

IN THE MATTER OF

**The Resource Management
Act 1991**

AND

IN THE MATTER OF

**Of applications by Transpower
New Zealand Limited for
resource consents and notices
of requirements for the Upper
North Island Grid Upgrade
between Whakamaru and
South Auckland**

Further Memorandum of Counsel on behalf of Robert McQueen

Dated 15 February 2008

**ELLIS GOULD
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AUCKLAND**

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REF: J T CAUNTER

**COUNSEL:
P T CAVANAGH QC
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**Shortland Chambers
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May it please the Board:**Introduction**

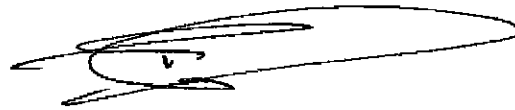
1. On Friday 8 February 2008 counsel filed with the Board of Enquiry a memorandum seeking an adjournment of the Board of Inquiry hearings.
2. Paragraph 13 of that memorandum referred to the Waiheke Island Airfields Limited case and the application that was made in that instance for those proceedings to be adjourned pending a decision under the Reserves Act 1977.
3. Mr Cavanagh QC acted for Waiheke Island Airfields Limited in that case but at the time of filing the 8 February 2008 memorandum, did not have his file available. Since then, counsel have had access to the Environment Court file and have obtained from that file various documents relevant to the matters canvassed in the application for adjournment, as follows:
 - (a) A memorandum signed by Mr Cavanagh for a judicial conference before Judge Sheppard (undated). Paragraphs 3 and 4 of that memorandum refer to an application to be made by Counsel for the Royal Forest and Bird Protection Society suggesting that the appeals not be dealt with until the Minister of Conservation had exercised his discretion under the Reserves Act 1977;
 - (b) A Minute of the judicial conference held with the Court on 31 October 1997, which refers in paragraph 1 to Mr Savage, counsel for the Royal Forest and Bird Protection Society, informing the Court that consent of a Minister of the Crown would be required to the proposed exchange of land in terms of the Reserves Act 1977. The Minute notes:

“After hearing submissions from counsel for the parties, Judge Sheppard announced that in order to preserve the independence of the Court from the Executive, and avoid a decision from the Executive frustrating implementation of a decision of the Court, and in accordance with the practice of the Planning Tribunal over many years, the Court would not

hear these appeals until after the decision of the Minister in terms of the Reserves Act has been given."

- (c) A letter dated 8 September 1998 from the Environment Court to Mr Cavanagh QC asking him to report on the current status of the Reserves Act procedures.
 - (d) A letter dated 28 June 2001 from the Auckland Regional Council to the Environment Court recording that the proceedings were originally adjourned by the Court pending a decision under the Reserves Act 1977 and that the Auckland Regional Council had resolved at a recent meeting that the land exchange should not proceed.
4. It is submitted, with respect, that the same principle applies. While the Transpower hearings do not involve a decision of the Executive, the Electricity Commission is a Crown Entity. Transpower is not able to proceed with its transmission line upgrade without the Electricity Commission's approval. It would not be helpful to any party for the Board of Inquiry to proceed with its hearings when the judicial review proceedings have not been heard and determined by the High Court. The outcome of those proceedings could frustrate, or in this case completely override, a decision of the Board.
5. We request that this memorandum and the attachments to it be lodged on the Board of Inquiry site and be brought to the attention of submitters and Transpower New Zealand Limited, so that all parties have the opportunity to respond fully to these matters in accordance with the Board's directions of 11 February 2008.

Dated at Auckland 15 February 2008



PT Cavanagh QC/ JT Caunter
Counsel for New Era Energy
Incorporated

THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER of appeals in terms of s120 of the Act

RMA514/97

BETWEEN GULF DISTRICT PLAN ASSOCIATION
INCORPORATED

Appellant

AND AUCKLAND CITY COUNCIL

Respondent

AND WAIHEKE ISLAND AIRFIELDS LTD

Applicant

RMA /97

BETWEEN THE HAURAKI ISLANDS BRANCH OF THE
ROYAL FOREST & BIRD PROTECTION
SOCIETY OF NZ INCORPORATED

Appellant

AND AUCKLAND CITY COUNCIL

Respondent

AND WAIHEKE ISLAND AIRFIELDS LTD

Applicant

MEMORANDUM OF COUNSEL FOR THE APPLICANT
FOR A JUDICIAL CONFERENCE BEFORE JUDGE
DFG SHEPPARD

This memorandum seeks to address issues raised by both appeals.

