

[238] The earthworks standard finally contains 2 notes which provide as follows:

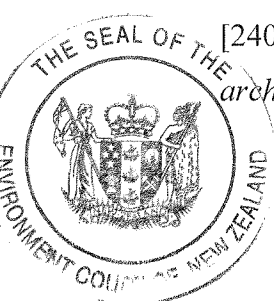
Note 1: In accordance with the Historic Places Act 1993, where an archaeological site is present (or uncovered) authority from the NZHPT is required if the site is to be modified in any way.

Note 2: Given the nature and history of the Airport land, before undertaking any earthworks consideration should be given to whether a section 11 or 12 approval is required under the Historic Places Act 1993.

[239] Accordingly, Plan Change 73 contains a series of controls on earthworks in the Airport Zone which might impact on archaeological sites, waahi tapu or the like:

- Firstly, earthworks are not permitted activities in Areas X and Y.
- Secondly, earthworks are controlled activities in Areas X and Y only if they have an approval under the Historic Places Act and involve disturbance of less than 100m³ of earth and do not alter the ground level by more than 1.0 metre over any 10 year period. Earthworks which do not comply with these standards require restricted discretionary activity consent with discretion directed to effects on archaeological values and sites of significance to tangata whenua.
- Thirdly, earthworks involving disturbance of more than 100m³ and altering ground level by more than 1.0 metre anywhere else on the airport land or earthworks closer than 20 metres to a water body require controlled activity consent.
- Fourthly, if any earthworks unexpectedly disturb any cultural site, notwithstanding the other controls in place, then the disturbance protocol is applicable. The protocol now makes specific provision for the involvement of tangata whenua with ancestral connections to the airport land in subsequent processes.
- Fifthly, the footnotes to the permitted activity standard in Plan Change 73 give specific warnings about archaeological sites and the need for NZHPT approval.

[240] Mr Aburn contended that *...in terms of sites of significance and archaeological matters, I believe the plan change before the Court now does*



*appropriately and robustly address that issue.*¹¹¹ In addition to the various rules and standards identified above he referred to specific policies and objectives regarding these matters. It was his view (and that of Ms O’Keefe) that these provisions contained adequate controls and that there was no need for any further investigations before approving Plan Change 73.

[241] We concur with the opinions of Mr Aburn and Ms O’Keefe in that regard. Plan Change 73 puts a comprehensive series of controls in place regarding earthworks and their possible effect on sites of interest to tangata whenua. It recognises the parallel jurisdiction of NZHPT but without surrendering District Plan control over such matters. No additional provisions, controls, rules or standards were suggested by Te Ngarara.

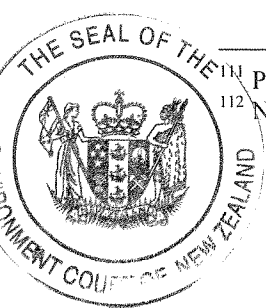
[242] The disturbance protocol has been amended to make specific provision for landowner descendants’ participation in any processes following unanticipated discovery of any archaeological site of interest to them. We note that the protocol is not the *first line of defence* for archaeological/tangata whenua values which are subject to a series of other prior controls and protections under both Plan Change 73 and NZHPT’s jurisdiction.

[243] We accordingly conclude that Plan Change 73 appropriately recognises and provides for those matters identified in ss 6(e), 7(a) and 8 RMA. We appreciate that our findings in that regard do not satisfy the specific concerns of Te Ngarara as to ownership of the airport land but it is beyond our jurisdiction to consider that matter.

Traffic (*This section of the decision was written by Commissioner Mills*)

[244] PAC appealed the Commissioners’ decision on traffic grounds as follows:

*The decision erred by failing to properly take into account the impact of increases in traffic which will result from the airport development proposal under the Plan Change on the social, economic and cultural wellbeing of people and communities, and their health and safety, and erred in failing to ensure that the adverse effects on the environment of increases in traffic are avoided, remedied or mitigated.*¹¹²



[245] The following witnesses filed evidence on traffic related issues with the Court.

Mr T M Kelly on behalf of PAL.

Mr P R Brown provided peer review evidence for PAL.

Mr G P Clark, on behalf of PAC.

Mr D J Dunlop, on behalf of the Council.

[246] Caucusing of the experts prior to the hearing failed to narrow the issues.

[247] At the commencement of the hearing the Court suggested, and the parties agreed, that further caucusing may be of value.¹¹³

[248] These caucusing sessions occurred on March 3 and March 4, 2009. The outcome was a document entitled: Joint Statement of Traffic Witnesses (4 March 2009) which was produced as Exhibit 15. This joint statement was signed by the four participating witnesses, who are listed above.

[249] For convenience we reproduce Paragraph 6 (Summary) of this joint statement.

[6] *Summary*

6.1

The caucusing has proved very helpful in narrowing down the areas of difference with the main conclusion being that the traffic model is fit for the purpose it is being used.

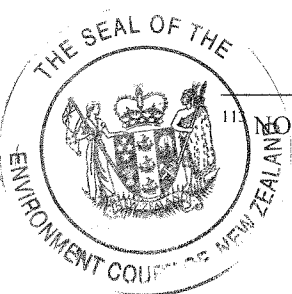
6.2

The areas relating to thresholds and the possible different completion dates of the WLR and the proposed development can be addressed by traffic management measures, such as signal timings to ensure any unforeseen adverse effects are not unnecessarily imposed on the existing road users along Kapiti Road and the wider road network.

6.3

In the light of this caucusing we believe that there are no points of disagreement regarding the traffic related impacts of Proposed Plan Change

73.



