

SUPREME COURT OF QUEENSLAND

CITATION: *Whitsunday Regional Council v Bairnsdale Air Charter Pty Ltd & Ors* [2026] QSC 141

PARTIES: **WHITSUNDAY REGIONAL COUNCIL**
(plaintiff)
v
BAIRNSDALE AIR CHARTER PTY LTD
(first defendant)
M R NOBLE & N R NOBLE (A PARTNERSHIP)
TRADING AS WHITSUNDAY AIR TOURS
(second defendant)
MARK ROGER NOBLE
(third defendant)

FILE NO/S: BS 3025/25

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 19 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 28 May 2026

JUDGE: Smith J

ORDERS: **THE ORDER OF THE COURT IS THAT:**

Application for an interlocutory injunction filed 14 July 2025 (the Injunction Application)

- 1. Order 1 of the order of the Court made 1 August 2025 (and varied by order 1 of the order of the Court made 5 August 2025) is vacated.**
- 2. Upon the plaintiff, by its counsel giving to the Court the usual undertaking as to damages, and until such further or other order of the Court, the defendants are each restrained from:**
 - (a) trespassing upon the plaintiff's land located at Lot 50 Lascelles Avenue, Gunyarra, in the State of Queensland (Land);**
 - (b) coming upon the Land, or causing their employees or agents to come upon the Land in connection with or in furtherance of the**

Business (as defined in the Statement of Claim) or any other commercial activity;

- (c) causing or permitting the Aircraft (as defined in the Statement of Claim), or any other aircraft in the possession or control of the defendants, to be used on or from the Land in connection with or in furtherance of the Business (as defined in the Statement of Claim) or any other commercial activity; and**
- (d) it is noted that these restraints do not restrain the Aircraft being landed at and taking off from the Airport for the sole purposes of:**
 - (i) refuelling the Aircraft;**
 - (ii) maintenance of the Aircraft; and**
 - (iii) an emergency which necessitates landing of the Aircraft at the Airport.**

Application regarding contempt filed 4 August 2025

- 3. Orders 3 through 5 of the Order made 5 August 2025 are vacated.**

Other

- 4. Liberty to apply on the giving of 3 days' notice to the other parties.**

THE COURT DIRECTS THAT:

- 5. The plaintiff is to file written submission on costs of the Injunction Application (not more than 10 pages in length) within 28 days of publication of the Court's reasons in respect of the Injunction Application.**
- 6. The defendants are to file written submission on costs of the Injunction Application (not more than 10 pages in length) within 42 days of publication of the Court's reasons in respect of the Injunction Application.**
- 7. The plaintiff is to file any written submissions in reply on costs of the Injunction Application (not more than 5 pages in length) within 56 days of publication of the Court's reasons in respect of the Injunction Application.**
- 8. Costs of the Injunction Application will be determined on the papers.**

CATCHWORDS: EQUITY – INTERLOCUTORY INJUNCTIONS – where it is alleged the defendants had a licence to operate a tourism flight business at the Whitsunday Airport – where the plaintiff owned the Airport – where the plaintiff granted a licence for the defendants’ business to operate from the airport – where the licence was terminated – whether the plaintiff is entitled to an interlocutory injunction restraining the defendants from operating aircraft at the airport – whether serious question to be tried – whether the balance of convenience favours the granting of the injunction

TORTS – TRESPASS – TRESPASS TO LAND AND RIGHTS OF REAL PROPERTY – where the plaintiff owned the land – whether the council had the right to refuse access to the defendants to use its land – whether rights attached to a licence issued by the Civil Aviation Safety Authority “trumped” the rights of a land holder

Civil Aviation Act 1988 (Cth)

Civil Aviation Regulations 1988 (Cth) r 93

Civil Aviation Safety Regulations 1998 (Cth) Part 139

Civil Proceedings Act 2011(Qld) s 9

Judicial Review Act 1991(Qld)

Local Government Act 2009 (Qld) s 9, s 262

AFC Holdings Pty Ltd v Shiprock Holdings Pty Ltd [2010] NSWSC 985, cited

Australian Broadcasting Commission v Australasian Performing Right Association Ltd [1973] HCA 36; (1973) 129 CLR 99, applied

Australian Broadcasting Corporation v O’Neill [2006] HCA 46; (2006) 227 CLR 57, applied

Beecham Group Ltd v Bristol Laboratories Pty Ltd [1968] HCA 1; (1968) 118 CLR 618, applied

Cowell v Rosehill Racecourse Co Ltd [1937] HCA 17; (1937) 56 CLR 605, applied

Direct Factory Outlets Pty Ltd v Westfield Management Ltd [2005] FCA 34; (2005) 144 FCR 23, considered

Electricity Generation Corporation (t/as Verge Energy) v Woodside Energy Ltd [2014] HCA 7; (2014) 251 CLR 640, applied

FAI Traders Insurance Co Ltd v ANZ McCaughan Securities Ltd (1990) 3 ACSR 279, cited

Lewis v Bell (1985) 1 NSWLR 731, cited

Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd [2015] HCA 37; (2015) 256 CLR 104, applied

Pilbara Iron Ore Pty Ltd v Ammon [2020] WASCA 92, cited

Plenty v Dillon [1991] HCA 5; (1991) 171 CLR 635, applied

Roy v O’Neill [2020] HCA 45; (2020) 272 CLR 291, cited

Sheridan v Australian Pacific Airports (Melbourne) Pty Ltd [2021] VSC 440, considered

