Airport Designation Issue Dakota Park

The land that is now referred to as Dakota Park was originally obtained by CIAL through a process of applying pressure to existing land owners to sell their land.

This was done under the threat of that land being compulsorily required and compulsion.

CIAL was approved as a 'Requiring Authority' by the Minister of Environment on 14 March 1984.

CIAL initiated this compulsorily acquisition of land threat, by lodging a notice of requirement with the Christchurch City Council (CCC) on the 5th of May 1994.

The requirement was notified by CCC on 24 June 1995 as part of its proposed city plan. A Council Planning Commissioner David W. Collins heard submissions and evidence in relation to the notice of requirement as part of the hearings on the proposed city plan.

In a letter to the Christchurch International Airport dated 18 December 1997 the Council set out its recommendation in respect of the notice of requirement pursuant to Section 171(2) (a) of the RMA. In particular the Council adopted the Commissioners recommendation which stated:

"That the Council should recommend pursuant to Section 171 of the Resource Management Act 1991 that the requirement issued by Christchurch International Airport Ltd for the designation of land for Airport Purposes, **more specifically for the developments set out in clause 1(c) of the notice of Requirement,** in the vicinity of Russley Road, Avonhead Road and Grays Road, Christchurch, be confirmed for the period of ten years sought subject to the area designated being reduced to no more than 45 hectares plus any additional area needed for access, and that a new plan showing the area to be designated should be prepared."

On the 24th of February 1998 A Hearn, Counsel and authorised agent for CIAL replied to the Councils recommendation in a document titled 'Decision of

Christchurch International Airport Limited On A Recommendation By The Christchurch City Council.'

I have attached this document and refer readers to Point 2 headed Christchurch International Airports Decision.

CIAL rejected the reduction to 45 hectares and argued that the full 100 hectare sought was required. The exact positioning of these 45 hectares has been difficult to determine it is all of Dakota Park and some land across Grays Road adjacent to that main runway. Refer Appendix 13 of Decision of CIAL in recommendation by CCC document.

Tellingly at point 2.2.2 it states: it is reasonably necessary to designate all of the land referred to in1 (b) of the notice of requirement for an air cargo and freight centre at Russley Road pursuant to section 171 (a) of the RMA.

This document continues on giving the reasons why all of the land is needed at 2.2.3 (vii) it states: Growth projections and information from airport users demonstrate that the area of land referred to in paragraph 2.2.2 will be required for the future growth and development of air cargo and freight centre facilities.

At point 2.2.3 (x) the final point of CIAL'S decision document there is the following:

Inclusion of all of the land referred to in paragraph 2.2.2 of the designation is not inconsistent with the lapse of the designation ten years from when it becomes operative. The ten year period provides appropriate certainty to the Christchurch International Airport while allowing the designation to be reconsidered at that later date to determine whether it remains reasonably necessary for the purposes of providing for the future growth and development of air cargo and freight operations.

The recommendations were incorporated into the Christchurch District plan and made operative in 2000 following Council recommendation No 202.

This is I submit conclusive proof that the designation Decision by CIAL has never has been for "Airport Purposes". It has always been specific for the development of air freight and air cargo operations.

What should have happened 10 years after the CIAL decision was made operative in 2000. Therefore in 2010 is that this designation should have been reconsidered to determine if it remained reasonably necessary for the designated purpose of future growth and development of air cargo and freight operations. The projections of those needs had been extremely exaggerated as would have had to have been admitted if such a review had taken place in 2010. Such a review never took place.

By this time the "Airport Purposes" myth had clouded judgments with the current CCC and CIAL incumbents refusing to address the facts by way of investigation.

Remember land has been taken under duress and compulsion from the past owners, the designation cargo projections have proven to be hopelessly exaggerated and the now 45 hectares so designated is not required for the designated purpose. Those previous owners still have rights which are being abused.

It is my assertion that this designation lapsed in 2010. Once lapsed it cannot lawfully be simply rolled over.

Yet again I raised the assertion that this designation was not "Airport Purposes" formally in Plan Change 84 in 2015.

This is a very interesting plan change as it was the last plan change before the Judge led Christchurch District Council Plan Hearings.

