



ADMINISTRATIVE APPEALS TRIBUNAL OR SMALL TAXATION CLAIMS TRIBUNAL

APPLICATION FOR REVIEW OF DECISION

This form can be used to lodge an application to the Commonwealth Administrative Appeals Tribunal (AAT) or to the Small Taxation Claims Tribunal (STCT). Please read the attached information sheet before filling out this form.

APPLICANT

Title: Mr Ms Mrs Miss Other

Full name First name: Last name:
ARCHERFIELD AIRPORT CHAMBER OF COMMERCE INC.

Gender Male Female Date of birth

Telephone (business) Telephone (home)

Your address Registered Office: POSTAL
c/- Steeles Chartered Accountants GPO Box 2511
Level 2 BRISBANE Q 4001
380 Queen Street
BRISBANE Q 4000

Your representative's name, address and telephone number (if you have one) (If you have a representative, please put their name (with firm or company name, if any), address and telephone number in this box.)
VAN ZYL Lawyers
PO Box 1471 or 11 Argent Pl.
SUNNYBANK HILLS Q 4109 Ph 07 32724771

Interpreter Do you require the assistance of an Interpreter? Yes No NO
If yes, for which language?

Disability If you have a disability and need assistance, please indicate whether:
Visual Hearing Wheelchair user
Other, please specify

DECISION

You do not have to answer this question if you can attach a copy of the decision. If you don't have a copy, please describe the decision briefly:

The Decision of Federal Minister for Infrastructure and Transport to approve the 2011-2031 Final Master Plan for Archerfield Airport pursuant to section 81(2) of the Airports Act 1996. The Ministerial Press Release dated 25 May 2012 attached refers. We have requested a copy of the decision document but have been refused same by the Federal Department of Infrastructure and Transport

Date the decision was made

25th May 2012

Decision reference

Please refer to the attached Information for Applicants sheet

Date you received notice of the decision

25th July 2012

Who made the decision, if known:

Department or other body:

The Federal Minister for Infrastructure and Transport (Mr Anthony Albanese)

Address: PO Box 6022 Parliament House Canberra ACT 2600

Tel: (02) 6277 7680 Fax: (02) 6273 4126

REASONS FOR APPLICATION

What are your reasons for seeking review of this decision? Please read the Information for Applicants sheet.

1. The Master Plan does not achieve the purposes of a final master plan, namely;
 - 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.
2. The plan does not meet present and future requirements of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport:
 - a. The plan downgrades current aviation facilities at the airport, damages and destroys current and existing aviation infrastructure including runways, taxiways, aviation fuel storage and refueling facilities, helipads, aircraft hangars and aviation businesses in favour of commercial non-aviation development and reduces the operational capabilities of the airport.
 - b. Certain types of aircraft operations presently using the 04/22 runways would not be able to use the proposed 01/19 runways because of operational and aircraft performance limitations or considerations. The proposed 01/19 runways are on average 18.1 percent shorter in take-off length than the 04/22 runways, with an

overall downgrade by the loss of 850 metres of runway. The shorter lengths of the proposed new runways mean that a higher proportion of larger aircraft types would require the use of Runways 10/28 when using 01/19 as the duty runway. This would result in a more dangerous traffic configuration with increased danger and inconvenience to all concerned and likely delays to these larger types.

