

DOUBLE SIDED

ORIGINAL

Decision No. A111/2000

IN THE MATTER of the Resource Management Act 1991

AND

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

BETWEEN **SOUTHPARK CORPORATION**
LIMITED

(RMA 743/99)

SOUTHPARK UTILITIES LIMITED

(RMA 404/00)

Appellants

AND **THE AUCKLAND CITY COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge Sheppard (presiding)
Environment Commissioner P A Catchpole
Environment Commissioner F Easdale

HEARING at Auckland on 22 August 2000.

COUNSEL

A Dormer for the appellants
P M S McNamara for the respondent
L O'Reilly for ACI New Zealand Glass Manufacturers Limited

DECISION ON PRELIMINARY ISSUES

[1] In the course of these appeals the parties have asked the Court to decide preliminary questions prior to the substantive hearing of the appeals.

[2] The first of the appeals, RMA743/99, was brought against a decision by the Auckland City Council refusing resource consent to construct and operate overhead electric power lines on sections of a route from the eastern end of McNab Street, Penrose, to Bell Avenue, Mt Wellington (the route). The second appeal, RMA 404/00, was brought against a decision by the Auckland City Council declining certificates of compliance in respect of construction and operation of overhead electric power lines on remaining sections of the route.

[3] The appellant in RMA743/99 is Southpark Corporation Limited, and the appellant in RMA404/00 is Southpark Utilities Limited. The Court was told that the difference is not material for the present purpose. We will refer to them both as Southpark.

[4] ACI New Zealand Glass Manufacturers Limited (ACI), having lodged a submission on Southpark's resource consent application, and having given the prescribed notice under s 271A of the Act, is a party to the appeal RMA743/99. Late notice under section 274 having been waived, ACI was heard on the appeal RMA404/00.

[5] The parties presented an agreed statement of the facts and preliminary questions for the Court's decision. We set them out:

RMA 743/99 –Application for resource consent

2. *On 30 March 1998 the respondent notified an application by Southpark Corporation Limited for resource consent to install overhead electric power lines along the following sections of the route:*
 - (a) *A segment of the route occupying the southern side of the McNab Street road reserve.*
 - (b) *A segment of the route which traverses the land designated for road and road widening purposes to the west of Great South Road, opposite the intersection of Great South Road and McNab Street.*
 - (c) *That segment of the route which traverses the SEART designation contiguous with the rail corridor.*
3. *Plans of the route for the proposed overhead electric power lines are attached marked "A", showing the segments of the route for which resource consents and certificates of compliance have been sought.*
4. *The route of the overhead electric power lines is predominantly located on private land, except along the length of McNab Street, on the designated land to the west of Great South Road/McNab St intersection, and where the route crosses the SEART designation and Church Street.*

5. *The purpose of the proposal is to distribute power to four industrial areas in south-east Auckland.*
6. *The network is to be supported on poles varying in height from 12 metres to 23 metres, spaced relative to line support requirements. The height of the lines will vary between 10 metres and 19 metres.*
7. *The system to be installed is to operate at a maximum voltage of 33 kV. The capacity of the line is proposed to be below 100 MVA which is the maximum permitted land [sic] under the Auckland District Plan (Isthmus Section) ("the Plan"). The poles are to carry two 33 kV circuits and two 11 kV circuits on two cross arms which are 2.8 metres and 2.4 metres wide respectively. Each circuit carries three lines. Each pole carries 12 lines.*
8. *Clause 4A.4.6 of the Plan states (so far as relevant):*

"B Permitted Activities

- (i) *The construction (including earthworks), installation, operation and maintenance of the following network utility services are permitted activities in, on, under over roads throughout the Isthmus ...*

- *Above ground telecommunication lines (other than connections) or above ground electric lines for conveying electricity at a voltage up to and including 110 kV with a capacity up to and including 100 MVA (other than connections), except in any portion of road which is longer than the legal width of the road where:*

- (i) *there are neither any existing above ground telecommunication lines nor above ground electric lines; or*
- (ii) *the only existing above ground telecommunication lines or above ground electric lines are connections; or*
- (iii) *either all existing electric lines (other than connections) or all existing telecommunication lines (other than connections) are underground; or*
- (iv) *the relevant portion of the road is within a Conservation Area; or*
- (v) *the relevant portion of the road abuts land zoned Residential 1, 2a, 2b, 2c, 3a, 3b or 4; or*
- (vi) *any rule in Clause 5C.7.6 'Views' would be infringed.*

- (iii) The construction, installation, operation and maintenance of the following network utility services are permitted activities throughout the Isthmus, other than in roads (which are provided for in subclause (i) above) or in the Coastal Protection Yard (which is provided for as a discretionary activity in subclause D below), and subject to compliance with the development control rules for the particular zone –

...

