AIRPORTS NEWSLETTER

powered by Ford Sumner Lawyers

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In this edition

Welcome to Ford Sumner Lawyers' latest Airports Newsletter

In this issue we encourage you to check that your workplace policies for critical areas are effective and up to date, and we look at two important High Court decisions involving air navigation decisions and RMA processes.

We also explain how some major changes to the Building Act could affect New Zealand airports, particularly around liability.

Your workplace policies:
Will they be effective when it really matters?

Workplace policies are often overlooked until something goes wrong. Well drafted, clearly communicated policies are important for establishing clear and consistent processes and safeguarding against risks, both within your business and in your interactions with the public.

Are your policies up to date?

Workplace policies, and the question of whether they're current, can sometimes be forgotten under the pressure of daily BAU work, but these documents often take centre stage once there's a dispute or something goes wrong.

You should review your workplace policies regularly to make sure they're in line with how your airport currently operates and address the issues that decision makers within the business are facing.

Generally, it's good to review and update your policies every two years. But if there's been a significant law change, or a change in the way your business functions, they should be updated sooner.

Some policies may also need updating more often because of the subject matter – for example, a policy for AI use, given how AI models and the issues they throw up are evolving so quickly.

What policies does an airport need?

Ideally, but depending on the size and complexity of the business, each airport should have a suite of policies covering core areas of their operations. This is in addition to the usual employee-related policies covering leave, flexible working, a code of conduct, and so on.

Policies on drug and alcohol management, CCTV and privacy, and health and safety are especially critical in the aviation sector, given the risks associated with aviation activities, the number of safety-sensitive roles (which gives employers greater scope to carry out drug and alcohol testing), and the amount of personal information that's collected regularly.

As airports typically have CCTV systems operating 24/7, it's important that your policies on privacy and CCTV use are clear and publicly accessible. They should explain how the business collects and manages personal information, and how you will respond to any requests for personal information made under the Privacy Act 2020.

If your airport uses any form of AI, including generative AI, decision-support systems, or automated agents, you need a policy clearly explaining how your people are permitted to use AI within the business, as well as how the related privacy and security risks will be managed.

Developing a well drafted and effective policy

Any workplace policy should clearly identify its purpose and objectives, and be written in plain language and be easy to follow, both by your own staff and members of the public.

The policy should provide clear guidance for consistent decision making in your business. It should be tailored to the aviation industry's context, and reflect the standards you expect within the workplace.

If necessary, get advice on whether your policies are consistent with all the relevant legislative or regulatory requirements.

Your workplace policies:
Will they be effective when it really matters? (continued)

Consulting with your employees

It's important to involve your staff in developing your workplace policies. This includes giving them a reasonable opportunity to give feedback on draft policies, genuinely considering their feedback, and amending the draft policy where appropriate.

This can sometimes be a legal requirement – for example, if this is specified in the relevant employment agreements. Even when it's not legally required, involving your staff will help canvas all the issues the policy needs to address and ensure the policy matches how your business currently operates.

At Ford Sumner we've recently been working closely with our aviation clients on developing or updating a range of policies including AI, CCTV and privacy. If you would like advice or support in this area, contact Paul Gillespie.

"DMAPs" and the judge over your shoulder
What a recent court ruling means for airports' air navigation decisions

A recent High Court decision illustrates in some detail how the courts will approach challenges to airports' decisions around air navigation. It also offers practical lessons for any airport managing opposition from the community to an operational change.

In June, the High Court dismissed a "judicial review" challenge brought against Wellington Airport, Airways Corporation, and the CAA Director by a residents group over the flight path changes known as the "Divergent Missed Approach Protection System", or DMAPS.

This decision – Plane Sense Wellington Inc v Airways Corporation of New Zealand Ltd [2026] NZHC 1573 – confirmed that airports are entitled to rely on qualified technical advice in this specific area. It also included a notable finding on the extent of an airport's obligation to consult the community in these cases.

The facts

Wellington Airport's single, wind-dependent runway sits hemmed in by Mt Kaukau, Mt Victoria, and the Miramar Peninsula, and before the new DMAPS change, departing aircraft and aircraft aborting a landing (called a "missed approach") would fly similar tracks.

That created a real risk that a faster missed-approach aircraft could close in on a departing aircraft ahead of it. Air traffic control had been managing the risk tactically, including by sending missed-approach pilots into a manually flown "visual circuit".

After a near-collision in March 2019 involving the visual circuit, Airways' resulting safety review found that the practice was unacceptably risky and withdrew it. This cut runway capacity from around 21 movements an hour to just 13.