Findings of that Commissioner, Paul Thomas as outlined in his report dated 27 January 2015 are unable to be changed except for matters of minor effect and are automatically incorporated into the Christchurch City Council District Plan.

With respect to this assertion Commissioner Thomas at page 12 point 33 makes the following comments:

In addition to the SPAZ most of the land within the zone is also designated for Airport Purposes by CIAL. A specific addition to the designated area was made in 1994 for an additional area for an air cargo and freight centre. This area is now known as Dakota Park. All the land is designated as "Airport Purposes" but the Notice of Requirement for the designation extension **identified more clearly the scope of activities in this area.** Notwithstanding this, there has been ongoing debate between CIAL and CCC regarding the scope of the designation and what proposals should be authorized through designation and what should be subject to SPAZ provisions. CIAL has taken a broad view to the meaning of Airport Purposes and has relied on case law to support that position. However, it is apparent from the documentation provided that CIAL has not sought to resolve this issue by way of a declaration to the Employment Court; instead it has conceded that certain activities should be authorized by way of resource consent.

In order to make it clear I provided the documentation Commissioner Thomas is referring to, I also provided the documentation that resulted in Thomas's point at 34, which states:

The District Plan does not record that any conditions apply to the Airport Purposes Designation. However I note during the hearing that documentation for the air cargo and freight centre is subject to a condition that states. **"All activities and building development shall comply with the Development and Community Standards specified in the Airport Zone rules**.**"** In reply Ms. O'Callaghan reported that the council has either not been aware of or has not been applying this condition to date.

It certainly has not been applying these conditions yet another competitive advantage to CIA development

Council to this day has not included this condition over this 45 hectares. They have continued to allow developments by way of out-line resource processes that significantly reduce both costs and scrutiny of development as no public input is allowed in that process. CCC has repeatedly refused to investigate this designations actual activity purpose while enabling very significant development that has no linkage to air freight or cargo.

At point 36 Commissioner Thomas states:

So in summary the SPAZ and the designation seek to authorize a wide range of airport related activities. There exists a high level of duplication in the terms of the scope of authorization between the two sets of legal provisions. There also remains a high degree of uncertainty as to the precise scope of activities authorized by way of the designation. CIAL has sought to address this by way of promoting duplication of scope rather than resolving the issue. In my opinion this is not good practice in terms of District Plans where it is more effective and efficient for the underlying zone to a designation to focus on activities that should be enabled on the land in the event that the designation is uplifted and activities that should be enabled but go beyond the scope of activities of the requiring authority.

At point 38 Commissioner Thomas states:

It is, I think somewhat ironical that CIAL firmly supports this overlapping regime when a principle concern of theirs, as expressed by a number of witnesses including Mssrs Boswell and Huse is the “unclear and uncertain planning provisions of the city plan (Boswell EIC para 54).

Despite these comments from their Commissioner, and my continued request to CCC to investigate they take no action at all. They continue to allow outline consenting processes sought by CIAL. A farm machinery sales yard, a data storage company, and a company making gibbons for roads are approved to name just a few. All activities with no air freight or air cargo connection at all.

This matter is then taken up in the Replacement District Plan process in 2016. Despite submitting to that process I was not notified of the hearing relating to this designation issue which was scheduled very early in Stage one of that protracted process. Counsels for CIAL Appleyard and CCC Scott advised that hearings Chair that there are no impediments to simply rolling over the designation which was done. Both were aware of my earlier submissions. On becoming aware of this the presiding Judge refused to readdress the matter.

It is my view CCC has provided very significant land planning, cost reduction and public scrutiny avoidance advantages to CIAL by allowing numerous out-line resource approvals, to a wide range of activities that have no linkage to this lands designated original air freight and air cargo specific purpose.

The development on the 45 hectares designated has been extensive over the years since I have been raising the issue. CCC has refused to investigate what really is a very easily identified Truth. It has continued to provide what are extreme competitive development advantages while ignoring the designation conditions and the rights of the previous owners of the land from which it was taken under duress and compulsion. This is in my view reckless and arrogant and not the ethical behaviour I expected from the Council.