- c. The Minister was required pursuant to Section 81(3)(a) of the Act to determine 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 and has either relied on the airport leasing company's flawed assessment and/or failed to make appropriate enquiries and/or to take objections by the local community as well as the applicant on behalf of its members into consideration and/or to exercise the appropriate due care and diligence of his office to adequately take account this Section as he was required to do before making his decision to approve the Master Plan.
- d. The Ministerial decision fails at the substantive level to take into account the requirement that Archerfield Airport must remain a viable airport, which it will not be with the removal of the current 04/22L and 04/22R cross runways, removal of aviation fuel farms, removal of the control tower, forced closure of some aviation business due to destruction of their premises and further possible closing down of a number of current aviation businesses.
- e. The Minister further failed to take into account the requirements for the proposed new Jacobs Well International and Domestic Airport ("JCW") to become the second Capital City Airport for Brisbane and the Gold Coast, and the largest freight airport in the southern hemisphere, which is to be sited only 20 kilometres from Archerfield Airport, although the proposed JCW development has been well publicised since its announcement during the past decade. Required Aviation Service Industries (Electronics, Maintenance etc.), Emergency Services, (Police, Ambulance, RFDS etc.), and Helicopter Operations (SES), as well as Charter, Freight and Business Aviation, and narrow-body Jet aircraft overflow demand an upgraded Archerfield Airport. Suitable main and cross runways must be available and able to accommodate various aircraft types (in any wind condition) and extensive increases in short, medium and long-term aircraft apron areas are required so that parking is available.
- f. The plan will result in the removal and/or forced closure of current aviation businesses, helipads, aircraft parking areas, shortening and realignment of the existing cross runway in a less favourable direction, (taking the most prevailing wind directions over time into consideration), removing of the existing control tower without any provision in the Master Plan for its replacement, removal of the current aviation fuel farm without any plans for its replacement and reducing the area of land that may be used in the future for further aviation purposes has the effect of preventing current and future aviation activities which will hinder or otherwise limit air operators from taking part in trade and commerce by air both within Queensland and Australia.
- g. The plan reduces the land within the airport presently being used for aviation purposes (e.g. Helicopter Training Area "A" used by air operators) and permanently locks up airport land needed for aviation purposes in favour of commercial industrial purposes, displaces and destroys existing aviation businesses in favour of the commercial industrial non-aviation facilities on airport land.
- h. The plan supports the business of property development which is in fact the primary business of Archerfield Airport Corporation Pty Ltd (AAC) and such a business is contrary to Division 6 Subdivision A of the Act (The airport operator must not carry out non-airport business). Refer <http://www.realcommercial.com.au/property-industrial+warehouse-qld-archerfield-50039068> It is more than activities incidental to the operation and/or development of the airport. Excepting the runways and taxiway's and portions of the existing aviation facilities in Beatty Road and Mortimer Road the airport is almost exclusively zoned general industry or light industry. Refer MP Figure 17.
- i. The *Air Navigation Act 1937 [Qld]* ("ANA") including sections 10 (1)&(2) deems the actions of the Federal Minister and his department to the extent that same has exceeded the purposes of the Qld act, is unlawful. [The relevant Sections read as follows: section 10(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. Section 10(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—(c) the prohibiting, preventing, hindering or otherwise limiting in any manner whatsoever the Crown in right of this State, any person or body authorised or established by the Crown in right of this State, or any other person whomsoever or body whatsoever from taking part in intrastate trade and commerce by air within Queensland excepting any such prohibition, prevention, hindrance or limitation which is necessary or expedient to carry out or give effect to, or incidental to the carrying out or giving effect to, the purpose of this Act.]et al

- j. The approval by the Minister has exceeded the purposes of the ANA, is contrary to existing Queensland legislation, the general interests of aviation and is beyond the power vested in the Minister on behalf of the Commonwealth of Australia.
 - k. The plan does not have due regard to the interests of airport users and the general community as required by the object of the *Airports Act 1996* (S3 (b) and nor does it promote the sound development of civil aviation in Australia S3(a);
3. Aviation users were not properly consulted in that:
 - a. Aviation tenants and users entered into agreements with the Commonwealth in establishing aviation businesses on the airport and will be displaced in the Master Plan by general industry without any or just compensation, for their assets e.g. leasehold improvements.
 - b. Users of the airport will be required to pay millions of dollars for unnecessary relocation of control towers, fuel farms and other costs outlined to the applicants letter to the Minister that the civil aviation users of the airport do not want and that only serves the commercial non-aviation interests of AAC.
4. The Minister has failed to take into account that there has been no real and effective consultation with all interested parties including actual airport users, tenants, commercial enterprises, aged care residential facilities and residents surrounding the area of the airport prior to approval of the Master Plan. The proposed direction by the Minister for consultation to take place after approval of the Master Plan is evidence of a failure to ensure that the interests of all concerned parties was taken into proper consideration before any approval of the Master Plan was given. The Minister has not ensured that Commonwealth land provided under an airport lease to the current airport leasing company, the AAC is used for aviation purposes only.
5. The Minister also failed to consult the applicant on behalf of its members, being aviation related businesses and operators at the airport, who forwarded objections prior to the decision to both the Minister as well as the current operator of the airport, the Archerfield Airport Corporation Pty Ltd (AAC), which objections the Minister dismissed and/ or ignored completely, to the detriment of current aviation users of the airport and the immediate community around the airport.
6. The Master Plan does not meet established best practice for design of airport plans in both subject matter and content. For example upgrades of visual and navigation aids for the airport including provisioning areas for ILS's and category I lighting are omitted. There is no Control Tower study showing analysis of CASA's rules in relation to location of the tower. There is no analysis of the influence of State Planning Policy 1/02 on the airport. It does not reflect the actual growth requirements for the airport for users nor meet the basic requirements of planning and designing in airports such as the United States Federal Aviation Administration ("FAA") AC 150 which explains how to design an airport or "Planning and Design of Airports, Fifth Edition by Robert Horonjeff, Francis McKelvey, William Sproule and Seth Young (May 17, 2010)