The DMAPS change was Airways' long-term fix. Rather than relying on real-time intervention, it built permanent divergence into the flight paths, so departing aircraft and missed-approach aircraft would automatically fly on separate tracks.

The change was implemented on 1 December 2022 following certification by Aeropath, written agreement from

Wellington Airport as required under Rule 173.201(d) of the Civil Aviation Rules, and registration by the Director of Civil Aviation. DMAPS concentrated north-bound jet departures onto a defined track flying over Khandallah, Ngaio, Broadmeadows, and Johnsonville far more regularly than before.

The resulting noise prompted affected residents to form Plane Sense Wellington Inc in 2023. Discussions with the three decision makers and a consultation process in 2024 failed to resolve their concerns, so Plane Sense brought this judicial review case asking the High Court to reinstate the pre-DMAPS flight paths.

"DMAPs" and the judge over your shoulder

What a recent court ruling means for airports' air navigation decisions (continued)

Airports are entitled to rely on qualified technical advice on new instrument flight procedures

The High Court confirmed that an airport operator has a deliberately narrow function under Rule 173.201(d), which says that a new instrument flight procedure requires the airport's agreement.

Wellington Airport doesn't employ its own specialists in flight procedure design, and the judge said the airport was entitled to rely on the technical judgment of Airways Corp, as the country's only air navigation service provider, and of the noise consultants the airport had retained, rather than re-running the underlying safety case itself.

The lesson is not that airports can just rubber-stamp technical proposals. It's that genuine, documented reliance on appropriately qualified advisers is a legitimate and defensible way for an airport to carry out that particular function under the Rules.

"Irrationality" is a high bar for challengers to clear

There's a firmly established principle in judicial review cases that the courts won't second-guess the decision maker on the merits or substance of their decision. The judge's job is instead to make sure the decision maker followed a proper process. This means that a challenge of "irrationality" or "unreasonableness" will usually succeed only if the decision was so unreasonable that no reasonable decision maker could have made it.

In this case, the residents' group, Plane Sense, filed extensive affidavits from seven experts challenging the technical merits of DMAPS. The judge held that evidence that simply disagrees with the merits of a decision, rather than pointing to an incontrovertible error, is not admissible on judicial review.

The judge said:

> "...it is not the Court's function to prefer one expert view of aviation safety over another. Rather, the onus is on the applicant [the challenger] to establish a clear and unequivocal technical error, or some other radical error resulting in an irrational and perverse decision."

There's no free-standing duty for airports to consult the public

The most useful finding for airports coming out of this case is that unless the legislation or Civil Aviation Rules specifically says so, the law does not require airports and aerodromes to consult the public before agreeing to a flight procedure change.

When the civil aviation framework requires decision-makers to consult the public, it says so explicitly. As a result, Plane Sense's 13 criticisms of Wellington Airport's subsequent, voluntary consultation in 2024 were unsuccessful. The judge said that when a decision-maker consults purely as good practice and not because they're legally required to, then the process they follow isn't automatically held to an enforceable legal standard (applying ALT New Zealand Ltd v Attorney-General [2025] NZCA 344).

That said, the consultation and noise monitoring that Wellington Airport did do helped show that its response to residents' concerns was considered and rational. This case illustrates that doing more than the law strictly requires can still be the right call, for practical and reputational reasons.

Good record keeping of the advice and your decision can make all the difference

Airports are increasingly attracting litigation from organised, well-resourced community opposition. The Plane Sense group, for example, grew from informal conversations among neighbours into a litigant backed by 38 affidavits and expert evidence across seven disciplines.

In that wider context, this case provides a reassuring precedent for airports making air navigation decisions. Here it was critical that Wellington Airport and the other respondents could point to their contemporaneous records showing exactly what advice they received and why they accepted it. The comfort this case offers to airports depends on having that record.

It pays for all airports to review their decision making and record keeping around approvals, so that any reliance on technical and expert advice is properly evidenced.

The case also illustrates that airports need to run voluntary consultation processes in a way that manages potential legal and reputational risks, without creating obligations you would not otherwise have.

If you would like help in reviewing your decision making and record keeping effectiveness, contact Sarah Churstain or Daniel Fraser.

Liability in the construction sector:
What the Building Amendment Bill could mean for your airport and its projects

The Building Amendment Bill, which passed its first reading on 2 July 2026, proposes some significant changes to the Building Act 2004. It's part of a wider government effort to address longstanding challenges in the construction and building sector, including high costs, delays, and unclear liability arrangements.

