

CONTRIBUTIONS CREDIT AGREEMENT

BETWEEN

PARAPARAUMU AIRPORT LIMITED

KAPITI COAST DISTRICT COUNCIL

**AGREEMENT RECORDING THE PROCEDURE FOR CALCULATING
AND USING CONTRIBUTIONS CREDIT FOR THE PARAPARAUMU
AIRPORT DEVELOPMENT**

3 February 2011

AGREEMENT dated

2011

PARTIES

PARAPARAUMU AIRPORT LIMITED ("PAL")

KAPITI COAST DISTRICT COUNCIL ("Council")

INTRODUCTION

- A. Council voted on 7 April 2008 to accept the recommendations from independent hearing commissioners, and adopt Plan Change 73-Airport Zone. The purpose of this Plan Change is to ensure the on-going viability and development of Paraparaumu Airport through maintaining the primary airport purposes, while enabling a range of complementary business and other activities that will support that airport purpose and will provide economic, employment and other benefits for the residents of Kapiti District.
- B. PAL acknowledges that, as part of the Paraparaumu Airport Development, it may undertake Public Works.
- C. Section D.9.2.1 (Permitted Activity Standards) of Plan Change 73-Airport Zone states that in calculating financial contributions, appropriate account will be taken of any private development agreement and any infrastructure or other works with public benefit within the Airport Zone or elsewhere, and the objectives of the Airport Zone.
- D. The Council accepts that Public Works investment in infrastructure, reserves or other facilities made by PAL, above those required to meet the requirements of the Plan Change 73 and any resource consent conditions related to mitigating environmental effects of development could result in benefits to both the airport and the residents of Kapiti Coast District.
- E. The Council acknowledges that it may grant PAL Contributions Credits which PAL may use to offset any Financial Contributions or Development Contributions that might become payable.
- F. The Paraparaumu Airport Development is a long term venture and will therefore span multiple LTPs and many Annual Plans.

- G. It is therefore desirable that the Council and PAL enter into this Agreement to set out the procedures that will be followed, and the considerations that will be taken into account, when PAL wishes to undertake Public Works and obtain Contributions Credits in respect of those Public Works.

AGREEMENT

1. INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires:

“Activity” has the same meaning set out in section 5 of the Local Government Act 2002 and includes Council’s services such as provision of Water, Wastewater, Stormwater, as well as facilities such as footpaths and roads.

"Airport" means Paraparaumu Airport, including all Certificates of Title listed in Harrison Grierson Plan appended in schedule 3.

"Buffer Area" means the area shown as Airport Buffer on the Airport Precinct Plan A set out in Schedule 1 and for the purposes of this Agreement includes the Aviation Heritage area shown on the same plan.

“Contribution Activity” under this agreement refers to either a Financial Contributions under the RMA and/or any contribution under the LGA related to the following activities:

- community infrastructure facilities (examples include libraries, swimming pools);
- roading, cycling, walking and bridleway facilities;
- stormwater;
- wastewater facilities;
- water supply facilities; and
- parks and reserves if Council change to using a Development Contributions policy method for these Activities instead of a Financial Contributions Policy.

"Contributions Credit" means the value of the credit in favour of PAL calculated in each separate agreement for each resource consent or set of Public Works. This credit is held against each individual Contribution Activity, and for the purpose of this agreement may include remissions or credits for Development Contributions and credits for Financial Contributions.

“Development” is to be read as Paraparaumu Airport Development.

"Development Contributions" means any contribution required by the Council under Subpart 5 of Part 8 of the Local Government Act 2002 for the Paraparaumu Airport Development provided that the contribution is:

- (a) provided for in a development contribution policy included in any current or future Long Term Council Community Plan of the Council; and

- (b) calculated in accordance with the methodology contained in the development contribution policy of any current or future Long Term Council Community Plan; and
- (c) comprising of money, or land or both.

“Development Completion” in relation to the Airport development programme means the completion of the development defined as completion of 300,000m² of Net Lettable Area (as evidenced through Resource Consents) or otherwise by joint agreement.

"Financial Contributions" means any money or land, or any combination thereof levied by the Council under the Kapiti Coast District Plan in accordance with section 108(9) of the Resource Management Act 1991 as a condition of any resource consent required for the Paraparaumu Airport Development.

"LTP" means the Council's Long Term Plan, previously known as the Long term Council Community Plan (LTCCP).

"Paraparaumu Airport Development" means the development of the Airport.

1.2 **"Public Works"** means any work undertaken or funded by PAL as part of the Paraparaumu Airport Development (whether occurring on or off the Airport land) that are for the purposes of, or equivalent to, the provision or development of reserves, network infrastructure or community infrastructure, and, to the agreement and satisfaction of the Council, have broader public benefit. In addition, the Council will only consider a work as a Public Work when the public right of access is guaranteed in perpetuity through such mechanisms as vesting of land or easements.