[250] At this point, the Court understood any potential traffic related effects in respect of Plan Change 73 had been mitigated to the satisfaction of all parties and this was confirmed by Mr Kelly.¹¹⁴

[251] However, Counsel for PAC subsequently informed the Court that Mr Clark had one concern remaining:

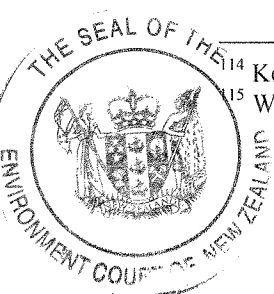
*The outstanding issue concerns the potential adverse effects on the Kapiti network arising from the airport development in circumstances where the Western Link Road (WLR) and the Ihakara extension are delayed. While the experts agree that traffic management measures would be required in such a scenario, there was no discussion of how such measures might be included in the Plan . . .*¹¹⁵

[252] As a method of explaining the background to the issue raised by PAC and to generally assist with the provision of context we reproduce the evidence of Mr Kelly:

The Airport Land is currently serviced by Kapiti Road. As the main route in the district linking coastal residential communities with Paraparaumu town centre, Kapiti Road carries significant volumes of traffic and congestion is a regular occurrence. The dual function of State Highway 1 as both a strategic State highway and a local north – south distributor road also results in high traffic volumes with some congestion at peak periods

The proposed Western Link Road (“WLR”) will provide a new local north-south route through the district. This Council-led project will provide a significant degree of traffic relief to the State highway and much of the local road network. The WLR alignment is fully designated and construction is programmed to commence in 2009, irrespective of the outcome of Plan Change 73 to the Kapiti Coast District Plan (“Plan Change”).

The WLR includes a link between Ihakara Street and the WLR itself, to be constructed by the Council. As part of the proposed Airport development (and hence reliant upon the Plan Change), this route would be continued through the development area, connecting to Kapiti Road close to



¹⁴ Kelly, NOE, page 495

¹⁵ Watson O/S para 57

Paraparaumu Beach. In doing so, this section (Ihakara Street West) would provide an alternative east-west local route, providing a more convenient route for many movements with resulting traffic relief to Kapiti Road and Raumati Road.

The combined effect of these improvements to the road network will be to ensure that the additional traffic movements associated with development in the Airport area (up to a development threshold of 102,900² floor-space) can be accommodated with a level of effect on the transportation network which is acceptable.

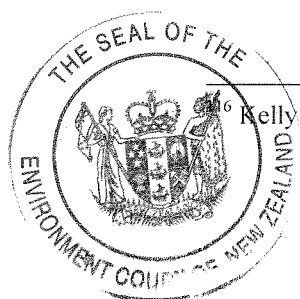
A system of thresholds has been developed to ensure that the rate of development is carefully linked to the provision of additional roading infrastructure. These thresholds seek to provide an assurance to the Kapiti community that the rate of traffic generation associated with the development will not precede the ability of the roading network to accommodate it.

Development will take place gradually over a considerable period of time. The earlier stages of development are proposed to be subject to controlled activity status, with development conditional upon the provision of both localised access and the commencement of construction of sections of the WLR. The later stages of development would be subject to restricted discretionary status, which acknowledges the greater degree of uncertainty regarding future traffic demands and performance of the road network. As such, for later development to occur, a comprehensive transportation study that considers the effects on the road network would be required to demonstrate that the outcomes will be acceptable.¹¹⁶

[253] We now turn to the issue raised by PAC. In a further attempt to settle this one outstanding traffic related issue, PAL's Planner suggested the following new policy and method be inserted into the District Plan.

Methods (p9) ADD the following bullet point:

- *Traffic management measures (e.g. traffic signal timings) implemented by the roading authority.*



Policy 5 (p8) AMEND by adding the following additional paragraph to the "Explanation":

"If the situation should arise where approved development in the Airport Mixed Use Precinct proceeds in advance of the completion of the Western Link Road (WLR) due to unforeseen circumstances delaying the completion of the WLR, any potential adverse effects will be addressed by traffic management measures (e.g. traffic signal timings) to ensure that any such effects are not unnecessarily imposed upon existing road users along Kapiti Road and the wider road network".¹¹⁷

[254] While these provisions were agreed to by PAC, Mr Clark's opinion was that a policy and method do not completely address PAC's concerns and he advocated, in addition, the inclusion of a Rule in the District Plan. He suggested the following:

Operation of any activity within the airport Mixed Used Precinct prior to the completion of the Western Link Road (including the Ihakara Street East and West extensions) shall be a Controlled Activity.

Extent of Control:

Impacts on the existing road network

Assessment Matters:

Council will review the impacts of the additional traffic on the existing road network and how it can best be managed using traffic management measures such as the timing of traffic signals until the completion of the Western Link Road. Any application will require a traffic report from a suitably qualified traffic engineer.¹¹⁸

[255] Three of the four expert traffic witnesses were called to give evidence on this discrete issue – Mr Brown, as a peer review witness, was not called.

[256] Messrs Kelly and Dunlop appearing for PAL and the Council respectively were in complete agreement and their evidence is well summarised in the following answer by Mr Dunlop to a question in cross-examination:

I personally do not believe there needs to be a rule. I believe that Council has the responsibility and take on the ownership of the network and the management of the network to make sure it is managed and controlled in an effective way. So I do not



*believe there needs to be a rule . . . I do not know of examples of where such a rule has been included, however, I guess if it is included it will be of no detriment.*¹¹⁹

And further Mr Dunlop said:

*. . . so I feel that the Council as a road-controlling authority has the ability to influence these decisions and adjust signal timings or whatever other traffic mechanisms might be required. And like I said before, I do not believe that the drafting of a specific rule is necessarily going to make it anymore effective.*¹²⁰

[257] It was also Mr Kelly's opinion that this issue was more one of planning than one of traffic engineering/planning. This was also the opinion of Mr Clark.¹²¹ For this reason Mr Aburn was recalled to give planning evidence on this issue. We shall discuss his evidence later.