7. Assessment of runways has not been based on appropriate criteria such as the United States FAA AC 150 which outlines the process for making a decision about runways has been made. More specifically the current Runways 04/22L and 04/22R which favour the best wind directions for airport operations will be destroyed in favour of commercial development to the detriment of aviation operations at the airport.
8. The airport lessee company's assessment [section 71(2)(b) of the Act] of the future needs of civil aviation users of the airport, and other users of the airport, for services and facilities relating to the airport, is wrong and flawed or alternatively does not represent the true future aviation requirements contrary to the *Airports Act 1996*,
9. The Minister by approving the Master Plan, did not take into account Queensland State legislation. Both the Master Plan and other developments at the airport have been approved by the Minister notwithstanding that they do not comply with Queensland State Planning, zoning and environmental laws. For example, the Pickles Auctions Yard directly at the end of the runway is in the runway public safety area, there is an intrusion of hanger construction in the published approach path of Runway 10L and environmentally hazardous Extractive Industry plants and their associated rubble heaps result in a hazard for aircraft taking off from Runway 22L and 22R.
10. The Master Plan also fails to address breaches of Commonwealth Acts e.g. the *Airports Act 1996*, *(Protection of Airspace) Regulations 1998*, *Civil Aviation Safety Regulations 1998*, *Air Services Act 1995*, *Air Services Regulations* particularly related to safety issues.
11. The Master Plan is contrary to (and the current actions of AAC are contrary to) the terms of the Commonwealth Lease for the Airport and in particular, clauses 3.1 and 9. The relevant clauses read as follows:
3.1 Lessee must give access
The Lessee:
(a) must at all times:
(i) subject to subclause 19.5, provide for the use of the Airport site as an airport:
(ii) subject to sub-clause 19.5, provide for access to the airport by interstate air transport:
(iii) provide for access to the airport by intrastate air transport:
(iv) not use or permit to be used, the Airport Site for any unlawful purpose or in breach of legislation: and
(b) may:
(i) permit the Airport Site to be used for other lawful purposes that are no inconsistent with its use as an airport

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.
12. The applicant also relies upon the other matters raised in the applicant's letter to Minister Albanese dated 19th June 2011, which is attached.
13. The Master Plan contains the following statement "*While all care has been taken in the preparation of this Master Plan: it is based on a series of forecasts and assumptions and Archerfield Airport Corporation (AAC) makes no claim as to the accuracy or completeness of any of the information or the likelihood of any future matter*"

Relief required:

1. Pursuant to section 41(2) of the *Administrative Appeals Tribunal Act 1975* (AAT Act) pending the hearing of the review the decision be stayed.
2. The decision of the Minister be set aside.
3. A decision refusing to approve the Master Plan be substituted for the Minister's decision.
4. In the alternative, the Minister is directed to take all relevant legislation and more specifically the *Air Navigation Act 1937[Qld]* ("ANA") as well as the objections of all interested parties into consideration before making a final determination in respect of the approval of the Master

Plan.

5. Such further and or alternative relief the Tribunal may find appropriate.

**SMALL TAXATION
CLAIMS
TRIBUNAL (STCT)
MATTERS**

(only answer this
question if you want
a tax decision
reviewed in the
STCT)

Please read the Information for Applicants sheet for details about the STCT and the Taxation Appeals Division of the AAT before you answer.

Is the amount of tax in dispute less than \$5,000? Yes No

If yes, and you want your application dealt with in the STCT, please state the amount of tax in dispute.

\$.....

If the amount of tax in dispute is over \$5,000, or you do not state the amount of tax in dispute, your application will be dealt with in the Taxation Appeals Division of the AAT.

Signature

Date



ADMINISTRATIVE APPEALS TRIBUNAL OR SMALL TAXATION CLAIMS TRIBUNAL

INFORMATION FOR APPLICANTS

ABOUT THE APPLICATION FORM

The form has two sides. The first side asks for personal information. The second side asks for information about the decision that you want reviewed. Please fill in both sides. The AAT needs this information to process your application.

If there is not enough space in a box on the form for the information asked for, write it on a separate piece of paper and staple it to the form. Write in the box “see attached”. If you have to do this more than once, use headings to show which question is being answered.

