

AIRWAYS CORPORATION OF NEW ZEALAND LIMITED

A NEW COMMERCIAL FRAMEWORK FOR AIRWAYS

SERVICE FRAMEWORK REVIEW PROCESS AND CONSULTATION PAPER

4 May 2021

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Introduction

1. Airways Corporation of New Zealand Limited (**Airways**) supplies air navigation services to airports, airlines, general aviation operators and the New Zealand public. We are incorporated as a state-owned enterprise under the State-Owned Enterprises Act 1986 (**SOE Act**).
2. The New Zealand aviation industry is governed by the Civil Aviation Act 1990 (**Civil Aviation Act**) and the Civil Aviation Rules (**CARs**) made by the Minister of Transport under that Act. Airways holds a certificate issued by the Director-General of Civil Aviation under the Civil Aviation Act, which enables us to provide various air traffic control services.
3. Under section 99 of the Civil Aviation Act, Airways is the sole supplier of certain air traffic control services (**statutory monopoly services**). We also supply other air traffic control services to our customers, for which we do not have a statutory monopoly. Customers could self-supply them or purchase them from competing operators, although currently no other Air Navigation Service Providers (**ANSPs**) have entered the market. We refer to these as **contestable services**.
4. As part of its new Customer Strategy, Airways has taken the opportunity to reflect on the service and pricing frameworks, within which we supply services to the industry.
5. We have identified the following objectives: a modern, fit for purpose aviation system that delivers safety and efficiency; alignment with the aviation industry's commercial imperatives; productive relationships with our customers and stakeholders; closer alignment between customer relationships and the provision of Airways services; and frameworks that incentivise innovation and quality outcomes.
6. As part of the review, we wish to consider whether there are underlying structural issues that prevent Airways from supplying services in ways that are more efficient and cost-effective. The pandemic has highlighted these issues, but they run deeper than the immediate effects of the pandemic. In particular, we are considering whether contestable services should be treated differently to statutory monopoly (or base) services. Contestable services are purchased by airports to support their business. The kind of services that will be appropriate, and the terms on which those services are provided, will vary from airport to airport. We are exploring whether it is appropriate for those services to be offered directly to airports on a commercial basis, instead of being grouped in with base services provided around the country, to enable these services to be provided on an efficient basis and given the potential for competition from other providers.
7. We are not consulting on operational aspects of Airways services or proposing to cease providing any categories of services as part of this process.¹
8. We are inviting customer and stakeholder views in three stages, which are described below. We would love to hear your views, and hope that our customers and stakeholders, including airports, airlines, general aviation (**GA**) and regulatory agencies, will provide us with rich

¹ Note that Airways has signalled its intention to cease Aerodrome Visual Navigation Aid Service (aka Airfield Power and Lighting) but currently is providing it.

feedback. We look forward to the opportunity to learn from those perspectives to ensure we provide our services going forward in a way that is reliable, efficient, cost-effective and promotes aviation safety.

9. The following relevant documents are available on our website:²
 - (a) Current Service Framework (effective 2012);
 - (b) Current Pricing Framework (in effect for 1 July 2019 to 1 July 2022);
 - (c) Current Standard Terms and Conditions for Provision of Airways' Services (effective 2019) **(Standard Terms)**;
10. We have attached to this document a consultation draft of a proposed revised Service Framework, to help stakeholders make submissions on our proposals.
11. The Service Framework outlines the nature of our business, the air traffic control services that we provide, and the service level targets that we have set ourselves. It is not a document that we are required to produce by the Civil Aviation Act or the CARs, and it does not create any legal obligations by itself. Instead, it is a description for the benefit of operators, airports, regulators, and other stakeholders of the range of services that we offer.
12. The Service Framework forms the backdrop to the contractual relationships we enter with individual customers to provide services. We have contracts with airports that describe the contestable services we provide at that airport, and when operators take the benefit of our services, they enter contracts with us on our Standard Terms.
13. The Pricing Framework describes how we calculate the prices charged for all the services listed in the Service Framework, and is designed to ensure that we cover our costs and achieve a reasonable return.
14. Consultation on the Service Framework is the first stage of hearing industry views. We have an open mind, and seek customer and stakeholder input on what (if any) changes are necessary to the current framework under which we deliver our services. We have divided our consultation into stages to enable us to seek input on the way in which services are offered before looking at the detail of the Pricing Framework. Any changes to the Pricing Framework will depend on changes to the Service Framework. But we are not looking at these documents in silos, and are interested in stakeholders' views about how they interrelate.
15. At points throughout this paper, we have included questions on specific issues where we are particularly interested in your feedback, but we welcome your thoughts on any other aspects of the proposals described in this paper.