In the allowed 10 years after CIAL's Decision was made operative in 2000 for the notified developments to be implemented they had not been even been commenced. The runway development allowing planes to roll up to air freight and air cargo off loading facilities as envisaged in the notice of requirement had not been built in 2010.

Commissioner Collins was very clear that while he approved the term sought for the designation as being ten years which was a departure from the usual 5 years, that after that time the designation over any land not used in terms of the designation would lapse. (Refer Page 6 paragraph 3 Collins report).

While CCC and CIAL have conspired to continue to roll over this designation an investigation it would be determined that the designation lapsed in 2010.

The Designation Process

In order to outline the process that resulted in this designation in more detail the following facts are presented.

A hearing before and Independent Commissioner convened in to order to decide if there was sufficient reason to designate the land CIAL required and if so to decide the amount of land to be designated, and any restrictions to be placed on the designation.

Of critical import therefore is the validity of the evidence submitted by CIAL at that time.

A recurring theme arises in this and other evidential submissions made by CIAL representatives when seeking land planning/development concessions. That is the tendency to submit exaggerated data or to present extreme projection scenarios which CCC consistently fails to subject to robust analysis.

The land now called Dakota Park was designated for the very specific purpose of the development of an air cargo and air freight facility.

In the Notice of requirement from the Christchurch International Airport to the Christchurch City Council this air cargo and air freight specific purpose becomes very clear when the reference to either is highlighted in wording from that Notice.

At 1(a) of that notice of requirement under the heading

THE REASONS WHY THE DESIGNAION OR ALTERATION IS NEEDED ARE:

The following points were made:

The designation is considered necessary to allow Christchurch Airport to meet the projected demand for the increasing movement of **air** freight.

The Master Plan for the Christchurch International Airport, which is dated October 1985, provided a zone for **air** freight adjacent to the north side of runway 11/29 at its eastern end. A total of 12 hectares was set aside for this purpose.

Current annual throughput of **air** cargo at Christchurch International Airport totals 83,200 Tonnes, made up of 22,700 Tonnes International and 60,500 Tonnes domestic.

Recent studies (Freight Facilities Study, September 1993) indicate that during the next 20 years, air cargo throughput will increase by between 2.7 and 5 times the current volume, based on the low and high forecasts respectively, to between 220,000 Tonnes and 413,000 Tonnes.

This point also indicates

“the 12 hectares provided in the 1985 Master Plan is therefore unable to accommodate this demand and it is estimated that a land reserve of at least 45 hectares is required for commercial and Antarctic **air** freight and cargo facilities based on the forecast growth to the year 2013 in order to cater for growth beyond 2013 a total of 100ha has been included in the designation.

At point 1(c) of the same document what was being envisaged to be development was articulated under the following heading.

THE NATURE OF THE WORK AND ANY PROPOSED RESTRICTIONS ARE:

The establishment of an **air cargo and freight centre will involve the following works:**

The building of cargo terminals

The building of administrative offices for Government Authorities (e.g. customs, MAF)

Service and ancillary facilities required to meet the needs of workers on site

The establishment of an aircraft apron (for aircraft parking)

A taxiway adjacent to the freight apron edge and a future field taxiway parallel to runway 11/29

An airside road link to passenger terminals

Vehicle access and parking for trucks and cars

Quarantine for incoming livestock

Container and equipment storage

Landscaping along road boundaries

The creation of a new road approximately 600 meters south of the existing Russley Road/Avonhead Intersection (shown on Plan D4659 attached)

The closure of Avonhead Road and part of Grays Road (shown on plan D4659 attached)

The site will be characterized by large utilitarian buildings for cargo/freight storage, handling and distribution, a large area of tarmac for aircraft parking, a taxiway and vehicle parking areas above ground fuel tanks. These facilities will be well setback from roads as required under the restrictions set out below with landscaping to soften the impact of large buildings when viewed from roadways. As the provision of cargo and freight facilities by airlines, operators etc. is competitive and market driven, facilities will be established over time in response to individual demands.

In the same document again at page 9 the following restrictions on this designation were proposed.

Proposed Restrictions

1. **All activities and building development shall comply with the Development and Community Standards specified in the Airport Zone rules.**

The Commissioner recommendation to CCC was to put into effect this requirement it seems that CCC has not done so to this day.