Sheridan v Australian Pacific Airports (Melbourne) Pty Ltd [2022] VSCA 222; (2022) 407 ALR 565, considered
State of Queensland v Congo [2015] HCA 17; (2015) 256 CLR 239, applied
Western Australia v Ward [2002] HCA 28; (2002) 213 CLR 1, cited
Westfield Management Ltd v Brisbane Airport Corporation Ltd [2005] FCA 32, considered

COUNSEL: M Williams for the plaintiff
 J Ribbands for the defendants

SOLICITORS: McKays Solicitors for the plaintiff
 Maitland Lawyers for the defendants

INTRODUCTION

- [1] The plaintiff Council owns the Whitsunday Coast Airport. The defendants¹ operated a tourist sightseeing business at the airport. There was a licence agreement between the parties allowing the defendants to operate their business there. As a result of alleged safety breaches by the defendants and late payment of fees, the plaintiff terminated the licence. Despite the termination the defendants continued to operate an aircraft at the airport in the course of their business.
- [2] The plaintiff has brought an application for an order that the defendants be restrained from trespassing upon the plaintiff's land located at Lot 50, Lascelles Avenue Gunyarra, Queensland; or alternatively for an order restraining the defendants from:
- (a) Coming upon the land or causing their employees or agents to come on the land with or in furtherance of the business or other commercial activity.
 - (b) Causing or permitting aircraft or any other aircraft in the possession or in control of the second or third defendants to be used on or from the land in connection with furtherance of the business or any other commercial activity.

PLEADINGS

Statement of Claim

- [3] In the statement of claim the plaintiff claims damages for the tort of trespass, an account of profits and an injunction against the defendants.
- [4] It is alleged that the plaintiff at all material times was the registered proprietor of the land located at 50 Lascelles Avenue Gunyarra and was the operator of the airport. The airport is a certified aerodrome on the property known as the Whitsunday Coast Airport.
- [5] The first defendant was the holder of an Air Operator Certificate (AOC) issued by the Civil Aviation Safety Authority (CASA) in which it permitted the second

¹ I refer to them collectively for ease of reference.

defendant to use the airport in the conduct of its operations. The third defendant was a director of the first defendant and one of two partners comprising the second defendant. He was also the holder of a pilot's licence and the registered operator of an aircraft registered VH88N.

- [6] On or about 1 July 2024, the plaintiff and the second defendant executed a deed which granted the second defendant a licence to occupy part of the airport and conduct activities associated with providing scenic flights from the airport.
- [7] Under the deed, the licence terminated upon the earlier of:
- (a) The giving of 30 days' notice to the other party; and
 - (b) The expiry date which was said to be 30 June 2025.
- [8] On 16 April 2025, the plaintiff gave notice to the second defendant of the termination of the licence under clause 8.2 of the deed, effective 16 May 2025. Alternatively, the licence terminated on 30 June 2025.
- [9] After the termination, the second defendant was not entitled to exercise the rights under the licence. Despite this, on the occasions mentioned in the schedule to the statement of claim, the aircraft has been loaded with passengers, taken off from the airport, returned to the airport where it landed and disembarked its passengers. In those circumstances it has trespassed onto the land. The third defendant is aware of these matters and had knowledge of them. He directed or permitted the aircraft to operate. Therefore, the third defendant also committed the tort of trespass or aided or abetted or procured the trespass. Additionally, the first defendant permitted or facilitated the tortious conduct.

Defence

- [10] In its defence, the defendants say that upon a proper construction of the licence provided by the deed, this was a licence to use and occupy at the airport for conduct associated with the carrying on of charter operations. The carrying on of charter operations at the airport is not something over which the plaintiff has any power or authority to control and by reason of the certification of the airport and the licences issued to the defendant under the *Civil Aviation Safety Regulations 1998* (Cth) (**CASR**), the defendant has a right to use and occupy the airport.
- [11] It is admitted that the second defendant ceased to hold the licence on the land but that it continued to enjoy the rights conferred by the AOC and continued to operate charter flights but there is no trespass.

Reply

- [12] By way of reply the plaintiff says the CASR do not confer or purport to confer the alleged right to use and occupy. And even if they did, s 93 of the *Civil Aviation Regulations 1988* (Cth) (**CAR**) did not provide them the right to use the land.

BACKGROUND

- [13] The evidence reveals that the second defendant operates a business of providing scenic flights over the Whitsunday and Great Barrier Reef to members of the public

from the airport. It trades under the name ‘Whitsunday Air Tours.’ The first and third defendants are each involved in the conduct of the business. Until 16 May 2025, the second defendant conducted the business pursuant to a licence granted to it by the plaintiff under a deed executed by the parties on or about 1 July 2024. The licence was for a period of 12 months, thereby expiring on 20 June 2025, unless terminated earlier. On 16 April 2025, the plaintiff gave notice to the second defendant of termination of the licence effective 16 May 2025.

- [14] The first defendant is the holder of the AOC number CASA.AOC.0517 pursuant to which the second defendant conducts its operations. The third defendant is a director of the first defendant and one of two partners comprising the second defendant partnership and the registered operator of a Gippsland aircraft.
- [15] Notwithstanding the termination, the second defendant has continued to operate the business from the airport. The second defendant on the evidence has undertaken in excess of 230 scenic flights from the airport since the termination. On each occasion it has done so, it is alleged the second defendant has trespassed on the land.
- [16] There is no dispute that the first defendant knew of the alleged trespass, bearing in mind a letter of demand was sent on 6 June 2025 requiring each of the defendants to cease trespassing on the land. The third defendant also knows of the alleged trespass.

