

**KAPITI COAST DISTRICT COUNCIL**  
**PRIVATE PLAN CHANGE 84: AIRPORT ZONE**  
**HEARING PANEL MINUTE 3**  
**23 FEBRUARY 2017**

**RECONVENED HEARING**

**Context**

1. At the end of the Submitters' evidence on Wednesday 15 February 2017, the hearing on Plan Change 84 was adjourned following the completion of the presentations by the Requestor and all Submitters who were heard in support of their submissions.
2. The Chairperson advised that the hearing would be reconvened at a date to be confirmed for the Panel to:
  - (a) receive the Reporting Officer's presentation (an introductory overview of the matter by the Officer being the Council's involvement in the hearing thus far) and a 'right-of-reply'/closing statement; and
  - (b) the Kapiti Coast Airport Holdings Limited's (KCAHL) closing submissions.
3. The reconvened hearing is confirmed for **Monday 20 March 2017** commencing at 9.00am in the Council Chamber.
4. Prior to adjourning the hearing, the Chairperson advised that the Panel would issue directions outlining the matters that the Panel wanted the Reporting Officer and his technical advisors to cover in the Council's right-of-reply/closing statement.
5. Since then there has been some email correspondence between the Submitters and Ms Match relating to a request by the New Zealand Transport Agency (NZTA) to produce supplementary information on the issue of scope.
6. This Minute covers both of these matters.

**Directions for Reporting**

7. A principal issue for the Panel is an apparent 'disconnect' between some of the factual findings and Officer conclusions and recommendations, an issue raised in the opening legal submissions (refer paragraph 21) presented on behalf of Coastlands Shoppingtown and Others" (hereafter "Coastlands' Submissions"). For the record, the Coastlands' Submissions suggested there was a disconnect on two levels as follows:
  - (a) that the conclusions of the retail, economic and traffic assessments by the Council reporting officers (Mr Heath, Mr Osborne and Mr Wignall respectively) are not reflected in their recommendations on how the Plan Change should be altered; and
  - (b) that the s42A overview planning report by Mr Schofield does not rationalise the above mentioned disconnects and his recommendation on the Plan Change does not reflect the assessments of the three technical experts.
8. Accordingly, the Panel can advise that it will have questions for each of the following contributors to the s42A Report:
  - Robert Schofield - resource management planner
  - Don Wignall - transportation planner
  - Tim Heath - retailing advisor
  - Phil Osborne - economic advisor

9. An 'over-arching' question for Mr Schofield will be whether (or not) the evidence and submissions presented on behalf of KCAHL and the Submitters led him to make any changes to the recommendations to the Panel contained in the s42A Report.
10. Similarly, an 'over-arching' question for Mr Heath, Mr Osborne and Mr Wignall will be whether (or not) the retail, economic and transport expert evidence presented on behalf of KCAHL and the Submitters results in any changes to their recommendations to Mr Schofield as the Reporting Officer.
11. If there are any changes in their recommendations, the Panel requests that the Officers state their reasons, and in so doing refer to the evidence presented to the Panel that led them to change their recommendations.
12. To assist the Officers in preparing their 'right-of-reply'/closing statement part of their presentation at the reconvened hearing, the Panel can advise that the following matters need to be addressed.

### **Mr Heath and Mr Osborne**

13. Confirmation of the evidential basis for the conclusion that some retail activities currently listed as Prohibited Activities should be enabled as either Discretionary Activities or Non-Complying Activities, notwithstanding the conclusion that:
 

*"The retail and economic analysis indicates that no additional retail enablement should be provided at the airport over and above what is already consented".*
14. A supplementary question relates to 'already consented' compared to 'already enabled' under the ODP. In Mr Heath's and Mr Osborne's opinion, is there a difference; and if so, what is it and what are the implications of the difference(s) in the Plan Change context?
15. The Panel asks that Mr Heath responds to matters raised in Coastlands' Submissions at paragraphs 22 to 26 inclusive, where the Panel's attention was drawn to what appears to be a disconnect between Mr Heath's findings and conclusions and his recommendations to the Reporting Officer.
16. With reference to paragraph 26 of Coastlands' Submissions, given that small-scale 'speciality' retail stores are enabled as a Non-Complying Activity under the ODP provisions (to be confirmed by Mr Schofield) does Mr Heath still recommend that small-scale convenience stores should also be a Non-Complying Activity; or would Discretionary Activity status be more appropriate? The question is (also) asked against the background of the statement made by Mr Heath that: *"not enabling additional small retail stores within the Airport Zone is appropriate from a retail perspective".*
17. Both Mr Heath and Mr Osborne should also respond to the matter raised in Coastlands' Submissions at paragraph 28 where it is suggested that their assessments have inappropriately conflated the provisions of the Plan Change and the Proposed District Plan (PDP).