- Above ground telecommunication (lines (other than connections), or above ground electric lines for conveying electricity at a voltage up to and including 110 kV with a capacity up to and including 100 MVA (other than connections) except over any land:

- (a) within a Conservation Area; or
- (b) zoned Residential 1, 2a, 2b, 2c, 3a, 3b or 4; or
- (c) set apart as road, private road or private way on a plan of subdivision for which a resource consent has been granted, provided that this exception shall not apply to the extent that such land contains existing lawfully established above ground telecommunication lines or electric lines; or
- (d) held as a local purpose (road) reserve or local purpose (access) reserve; or
- (e) designated for a road; other than land designated for road widening purposes by way of building line or otherwise, provided that this exception shall not apply to the extent that such land contains lawfully established above ground telecommunication lines or electric lines.

...

D Discretionary Activities

Except as provided for in Clause 5C.7.3.3B(b) [Works in the vicinity of trees in roads and unzoned land] and in the Special Purpose Activity 3 zone, the construction, operation and maintenance of the following network utility services are discretionary activities throughout the Isthmus.

- Network utility services which are not in a road and which are located in the Coastal Protection Yard;

- *Network utility services not otherwise provided for as permitted or controlled or restricted discretionary activities."*

In addition to the criteria set out in Section 104 of the Act, discretionary activities will be assessed against the following criteria:

- *The extent to which the proposed location, site and route affects public safety and convenience;*
- *Effect on the health and safety of people;*
- *The visual impact of the activity and the extent to which this is mitigated by landscaping and screening or other remedial measures;*
- *The scale and significance of any adverse effects on the environment and the extent to which these are avoided, remedied, or mitigated;*
- *The effects on scheduled buildings, objects, heritage properties, and places of special value; also conservation areas, trees, archaeological and geological features and Maori heritage sites, and the extent to which any adverse effects are avoided, remedied or mitigated;*
- *In the case of above ground network utility services including telecommunications and electric lines, the nature of the subsoil and extent of existing underground works in the vicinity, and the effect on –*
 - *the visual environment*
 - *amenity values of the area*
 - *traffic safety;*
- *The location of the activity may give rise to adverse effects including noise, lighting and overshadowing, on adjacent land;*
- *In the case of an activity which includes underground works, the extent to which the work is able to be conveniently accommodated underground without adversely affecting existing underground network utility services (including ready access for maintenance purposes) or seriously limiting the opportunity for additional underground network utility services in the future;*
- *The effect of the position of vehicular access locations and the traffic generated by the activity on existing traffic flows and parking and on adjacent property;*
- *The extent to which Maori cultural values are affected."*

9. *The term "network utility service" is defined in the Plan as any activity relating to (among other matters):*

"(iii) Transformation, transmission, or distribution of electricity"

10. *In his report dated 16 March 1999 on the application for resource consents, the respondent's planning officer assessed the status of the proposal as follows:*

"... discretionary activity consent is required for those parts of the route which are located within McNab Street, and within the land designated for road, being Great South Road adjacent to the intersection of McNab Street and the crossing of SEART generally in a location adjacent the rail corridor (sic). The balance of the proposed route on private land, including the rail corridor is a permitted activity. This assessment will address those matters only, having no regard to the balance of the route." (paragraph 3.6)

11. *On 22 June 1999 the respondent declined the application for the three sections of the route for which consent was sought on the basis that an application was required for the whole route and, inter alia, that the effects of the activity in the sections of the route for which consent was sought were more than minor.*

RMA 404/00 - Application for Certificates of Compliance

12. *In December 1999 Southpark Utilities Limited lodged an application for certificates of compliance in respect of those parts of the route for which it alleges no consent is required. That application has also been declined by the respondent on the grounds that, inter alia, the activity described in the application is not, in its entirety, an activity which the Plan describes as permitted.*