- 1 Counsel for the applicant will be P T Cavanagh QC.
- 2 Unless the scope of both appeals is limited following an agreement to do so achieved as a result of this conference, the applicant proposes to call the following evidence to support its case:
 - a) Denis Brian Musson. Mr Musson is Chairman of Directors of Waiheke Island Airfields Ltd. In his evidence, he will address the history of the airfield development and the reasons why the company wishes to pursue a realignment of the runway.
 - b) Ronald James Stevenson. Mr Stevenson is a Registered Architect and qualified town planner. He was responsible for the overall design of the development; he prepared the original application to the Auckland City Council for resource consent. His evidence therefore addresses the applications in some detail. He describes what has been proposed and addresses the various elements involved in the total development of the whole property. In that regard it is important to recognise that the airfield is but part of a comprehensive development of a large property. The rural residential lifestyle blocks involve covenanting of significant areas of native vegetation. It is submitted that this should be weighed and considered when addressing the relatively minor vegetation clearance involved in establishing the new runway alignment.

The effect of the residential development of a large part of the block will be to secure an enhancement of the natural vegetation

growing there and create an attractive backdrop to the northern face of Whakanewha Regional Park.

- c) Charles Bernard Lewis. Mr Lewis is a highly qualified Aviation Consultant who has a lengthy background in the administration of civil aviation in this country. His brief was to evaluate the implications of altering the runway heading at Reeves Airfield by providing a sealed, lengthened and level runway. He also in his evidence, will refute the submission of George Richardson. He describes the characteristics of the present airstrip, of the new runway and the advantages that will accrue from the new runway.
- d) Nevil Hegley. Mr Hegley will be well known to the Commissioners. He is a well qualified and experienced Acoustical Engineer. In his evidence he will demonstrate the significant improvement that will occur within the acoustic environment enjoyed by residents in the area surrounding the airfield once aircraft are able to operate from the realigned runway.
- e) Dr Gordon Maxwell. Dr Maxwell is a very well qualified Ecologist who will address impacts on the vegetation arising from construction of the realigned runway and the relative values in the areas where vegetation is to be removed and within the wetland.
- f) Mr Jason Hogan. Mr Hogan is a Landscape Architect who will provide evidence as to mitigation of the effects arising from vegetation clearance and landscape effects.
- g) Mr Brian Handysides. Mr Handysides is a Consultant in erosion

and sediment control and addresses those issues in relation to the consents sought from the Auckland Regional Council.

- h) Mr Peter Lee. Mr Lee will give evidence regarding the background to the acquisition of the Whakanewha Regional Park relevant to the issue of whether or not an incursion into the Park by the proposed realigned runway should be permitted.
- i) Brian Putt. Mr Putt is a Resource Consultant who addresses relevant resource management issues involved in the assessment of these various applications.

All these witnesses gave this evidence at the hearings held before Commissioners appointed by the consent authority.

- 3 It is understood that counsel for Forest & Bird will be seeking to suggest that these appeals should not be dealt with until the Minister has exercised his discretion under the Reserves Act 1977 to permit the uplifting of the reserve designation over portion of the Whakanewha Regional Park to permit the airfield to be extended in the manner contemplated by the application.

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- 4 It is submitted in opposition to that proposition that the Minister will be aided by a determination of this Court as a specialist body on relevant issues before he is required to exercise that discretionary judgment. Any attempt to delay a hearing of the appeals on that ground is therefore opposed.

- 5 The appeals are against decisions:

- a) By Auckland City Council granting a resource consent authorising:
 - i) earthworks associated with the runway realignment and road (Rule 6C1.3.6), and
 - ii) the removal of 1.7 hectares of indigenous vegetation as a discretionary activity (Rule 6C1.3.3).
 - b) The Auckland Regional Council granted a land use consent; in relation to sediment control associated with the construction of the realigned runway and roadworks.
- 6 The proposal to be considered by the Court when these appeals are addressed involves the construction of a sealed runway extension from the southern end of the existing airstrip occupied by Waiheke Island Airfields Ltd which has access off Gordons Road. The realigned runway will extend 760 metres in a southeasterly direction over an area of pasture and poor indigenous vegetation into the Whakanewha Regional Park. To establish the realigned runway, there needs to be extensive areas of cut and fill so that a level runway surface can be achieved.
- 7 The construction of the new runway necessitates the removal of a large Totara tree and a number of Taraire trees, together with approximately 1 hectare of regenerating scrubland.
- 8 The applicant proposes to vest in the Auckland Regional Council a

significant wetland area for inclusion in the Regional Park in compensation for the area to be removed from the Park to accommodate the runway extension.

