



NEW ZEALAND AIR LINE PILOTS' ASSOCIATION

16 June 2021

Tracey Hall
tracey.hall@airways.co.nz

By email

Dear Tracey,

Re Feedback responses on service framework review process and consultation paper

Please see below NZALPA's feedback on the document mentioned above.

Consultation Question 1: What role do you see Airways playing in the recovery of the aviation sector, and how can we support you in that process?

The Prime Minister has described the Budget 2021 as investing in recovery through:

- (1) rolling out the vaccine;
- (2) reforming the health system;
- (3) creating jobs through infrastructure investment;
- (4) taking on challenges such as housing, climate change, child wellbeing and inequality; and
- (5) providing training and education opportunities that ensure New Zealanders are prepared for employment.

On the same occasion, the Minister of Finance referred to Budget 2021 as repairing the damage done to the social fabric of New Zealand by the policies of neo-liberalism. He said this was important to give New Zealand a sense of dignity and hope.

In the Civil Aviation Authority (CAA) Statement of Performance Expectations 2020-2021, the Airborne Conflicts risk focus area remains under active management. CAA's work in this area includes "targeted safety analysis ... and safety regulatory investigations" through which it hopes to "contribute to understanding the issues and influences of this focus area." The focus area is noted as high potential risk.

The State Owned Enterprise Act 1986 requires Airways to be an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so. This is one part of the definition of a successful business in the SOE Act - being profitable and efficient is another equal part.

Contrary to this, the consultation is framed as considering whether there are underlying structural issues that prevent Airways from supplying services in ways that are more efficient and cost-effective. It is our submission that the underlying settings that balance out efficiency and profitability are not structural issues but reflect the design that Parliament has legislated.

Within the context of the economic recovery from COVID-19, more infrastructure spending has been identified by the Government as a key stimulus for creating jobs.

The assets and work of Airways are an under-appreciated but absolutely critical part of New Zealand's infrastructure. New Zealand's recovery will depend on the export sector. The recovery is likely to see a resurgence of the tourism industry which will be accompanied by greater volumes of both recreational and commercial aviation movements.

Further, Minister Nash and others have made several statements during the past year concerning a desire to incentivise high value tourism.¹ High value tourists are much more likely to use the recreational aviation services. As such, it is possible that the recreational and adventure aviation service sectors may grow and increase traffic volumes beyond pre-pandemic levels.

Finally, Airways should also be aware that the Ministry of Transport has undertaken to the Minister to publish a Generational Investment Approach that will address such questions as "whether transport sources should fund a minimum level of connectivity for communities in regions, or whether to consider more broadly what public transport is funded."² This is likely to be accompanied by a supply chain strategy document. We consider that it is premature for Airways to be conducting this review whilst this work remains uncompleted. The principles arrived at by the GIA should inform these decisions by Airways. This review is also premature whilst the aeronautical studies being carried out by aerodromes remain unreviewed by CAA. Those studies should inform the nature of this review.

Consultation Question 2: Do you have any comments on our timeline for consultation, and in particular, on the implementation of the new Service Framework?

Please see below our comments on your timeline for consultation, and in particular, on the implementation of the new Service Framework.

Basically, we consider that the timeframe to provide submissions on the proposed Service Framework by 16 June 2021 is very short given the scope and consequences of the change suggested.

We cannot make informed submissions without:

- the facts on future models of service provision at procedural approach aerodromes
- knowing how Airways will deal with simultaneous provision of base and contestable services, and
- the massive cross subsidies currently being applied.

Thus, we request an extension of the current consultation period to provide a substantial feedback after being provided with the information mentioned above.

On the timeline of the implementation of the new Service Framework, we believe that making a decision on the new Service Framework, and publishing the new Service Framework document, by 30 August 2021 is too short as we already need more time to be allocated for the current consultation period.

¹ Including in a speech to the TRENZ Hui 2021 given on 6 May 2021 in Christchurch.

