



22 July 2019

The Ministry of Transport
Westpac House
318 Lambton Quay
Wellington

To Whom It May Concern,

WHAKATĀNE DISTRICT COUNCIL SUBMISSION ON THE DRAFT CIVIL AVIATION BILL.

Thank you for the opportunity to provide feedback on the draft Civil Aviation Bill. The Whakatāne District Council (WDC) operates the Whakatāne Airport as a 50/50 joint venture with the Ministry of Transport. Our submission to this Bill reflects our experience in managing a small regional airport..

We believe that it is imperative that all airports, including small regional airports, are able to operate safely and efficiently as an important economic enabler and piece of national infrastructure, and support any changes to legislation that further these objectives.

We do wish to highlight that the Eastern Bay of Plenty is an area identified by Government as a surge region through the Provincial Growth Fund. Our Council strongly sees the airport as an economic development asset for the Eastern Bay of Plenty and jeopardising the viability of a regional airport would be at odds with Government's efforts to grow the regions.

For specific enquiries related to the submission please feel free to contact the Strategic Policy Team at the Whakatāne District Council [REDACTED]

Ngā manaakitanga,

Tony Bonne
Mayor
Whakatāne District Council

Introduction

1. The Whakatāne District Council is grateful for the opportunity to provide feedback to the Ministry of Transport (MoT) on the exposure draft of the Civil Aviation Bill. Council is particularly supportive of the intention to improve safety and security, increase the usability of the legislation and provide a welcome update to respond to the evolution of the industry.
2. Considering that this reform started as a “best practice regulation” review, with the intentions stated above, it is disappointing that there are proposals in the Bill likely to cause large scale disruption to the aviation sector, which are unsupported by robust regulatory impact analysis. We would expect that reversing decades of policy and regulatory review processes, which have confirmed the current regulatory settings and indeed resisted the changes proposed by this bill, would be supported by more than “a series of ad hoc one-liners in Cabinet Papers.”¹
3. Our submission is focussed on the key policy issues that concern Whakatāne District Council. We are generally support of NZ Airports submission, and similarly can be seen to be supportive of the majority of the Bill.

Repeal of Section 4(a) – Power to set charges

4. Whakatāne District Council is strongly opposed to the proposal to repeal Section 4A of the Airport Authorities Act (AAA), and is concerned about the justification for the proposal.
5. We firstly question the necessity for a change at all. Sections 4A and 4B work in tandem, with section 4B requiring airports to go through extensive consultation processes which in many ways mirror commercial negotiations, and section 4A recognising that no agreement should be required and acting as a “circuit-breaker”. This was an intentional decision, repeatedly affirmed by successive governments and ministries, and tested through the courts over two decades and is now reasonably settled.
6. We support the submission by NZ Airports which recommends that removing this section will have extremely predictable consequences across NZ; with major airlines again seeking to test their power to pay charges as they have done under the existing framework. Moreover, the ramifications of removing this statutory power are clear; it will require airports to have agreements on prices with all of their customers, and this intent is expressly laid out in the Cabinet Papers.
7. The submission by NZ Airports highlights the implications, particularly for small regional airports, who have very limited leverage in commercial negotiations, as we run at a deficit and our primary purpose is delivering a key piece of national infrastructure and enabling economic development for the wider Eastern Bay of Plenty region.
8. Airports do not want unconstrained power to set the level of charges, nor is that something that we have, with the duty to consult. In the case of the Whakatāne Airport, the landing fees charged to Air Chathams, the sole airline, may be considered low compared to other domestic airports with similarly scheduled services. This decision was made in order to support Air Chathams in establishing the service, and to recognize the wider interests of the regional economy, while seeking to maximize commercial arrangement as far as possible.

¹NZ Airports Draft Submission to CAA Bill

9. What the Council does want is to retain is an essential lever that we can use when we can't reach an agreement, and the ability to set fair and reasonable charges that allow for continued safe operation and infrastructure development. It will not always be the case that the needs of the airport, particularly where there is a sole carrier, match with the needs of the airline. If a competitor were to be interested in using Whakatāne Airport, but requiring additional facilities, we would need to use every tool possible to ensure that we could plan and fund infrastructure in order to provide the best service, and opportunity, for our region.

Removal of power to terminate leases

10. There has been no commentary in the Bill around the proposed removal of the power to terminate leases under section 6(3) of the AAA, it is merely listed as an obsolete provision, with no identifiable analysis as to why this is the case. During the 2014 review, MOT proposed to provide greater clarity about the circumstances under which airports could terminate leases without compensation, yet this Bill changes that position without any further explanation.
11. This provision was included in the AAA as yet another reflection of the unique position of airports as land owners, and that position has not changed, nor is it likely to in the foreseeable future. The very essence of this Bill is to accommodate changes in the aeronautical industry that were not foreseeable when the CAA or AAA were drafted.
12. As technology continues its inexorable and meteoric advance, airports must adapt to these changes. Airports have long term planning horizons for the use of land over time, and often that involves leasing on a long term basis for commercial purposes when there is no immediate need for that land for an aeronautical purpose. The ability to terminate leases encourages this longer term vision for the land and maximizes returns for Airports.
13. This is particularly pertinent for airports like the Whakatāne Airport, with over fifty percent of operating revenue coming from leases, and a third from grazing leases alone.
14. There is not an identifiable problem of Airports abusing their statutory power to terminate leases, as it would not be in an airport's commercial interest to jeopardise their leasing environment. Moreover, leases have been agreed to on this basis currently, and the Bill does not even go so far as to grandfather this provision such that it only applies to new leases.
15. The Bill is also inconsistent in that it still, sensibly, imposes restrictions on airports from entering into leases that interfere with the safe and efficient operation of the airport. Given the inherent uncertainty that goes along with long term planning, it is extremely important to maintain the ability to terminate leases which, due to unforeseen circumstances, or even future legislative change, impede the operation of an airport.

Funding for small airports

16. Whakatāne District Council understands that NZ Airports is advancing a position statement in their submission to the Civil Aviation Bill on the funding of small airports. Whakatāne District Council is strongly supportive of the work that NZ Airports are doing in this regard, and is participating in this work.
17. The Council at present has no preferred position with regard to the funding of the Whakatāne Airport, provided that whatever solution is settled on leaves us in a position where we are still able to operate

the airport without an increased burden on the Council and its ratepayers. We are already fiscally constrained, and any additional burden on our ratepayer is untenable and unaffordable.

18. As an area identified by the Government as a surge region through the Provincial Growth Fund, jeopardising the viability of a regional airport would be at odds with the Government's efforts to grow the regions through economic development.