

BEFORE THE HEARINGS PANEL

IN THE MATTER of the Private Plan
Change 84: Kapiti Coast
Airport

AND Submissions by **Coastlands
Shoppingtown Limited,
Sheffield Properties
Limited, Ngahina
Developments Limited,
Alpha Corporation
Limited, and Mr Richard
Mansell**

**BRIEF OF EVIDENCE OF CHRISTOPHER ADRIAN HANSEN
(PLANNING)
ON BEHALF OF COASTLANDS SHOPPINGTOWN LIMITED, SHEFFIELD PROPERTIES
LIMITED, NGAHINA DEVELOPMENT LIMITED, ALPHA CORPORATION LIMITED
AND MR RICHARD MANSELL**

Dated: 3 February 2017

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1. INTRODUCTION

Qualifications

1.1. My name is Christopher Adrian Hansen and I am a Director and Principal Planning Consultant with Chris Hansen Consultants Limited. My qualifications are a Bachelor of Regional Planning (Hons) from Massey University (1980). I am a full member of the New Zealand Planning Institute, a member of the Resource Management Law Assoc., and a certified Hearings Commissioner.

Experience

1.2. I have over 34 years' experience in planning and resource management. I began my career in 1980 with the Ministry of Transport who had the responsibility for coastal and maritime planning under the former Town & Country Planning Act, and joined the Ministry of Works & Development in 1982 when the coastal and maritime responsibilities were transferred to the Minister of Works. I later joined the Ministry for the Environment from 1987 – 1989 where I was involved in the preparation and 'testing' of parts of the proposed Resource Management Act legislation. In 1989, I joined the Department of Conservation in a management role that including planning responsibilities under the Conservation Act, and input into RMA process on conservation matters. Since 1995, I have practiced as a consultant planner, firstly with Tonkin & Taylor Limited (11 years) and then Sinclair Knight Merz (4 years) as their National RMA Planning Manager. I have run my own practice since 2010.

- 1.3. I have particular experience in the review and assessment of regional and district plans and the preparation of submissions, attendance at hearings providing expert planning evidence, and in mediation to resolve appeals.
- 1.4. Relevant to this evidence, I have a long history providing planning advice to resource users in the Kapiti District, including under the previous District Scheme and the operative District Plan. Previous projects in Kapiti have included a lengthy involvement the designation of the Western Link Road; retail developments in Coastlands; and involvement in Plan Changes 70; 72A; 73; 78 and 83.
- 1.5. Of particular relevance to this hearing is Plan Change 73 where I provided planning evidence on behalf of Coastlands, and participated in the conferencing that resolved the appeal matters relevant to the Airport Mixed Use Zone.
- 1.6. Projects I have recently (within the last two years) been involved in Kapiti include:
 - i. Consents for a quarry operation at Otaki;
 - ii. Consents for an outdoor furniture manufacturing facility in Mazengarb Rd, Paraparaumu;
 - iii. Consents for the development of a large format retail development in Rimu Rd, Paraparaumu;
 - iv. Consents for the Takiri Building(s) within the Coastlands Complex; and
 - v. Consents for the subdivision of Stage 1 of the Waimeha Neighbourhood Development Plan for the Ngarara Farm development, Waikanae.
- 1.7. I have also been closely involved in the PDP process that has included reviewing the proposed plan, preparation of submissions, and providing expert planning evidence to the hearings on various chapters of the proposed plan on behalf of two resource users.

2. BACKGROUND

- 2.1. I provide the following statement of evidence in support of the submissions lodged by Coastlands Shoppingtown Limited (Coastlands); Sheffield Properties Limited; the Ngahina Development Limited; Alpha Corporation Limited and Mr Richard Mansell to Proposed Plan Change 84 (proposed PC84) to the operative Kapiti Coast District Plan (operative DP). I note that three of these parties: Coastlands; Sheffield Properties Limited; and Ngahina Development Limited were determined by the Environment Court to be trade competitors. As I understand it, these parties can only address [significant] effects that directly affect them. Where appropriate while assessing the actual and potential effects that may be expected from PC84, I have identified where these effects directly affect these trade competitors.
- 2.2. I reviewed proposed PC84 and provided a report to these parties that identified matters of interest to them, and assisted in the preparation of their submissions (including further submissions). I also prepared a response on behalf of Coastlands Shoppingtown Ltd to a letter dated 25 February 2016 received from the Kapiti Coast Airport Holdings Limited's (KCAHL) legal advisors, Russell McVeagh, suggesting Coastlands was a trade competitor and was prohibited by law to lodge a submission on the plan change. Subsequent to the lodging of submission on PC84, I also prepared a response letter for each of the parties to a letter dated 19 April 2016 also received from KCHAL's legal advisor, Russell McVeagh, stating that their client was disappointed that the individual party had lodged a submission, that the party was prohibited by law from lodging the submission, and advising that legal action was forthcoming.
- 2.3. For the preparation of this planning evidence I have reviewed the following documents:
- i. The notified PC84 and accompanying expert reports and further information;

- ii. The Section 32 Report that was part of the application;
- iii. The s.42A Officer Report and accompanying expert reports;
- iv. The evidence on behalf of the requestor, and in particular Mr Israelson;
- v. The National Policy Statement – Urban Design Capacity;
- vi. The operative Wellington Regional Policy Statement;
- vii. The operative Kapiti Coast District Plan; and
- viii. Resource consents currently held for land use activities within the Airport Zone.

2.4. For my planning assessment below, I have relied on the following expert evidence prepared on behalf of the five parties:

- i. Mr John Small (Covec) – economics;
- ii. Mr Mike Copeland (Brown, Copeland & Company Limited) – retail economics;
- iii. Mr Mark Georgeson (Traffic Design Group) – traffic;
- iv. Mr James Lundy (Urban Design).

2.5. Where I have relied specifically on their advice to inform my planning assessment, I reference that part of their evidence accordingly.

3. CODE OF CONDUCT

3.1. Although not necessary in respect of council hearings, I confirm I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2014. I have complied with the Code of Conduct in preparing this evidence and I agree to comply with it while giving oral evidence before the hearing committee. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

4. EXECUTIVE SUMMARY

- 4.1. My planning assessment has been informed by the findings of expert evidence provided by Mr Small (Economics); Mr Copeland (Retail Economics), Mr Georgeson (Traffic) and Mr Lundy (Urban Design) that each identify significant adverse environmental effects that PC84 will have on the Paraparaumu Town Centre and other centres in the Kapiti District;
- 4.2. I do not consider there is a tight policy framework within the ODP provisions and utilising discretionary and non-complying activity status ensures a high level of scrutiny through the resource consent process. I therefore do not consider the resource consent process is sufficiently robust to enable the effects of a specific proposal will be address to be able to determine whether it is contrary to the objectives of the ODP;
- 4.3. My review of the existing environment shows that a considerable amount of retail GFA can be developed in the AMUP in the future, either through existing consents, as permitted activities or as a controlled activity;
- 4.4. In my opinion, Prohibited Activity status is a legitimate planning tool that is available to Council to restrict the types of retail activities proposed by PC84 for reasons confirmed by the Courts;
- 4.5. In my opinion PC84 fails to meet the required tests of s.32 of the RMA and is not the most appropriate way to achieve the objectives of the ODP;
- 4.6. In my opinion, PC84 fails to meet the requirements of Part 2 of the RMA in that it does not meet the purpose of the RMA, does not have particular regard to s.7 (b), (c) or (f), or take account of the principles of the Treaty of Waitangi as required by s.8 of the RMA.
- 4.7. For the above reasons, I recommend PC84 be rejected.

5. SCOPE AND STRUCTURE OF EVIDENCE

5.1. I have structured my evidence as follows:

- i. Outline of PC84;
- ii. Outline of the Operative District Plan provisions;
- iii. Outline of the resource consents held by the Airport Company;
- iv. The statutory context;
- v. Outline of the s.42A Report findings and recommendations;
- vi. Planning assessment; and
- vii. Concluding comments.

6. OUTLINE OF PROPOSED PLAN CHANGE 84 (PC84)

6.1. The purpose of proposed Plan Change 84 (PC84) is to remove prohibited activity status from certain activities so as to enable KCAHL to undertake master planning of the land currently owned in the Airport Zone, and so that resource consents can ultimately be sought in the future (para. [2.6] of Request).

6.2. The changes sought to the Operative District Plan (ODP) involve the removal of prohibited activity status in relation to the following specified activities:

- i. Noise sensitive activities outside of the Air Noise Boundary (to be permitted);
- ii. One department store (to be non-complying);
- iii. One supermarket (to be discretionary);
- iv. More than one store of between 151m² and 1,500m² gross floor area (GFA) that retails groceries or non-specified food lines (to be discretionary); and
- v. Any consequential amendments to the ODP necessary to achieve the purpose of PC84. It is not clear in the notified PC84 what consequential amendments are or will be recommended.

6.3. I note through discussions with the Kapiti Coast District Council (Council) prior to the acceptance of the private request, KCAHL agreed to amend the request as follows (para. [3.9] of s.42A Report):

- i. An amendment to the explanation to Policy 2 of the Airport Zone (C19) bring it into line with the requested changes to the Airport Zone rules;
- ii. More than one supermarket to be non-complying; and
- iii. More than one department store retained as prohibited activity.

6.4. I also note the s.42A Report recommends further amendments to PC84 (para. [8]; page 2):

- i. More than one store of between 151m² and 1,500m² gross floor area (GFA) that retails groceries or non-specified food lines (to be non-complying); and
- ii. There is no recommendation relating to the amendment to the explanation to Policy 2.