### **Mr Wignall**

18. Mr Wignall's attention is drawn to paragraphs 29 to 34 of Coastlands' Submissions. In particular, the Panel requests that Mr Wignall have particular regard to his earlier stated opinion that:
  - *there is strong justification for retaining prohibited on non-complying activity status for higher traffic generating uses;*
  - *the private plan change as proposed should not be approved; and*
  - *if the private plan change is approved, it should be substantially modified to include appropriate safeguards as recommended by the Council reporting officer.*

19. Having heard and taken into account the expert evidence presented to the Panel, does Mr Wignall still maintain his above stated opinion. If 'yes', please state the reasons for any amended recommendations.
20. With reference to the third bullet point under paragraph 18 above, what modifications to the Plan Change as notified would Mr Wignall recommend to the Reporting Officer?

**Mr Schofield**

21. The Panel anticipates that Mr Schofield will respond to a number of matters that have been raised during the hearing. Without prescribing what those matters will be, a key matter for the Panel will be Mr Schofield's 'reconciliation' of his recommendations with the technical evidence produced on behalf of the Council by Mr Heath, Mr Osborne and Mr Wignall.
22. Mr Schofield will also need to explain how any amendments to the current operative District Plan rules are considered to be the most appropriate method for delivering the Plan/Plan Change objectives for the Airport Zone - firstly, if those objectives remain unchanged and secondly if the related policies are amended along the lines recommended by Ms Penfold on behalf of the NZTA. In short, the question posed by the combination of s32(1)(a) and s32(6) RMA is:

*Are the proposed amendments sought through Plan Change 84, which are amendments currently (subject to the matter of scope discussed below) limited to Plan rules, more appropriate than the operative provisions in achieving both:*

- (a) the purpose of the Plan Change; and*
- (b) the settled objectives of the Plan.*

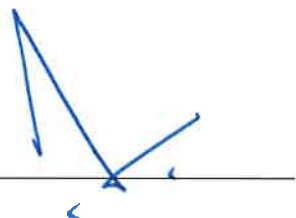
23. The Panel anticipates that Ms Carruthers, on behalf of KCAHL will also address this matter in her closing submissions.
24. The Panel draws attention to paragraph 125 of Coastlands' Submissions on this matter.

**Issue of Scope and Request by NZTA to File Supplementary Information**

25. During the course of the presentation of the evidence on behalf of KCAHL and the Submitters an issue that was raised was whether (or not) the Panel would have 'scope' to amend Plan Change 84 in several respects, including:
  - amendments to the Airport Zone objectives and policies;
  - amendment to the definition of "supermarket";
  - amendment to the thresholds applying to development in the Airport Mixed Use Precinct; and
  - amendments relating to the activity status of noise sensitive activities outside the Air Noise Boundary in the Airport Zone.
26. In particular, the Panel would like to receive comment and submissions on whether potential amendments along the lines indicated above would come within the 'scope' of:

*"Any consequential amendments to the District Plan that may be necessary to achieve the purpose of this private plan change request".*
27. The Panel draws attention to paragraphs 87 to 94 of Coastlands' Submissions in relation to this issue.
28. On 21 February 2017 an email was received from Ms Angela Penfold NZTA's planning witness requesting that the Panel receive supplementary information relating to the issue of scope. The supplementary information was a legal opinion dated 20 January 2017 which Ms Penfold said *"informed paragraphs 36 and 37"* of her written evidence which she presented to the Panel on 16 February 2017.
29. Subsequently, an email was received from Ms Tancock counsel for the Coastlands' Submitters opposing the request on several grounds including:

6. *Ms Penfold was clearly aware of scope being an issue as she subsequently sought advice from Kensington Swan (the opinion that NZTA now seeks to include is dated 20 January) but decided not to pursue this at the hearing or present submissions on this point.*
7. *NZTA had every opportunity to present its submission in its allotted time, including legal submission from Kensington Swan on scope at the time that was allocated to it, but opted not to do so.*
30. Careful consideration has been given to Ms Penfold's request and also to Ms Tanock's submission and the decision made to not accept Ms Penfold's request, principally on the grounds of 'procedural fairness'. Accordingly, the Kensington Swan legal opinion will not be information that the Panel will have regard to in its deliberations.
31. The Panel notes that the issue of scope in relation to the NZTA requested amendments to the Airport Zone policies is a 'live issue' which the Panel anticipates will be covered by both Mr Schofield and Ms Carruthers.



Alistair Aburn  
Chairperson

for and on behalf of  
PC84 Hearing Panel

23 February 2017