The amendments would reshape how liability for defective work is allocated, how consumers are protected, and how key regulatory processes operate.

Airports should be aware of, in particular, how the proposed changes around liability could affect their options to recover for defective building work on infrastructure and other construction projects.

The Amendment Bill has now gone to select committee. If passed, the changes could come into effect in early 2027.

A shift to proportionate liability

Perhaps the most significant change is a new proportionate liability model for defective building work, where each defendant would be liable only for the share of the loss that's attributable to their particular conduct.

This marks a major shift from the current New Zealand model of "joint and several" liability. At present, a claimant can recover the full loss from any defendant responsible for the defective work, regardless of that defendant's share of fault.

In practice, joint and several liability can mean that the cost of defective work falls on those with the means to pay, rather than those most responsible. As a result, councils (and their ratepayers), as well as insured professionals, have often borne a disproportionate share of that burden.

The shift would bring New Zealand more closely in line with Australia, where proportionate liability has operated in the construction industry for more than 30 years.

When you can contract out of proportionate liability

For residential building work on stand-alone houses and small-to-medium apartment buildings (that is, residential-only buildings less than 10 metres high), the Bill would prohibit contractual terms that exclude or limit a party's liability.

In other words, parties to those residential projects wouldn't be able to contract out of the proposed proportional liability. Attempts to do so would be legally ineffective.

The position is different for commercial projects and larger residential developments. For those projects, parties will generally retain freedom of contract and be able to make their own agreements for allocating liability.

Airports will therefore need to carefully consider their contractual arrangements around liability for new construction projects.

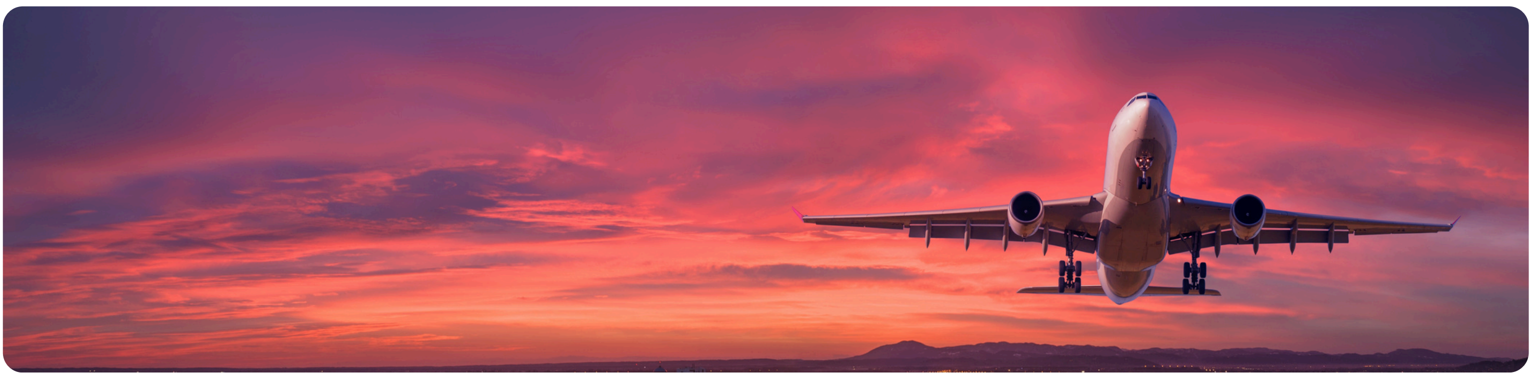
Some airport companies may also have some residential properties – pensioner flats for example – on their asset registers, and building work carried out on those properties could be caught by the rule against contracting out for smaller residential properties.

Reconciling proportionate liability with adjudication: Some unanswered questions

The Bill leaves open some important questions about the relationship between proportionate liability and the adjudication framework under the Construction Contracts Act 2002. It's not clear yet how any inconsistencies between the two regimes will be addressed.

Adjudication is typically a two-party process between parties to a construction contract. By contrast, determining liability on a proportionate basis usually requires considering all the parties responsible for the loss, including those who aren't party to the adjudication or to the relevant construction contract.

The Bill makes it clear that, for the purposes of proportionate liability, it doesn't matter that a concurrent wrongdoer is insolvent, is being wound up, or has ceased to exist or died – their contribution to the loss or damage can still be considered in assessing liability.



Liability in the construction sector:
What the Building Amendment Bill could mean for your airport and its projects (continued)

In court proceedings, the Bill provides for costs to be awarded against a defendant who fails to identify other concurrent wrongdoers. It's unclear whether, or how, a similar approach would apply in adjudication.

