

Attachment 5

Statement of Derek A Nolan on behalf of Auckland International Airport Limited in relation to comments on the second runway at Auckland International Airport by the Commerce Commission

**STATEMENT OF DEREK A NOLAN
ON BEHALF OF AUCKLAND INTERNATIONAL AIRPORT LIMITED
IN RELATION TO COMMENTS ON THE SECOND RUNWAY AT AUCKLAND
INTERNATIONAL AIRPORT BY THE COMMERCE COMMISSION
13 AUGUST 2001**

RUSSELL McVEAGH

Introduction

1. My name is Derek Nolan. I hold the degree of LLB (Hons) (Auckland University) and LLM (London University). I am a partner at Russell McVeagh and Chairman of the environmental and resource management group within the firm.
2. I was admitted as a Barrister and Solicitor to the High Court in New Zealand in January 1976 and have specialised full-time in environmental and resource management law for over 20 years.
3. I was a founder of the Resource Management Law Association NZ Incorporated ("**RMLA**"), a member of its National Committee for several years and was its second President, succeeding Justice Salmon upon his elevation to the High Court. The RMLA has over 800 members including all Environment Court Judges and many lawyers, town planners, engineers, scientists, central and local government officials, environmental managers and consultants.
4. I am a past Vice Chairman of the Environmental Law Committee of the International Bar Association (Business Law Section); Deputy Editor of the second edition of "Environmental and Resource Management Law in New Zealand" (Butterworths) and joint Editor in Chief of the third edition now under preparation. I am currently a member of both the NZ Law Society Resource Management Committee and the Auckland District Law Society Resource Management Committee. I am a Trustee of the New Zealand National Maritime Museum.
5. I have been heavily involved in the planning of infrastructure in New Zealand, particularly in the transportation area. I have been advising the port industry for many years on environmental and resource management issues. I have represented all 13 port companies before Select Committees of Parliament and at various inquiries and hearings. I have obtained all necessary approvals under various statutes for specific port projects for several port companies. A recent example is the doubling in size of the Fergusson Container Terminal in the Port Of Auckland. I act for Tranz Rail Limited and recently obtained all necessary approvals for its new inter-island ferry terminal at Clifford Bay in Marlborough.
6. I have had a particular focus for the past 10 years or so in the environmental and resource management issues arising at all of the airports around New Zealand. I advised Air New Zealand on the development of the New Zealand Standard NZS 6805:1992 (discussed below) and have represented Air New Zealand (and its subsidiaries) or the Board of Airline Representatives of New Zealand Incorporated ("**BARNZ**") on appropriate provisions to be made for current and future operations at Whangarei, Tauranga, Hamilton, Rotorua, New Plymouth, Gisborne, Napier, Palmerston North, Wellington, Blenheim, Christchurch, Queenstown, Dunedin and Invercargill airports.)
7. In particular, I have been heavily involved in the environmental and resource management process relating to Auckland International Airport, advising both Auckland International Airport Limited ("**AIAL**") and BARNZ jointly on that matter since the early 1990's. That process has included:
 - (a) advising on AIAL's requirement for inclusion in the Proposed Manukau District Plan ("**Proposed Plan**");
 - (b) preparing and lodging submissions and further submissions on the Proposed Plan;

- (c) representing AIAL and BARNZ at the hearing held by the Manukau City Council;
 - (d) lodging appeals and then advising AIAL and BARNZ throughout the lengthy negotiation and mediation process that has followed the lodging of appeals in 1998, and which is still underway today. A major aspect of the Proposed Plan and the appeals is the appropriate provisions to apply to the second runway and to the land affected by future operations from that runway.
8. As part of my work for AIAL and BARNZ on this matter I went on a study trip in 1998 to several international airports in Europe and the United States where further runways had been developed in recent times and also met with Boeing Corporation in Seattle, USA.

The Issue

9. The Draft Report “optimises” out the second runway land from the asset base. It is suggested that AIAL has two options in respect of the land it is currently holding for the second runway and related operations (such as aircraft taxiing and manoeuvring, terminals etc) - that of either:
- (a) divesting the surplus land and returning the funds to shareholders then repurchasing the land at some future date when actual construction of a second runway might be needed, or
 - (b) of finding alternative, more productive, uses for it.
10. It is submitted that neither of these are appropriate or realistic from an environmental and resource management perspective for a number of reasons, explained in more detail below, but which can be summarised as:
- such an approach is inconsistent with the environmental and resource management legal framework; and
 - would be likely to prevent, in practice, development of the second runway ever occurring.