6.5. For the purposes of this evidence, I will rely on the notified PC84 request and the s.42A Report recommendations.

7. OPERATIVE DISTRICT PLAN PROVISIONS

7.1. The key operative District Plan (ODP) provisions relating to the Airport are (Refer to **Appendix 1** for wording of the provisions):

- i. C.19 Airport Zone Objectives and Policies;
- ii. D9 Airport Zone Rules and Standards which includes D9 Appendix 1 Design Guide

7.2. I consider the following are the relevant key resource management issues are identified in Chapter C.19:

- i. The provision for commercial and other non-aviation employment generating activities where this is consistent with the principles of sustainable development;

- ii. Retail and commercial service activity should not undermine the role and function of the Paraparaumu District Centre;
- iii. Roads should facilitate and encourage safe pedestrian and cycle access and provide for public transport, and development should be managed to ensure an efficient road network is maintained;
- iv. The intensity of development should not exceed the available infrastructure.

7.3. I consider the following are the relevant Objectives and Policies:

- i. **Objective 1.0** that intends to achieve significant sustainable aviation, business and employment opportunities by enabling the efficient use of the land for aviation and associated activities, and supporting non-aviation business activities while managing effects.
- ii. **Policy 2: Uses** that intends for a range of activities in the “Airport Mixed Use Zone” to support aviation activities and provide for non-aviation, commercial and other employment opportunities.
- iii. **Objective 2.0** that intends to protect the amenities of areas surrounding the airport from adverse environmental effects from airport use and development;
- iv. **Policy 2: Commercial Activity** that states it is desirable that specifically identified retail and commercial activities are identified, subject to specific threshold standards, so that the nature and scale of such activities does not undermine the role and function of the Paraparaumu Town Centre and is linked to the development within the Airport Mixed Use Precinct (AMUP);
- v. **Policy 5: Traffic Effects** requires development within the Airport Zone to ensure any traffic effects are managed through restrictions on the timing of the development.
- vi. **Anticipated Environmental Outcomes** include (amongst other things) the maintenance and enhancement of transport and services infrastructure; the need for people to leave Kapiti to

gain sustainable employment is reduced or maintained; and commercial and non-aviation activities are established within the Airport Zone but do not undermine the sustainability of the Paraparaumu District Centre.

7.4. I consider the relevant Rules and Methods are:

- i. **Rule D.9.1.1 Permitted Activities** that provides for (amongst other things) the following trade/wholesale and commercial activities with limited retail that comply with permitted activity standards: retail activity ancillary to Industrial or Warehousing activities; Large Format Retail (LFR); Home Improvement Retail activity; Small Scale Convenience Retail activity; Small Scale Commercial Services activity; Retail Activity as part of a Service Station;
- ii. **Rule D.9.1.2 Controlled Activities** that provides for (amongst other things) any development within the AMUP (subject to complying with permitted and controlled activity standards and not being classified as non-complying or prohibited activities) where the gross floor area (GFA) does not exceed 102,900m² of development - Matters of Control relate to design and location matters – there are no Matters of Control relating to activities or the effects of activities; New Airport Roads in the Airport Zone – Matters of Control relate to route, design and location, and any proposed new intersection requires a traffic management plan – there are no Matters of Control that addresses the effects of new roads on the traffic network; Subdivision;
- iii. **Rule D.9.1.3 Discretionary Activities Restricted** provides for (amongst other things) any activity which results in the GFA of development in the AMUP being greater or equal to 102,900m² but less than 282,450m², and requires a full transport assessment; Discretion is restricted to: the expected generation from the Airport Zone; the effects on the local road network and State Highway 1, and the timing of any improvement

- works on the local road network and State Highway 1; The construction of intersections between either Ihakara Street west and Tahi Road or Toru Road;
- iv. **Rule D.1.4 Discretionary Activities** provides for activities that do not comply with any restricted discretionary activity standards;
 - v. **Rule D.9.1.5 Non-Complying Activities** provides for (amongst other things) retail and commercial service activities not prohibited or permitted or do not comply with the permitted activity retail/commercial floorspace threshold; any development not prohibited exceeding 339,400m² GFA;
 - vi. **Rule D.1.6 Prohibited Activities** prohibits noise sensitive activities, department stores, supermarkets and more than one store between 151m² and 1,500m² GFA that retails groceries or non-specified food lines;
 - vii. **Rule D.9.2.1 Permitted Activity Standards** include (amongst other things) thresholds for retail and commercial activities in the AMUP that restrict: retail activity associated with any non-retail not to be greater than 15% of GFA of the non-retail activity, or 150m² GFA, whichever is the lesser; total LFR not to exceed 10,000m² GFA; total Home Improvement retail activity not to exceed 17,000m² GFA; total Small Scale Retail not to exceed 1,500m² GFA, and an additional 800m² allowed once total GFA exceeds 200,000m² GFA; Note states that floorspace used for non-retail purposes (i.e. office space; storage; areas not accessible to public) is excluded from the retail thresholds, in addition to exclusions already provided in GFA definition;
 - viii. **Rule D.9.2.2 Controlled Activity Standards** include (amongst other things) traffic and development thresholds that apply to development in the AMUP that require: prior to any development in excess of 43,050m² GFA roading improvements relating to the Western Link Road; prior to the operation of any Aviation [sic] Mixed Use development in the Aviation [sic] Mixed Use Precinct in excess of 62,500m² GFA: other roading improvements; Note states any activity that results in GFA in

AMUP exceeding 102,900m² shall be restricted discretionary activity and a fill transport assessment is required;

- ix. **Rule D.9.2.3 Discretionary Activity (Restricted) Standards** requires that prior to any new building and development in the AMUP where 161,000m² GFA is exceeded the construction of the Western Link Road (Stage 2) must have commenced.

7.5. In addition, I consider the following other ODP provisions are relevant to PC84:

- i. C1 Residential Zone Objectives and Policies and in particular Objective 1.0 – General and Policy 1 – Amenity Values;
- ii. C3 Commercial/Retail Objectives and Policies and in particular Objective 1.0 and Policy 1 Amenity Values; Objective 2.0 and Policy 1 – Consolidation;
- iii. C4 Paraparaumu Town Centre Objectives and in particular Objectives 1.0 relating to amenity values and Objective 2.0 relating to its overall development;
- iv. C5 Industrial/Service Zone Objectives and Policies and in particular Objective 1.0 and Policy 3 – Retailing.

7.6 I also consider there are a number of definitions contained in the ODP relevant to considering the provisions of PC84 (full definitions are contained in **Appendix A**): Amenity Values; Development (within the Airport Mixed Use Precinct); Department Store; Gross Floor Area; Home Improvement Retail; Large Format Retail; Retailing, Retail Outlets and Retail Trade Premises; Small Scale Convenience Retail; Supermarket; Vehicle Movement.

8. AIRPORT CONSENTS

8.1. I have summarised below in table for the resource consents held by KCAHL for the Airport Zone:

RM # and date	Activity	Gross Floor Area	Car parks provided
RM100069 May 2010	Access and earthworks	N/A	N/A
RM100081 July 2010	Stage 1A Mitre 10	8,713m ²	160
RM200211 December 2010	Stage 1B Mixed retail	7,100m ²	348 (only 231 provided)
RM110031 March 2011	Stage 1B Retail Grocery Store	1,500m ²	N/A
RM130106 July 2013	Stage 1C LFR	1,990m ²	50
RM130107 July 2013	Stage 2H Vehicle Dealership	Unknown	Unknown
RM130120 February 2014	Stage 1K – 1M Retail Node 'Market Square'	1,211m ²	19
RM130155 August 2013	Stage 2K Vehicle Trade Workshop	920m ²	25
RM140060 April 2014	Stage 1C LFR – change to RM130106	580m ²	36
RM140131 July 2014	Stage 2J Service Station (retail)	213m ²	13
RM140219 October 2014	Stage 1D New retail building	530m ²	16
RM150022 February 2015	Stage 1K – 1N Retail node – change to RM130120	Re-configuration of 1,032.79m ²	19
RM150088 May 2015	8 lot subdivision	N/A	N/A
RM150208 October 2015	Stage 2M/2P Placemakers	720m ² retail; 1,700m ² 'drive through'	80
Total		26,209m ²	766 (consented)

8.2. The above table is derived from the information provided by Council.

9. STATUTORY CONTEXT/CONSIDERATIONS

Resource Management Act 1991

- 9.1. A district plan change is primarily subject to Part 2 (Purposes and Principles), Part 5 (Standards, Policy Statements and Plans), and Schedule 1 of RMA.
- 9.2. Part 2 matters establishes the purpose of the RMA (s.5) being to promote the sustainable management of natural and physical resources while meeting a number of social, cultural, economic and environmental outcomes. I do not consider there are any s.6 Matters of National Importance relevant to PC84. I agree with the s.42A Report that matters identified in s.7 Other Matters (b), (c), (f), and (g) are relevant consideration to PC84.
- 9.3. Section 8 requires all persons exercising functions and powers under the RMA, in relation to managing the use, development, and protection of natural and physical resources, to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).
- 9.4. Section 72 outlines the purpose of a district plan which is to assist Council to carry out its functions listed in s.31 (which includes the control of any actual or potential effects of the use and development of land) and to meet the purpose of the RMA as outlined in s.5.
- 9.5. Section 74 outlines the matters that are to be considered when preparing a plan change, and s.75 requires that a district plan must give effect to a national policy statement, any New Zealand Coastal Policy Statement, and any regional policy statement.
- 9.6. Section 76 provides for a Council to include rules in the District plan, and prohibited activity status is provided for in s.77A (2)(f) of the RMA and means no application may be made for that activity and a

resource consent must not be granted for it. The only way a prohibited activity may be countenanced is through a change in the provisions of the plan.

9.7. Schedule 1 outlines the process PC84 is to follow. Clause 22 of Part 2 of Schedule 1 requires an evaluation report to be provided with PC84 in accordance with s.32. Where there are effects, clause 4 and 6 of Schedule 4 apply and the evaluation is required to be in such detail as corresponds with scale and significance of the actual or potential environmental effects anticipated from the implementation of the change, policy statement, or plan.