PROCEDURAL HISTORY

- [17] The matter came before Ryan J on 1 August 2025, when the plaintiff sought an interim injunction restraining the defendants from trespassing upon the land. Her Honour granted an injunction preventing this in the following terms:

“Upon the plaintiff by its counsel, giving to the court the usual undertaking as to damages, until hearing and determination of the application for an interlocutory injunction filed 14 July 2025, the second and third defendants are each restrained from trespassing upon the plaintiff’s land located at Lot 50 Lascelles Avenue Gunyarra in the state of Queensland.”

- [18] Following the making of that order, the defendants continued to come upon the land in connection with the operation of the business.
- [19] On 4 August 2025, the plaintiff filed an application seeking that the second and third defendants be dealt with for contempt for contravening the interim injunction. The contempt application was listed for an urgent hearing on 5 August 2025 but was adjourned.
- [20] Ultimately Ryan J made an amended order on 5 August 2025 in the following terms:

“Upon the plaintiff by its counsel giving to the court the usual undertaking as to damages, and until such further or other order of the court, it is ordered the defendants be restrained from:

- (a) Coming onto 50 Lascelles Avenue Gunyarra in the state of Queensland (“the land”) or causing their employees or agents to come onto the land in connection with or in furtherance of the business (as defined in the statement of claim or any other commercial activity);

- (b) Causing or permitting the aircraft (as defined in the statement of claim) or any other aircraft in the possession or control of the second or third defendants to be used on or from the land in connection with on in furtherance of the business (as defined in the statement of claim) or any other commercial activity.”

EVIDENCE

Mr Turner

- [21] Craig Turner, the Director of Commercial Business of the Whitsunday Regional Council, deposes to the fact that the plaintiff is the registered owner of the airport. The second defendant offers a business offering scenic charter flights over the Whitsunday Islands and Great Barrier Reef. The third defendant is the registered operator of the aircraft registered VH88N. The second defendant operates their commercial charter flights pursuant to AOC (CASA.AO.0517) issued by CASA in the name of the first defendant.
- [22] As owner of the airport, the plaintiff granted a non-exclusive licence to the second defendant on or about 1 July 2024 to occupy a specified part of the airport and conduct activities associated with providing scenic flights. The lease was a licence to occupy on payment of a fee. The permitted use in item 9 was described as “activities associated with providing scenic flights.” It provided for when the licence could be terminated.²
- [23] The termination letter dated 16 April 2025 is from the plaintiff to the third defendant. In that letter the following was noted:
1. The council was terminating the licence to operate.
 2. From the termination date, the third defendant could not conduct any commercial operations from the Whitsunday Coast Airport with all aircraft and equipment to be removed.
 3. Their tenure at the Whitsunday Coast Airport had been unsatisfactory as a structured payment plan was agreed on, however payments were late; employee behaviour was unsatisfactory and there were recent radio issues which caused significant concern to Qantas and Jetstar.
 4. It was noted that the Whitsunday Coast Airport prided itself on strong enforcement of safety and respect and it had tried working with the third defendant and their team, but the relationship was no longer of benefit to the Whitsunday Coast Airport.
- [24] On 13 May 2025, Whitsunday Air Tours responded noting:
1. Their conduct was not unsatisfactory.
 2. It acknowledged that payment delays did occur on occasions.

² There is no dispute the licence has been terminated or has expired.

3. Allegations relating to staff conduct were disappointing and any isolated incidents of non-compliance were not representative of their culture.
 4. The radio issues of March and April 2025 were investigated by their operational team and no finding of negligence was made.
- [25] On 14 May 2025, Mr Noble wrote to the Mayor of the Council expressing his disappointment as to the termination and noting that they would incur cancellation penalties from existing bookings with a current value of \$290,000.
- [26] On 14 May 2025, Mr Turner received a call from the owner of Sailing Whitsundays who told him that the third defendant had told him that he was not going to comply with the cancellation.
- [27] As of 16 May 2025, the second defendant has not had the benefit of any licence or right to occupy the specified part of the airport.
- [28] On 17 May 2025, Mr Turner was called by the Air Operations Manager Amy Humphries-Behan who advised him that she had received a call from the Air Reporting Officer advising the third defendant was airside and was unsure how he got the gate code to get in. A report in this regard was later filed. The report noted that Ms Humphries-Behan approached the third defendant and told him that his licence to operate scenic flights was terminated and that he was no longer able to conduct scenic flights from the airport. He listed a number of laws and regulations stating the council had no right to lock and restrict access to his aircraft.
- [29] Ms Humphries-Behan told him that council was not restricting access to his aircraft as a general aviation (**GA**) operator he and his pilot are able to refuel, complete safety checks and fly in and out of the airport. However, he does not have permission to conduct his commercial business from the airport. The third defendant claimed that there was no licence agreement termination valid for his operation. The third defendant said he was going to call the Australian Federal Police (**AFP**). Humphries-Behan called the Queensland Police (**QPS**) who noted this was outside of their knowledge field.
- [30] Ms Humphries-Behan explained the situation to the AFP agent, who agreed that the third defendant should not be operating commercially if there was no agreement in place for him to do so.
- [31] On 19 May 2025, there was a report that aircraft VH88N was inbound on the runway.
- [32] Mr Turner says that following the termination of the licence, the defendants have continued to occupy the specified part of the airport and conduct the business of operating scenic flights at the airport.
- [33] On 6 June 2025, Mr Turner instructed Mackay solicitors to send a cease-and-desist letter to the defendants. The letter dated 6 June 2025 noted that the third defendant was continuing to operate commercial aviation operations on a daily basis at the Whitsunday Coast Airport. This was evidenced on CCTV footage which captured between five to seven passengers being escorted to the aircraft in the GA area at various times each day. Mr Turner also refers to the CCTV footage which showed between five to seven passengers being escorted by the third defendant personally or

another person employed by the second defendant to the aircraft up to five or more separate occasions per day. The second defendant has continued to advertise online to the public that their scenic flights are available. Also, aircraft landing data has been downloaded.