- 9 The appeal of Gulf Plan Association is widely drawn and would require the applicant to address the need for the runway extension and the effects arising from aircraft movements utilising that runway if permitted, landscape and ecological issues.
- 10 It is submitted that the grounds for appeal specified in the appeal of Forest & Bird, similarly are broad in their compass, so that the applicant, to meet them, would need to present a full case.
- 11 It is submitted that both appeals raise similar issues and they could therefore conveniently be heard together.
- 12 The applicant does not perceive a need to summons any witness.
- 13 The applicant would require reasonable display board space to appropriately present to the Court aerial photographs, plans and other material. It is not anticipated that there would be any need however to ~~prepare an agreed file of documents or to attempt at the outset to~~ identify intended exhibits.
- 14 This is not a case where there needs to be unusual arrangements made for the distribution of evidence. The applicant presented a full case to the consent authorities. That case is unlikely to be varied in any significant way.

- 15 If a full case is required and witnesses are to be extensively cross-examined, it is anticipated that the applicant's case alone could take five days to determine.
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IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of two appeals under section 120 of the
Act

BETWEEN

GULF DISTRICT PLAN
ASSOCIATION INCORPORATED

(RMA 514/97)

THE HAURAKI ISLANDS BRANCH
OF THE ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED

(RMA 515/97)

Appellants

AND

THE AUCKLAND CITY COUNCIL

Respondent

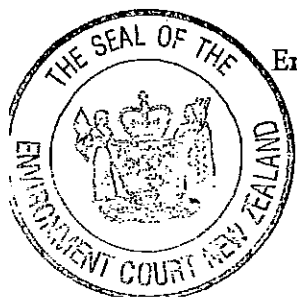
AND

WAIHEKE ISLAND AIRFIELDS
LIMITED

Applicant

BEFORE THE ENVIRONMENT COURT

Environment Judge DFG Sheppard



MINUTES OF JUDICIAL CONFERENCE
HELD AT AUCKLAND ON 31 OCTOBER 1997

PRESENT

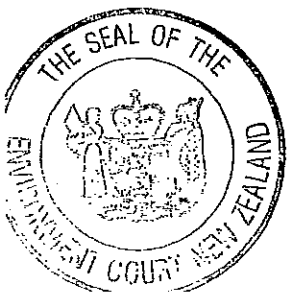
Mr P T Cavanagh QC for the applicant

Ms H Ash for the Auckland City Council, respondent

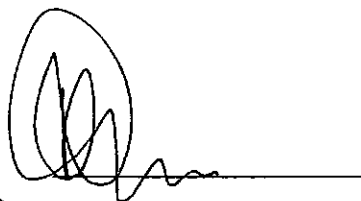
Mr J M Savage for the Royal Forest and Bird Protection Society

Ms Parker for Gulf District Plan Association Incorporated

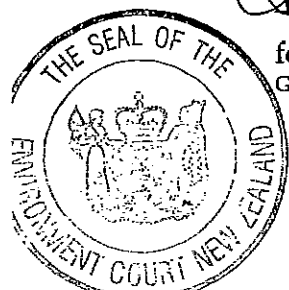
1. Mr Savage informed the Court that consent of a Minister of the Crown would be required to the proposed exchange of land in terms of the Reserves Act. After hearing submissions from counsel for the parties, Judge Sheppard announced that in order to preserve the independence of the Court from the Executive, and avoid a decision from the Executive frustrating implementation of a decision of the Court, and in accordance with the practice of the Planning Tribunal over many years, the Court would not hear these appeals until after the decision of the Minister in terms of the Reserves Act has been given.
2. Mr Cavanagh presented detailed submissions listing the 9 witnesses to be called on behalf of the applicant and indicating that unless the grounds of appeal are narrowed, it is estimated that the applicant's case alone could take 5 days.
3. Ms Ash announced that the City Council would be calling 1 witness, Mr Owen Burn; and might also call a landscape architect.
4. Mr Savage announced that the Forest and Bird Society wishes to focus on ecological issues, erosion and visual effects. It will not pursue the question of noise effects.