9.8. Section 32 (1)(b) of the Act requires an evaluation report that must:

'(b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—

(i) identifying other reasonably practicable options for achieving the objectives; and

(ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and

(iii) summarising the reasons for deciding on the provisions; and

(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.'

9.9. Section 32 (2) requires that an assessment under subsection (1)(b)(ii) must:

(a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—

(i) economic growth that are anticipated to be provided or reduced; and

(ii) employment that are anticipated to be provided or reduced; and

(b) if practicable, quantify the benefits and costs referred to in paragraph (a); and

(c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

The National Policy Statement – Urban Development Capacity (NPC – UDC)

- 9.10. The NPS – UDC took effect on 1 December 2016. The NPS – UDC provides direction to decision makers under the RMA on planning for urban environments. It recognises the national significance of well-functioning urban environments, with particular focus on ensuring that local authorities, through their planning, enable urban environments to grow and change and provide enough space for populations to live and work ‘happily’.
- 9.11. The NPS - UDC still expects Councils to need to consider a range of matters (relating to effects) in deciding where and how development is to occur. The NPS – UDC intends that development capacity must be provided for in plans and also supported by infrastructure.
- 9.12. The objectives of the NPS – UDC are listed in four Groups that relate to Group A - outcomes for planning decisions; Group B - evidence and monitoring to support planning decisions; Group C - responsive planning; and Group D coordinated planning evidence and decision-making. I note the NPS – UDC defined *Business Land* as including commercial and retail activities.
- 9.13. While the objectives are at a high level and have generic principles that PC84 is required to give effect to, in my opinion Objective OA2 and Objective OD1 (both which have immediate effect) are particularly relevant:

***Objective OA2** - Urban environments that have sufficient opportunities for the development of housing and business land to meet demand, and which provide choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses.*

***Objective OD1** - Urban environments where land use, development, development infrastructure and other infrastructure are integrated with each other.*

9.14. Policies are linked to the four Objective Groups identified above. The following is a brief summary of these policies:

- i. **Policies PA1 – PA4** (which must be given immediate effect) apply to any urban environment that is expected to experience urban growth, with **Policy PA1** requiring a Council to ensure sufficient business land capacity according to the short term, medium term or long term with key criteria being feasibility and developed infrastructure (short term) or funding for future infrastructure for medium/long term;
- ii. **Policy PA2** also requires local authorities to be satisfied that other infrastructure supporting the urban development are likely to be available;
- iii. **Policy 4A3 c)** requires limiting as much as possible adverse impacts on the competitive operation of land and development markets which is relevant to PC84;
- iv. **Policy PB1** requires local authorities to carry out a business land capacity assessment every three years to look at the demand and supply of business land and floor area in the short, medium and long term;
- v. **Policy PD2** (which must be given immediate effect) requires to achieve integrated land use and infrastructure planning, local authorities shall work with providers of development infrastructure, and other infrastructure, to implement policies PA1 to PA3, PC1 and PC2.

Wellington Regional Policy Statement (RPS)

9.15. As discussed above, PC84 is required by s.75 of the RMA to give effect to the RPS which became operative in April 2013. The RPS identifies as a resource management issue the regional form, design and function of the region, and identifies the Paraparaumu Town Centre as a sub-regional city centre that are significant areas of transport movement and civic and community investment (second paragraph; page 67).

9.16. The key provisions of the RPS are:

- i. A **regionally significant issue** for urban form, design and function is sporadic, uncontrolled and/or uncoordinated development (page 68) which can adversely affect the regions compact form and results in (amongst other things):
 - (a) new development that is poorly located in relation to existing infrastructure (such as roads, sewage and stormwater systems) and is costly or otherwise difficult to service;
 - (e) development in locations that undermine existing centres and industrial employment areas;
 - (f) loss of vitality and/or viability in the region's central business district and other centres of regional significance;
 - (h) adverse effects on the management, use and operation of infrastructure from incompatible land uses under, over, on or adjacent.
- ii. **Objective 22** that seeks a compact well designed and sustainable regional form that has an integrated, safe and responsive transport network; an increased range and diversity of activities in and around the regionally significant centres to maintain vibrancy and vitality (including the Paraparaumu Town Centre); integrated land use and transportation; and efficiently use existing infrastructure (including transport network infrastructure);
- iii. **Policy 30** intends to maintain and enhance the viability and vibrancy of regionally significant centres through district plans and the Wellington Regional Strategy;
- iv. **Policy 31** intends to identify and protect key industrial-based employment locations through district plans;
- v. **Policy 33** intends to support a compact, well designed and sustainable regional form through the Regional Land Transport Strategy.

Prohibited Activity Status

- 9.17. A key planning issue is whether prohibited activity status is appropriate for retail activities in the AMUP. Case law can provide some guidance regarding when the use of prohibited activity status is appropriate [Coromandel Watchdog vs Ministry of Economic Development [2007] NZCA 473]
- i. Where the council takes a precautionary approach. If the local authority has insufficient information about an activity to determine what provision should be made for that activity in the local authority's plan, the most appropriate status for that activity may be prohibited activity. This would allow proper consideration of the likely effects of the activity at a future time during the currency of the plan when a particular proposal makes it necessary to consider the matter, but that can be done in the light of the information then available;
 - ii. Where the council takes a purposively staged approach. If the local authority wishes to prevent development in one area until another has been developed, prohibited activity status may be appropriate for the undeveloped area. It may be contemplated that development will be permitted in the undeveloped area, if the pace of development in the other area is fast;
 - iii. Where the council is ensuring comprehensive development. If the local authority wishes to ensure that new development should occur in a co-ordinated and interdependent manner, it may be appropriate to provide that any development which is premature or incompatible with the comprehensive development is a prohibited activity;
 - iv. Where it is necessary to allow an expression of social or cultural outcomes or expectations;
 - v. Where it is intended to restrict the allocation of resources;

- vi. Where the council wishes to establish priorities otherwise than on a “first in first served” basis, which is the basis on which resource consent applications are considered.

10. SECTION 42A REPORT

10.1. The s.42A Report recommends PC84 be approved to enable the following changes to be made to the ODP:

- Only one supermarket as a discretionary activity, with additional supermarkets as non-complying activities;
- One department store as a non-complying activity, with any additional department store remaining as prohibited;
- More than one store of between 151m² and 1500m² GFA that retails groceries or non-specified food lines as non-complying activities; and
- Noise sensitive activities that are not otherwise permitted as non-complying activities.

10.2. The findings of the s.42A Report are:

- i. From a planning perspective, it is difficult to support prohibited activity status [para. 6];
- ii. The rule amendments would generally maintain consistency with the ODP’s approach of limiting the type and extent of retail activities within the Airport Zone in order to maintain the role and function of the District’s centres, particularly the Paraparaumu Sub-Regional Centre [para. 6];
- iii. A robust assessment is required of the potential effects to determine any proposal’s consistency with the strategic direction of the district plan [para. 7];
- iv. PC84 is separate and legally distinct from the PDP [para. 3.32];
- v. While no changes to the development thresholds [included in the AMUP] were requested under PPC84, the potential traffic effects related to the activities means that reconsideration of the development thresholds is a potentially relevant ‘consequential’ matter [para. 5.33];
- vi. The use of prohibited activity status to manage the effects of retail activities is relatively unusual [para. 5.39]; the plan

- change request has some merit in terms of its statement that the use of prohibited activity status to manage some forms of retail activities is inappropriate [para. 5.41];
- vii. Having a tight policy framework and utilising discretionary and non-complying activity statuses for specific activities ensures that a high level of scrutiny is applied to a development proposal through the resource consent process - this approach is appropriate and reasonable [para.5.45];
 - viii. Given the economic and traffic advice provided by Council's experts on this matter, the further enablement of retail activities in the Airport Zone as sought under PPC84 could have significant and unacceptable adverse effects in terms of the objectives and policies of the ODP and PDP - it is appropriate for the ODP to retain a higher level of control over such activities to impose a high level of rigour in assessing the effects of proposals [para. 5.53];
 - ix. If these assessments [of traffic effects] conclude significant adverse effects on the capacity and efficiency of the roading network, including the functioning of the interchange with the Expressway, cannot be readily ameliorated by conditions of consent, then the current objectives and policy framework would enable consent to be declined [para.5.57];
 - x. In terms of enabling retail activity outside the town centre, the evidence would have to indicate that the viability of the District Centre is marginal, and/or that there is sufficient capacity within the town centre to provide for additional growth [para. 6.16];
 - xi. Based on the expert economic assessment of Mr Heath, it is accepted that enabling resource consent for the activities does pose the risk of further retail development in the Airport Zone having significant adverse effects on the District's town centres, particularly the Paraparaumu Town Centre [para.6.24];
 - xii. The policies and rules in PPC84 are consistent with the objectives and policies of the RPS [para.6.28];

- xiii. PPC84, subject to the recommended modifications, is consistent with the purpose and principles of the RMA, for the reasons included in a) – e) in para. 6.30;
- xiv. Recommends **accepting in part** submissions and further submissions regarding the level of control over grocery and non-specified food stores between 151m² and 1500m²; **accept in part** or **reject** submissions for reasons given in s.42A Report and Appendix 7.