- [34] The airport is a certified aerodrome under the CASR. As operator of the certified aerodrome, the plaintiff must comply with the requirements of Part 139 of the CASR. The plaintiff is obliged to provide GA activity access to the airport to any Australian registered aircraft capable of safely landing there, which is flown by a licenced pilot. Once an aircraft has landed at the airport in furtherance of GA activity, the plaintiff is also obliged to provide access to their aircraft for the purpose of safety inspections, refuelling and departure.
- [35] The plaintiff is not obliged to provide access for commercial aviation activity. In order to do this, an operator is required to hold a licence to engage in a relevant activity from the plaintiff. While a small amount of GA activity does take place at the airport, most of the aircraft movements relate to commercial airline operations. The airport is used by four commercial airline operators, namely Virgin, Jetstar, Qantas and Skytrans.
- [36] The airport has experienced rapid growth in passenger numbers in recent years. In order to stop the offending conduct by the first, second and third defendants the plaintiff has:
- (a) Implemented a new process of changing the gate code.
 - (b) Raised the matter with both the QPS and the AFP who have taken the view this a civil matter.
 - (c) Caused a cease-and-desist notice to be issued.
- [37] The second defendant has circumvented the gate code measure. The cost of employing a security guard would be prohibitive.
- [38] Mr Turner is of the opinion that unless restrained by an injunction, the defendants will continue to conduct the activity from the airport. Mr Turner also raises the fact that he has serious concerns regarding the health and safety of passengers and other users of the airport as a result of the defendants' conduct. Although the licence was terminated for convenience, there were numerous safety incidents involving the second defendant prior to the termination as follows:
- (a) On 17 March 2025 at 1.00pm there was an incident on the runway strip involving a near miss.
 - (b) On 23 March 2025 there was a near miss.
 - (c) On 14 April 2025 there was an inflight incident involving no radio communications with the aircraft.
- [39] A loss of radio communications with an aircraft is a very serious safety matter. Relevant reports are attached.

Ms Humphries-Behan

- [40] Ms Humphries-Behan in her affidavit dated 4 August 2025, says that CCTV footage shows the defendants operating the aircraft on 2, 3 and 4 August 2025. They were

operating charter flights with passengers. This was despite an interim injunction being granted by the court.

- [41] In an affidavit dated 7 May 2026, Ms Humphries-Behan further describes the airport and describes where the defendants conducted their activity. She also encloses a 2024/2025 report for the council.

Mr Noble

- [42] Mr Noble has provided an affidavit dated 1 August 2025. In his affidavit he says that as a publicly used aerodrome, the airport generally does not require prior permission for landing, loading or unloading passengers, provided operations comply with the applicable aviation regulations and publications. He says that he has had over 29 years' experience operating aircraft and 17 years managing flight operations throughout Australia. He manages a fleet of 53 aircraft.
- [43] After a post-COVID downturn in charter operations in Victoria, in December 2023 they identified Airlie Beach as a promising tourism market and notified airport authorities and council of their intention to commence operations. The council initially raised no objection. Subsequently, the council presented a licence to the occupier which he believed was unnecessary, but to maintain a cooperative business relationship he agreed to execute the licence.
- [44] In mid-2024, council advised of plans to construct a new facility and invited tenders. They declined to do this. Their operations expanded steadily, and no concerns were raised by council.
- [45] In May 2025, council purported to terminate the licence. They complied with the termination by removing signage and ceasing overnight aircraft parking but continued with their operations in accordance with the regulations and published aerodrome information. As a certified publicly used airport, Whitsunday Coast Airport does not require permission for GA operations. He says that all flights were conducted by Bairnsdale Air Charter under AOC CASA.AOC.0515. He says he received no response to his letter dated 14 May 2025.
- [46] He says that council's own personnel continue to provide gate codes to Bairnsdale Air Charter pilots upon request. He is of the view that the council's claim for trespass is without merit as they do not occupy a facility or have exclusive access. His operations simply use the gate for passenger transit. He disputes the council's allegation of safety incidents and regulatory breaches. He says the first defendant has an exemplary safety record.
- [47] He says that Whitsunday Air Tours generates annual revenue in the range of \$4 million a year, which reflects a strong demand for tourism experiences in the Whitsunday Region. The operations contribute to the local economy. He asks the court not to grant the injunction.
- [48] In a second affidavit dated 30 October 2025, Mr Noble swears that the first defendant continued to conduct aircraft charter flights in the ordinary course of its business pursuant to the AOC issued by CASA. He says that CASA can certify an aerodrome which meets the requirements of CASR Part 139. No prior permission is required for an aircraft to land and/or take off from Proserpine. The operational documents

published by CASA and Airservices Australia include an En Route Supplement Australia (**ERSA**). The Aeronautical Information Publication (**AIP**) procedures for Proserpine provide directions for general aircraft movements and operations.

- [49] The Whitsunday Coast Airport has published a “General Aviation and sports recreational activity procedure” for the aerodrome. Prior permission is not required for GA Aircraft operations. He is permitted under the AOC to conduct commercial operations and scenic flights at the aerodrome.