1.3 In the construction of this Agreement, unless the context requires otherwise:

- (a) a reference to a clause or a schedule is to a clause or schedule of this Agreement, and a reference in a schedule to a clause is a reference to a clause in that schedule;
- (b) words or phrases appearing in this Agreement with capitalised initial letters are defined terms and have the meanings given to them in this Agreement;
- (c) headings appear as a matter of convenience and do not affect the construction of this Agreement;
- (d) any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and severally;
- (e) a reference to a prohibition against doing anything includes a reference to not permitting, suffering or causing that thing to be done;
- (f) a reference to a party to this Agreement or any other document includes that party's personal representatives, successors, and employees, agents, and assigns;
- (g) a reference to a person includes a corporation sole and also a body of persons, whether corporate or unincorporated;
- (h) the schedules form part of this Agreement;

- (i) the singular includes the plural and vice versa, and words importing one gender include the other genders; and
- (j) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.

2. PURPOSE OF AGREEMENT

2.1 The purpose of this Agreement is to –

- (a) facilitate the delivery of benefits from Public Works projects ahead of that scheduled in Council's LTP. These may be uniquely identified Public Works or smaller Public Works identifiable within Asset Management Plans where funding is pooled within LTP budgets; and
- (b) provide a process for the Council and PAL to agree on the Public Works which PAL may carry out, the value of any Contributions Credits and how those Contributions Credits may be used in the future.

2.2 Both parties accept that Public Works undertaken by PAL may or may not be desired by Council in terms of priority and budgeting (see clause 3.3)

2.3 Other than confirming that PAL is entitled to use Contributions Credits to offset any Financial Contributions or Development Contributions that might become payable, this Agreement does not restrict or affect any of the other statutory or other rights of either party whether in respect of either formulating or implementing any particular contributions regime, or challenging any such contribution, or other charge or levy, or otherwise.

2.4 Nothing in this Agreement requires the Council to enter into a separate agreement with PAL with respect to specific Public Works or any Contributions Credits.

3. SEPARATE AGREEMENT FOR PUBLIC WORKS AND ASSOCIATED CONTRIBUTIONS CREDITS

3.1 If PAL wishes to obtain Contributions Credits for any Public Works, it must, prior to undertaking any Public Works, obtain the separate agreement of the Council (or an appropriately delegated Council Committee or Council officer) to PAL carrying out those Public Works. The parties note that depending on the nature of the Public Works, the Council may be required to carry out public consultation through an Annual Plan or LTP process before it so agrees.

3.2 The separate agreement must specify –

- (a) that the Public Works must be carried out and completed to the satisfaction of the Council **before** any Contributions Credits are applied in favour of PAL; and
- (b) the value of the Contributions Credits in favour of PAL; and
- (c) the Activity to which the Contributions Credits may be applied; and
- (d) any other restrictions as to when those Contribution Credits may be applied to future developments.

- 3.3 The parties note that the Council may abstain from funding the construction of Public Works. Where Council does not want to contribute in any way, PAL will decide if it is to continue on its own and there will be no obligations on Council for the building of the Public Work or the operation or maintenance.

4. DEVELOPMENT CONTRIBUTIONS POLICY

- 4.1 The Parties acknowledge that there is a development contributions policy in the Council's LTP that allows for remissions and credits. Each separate agreement is made in the context of the Development Contributions Policy applicable at the time such an agreement is signed. Retrospective changes to existing agreements are not permitted.
- 4.2 The 2009 LTCCP Part 2, 2009 [Section A.3 Remissions (3)], allows the Chief Executive or Sustainable Development Manager to apply remissions where the works will offset the need for other Council programmed works. These remissions are subject to limits specified within the Council's delegation policy.
- 4.3 The Development Contributions Policy in Part 2 of the 2009 LTCCP [Section A.6.1 Credits (b)] allows for the prior payment of development contributions for the same development to be credited to the same activity. Within this 2009 policy, there is the ability to use the credits for subsequent building activity on the same site.

5. CONTRIBUTION CREDITS

- 5.1 The parties agree that in each separate agreement Contributions Credits will be accumulated in dollars calculated at the time the resource consent for the Public Work is granted.
- 5.2 Contributions Credits earned will be adjusted by CPI on 1 July each year and confirmed in writing by Council at that time.
- 5.3 The basis for determining Contributions Credits is that PAL may be asked to undertake Public Works that are outside of the immediate area of the Paraparaumu Airport Development and/or provide for a capacity that is greater than is needed for the that Development as prescribed by Council's engineering standards, the District Plan or other Council documents (such as guidelines related to the development of public infrastructure and amenities). This means that there must be one or more tangible benefits for the public that are not just a consequence of using the Airport's commercial facilities.
- 5.4 In calculating Contributions Credits, the Credits must not exceed Council's calculation of the additional public good of those works.
- 5.5 Clause 6 applies in determining the value of any Contributions Credit in a separate agreement.
- 5.6 The Council accepts that, until an Activity's Contributions Credit is exhausted, it will allow PAL to use that Contributions Credit to offset any Financial Contributions or any future Development Contributions for that Activity (such as stormwater) required by the Council in relation to the Paraparaumu Airport Development.