10.3. I refer to the above findings in my planning assessment below.

11. PLANNING ASSESSMENT

Context

- 11.1 Further to the statutory context I have provided above, I consider it is important to consider PC84 in a planning context by reviewing the history that culminated in the approach incorporated into the operative District Plan. In particular, the Vision Statement developed as part of the '*Kapiti Coast: Choosing Futures*' process between 2003 – 2005 established a set of outcomes for the Paraparaumu Town Centre (PTC) agreed to with the community. This Vision Statement led to the development of the 'Consolidation Approach' that has been incorporated into the ODP to ensure competing commercial and retail activities are restricted outside of the PTC. In my opinion, this provides an important context that expresses a social expectation of how the planning mechanisms in the District Plan will achieve the outcomes agreed to with the community for the PTC.
- 11.2 I included an overview of this history in paragraphs [33] to [45] my primary evidence dated 17 March 2016 to the Proposed District Plan hearings on General/Plan-wide Matters. I have included in **Appendix B** to this evidence a copy of that history.
- 11.3 Also of relevance to the planning context is Plan Change 73 (PC73) that was incorporated into the ODP on 21 January 2010 and introduced D.9 Airport Zone Rules and Standards. I provided an

overview of these provisions in para. [7.1] to [7.4] above. These provisions are required to implement the objectives and policies of the ODP, and therefore these provisions have been considered by Council through the plan change process to appropriately achieve the Vision Statement for the PTC, and the Consolidation Approach adopted that restricts competing commercial and retail activities in areas outside of the PTC.

- 11.4 As I indicated in my summary of my experience, I was involved in PC73 on behalf of Coastlands Shoppingtown Limited and attended the Council hearings. My recollection of the Council hearings was that the Paraparaumu Airport Limited (PAL) offered up through the process of the hearing a number of concessions to meet the concerns of submitters, which included prohibited activity status for department stores, supermarkets, and small retail activities. These provisions were considered by the Commissioners to be totally consistent with objectives and policies of the ODP and the outcomes sought for the PTC and the Consolidation Approach, and were agreed to by the parties. I understand an appeal to the Environment Court (by another party) confirmed prohibited activity was appropriate, and a robust consideration of the objectives and policies was not required.
- 11.5 The Consolidation Approach adopted by Council has been supported by Plan Change 72A (PC72A) for the Wharemauku Precinct which enables LFR development within the PTC. PC72A has enabled the consenting of Phase 1 of the Coastlands Square development (in 2016) that has a total GFA of 23,215m². Further development of the Takiri Development (two buildings with a total of 1,838m² GFA) adjoining Rimu Rd almost opposite to the Council Offices within the PTC, in my opinion, demonstrates the intention of the Consolidation Approach combined with the ODP provisions is working towards achieving the outcomes sought in the Vision Statement.

Adequacy of PC84 Application

- 11.6 Clause 22 of Part 2 of Schedule 1 of the RMA requires a request to change a plan to be in writing, explain the purpose of, and reasons for, the proposed change to a plan and contain an evaluation report prepared in accordance with section 32 for the proposed change.
- 11.7 Where effects are anticipated, these effects are to be described taking into account clause 6 and 7 of Schedule 4 of the RMA and be in such detail as corresponds with the scale and significance of the actual or potential environmental effects anticipated from the implementation of the change. Clauses 6 and 7 of Schedule 4 requires a comprehensive range of matters to be assessed, including actual and potential effects; possible alternative locations or methods if the effects are significant; mitigation measures; monitoring; relevant provisions of any policy statement or plan; affected parties including the wider community and social, economic and cultural effects; and effects on the natural environment.
- 11.8 I have discussed the purpose and reasons for PC84 above, and the s.42A Report outlines in Section 3 the further information request and process Council went through before accepting the plan change.
- 11.9 The PC84 request took the view that the change in activity status sought will have no environmental effects, and that any environmental effects that might arise from a future land use the subject of an application can be dealt with through the consenting process. The s.32 evaluation that was incorporated into the request therefore assessed the alternatives to the activity status proposed, and determined prohibited activity status is not the 'most appropriate'. No environmental effects were identified or assessed.
- 11.10 While at a first glance such a view might be seen as logical and defensible, I do not consider it has planning merit in this case for the reason that the request will enable activities to occur that are currently prohibited deliberately, and for a reason. PC73

incorporated the prohibited activity status in response to significant effects and risks being identified on achieving the Consolidation Approach adopted by Council in response to the outcomes for the PTC agree with the community.

- 11.11 In my opinion, and based on the evidence of Mr Small, Mr Copeland, Mr Georgeson, and Mr Lundy discussed below, these significant effects and risks remain. I note Council's expert economist and traffic advisor also express concerns about the significant effects of the activities that are to be provided for.
- 11.12 As a result, in my opinion the PC84 request was inadequate in that it did not provide a s.32 evaluation as required by Clause 22 of Schedule 1 (I discuss this further below). Furthermore, even after additional information was provided by the requestor, the requestor did not provide an assessment of effects as required by clauses 6 and 7 of Schedule 4 in such detail as corresponds with the scale and significance of the actual or potential environmental effects anticipated from the implementation of the change.
- 11.13 While I acknowledge that Council went through the necessary statutory process prior to accepting the request, I do not agree with Council that PC84 met the requirements of the RMA, and I am confused by the discussion in para. [3.10] of the s.42A Report that seems to link the prohibited status of the ODP with the future PDP saying it would act as a constraint on seeking consents in the period before decisions on the PDP are released and any appeals resolved.
- 11.14 In my opinion, this is not a valid reason and should not have been a consideration for accepting the request. There are several reasons for this view. Firstly, only the PDP objectives and policies have weight, and the Consolidation Approach and hierarchy of centres approach incorporated in the notified PDP reinforces, in my opinion, the ODP approach. Secondly, the notified PDP retained the prohibited activity status for the activities the subject of PC84, and while these provisions have no legal weight, there are submissions that support these

provisions. Thirdly, while I accept that the Council Officer recommendation to the PDP hearings on Chapter 6 Living Environment is to change the activity status for the activities subject to PC84 from prohibited activity, the recommendation has no legal weight and there is no certainty that the decision of the Commissioners will adopt that recommendation, which would be subject to appeal.

Assessment of Actual and Potential Effects

11.15 As part of the assessment of effects, I acknowledge s.74(3) of the RMA that Council must not have regard to trade competition or the effects of trade competition. As I discussed in paragraph [2.1] above, the Environment Court has determined that Coastlands Shoppingtown Ltd, Sheffield Property Ltd, and Ngahina Development Ltd are trade competitors and trade competition effects relating to the interests of these parties must not be considered.

11.16 Notwithstanding this, it is my understanding that significant economic effects go beyond trade competition effects, and can properly be considered. I understand 'significant' to be more than minor, but not as high as irreversible.

11.17 Furthermore, it is my understanding that direct effects on the Coastlands Shoppingtown Ltd, Sheffield Property Ltd, and Ngahina Development Ltd can also be considered. These relate to traffic, urban design and planning effects, and the expert traffic and urban design evidence of Mr Georgeson and Mr Lundy (respectively) specifically identify these effects.

Retail Effects

11.18 Mr Copeland has provided evidence addressing a range retail economics matters relevant to the consideration of PC84. The key findings in Mr Copelands evidence are:

- i. There are a range of economic and social benefits from the consolidation of retail and other commercial development within a limited number of centres within a district or city, rather than having such activity dispersed throughout the district or city;
- ii. Enabling a greater dispersal of retail development away from the existing centres within the district will lessen the value of the large \$45m investment Council proposes over the next 15 years in the PTC and will may make it more difficult to raise funds from the private sector for this project – this is also not an efficient use of ratepayer funds which is a scarce resource;
- iii. PC84 will divert sales from the PTC and Paraparaumu Beach and Raumati town centres by:
 - (a) Making it easier for a fully-fledged supermarket and a department store to be developed in the Airport Zone and this will lead to the diversion of business from these activities within the PTC;
 - (b) Making it less likely other department stores and supermarkets will be developed (or redeveloped and enlarged) within the PTC;
 - (c) Taking sales from the smaller specialty (or “fine grain”) stores within the PTC and within the Paraparaumu Beach and Raumati Beach town centres; and
 - (d) Making it more likely that the significant amount of retail development that is already provided for under the ODP will occur on the Airport Zone Land at a quicker rate.
- iv. PC84 will not deliver the economic benefits claimed by the requestor – i.e. it will not lead to:
 - (a) An increase in the size of the local “retail pie”;
 - (b) Reduced travel time and cost for local shoppers;
 - (c) Additional employment opportunities within the District; and
 - (d) Greater retail competition.

- v. PC84 will lead to the earlier efficient utilisation of the airport land but this will be at the expense of efficient utilisation of other land within the District. This is not district-wide economic benefit.
- vi. PC84 will make it more likely that supermarkets and department stores – i.e. “anchor stores” will be developed on the Airport Zone land. This will lead to a more dispersed pattern of development within the District leading to reduced agglomeration and amenity benefits and increased transport and infrastructure costs.
- vii. PC84 does not promote “people and communities economic wellbeing” or the “efficient use and development of natural and physical resources.”

11.19 Mr Copeland determines overall that the ‘significant’ economic benefits relating to retail activities suggested by the requestor will not occur, but instead there will be significant economic effects of approving PC84. As I understand it, these significant economic effects related to retail activity go beyond trade competition effects, and can be properly considered. The findings of Mr Copeland have informed my planning assessment relating to the retail effects of PC84 in this evidence.

Economic Effects

11.20 Mr Small has undertaken an economics analysis of PC84 that has been informed by empirically modelling of the likely effects focusing on the diversion of retail trade from the PTC. This enables Mr Small to draw inference from that diversion as to the likely effect on public benefits including amenity benefits at the PTC over the next few years.

11.21 Mr Small has determined from his modelling of household demand for core retail products for 17 census area units (CAUs) that the trade diversion estimates range from 40% for CAUs located close to the airport down to 5% for Paekakariki. These figures represent the share of

current spending at PTC from each CAU that is likely to divert to the airport under PPC84. Using this method, Mr Small estimates that PTC will lose 21% of its retail turnover if PPC84 is approved. He concludes that a loss of 21% of patronage will significantly reduce these public benefits and amenities, and these losses will not be made up for at the airport.