Background: resource management

11. It is important to explain, by way of background, the framework within which AIAL is required or expected to manage and operate the Airport in terms of environmental legislation and related documents, and more particularly, the development of the second runway.
12. The Resource Management Act 1991 (“**RMA**”) is now the key piece of legislation, the purpose of which is to promote the sustainable management of natural and physical resources. The Airport is a physical resource of district, regional and national importance. The RMA requires AIAL, the Auckland Regional Council and the Manukau City Council who have jurisdiction over the Airport land, to be significantly forward-looking in terms of that management. “Sustainable management”, in terms of the RMA means managing the use, development, and protection of physical resources (such as the Airport), in a way and at a rate which provides for the social, economic, and cultural well-being and the health and safety of people and communities. The RMA further requires that the reasonably foreseeable needs of future generations are met, and that the adverse effects of activities on the environment are avoided, remedied or mitigated.
13. One of the key documents used by airport operators and local authorities throughout the country, when they are formulating provisions for airports to give effect to these

obligations under the RMA, is the New Zealand Standard NZS 6805:1992 *Airport Noise Management and Land Use Planning* (“**NZS 6805**”). NZS 6805 is concerned with land use planning and the management of aircraft noise in the vicinity of airports, for the protection of community health and amenity values. It aims at ensuring that communities in close proximity to airports are properly protected from the effects of excessive aircraft noise, while recognising the need to be able to operate airports effectively.

14. NZS 6805 recommends that noise contours be established at each airport. The noise contours are to be based on the predicted noise levels which would arise from future airport operations. They are projected in terms of, amongst other things, likely runway use and approach/departure tracks and “current and future runway capacity and any proposed airport development”. The projected noise contours are then used to limit both the amount of noise able to be made by aircraft operations in the future at or within those contour boundaries and also to limit the location of incompatible land uses in close proximity to airports within the contours. Where it is not reasonable or practical to limit incompatible land uses, NZS 6805 requires that activities sensitive to aircraft noise be acoustically insulated for the predicted noise level (regardless of whether that eventual level is currently being made or experienced).
15. Any use of the land at Auckland International Airport for a second runway will potentially result in adverse noise effects, particularly over land to the east of the future runway. In accordance with the RMA and NZS 6805, noise contours have been established based on projected growth until 2030. These identify the areas likely to be impacted by both the existing runway and the second runway. The area that will be potentially affected by high to moderate levels of noise are those areas lying generally along an extension of the centre line of the two runways. They stretch across substantial areas of land. The area impacted by future growth on the existing runway actually extends across the full length of the built up part of the City of Manukau to land currently zoned rural in East Tamaki, but which is currently being rezoned for future residential use. The area subject to existing or future high aircraft noise is known in planning documents as the High Aircraft Noise Area (“**HANA**”). The area subject to existing or future moderate levels of aircraft noise is known as the Moderate Aircraft Noise Area (“**MANA**”). The extent of these areas can be seen on the plan **attached**.
16. The only way that the projected number and type of aircraft operations that are predicted to be needed to occur on the second runway can take place is if, within the MANA and HANA, there can be placed significant limits on the location of new houses or other activities sensitive to aircraft noise (“**ASANS**”) such as schools, hospitals etc. They either need to be prevented from building at all within the HANA and MANA, or if they are built, they must be acoustically treated to a sufficiently high degree so as to provide acceptable internal noise environments.
17. If that opportunity for land use controls is not taken, numerous ASANs will inevitably locate in the area that will be exposed in the future to high or moderate aircraft levels from the second runway. If that occurs, it would be almost impossible for AIAL to later try and get approval under the RMA to build a second runway in the currently planned location and to use it to the extent required and planned for, as it would result in unacceptable adverse environmental effects on the ASANs built in the intervening period.

No other realistic options

18. No other realistic options for the location of the second runway, or for the accommodation of the additional aircraft operations which it is intended to serve, exist.
19. The aircraft movements intended to be accommodated on the second runway cannot simply be replaced on the existing runway. There will not be enough capacity on that

runway to accommodate all the expected growth and the required number of aircraft movements. In addition, that would only increase the noise levels likely to be experienced by residential areas to the east of the main runway and make those noise levels unacceptable. It can be seen from the Plan that the existing runway will already result in significant impacts, without further traffic put on it from the second runway.

20. A second runway cannot be realistically expected to be constructed by reclamation in the Manukau Harbour. Such a proposal would be strongly opposed by numerous parties as being environmentally unsound. Sections 6(a) and (e) of the RMA would also clearly not support such a reclamation. It would almost certainly be strongly opposed by Maori who, at the Waitangi Tribunal Inquiry into the Manukau Harbour, expressed the strongest possible reservations about any further reclamations and other degradation occurring in the Manukau Harbour which would result in a further loss of harbour waters, fishing and public access (see *Waitangi Tribunal "Manukau Report" 1985 WAI-8*). At present significant public funds are being expended into the restoration of the Manukau Harbour, including approximately \$400m by Watercare Services Limited to upgrade effluent discharging into the harbour and to remove the waste treatment ponds to the west of the airport and reintroduce the sea back into the area formerly covered by those ponds. It would be acting contrary to the wishes of Maori and others to begin reclaiming significant areas of additional land for airport purposes. In addition, a second runway constructed in the harbour would be inefficient. The terminals would be to the north of the current runway and aircraft would have to taxi from those terminals across the existing runway to reach the second runway to the south. That would place constraints on the use of the existing runway.
21. Whilst it is theoretically possible to contemplate an additional runway elsewhere in Auckland, having a second runway at some other distant airport also does not provide for a convenient and efficient transport system, as passengers are frequently transferring from international to domestic aircraft or to regional carriers, and all three generally need to be in the same location to allow easy transfers of passengers between them. Reports commissioned by the Auckland Regional Council confirm that the military bases are unsuitable.