Issues

13. *The preliminary issues for the Court's determination are:*
- (a) Should a consent authority treat the appellant's applications for resource consents for electric power lines on certain sections of the route and for a certificate of compliance for electric power lines on remaining sections of the route as a single proposal, or as separate proposals which can be the subject of separate applications?*
 - (b) In considering the appeal by Southpark Corporation against the respondent's decision to decline its application for resource consents, is the Court entitled to have regard to the environmental effects of those sections of the proposed electric power line for which the appellant contends no consent is required, and which were not part of the application?*
 - (c) In considering the appeal by Southpark Utilities against the respondent's decision to decline the application for certificates of compliance, is the Court entitled to have regard to the environmental effects of those sections of the proposed electric power line for which the appellant acknowledges a resource consent is required?"*

[6] As the reporting officer stated (in the passage from the report quoted in paragraph 10 of the agreed statement of facts), the outcome of applying clause 4A.4.6 of the district plan to the circumstances of the proposed electricity line is that where the lines passes over road it is a discretionary activity, and where it passes over private land it is a permitted activity.

[7] The heart of the issue is this. Has the electricity line that Southpark proposes to establish to be considered "in its entirety" as a single proposal (as the Council and ACI contend)? Or can the parts of the line that are a permitted activity (the subject of the certificate of compliance request) be considered independently from the parts that are a discretionary activity as separate proposals (the subject of the resource-consent application) (as Southpark contends)?

[8] At least since *Locke v Avon Motor Lodge*¹ it has been established and accepted that in general there is no scope for hybrid planning status for a proposal, and that the more stringent classification applies to the whole. In *Rudolph Steiner School v Auckland City Council*² the Environment Court had held that this approach continues to apply in the regime of the Resource Management Act (except where one of the activities for which consent is sought is a restricted discretionary activity), and that had been approved by the High Court in *Aley v North Shore City Council*.³

[9] The question has recently been reconsidered in the context of cases challenging decisions that resource-consent applications need not be notified. In *Bayley v Manukau City Council*⁴ the Court of Appeal held that where part of the proposal is a restricted discretionary activity, this approach "may be inappropriate". The Court referred to the judgment of Justice Salmon in *Aley v North Shore City Council*⁵ and said⁶—

Salmon J's observations were made concerning a discretionary activity consent application in respect of which the council had not restricted its discretion. Mr Gault appeared to accept the force of them, but he argued that where the council has restricted its discretion, then the activity which it is considering under s 94(2) and will later consider under s 104 does not consist of the whole of the proposed development, but only those aspects of it which the council has specified as remaining for its consideration. Counsel drew attention to the fact that Salmon J had qualified his endorsement of the Environment Court's approach by distinguishing restricted discretionary activities.

¹ (1973) 4 NZTPA 17 (SC).

² (1997) 3 ELRNZ 85.

³ [1998] NZRMA 361, 378.

⁴ [1999] 1 NZLR 568, 577 (CA).

⁵ [1998] NZRMA 361.

⁶ Pg 577.

Mr Gault's argument is in our view correct as a matter of construction... The words "activity for which consent is sought" in s 94(2) do not extend to any activity which is able to be undertaken without that consent and, more importantly, is unable to be considered by the council. Section 88(5) states that the applicant's assessment is only to address the matters over which the authority has retained control. Under the proviso to s105(1) the authority may refuse consent or impose conditions only on the basis of those matters. It would make little sense to require a consent authority to notify an application because it may involve effects which the authority must then disregard at the hearing of the application. That would provide false hope for objectors and be wasteful of time and money.

Mr Gault's argument does not in this case lead to the result he seeks. Here the council, as permitted by statute, has restricted itself to consideration of particular matters. When that has been done the approach taken in Locke may be inappropriate. In this case, however, when the content of R 14.13.3 is examined it can be seen that the "restriction" is relatively unconfining, especially in relation to site layout.

[10] That judgment is authority for the proposition that where one of the activities for which consent is sought is a restricted discretionary activity, the *Locke* approach may or may not be appropriate. A decision whether or not it is appropriate evidently depends on how relatively unconfining are the factors to which exercise of the discretion to grant or refuse consent is restricted.

[11] In a later passage of the same judgment, the Court of Appeal referred to the related application for controlled activity consent not having been notified, and said⁷ –

Such a course may be inappropriate where another form of consent is also being sought or is necessary. The effects to be considered in relation to each application may be quite distinct. But more often it is likely that the matters requiring consideration under multiple land use consent applications in respect of the same development will overlap. The consent authority should direct its mind to this question and, where there is an overlap, should decline to dispense with notification of one application unless it is appropriate to do so with all of them. To do otherwise would be for the authority to fail to look at a proposal in the round, considering at the one time all the matters which it ought to consider, and instead to split it artificially into pieces.