² <https://www.airways.co.nz/about/performance-and-pricing/ans-services-and-pricing-explained/>.

Context for this process

16. Airways has been significantly impacted by COVID-19, with an immediate and near total loss of revenue. We are fortunate to have received the support of Treasury and our shareholding Ministers, including funding, where other aviation sectors and ANSPs internationally have not. In particular, our loss of revenue has been eased by the Government's Aviation Relief Package in the form of a cash support, loans, and subsidised airline fees. As that funding comes to an end, and as a state-owned enterprise, we are mindful of the need to look to the future to ensure our business model supports the aviation sector to revive and thrive.
17. In fulfilling our objective under the SOE Act of operating as a successful business, we are required to take into account the expectations of our shareholders, the Minister for State Owned Enterprises and the Minister of Finance. These were most recently conveyed in the shareholding Ministers' updated letter of expectations dated 17 December 2020, which recorded:
 - (a) The responsible management of Crown-owned company assets and finances can make an important contribution to the COVID-19 recovery ambitions of New Zealanders, and Crown-owned businesses should continue to focus on ensuring the ongoing viability of their business, taking into account the impact of decisions on staff and suppliers;
 - (b) Airways will continue to play a critical role in New Zealand's air transport network by being an efficient, reliable and safe air traffic service, with our primary objective being to ensure that aircraft and passengers in controlled airspace reach their destination safely and efficiently, and retaining skills and flexibility where possible;
 - (c) The Ministers reiterated their expectations, as recorded in letters dated 22 April 2020 and 5 August 2020, that Airways would decrease its financial risk exposure and exercise financial responsibility in utilising Crown financial support. In relation to regional airports (discussed further below), the Ministers recorded their expectation that Airways would provide air traffic management services to regional airports where the Civil Aviation Authority (CAA) determines them to be necessary.
18. Earlier letters of shareholder expectations recorded that Airways is expected to reshape itself as "an efficient, reliable, safe and low cost Air Traffic Management service". Our Board and Management team takes these expectations seriously.
19. Airways is aware that, with time and good planning, New Zealand and the aviation sector will bounce back from the COVID-19 crisis. Our primary focus is on supporting the long-term recovery of New Zealand's aviation industry and its services to New Zealand by matching our services to the reality of the aviation sector now and into the future while maintaining aviation safety, which is core to our purpose.
20. We recognise our critical role in this interdependent network of airlines, airports, regulators and service providers. We want to come out on the other side of this crisis with a future-fit business model to support New Zealand's economic recovery. Along with safety, we see our role as removing cost from our business, and unnecessary cost from the aviation supply chain.

In line with international ANSP practice, we have therefore added two levers to our core mission of safety: appropriateness and affordability. This requires us to ask questions about whether aspects of our business are appropriate for the future.

21. The proposals we are considering are not just about responding to the short- or medium-term effects of the pandemic. They are also designed to consider the fitness for purpose of the framework under which we supply services generally, and to address concerns that we have about underlying structural issues that might prevent us from supplying services in the most cost-effective, efficient, and pro-competitive way possible even after the effects of the pandemic have passed, and to make the regime more adaptable and responsive to changes and shocks in the future. We are conscious that the existing frameworks have been in place since 2012, and as a responsible SOE we consider that it is important to reflect on whether the existing arrangements are best suited to achieve our statutory obligations, our Ministers' expectations, and the needs of the aviation industry generally.