Home warranties and professional indemnity insurance

The shift to proportionate liability would most likely make it harder for claimants to recover loss, and in an effort to balance that effect the Bill introduces new consumer protection measures. These include new requirements for home warranties and professional indemnity insurance.

Home warranties will be required for new residential buildings up to three storeys, and for residential building work valued at $100,000 or more. These warranties must cover (at minimum) a one-year defect period and a 10-year structural warranty period. There are proposed fines of up to $50,000 for individuals and $150,000 for corporate bodies for not complying with these new warranty provisions.

Design professionals (such as architects, engineers and surveyors) who contribute to building projects valued at over $100,000 will also be required to have professional indemnity insurance, with new penalties for not complying.

Changes to building consent processes

- **Local councils as Building Consent Authorities**

  The Bill removes the requirement for territorial authorities to maintain accreditation or registration as a Building Consent Authority ("**BCA**"), if they transfer their consenting functions to another BCA. Certain consent-related functions can be delegated from a territorial authority to a stand-alone BCA if the BCA is a council-controlled organisation.

  This will probably mean more flexible, and potentially more efficient, consenting pathways. This could help reduce delays and create more consistency in how consent applications are processed.

- **Fast-track consenting for eligible residential buildings**

  The Bill introduces a new fast-track building consent pathway for eligible residential buildings of up to three storeys with solar electricity generation or other specified sustainable features.

  BCAs are required to process these applications within 10 working days, compared to the current standard 20 working days. This fast-track process aims to support a more efficient consenting process that encourages sustainable residential developments.

- **Off-site construction of granny flats**

  The recent Building and Construction (Small Stand-alone Dwellings) Amendment Act 2025 amended the Building Act to allow certain small stand-alone dwellings (under 70 m^2) to be built without a building consent, provided specified conditions are met, including obtaining a Project Information Memorandum ("**PIM**").

  The Bill builds on these changes by allowing off-site construction of these dwellings to begin before a PIM is obtained, if certain conditions are met. This is intended to improve construction efficiency and reduce delays.

- **When these changes will come into effect**

  The proposed change to proportionate liability, and the new requirements for home warranties and professional indemnity insurance, would come into effect one year after the Bill receives Royal assent.

  If the Building Amendment Bill is passed, it would be the most significant overhaul to New Zealand's construction and building sector since the Building Act 2004. If you would like to discuss how the proposed reforms around liability or otherwise could affect your business, contact Jaesen Sumner at Ford Sumner.

The developer on your doorstep:
The High Court Backs the airport in a landmark non-notification decision

In a significant win for airport authorities and operators, the High Court has quashed a resource consent granted on a non-notified basis for a large commercial storage facility 150 metres from the end of a runway at Palmerston North Airport.

This decision from February this year – Palmerston North Airport Ltd v Palmerston North City Council [2026] NZHC 224 – provides a warning to any local councils attempting to side-step difficult safety questions in the consent process.

The facts

Palmerston North Airport Ltd ("**PNA Ltd**") owns and operates Palmerston North Airport, a 24-hour airport, a designated lifeline utility, and a hub for overnight airfreight and fixed-wing medical flights.

In this case a developer applied for a resource consent to build a 296-unit commercial storage facility on land adjoining the airport's south-eastern boundary.

To avoid notifying PNA Ltd, the developer had to show the City Council that the effects on the airport would be "less than minor" (under sections 95A and 95B of the Resource Management Act 1991).

The developer on your doorstop:

The High Court Backs the airport in a landmark non-notification decision (continued)

Two safety zones were central to the application, the Airport Protection Surface ("**APS**"), which is a 3D "surface" that prohibits any obstacles near the runway end, and the Runway End Protection Area ("**REPA**"), which restricts land use assemblies to fewer than 10 people – the judge called this the "10-person problem".

The City Council used an Independent Commissioner to decide whether PNA Ltd had to be notified of the application. The Commissioner initially accepted advice from the City Council's aviation expert, Navigatus Consulting, that construction of a stormwater trench for the development would inevitably breach the APS and require temporary runway closures. As this was plainly more than a minor effect, the Commissioner recommended notifying PNA Ltd.

The amended application and the Commissioner's "side-step"

The developer then amended its application, redesigning the stormwater trench to curve away from the runway. The developer claimed this would create an additional 90 cms of clearance beneath the APS during construction.

In the judge's words, the Council's expert "was unimpressed with the proposed changes": Navigatus Consulting advised the Commissioner that construction of the redesigned trench would still penetrate the APS.

