



**Supreme Court of New Zealand  
Te Kōti Mana Nui**

**21 DECEMBER 2017**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

***WELLINGTON INTERNATIONAL AIRPORT LIMITED v  
NEW ZEALAND AIR LINE PILOTS’ ASSOCIATION INDUSTRIAL  
UNION OF WORKERS INCORPORATED AND DIRECTOR OF  
CIVIL AVIATION***

**(SC 26/2017 and SC 30/2017) [2017] NZSC 199**

**PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz)**

To limit the risk of accidents from aircraft overshooting or undershooting a runway on landing or take-off, the Convention on International Civil Aviation, to which New Zealand is a party, requires that airports servicing particular categories of aircraft have runway end safety areas (RESAs) at each end of a runway. These requirements have been implemented in New Zealand through the Civil Aviation Rules (the Rules), made under the Civil Aviation Act 1990 (the Act).

Wellington International Airport Ltd (WIAL) operates Wellington Airport. The RESA requirements applicable to Wellington Airport under the Rules are that:

- (a) A RESA must extend to a distance of at least 90 m and, if practicable, to a distance of at least 240 m, or to the greatest distance practicable between 90 and 240 m.
- (b) A RESA must be “acceptable” to the Director of Civil Aviation (the Director).

Currently, WIAL operates Wellington Airport with 90 m RESAs. WIAL wishes to extend the runway. It considered that 90 m RESAs would be sufficient if the runway were to be extended and sought the Director's acceptance of this under the Rules. Although he accepted that longer RESAs would reduce the risk of accidents on landing and take-off, the Director indicated that 90 m RESAs would be acceptable to him, essentially because the costs of RESAs longer than 90 m outweighed the safety benefits that would result.

The New Zealand Air Line Pilots' Assoc Industrial Union of Workers Inc (NZALPA) issued judicial review proceedings challenging the Director's decision.

NZALPA's application was dismissed in the High Court but was successful on appeal to the Court of Appeal. The Director and WIAL filed separate applications for leave to appeal to this Court. Both were granted leave on the question of whether the Court of Appeal was right to allow NZALPA's appeal. The key issues identified by the Court of Appeal were: (a) the meaning to be given to the word "practicable" in the context of the rule requiring a RESA to extend to at least 90 m and, if practicable, to a distance of at least 240 m, or to the greatest distance practicable between 90 and 240 m; and (b) the role of a cost/benefit analysis in the Director's decision.

In this Court, the Director and WIAL maintained the interpretation of "practicable" applied by the Director in making his decision: that is, a case by case analysis involving the balancing of safety considerations against the cost and difficulty of extending a RESA. NZALPA's position was that "practicable" refers to what is physically feasible or what is able to be constructed; not what is reasonable on the basis of a cost/benefit analysis.

This Court has unanimously dismissed the appeal, although its reasoning differs from that of the Court of Appeal. This Court considered that the question of what is "practicable" requires a more nuanced approach than those contended for by the parties. What is "practicable" must be addressed in the particular context in which the issue is raised. While a cost/benefit analysis may provide assistance to the Director in deciding whether a RESA is acceptable, such an analysis is an incomplete tool. Promotion of safety is a key focus of the Act and a mandatory relevant consideration in rule-making. Against that background, the broader benefits accruing to the airport operator, which a cost/benefit analysis may not capture, may be relevant to the director's decision-making. If, for example, a runway extension would create a new and substantial income stream for an airport operator, that additional benefit may mean that a longer RESA is "practicable" given that a longer RESA will enhance safety.

The Court has found that the Director erred in law in assessing what was "practicable" solely by reference to WIAL's costs as balanced against safety benefits. He was required to consider whether safety could be improved and in considering that, ought to have considered benefits

accruing to WIAL as a result of the extension. It was possible that such benefits might justify the Director requiring an incremental improvement in safety in the form of a RESA longer than 90 m.

This Court also found that the Director erred in his approach by taking WIAL's proposal as the starting point of his analysis rather than the requirements of the Rules and by not considering the question of an arresting system because it was not part of WIAL's proposal.

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