cahill* (2011) 194 FCR 502; [2011] FCAFC 62 at 34 – 52.

applicable to the Territories as if they were applicable in Queensland and, by s 6, to vest the powers or functions under those regulations as adopted by operation of s 5 in the person or authority in whom the Commonwealth power or function was vested. The various State Acts operated to give the *Air Navigation Regulations 1920* (Cth) the force of State law.

65. Section 10 of the Queensland Act, on which the Chamber relies, operates on "the regulations", a term defined in section 4 of the Queensland Act as "regulations made under a Commonwealth Act". The submissions do not explain how that operates to prevent the Commonwealth Minister exercising a power under the *Airports Act* to approve a draft master plan.

66. The town planning argument is expanded upon in paragraphs 7.2 to 7.4.1.2 of the Chamber's written submissions but the argument does not ever come to grips with s 112 of the *Airports Act*. That section provides:

> *(1) It is the intention of the Parliament that this Part is to apply to the exclusion of a law of a State.*
>
> *(2) In particular, it is the intention of the Parliament that this Part is to apply to the exclusion of a law of a State relating to:*
>
> *(a) land use planning; or*
>
> *(b) the regulation of building activities.*

That, as it seems to me, is the complete answer to the argument. Regulation 5.02(2) of the *Airport Regulations*, set out in paragraph 9 above, requires a master plan, where possible, to provide details of proposals, and to use terminology, consistent with that applying in State planning legislation. The draft master plan appears to me to do so and I do not discern any particular criticism of the draft master plan on this basis in the Chamber's written submissions.

Provision for future aviation needs

67. The Chamber's complaints under this heading are put in a variety of ways but in reality they are all variations on the Chamber's main theme – non-aviation uses and users ought not be permitted at Archerfield Airport.

68. The first issue concerns the "Barton Precinct", an area in the north-east corner of the airport and bounded by Beatty Road to the east and Barton Street to the north.

The Draft Master plan proposes that, with the realignment of the 04/22 runways to an 18/36 alignment, industrial, office and service tenancies will be able to be developed along the Beatty Road frontage with display and sales tenancies occupying the Barton Street and Beatty Road corner.[37] The Chamber contends that this,

> *… will force the removal of all aviation related entities from this part of the airport with no alternative accommodation, hangar facilities, or land for the displaced aviation business and aircraft owners.*[38]

The argument assumes, wrongly in my view, that the airport may not utilise its space for non-aviation uses despite the clear indications in the language of the Act to the contrary. The draft master plan contemplates an additional five hectares of airport land available for aviation development. The proposed Barton Precinct structure plan shows additional aviation uses at the rear of the proposed non-aviation tenancies. And there can be no question of the Corporation "forcing the removal" of any tenancies. The Corporation can bring tenancies to an end only in the circumstances permitted by the existing leases. Members of the Chamber who have the benefit of a lease have that benefit for the term of the lease. Prior to the expiry of the lease there will need to be negotiations about the renewal of that lease and, if it is to be renewed, the terms of the renewal. The fact that the airport is subject to a statutory scheme of planning does not give either lessees or lessors any greater rights or obligations than those under the lease or the general law.

69. Next the Chamber complains that the creation of the Barton Precinct together with the realignment of the 04/22 runways has the effect that helicopter training will no longer be possible in the area from where it is presently conducted and that no other provision has been made for helicopter training. That contention is, apparently, sustained by the evidence of Mr Lindsay Snell, the proprietor of Austcopters Pty Ltd, the entity undertaking helicopter training (and President of the Chamber) who said:[39]

> *With the loss of the Austcopter facilities, Austcopters will be unable to conduct its business and the Air Commerce Business services of Austcopters will be terminated. Operational use of helicopter training areas Alpha and Bravo by Austcopters is presently being restricted because of heavy Plant and Machinery and construction activities commenced since the approval of the MP by Minister Albanese.*

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37 Exhibit 5, page 5471.

38 Applicant's Statement of Facts, Issues and Contentions, page 30, paragraph [14].

39 Exhibit 9, paragraph [31].

Mr Snell's reasoning for this conclusion is argumentative and unclear. Mr Snell's view is contradicted by the evidence of Mr Roger Weeks, the Manager of the Flying Standards Branch of CASA. Whilst Mr Snell was dismissive, in a somewhat insulting manner, of the qualifications held by Mr Weeks, he is a senior officer employed by the aviation regulator and, unlike Mr Snell, has provided objective evidence. Whilst he accepts that some modifications will be necessary, he concludes that helicopter training will be able to continue. He says:[40]

> *The precise impact that the development of land may have on helicopter training at Archerfield Airport will quite properly be subject to the more detailed design and planning work that is undertaken as part of the runway realignment Major Development process. Airservices Australia would conduct a detailed analysis of airways planning and aircraft separation as part of that process, in consultation with all relevant stakeholders. All options would be considered including the appropriate height at which helicopters may be able to operate when conducting circuit training.*

70. I see no reason to conclude that the draft master plan fails to meet the present and future needs of helicopter training.