11.22 Mr Small considers the likely effects on the PTC could be:

- i. A supermarket will close at PTC – many people at Paraparumu beach (north & south) will prefer the airport supermarket and expressway exits will encourage residents of other CAUs away from the PTC;
- ii. The main department stores at PTC will be seriously challenged - whether they remain open or not will be highly correlated with the broader amenities offered at the PTC;
- iii. Smaller retailers at PTC will consider shifting to the airport, and if not, will choose between closing down and remaining in business. Depending on the nature of the retail shop these type of speciality shops will face more competition from an increased number of department stores and loss of foot traffic in the PTC. Responses will vary but vacancy rates will certainly increase at PTC.

11.23 Mr Small concludes these effects are a very serious commercial challenge to the PTC.

11.24 Mr Small also considers that a 20% reduction in patronage at the PTC will divert to airport meaning the values of the vibrant (PTC) centre is reduced. Mr Small considers this is a loss in social value for the District residents, and considers the between \$1.2m to \$1.8m per annum cost predicted by the property Economics Report to be conservatively low.

11.25 Overall Mr Small concludes that the diversion of trade from the PTC to the Airport Zone is significant and will have significant economic and

social costs. The approval of PPC84 would significantly undermine the commercial base of the PTC.

11.26 Similar to Mr Copeland's findings above, as I understand it, these significant economic and social benefit effects go beyond trade competition effects, and can be properly considered. The findings of Mr Small have informed my planning assessment relating to the retail effects of PC84 in this evidence.

Traffic Effects

11.27 Mr Georgeson provides comprehensive evidence regarding the current district traffic environment, the traffic issues that could arise from PC84, and the likely traffic effects. The key findings of Mr Georgeson's evidence are:

- i. Comprehensive traffic modelling of the effects associated with staged development at the Airport Zone, undertaken to assess the effects of PPC73, showed that the network was sensitive to new traffic travelling to/from the site, leading to a significant degradation in the performance of the Kapiti Road corridor (which was already under pressure) and the adjoining district network;
- ii. The development GFA thresholds included in the ODP anticipate activities within the Airport Zone that generate low traffic volumes - these are shown to be much lower than typical traffic generation rates associated with supermarkets, shopping centres and department stores;
- iii. Determination of the GFA thresholds has been informed using traffic modelling that included only primary development trips, rather than full (primary and secondary) development traffic movements;
- iv. The comprehensive traffic modelling undertaken for PPC73 indicated that even with new development generating such low levels of additional vehicles on the network, significant roading infrastructure improvements (including

commencement of the Western Link Road stages and completion of the Ihakara Street East extension) were required to maintain an acceptable level of performance on the network;

- v. As such, any proposed changes to the Airport Zone rules that influence the level of traffic generated at the site represents a significant risk to the future operation of the road network in both the short and long term, as a number of significant local and strategic road network changes (which have not anticipated the proposed PPC84 effects) come online;
- vi. Modelling scenarios for Kapiti Road east of the Expressway interchange and Arawhata Road, show a LOS E is expected - this represents a significant reduction in performance from the LOS C forecast at these intersections without PC84 that will have substantial impacts on the Kapiti Road network performance, not just at the site access, but further afield at the Expressway interchange and beyond;
- vii. The combined effects of two further modelling considerations show parts of the network approaching an equivalent LOS F, at 2017, well before the full 43,050m² GFA is established;
- viii. Particular congestion is experienced for the PPC84 scenario on Kapiti Road east, around the Expressway interchange and Arawhata Road (showing LoS E) – this will materialise in delay for those east-west movements on Kapiti Road, culminating in increased journey times for people wishing to travel to and from the Paraparaumu town centre – this would likely manifest in the form of new travel choices being made, including the use of alternate routes not otherwise considered and retail visits being made elsewhere, away from the desired location of the town centre;
- ix. A drop in LOS on Kapiti Rd east are likely to result in a drop in performance of at the Arawhata and Rimu Rd intersections, frustrating visitors to the PTC and causing the need for greater levels of intervention on the road network – this has for the

development of Stage 2 of Coastlands Square, and access from Rimu Rd to the Coastlands facility;

- x. In the absence of specific option testing of infrastructure mitigation measures that might appropriately accommodate the additional development traffic, it is difficult to see how such forecast congestion could be addressed via conditions by a single applicant at the time of resource consent.

11.28 Overall Mr Georgeson concludes PC84 will lead to significant increases in traffic generated from the Airport Zone compared to the existing retail GFA development. These increases will exert and influence on traffic patterns both locally and at a wider level triggering poorer levels of service. This will directly affect the PTC network and have an effect on the Stage 2 development of Coastlands Square.

11.29 Similar to the economist's findings above, as I understand it, these significant traffic effects go beyond trade competition effects, and can be properly considered. The findings of Mr Georgeson have informed my planning assessment relating to the traffic of PC84 in this evidence.

Urban Design and Form Effects

11.30 Mr Lundy has reviewed PC84 from an urban design and form perspective, and has determined that:

- i. Allowing 'Out of Town Retail Centres' to apply for resource consent to have anchor stores, such as Department Stores, or further supermarkets, will weaken and damage the viability of existing town centres;
- ii. If further retail is allowed to drift to the Airport, the existing centres will degrade and revitalisation opportunities that exist now will be lost;
- iii. Paraparamu Town Centre requires commercial demand and has more than sufficient capacity to absorb more retail,

commercial and residential apartments driven by location, community services and the transport hub;

- iv. Retail traditionally aligns along the busiest longest and most connected route (B.Hillier Space Syntax Theory) - the opening of the expressway changes the existing pull along State Highway 1. Unless there are land use restrictions on the type of retail allowed at Kapiti Landing this theory indicates that commercial use will relocate alongside the expressway interchange thus undermining the strategy of enhancing the old State Highway as a local Arterial and "Main Street" and purpose of the Expressway;
- v. If anchor stores are removed from the prohibited activity list, it signals the ability for Kapiti Landing to become a retail node and a 'centre' - the inclusion of further supermarkets or a Department Store will create a Retail Node and weaken the viability and vitality of Paraparaumu Town Centre.

11.31 My Lundy concludes that for Paraparaumu Town Centre to function and succeed as a vibrant Town Centre, department stores and supermarkets need to remain as prohibited activities at the airport. As I understand, these significant effects on the vitality and vibrancy and associated amenity effects of the PTC are legitimate effects that can be considered on those parties who have been adjudged to be trade competitors, as well as the wider District community.

11.32 The overall findings of Mr Lundy have informed my planning assessment relating to the urban design and form effects of PC84 in this evidence.

Assessment of PC84 Against High Order Documents

11.33 As I have discussed above in the Statutory Context, PC84 is required to give effect to NPS – UDC as directed by s.75(3)(a) of the RMA. I note in paragraphs [4.15] to [4.22] of the s.42A Report provides a commentary on the NPS – UDC and identifies a number of objectives of relevance to PC84. I note the s.42A Report does not identify any

relevant policies, and does not make a determination that PC84 'gives effect to' the NPS – UDC. I consider this is a gap in the s.42A Report assessment.

- 11.34 I also note in paragraph [4.21] of the s.42A Report there is references the Property Economics reports of 2011 and 2015 and the findings that currently there is sufficient land zoned for business activities for the medium term, with an oversupply of land for some kinds of business activities (such as retail and commercial). While these findings are relevant from a supply of land perspective, I also note the NPS – UDC places a focus on ensuring land use development is supported by infrastructure through Objective OD1 and implemented through Policies PA1, PA2 and PD2 (summarised in para [9.4] above).
- 11.35 In my opinion, PC84 does not demonstrate that it is giving effect to the supporting infrastructure requirements that might be associated with the development that accompanies the activities enabled by the change in activity status, and in particular transport infrastructure, as required by Objective OD1 and Policies PA1, PA2 and PD2. Both Mr Wignall (traffic adviser to Council) and Mr Georgeson raise significant concerns about the ability of the traffic network to cater for traffic movements that may result from the proposed activities, and the need for infrastructure improvements is identified.
- 11.36 While I accept PC84 was prepared prior to the introduction of the NPS – UDC, the s.42A Report fails to address this point, and Mr Israelson (planner for KCAHL) also fails to provide an assessment as part of his expert evidence.
- 11.37 PC84 is also required to 'give effect to' the Wellington RPS. I note that neither the request or supporting planning documents (including the additional information provided by Mr White) identified the relevant RPS provisions and provided an assessment of whether PC84 gives effect to the RPS.

11.38 I note the s.42A Report identifies the relevant objectives and policies of the RPS in paragraph [4.24]. In paragraph 6.28 the s.42A Report considers the policy and rules in PC84 are 'consistent' with objectives and policies of RPS as the proposed provisions would contribute to the achievement of:

- A sustainable, compact urban form;
- Implementation of sound urban design principles;
- Maintenance of vitality and vibrancy of the Region's importance centres; and
- Promotion of energy efficient development.

11.39 With respect, the test required by s.75(3)(c) is not whether PC84 is 'consistent' with the objectives and policies of the RPS, but whether it 'gives effect to' the RPS. In note Case Law (King Salmon vs Environmental Defence Society Incorporated [[2014] NZSC 38) also confirms 'give effect to' equates to 'the implementation of' and 'consistent' is not an adequate assessment for this test.

11.40 In my view, being 'consistent' with objectives and policies is a 'passive' test, and may simply mean PC84 is not contrary to the RPS. However, to 'give effect to' is an 'active' and much higher test that has to demonstrate achievement. This is required so that ultimately the s.32 test regarding whether the proposal is the most appropriate way to achieve the objectives can be determined.