[258] Mr Clark's evidence was that while the risks of adverse traffic effects as a result of the KCDC failing to implement the identified traffic management techniques, such as traffic signal timings, is low the impacts of such inaction are high¹²² and for that reason a Rule in the Plan is required. It was Mr Clark's opinion that the Council may bow to pressure from some sectors of the community and delay implementation of the traffic management techniques or not act at all.

[259] Mr Aburn was unequivocal:

*So I do not believe such a rule is necessary, I think it is inappropriate. I do not think it will add to the ability of the consent authority, in this case, acting as a roading authority to manage those effects. And I do not believe that to be significant in any case because of the quantum of development is including . . . [indistinct] control through the thresholds.*¹²³

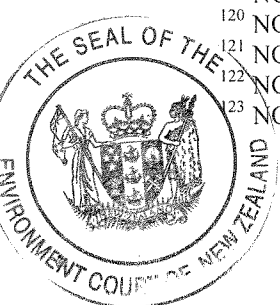
¹¹⁹ NOE page 515

¹²⁰ NOE page 517

¹²¹ NOE, page 502

¹²² NOE, page 725

¹²³ NOE, Page 751



Discussion

[260] We look first at the potential adverse effects that may arise in the absence of a Rule in the District Plan and the combination of circumstances that could trigger such effects, namely:

- (1) Development completed on the airport site (beyond specified thresholds) prior to WLR becoming operational.
- (2) The Council, for whatever reason, failing to implement traffic management measures, such as traffic signal timing. (A combination even Mr Clark agrees is of low probability and we believe unlikely).

[261] Mr Clark's opinion was that while there will not be added congestion on Kapiti Road in the morning (as a result of the airport development) there are likely to be problems for the *evening flow*, moving traffic offsite onto Kapiti Road.¹²⁴

[262] When questioned by the Court as to exactly what he meant by:

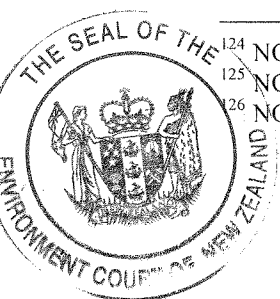
The development has the potential if the Western Link Road is delayed, to significantly impact on people's service.

He replied:

*That increasing the queue length above what they experience at certain times now, it is a noticeable effect.*¹²⁵

[263] Mr Clark went on to say that he had on occasion seen a queue of 20 or 30 cars and that *the likelihood of that queue appearing more often will be more likely*¹²⁶.

[264] We are not persuaded by Mr Clark's evidence that a *significant* adverse effect is likely. The effects he describes, while noticeable, and entailing an occasional reduction in the level of service, during the evening peak for the users of Kapiti Road, appear to us to fall well short of being significantly adverse. For this reason alone we find the proposed rule unnecessary.



¹²⁴ NOE, page 739

¹²⁵ NOE, page 740

¹²⁶ NOE, page 741

[265] Irrespective of whether the development is completed before the WLR is operational the following signalised intersections will be completed and operational:¹²⁷

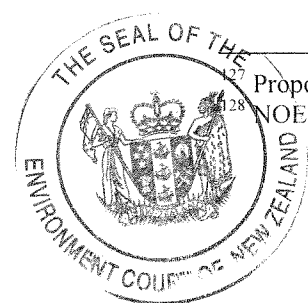
- Eastern intersection
- Langdale intersection
- Hurley Road intersection

On completion of the above improvements to the road network (at PAL's expense) the operation of the improvements (and the network generally) will be the responsibility of the Council. Mr Clark's position is predicated on the Council not exercising responsible and appropriate control over the network – specifically by not adjusting signal timings to take account of an increase in traffic leaving the airport development. The operation of the road network is the responsibility of the council and not something PAL can influence or change.

[266] We agree with all the witnesses that the probability of the development being completed prior to the completion of WLR and the Council failing to implement appropriate traffic management mechanisms is extremely low. We agree with the witnesses who suggest that it is very much in Council and road user interest to mitigate any adverse effects on Kapiti Road.

[267] We further agree that this is essentially a planning matter and for that reason we rely to a considerable extent on the evidence of Mr Aburn. We note also in this respect that Messrs Kelly and Dunlop list planning and traffic planning qualifications in their CVs and Mr Clark does not. In fact he, when questioned about the *likely effect* of the rule that he has proposed, being to *oblige the Council to act* he replied: *Sorry, I am not experienced enough in planning to answer that question.*¹²⁸

[268] For this reason we prefer the evidence of Mr Aburn (and Messrs Dunlop and Kelly) and agree that this is an operational matter and not something that would usually appear in a district plan.



[269] Because the traffic management techniques referred to in the proposed rule are outside the control of the holder of any resource consent to which consequential conditions would attach, we consider that Mr Aburn was correct when he surmised that such a condition would be *ultra vires*.

Finding

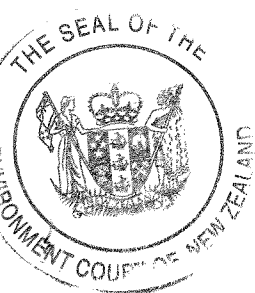
[270] For the reasons given above we find that the Rule proposed by Mr Clark to address a potential traffic-related adverse effect is neither necessary nor appropriate. The policy and method referred to above, and agreed to by the parties, would give adequate direction to Council in the unlikely event that development on the site (beyond the specified threshold) is completed before the WLR is operational.

[271] One further matter was raised by the Court during the hearing. It related to that part of the proposed roading network (Ihakara Street extension) that is to be located on the land owned by PAL. The Court recognised that this section of the proposed road was outside the control of Council and responsibility for its construction lay with PAL. The Court required certainty in respect of the completion of this section of road. No such certainty attached to the proposal before the Court at the beginning of the hearing.