[12] In another case challenging a decision not to notify a resource consent application, *King v Auckland City Council*,⁸ Justice Randerson quoted part of the first passage from the Court of Appeal judgment in *Bayley* quoted above, and said⁹ –

[41] These remarks were made in relation to restricted discretionary consent applications under s94(2) but the same logic must apply to controlled consent applications under s94(1)(c) given the restrictive provisions of s 105(1)(a) in terms of which the consent authority is obliged to grant the consent but may impose conditions in respect of which it has reserved control under the plan. Section

⁷ Pg 580.

⁸ [2000] NZRMA 145 (HC).

⁹ Pg 156, paragraph [41].

105(3) should also be noted as this provision restricts the consent authority's consideration of the matters described in s 104 to those relevant to determining any conditions to be included in the consent.

[42] In *Bayley*, the Court then proceeded to analyse the scope of the discretion reserved under the relevant rule relating to the restricted discretionary consent activity at issue and concluded that the rule was "relatively unconfining" and "preserves a broad range of consequential effects which the Council needed to consider in the present case" (577-578). There could have been adverse effects on neighbours as a result of the offending structures being in the yard space which would not have occurred if the development as a whole had to be designed in a way which complied with the plan. The Court noted that s 94(1A) was not available because the plan had not expressly stipulated that the restricted discretionary activity need not be notified.

[43] The principle that the scope of the activity for which consent is sought does not extend to activities which may be undertaken without that consent will vary in its application according to the facts of the case. The more restricted the control or the discretion reserved, the narrower will be the range of considerations the consent authority may take into account and the more limited its ability to decline consent or to impose conditions. The same applies to the range of adverse effects which may be considered for the purposes of dispensing with notification under s94.

[44] Much will therefore depend on the nature and scope of the control at issue, the matters to which the consent authority is obliged to have regard under the Act, any statutory restrictions upon the matters which may be considered and the relevant provisions of the plan. By their nature, controlled activities are likely to give the least scope to a consent authority to effect change, having regard to the provisions of the Act. There may be control only over such matters as external appearance or design or the control may be much more extensive as it was in *Bayley*. If, for example, the Council has excluded its ability to direct the size and location of a dwelling on a site so long as it is within the relevant development controls, then an adverse effect on a neighbour's view or amenities would be irrelevant to the consent authority's considerations under s94. The house could be built where the applicant wished and the adverse effect on the neighbour's view or amenities would necessarily follow. Neither the consent authority nor the neighbour would be able to forbid the construction of the dwelling within the permitted envelope and in the location sought.

[45] The consent authority has greater scope to intervene with restricted discretionary consent applications because consent may be declined. Nevertheless, regard must be had to the statutory limitations on the consent authority's discretion in terms of s105(1)(b) and (3A). Again adverse effects arising from matters which the consent authority has by its District Plan excluded from consideration would be irrelevant when considering dispensation from notification. The greatest scope for the exercise of control is afforded to unrestricted discretionary consent activities. The full range of matters under s104(1) becomes applicable including Part II considerations. Except to the extent that activities which may be undertaken as of right may be applicable (as discussed above) the full range of actual or potential adverse effects on the environment of the activity for which consent is sought, is to be considered under s 94(2).

[13] In a later passage of the judgment the learned Judge considered multiple consents, and applied the second of the passages from the Court of Appeal judgment in *Bayley* quoted above, finding that the consents overlapped "to such an extent that they could not realistically or properly be separated either for the purposes of s 94 or for the grant of the consents themselves".

[14] In *Body Corporate 97010 v Auckland City Council*¹⁰ there was a challenge to a decision that a resource consent application for an apartment building need not be notified. Two kinds of resource consent were required: a controlled activity consent for dwelling units in the zone, and a discretionary activity consent because car parking spaces were to be stacked. It was submitted that the Council had erred in failing to treat the whole application as a discretionary activity. We quote the relevant passages from the judgment of the Court of Appeal¹¹ upholding the judgment of the High Court in that respect—

[18] ... Justice Randerson rejected that argument. He said that there were no grounds for interfering with the view of the Council's officer that the stacked parking proposal would comply with the criteria in the relevant rule and that no person would be adversely affected by the granting of the resource consent in that respect. The parking would have "no off-site effects". Even if the discretionary activity application were refused, the Judge said,

... the evidence is that, at worst, one of the residential apartment levels would have been converted to provide additional complying parking. There would be no effect on the size, shape, or location of the building on the site and it could not be said that consideration of the parking issue would affect the outcome of the controlled activity consent for the building as a whole.

