

**BEFORE the Kapiti Coast District Council Plan Change 84 Hearings
Panel**

**Proposed Plan Change 84 – Airport Zone; Kapiti Coast District
Council**

Under: of the Resource Management Act 1991 ('RMA')

In the matter of a submission by the **NZ Transport Agency** on Proposed
Plan Change 84 – Airport Zone

**Primary Statement of Evidence of Angela Kim Penfold for the NZ
Transport Agency regarding Proposed Plan Change 84 – Airport
Zone**

Dated 3 February 2017

The NZ Transport Agency

DDI: +64 4 894 5236
Mobile: +64 21 908 654

angela.penfold@nzta.govt.nz

Introduction

1. My full name is Angela Kim Penfold. I am a Senior Resource Planner within the Planning and Investment Group for the NZ Transport Agency ('Transport Agency').
2. I hold a Bachelor in Resource and Environmental Planning (hons.) from Massey University. I have 15 years' experience in the planning field in New Zealand.
3. Previously, I worked for a traffic engineering consultancy and various councils providing expert traffic advice and processing resource consents respectively.
4. For the past seven years I have worked at the Transport Agency as a Senior Resource Planner, where my roles have including promoting effective integration of land-use and transport, strategic planning processes, and Transport Agency representation in the preparation of RMA statutory plans.
5. I confirm that I have authority to give evidence on behalf of the Transport Agency.

Code of Conduct

6. I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are 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. I understand that the Code of Conduct requires me to assist the Hearings Panel impartially on matters within my expertise, and not to advocate for the Transport Agency.

Background

7. The Transport Agency is a Crown entity¹. Its objective is to undertake its functions in a way that contributes to an effective, efficient and safe land transport system in the public interest. It provides an integrated approach to transport planning, funding and delivery. This includes investment in public transport, walking and cycling and local roads, and the construction and operation of state highways.
8. Transport is a critical part of daily life for all New Zealanders, enabling a range of activities and making a significant contribution to the country's economic growth and productivity. Recognising this, over \$3 billion is invested in the land transport network through the National Land Transport Fund annually. Local government contributes another \$1 billion to the annual spend².
9. While the transport system is owned and operated by various parties for users of that system, there is only one transport network. The Transport Agency and our investment partners (such as the Kapiti Coast District Council) work together to provide integrated and seamless connections across networks, modes and services. This seamless connection is referred to as the 'one network' approach and ensures strong integration of transport decisions and land-use development and balances the needs of all network users.
10. A highly efficient, safe and sustainable transport network is vital to support the growth and prosperity of the Kapiti Coast and of the Greater Wellington Region. The Government Policy Statement on Land Transport (2015/16-2024/25) ('GPS') confirms that economic growth and productivity is the primary objective for land transport expenditure, and includes value for money and road safety as additional priorities.
11. The Transport Agency supports an integrated planning approach to provide planning and investment certainty and to enable the Transport Agency to fulfil its statutory purpose. Integrated land use and infrastructure planning will ensure that infrastructure investments contribute to and support

¹ Section 93(2) Land Transport Management Act 2003.

² GPS on Land Transport 2015/16-2024/25

economic growth and productivity and maintain a safe transport network. Without integrated planning, undesirable outcomes such as ribbon development, stressed infrastructure, inefficient use of infrastructure, community severance and car dependency, can occur.

Scope of Evidence

12. My evidence addresses proposed Plan Change 84 (PPC84), particularly in relation to supermarkets and department stores since they are high traffic generating activities. I discuss the following matters:
 - a. Transport Environment and Effects;
 - b. The Transport Agency's primary submission and prohibited activity status;
 - c. Outcomes now sought by the Transport Agency;
 - d. Objectives and policies; and
 - e. Discretionary or non-complying activity status.
13. I confirm that I have read all of the evidence filed on behalf of Council on this topic.

Transport Environment and Effects

14. I rely on Mr Kerr's evidence for a description of the strategic transport network and a review of the transport information available for PPC84. In particular, the following statement has informed my evidence:

While Mr Wignall uses higher trip generation assumptions, even the lower trip generations assumed by Mr Kelly are likely to significantly impact on the safe and efficient operation of Kapiti Road and the wider transport network, potentially including access to the Mackays to Peka Peka Expressway.³

³ Primary Statement of Evidence of Alan Kerr, paragraph 14, page 3

Primary Submission of the Transport Agency

15. The Transport Agency's initial submission opposed PPC84 because of concerns regarding the impact of high traffic generating activities on the MacKays to Peka Peka Expressway, particularly the Kapiti Road interchange, and the local transport network. In addition, the Transport Agency noted that PPC84 did not set out expectations around information requirements for transport modelling.