[272] In response to the Court's enquiry PAL has amended the Plan Change 73 provisions as follows: Under the section headed - Traffic and Development Thresholds - the provision relating to Ihakara Street West (to be undertaken by PAL) now requires this section of road to be completed prior to the commencement of operation of any Aviation Related Mixed Use Development in the Aviation Mixed Use Precinct in excess of 62,500 square metres gross floor area. This change allays the Court's concern.

Planning Issues

[273] Two planners gave evidence to the Court. They were Mr Aburn for PAL and Mr A D Guerin for the Council. No other party called a planning witness.



[274] The cross-examination of the planners was largely confined to issues relating to Te Ngarara's interests and safety matters relating to runway length which we have discussed elsewhere.

[275] The uncontested planning evidence before us was significant in a number of respects. The particular planning issues to which we wish to refer are:

- Strategic issues;
- Existing plan provisions;
- Features of Plan Change 73;

Strategic Issues

[276] Both Messrs Aburn and Guerin referred to the importance of Paraparaumu Airport in the regional infrastructure and air transport network. Mr Guerin concurred with the finding of the Council Hearings Commissioners that:

*The retention and economic viability of Paraparaumu Airport as a transport and aviation related activity centre is a strategic priority of Kapiti Coast.*¹²⁹

[277] We did not understand there to be any dispute about the strategic significance of the airport to the District and Region. Mr Aburn referred to the following provisions of the District Plan (inter alia):

- Transportation Resource Management Issues B.19.4 (iv),p76
Paraparaumu Airport is a well established facility of strategic importance providing the district and wider region with a range of aviation services;
- Airport Zone C.19, p.C19-1
Paraparaumu Airport is an important strategic facility for the District. It represents a significant physical and economic resource that needs to be managed to enable the continued use and development of a range of aviation, aviation related, and weather monitoring services.

[278] Both witnesses referred to the Council's LTCCP – Kapiti Coast Choosing Futures Community Plan (2006) which advocates for the development of the airport as a strategic asset. Mr Aburn also made reference to:

- Kapiti Coast Development Management Strategy (2006)
The retention and economic viability of Paraparaumu Airport as a transport and aviation related activity centre is a strategic priority for Kapiti Coast;
- Kapiti Coast Sustainable Transport Strategy (2007)
The retention and economic viability of Paraparaumu Airport as an aviation and transport related activity centre is a strategic priority for the Kapiti Coast.

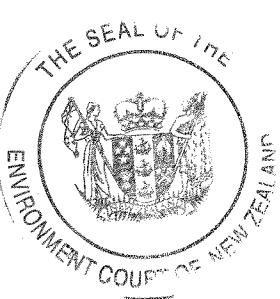
[279] Mr Aburn concluded that the retention of a viable, economic airport operation is consistent with the strategic directions of both the District Plan and the other Plans and Strategies identified. He acknowledged that strategic importance had to be balanced against other equally important District Plan objectives relating to environmental amenity, urban form and the sustainability of the Paraparaumu Town Centre. There was no challenge to that evidence.

Existing Plan Provisions

[280] Both planners considered the current District Plan provisions introduced by Plan Change 18.

[281] Mr Aburn testified that the current zoning allows for the following range of activities within the Airport Zone:

- Aviation and aviation activities;
- Recreation Activities;
- General business activities, including retailing but with permitted activity retailing limited to premises not exceeding 249m²;
- Warehousing, storage and distribution activities;
- Residential activities;



- Hospital and age care facilities;
- Heritage and museum activities.

[282] In response to questions from the Court, Mr Guerin acknowledged that the existing provisions of the District Plan do not impose an obligation on the airport operator to keep Runway 11/29 open. Any control in that regard is presently a negative control which precludes the area of the runway being used for other purposes¹³⁰, but cannot compel the airport operator to retain the runway.

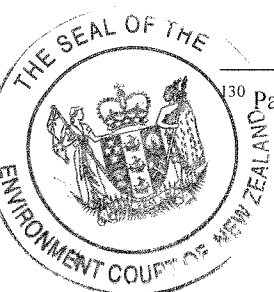
[283] It was PAL's contention that the present provisions for retailing were so restrictive as to prevent the most efficient use of airport land not otherwise required for core airport activities. On the other hand, allowing for residential use of airport land outside the aviation area (as Plan Change 18 does) was seen to introduce an activity which is in direct conflict with airport activities and was inappropriate.

Plan Change 73

[284] Mr Aburn identified the reasons for the Plan Change and in particular the need for there to be some provision for retailing on the airport land as part of the Airport Mixed Use Precinct. He accepted the evidence of Mr Robinson in that regard (as do we).

[285] Mr Aburn was conscious of the *balancing act* which was required to enable commercial/retail development to occur on the airport lands on the one hand, whilst ensuring that such development would not have adverse effects on the viability of the Paraparaumu Town Centre on the other. He quoted extensively from the findings of the Council Hearings Commissioners as to how the balance might be struck between the two and adopted their findings in that regard. In particular, the Hearings Committee had concluded that:

[222] *The introduction of a comprehensive set of carefully drafted rules, including Prohibited Activities, for the Airport Zone is an efficient and effective way of*



implementing the policies of the District Plan, including those for the Paraparaumu Town Centre.

[286] Mr Aburn identified the rules in question. They include the following:

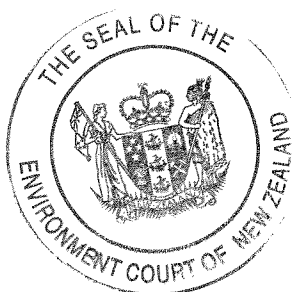
- Rule D.9.1.1 (ii) provides that within the Airport Mixed Use Precinct permitted activities include:

Commercial activity, (including logistics or distribution uses) provided that retail activity shall be limited to:

- *Retail activity ancillary to Industrial or Warehousing activities within the Precinct;*
- *Large Format Retail activity;*
- *Home Improvement Retail activity;*
- *Automotive and Marine Equipment Retail activity;*
- *Small Scale Convenience Retail activity;*
- *Small Scale Commercial Services activity;*
- *Retail activity permitted by the definition of "Service Station"*

(The Definitions section of the Plan defines the various categories of activity referred to above and sets standards or limitations as to the types of goods which might be sold and maximum and minimum floor areas for those activities within the Zone).