² Ministry of Transport, *Briefing to the Incoming Minister: Your Guide to Opportunities and Challenges in the Transport System 2020* p 21

Consultation Question 3: What objectives do you think should guide the development of our Service and Pricing Frameworks?

The primary objective that should guide the development of Airways Service and Pricing Frameworks is, as recognised, the need to operate safely.

This should be articulated as an objective of promoting safety in civil aviation in a way that contributes to the aim of achieving an integrated, safe, responsive and sustainable transport system. The consultation document describes this objective as ensuring all aircraft and passengers operating in controlled airspace reach their destination safely and efficiently. As a monopoly providing a service that is not a standard private good under a civil aviation document Airways should not limit its obligations only to controlled airspace. Whilst it provides services primarily to aircraft in controlled airspace, it should do so with consideration of what parts of uncontrolled airspace might need also need its services (for example, AFIS).

One secondary objective should be to operate as profitably and efficiently as a comparable business not operated by the Crown. In doing so, it is important that the comparator “business not operated by the Crown” be clearly understood as a comparator business in the aviation sector. Within that sector, efficiency is tempered by safety and compliance with the aviation document under which it operates. This includes operating in a just culture framework.

A further secondary objective should be to exhibit a sense of social responsibility by having regard to the aviation safety interest, and any other relevant interests, of the community. Airways operates on a national scale. However, its operations take place within two types of communities. First, it operates as a civil aviation system participant. Secondly, each part of Airways’ operations is located within a physical geographic location. In the second type of community, Airways’ role is as an operator in the first type of community. Therefore, the primary way in which Airways operates in the community is as an aviation document holder. The interests that the community expects of it are to uphold the highest standards of compliance regarding that document. These interests are well articulated in CAR Part 100.

Airways has identified efficiency as an objective in this process. With respect, that is only one aspect of s4 of the State Owned Enterprises Act 1986 and, in Airways’ case, should not be the primary aspect. However, as pointed out above, even when considered in isolation, efficiency should be understood by comparison to other aviation businesses of Airways’ scale not owned by the Crown. Airways should not understand itself to be required to operate as efficiently as a generic business not owned by the Crown. Efficiency should be understood as modified by the primary safety objective. Further Airways has described it as efficient for the provision of ATM services to be procured on a negotiated basis. This may be efficient for Airways, but it is far from efficient for aerodromes, or for end users – it has the potential to be inequitable.

Whilst it is important to be flexible and responsive to change, it is also important that changes are only made once technological developments are supported by a robust safety case. Airways seem to suggest that changes to the supply of services are being driven by anticipated technological developments. This is not appropriate. Technological developments must first be proven and tested before they should give rise to change.

Airways has identified fairness and alignment of incentives, benefits and risks as an objective. Yet, this is phrased in terms of efficient deployment and purchase of services. This should not be a separate objective but should inform any objective deriving from s4(1)(a) SOE Act. At maximum, only one objective ought to derive from that sub-section. We further disagree with the contention that the cost should rest with those who benefit from the service. Airways fundamentally misunderstands the nature of the service it is providing and we cover this in the next paragraph.

Finally, Airways also suggests that an objective should be the promotion of competitiveness. In our view, this is wholly inappropriate for the type of service that Airways provides. Air Traffic Management should be recognised as an anti-rival good. That is, the more that is consumed, the better the service becomes for everyone. This can also be described as a network good. Competition is a useful concept to use to promote rivalrous goods. Those are goods that cannot be used if another person is using them. However, this is not the case with ATM. Even in a narrow sense, when one aircraft is benefiting from direction from ATM this does not create a detriment to other aircraft in the vicinity – rather by making that aircraft safer it increases the safety of the other aircraft too. The document is categorically wrong within this context to state that robust competition generates benefit for the New Zealand community. Robust competition over a network good is likely to disrupt the flow of the network in such a way as to reduce the value of the service provided.