71. The Chamber submits that the draft master plan does not meet future needs in two respects – the possibility of accepting overflow traffic from Brisbane Airport and the potential for greater use of Archerfield Airport for charter operations, particularly in connection with mining operations. The evidence relied on by the Chamber fails to make good these propositions. The evidence of future demand from charter operators is evidenced by identical or nearly identical letters attached to Mr Appleton's witness statement but none demonstrates, or even attempts to demonstrate, why any future demand could not be met.

72. The only tangible evidence on the point, that of Mr Shields, was demonstrated in cross-examination to be a complaint about present facilities, a complaint that Mr Shields acknowledged would be alleviated by the draft master plan.[41]

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40 Exhibit 45, paragraph [27].

41 Transcript, page 27, line 29 to page 28, line 7.

Risks to aviation safety

73. Again, the Chamber advances this argument in a variety of ways, much of it in reliance on the evidence of Mr Banks. He says that the proposed realignment of the 04/22 runways "considerably enhances the risk to aircraft departing or approaching the main runway at Brisbane Airport…"[42] Next, complaint is made by Mr Clement Grehan, who is the secretary of the Chamber and a member of its "Aerodrome Standards Sub-Committee", about the location of hangers immediately to the north of the western end of the runway 10L. Mr Banks complains, as well, that the existing 10/28 runways offend the requirements for "Runway End Safety Areas" (RESA) because of the presence of a road culvert at the western end and some structures on leased land at the eastern end. There is an assertion from Mr Shield that conflicts between aircraft on the 10/28 and 18/36 runways will increase,[43] and another that the realignment to runway18/36 will increase the risk to adjoining communities.

74. There are other complaints regarding EFATO training and the angle of approach which I have already dealt with and which need not be repeated.

75. I should first say that I am well short of being persuaded that the Chamber's complaints about aviation safety are at all relevant. Matters of aviation safety are not listed in s 70(2) of the Act amongst the purposes of a final master plan nor are they explicitly referred to in the matters required by s 71(2) of the Act to be specified in the draft master plan. The Minister, and thus the Tribunal on review of the Minister's decision, is bound by s 81(3) of the Act to have regard to the views of CASA and Airservices Australia so far as they relate to safety and operational aspects of the draft master plan but the Minister is not otherwise expressly required to have regard to the views of any other person or entity regarding such matters. The scheme of the legislation rather suggests that CASA and Airservices Australia are expected to be the authoritative source of information to the Minister on matters regarding aviation safety and operational matters.

76. I propose, however, to assume, rather than decide, that the matters advanced by the Chamber are relevant to my task in reviewing the Minister's decision. I can take that

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42 Exhibit 12, paragraph 58.

43 Exhibit 1, paragraphs [46] – [50].

approach because the Chamber's evidence, even if relevant, does not satisfy me that there are matters of genuine concern regarding aviation safety.

77. The first issue is Mr Banks' concern that the runway realignment increases the risk to aircraft departing or approaching the main runway (01/19) at Brisbane Airport. It is undoubtedly the case that there is potential for aircraft using Archerfield to intrude into the Brisbane Airport control zone. That, as it seems to me, is the inevitable consequence of the proximity of the two airports and the alignment of the main Brisbane Airport runway. There is a vast potential for the "cowboy flyers", referred to by Mr Banks,[44] to intrude into the Brisbane control zone. But that risk presently exists and Mr Banks' evidence does not persuade me that the risk is any greater as a consequence of the runway realignment. Moreover, as Mr Banks conceded,[45] there is little that the airport lessee company could do in an airport draft master plan to address concerns with reckless pilots. If, as Mr Banks thought, pilots in training might be more likely to intrude into Brisbane-controlled airspace, that risk presently exists and is abated by the presence of an instructor.

78. The next complaint concerns the construction of hangers, including the Emergency Management Queensland hangar, on the northern side of the 10L/28R runway. It is said that those hangers penetrate the obstacle limitation service for that runway presenting aircraft with an unacceptable risk.[46] That complaint has already been considered, and rejected, by the Australian Transport Safety Bureau which determined that the buildings did not breach obstacle limitation surfaces. No reason is shown to doubt the correctness of that conclusion.