- Controlled Activity Rule D.9.1.2 enables...*Within the "Airport Mixed Use Precinct", any Development where the gross floor area in the Precinct does not exceed 102,900m² of development...* as a controlled activity.
- Rule D.9.1.3 provides that activities resulting in the gross floor area of development in the Airport Mixed Use Precinct being greater than 102,900m² but less than 282,450m² are restricted discretionary activities, with the matters of discretion being restricted to transport issues;
- Rule D.9.1.5 provides that retailing /commercial services activities which are not prohibited and are not listed as permitted activities or do not comply with permitted activity standards are non-complying activities;

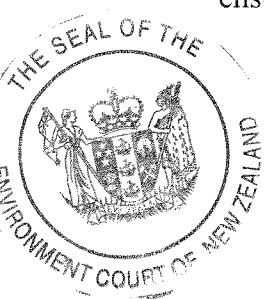


- Rule D.9.1.6 prohibits the following activities in the Airport Zone:
 - o Department stores;
 - o Supermarkets;
 - o More than one store of between 151m² and 1500m² gross floor area that retails groceries or non-specified food lines;
- Permitted activity standard 9.2 then imposes a series of threshold standards for retail and commercial activity within the Airport Mixed Use Precinct. It limits the total areas which can be given over to Large Format Retail activity, Home Improvement Retail activity, Small Scale Retail activity and Small Scale Commercial Services. The standard also limits the number of Small Scale Retail and Commercial Service activities which could be located in a single node.

[287] Accordingly, Plan Change 73 establishes a complex series of controls on the commercial and retailing activities which might establish in the Airport Zone at Paraparaumu. These controls are intended to ensure that the sorts of retail activity which establish in the zone are either those requiring *big box* large scale buildings which do not fit readily within the Town Centre or alternatively are small scale activities seeking to provide services to people employed within or visiting the Airport Zone. It was these provisions of Plan Change 73 as finally approved by the Hearings Commissioners which led to their conclusion that Plan Change 73 achieved a satisfactory balance between retail/commercial activities at the Airport and those at the Town Centre and satisfied the relevant objectives and policies of the District Plan.

[288] In assessing the economic effects of Plan Change 73 on the Paraparaumu Town Centre, Dr Fairgray identified the need for the right balance to be struck as to the scale and nature of retail activity enabled at the airport. It was his view that Plan Change 73 achieved that. Mr Aburn agreed with that conclusion.

[289] Similarly, it was Mr Guerin's evidence for the District Council that the restrictions proposed on retailing/commercial activity by Plan Change 73 would ensure that potential adverse effects of such activities on the viability and vibrancy of



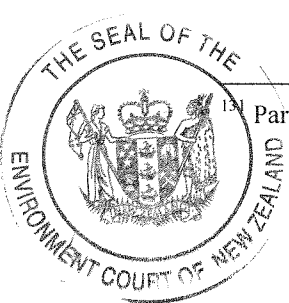
the Town Centre would not be significant nor result in significant deterioration of the Town Centre.

[290] As we have noted, PAC's witness as to the economic effect that Plan Change 73 might have on the Town Centre (Dr Hudson) had not read the Plan Change in its current form.¹³¹ It appears to us that detailed consideration of the restrictions to be imposed on retailing and other commercial activities within the Airport Zone was a fundamental consideration in assessing what impact Plan Change 73 might have on the Town Centre.

[291] Neither Mr Aburn nor Mr Guerin were cross-examined on their conclusions as to how Plan Change 73 might impact on the Town Centre nor was there any credible evidential challenge to their views in that regard. We therefore accept Mr Aburn's conclusions that:

- *An appropriate balance has been achieved between enabling appropriate retail development at Paraparaumu Airport while avoiding the potential for adverse effects on the sustainability of the Town Centre (vitality and viability) through controlling the nature and quantum of retail activities within the Airport Mixed Use Precinct;*
- *The amended provisions allow sufficient retail and commercial development to ensure the viability of the airport's development;*
- *Retail development of the scale and nature now proposed (ie in amended standards) will not, in my opinion, have a significant detrimental impact (ie reduce the public amenity/vitality and viability) on the Paraparaumu Town Centre.*

[292] Both of the planning witnesses addressed a range of other issues, particularly those relating to s32 RMA and Part 2 matters. We address those issues in the succeeding sections of this decision.



¹³¹ Para 176 (Supra)

Section 32

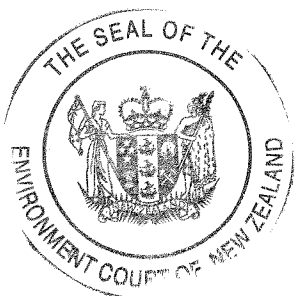
[293] Before finally making a decision on a privately requested Plan Change under Clause 29(4) Schedule 1 RMA, a local authority (or this Court), is obliged to make an *evaluation* of the Plan Change pursuant to s32(2) RMA.

[294] Section 32(3) and (4) RMA impose the following requirements on such evaluation:

- (3) *An evaluation must examine -*
 - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*
 - (b) *whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.*
- (4) *For the purposes of the examinations referred to in ss(3) and (3A), an evaluation must take into account –*
 - (a) *the benefits and costs of policies, rules, or other methods; and*
 - (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

[295] The notices of appeal filed by PAC and Te Ngarara contended that the Council decision to approve Plan Change 73 was in error because of an inadequate evaluation under s32. However, prior to commencement of the appeal hearing, both Appellants withdrew this ground of appeal by way of memorandum dated 15 September 2008.