Overview of our consultation process

22. We are seeking widespread feedback of the frameworks under which we supply our services, and how we charge for those services. We want to ensure that our service and pricing frameworks are fit for purpose, efficient, pro-competitive and best suited to help us, as a supplier to the aviation industry, to adapt and respond to our changing aviation environment.
23. We are conscious of the potential impacts these reforms may have on our customers (including airlines, airports, GA, and Defence), and our stakeholders (including customer stakeholders, the Government, the general public, and our staff). As such, we have designed our consultation process in accordance with the following consultation principles:
 - **Consultation principle 1:** All information regarding our current commercial framework, and the proposed changes, will be presented in a transparent, easy-to-understand way
 - **Consultation principle 2:** We will not second-guess or judge what our customers and stakeholders value, but instead seek to pinpoint exactly what they value, and why
 - **Consultation principle 3:** We will listen and consider feedback openly and are genuinely interested in understanding our customers' and stakeholders' feedback and interests
 - **Consultation principle 4:** We will take an interest-based, bilateral approach to onboarding customers to any new commercial framework, taking into consideration our customers' and stakeholders' interests
24. We recognise that the consultation and implementation process will require coordination and information symmetry across many stakeholders. As such, the process is also designed in accordance with the following management principles:
 - **Management principle 1:** Work to align stakeholder and customer interests to the fullest extent possible

- **Management principle 2:** Ensuring all stakeholders and customers have an accurate and shared understanding, and alignment across internal and external stakeholders
 - **Management principle 3:** Communicate with stakeholders and customers in the manner and timing that works for them
 - **Management principle 4:** All information regarding our current commercial framework, and the proposed changes, will be presented in a transparent, easy-to-understand way
25. There are three elements to our process. The first stage will consider the Service Framework, which outlines the services we provide and the commercial characteristics of those services. We will be considering whether we should make any change to the services in the Framework, including whether we should distinguish statutory monopoly services and contestable services.
26. Once the first stage is concluded, the second stage will consider our Pricing Framework and our Standard Terms. During this stage we will be consulting on proposed revisions to the Pricing Framework and Standard Terms. We do not have fixed views on what changes might be necessary to the Pricing Framework, because this will depend in part on the results of our consultation on the proposed Service Framework, but we will be exploring whether we should restructure the Pricing Framework to make it more efficient and fit for purpose, including by including only statutory monopoly services, changing the pricing structure and requiring airports to pay directly for services they receive under contracts.
27. Once the second stage is concluded, we will look to reset our prices to take effect from 1 July 2022 as stage three. In this third stage we will review and reset our prices following any changes to the Pricing Framework.

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?

Legal framework and our current Service and Pricing Frameworks

28. In this section we summarise the regulatory framework applicable to Airways’ services, to place our consultation proposals in context.

Legislative framework for supply of our services

29. We provide six sets of services. As we explain below, we have a statutory monopoly over the supply of some of these services, while other services can be offered by other providers.

Service	Description	Service status	CAR Rules	Service Framework	Contract ³
Aerodrome Air Traffic Management Service (<i>includes FIS</i>)	Control of aircraft arriving to/departing from an airport	Contestable service	171 172 174	Schedule 2	Schedule 2

³ The corresponding schedule in the contract that Airways has executed with airport operators.

			175		
Approach services (includes FIS and Alerting)	Services for arriving and departing aircraft, electronic navigation aids at attended and some unattended airports	Statutory monopoly	171 172 173 174 175	Schedule 4	Schedule 4 Schedule 5 (IFR)
En-route Domestic / Oceanic Service (aka Area Control Services) (includes FIS / Alerting)	Control and navigation services for aircraft en-route between airports, domestically and internationally	Statutory monopoly	171 172 173 174 175	Schedule 5 Schedule 7	N/A
Flight Information Service in Uncontrolled Airspace	Provision of information to aircraft in uncontrolled airspace	Statutory monopoly	171 172 174 175	Schedule 6	N/A
Alerting Service in Uncontrolled Airspace	Provision of alerting service to aircraft in uncontrolled airspace	Statutory monopoly	171 172	Schedule 8	N/A
Aerodrome Visual Navigation Aid Service (aka Airfield Power and Lighting)	Provision and maintenance of airfield lighting and paint markings at airports	Contestable	139	Schedule 3	Schedule 3

30. We are a state-owned enterprise that is required to operate as a commercial business under the SOE Act. Otherwise, the principal statutory regulation of our business is the Civil Aviation Act. Section 99(1) of that legislation provides:
- (a) Airways shall be the only person entitled to provide statutory monopoly services, being: (a) area control services; (b) approach control services and (c) flight information services.
 - (b) Airways does not have a statutory monopoly on (d) aerodrome control services or (e) aerodrome flight information services.
31. We describe the first category as statutory monopoly services, and the second category as contestable services:
- (a) The Civil Aviation Act does not impose an obligation on us to supply the statutory monopoly services, but we supply those services recognising that we are the only provider permitted to do so.
 - (b) We describe the latter as contestable services because other operators are free to supply them, if necessary, with certification from the CAA.
32. Section 35 of the Civil Aviation Amendment Act 1992 provides for s 99(1) of the Civil Aviation Act to be repealed, in whole or in part, by the Governor-General issuing Orders in Council. This gives the government the power to remove our statutory monopoly over the provision of area

control services, approach control services, and/or flight information services. No orders have been made since that power was introduced in 1992.