79. The complaint concerning runway ends is comprehensively dealt with in the evidence of Mr Matthew Windebank, an Aerodrome Standard Engineer in the Airspace and Aerodrome Regulation Division of CASA. Mr Windebank accepts, as Mr Banks says, that Australian standards regarding runway end safety areas differ from those recommended by the International Civil Aviation Organisation (ICAO). However, Australia is not obliged to do so and has adopted the appropriate mechanism required by the Convention,[47]

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44 Transcript, page 89, line 37 – page 90, line 10.

45 Transcript, page 103, lines 42 – 44.

46 Exhibit 40, Attachment I1.

47 *Convention on International Civil Aviation*, done at Chicago on 7 December 1944, 15 UNTS 295 (entered into force 14 April 1947).

to notify Convention states of the difference. Moreover, as Mr Windebank points out, what is required is compliance with CASA's standard, the Manual of Standards Part 139 – Aerodromes. Archerfield presently satisfies that standard. If further developments involving the runway are undertaken, CASA will examine compliance of any proposed development in connection with its consideration of the major development plan made necessary by the Act for that development.

80. Mr Windebank says, and I accept:

> *Nothing in Mr Banks' assertions about RESA provide any basis upon which CASA would or could advise the First Respondent (or the Tribunal) that it has any safety and or operational concerns about the Master Plan for Archerfield Airport.*[48]

81. The other issue raised by the Chamber relates to what are said to be obstacles on land owned by the Corporation and to the east of the 10L/28R runway. The land identified is some 330 metres from the runway end,[49] and on the other side of Beatty Road, the major road traversing the eastern boundary of the airport. It is well outside the distance required for clearway and runway ends.

82. The Chamber appears to rely, in further support of this argument, on legislation of the Queensland Parliament which led to the adoption of Queensland State Planning Policy 01/02 which, the Chamber says, would require the area in question to be kept clear of obstacles. Its submissions do not come to grips with s 112 of the Act which provides a complete answer to the argument.

83. The position then is that each of CASA and Airservices Australia, the Commonwealth agencies having statutory authority to regulate aviation and aviation safety, and the agencies whose views the Minister is obliged to consider, is satisfied with the content of the draft master plan. Nothing in the Chamber's arguments leaves me in any doubt about the correctness of those views.

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48 Exhibit 46, paragraph [18].

49 Exhibit 46, Attachment MW-1.

The FAA and ICAO

84. The Chamber contends that the draft master plan was required to meet the standards imposed by the United States regulator, the FAA,[50] not by operation of the domestic law but because its standards represented "best practice".[51] The argument is simply wrong. The Australian Parliament has given to CASA the task of setting standards for the design of airports and of enforcing those standards. CASA is satisfied with what is in the draft master plan and has informed the Minister accordingly. As the airport is developed, the Corporation will be obliged to submit a major development plan to the Minister. That plan will also be scrutinised by CASA (and Airservices Australia) by reference to Australian standards. There is no occasion to resort to the standards of other polities.

85. The same is true of ICAO. The Convention admits of the possibility of differences of opinion. There is such a difference concerning runway safety ends and Australia has adopted a different standard.

86. It follows that I reject this argument.

The needs of existing users

87. Many of the Chamber's complaints have already been addressed; however two discrete arguments remain concerning the fuel farm and the control tower. The argument is that the draft master plan contemplates,

> *… 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 …*[52]

The argument is flawed and misstates what is contained in the draft master plan. It says, under the heading "Aviation infrastructure development":[53]

> *Proposed aviation infrastructure development includes:*
>
> *…*

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50 Applicant's Statement of Facts, Issues and Contentions, 8 March 2013, page 29, paragraph [12].

51 See also Transcript, page 8, line 28.

52 Applicant's Statement of Facts, Issues and Contentions, 8 March 2013, page 27, paragraph [2f].

53 Exhibit 5, pages 5368 and 5370.

- *relocating facilities such as the fuel farm and control tower, if, because of their locations, they constrain future aviation development or their relocation would improve airport operations;*

There is a similar reference at page 5416 of Exhibit 5. In each instance what is referred to is "relocation" not removal. If, eventually, the Corporation determines to relocate facilities such as the fuel farm or the control tower it will be required by the Act to prepare a major development plan and to have that plan approved by the Minister. At that time the Chamber will have the opportunity of advancing arguments to the Minister why the major development plan ought not be approved.