[19] Secondly, the Judge said, the plan did not permit the Council to require material changes to the form of the building, which complied with development controls for the site, and that it could not in this case require alteration of the shape or height of the building or dictate a materially different location on the site. He noted that the appellant's concern was with the height and bulk of the building, not its location on the site. "The Council had no power to prevent STC taking advantage of the development rights afforded for the site by the [Operative] Plan". Therefore, the Judge concluded, the Council was entitled to consider separately each of the two resource consents. Because the Council had no power to impose a condition about the height or bulk of the building or materially affecting its location, any adverse effects on the persons represented by the appellant could not have been addressed if the application had been notified. No purpose would have been served by requiring notification. Although the report did not refer explicitly to s94(2), the Judge said that it in fact addressed the matters which the Council was required to address under that provision.

[20] The appellant made essentially the same arguments in this Court. We agree with the Judge that in substance the Council's officer did address s94(2). We are not persuaded that Ms Bell failed to give consideration to the possibility of adverse effects on the environment. The report she endorsed did so, and said that they would not be more than minor, which was a clear reference to s94(2)(a). There was ample basis for the Council to reach the view that the car parking arrangements would not give rise to any adverse effects beyond the site.

[21] Mr Farmer [counsel for the appellant] also repeated the argument made to Randerson J that, in accordance with Bayley, the whole proposal should have been assessed for notification purposes as a discretionary activity...

[22] ... The effects of the car parking in this case were distinct in the sense that, unlike the staircases and decks in Bayley, the arrangements proposed for it had no consequential or flow-on effects on the matters being considered under the controlled activity application ... There was in this case no overlap and therefore no need for an holistic approach.

¹⁰ [2000] NZRMA 202 (HC).

¹¹ CA64/00, 17 August 2000.

[15] From those authorities, it is our understanding that while the *Locke* approach remains generally applicable, so a consent authority can consider a proposal in the round, not split artificially into pieces, that approach is not appropriate where: (a) one of the consents sought is classified as a controlled activity or a restricted discretionary activity; and (b) the scope of the consent authority's discretionary judgment in respect of one of the consents required is relatively restricted or confined, rather than covering a broad range of factors; and (c) the effects of exercising the two consents would not overlap or have consequential or flow-on effects on matters to be considered on the other application, but are distinct.

[16] Returning to the present case, the reason some sections of the proposed electricity line are classified as a discretionary activity is that those sections pass over lands designated as road in the district plan. Other sections of the line pass over private land, and are a permitted activity. That is not dissimilar to the case in which an activity crosses from land in one zone over a zone boundary into land in another zone where it has a different classification.

[17] In *Contact Energy v Waikato Regional Council*¹² it was submitted that where a proposal crosses zone boundaries, the general *Locke* approach is not applicable, and the proposal should be considered separately for each zone. We held that the classification of the status of the land-use aspects of the proposal had to be wholly one, not a hybrid. As the most stringent status was a noncomplying activity in one zone, we found that the land-use activities had to be treated as a noncomplying activity. The Court also held that in exercising the discretionary judgment whether resource consent should be granted or refused, it should consider the various elements of the proposal by reference to the district plan provisions in respect of the respective zones in which they are to be located.

[18] That decision was given before the judgments in *King* and in *Body Corporate 97101* were available to us.

[19] Returning to the three criteria we identified in paragraph [15] we find that the only resource consent required for the electricity line is a discretionary activity consent required for the sections that pass over land designated as road. The sections that pass over private land are a permitted activity, for which no resource consent is required. In deciding the certificate of compliance request, the territorial authority had only to decide questions of primary fact (eg the voltage and capacity of the line,

¹² Environment Court Decision A04/2000.

whether it passes over a portion of road which is longer than the legal width of the road, etc) and has no discretionary judgment to exercise.

[20] The agreed statement of facts does not identify any effects of the line either over road or over private land. We suppose the possible effects might be visual effects of the conductors, poles and cross-arms, and radiation effects from electric and magnetic fields created around the conductors when energy is being transmitted along the lines.¹³

[21] If the effects of the lines over private land were to be considered as well as the effects of the lines over roads, to consider them separately would not be considering the proposal in the round, but splitting it artificially into pieces. However as the sections of the line over private land meet the conditions for classification as a permitted activity, the scope of the authority's discretion is not merely restricted or confined, it is eliminated altogether. The result is that whatever the environmental effects of installing and operating those sections of the line, those effects cannot lead to a decision to refuse a certificate of compliance.