Manukau City District Plan

22. There is therefore a need to maintain land use controls over land within the HANA and MANA to the east of the proposed second runway at Mangere in order to preserve the option of constructing the second runway in its current location. It is the only realistic site available.
23. Some critical controls over land use in the HANA or MANA can, in turn, only be justified under the RMA if there is a definite proposal for that runway and if controls exist in the District Plan for that land to be used for the second runway.
24. At present, the proposed District Plan for Manukau City (now in the final stages of negotiation) does make specific provision for the construction and use of the land for the second runway. The Manukau City Council, the ARC and local residents have all accepted that there is a need for those provisions. Detailed rules have been proposed for inclusion in the District Plan, including a requirement that aircraft operations not exceed certain noise levels at the HANA and MANA and along the northern boundary of AIAL's land.
25. As a direct consequence of those provisions, the Plan has also introduced land use controls over land within the HANA and MANA. These place significant restrictions on new ASANs locating in these areas, so as to avoid adverse effects on them and future conflict with the Airport. All of these various provisions are currently being finalised and are expected to be the subject of consent orders by the Environment Court later this year.

26. The current expectation of AIAL is that construction of the first stage of the second runway will need to commence within the next ten years. Various opportunities, if they occurred, could actually see it commenced earlier. This necessitates all the necessary planning provisions being in place in time for construction to commence. The only realistic way that approvals of the magnitude needed for the second runway, with its associated need for numerous objectives, policies and detailed land use controls, can be introduced, is through a review of the Manukau District Plan. The Manukau City District Plan has coincidentally been going through a review. AIAL therefore acted responsibly and sought inclusion in this plan of all necessary approvals and land use controls. Once the new District Plan is operative, it lasts for ten years.
27. This review of the District Plan commenced in 1994. Preparatory work by AIAL and Manukau City Council commenced even earlier. AIAL could not realistically obtain District Plan provisions providing for the construction and use of the second runway without actually owning the land or having it under its control. This would always need to be achieved first and in plenty of time before such a planning process commenced. If runway construction were to commence in say 7 to 8 years time, then if AIAL had to sell the land now, or lease it to third parties for other uses in the interim, it would have to repurchase the freehold or leasehold interests again within a few years (if it could) and then go through an identical planning approval process as it is going through right now, almost immediately, to have everything in place in time for construction. Not only is that nonsensical, but there will not be another review of the District Plan for AIAL to use prior to possible construction, so there is no real opportunity to seek all of those approvals within the time required in any sensible manner. AIAL has done the only responsible thing it could in acquiring the land, going through this seven year period to get suitable District Plan provisions for the second runway and appropriate land use controls, then having those in place ready for actual construction to commence some time in the life of this new District Plan.

Difficulties of re-purchase

28. If the land had to be sold off now, or leased to others for more "productive uses", then not only would AIAL not be able to justify the land use controls currently being put on ASANs in the MANA or HANA (as explained above), and AIAL would run out of time to recommence the planning process sufficiently ahead of when construction would be needed (also as explained above), but any new owners or lessees of the land presently set aside for the second runway would be most unlikely to accept the current Rural Zoning applying to it.
29. New owners or lessees would almost certainly move to try and have a Business zoning applied to the land. It is understood that there is sufficient demand for business activities in this general area to support a rezoning of land in Mangere from Rural to Business within a few years. That rezoning (or any individual resource consent that might be obtained) would possibly enable any new owners or lessees to construct factories, warehouses, hotels and a wide variety of other industrial and commercial activities on the sites. Capital improvements of a significant nature on the land could then make subsequent re-purchase by AIAL cost prohibitive, which would effectively prevent a second runway ever being constructed.
30. Any re-acquisition by AIAL also assumes that AIAL is able to achieve such an acquisition by voluntary means. That may not be able to be achieved as such a significant area of land is involved. It may well be that certain key titles or other interests cannot be purchased voluntarily. This could nullify any opportunity to construct the runway.
31. In addition, the issue of "hold-out" of landowners or lessees refusing to agree to the sale of the land or of their leasehold interests in the knowledge that the land is needed for such a significant work as a second runway, could make the cost of purchasing the

interests at a future date prohibitive. As all of the land is needed, even a very minor landholding could prevent the development of the second runway from proceeding. Any voluntary purchasing of the land would be likely to be at premium cost.