11.41 While the s.42A Report suggests that a number of the RPS outcomes will be 'achieved', there is no evidence as to how PC84 will achieve these outcomes. In fact, based on the evidence prepared by Mr Lundy, Mr Small and Mr Copeland, PC84 will have urban design and form and associated social effects effects that will mean PC84 does not give effect to the RPS.

11.42 In particular, there is no evidence from the requestor to suggest the Paraparaumu Town Centre, being is recognised by the RPS as a regionally significant centre, will be maintained and enhance as

required by Policy 30. There is also no evidence to demonstrate that PC84 will support a compact, well designed and sustainable regional land for (Policy 33), or is the most appropriate way to meet the outcomes sought in Objective 22. In my opinion, and based on the evidence of Mr Lundy, Mr Small, Mr Copeland, and Mr Georgeson, PC84 fails to 'give effect to' the RPS.

PC84 Reliance on the ODP Objectives and Policies

- 11.43 PC84 does not change any of the objectives or policies of the ODP. I note the PC84 request considers the existing ODP objectives and policies relating to the Airport Zone are appropriate and do not require alteration under the plan change (para. [2.14]).
- 11.44 I also note the s.42A Report considers a tight policy framework and utilising discretionary and non-complying activity statuses for specific activities ensures that a high level of scrutiny is applied to a development through the resource consent process (para. 5.45]). However, I am unable to find an assessment in the s.42A Report of the ODP policies to determine they are robust.
- 11.45 The s.42A Report also acknowledges, given the economic and traffic advice, the further enablement of retail activities in the Airport Zone could have significant and unacceptable adverse effects in terms of the objectives and policies of the ODP (para.5.53]). This point is reiterated again in relation to economic matters in paragraph [6.24].
- 11.46 The s.42A Report therefore considers it appropriate for the ODP to retain a higher level of control over such activities to impose a high level of rigour in assessing the effects of the proposals. The s.42A Report places a high reliance on the current objectives and policy framework to decline a consent (para. [5.57]), and does not consider any consequential amendments to the objectives and policies of the Airport Zone are needed (para. [5.58]).
- 11.47 The s.42A Report puts the onus on Council to be satisfied that the resource consent process would not be sufficiently robust to enable

the effects of any specific proposal to not be addressed, to determine whether it would be contrary to the objectives of the ODP (para. 6.17]). While accepting that further retail development in the Airport Zone poses a risk of have significant adverse effects on the District's Town centres, it considers as non-complying activities the proposal will be rigorously evaluated against the potential effects as well as whether it is contrary to the objectives and policies of the ODP. I note that there is no mention that a discretionary activity (i.e. a supermarket) will not necessarily have such a rigorous evaluation.

11.48 I am concerned that there is a high reliance on the robustness of the consenting process to identify and manage significant adverse effects from the changes proposed by PC84, and the ODP objectives and policies to provide guidance to decision makers when considering consents. When considering whether to accept a non-complying consent application, the Council would need to be satisfied, as one of the two 'gateway tests', the proposal is not contrary to the objectives and policies of the ODP (s.104D (1)(b) test). When considering a discretionary activity consent, Council is to have regard to the objectives and policies (s.104(b)).

11.49 I have reviewed the ODP provisions in light of the fact they would be heavily relied to ensure a robust consenting process, and would make the following comments in relation to the C.19 Airport Zone Objectives and Policies (the full wording of these provisions is included in **Appendix 1** to the s.42A Report):

- i. **Objective 1.0** is high level and focusses on sustainable opportunities by enabling the efficient use of land while managing effects. In my view this objective could be widely interpreted and does not reflect the consolidation approach included in the ODP or provide any guidance on the nature, scale and intensity of effects that are appropriate.
- ii. **Policy 2** (implementing Objective 1.0) uses language that is non-specific and enabling – the term 'a range of activities' provides no guidance to the decision maker regarding specific

activities, and the term 'will be permitted' provides an expectation that non-aviation activities that might provide employment opportunities are anticipated. I note the explanation to the policies reinforce the enabling nature with the key requirement being to support the sustainability of the Airport Centre. While the explanation identifies supermarkets, department stores and more than one small scale retail grocery outlet are prohibited activities, this would change through PC84. In my opinion, Policy 2 does not provide any guidance to a decision maker regarding when a non-aviation activity might be inappropriate and has no requirement to consider any effects.

- iii. **Objective 2.0** provides guidance that amenities of the surrounding area are to be 'protected' from the adverse effects of airport use and development, although the term 'areas surrounding the airport' could be up for interpretation, as could be the amenities of importance. The term 'protect' could be considered to provide direction to a decision maker when considering a non-complying activity effects test under s.104D of the RMA, however as the term 'amenities' and 'areas surrounding the airport' are undefined, in my opinion the use of the term 'protect' provides little guidance and the objective is open to interpretation.
- iv. **Policy 2** (implementing Objective 2.0) expresses the 'desirability' of permitting specifically identified retail and commercial activities subject to threshold standards and a test that the role and function of the PTC is not undermined. The explanation to the Policy provides guidance regarding what the specific retail activities might be: larger format, vehicle orientated retail activities, as well as wholesale/trade activity (i.e. not a department store; supermarket or small scale retail). The explanation also clarifies that the policy is aimed at ensuring unlimited large and small retail activities do not undermine the role and function of the town centre through

the thresholds set. In my opinion, this policy is not directed towards the specific activities being addressed in PC84, such as a department store or supermarket, and is not intended to address effects that might come from these activities.

- v. **Policy 5** (implementing Objective 2.0) requires restrictions on the timing of developments (through GFA thresholds) to manage the traffic effects of development. The explanation clarifies that certain roading improvements are also required to be undertaken in parallel with the increase in GFA. It is my understanding based on Mr Wignall's evidence, that assumptions were made on the mix of activities that were provided for by PC73 that allowed the GFA thresholds to be met. Mr Wignall expresses the view that if the mix of retail activities change (i.e. a supermarket and department store are provided for), there is a need to revisit the GFA thresholds. I note the s.42A Report suggests that amending the GFA thresholds could be considered a 'consequential amendment' brought about by PC84, but makes no recommendation on this matter. In my opinion, the amending the GFA thresholds as a consequential amendment would be outside of the scope of PC84 as there are no submissions seeking this amendment, and there has been no opportunity for submissions to be made on such a change. Notwithstanding the above, I consider Policy 5 is broad in nature and does not provide any guidance regarding what traffic effects are required to be managed to. For example, there is no guidance regarding what the Level of Service (LOS) should be achieved for key roads within the Kapiti network, what waiting times are acceptable at traffic lights etc. In my opinion the policy would provide little guidance to a decision maker who is required to consider the effects that might be anticipated from the activities enabled by PC84.

11.50 In terms of C.3 Commercial/Retail Objectives and Policies (the full wording of these provisions is included in **Appendix C**):

- i. **Objective 1.0** is focusses on maintaining and enhancing the amenity values in centres, and the explanation clarifies that the amenity values (in the PTC and other centres) relate to the character of the areas that is affected by building heights, quality active building frontages at street edges and the careful distribution of retail within the centres. I do not consider the objective intends to apply beyond the Commercial/Retail Zone and therefore does not provide any guidance to developments within the Airport Zone.
- ii. **Policy 1** (implementing Objective 1.0) also relates to amenity values of the commercial/shopping centres, and the explanation appears to confirm that the policy is primarily focussed on controlling activities within the Commercial/Retail Zone and does not provide any guidance for activities within other zones, such as the Airport Zone.
- iii. **Objective 2.0** is relevant to PC84, although I note the s.42A Report does not consider it is relevant as it says there is only one objective (Objective 1.0) for the District's Commercial/Retail Zone (para. [6.13]). The objective intends to retain and enhance the vitality and viability of the District's main centres, including the PTC. While this objective does provide some guidance to a decision maker considering a resource consent in the airport zone, it is a high-level objective and in my opinion it would be difficult to determine whether a non-complying consent would not be contrary to this objective (s.104D (1)(b) test), or when having regard to the objective when considering a discretionary activity consent (s.104(b)).
- iv. **Policy 1** provides direction for retail development in the District Centres (including the PTC) to implement the consolidation policy. The policy does not contemplate retail activities outside the District centres, apart from small scale convenience shopping for day to day needs. In my opinion this reflects the restrictions on retail shopping (i.e. prohibition of supermarkets and department stores) in the Airport Zone. I do not consider

the policy provides guidance for a decision maker considering a non-complying or discretionary activity resource consent for a retail activity in the Airport Zone.

11.51 In terms of C.4 Paraparaumu Town Centre Objectives and Policies (the full wording of these provisions is included in **Appendix D**):

- i. **Objective 1.0** is focussed on the PTC and the explanation is useful as it reinforces the community outcomes and expectations that derived from the establishment of a Vision for the PTC. However, in my opinion it does not provide guidance to a decision maker considering a non-complying or discretionary activity consent application for an activity in the Airport Zone.
- ii. **Objective 2.0** is also focussed on the development of the PTC within the wider District Centre. I note the policies that implement Objectives 1 and 2 are also PTC focussed, and provide no guidance to a decision maker considering a non-complying or discretionary activity consent application for an activity in the Airport Zone.

11.52 Similarly, the objectives and policies in C.5 Industrial/Service Zone are focussed on activities within industrial/service areas and provide no guidance to a decision maker considering a non-complying or discretionary activity consent application for an activity in the Airport Zone.

11.53 From my assessment of the relevant ODP objectives and policies, I have determined the following:

- i. Objectives 1.0 and 2.0 of the Airport Zone are high level and could be widely interpreted meaning they provide little guidance to a decision maker considering the effects of a resource consent;
- ii. The two Policy 2 implementing the objectives are non-specific and are not measurable meaning they do not provide

guidance regarding what is acceptable or not acceptable, and when a resource consent should be declined. In fact, both policies focus on permitting activities rather than identifying when activities might not be acceptable;

- iii. Policy 5 is broad in nature and does not provide any guidance regarding what traffic effects are required to be managed, or any guidance regarding what LOS should be achieved for key roads within the Kapiti network, or what are acceptable waiting times at lights etc.;
- iv. Objectives and policies specific to other zones, including the PTC, are focussed on activities within these zones, and provide little or no guidance to decision makers considering non-complying or discretionary activity resource consents for activities within the Airport Zone.