Consultation Question 4: Do you agree with our proposal to distinguish between contestable services and statutory monopoly services?

We do not agree with the proposal to distinguish between contestable services and statutory monopoly services.

The consultation paper does not address the common situation where the same controller provides “base” and contestable services simultaneously. This occurs at every procedural approach tower. The consultation paper also largely ignores how the extra workload of procedural approach integrates into the resource requirement.

The consultation paper does not address how a service model that has a remote radar controller as well as an aerodrome controller, replacing a single aerodrome / procedural approach controller, provides services in a more efficient manner that assists the recovery of commercial aviation in NZ.

Aerodrome Control charges are not reasonable on a per aircraft or interaction basis, from our perspective. The consultation paper does not address whether Airways provides services for the benefit of VFR, or Airways provides restrictions to VFR for the benefit of IFR. We believe that huge cross subsidisation exists in Airways charging.

What the consultation paper is suggesting is removing any obligation it has to provide any level of aerodrome service anywhere.

Given the current simultaneous base and contestable services that procedural approach units currently provide, and Airways’ commitment to provide “remote” radar services, the consequential massive inefficiencies may result in overall greater charges to ATS service users.

Addressing the significant cross subsidisations between units within Airways will be very challenging, from our perspective. Increasing aerodrome service charges to regional IFR and VFR operators may make their operations unviable in themselves.

Consultation Question 5a: Do you support the direct charging to airports for Aerodrome Services?

No, direct charging to airports for aerodrome services is based on several false premises.

First, it is not correct to understand ATM as a private good. Where the costs of providing a private good should rest with those who benefit from the services, this is not the case with a network good. As ATM is a network good it is not appropriate to understand individual participants within the system as the beneficiaries of services. All participants and customers of the whole network (the civil aviation system) are

properly understood as the beneficiaries of the services. The underlying premise should therefore not be to allocate the costs according to benefit received but to spread the costs evenly according to ability to pay.

Secondly, it is also a false premise to understand the airports as the beneficiary of services provided by the tower at each airport. We suspect this derives from the construction of CAR Part 139. In that part, aerodrome operators are responsible for provision of sufficient ATM. However, with respect, this is an artificial construct. This structure has been criticised by several reports that we have raised with you in previous matters. Here our concern is that the responsibility has been provided to aerodrome operators there because they are distinct to each aerodrome and the provisions of CAR Part 172 are not particularised to the level that CAR Part 139 are. As a socially responsible corporate citizen, Airways should not attempt to deflect these duties when it has such overwhelming expertise and experience in providing them.

In the same sentence that Airways states that the costs of its services should rest with those who benefit from the services, it also states that the risks should be allocated to those who are best {sic} placed to manage those risks. It is grossly irresponsible for Airways to suggest that risks arising in the aviation sector should be allocated in advance. With respect, this undermines the work of the Transport Accident Investigation Commission. It is the job of TAIC to determine the circumstances and causes of accidents and incidents (including not to ascribe blame). It is important that any finding that TAIC makes that does lead to a possibility of the apportionment of blame by another body not be compromised in advance by commercial parties choosing to allocate risk in one way or another contractually.

Finally, aerodromes are currently not well equipped to provide the ATM network services that Airways provides. There would be significant difficulties for aerodromes or other operators who wished to provide services that integrated with the services that Airways is mandated by law to provide. It is not in the interests of an integrated system to encourage the provision of services that would find it more difficult to integrate than current services.

Consultation Question 5b: Do you agree that if contestable services and statutory monopoly services are distinguished in the way we have proposed, the former should be excluded from the Pricing Framework?

We do not agree that if contestable services and statutory monopoly services are distinguished in the way you have proposed, the former should be excluded from the Pricing Framework.

We made clear above that we disagree with contestable services and statutory monopoly services to be distinguished.

Yours sincerely

Andrew Ridling

President