32. The detrimental effect that the selling of the land would have on the positive relationship AIAL has established with local Maori groups with an interest in the land and waters around the Airport, can also not be discounted. They would see the sale of any interests in this land as a major reversal of AIAL's commitment to a land-based site for the second runway, not a further reclamation in the harbour.
33. If the land could not be re-purchased, there could also be potential constraints placed on operations on the **existing** runway. The noise effects of its use are considerable. As growth builds up and as operations are maximised because there is no second runway, it is possible that the noise impacts on the privately owned or leased former second runway land would be considered unacceptable. AIAL's current land holdings, which include the second runway, provide an important buffer for the noise from the existing runway. It is possible that more stringent noise control would be placed at the adjusted AIAL / new owners' boundary, which may reduce permitted aircraft operations on the runway. This would have significant adverse effects on AIAL and the country as a whole.
34. Not planning for future capacity by way of the second runway is therefore inconsistent with the RMA and with sound resource management practice - quarries, ports, marinas, roading and telecommunication providers all put in place provisions, as soon as they are reasonably able, to provide for future projected or predicted needs. The RMA supports, and in fact endorses, such an approach, by requiring, as its overriding purpose the sustainable management of resources and also requiring provision for the reasonably foreseeable needs of future generations (as discussed above). If investment in airport infrastructure in the region is not able to remain in line with international practice and patterns, there must be a risk that passenger and freight/cargo carriers will ultimately stop using Auckland as a destination, or reduce their use, and will choose to fly to other airports because Auckland is not able to provide for their needs. This would result in the need for travellers to go from Auckland to another airport, such as Sydney, and to then connect with another flight to their eventual destination. The costs of that, and the related inefficiencies, may not be reasonable or appropriate.

Compulsory Acquisition not realistic

35. The Draft Report also appears to assume that the Public Works Act 1981 is available, so that AIAL can compulsorily purchase the land it might need. AIAL does not enjoy any direct powers to compulsorily acquire land (freehold or leasehold) under the Public Works Act. As AIAL is a requiring authority under the RMA (see the Resource Management (Approval of Auckland International Airport Limited as Requiring Authority) Order 1993), AIAL may only apply to the Minister of Lands indirectly to have the land required for the second runway to be acquired or taken under Part II of the Public Works Act, as if it were a Government work within the meaning of the Public Works Act; and, if the Minister agrees, the land **may** be so acquired or taken.
36. Any use of the Public Works Act would involve an extremely slow process.
37. First (assuming the Minister of Lands agrees to the procedure, which itself may take time), there has to be a notice of intention to acquire the land. If the land owner opposes the acquisition, the matter is referred to the Environment Court to make a ruling whether or not it is "fair, sound, and reasonably necessary" that the land be compulsorily purchased. That could take a year or more. Even if the land is ordered by the Court to be compulsorily acquired, that does not resolve price. There must be voluntary negotiations and if they are unsuccessful, the land owner is entitled to have the price, or compensation for the taking of the land, considered by the Land Valuation Tribunal.

Again, with current delays, that could involve a further significant period of time. There would also be no certainty of a successful final outcome. These compulsory acquisition powers, if available, would also be cumulative to the time taken for the planning provision for the second runway. Based on current experience, there just isn't time to sell, re-acquire voluntarily or compulsorily and go back through the planning process all over again. Intervening ASANs in the HANA or MANA could also rule the runway out.

38. In addition, there is currently a major Government review under way which seeks public input into the whole Public Works Act regime. At the moment Land Information New Zealand is considering submissions on a set of proposals they have developed, with a view to releasing a discussion document for further submissions. Among the options which the review is considering is the removal of Public Works Act acquisition powers from many non-government agencies. Thus there is no certainty that any compulsory acquisition powers would remain for organisations like AIAL. (It is notable that no port companies have any right to compulsory acquisition under the Public Works Act).
39. Finally, selling the freehold or leasehold in the land and effectively losing any ability to build the second runway, and giving up all of the planning procedures that have been undertaken to date to make provision for the second runway and to put land use controls in place, must be directly opposed not only to the interests of AIAL, but also to the airlines who use AIA.
40. Through the auspices of BARNZ, the airlines have been working jointly with AIAL since the early 1990's to make express provision for the construction of the second runway in the proposed District Plan and to impose suitable land use controls on all ASANs in the MANA and HANA. Significant sums of money have been spent on this process, both in terms of legal fees and the fees of numerous expert consultants by both parties. All or much of those funds would have been wasted and the purpose of the proceedings would have been largely lost.

Derek A Nolan

(Note – Map in hard copy only)