Noise

The establishment of the **air** cargo and freight centre will introduce activities to the site which have the potential to generate greater noise than the existing rural activities. In particular the arrival and departure of aircraft from the **air** freight/cargo apron. It will be an operational apron and will not be used as an area for the ground running of engines.

All activities on the site will be subject to compliance with the Community standards which includes meeting noise levels standards. Compliance with these levels should ensure that unacceptable noise levels from activities are not created. It is also anticipated that by the time the aircraft apron becomes operational and facilities are established that aircraft will be quieter than they are

at present and will meet the ICAO Chapter 3 noise criteria for example BAE 146 and B767 aircraft.

In addition, it is noted that with development of this area there will no longer be persons residing on the site who will be affected by noise. There are no existing established residences to the immediate south west of the site which is the predominate area with the potential to be affected by noise.

David W. COLLINS was appointed by CCC to hear and report on the matter. In his report to CCC at page 2 he states:

The requiring authority has sought that the designation be provided for a period of ten years before it must be implemented or it lapses, rather than the standard 5 years specified in the Act.

At page 5 he states:

The compulsory purchase of land is anticipated as a possible consequence of the designation process and it is clearly the intention of the legislation that if it is appropriate for private land to be designated then the requiring authority should be able to initiate compulsory purchase procedures if necessary. This consequence of designation illustrates the importance of ensuring designation proposals meet the criteria in section 171 of the Act.

At Page 6 paragraph 3 under the heading

Designation reasonably Necessary

Commissioner COLLINS states the following:

The term sought for the designation is 10 years. **After that time the designation over any land not used in terms of the designation would lapse.**

On page 7 in his final paragraph under the above heading he states:

From the evidence presented I have come to the conclusion (which accords with the Council planners recommendation) that it is “reasonably necessary” to designate only half of the 100 ha identified in the requirement. This would

achieve the purpose of the designation set out in the notice and would provide sufficient land to meet projected need well beyond the 10 years designation sought.

The even exaggerated growth data submitted to justify 100 ha to be designated was rejected by this Commissioner who reduced the requested land size no more than 45ha. This is an example of the extreme scenarios that CIAL regularly submit.

At page 8 under the heading

Recommendation:

Collins states:

Having considered all the evidence I have come to the view that the Christchurch City Council should recommend, pursuant to section 171 of the Resource management Act 1991, that the requirement issued by Christchurch International Airport Limited for the designation of land for "Airport Purposes," **more specifically for the developments set out in clause 1(c) of the Notice of Requirement,** in the vicinity of Russley Road, Avonhead Road and Grays Road Christchurch be confirmed for the period of 10 years sought subject to the area designated being reduced to no more than 45 hectares plus any additional area needed for access and that a new plan showing the area to be designated should be prepared accordingly.

This recommendation was eventually accepted by CIAL and incorporated into the Christchurch District plan in 2000 following Council recommendation No 202.

What was envisaged at the time the designation was made operative was the development of a new and separate runway area where planes would roll up directly from the main runway to a side area (tarmac Apron) and be loaded and unloaded in a freight and cargo specific complex. Having acquired the land this development has never eventuated.

The mere existence of the designation completely altered the position of the private land owner's ability to retain their land making CIALs bargaining position one of extreme power.

CIAL avoids seeking an easily obtained Environment Court declaration as to what "Airport Purposes" actually means in terms of the strength the aviation linkage is required to have with regards to the desired commercial activity. Its owner CCC remains mute in requiring CIAL to clarify this critical issue. Clearly the ambiguity is desired.

This then raises the question if it is appropriate for CIAL to retain its ability to require land. CAIL derives in excess of 65% of its revenue from property management activities not core aviation activities. It is actively attempting to purchase land for "Airport Purposes" which in the current arena seems to mean whatever CIAL determines it means. This is unacceptable and an abuse of power that could at any time be targeted against existing land owners living as neighbours. I submit that Airport Purposes must have a clear identifiable linkage to aviation activities which for example selling farm machinery does not.

This matter should be investigated by an independent body and resolved once and for all. The development competitive advantage, that is currently provided by CCC to CIAL is significant and reduces competition which I have no doubt is its aim.

D.M. LAWRY

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