33. The Ministry of Transport is currently considering reform of the Civil Aviation Act. In 2019, it published an exposure draft bill of new legislation to replace the existing Act. That draft bill retains section 99, but omits section 35, so that Airways would retain its statutory monopoly over area control, approach control and flight information services.
34. We expect the revised bill to be introduced to Parliament in April or May this year. If there is any change to the status of our services, we will take that change into account and seek further submissions if necessary.
35. We have also reviewed customer and stakeholder submissions on the Ministry of Transport's exposure draft of the bill, which has given us valuable insight into the different perspectives on our role and the extent to which competition can and should emerge in relation to particular categories of services. We discuss these issues further below.

Civil Aviation Rules

36. The CARs are made by the Minister of Transport under the Civil Aviation Act and are administered by the CAA. The CARs govern how services are to be provided. CAA can require that certain services are provided at airports, depending on the characteristics of the airport. It is the responsibility of the airport operator to ensure that those services are available and provided.
37. Airways holds a certificate under Part 172 of the CAR which entitles it to provide various services. This certificate is amended from time to time to reflect what services we supply and where we supply those services. However, neither the CARs nor the certification imposes an obligation on us to provide any services. As a matter of practice, airport operators will contract with us to supply the services that the operator requires at the airport in order to comply with the operator's regulatory requirements.

Frameworks and contractual arrangements

38. Under the SOE Act, we are entitled and required to charge for our services. We have put in place a suite of documents to determine how we charge for our services.
39. We have produced three framework documents to govern the supply of our services:
 - (a) The **Service Framework** describes the air traffic control-related services (or "base services") that we provide and specifies the parameters and performance expectations of each service in schedules. We last consulted on the Service Framework in 2012, and the current document has been in place since then. The Service Framework records our expectations about what "base services" we will supply, to whom we will supply the services, and the specifications of those services. As noted above, in this consultation we propose narrowing the concept of "base services" to those over which we have a statutory monopoly.

(b) The **Pricing Framework** describes the methodology that we use to calculate and allocate the cost of providing our services. The current Pricing Framework was also put into place in 2012. Prices are set in three-year cycles. We last consulted on prices in 2019, and the current prices are in effect from 1 July 2019 to 30 June 2022.

(c) The **Standard Terms** specify the contractual terms on which services are offered.

40. We have two sets of contractual arrangements with our customers:

(a) We have concluded contracts with airports at which we supply the services set out in the Service Framework. These arrangements are bilateral and commercially confidential. Some have fixed termination dates, and others have expired and rolled over and are now terminable on reasonable notice.

(b) Every time an operator (such as a GA operator) uses other services to depart from or land at an airport, they form a contract with us in accordance with the Standard Terms and pay fees accordingly.

Consultation process

Indicative Timeline

41. To ensure our decision is an informed one, we invite you to submit your view on the questions asked herein, and any other matters you consider ought to be weighed in deciding whether or how to amend the Service Framework. For this first stage of the consultation process, we are seeking submissions per the following timetable:

(a) We invite submissions on the proposed Service Framework by 16 June 2021;

(b) We invite cross-submissions by 30 June 2021;

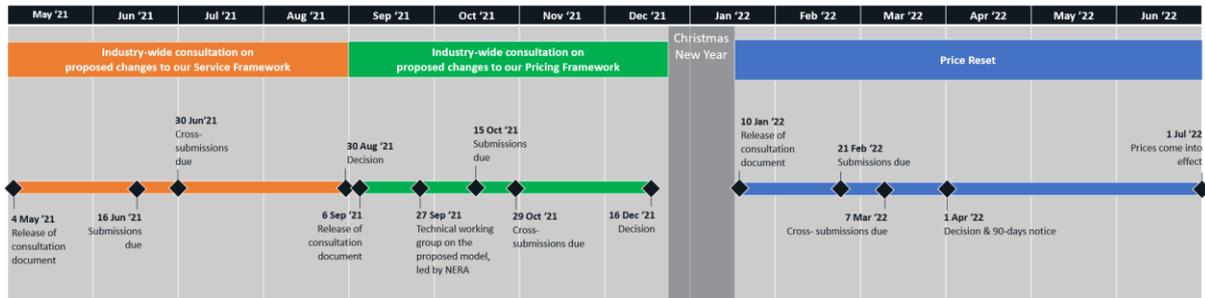
(c) We will make a decision on the new Service Framework, and publish the new Service Framework document, by 30 August 2021.