Outcomes now sought by the Transport Agency

16. The Transport Agency's position has changed since the lodging of the initial submission so that the following outcomes are now sought:
 - a. Changes to the policies for the Airport Zone to provide guidance and expectations around managing the traffic effects of activities PPC84 relates to;
 - b. An activity status of Non-Complying for all supermarkets; and
 - c. All other activity statuses as proposed by the section 42A report.
17. I accept the reasoning in the section 42A report⁴ explaining why prohibited activity status is inappropriate.

The Objectives and Policies of the Airport Zone

Operative provisions

18. In my view, the objectives and policies of the Airport Zone would carry the most weight in any subsequent resource consent application. While there are District Wide objectives and policies, and other zones also have provisions of relevance, the Airport Zone provisions are the most directly applicable, having been developed with the airport in mind. Additionally, the Airport Zone policies address many of the wider issues, including traffic and the impacts on the Paraparaumu town centre.
19. Traffic and the impacts on the Paraparaumu town centre appear to be the two biggest resource management issues being considered for PPC84.

⁴ S42A Report on Private Plan Change 84: Kapiti Coast Airport, paragraphs 5.39 to 5.41

They are addressed under Policy 2 and Policy 5 of Objective 2, which I have laid out below. Both of the policies seem to have been written on the assumption that certain activities would not occur. In particular, they are silent on the activities under consideration via PPC84. This has not been an issue while those activities had prohibited activity status as resource consent applications were not possible, and therefore did not need to be tested against the policies. However, if PPC84 is going to remove prohibited activity status, then the policy gap cannot remain.

20. Policy 5 states:

Traffic Effects: Development within the Airport Zone shall ensure that any traffic effects are avoided, remedied or mitigated through restrictions on the timing of development.

21. As written, the Policy implies that the only transport issue is ensuring that development is linked to the timing of appropriate provision of infrastructure. That is not the case for department stores and supermarkets. At this point in time, it is unknown how much capacity the transport network will have to accommodate these activities.

22. Consequently, Policy 5 provides no useful guidance to decision makers considering resource consent applications for supermarkets or department stores.

23. I have similar concerns about Policy 2 of Objective 5, which addresses commercial activity, and states:

Commercial Activity: It is desirable that specifically identified retail and commercial activities are permitted, subject to specified 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 development within the Airport Mixed Use Precinct.

24. This policy addresses only permitted retail and commercial activities, which are addressed by Rule D9.1.1(ii)⁵. The list of permitted retail activities does not include department stores or supermarkets.

Implications for Non-Complying activities

25. Of particular concern is the application of the gateway tests relating to Non-Complying activities under section 104D of the RMA, which requires decision makers to be satisfied that either:
- a. The adverse effects of the activity on the environment will be minor, or:
 - b. The activity will not be contrary to the objectives and policies of relevant Plan/s,
26. In my view, because Policy 5 (traffic) limits itself only to matters of timing and Policy 2 (commercial activity) limits itself only to permitted activities, it would be very easy to show that a resource consent application is not contrary to them. This is because it is impossible to be contrary to issues which are not addressed. The effect of leaving the policies unchanged is to negate the importance of the gateway tests, and thus make the Non-Complying activity status inconsequential.
27. Accordingly, I submit that the operative policies would not provide suitable direction and would not enable an appropriate assessment for resource consents. This is particularly important for a plan change request such as this one, where the primary argument seems to be that subsequent resource consent applications will be subject to a full and thorough assessment.

⁵ 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.

28. As an additional point, the importance of objectives and policies in the resource consent process has recently been confirmed by the High Court in *Davidson Family Trust v Marlborough District Council*⁶. The Court found that as planning documents already give substance to the principles of Part 2, there is no need for resource consent decisions to take an overall broad judgement approach by referring back to Part 2. The following is from paragraph 76:

I find that the reasoning in *King Salmon* does apply to 104(1) because the relevant provisions of the planning documents [...] have already given substance to the principles in Part 2. Where, however, as the Supreme Court held, there has been invalidity, incomplete coverage or uncertainty of meaning with the planning documents, resort to Part 2 should then occur.

29. With this in mind, the closing of the policy gap is critical for ensuring development is appropriately managed at Kapiti Airport.

Suggested amendments

30. I suggest that Policy 5 of the Airport Zone is amended to read:

Policy 5: Traffic Effects

Development within the Airport Zone shall ensure that:

- i. Any traffic effects are avoided, remedied or mitigated through the timing of development; and
- ii. In the case of department stores, supermarkets, and stores of between 151m² and 1,500m² gross floor area that retail groceries or non-specified food lines, development is further restricted to ensure that:
 - a. Significant adverse effects on the safety and efficiency of the strategic transport network are avoided; and

⁶ [2017] NZ High Court 52, CIV-2016-406-14, Paragraph 32

- b. The safety and efficiency of the strategic transport network is protected through the remedy or mitigation of other adverse effects.