11.54 Based on the above, I do not consider there is a tight policy framework within the ODP provisions and utilising discretionary and non-complying activity status ensures a high level of scrutiny through the resource consent process. I therefore do not consider the resource consent process is sufficiently robust to enable the effects of a specific proposal will be addressed to be able to determine whether it is contrary to the objectives of the ODP.

11.55 I find it difficult from a planning perspective to accept that the ODP objectives and policies are fit for purpose for considering non-complying or discretionary activities that were prohibited in the ODP.

Existing Environment

11.56 I agree with s.42A Report (para. 6.9) that PC84 needs to be considered within the framework of the ODP. As well as considering the objectives and policies of the ODP as I have above, there is a need to consider the existing environment that is formed by the activities permitted and controlled through the ODP, and consents that have been granted.

11.57 In terms of the permitted activities (as of right) and controlled activities (where a consent is required by cannot be refused), a range of retail activities are provided for as I have outlined in paragraphs [7.3] and [7.5] above. Importantly, permitted activities included within the AMUP:

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"

11.58 The above activities are subject to permitted activity conditions including (amongst other things) building height (maximum 12.5m for retail); building design; site coverage (maximum 75%); parking requirements etc. Specific retail threshold standards are included that restrict retail activity part of a non-retail activity to less than 15% of GFA; restrict LFR to 10,000m²; restrict Home Improvement retail to 17,000m²; restrict Small Scale Retail to 1,200m² GFA – an addition 800m² allowed after Airport develop exceed 200,000m²; restrict Small Scale Commercial Services to 1,200m² GFA – an additional 700m² GFA after Airport develop exceed 200,000m²; restrict number of individual Small Scale Retail and Commercial Service activities in a 'node' to 8, with 100m between a 'node'.

11.59 A controlled activity in the AMUP is:

- (i) ... any Development where the gross floor area in the Precinct does not exceed 102,900m² of development

11.60 Controlled activities are subject to the permitted activity standards (as discussed above) and controlled activity standards that require an Environmental Management Plan, Stormwater Management Plan,

and traffic and development thresholds. The traffic and development threshold relates to the provision of the Eastern Intersection; the use of the operational use of the runway; and development thresholds of 43,050m² and 62,500m² that require additional works before they can be exceeded.

- 11.61 In terms of the consents already granted by Council for the AMUP, I have summarised in the table in paragraph [x] above what I understand to be GFA already approved (26,209m²), presumably all within the AMUP. From reading the evidence of Mr Israelson, I understand the 17,400m² of retail GFA has already been established on the site, with a further 3,000m² of retail GFA under construction (para. 3.2 of his evidence). Based on those numbers, a further 5,800m² of retail GFA could be constructed under existing consents. My reading of these consents are that it is not fanciful and I see no reason why they would not be exercised, and they can be considered as part of the existing environment.
- 11.62 From the above, it therefore follows that a further 16,841m² of retail GFA (up to the 43,050m² GFA threshold) could be developed within the AMUP as a controlled activity (where Council is unable to say no), subject to meeting the matters of control. In my opinion the matters of control are not too onerous and I would expect little problem with a development meeting these controls and being consented.
- 11.63 Beyond that 16,841m² a further 19,450m² of retail GFA (up to 62,500m² of GFA) could also be developed as a controlled activity if the controlled activity standards (for developments above 43,050m² GFA) are met and in theory an additional 59,850m² of retail GFA (up to 102,900m² of GFA) can also be developed as a controlled activity. However, meeting some of the controlled activity standards for the development above the 43,050m² and 62,500m² retail GFA traffic and development thresholds would be problematic as they require road improvements and the western Link Road to be constructed prior to a threshold being exceeded. The Western Link Road has been replaced by the Expressway, and other roading improvements (such

as the Ihakara Street West) may be difficult to construct. I note this matter is not the subject of PC84, and will be a matter addressed through the PDP so may end up not being a constraint for further retail development within the AMUP as a controlled activity.

11.64 Overall, my review of the existing environment shows that a considerable amount of retail GFA can be developed in the AMUP in the future, either through existing consents, as permitted activities or as a controlled activity. In my opinion, there is little opportunity for Council to manage the effects of such development on the PTC and other centres in the district. As discussed by Mr Small, Mr Copeland, Mr Georgeson and Mr Lundy, the effects on retail, traffic and urban form from approving PC84 are significant on the PTC and the transport network. In my opinion, PC84 will exacerbate these effects within the context of the existing environment, and this matter needs to be given weight when assessing PC84.

Appropriateness of Prohibited Activity Status

11.65 I note the requestor and s.42A Report provide a number of reasons why prohibited activity status is not considered appropriate for retail activities in the AMUP, including:

- i. Using prohibited activity status is not effects based;
- ii. Costs associated with retaining prohibited activity status are prohibitive;
- iii. Unable to undertake master planning for airport;
- iv. Unable to engage with market to best utilise land and respond to M2PP;
- v. Unusual to use to control retail activities;
- vi. Not 'consistent' with ODP rule regime approach.

11.66 I also note the s.42A Report is not consistent on its view that it is unusual to control retail activities using prohibited activity status, but then recommends the activity status be retained for some small-scale retail activities.

- 11.67 In my opinion, the above reasons hold little planning weight and fail to acknowledge that prohibited activity status is a legitimate activity status provided for by the RMA. The RMA provides for activities to be prohibited through regulations, policies and plans.
- 11.68 I consider it is important to note that the ODP provides for all retail activities within some part of the Kapiti District through zoning. However, PC84 is specifically focussed on department, supermarkets and small scale retail that are not provided for in the AMUP. The ODP provides for department stores, supermarkets and small scale retail in other zones within the District, so it is not a case of these specific activities being prohibited throughout the District.
- 11.69 As I discuss in paragraph [9.17] above, Case Law provides a number of examples where prohibited activity status is appropriate, and in my opinion apply to specific retail activities in Kapiti.
- 11.70 The first valid reason is where a council wishes to take a precautionary approach, which is anticipated under s.32 (2)(c) of the RMA. This may be due to lack of information regarding the activity meaning it would be difficult to determine the effects that might be anticipated. In my opinion, this is an appropriate approach for Council to take in this situation as the details of the size of a department store or supermarket are unknown, and the effects are difficult to determine. The evidence of Mr Small and Mr Copeland are that retail and economic effects of a department store and supermarket are unknown but are likely to be significant. Similarly, Mr Georgeson considers the modelling of the transport network is unable to determine the likely traffic effects of a department store or supermarket, but are likely to have significant effects on the LOS of key roads within Paraparaumu. In my opinion a precautionary approach is essentially the status quo option, and is valid.
- 11.71 A second valid reason is that Council has taken a purposively staged approach to the development within the AMUP, and has set thresholds with standards and conditions when retail GFA areas are

met. The Court has determined the use of a prohibited activity in this case is appropriate. In my opinion, PC84 has not established that there has been any significant change in the retail, traffic or urban form environment of Kapiti that would mean the thresholds included in the ODP are no longer valid and the prohibited status of specified retail activities should be changed. To the contrary, Mr Wignall is of the view that should the mix of uses change, the thresholds need to be also changed (presumably tightened) to ensure traffic effects are addressed. Changing these thresholds is not within the scope of PC84.

11.72 The third valid reason is where a council wishes to ensure a comprehensive development is achieved. In this case, to ensure a new development can occur in a coordinated and independent manner, will occur, the Court decides that it is appropriate to prohibit an activity that is premature or incompatible with the comprehensive development. In my opinion, this is applicable to the retail activities PC84 intends to provide which are incompatible with the Consolidation Approach and outcomes for the PTC included in the Vision Statement agreed to with the community.

11.73 The fourth valid reason is where it is necessary to allow an expression of social (or cultural) outcomes or expectations. As I have outlined in the summary of the process of developing a Vision Statement for the PTC since 2003, a strong community involvement has led to a Consolidation Approach being adopted that enables retail activities in appropriate areas, and restricts or prohibits specific retail activities in other areas. Prohibiting department stores, supermarkets and small scale retail in the AMUP is totally consistent and implements the Vision Statement and Consolidated Approach of the ODP, and is the expectation of the community.

11.74 Finally, the Court has determined another valid reason is where Council wishes to establish priorities otherwise than on a 'first in first serve' basis. In my opinion it is a valid for prohibited activity status to be applied to department stores, supermarkets and small scale retail

in the AMUP in order to ensure the priorities and wider social and economic outcomes of the PTC, recognised as a regionally significant centre, is preserved.

- 11.75 In addition, the guidance provided in Case Law, I also consider prohibited activity status is appropriate for department stores, supermarkets and fine grain retail in the AMUP because I do not believe the effects of these activities can be 'conditioned out' through a consenting process. In other words, it is not clear to me what consent conditions could be put on a supermarket or department store or small scale retail that would mitigate retail, economic, traffic or urban form effects on the PTC. I note Mr Georgeson shares this concern regarding traffic effects and the need for infrastructure to mitigate effects. Any consent conditions on a non-complying or discretionary activity consent would need to be robust to be effective, and I fail to see how the conditions could be formulated to address significant effects that are difficult to determine and mitigate against.
- 11.76 I agree with Mr Wignall who concludes that improvements in the transport infrastructure could not be a mitigation for effects due to the issues of timing. Providing for a supermarket or department store or small scale retail as a non-complying or discretionary activity would provide no certainty that the conditions on the consents could mitigate the significant effects the s.42A Report and experts (from all parties) have identified.
- 11.77 I consider the s.42A Report is inconsistent in that it determines that prohibited activity is not appropriate for retail activities in the AMUP, but then recommends prohibited activity status be retained for small scale retail activities. I also note the PDP includes other prohibited activities in a range of zones, including vehicle access to Awanui Drive from Waikanae North, commercial panel beating in a living zone, and demolition of Class 1 Heritage Building. In my opinion, the use of prohibited activity status in the ODP to prohibit supermarkets,

department stores and small scale retail is not an anomaly or unprecedented.