42. Once the new Service Framework is in place, we will consult on revision of the Pricing Framework, and then new prices. We have scheduled the Pricing Framework review to take place after the Services Framework has been finalised, so that our customers and stakeholders know what services are being provided and on what basis before appropriate pricing and cost allocation methodologies can be determined. We have engaged external economic consultants to support the Pricing Framework review. We will publish a more detailed timeline for the second stage of the process in due course.

43. Below we set out an indicative timeline for our process for reviewing our Service Framework, Pricing Framework, and price reset.

44. Although we have decided it is appropriate and beneficial to consult with stakeholders, we are also conscious that we are operating in a commercial environment that can change very quickly,

and that may require commercial changes outside the scope of this process. If such a change is required we will announce that publicly and explain why.



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

Review of the Service Framework

45. We have included with this consultation document a consultation draft of a proposed Service Framework, on which we are seeking your views. We describe the key proposed changes in the next section.

Objectives that our frameworks should promote

46. We must operate our business in accordance with the general requirements imposed on all SOEs under section 4 of the SOE Act. Our Ministers have reiterated our critical role in New Zealand's air transport network by being an efficient, reliable, and safe air traffic management service, whose primary objective is to ensure all aircraft and passengers operating in controlled airspace reach their destination safely and efficiently. That is reflected in the statutory monopoly over certain services in section 99 of the Civil Aviation Act.
47. Beyond that, the legislation is not prescriptive about the commercial basis on which we deliver our services, and the objectives that we should promote in designing that framework. We have given careful consideration to the principles and objectives that should inform our commercial framework, and will continue to do so through the review of the Pricing Framework and Standard Terms, with the assistance of our economic advisers.
48. At this stage, we outline a number of objectives that we have identified as being potentially helpful in designing our frameworks, keeping in mind that our primary objective remains to keep providing a safe and efficient air traffic management service.
- Efficiency:** The SOE Act requires, and our Ministers expect, us to operate as a successful business and to be as profitable and efficient as comparable businesses not owned by the Crown.
 - Fairness and alignment of incentives, benefits and risks:** Our commercial framework should provide us, and our stakeholders, incentives to deploy and purchase our services efficiently. The costs of services should be allocated fairly between different stakeholder

groups. The cost should rest with those who benefit from the services, and risks should be allocated to those who are best placed to manage those risks.

- (c) **Promotion of competition:** Our commercial framework should be designed to enable and promote competition where appropriate. As a responsible Crown-owned company, we recognise that robust competition generates benefit for the New Zealand community as a whole. Where services are contestable, our framework should be designed to facilitate and encourage competition where possible. This drives us to be more efficient and responsive, provides choice to our customers, and ultimately benefits the New Zealand community.
- (d) **Clear and accessible:** Consistent with our stakeholder management principles, our commercial framework should be clear, accessible and understandable.
- (e) **Agile and responsive to change:** The aviation industry is dynamic, and is expected to undergo significant and fundamental change in response to the COVID-19 pandemic and consequent structural changes, changes in domestic and international tourism, climate change considerations, technology developments, and so on. Our commercial framework should be flexible and capable of responding to these changes.

49. We will continue to consider and refine these objectives as we work through the consultation process.

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

Distinguishing between base services and other services

- 50. Earlier we described the distinction between services over which we have a monopoly (area control, approach control and flight information services) and those which can be provided by other ANSPs in competition with Airways (aerodrome control and aerodrome flight information services).
- 51. The current version of the Service Framework does not distinguish between these two groups of services: they are all called “base services”. In our proposed Service Framework, we propose to draw a distinction between two categories of services:
 - (a) **Base Services** will capture the statutory monopoly services; and
 - (b) **Contestable Services** will capture the services where we do not have a statutory monopoly.
- 52. This would mean that:
 - (a) we would continue to supply Base Services to our customers, in accordance with the Pricing Framework and Standard Terms (to be consulted on separately);
 - (b) we will supply Contestable Services directly to our customers, and in particular airports, pursuant to commercially negotiated contractual arrangements.