Representative

You can be represented by any person you choose. If you tell us that you have a representative and you give us your representative’s address, the AAT will send letters and documents about your case to your representative, instead of to you.

Interpreters and disability assistance

If you need an interpreter, the AAT will arrange for a qualified interpreter to assist you. If you have a disability, the AAT will try to make appropriate arrangements for you.

Decision

If you can, attach a copy of the decision you want the AAT to review to this form. If you can’t, briefly describe the decision in the box provided. For example: “Decision of Comcare to terminate weekly payments of compensation”. It is important that you include the decision reference number.

Decision reference

You will usually find a reference number on the copy of the decision you want the AAT to review. If you write this number on your application form, the relevant decision can be identified quickly. This is particularly important in tax matters.

Who made the decision

If you can’t attach a copy of the decision you want the AAT to review, you need to tell us the name of the department that made the decision. You also need to tell us the address of the office of that department where the decision was made.

Reasons for application

It is important that you tell us why you want the decision reviewed. For example, you may think the decision is wrong and a different decision should be made. You must answer this question before the AAT can accept your application.

Tax matters

Tax matters are dealt with by the Taxation Appeals Division of the AAT and the Small Taxation Claims Tribunal. The STCT is designed to deal quickly with matters where the amount of tax in dispute is under \$5,000. If you do not complete the section of the application form headed “Small Taxation Claims Tribunal”, or if you state an amount of tax in dispute over \$5,000, then your application will be dealt with in the Taxation Appeals Division of the AAT.

STCT

You can only choose to have your application heard in the STCT if the amount of tax in dispute is under \$5,000. If you complete the section of the application form headed “Small Taxation Claims Tribunal”, and you state that the amount of tax in dispute is under \$5,000, then your application will be dealt with as an STCT application.

In the STCT, applications are dealt with quickly and informally. There is an application fee which is not refundable even if the application is resolved in your favour.

If you choose the STCT, then unless you obtain a section 35 confidentiality order (see “Privacy” below), the information used at your hearing becomes public.

Taxation Appeals Division

The higher application fee applies in the Taxation Appeals Division. This fee is refunded in full if the application is resolved in your favour. Any request you make for confidentiality is granted automatically.

PRIVACY

AAT and STCT conferences and mediations are held in private. Anything said or done at a conference or mediation is confidential.

AAT and STCT hearings are usually held in public, and any information which is given or used at a public hearing will become public information. The decision of the Tribunal in your application, including any written reasons for the decision, will also be made available to the public. There are two exceptions to this:

1. You may make a request under section 35 of the AAT Act for an order that some, or all, information in your case be confidential and/or that any hearing be held in private. The Tribunal can only grant your request if it is satisfied that there is a good reason to do so.
2. In some cases, the legislation under which the decision was made may require that the information be kept confidential and that any hearing be in private.

If you want more information about your privacy when dealing with the AAT, please ring your local AAT office.

FEES

In many cases, there is no fee for an application to the AAT. In some applications, however, a fee must be paid when you lodge your application.

If your application is one where you must pay a fee, you may be able to pay a reduced fee of \$100 if you can show that you can't afford to pay the full fee. There are other circumstances where you are able to pay the reduced fee. An AAT staff member will be able to explain these to you.

If you have paid a full fee and the application is resolved in your favour, you will receive a partial refund.

If you choose to have your application heard in the STCT, there is a lower fee. This fee will not be refunded even if the application is resolved in your favour.

Please ring your local AAT office or go to our website (www.aat.gov.au) to obtain the current fees.



If you need more information please ring your local AAT office on:

1300 366 700

Residents of the Northern Territory will be connected to Brisbane for the cost of a local call

If you are hearing impaired the AAT has a free-call **TTY service** available on:

1800 650 662



The addresses of the AAT offices are:-

Postal Address

District Registrar
GPO Box 9955
in your Capital City
(except for residents of the Northern Territory who should write to Brisbane)

Adelaide

District Registrar
11 Floor
Chesser House
91 Grenfell Street
ADELAIDE SA 5000
Fax: (08) 8201 0610

Brisbane

District Registrar
Level 4
Commonwealth Law Courts
Cnr Nth Quay & Tank St
BRISBANE QLD 4000
Fax: (07) 3361 3001

Canberra

District Registrar
Level 4
Canberra House
40 Marcus Clarke St
CANBERRA ACT 2601
Fax: (02) 6243 4600

Hobart

District Registrar
Commonwealth Law Courts
39-41 Davey St
HOBART TAS 7000
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Melbourne

District Registrar
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