11.78 In my opinion, Prohibited Activity status is a legitimate planning tool that is available to Council to restrict the types of retail activities proposed by PC84 for reasons confirmed by the Courts.

Section 32 Evaluation

11.79 As I have discussed above, PC84 does not propose to amend the objectives and policies of the ODP. Therefore, the s.32 evaluation of the proposed amendments to the rules of the ODP needs to examine whether they are the most appropriate way to achieve the ODP objectives (as discussed in para. [9.8] to [9.9] above. Section 32 (1)(b) requires this examination to consider reasonably practicable options; the efficiency and effectiveness of the provisions, and the reasons for decision on the provisions when considering they are the most appropriate way to achieve the objectives. I note the rules are also required to implement the policies of the ODP.

11.80 In terms of alternatives, PC84 identifies the status quo as the key alternative, being retention of prohibited activity status. Other possible alternatives identified are waiting for the PDP or undertaking a plan change to change prohibited activity status to some other status classification (which is PC84).

11.81 PC84 discards the status quo as an alternative because (para. [6.13] – 6.17]:

- i. The cost of retaining prohibited activity status for the listed activities means KCAHL is unable to consider these activities in at all and the Airport Zone is sterilised;
- ii. This reduces the prospect of a comprehensive and workable master plan being developed as the market will not engage with KACHL.

- 11.82 PC84 discards waiting for the PDP because there are greater delays and uncertainty with the PDP process.
- 11.83 While I accept that retaining the status quo is a key reasonably practicable option for achieving the objectives of the ODP, I do not agree with for the basis of discarding this alternative, for reasons I have discussed above in my evidence (the reasons why prohibited activity status is an appropriate alternative in para [9.17]).
- 11.84 In terms of efficiency (benefits and costs), PC84 identifies the benefits of the proposal being to allow KCAHL apply for a consent, undertake master planning, proactively respond to the changing environment in the District, and engage with the market. From these benefits, economic growth is expected of the Airport, District and Region. PC84 says only costs are if an activity is not appropriate for the relevant location, and the cost of parties being involved in a plan change process.
- 11.85 In my opinion, this assessment of the benefits and costs is inadequate and does not meet the requirements of s.32 (2)(a) of the RMA. In particular, Mr Copeland disputes in his evidence the retail economic benefits that predicted to come from PC84 by the requestor, and Mr Small demonstrates through his modelling there is retail distribution effects that are a significant cost to the PTC and wider community. Mr Georgeson demonstrates there are significant traffic effects associated with approving PC84, and Mr Lundy demonstrates there are urban design and social costs associated with PC84.
- 11.86 In terms of effectiveness, PC84 identifies in the table in para. [11] that the status quo on the one hand is 'very effective' in not allowing activities, but is not effective in achieving Objective 1.0. PC84 expresses serious concerns regarding the effectiveness of waiting for the PDP due to the timing and process. PC84 considers a plan change is the most effective option, but is only a 'partial' solution.

11.87 In my opinion the assessment of whether the provisions of PC84 is effective in achieving the objectives is inadequate, as it only considers Objective 1.0 in relation to the status quo. Other relevant objectives include:

- i. In the AMUP Objective 2.0;
- ii. In the Residential Zone Objective 1.0;
- iii. In the Commercial/Retail Zone Objectives 1.0 and 1.2;
- iv. In the Paraparaumu Town Centre Zone Objective 1.0;
- v. In the Industrial/Service Zone Objective 1.0

11.88 Collectively these objectives require a number of other matters to be considered, including:

- i. The maintenance of amenity values of surrounding residential areas;
- ii. The maintenance and enhancement of amenity values in centres of commercial and retail activities;
- iii. Retain and enhance the vitality and viability of the District's main centres, including the PTC which is a regionally significant centre;
- iv. Enable development within the PTC consistent with the amenity values embodied in the Vision Statement for the PTC;
- v. Sustain and enhance the character to of industrial services, including amenity values.

11.89 I can find no assessment within PPC84 or the s.42A Report regarding how the proposed amendments to the rules of the ODP are effective in achieving these outcomes. To the contrary, in my opinion the evidence of Mr Copeland and Mr Small identifies significant economic and social effects, Mr Lundy identifies significant urban design and social effects, and Mr Georgeson identified significant traffic and network effects that would mean amenity values and vitality and viability outcomes sought in these objectives would not be achieved. They would certainly not be retained, maintained,

sustained or enhanced as required by the various objectives. In my opinion, PC84 is not effective in achieving the objectives of the ODP.

- 11.90 In terms of the risks of acting or not acting, the risk of acting (i.e. approving PC84) have been identified and assessed in my evidence, based on the expert evidence on Messrs Small, Copeland, Georgeson and Lundy. In my opinion, the risk of not acting is to retain the status quo which, in my opinion, is effective in achieving the objectives of the ODP. In some ways, PC84 is a reflection on how effective this provision has been,
- 11.91 In terms of the reasons for PC84, in my opinion the reasons provided benefit the requestor at the expense of wider district and region, as demonstrated by the evidence of Messrs Copeland, Small, Georgeson and Lundy.
- 11.92 I note the s.42A Report determines PC84 is 'consistent' with the ODP approach (para. [6]) and 'consistent' with ODP strategic direction (para. [7]). With respect, this is not the test required under s.32 of the RMA. As I have discussed above, in my opinion determine PC84 is 'consistent' is a passive test, while s.32 requires an active and higher test that involves assessing a number of factors (alternatives; efficiency; effectiveness; reasons) to determine if the provisions are the most appropriate way to achieve the objectives.
- 11.93 Overall I can find no consideration within the s.42A Report (para. [6.11] – [6.19]) to determine whether PPC84 contributes or achieves the objectives of the ODP, and without this assessment, I do not know how the s.42A Report concludes PC84 is 'consistent' with the objectives of the ODP.
- 11.94 Overall, in my opinion PC84 fails to meet the required tests of s.32 of the RMA and is not the most appropriate way to achieve the objectives of the ODP.

Part 2 Matters

- 11.95 I note the s.42A Report concludes PC84 (with recommended modifications) 'consistent' with purpose and principles of RMA (para. [6.30]). Again, with respect, this is not the required Part 2 test. The Part 2 test requires PC84 to achieve the purpose of the RMA (s.72) which is to promote the sustainable management of natural and physical resources. As I have discussed above, in my opinion 'consistent' is a passive test, but in this case achieving the purpose of the RMA is active and higher test than just being consistent with. I consider there is no evidence in PC84 or the s.42A Report assessment that demonstrates achievement of the purpose of the RMA. While accept that it could be argued that PC84 will allow the Airport as a physically resource to be sustainably managed, the evidence of Messrs Small, Copeland, Georgeson and Lundy suggests there are significant retail, economic, social, traffic and urban design effects to the wider district and community that would mean, on balance PC84 does not promote the sustainable management of the PTC and other centres as a physical resource.
- 11.1. I also disagree with the findings of the s.42A Report (para. [6.30]) that determines that PC84 would meet the requirements of s.7(b), (c), (f).
- 11.2. In relation to s.8 matters, I understand that the tangata whenua have issues with the way the Airport Land was sold by the Crown in the past, and I consider the principles of the Treaty of Waitangi need to be properly taken into account through the consideration of PC84. I do not consider the s.42A Report has given any consideration of Section 8 requirements as it records in paragraph [6.30] that there is no evidence that PC84 is contrary to section 8 of the RMA.
- 11.3. With respect, the requirement of s.8 is not an assessment regarding whether PC84 is contrary to the principles of the Treaty of Waitangi, but whether the principles have been taken into account. I can find no evidence in the request or supporting reports to demonstrate the preparation or consideration of PC84 has taken into account the principles. This is despite the submission by the Ngahina Trust raising iwi concerns.

12. CONCLUDING COMMENTS

- 12.1. My planning assessment has been informed by the findings of expert evidence provided by Mr Small (Economics); Mr Copeland (Retail Economics), Mr Georgeson (Traffic) and Mr Lundy (Urban Design) that each identify significant adverse environmental effects that PC84 will have on the Paraparaumu Town Centre and other centres in the Kapiti District;
- 12.2. I do not consider there is a tight policy framework within the ODP provisions and utilising discretionary and non-complying activity status ensures a high level of scrutiny through the resource consent process. I therefore do not consider the resource consent process is sufficiently robust to enable the effects of a specific proposal will be address to be able to determine whether it is contrary to the objectives of the ODP;
- 12.3. My review of the existing environment shows that a considerable amount of retail GFA can be developed in the AMUP in the future, either through existing consents, as permitted activities or as a controlled activity;
- 12.4. In my opinion, Prohibited Activity status is a legitimate planning tool that is available to Council to restrict the types of retail activities proposed by PC84 for reasons confirmed by the Courts;
- 12.5. In my opinion PC84 fails to meet the required tests of s.32 of the RMA and is not the most appropriate way to achieve the objectives of the ODP;
- 12.6. In my opinion, PC84 fails to meet the requirements of Part 2 of the RMA in that it does not need to purpose of the RMA, does not have particular regard to s.7 (b), (c) or (f), or take account of the principles of the Treaty of Waitangi as required by s.8 of the RMA.
- 12.7. For the above reasons, I recommend PC84 be rejected.

Chris Hansen

Date: 3 February 2017