[296] Notwithstanding the withdrawal of this ground of appeal, we still have a statutory obligation to undertake the evaluation required by s32(2). In light of the withdrawal of the s32 ground from the PAC and Te Ngarara appeals and in the absence of any questioning of the planning witnesses for PAL and the Council we propose to carry out our s32 analysis on a somewhat more restricted basis than might otherwise be the case. More particularly we propose to have regard to the Council's s32 analysis and the uncontested planning evidence of Messrs Aburn and Guerin.



[297] As part of their recommendations to the Council, the Council Hearings Commissioners undertook a preliminary analysis pursuant to s32 which formed the basis of a draft report to the Council.

[298] The draft report was adopted by the Council and in our view forms part of the Council decision. The Council s32 analysis identified three options or alternatives in assessing whether or not Plan Change 73 achieved the purpose of the Act, namely:

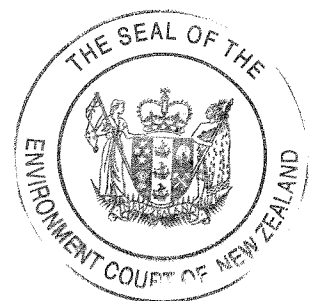
- Retain the current provisions of the District Plan as introduced by Plan Change 18; (Option 1)
- Approve Plan Change 73 as notified; (Option 2)
- Approve Plan Change 73 with further changes identified by the Hearings Commissioners. (Option 3)

[299] Insofar as Option 1 is concerned the Council recognised the following benefits of retaining the existing Zone Rules (in summary):

- The site would continue to be used as a recreational and commercial airport with some ancillary industrial and commercial activities;
- A significant part of the site could be developed for large lot residential and aviation associated activities;
- The airport core precinct would remain open in character;
- Health and safety of the community would be protected by known existing noise contours;
- Social benefits included the retention of open space character.

[300] Disbenefits identified in Option 1 were:

- No guarantee of enhancement of the Wharemauku Stream or protection of existing wetlands as proposed under the other Options;
- Less effective design control on buildings than proposed in Options 2 and 3;
- Less opportunities for local employment when compared with Options 2 and 3;
- Less potential for the airport owner to generate revenue.



[301] Overall the Council considered that Option 1 provided for operation of the airport for aviation purposes and protected the amenity of surrounding residential areas but was not a particularly efficient use of the land and was less efficient than Option 3 but more efficient than Option 2.

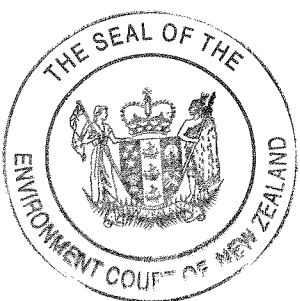
[302] Insofar as Option 2 was concerned, the following benefits were identified:

- Provision for recreation, conservation and water management activities within the Airport Buffer Precinct;
- Provision for Council control over design and positioning of buildings and subdivision of land;
- Enhancement of open drains, wetlands and streams in the Buffer Precinct;
- Potential social benefits including local employment;
- Certainty that development could occur over most of the site as a permitted activity with increased local employment opportunities.

[303] Disbenefits identified in Option 2 were:

- The density and scale of the development were contrary to community expectations;
- The objectives and policies did not take sufficient account of the context of residential development within which the airport sits;
- Potentially high environmental costs for adjoining sites and for the community as a whole, particularly arising out of significant traffic congestion;
- The risk of creating a defacto town centre on the airport site which would compromise the viability of the existing Town Centre.
- Costs for surrounding residents due to expanded noise contours.

[304] The Council concluded that Option 2 (Plan Change 73 as notified) was the least effective and efficient of the three options which it considered.

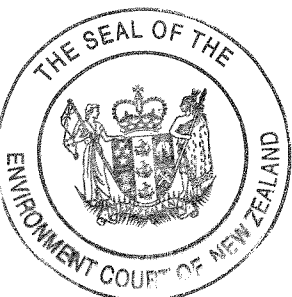


[305] Option 3 was the modified proposal which emerged from the Council hearing process. Option 3 included modifications to the proposal agreed to by PAL during the course of the hearing, together with other modifications directed by the Hearings Commissioners as part of their decision-making. Option 3 (as opposed to Option 2) included . . . *revised noise contours, revised traffic thresholds, reduced provision for retail activities, certainty of permitted activities, increased protection of amenity for surrounding residents and increased ecological consideration.*

[306] Option 3 was the Plan Change presented by PAL to the Court for consideration. It was modified both before and during our hearing in response to specific concerns which arose. The final form of Plan Change 73 as now proposed by PAL was presented to the Court as part of PAL's closing submissions. Although it has a number of changes from Option 3 approved by the Hearings Commissioners, the changes largely incorporate further protections and controls intended to address concerns raised by other parties or the Court. We consider that the Council's s32 analysis of Option 3 remains equally pertinent to Plan Change 73 in its current form.

[307] The following benefits of Option 3 were identified by the Council:

- The introduction of a comprehensive set of carefully drafted rules intended to achieve the objectives and policies of the District Plan, including those for the Town Centre;
- Policy imperatives regarding the retention and efficient operation of the airport were achieved;
- The airport company was given a level of certainty which would enable it to proceed with development of the airport;
- Limits on retail activities and proposed floor space thresholds would ensure that adverse effects on the Town Centre and surrounding road network were avoided;
- This option was the most efficient and effective way of achieving the objectives and policies of the District Plan;
- There were less environmental costs for surrounding residents than Option 2 due to reduction in height and density of buildings, increase in



airport buffer and increased recession planes relative to residential properties;

- Enhancement of the Wharemauku Stream wetlands and open drains through the site;
- Reduction of noise effects compared with Option 2;
- More open space than Option 2;
- Social benefits including no significant increase in airport noise and potential for local employment;
- Economic benefits including certainty for developers and the community, the provision of local employment and no compromise to the integrity of the Town Centre.