Ms Noble

- [50] Trinati Noble in her affidavit says that her main job is to take bookings from tourists who wish to travel with Whitsunday Air Tours. She confirms that her father has had 29 years’ experience operating aircraft and managing flight operations. The first defendant has never held a licence at the aerodrome. The aerodrome allows use through the AIP published by Airservices Australia. Bairnsdale Air Charter has been the licenced operator of the Aircraft since December 2023. Whitsunday Tours is an online booking agency only. Whitsunday Air Tours and the third defendant have not breached any direction given.

SUBMISSIONS

Plaintiff’s submissions

- [51] The plaintiff submits that in this case there is clearly a claim in trespass. There is compelling evidence that the second defendant has trespassed upon the land by continuing to operate the business from the airport. There is also compelling evidence the first defendant knew of this. The first defendant has permitted the second defendant to continue to use the AOC in connection with these operations despite being aware of the termination and the demand. There is also compelling evidence the third defendant has been knowingly involved in the second defendant’s trespass on the land. The third defendant is the registered operator of the aircraft used in the second defendant’s operations and has permitted the second defendant to continue to use the aircraft.
- [52] The defendant does not identify any source of any right or entitlement to come onto the land. The plaintiff submits that r 93 of the CAR is contrary to the defendants’ argument.
- [53] The court would be satisfied the plaintiff has a prima facie case against each of the defendants.
- [54] The balance of convenience favours the granting of an injunction. It is submitted that Mr Turner has deposed to the safety and security risks posed by the second defendant continuing to conduct the business in the airport. Also, the second defendant has not paid any licence fees since the termination. In the circumstances, bearing in mind there is a prima facie case, the balance of convenience favours the granting of an interlocutory injunction.

Defendants’ submissions

- [55] The defendants submit that the airport is a certified aerodrome which means it has met the standards required by CASA under Part 139 of the CASR. The defendants

submit that they hold an AOC pursuant to Part 3 Division 2 of the *Civil Aviation Act 1988* (Cth) (CAA). An AOC is an authorisation granted by CASA that permits the defendants to undertake charter flights and carry passengers for hire or reward.

- [56] By the plaintiff's statement of claim, it is alleged the plaintiff seeks to prohibit the defendants from trespassing upon the airport. The defendants agree the licence is at an end. It is submitted that where the result of the grant of an injunction is to put a party out of business or to cause that party significant loss or irrevocable damage, the harm may be so significant that it cannot be compensated by an undertaking as to damages and the balance of convenience would dictate the discharge of the interim injunction. The prohibition on commercial charter flights from the airport has seen that aspect of their business collapse.
- [57] It is submitted that a pilot is permitted to land his aircraft at any place he or she considers it is safe to land. Some aerodromes have instrument flight procedure which permits aircraft to navigate their way to landing in instrument flight conditions. Proserpine Airport has an instrument approach procedure and is certified. As a result, the airport is available for public use.
- [58] Also, an aerodrome operator must seek to have their aerodrome licence under Part 139 of CASR. The details of that aerodrome are then published in a guide for all pilots Australia wide the ERSA.
- [59] The defendants are GA operators and as such their operation is wholly within the purview of CASA.
- [60] It is submitted that a contract to land at and use the aerodrome is not required. There is nothing in the ERSA that says the Whitsunday Airport requires this as a prerequisite to landing. A system which required some operators to have a contract, and others not, would not be completely dysfunctional.
- [61] In order to operate under their AOC passengers must embark and disembark the aircraft.
- [62] Many clauses of the licence point to the conclusion that the licence was for something other than the undertaking of AOC Regulated Charter Operations. For example, the construction of a booth or kiosk.
- [63] It is submitted that the plaintiff's claim for trespass is erroneously founded on the proposition that the licence agreement meant the defendants were precluded from using the airport for AOC regulated flights. It is submitted the plaintiff's claim for trespass is unworkable and would see air navigation in the Whitsundays controlled by the plaintiff and not CASA.
- [64] The defendants submit that r 93 of CAR merely confirms property rights but this does not affect their argument as by seeking a licence for its airport the plaintiff has become part of the air navigation system overseen by CASA. Under the Chicago convention there is non-discriminatory access to public use airports. The licence was not a prerequisite for the use of the aerodrome conducting charter flights.

- [65] There is no serious question to be tried, but more fundamentally the closure of the defendant's business heavily weighs in assessing the balance of convenience. This is in favour of the defendant. The interim injunction should be dissolved.

DISCUSSION

- [66] Section 9(1) of the *Civil Proceedings Act 2011 (Qld) (CPA)* empowers the court to, at any stage of proceeding, restrain a threatened or apprehended breach of contract or other wrongful conduct, by injunction.

- [67] Section 9(3) of the CPA empowers the court to grant such an injunction at any stage of the proceeding if it considers it to be "just or convenient."

- [68] In *Australian Broadcasting Corporation v O'Neill*³ it was noted that the principles relevant to the granting of an interlocutory injunction are:

1. Whether the plaintiff has made out a prima facie case, that is, is there a probability that at the trial of the action the plaintiff will be entitled to relief.
2. Whether the inconvenience or injury which the plaintiff would be likely to suffer if an injunction were refused, outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted.

- [69] With respect to the prima facie case issue, the test is whether there is a probability that at trial the plaintiff will be entitled to the relief sought.⁴ With respect to the balance of convenience, this involves an assessment of the inconvenience or injury to the plaintiff as compared to that of the defendant.