53. As a consequence of this change, Contestable Services would be excluded from the Pricing Framework because the price of those services would be negotiated on a case-by-case basis.
54. There are a number of reasons for considering this change:
- (a) **Consistency with legislation:** the Civil Aviation Act and the exposure draft of the new legislation makes a clear distinction between statutory monopoly services and other services. We consider that it is appropriate for the proposed Service Framework to reflect that distinction.
 - (b) **Promotion of competition:** the legislation contemplates that services outside the statutory monopoly should be contestable, and that other operators (including overseas ANSPs, new entrants, and airports themselves) may wish to provide those services in competition with Airways. A number of submitters on the Ministry of Transport's consultation on the exposure draft of the new legislation commented on the desirability of encouraging competition where possible.
 - (c) **Efficiency of provision and pricing:** This distinction recognises that a different approach to provision and pricing of services may be appropriate depending on whether services are subject to a statutory monopoly or fall within the contestable services. In particular, we consider that where airports have a choice whether to procure contestable services at their airport, it is efficient for the provision of those services to be procured on a negotiated basis.
 - (d) **Flexibility and responsiveness to change:** Technology developments in particular are likely to drive changes in the way that we supply our services (for example, certain services can be provided remotely as an alternative to in-person airport control services). Clearly disaggregating the different categories of services we provide enables us to respond more easily to those changes.
 - (e) **Clarity and accessibility:** Delineating the different categories of services that we provide helps stakeholders understand what services are provided and how.
55. We recognise that we are currently the only ANSP operating in New Zealand, although we understand that overseas operators have been exploring entering the New Zealand market. We want to continue supplying the Aerodrome Air Traffic Management Service to all the airports who currently purchase it where CAA regards the service as necessary and subject to appropriate commercial terms, but it is important that we do so on a basis that is efficient and that aligns incentives.
56. We consider that the current arrangements may not meet these objectives. The contract to supply Aerodrome Air Traffic Management Services is with the airports, but they pay nominal consideration and the cost is borne by airlines and other users. This obscures the value proposition of the services and passes the cost on to users who are not involved in the purchasing decision. It misaligns incentives because airports are not paying for the service and are not required to assess its value to their operation.

57. Whether Aerodrome Air Traffic Management Services are required, and the terms on which they should be provided, needs to be assessed on an airport-by-airport basis, with CAA making an assessment of what services are required for particular operations. If airports wish to obtain such services to support particular operations or their own commercial goals, then we consider it may be appropriate for them to negotiate for the provision of those services from us, rather than socialising the cost via airlines for services, including where that may not be efficient, proportionate or appropriate.
58. For the same reasons, we are considering whether it is appropriate for charges to be determined on an airport-by-airport basis, with the negotiations taking into account the particular needs of the individual airport. We are concerned that the current system, where the cost of providing Aerodrome Air Traffic Management Services is bundled in with the cost of other (country-wide) services in the Pricing Framework, may obscure the true costs and benefits of the service at individual airports and obscure inefficiencies.
59. Our view is that our proposal meets our statutory obligations and commercial considerations. Distinguishing contestable services from statutory monopoly services in the proposed Service Framework will promote efficiency, encourage other providers into a competitive market, and enable the development of new contractual arrangements that better reflect fairness in pricing, cost and risk allocation.

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

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

A note on regional airports where the CAA is currently reviewing aeronautical studies

60. For the seven regional airports where the CAA is currently reviewing aeronautical studies on the level of service, there may be a change in service, or the same service as currently provided.
61. For airports outside of the scope of the regional airports change review, we are not proposing to change the services provided, only the contractual and commercial basis on which they are provided. This would mean that we would enter negotiations with individual airports for the services that would be provided and the terms on which they would be provided.

We welcome your submissions

62. We welcome your submissions, which can be emailed to Tracey Hall at tracey.hall@airways.co.nz.
63. Please note that all submissions will be made available to the public on our website. If your submission contains any commercially sensitive or confidential information that you do not

wish to be publicly disclosed, please identify this clearly and provide a redacted version of your submission for publication.