The Independent Commissioner didn't reject Navigatus' advice, but instead took a different approach, accepting the developer's assurance that it wasn't in fact asking for consent to breach the APS. The Commissioner reasoned that if construction couldn't be completed without an APS breach, the developer would need to return for further resource consents. The judge described this as a "side-step", by which the Commissioner set aside the question of the APS entirely.

On 30 January 2025, the Commissioner decided the application could go ahead on a non-notified basis, and a resource consent was issued on 17 February 2025. It was then challenged by PNA Ltd.

Three material errors

In siding with PNA Ltd, the judge found that at least three errors had contributed to the Commissioner's decision.

- **The developer hadn't in fact solved the REPA 10-person problem**

  The developer's proposed solution to the 10-person problem depended entirely on users being able to queue in the car park while waiting to enter the facility. But that solution collapsed once it emerged the car park was in fact inside the REPA.
  The developer argued this mistake wasn't fatal and that it would simply find another solution, but the judge rejected this. The Commissioner had carefully considered and approved a specific solution, and no alternative had been devised or disclosed. The judge found that this uncertainty about where a new "choke point" might be placed, and whether it would itself comply with the District Plan, was unacceptable in the context of a major development affecting aviation safety zones.

- **The Commissioner didn't consider whether construction of the building itself would breach the APS**

  The Commissioner didn't consider whether construction of the building itself would breach the APS boundary. She never considered whether construction of the building itself (as opposed to the stormwater trench) would penetrate it.

  Given the APS is less than two metres above current ground level across the site, the judge considered that a major construction project could not be completed without cranes, displaced earth, or scaffolding breaching that surface.

  The judge also noted that, as currently designed, the roof of the finished building might permanently protrude above the APS, a question the Commissioner never addressed because she incorrectly believed the building sat outside the APS entirely.

- **The development would conflict with FAA guidance**

  Finally, the Commissioner had been told incorrectly that the development would be acceptable under the relevant Advisory Circular of the US Federal Aviation Administration.

  It turned out the development would conflict with that FAA guidance both because the previous comparison to a parking structure wasn't analogous, and because a permanent trench would create an independent aviation hazard.

- **The judge's decision**

  The High Court decided it was impossible to dismiss any of the three errors as immaterial. Clearly, each one had influenced the Commissioner's reasoning, and the developer's "side-step" strategy was inadequate.

The developer on your doorstop:

The High Court Backs the airport in a landmark non-notification decision (continued)

The judge set aside both the notification decision of 30 January 2025 and the resource consent of 17 February 2025. The developer was ordered to pay PNA Ltd's costs.

What this means for airport operators

This decision carries several important practical lessons for airports facing development pressure near their boundaries.

- **Non-notification presents a high bar for developments near airports**

  When a proposed development is in or near an aviation safety zone, council decision makers face a significant hurdle before they can find that the development's effects would be "less than minor". They must be properly and accurately informed before they can proceed without notifying the relevant airport.

  If there's genuine doubt about the effects on aviation safety, councils should err on the side of notification.

- **Airports can be "affected persons" under the Resource Management Act**

  An airport operating near a proposed development is entitled to be notified if the development's adverse effects are "minor" or "more than minor".

- **The construction phase matters, not just the finished product**

  The focus of both notification decisions was substantially on the completed building. But the judge confirmed that the construction phase – including earthworks, cranes and displaced material – must also be assessed.

- **Don't accept non-notification without scrutiny**

  If you become aware of a consent being granted on a non-notified basis for development near your boundary, get legal advice promptly, because the window for bringing judicial review proceedings has strict limits.

If your airport is facing a resource consent application near your boundary, or a notification dispute or other RMA or litigation matter touching on aviation safety, the team at Ford Sumner is here to help. Get in touch with Sarah Churstain or Daniel Fraser for assistance.

About Ford Sumner Lawyers

Ford Sumner is a commercial law firm based in Wellington that services a national and international client base. We are passionate about working with airports. We have a wealth of experience across airport legal matters, including commercial contracts, property, construction, employment, dispute resolution and legislative compliance matters. Contact us if we can be of assistance to you and your airport.

Sarah Churstain, Partner

An expert corporate and commercial lawyer, Sarah leads Ford Sumner's Commercial Team. Acting for several regional airports, Sarah is an expert in the commercial contracts and regulatory issues that arise in the aviation sector. Sarah's experience includes the full spectrum of issues in the airport legal environment, from airline agreements to property development, including renewable energy projects.

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