Serious question to be tried

- [70] This involves a consideration of the validity of the action for trespass.

- [71] There is a dispute between the parties on whether the AOC confers an absolute right on a pilot, to land and use an aerodrome. The plaintiff submits there is no such right conferred under the CAR, CASR or the ERSA. It is submitted that the ERSA contains reference to a number of certified aerodromes across Australia which require permission to land and/or payment of a fee. This highlights the power of a landowner to prevent a pilot using an aerodrome.

- [72] The defendant on the other hand submits that the holding of an AOC provides a right to land at an aerodrome. There is some evidential support for the defendant's contention.

- [73] First, Mr Turner in his affidavit stated:

"The plaintiff is obliged by industry practice to provide general aviation activity access to the airport to any Australian registered aircraft capable of being safely landed at the airport, which is being flown by a licenced pilot, subject only to the airports operational requirements. Once an aircraft has landed at the airport

³ [2006] HCA 46; (2006) 227 CLR 227 at [65].

⁴ *Beecham Group Ltd v Bristol Laboratories Pty Ltd* [1968] HCA 1; (1968) 118 CLR 618 at p 622.

in furtherance of general aviation activity, the plaintiff is also obliged to provide access to the relevant pilot to their aircraft for the purposes of safety inspections, refuelling and, ultimately departure from the airport.”⁵

[74] Mr Turner further said:

“The plaintiff is not obliged to provide access to the airport for commercial aviation activity. In order to conduct commercial aviation activity from the airport an operator is required to hold a licence to engage in the relevant activity from the plaintiff.”⁶

[75] Second, on 17 May 2025, Ms Humphries-Behan told Mr Noble that “we are not restricting the access to his aircraft as a GA operator, he/his pilot is able to refuel, complete safety checks and fly in and out of the Whitsunday Coast Airport, however he does not have the permissions to conduct his commercial business from WCA.”

[76] Although Mr Turner’s evidence is disavowed by the plaintiff and may be proved wrong at trial, at this point, the evidence of Mr Turner is admissible as evidence of custom and usage.⁷

[77] Although it may be accepted that the defendants⁸ hold an AOC pursuant to Part 3 Division 3 of the CAA and this AOC authorises the defendants to undertake charter flights and carry passengers for hire or reward, there is clearly a distinction to be made between the operation of commercial business at the airport and the operation of the aircraft as a pilot.

[78] There is also a distinction to be made concerning rights of occupation and use as compared to rights under an AOC. Regulation 93 of CAR acknowledges this. It provides:

“93 Protection of certain rights

Nothing in these Regulations shall be construed as conferring on any aircraft, as against the owner of any land or any person interested therein, the right to alight on that land, or as prejudicing the rights or remedies of any person in respect of any injury to persons or property caused by the aircraft.”

[79] In my opinion, this section preserves the rights of a property owner in priority to any rights associated with the AOC under the CAA, CAR or the CASR.

[80] Three authorities have examined the rights of holders of interest in land in connection with airport facilities previously albeit in a different context.

[81] In *Westfield Management Ltd v Brisbane Airport Corporation Ltd*,⁹ the Federal Court was concerned with a situation in which the applicants had interests in large retail shopping centres located near Brisbane Airport. The application sought declaratory

⁵ Affidavit of Mr Turner 17 July 2025 [49].

⁶ Affidavit of Mr Turner 17 July 2025 [50].

⁷ See *FAI Traders Insurance Co Ltd v ANZ McCaughan Securities Ltd* (1990) 3 ACSR 279 at pp 305-306.

⁸ Again, collectively for ease of reference.

⁹ [2005] FCA 32.

relief against the airport and the Minister because the airport proposed to develop a commercial site at the airport. It was alleged that this site was illegal because the draft master plan was of no force and effect because the site was not related to or incidental to the operation and development of the Brisbane Airport as an airport. Although the case involved a Federal Airport, the court had noted that the Commonwealth was granted a power to grant an airport lease.

- [82] It was held at [47] that at common law, a tenant, in the absence of a contrary covenant may use a demised premises for any lawful purpose. Subject to the covenants contained in the lease, the Brisbane Airport Corporation (**BAC**) had a common law right under its lease and there was nothing in the legislation to operate to deny BAC the enjoyment of its common law rights as lessee of the Brisbane Airport.
- [83] Similar statements were made in *Direct Factory Outlets Pty Ltd v Westfield Management Ltd*.¹⁰
- [84] In *Sheridan v Australian Pacific Airports (Melbourne) Pty Ltd*,¹¹ the Victorian Supreme Court was concerned with a situation where an airport introduced a scheme which restricted access to taxi drivers. The plaintiff argued the scheme was unlawful and his rights as the holder of a taxi licence enabled him to pick up and drop off passengers without restriction. Mr Sheridan lost. The defendant had a legal right to possession to the land and the right to exclude. It also had the right to impose conditions on access to the land.¹²
- [85] In this case, there is no provision of the CAA, CAR or CASR which restricts the relevant common law rights of the plaintiff as the owner of land in fee simple. The CAA provides by s 27 that CASA may issue an AOC, but there is nothing in the CAA or CASR interfering with the common law rights of the owner of an airport to control who may occupy part of the airport or the right of the council to impose restrictions on the operation of a business at the airport. The plaintiff has wide powers under s 9 of the *Local Government Act 2009* (Qld) (**LGA**) for the good rule and local government of its local government area. Under s 262 of the LGA it may also own property.
- [86] As an owner of land, the council is entitled to allow persons to come onto the land, to refuse permission for entry and impose conditions on entry. As the High Court put it in *State of Queensland v Congoo*,¹³ the holder of an estate in fee simple may use land as they see fit and may exclude anyone access to the land.
- [87] It is to be accepted that every invasion of private property (without licence) constitutes a trespass.¹⁴ A person who enters the property must justify the entry by showing that he or she entered with consent or had lawful authority to enter.¹⁵

¹⁰ [2005] FCA 34; (2005) 144 FCR 23 at [47]-[48].