[22] In considering the resource consent application for the sections of the line that pass over road, the consent authority has to have regard to the effects on the environment of allowing the activity, and has to exercise an unrestricted discretionary judgment whether to grant or refuse consent. In doing so it has to consider the cumulative effects, and that may include the extent to which the visual and radiation effects of the sections over road are cumulative on the effects of the sections over private land.

[23] Counsel for the respondent relied on provisions in the Resource Management Act 1991 that indicate an aim of integrated management of the effects of the use and development of resources. We agree that this is an important aim of the Act. However it is the artificial splitting of the classification of electricity lines in the respondent's district plan, making them permitted activities over private land and discretionary activities over road, that results in the distinction in management of their effects.

[24] Although section 139(6) provides that a certificate of compliance is deemed to be an appropriate resource consent, resource consent is not required for a permitted activity. It is inherent in the nature of a permitted activity that it may be

¹³ See *Trans Power v Rodney District Council* Planning Tribunal Decision A85/94.

exercised as of right without the consent of the territorial authority. Southpark does not need resource consent for the permitted-activity sections over private land: a certificate of compliance would only be an authoritative verification of the position at law.

[25] Mr McNamara also referred to the leading case about planning units, *Burdle v Secretary of State for the Environment*¹⁴ and to *Westpark Investments v Auckland City Council*¹⁵ in which it was applied by the Planning Tribunal. The concept of planning unit is important. However we do not accept that it is influential in this case. Rather we have to apply and give effect to the law as explained by the Superior Courts in the judgments already cited, which are directly binding on this Court.

[26] ACI's concern is the proximity of the proposed electricity line over the road to its glass manufacturing operation, and associated traffic safety and amenity issues. As the section of the line over the road is classified as a discretionary activity, it had the right (which it exercised) to make a submission on the resource consent application in that respect, and it has the right to be party at the hearing of Southpark's appeal against the refusal of resource consent for that section. Any section of the line over private land in the vicinity of ACI's premises being classified by the district plan as a permitted activity, ACI has no right to make objection in respect of it, any more than the territorial authority has any discretion to forbid it.

[27] We now address the first of the three preliminary issues for determination.

(a) Should a consent authority treat the appellant's applications for resource consents for electric power lines on certain sections of the route and for a certificate of compliance for electric power lines on remaining sections of the route as a single proposal, or as separate proposals which can be the subject of separate applications?

[28] We hold that the two applications have to be treated separately. On the request for a certificate of compliance for the sections over private land, the territorial authority has no discretion to exercise, nor is there room for consideration of environmental effects. If the proposal complies with the conditions specified in the rule as a permitted activity, the territorial authority has to issue the certificate; if it does not comply with any of them, it may not issue the certificate. On the application for resource consent for the sections of line over road, the consent

¹⁴ [1972] 3 All ER 240.

¹⁵ Planning Tribunal Decision A73/95.

authority has to have regard to the matters listed in section 104(1) (including the actual and potential effects on the environment of allowing the activity), and has to exercise the discretion conferred by section 105(1) to grant or refuse consent, and if it is granted, to impose conditions.

[29] The second preliminary issue is—

(b) In considering the appeal by Southpark Corporation against the respondent's decision to decline its application for resource consents, is the Court entitled to have regard to the environmental effects of those sections of the proposed electric power line for which the appellant contends no consent is required, and which were not part of the application?

[30] We hold that in deciding the appeal against refusal of the resource consent for the sections of line over road, the Court would be entitled (and obliged) to have regard to any environmental effects of the sections of the line over private land (a permitted activity) to the extent that any effects of the line over road are cumulative on the effects of the line over private land.

[31] The third preliminary issue is—

(c) In considering the appeal by Southpark Utilities against the respondent's decision to decline the application for certificates of compliance, is the Court entitled to have regard to the environmental effects of those sections of the proposed electric power line for which the appellant acknowledges a resource consent is required?

[32] We hold that if the Court finds that the sections of the line over private land comply with the conditions in the district plan for classification as a permitted activity, the Court would then be obliged to allow the appeal and grant the certificate of compliance; it would not be entitled to have regard to the environmental effects of the line, and would not have jurisdiction to exercise a discretion to refuse the certificate.

[33] We apprehend that in the light of those determinations, the parties may be able to settle one or both of these appeals. If that does not prove possible, a fixture may be requested in due course.

[34] The question of costs is reserved.

DATED at AUCKLAND this 18th day of September 2000.

For the Court:



D F G Sheppard
Environment Judge