88. Nothing in the Chamber's arguments leads me to conclude that the draft master plan fails to meet the present and future needs of civil aviation users and other users of the airport. To the contrary, I am satisfied that it meets those needs.

Consultation

89. The Departmental policy document dealing with the process of consultation describes what is required in this way:[54]

> *The conduct of an effective consultation program does not necessarily mean that all interested parties will be satisfied with the outcome. Rather, it is about ensuring that a proposal has been fully explored, concerns identified and alternatives considered.*

That seems to me to be an apt way of describing what the Act requires in the way of consultation.

90. In reality, the Chamber's complaint under this head is that the Corporation did not accept the Chamber's arguments. Whilst some of the Chamber's witnesses assert they were not consulted it is apparent that they were well aware of the draft master plan and acutely aware of what it proposed. The evidence in chief and cross-examination of Mr Snell, the current president of the Chamber, on the consultation process is illuminating. He said this:

> *In connection with the consultation that Archerfield Airport talks about in the Master Plan, were the Chamber consulted about all the plans?---No, they weren't.*
>
> *Were you allowed to make any input in the plans?---No, we were not.*[55]

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54 Section 37 documents, page 5883.

55 Transcript, page 72, lines 15 – 19.

…

Thank you. And also if I understand your evidence correctly, you said that you weren't consulted by the Airport Corporation individually about the preliminary Draft Master Plan, or the Draft Master Plan. Is that correct?---That's correct.

How then did you become aware of the Draft Master Plan?---Through our endeavours in the Chamber.

DEPUTY PRESIDENT: But how? Was there a public advertisement of it, was there?---Public advertisements, and, you know, the website, the Archerfield Airport Corporation website.

Did you want them to come round and deliver it to you personally?---No, no, not necessarily, no. We're, you know, in everyday life of trying to survive in the aviation business. We're not, you know, completely aware of everything that's going on every minute, but we became aware of the new Master Plan and the - for the 2011 Master Plan.[56]

…

Thank you. You've said that the Chamber wasn't consulted in the master planning process?---It's our belief that there's been a concerted effort by the airport leasing company to exclude the Archerfield Airport Chamber of Commerce - - -

DEPUTY PRESIDENT: Mr Snell, that may be your belief. Would you focus on the question please?---I thought I was, Deputy President.

Yes.

MR GOLD: So you say the Chamber wasn't consulted?---That's correct.

Were the individual people on the airport consulted who would make up members - - -?---Well, Mr Gold, it depends on what you consider consultation. If you're sending out a letter or posting something on a website, then if you call that consultation then I guess a lot of people were consulted. In fact the whole south side of Brisbane was consulted. But I don't consider that the level of consultation that I'd expect as a tenant of the airport over the many years that I've been there, religiously paying my lease and being involved in the running of the airport, or operating of the airport. That's my opinion.

That's fine. And would you agree that holding forums and having other avenues is also a valid form of consultation?---That is one, yes. If you know when the forums are on.

You're saying that - I don't understand?---If you know, if you can participate in the forums. There have been several that I have attended, but many I haven't because they weren't easily advertised. They may be on a website, but as I said before, I'm not looking at a website on a daily basis.

No. But you were aware that there were forums running through a Master Plan?---And I went to some.[57]

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[56] Page 73, lines 22 – 39.

[57] Page 74, lines 13 – 45.

91. There is no evidence to suggest, nor does the Chamber submit, that persons or classes of persons likely to be affected by the draft master plan were not made aware of the Corporation's plans and given an opportunity to provide a response to the Corporation about those plans. The draft master plan, in Section 14, details the lengthy consultation undertaken by the Corporation and the process by which the final version of the draft master plan came into being. I am satisfied that the process of consultation was both appropriate and meaningful. The Chamber's complaints about the outcome do not lead me to conclude to the contrary.

Conclusion

92. I am then of the view that there is no substance in the Chamber's criticisms of the draft master plan. The Chamber provides no basis on which the Minister's decision ought be set aside. Having regard to the matters specified in s 81(3) of the Act, I am satisfied that the Minister was right to approve the draft master plan. In my view the Minister's decision ought be affirmed.

I certify that the preceding 92 (ninety -two) paragraphs are a true copy of the reasons for the decision herein of Deputy President P E Hack SC

.....[Sgd].....

Associate

Dated 8 July 2015

Dates of hearing	**17 – 21 November 2014**
Date final submissions received	**8 March 2015**
Solicitors for the Applicant	**Van Zyl Lawyers**
Solicitors for the Respondent	**Ashurst Australia**
Advocate for the Joined Party	**Mr D Gold, Planned F.X. Pty Ltd**