¹¹ [2021] VSC 440 at [26]. On appeal [2022] VSCA 222; (2022) 407 ALR 565 at [59], [61].

¹² See also *Western Australia v Ward* [2002] HCA 28; (2002) 213 CLR 1 at [488] and [501]-[504]; *Lewis v Bell* (1985) 1 NSWLR 731 at p 734.

¹³ [2015] HCA 17; (2015) 256 CLR 239 at [131].

¹⁴ *Plenty v Dillon* [1991] HCA 5; (1991) 171 CLR 635 at p 639.

¹⁵ *Plenty v Dillon* [1991] HCA 5; (1991) 171 CLR 635 at p 647.

[88] A licence to enter land may be withdrawn by the owner as it is revocable.¹⁶ Dixon J said in *Cowell v Rosehill Racecourse Co Ltd*:¹⁷

“A licence which is not coupled with or granted in aid of an interest is revocable at law. It operates as a bare permission to do what would otherwise be an invasion of the licensor’s rights. If the permission is terminated, further continuance of the acts it authorised becomes wrongful. A licensee does not become a trespasser until he has received notice that the licence is countermanded and until a reasonable time has elapsed in which he may withdraw from the land and remove whatever property he has brought in pursuance of the licence. But, if he then refuses to leave the premises, he cannot complain of his forceable removal.”

[89] In this particular case, the defendants were given clear notice of the termination of the licence agreement and given a cease-and-desist letter. Their entry onto the airport and the use of the aircraft to conduct commercial operations on the evidence constitutes a trespass.

[90] The case is less clear regarding the use of the airport simply as a pilot. The defendant may have a case that in the industry a pilot is entitled to land and refuel and conduct safety checks. In other words, there may be an implied licence.¹⁸ This remains to be seen at trial. In the circumstances, I am not persuaded to grant an injunction to absolutely prevent the defendants at all from operating an aircraft at the airport at this point.

[91] An issue arose as to whether the licence agreement merely applied to the occupation of the building at the airport rather than commercial flying operations.

[92] The meaning of an agreement is to be determined objectively by examining the text, context and purpose of the agreement.¹⁹ The agreement has the meaning that a reasonable businessperson in the position of the parties would have understood the terms to mean.²⁰

[93] Where a term used in an agreement is undefined and does not have a technical meaning it is to be given its ordinary meaning.²¹ The words of an agreement should be interpreted in a way that gives them an effect rather than in a way that makes them redundant.²²

[94] The court endeavours to discover the intention of the parties from the words of the contract. The whole of the contract needs to be considered as one clause may inform the meaning of the another and all clauses must if possible be construed harmoniously.²³

¹⁶ *Plenty v Dillon* [1991] HCA 5; (1991) 171 CLR 635.

¹⁷ [1937] HCA 17; (1937) 56 CLR 605 at p 630.

¹⁸ *Roy v O’Neill* [2020] HCA 45; (2020) 272 CLR 291 at [66]-[67].

¹⁹ *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* [2015] HCA 37; (2015) 256 CLR 104 at [46].

²⁰ *Electricity Generation Corporation (t/as Verge Energy) v Woodside Energy Ltd* [2014] HCA 7; (2014) 251 CLR 640 at [35].

²¹ *Pilbara Iron Ore Pty Ltd v Ammon* [2020] WASCA 92 at [101].

²² *AFC Holdings Pty Ltd v Shiprock Holdings Pty Ltd* [2010] NSWSC 985 at [13].

²³ *Australian Broadcasting Commission v Australasian Performing Right Association Ltd* [1973] HCA 36; (1973) 129 CLR 99 at p 109.

- [95] I prefer the plaintiff's construction of the licence. The following aspects are instructive:
- (a) The recital noted the licensee was seeing an area to "operate their business."
 - (b) The land was defined as the Whitsunday Airport.
 - (c) The licensee was to only use the licensed area for the "permitted use."
 - (d) The permitted use was "activities associated with providing scenic flights."
- [96] I consider the licence is broad enough to include the use of aircraft at the airport for the conduct of the business. But regardless, consent has been withdrawn from allowing the defendants to conduct commercial operations at the airport.
- [97] In those circumstances on the evidence available, there is a prima facie case that the plaintiff will be successful at trial in establishing that the defendants have trespassed upon the land to conduct an unauthorised business operation.