31. The explanation to Policy 5 (Traffic) should be amended to include:

In relation to the airport, the Strategic Transport Network includes

- Kapiti Road;
- Roads that connect to Kapiti Road (including unconstructed but designated routes);
- The Mackays to Peka Peka Expressway, including its interchanges, and;
- State Highway 1 (or the route that follows the State Highway 1 alignment if it is revoked to become a local road).

32. This explanation will also provide much of the clarity the Transport Agency was seeking regarding information requirements in its primary submission.

33. I also suggest that a new Policy 2A is included, being:

Commercial activity: Resource consent is required for the following activities:

- Department stores,
- Supermarkets, and
- Stores of between 151m² and 1,500m² Gross Floor Area that retails groceries or non-specified food lines

in order to ensure they avoid significant effects, and protect the role, function, vitality and viability of the Paraparaumu Town Centre through the remedy and mitigation of other effects.

34. Inserting a new Policy 2A establishes a structure whereby Policy 2 is implemented through Permitted activity status for identified activities, and Policy 2A is implemented through Non-Complying activity status for identified activities.

35. Including a new policy, as opposed to amending Policy 2, is necessary because ‘desirable’⁷ is a strong and proactive word to include in a policy and it is not suitable to apply it to the activities under consideration. To ensure I did not impinge on Policy 2 as it relates to other activities in the Airport Mixed Use Precinct, I thought it best to have an additional policy.
36. When developing these policy changes, I have been particularly careful to satisfy the tests setting out whether a submission is ‘on’ a plan change, being:
- a. Does the submission address the change to the status quo advanced by the plan change?
 - b. Is there a real risk that persons potentially affected by such a change would be denied an effective opportunity to participate in the plan change process?
37. The changes I have suggested have been crafted to only address activities subject to PPC84. Consequently, I consider that the changes are ‘on’ plan change. I am willing and interested in considering other amendments that achieve the same outcomes if any other party would like to suggest them.

Activity status relating to PPC 84

38. In the table below I have set out my understanding of the proposed suggestions for the activity statuses of most interest, with the right column being my recommendation.

Activity	Request status	section 42A report status	My status
One department store	Non-Complying	Non-Complying	Non-Complying
One supermarket	Discretionary	Discretionary	Non-Complying
More than one supermarket	Non-Complying	Non-Complying	Non-Complying

⁷ Paragraph 23 of this evidence.

One Supermarket

39. The evidence of Mr Colegrave clarifies that the existing New World is a store between 150m² and 1500m² Gross Floor Area that retails groceries or non-specified food lines⁸. While New World is a well-recognised supermarket chain, the floor area means the store is not a supermarket in this planning environment.
40. The fact that the District Plan has such a distinction is a clear indicator that there is potential for differing effects based on the floor area. In addition, the effects of establishing a supermarket have not yet been considered through a resource consent process.
41. I accept that the land use of a supermarket is likely to be considered suitable for the zone and for the location in the urban environment. I consider, however, that there is high level of uncertainty whether the traffic generation of a supermarket is suitable within the transport environment described by Mr Kerr and Mr Wignall. Moreover, if there are transport effects, they are likely to be significant.
42. *Mighty River Power v Porirua CC* notes:

The [...] trigger for non-complying status [...] is intended to signal that proposals [...] will be subject to a higher degree of scrutiny, and have to meet a sterner test, because of the likelihood that at least one adverse effect [...] will be more than minor.

[...]

We agree to [sic] that it is part of a Council's function under the Act to anticipate activities which are likely to require particular attention because of their effects, and to make Plan provisions accordingly. That is a position envisioned by sections 31, 32, 72, and part 2 of the Act.⁹

43. Accordingly, I consider Non-Complying activity status to be the appropriate.

⁸ Evidence of Fraser James Colegrave, on Behalf of Kapiti Coast Airport Holdings Limited, 27 January 2017, paragraph 28

⁹ [2012] NZ Environment Court 213, ENV -20 I 0-WLG-000041 and 000042, Paragraph 32

Department Stores and more than one supermarket

44. I agree with the Plan Change Request and the section 42A report that Non-Complying is an appropriate activity status for more than one supermarket.

Summary

45. In conclusion:
- a. The policies of the airport zone were developed on the understanding that resource consents for certain activities could not be applied for. This creates a policy gap for PPC84 that needs to be addressed, by:
 - i. Amending Policy 5 (traffic) of Objective 2 to ensure a wider range of measures can be considered to address effects; and
 - ii. Adding a new Policy 2A (commercial activities) to address the impacts of the relevant activities on the Paraparaumu town centre.
 - b. All supermarkets should be treated as Non-Complying activities since there are currently none on site and in this transport environment there is high potential for significant traffic effects to eventuate.
46. I will attend the hearing to provide a concise summary to the Panel and to answer any questions that may arise.

ANGELA KIM PENFOLD
3 February 2017