5. The Forest and Bird Society is directed to advise the Registrar and the other parties by 28 November 1997 of the names of all witnesses to be called on its behalf and the subject matter of the evidence to be given by each.
6. Ms Parker announced that the Gulf District Plan Association would not seek to duplicate evidence called on behalf of the Forest and Bird Society. Ms Parker also indicated that the Gulf District Plan Association did not wish to abandon any of the grounds of appeal pleaded in its notice of appeal. Ms Parker accepted that if the appeal is prosecuted on a broader front than is ultimately found justified, that could influence the question of costs. She also announced that the appellant is incorporated under the Incorporated Societies Act.
7. The appellant Gulf District Plan Association is directed to advise the Registrar and other parties by 28 November 1997 of the names of all witnesses to be called on its behalf, and the subject matter of the evidence that be given by each. In total there are to be 14 witnesses for that appellant.
8. At the request of Gulf District Plan Association, the applicant agreed to provide records about the number of movements on the existing airfield.
9. All parties agreed that both appeals should be heard together and that the hearing is likely to require 2 weeks.
10. The applicant is to advise the Court when the Reserves Act procedures have been completed and it may then request a fixture. In the meantime these appeals are not to be set down for hearing without further order.



for Registrar
Gulfdc.doc



In reply, please quote:
RMA 505, 514 & 515/97

8 September 1998

Mr P Cavanaugh QC
Barrister
P O Box 4338
AUCKLAND

Dear Mr Cavanaugh

**ROYAL FOREST & BIRD PROTECTION SOCIETY INC. -v- AUCKLAND
REGIONAL COUNCIL (505/97)**
**GULF DISTRICT PLAN ASSOCIATION -v- AUCKLAND CITY COUNCIL
(514/97)**
**ROYAL FOREST & BIRD PROTECTION SOCIETY INC. -v- AUCKLAND
CITY COUNCIL (515/97)**
APPLICANT: WAIHEKE AIRFIELDS LTD.

I refer to the above appeals.

At a judicial conference held on 31 October 1997, the presiding Environment Judge directed that these matters, or more correctly the appeals against the Auckland City Council decisions (the Regional Council matter was later included), should not be set down for hearing until the Court had been advised that the Reserves Act procedures had been completed. To date the Court has not been so advised.

Would you please advise as to the current status of this matter, in particular whether the Reserves Act procedures are still to be completed or, if they have been completed, whether hearing time is now required.

You will no doubt be aware that the Courts' calendar is extremely full for the remainder of this year, so it is likely that hearing time would not be available until well into 1999. However, if these matters were known to be ready to proceed, then, should some hearing time become available, it would be considered.

Thank you for your assistance.

Yours faithfully

Andrew Schulte
Administration Officer
ENVIRONMENT COURT



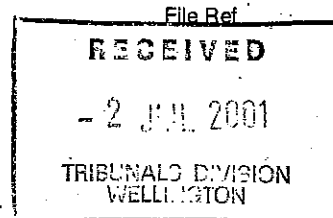
Auckland **Regional** Council

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28 June 2001

Mrs K Aspinall
Environment Court
P O Box 5027
WELLINGTON



Dear Ms Aspinall

Re: Royal Forest and Bird Protection Society Inc v ARC (RMA 505/97, 514/97 and 15/97)

Thank you for your letter of 25 June 2001. You will recall these proceedings were originally adjourned by the Court pending a decision under the Reserves Act 1977 on a proposed exchange of land which effected the land which is the subject of the appeals.

I can advise that, at its meeting on 30 April 2001, the Council resolved that, in terms of the Reserves Act 1977, the land exchange should not proceed. Subsequently, Royal Forest and Bird Protection Society Inc, which had brought proceedings in the High Court against both the Council and Waiheke Island Airfields Limited (the applicant) has discontinued those proceedings.

Accordingly, I consider the appropriate course now is for the applicant to advise the Court whether it still wishes to continue with the resource consent which is the subject of the appeals, and, if so, for the appellants to advise whether they wish to proceed with their appeals. So far as the Council is concerned, now the decision under the Reserves Act has been made, and the High Court proceedings discontinued, there is no reason why the Court should not determine the proceedings.

I have sent a copy of this letter to each of the other parties.

Yours sincerely

J.A. Burns
SOLICITOR

cc Graeme Ridley, Land and Water Quality

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Attention: D A Nolan/C N Whata