[308] Disbenefits identified were:

- Scale and density of development were greater than the existing District Plan provisions;
- A reduction in open space and views from adjacent sites;
- Costs to land owners associated with complying with additional insulation standards proposed due to new noise contours;

[309] The Council found that Option 3 was the most efficient and effective option to achieve the purposes of the Act. It concluded its s32 analysis in these terms:

2.0 PREFERRED OPTION

In terms of the scale, intensity and ambience components of this area, the modified zoning policies and methods (Option 3) are a more appropriate way of achieving the plan's objectives and policies than the notified plan change (Option 2).

The viability of the airport is considered to be of strategic importance to the community. Making provision for non-aviation activities in the Airport Zone will allow the aviation facilities to be developed to a standard envisaged by the District Plan, and importantly where regular scheduled air services are a definite prospect. Option 3 ensures that the level and nature of these commercial activities are such that adverse effects on the viability of the Town Centre will be avoided.



The suitability of the existing zoning (Option 1) is questionable given that the provisions for residential zoning would allow significant reverse sensitivity issues with regard to noise irrespective of the change in noise contours. This is in itself an undesirable outcome.

It is considered that Option 3 best achieves the purpose of the RMA and the objectives and policies of the District Plan and would be the most appropriate method to address all the potential adverse effects on the environment and for that reason the Plan Change as amended is recommended for approval.

[310] Mr Guerin's s32 analysis accepted the Council's analysis. He concluded that the changes made to the Plan Change (ie Option 3) would result in a better environmental outcome than either the existing zoning (Option 1) or the Plan Change as notified (Option 2).

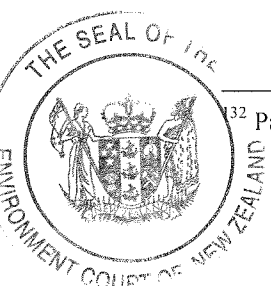
[311] Mr Aburn referred to the importance of Paraparaumu as a strategic resource and the need for District Plan provisions to ensure the continuation of a viable airport operation, that any new development was staged in a manner which could be supported by infrastructure, particularly roading infrastructure, and that adverse effects were appropriately avoided, remedied or mitigated.

[312] Mr Aburn further contended that doing nothing (Option 1) was not really an option and that Plan Change 73 as amended by the Council decision (Option 3) provided a better suite of provisions than the Plan Change 18 provisions. He concurred with the Council's s32 analysis.

[313] Both planners quoted the conclusion to the Council's s32 analysis which we ourselves have quoted above.¹³² They concurred with that conclusion.

[314] Section 290A RMA provides:

In determining an appeal or inquiry, the Environment Court must have regard to the decision that is the subject of the appeal or inquiry.



¹³² Para 309 (Supra)

[315] In this instance we have had regard to the Council decision including the s32 analysis which forms part of that decision. Having done so we concur with and adopt the findings made by the Council pursuant to s32.

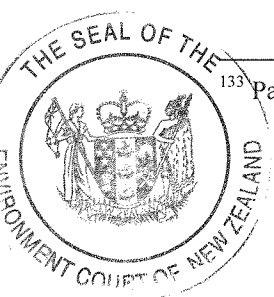
Part 2 RMA

[316] Our final consideration requires an assessment as to whether or not Plan Change 73 achieves the purpose of RMA, namely the promotion of sustainable management of natural and physical resources. We refer to the definition of sustainable management contained in s5(2) RMA which we cited in our discussion on financial and economic issues.¹³³ That discussion was on a somewhat more narrow basis than we must now consider the issue of sustainable management.

[317] We refer to the comments made in the financial/economic section of the decision that the concept of sustainable management seeks to manage the use development and protection of natural and physical resources whilst enabling people and communities to provide for their social, economic, and cultural well being and for their health and safety. Sustainable management does not seek to just retain the status quo.

[318] Management of the use, development and protection of natural and physical resources is required to:

- Sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations. In this case Plan Change 73 seeks to ensure the retention of Paraparaumu Airport as a functional airport facility providing expanded services into the future for the people of the district;
- Safeguard the life-supporting capacity of air, water, soil and ecosystems. Nowhere in the evidence which we heard was there any suggestion that this imperative of s5 could not be met. The extensive Buffer Precinct which Plan Change 73 proposes is a substantial improvement on the provisions of Plan Change 18 with regard to these values;



¹³³ Para 162 (Supra)

- Avoid, remedy or mitigate any adverse effects of activities on the environment. We refer to the range of findings which we have made as to the effects of Plan Change 73 insofar as it relates to the issues in dispute before us. We consider that Plan Change 73 achieves this requirement.

[319] Application of s5 requires a broad overall judgment to determine whether or not any particular proposal achieves the purpose of the Act. In making that judgment we are required to have regard to the provisions of ss6, 7 and 8 RMA.

[320] In terms of s6 we have had regard to the following relevant provisions:

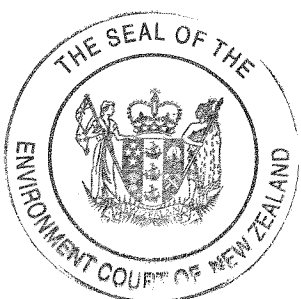
6 *Matters of National Importance*

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- (f) *The protection of historic heritage from inappropriate subdivision, use, and development.*

[321] We refer to the findings which we have made relating to issues of concern to Tangata Whenua. For the reasons contained in that section of our decision we consider that Plan Change 73 recognises and provides for the relationship of Maori with the land contained within Paraparaumu Airport, to the extent that it is able to do so.