Balance of convenience

- [98] I next turn to the balance of convenience.
- [99] On the evidence it may be there is no restriction on the defendants operating an aircraft by landing or taking off at the airport or refuelling there. However, the issue is whether they should be restrained from operating a charter flight/sightseeing tourism business.
- [100] On the evidence, Mr Noble seems to operate a number of aircraft around Australia which presumably generate an income. There is no specific accounting evidence as to what loss may be caused by the granting of an interlocutory injunction aside from general allegations from Mr Noble.
- [101] It may readily be determined that the council has the financial capacity to meet the undertaking as to damages if it is ultimately unsuccessful.
- [102] The fact is there has been an interim injunction in place since August 2025. There is no evidence put forward by the defendants as to adverse impact on their business since that time, although it can be assumed there would have been some. At first blush, the issue of delay might be seen to work both ways, but I accept the plaintiff's submissions that the delay in this case has largely been caused by the defendants. The letter attached to Ms Hage's affidavit affirmed 21 May 2026²⁴ sets out the history of the matter.
- [103] The matter was before the court on 5 August 2025 and the defendants foreshadowed to the court it was their intention to join further parties. As a result of this, the court declined to make any orders programming the relisting of the application.
- [104] On 21 August 2025, the plaintiff's solicitors wrote to the defendants' lawyers noting that the defendants foreshadowed an application to join parties and enclosed a draft order setting various dates for the progression of the matter. There was no response to this. On 3 September 2025, 9 September 2025, 24 September 2025, 25 September

²⁴ Affidavit of Ms Hage sworn 22 May 2026 at p 98.

2025, and 29 September 2025, the plaintiff's lawyers wrote to the defendants' lawyers as to the relisting of the matter as a matter of priority.

- [105] On 30 September 2025, there was a reply from the defendants' solicitors, but they did not engage at all concerning the draft order and claimed they wanted the matter back on as soon as possible.
- [106] On 7 October 2025, the plaintiff's lawyers wrote to the defendants' lawyers asking if they were content to liaise as to suitable dates for relisting the application and reminding them of the draft orders seeking their urgent reply.
- [107] On 10 October 2025, the plaintiff's lawyers wrote, noting that despite the passage of more than four months, there was no response by the defendants concerning the draft document plan.
- [108] On 18 February 2025, the defendants claimed that the matter had been "inactive and dormant for months" and it had been "stalled pending further action by the plaintiff."
- [109] On 23 February 2026, the plaintiff's lawyers wrote rejecting the propositions made in the last letter noting that, "the matter has not stalled through any inaction by our client; to the contrary it is your client's consistent failure to engage with matters necessarily antecedent to the application being relisted which has resulted in the application not being relisted, to date." On my assessment the delay is largely attributable to the defendants.
- [110] I might say it is also of concern that the evidence tends to reveal that one of the defendants operated the aircraft in breach of the injunction granted by Ryan J in August 2025. Mr Noble also said he was not going to comply with any termination.
- [111] This gives rise to a real concern that continued trespasses by the defendants will occur.
- [112] The defendants submit that the termination of the licence agreement and the withdrawal of permission to use the airport is unreasonable. The defendant has not brought a case under the *Judicial Review Act 1991* (Qld). Lack of reasonableness would provide no defence to an action in trespass, absent a statutory provision or contractual provision to the contrary. Also, unreasonableness is not pleaded. The defendants say the issue of unreasonableness is relevant to the discretion to grant an injunction.
- [113] I do not accept these submissions. On the evidence there appears to have been three serious safety incidents as follows:
- (a) The near miss on 17 March 2025.
 - (b) The near miss on 23 March 2025.
 - (c) The inflight incident involving no radio communications on 14 April 2025.
- [114] Whilst CASA has taken no action, I accept the plaintiff's contention that a loss of radio communications with an aircraft at this aerodrome is a very serious safety matter because this is a "uncontrolled aerodrome" without air traffic control and where pilots in incoming and departing aircraft rely solely on radio communications to maintain

safe distances. It is understandable that council is concerned about significant risks posed to the security at the airport and the safety of passengers and other users of the airport.

- [115] In the circumstances balancing all matters, I am of the view that the balance of convenience favours the plaintiff in this case, particularly when one considers the alleged safety breaches and the fact that major airlines operate from the airport.

ORDERS

Application for an interlocutory injunction filed 14 July 2025 (the Injunction Application)

1. Order 1 of the order of the Court made 1 August 2025 (and varied by order 1 of the order of the Court made 5 August 2025) is vacated.
2. Upon the plaintiff, by its counsel giving to the Court the usual undertaking as to damages, and until such further or other order of the Court, the defendants are each restrained from:
 - (a) trespassing upon the plaintiff's land located at Lot 50 Lascelles Avenue, Gunyarra, in the State of Queensland (Land);
 - (b) coming upon the Land, or causing their employees or agents to come upon the Land in connection with or in furtherance of the Business (as defined in the Statement of Claim) or any other commercial activity;
 - (c) causing or permitting the Aircraft (as defined in the Statement of Claim), or any other aircraft in the possession or control of the defendants, to be used on or from the Land in connection with or in furtherance of the Business (as defined in the Statement of Claim) or any other commercial activity; and
 - (d) it is noted that these restraints do not restrain the Aircraft being landed at and taking off from the Airport for the sole purposes of:
 - (i) refuelling the Aircraft;
 - (ii) maintenance of the Aircraft; and
 - (iii) an emergency which necessitates landing of the Aircraft at the Airport.

Application regarding contempt filed 4 August 2025

3. Orders 3 through 5 of the Order made 5 August 2025 are vacated.

Other

4. Liberty to apply on the giving of 3 days' notice to the other parties.

THE COURT DIRECTS THAT:

5. The plaintiff is to file written submission on costs of the Injunction Application (not more than 10 pages in length) within 28 days of publication of the Court's reasons in respect of the Injunction Application.

6. The defendants are to file written submission on costs of the Injunction Application (not more than 10 pages in length) within 42 days of publication of the Court's reasons in respect of the Injunction Application.
7. The plaintiff is to file any written submissions in reply on costs of the Injunction Application (not more than 5 pages in length) within 56 days of publication of the Court's reasons in respect of the Injunction Application.