[322] Plan Change 73 makes specific provision for accommodation of the existing airport control tower which is to be contained within the Airport Heritage Precinct, thereby recognising and providing for s6(f).



[323] The relevant provisions of s7 RMA provide:

7 Other Matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –

- (a) *Kaitiakitanga:*
- (aa) *The ethic of stewardship:*
- (b) *The efficient use and development of natural and physical resources:*
- (c) *The maintenance and enhancement of amenity values:*
- (d) *Intrinsic values of ecosystems:*
- (f) *Maintenance and enhancement of the quality of the environment:*
- (g) *Any finite characteristics of natural and physical resources.*

[324] Again, we refer to the findings which we made in the Tangata Whenua issues section of this decision insofar as they relate to matters of Kaitiakitanga and stewardship.

[325] We find that Plan Change 73 will enable efficient use and development of Paraparaumu Airport.

[326] The maintenance and enhancement of visual amenity was not something which was the subject of debate before us. For the sake of completeness however, we refer to the uncontested evidence of Ms R V de Lambert, a landscape architect, whose brief came into the court by consent. Ms de Lambert concluded that Plan Change 73 would bring about desirable and beneficial landscape and amenity effects which were an improvement on the outcomes resulting from the existing provisions of Plan Change 18. We accept that conclusion. We have found that the provisions dealing with airport noise, with some amendments, will maintain amenity for local residents.

[327] The possible impact of Plan Change 73 on ecosystems was not the subject of debate before us, but again for the sake of completeness we refer to the evidence of Mr S Fuller, an ecologist who gave evidence for PAL. Mr Fuller's evidence came into the court by consent and he was not cross-examined. Similarly to Ms de Lambert



he concluded that Plan Change 73 was a significant improvement on the provisions of Plan Change 18 in terms of recognising, protecting and enhancing local ecology. We accept Mr Fuller's conclusions.

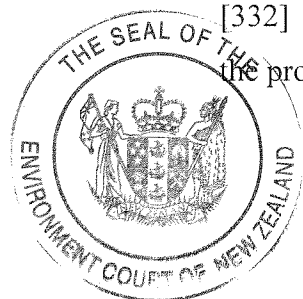
[328] We consider that Plan Change 73 does contribute to maintenance and enhancement of the quality of the environment and again refer to and accept the evidence of Ms de Lambert and Mr Fuller with regard to amenity/ecological issues. In terms of the wider environment we refer to our findings as to traffic effects and also the uncontested evidence of various engineers for PAL (Messrs N T Barr, I D McPherson and B D Robinson) on a range of engineering issues including the capacity of the site and the district infrastructure to cater for development proposed by Plan Change 73. To some extent this evidence was confirmed by the uncontested evidence of Mr D R Wills, an engineer called by the Council.

[329] Having regard to all of this evidence, we conclude that Plan Change 73 is in accordance with s7(f).

[330] Insofar as s7(g) is concerned, the land of Paraparaumu Airport is a finite resource. The various Plan documents to which we have referred identify the airport as a significant strategic resource for the Kapiti District and Region. Plan Change 73 seeks to enable the use of the airport land in as efficient a way as possible, consistent with maintaining the finite airport core facilities (runways etc) which are essential to its use as an airport.

[331] Although Paraparaumu Airport is a strategic resource for the District and a significant part of the District's infrastructure, it is in private ownership. Accordingly, it is vulnerable to the same market and economic forces and circumstances to which any private enterprise is subject. Plan Change 73 cannot guarantee the ongoing viability of the airport but seeks to enable the appropriate environment for that viability to be achieved.

[332] For all of the above reasons we conclude the Plan Change 73 is consistent with the provisions of s7 RMA.



[333] Section 8 RMA provides:

8 Treaty of Waitangi

In achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

[334] We refer to our earlier findings in respect of ss 6(e) and (7)(a) and (aa) RMA in this regard. We find that Plan Change 73 does have regard to the principles of the Treaty of Waitangi to the extent possible in the RMA context.

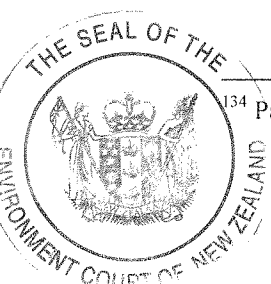
Conclusion

[335] Having regard to all of the above matters, we conclude that approval of Plan Change 73 promotes the sustainable management of natural and physical resources as required by s5(1) RMA. We accordingly propose to approve Plan Change 73 in accordance with the **CLOSING VERSION (21 May 2009)** submitted to us with PAL's closing submissions, subject only to the amendment of the noise contours identified in the section of this decision addressing noise issues.¹³⁴ We accordingly issue this decision as an interim decision to enable that change to be made.

[336] We suggest that the appropriate process is for PAL to submit the requested amendment to the Court for approval within 15 working days of issue of this interim decision. We would allow a period of a further ten working days from receipt of PAL's amendments for other parties to make any comments which they might wish to make on them and a further five working days from receipt of such comments for PAL to respond. At the conclusion of that process we will issue a decision approving Plan Change 73 in its final form.

[337] In its closing submissions PAL requested that costs be reserved on issue of this decision. Complaint was made about a number of aspects of the case conducted by PAC in particular. Ultimately, we have determined by a narrow margin not to depart from the Court's usual (but not invariable) practice of not awarding costs in Plan Change cases.

¹³⁴ Paras 143, 144 and 145 (Supra)



DATED at WELLINGTON this ^{2nd} day of September 2009

For the Court:



H M Beaumont

H M Beaumont
Environment Commissioner

J R Mills

J R Mills
Environment Commissioner

B P Dwyer

B P Dwyer
Environment Judge