Monitoring of the Contribution

- 5.7 Each separate agreement will provide for the Council to maintain a ledger for Credits that will include:

- (a) Credits gained and how:
- (b) Any application of credits, plus CPI adjustments:
- (c) The credit balance.

Development Contributions

- 5.8 The separate agreement may provide that PAL may use Contributions Credits to offset Development Contributions required by the Council in relation to this Development for the same Activity.

Financial Contributions

- 5.9 The Kapiti Coast District Plan sets out the financial contributions which will be levied by the Council on resource consents issued for the Development.
- 5.10 The separate agreement may provide that PAL may use the Contribution Credits to offset Financial Contributions imposed by the Council on future resource consents for the same Activity for which a Contributions Credit was obtained.

Transfer Credits

- 5.11 After entering in a separate agreement, the parties may subsequently agree that PAL may use the Contributions Credit to offset Development Contribution or Financial Contribution charges due within the same financial year for other Activities required by the Council in relation to the Development. Off-setting Development Contributions against other Activities is possible but only if budgeted in the same financial year. The Council is not under any obligation to provide its agreement to any such proposal.

6. FORMULA FOR DETERMINING THE CONTRIBUTIONS CREDIT

Determining the Contributions Credit

- 6.1 In any separate agreement, the value of the Contributions Credit for any Public Works shall, unless expressly stated otherwise in this Agreement, be agreed in accordance with clause 6.2 – 6.4 below.
- 6.2 **In regard to the proposed roading improvements** to be undertaken as part of the Development:
- (a) Where the development of a road aids the District's roading network and provides Public Good
 - (i) Council would contribute to the marginal cost difference of the road and land value required to bring it up to a standard the Council considers necessary over and above that needed by PAL; and
 - (ii) such roads shall be vested in Council and will be maintained by Council. Alternatives to vesting will be considered but any alternative

to be agreed must guarantee public pedestrian and vehicular thoroughfare; and

(iii) such roads are able to be relocated as part of any future redevelopment of the Airport (eg, if the Airport Core operations need to be expanded). Any relocated road must provide equal right and amenity to the original road. This re-alignment would be within the Airport precinct at PAL's cost. PAL will use all reasonable endeavours to provide continuous availability for public thoroughfare during the road relocation; and

(iv) all legal fees are met by PAL.

(b) If the new road is vested or an alternative arrangement entered as in S6.2(a)(ii), then any unused road would be returned to PAL. The Council will not be required to provide an additional credit for the relocation of a road in the following circumstances:

(i) The road is relocated solely for PAL's convenience; and

(ii) The relocated road provides no greater amenity than the road prior to relocation. For the avoidance of doubt any upgrades requested by Council will be contributed to by Council.

6.3 **In regard to the Buffer Area** shown on the Precinct Plan, the following considerations apply in determining the value of any Contributions Credit:

(a) Should PAL wish to grant an easement in favour of the Council in the Buffer area and Council wish to accept an easement, conditions of that easement are to be jointly agreed. The easement should provide for future public access to and use of the Buffer area while not diminishing PAL's rights to lay services, to construct maintain and operate infrastructure within, and to construct and maintain roads across, the Buffer Area; and

(b) In recognition of such an easement, Council shall consider remissions or credits under either the Financial Contributions Policy of the District Plan (Reserves Acquisition Strategy or its equivalent) or the Development Contributions Policy of the LTP, depending on the intended use of the area. Applications for remissions or credits would be considered except where enhancements are required by the Plan Change, Stormwater Management Plan, Environmental Management Plan, Resource Consent condition(s) or the Public Work is associated with a

commercial activity or building (an example of exclusion may be a playground next to a fast-food outlet); and

- (c) Should an area of the Airport Buffer be vested in Council (at the Council's absolute discretion), a Contributions Credit may be considered where this area provides a Public Good component.
- (d) Additional enhancements that have a measurable public benefit within the Buffer Area that will be undertaken by PAL shall take into account the value of any enhancements to the airport and occupiers of the airport (Airport Owner/Occupier Value), as distinct from the Public value in terms of the Reserves Acquisition Strategy or its equivalents. (This includes but is not limited to: Ecological value, visual amenity value, recreational value, and accessibility.)
- (e) PAL and Council shall calculate any applicable reserve remissions or Contribution Credits that might apply, based on:

$$\text{Remission or Contributions Credit (within Buffer Area)} = \text{Enhancements Value} - \text{Airport Owner/Occupier Value}$$

6.4 In any separate agreement, the value of the Contributions Credit for any Public Works must exclude:

- (a) works to comply with any resource consent conditions for the Development or Plan Change 73;
- (b) screening of Airport development from adjacent properties;
- (c) areas that predominantly enhance entrances to the Development;
- (d) works under the Stormwater Management Plan;
- (e) an amenity developed as part of, or adjacent to, a retail complex or commercial building such that it provides value to the commercial activity would be excluded; and
- (f) stated required outcomes in the Environment Management Plan (EMP) (rather than aspirations), or works required to comply with the EMP.

7. FORWARD-FUNDING CAPITAL WORKS.

7.1 If PAL chooses to undertake or fund Public Works as part of the Paraparaumu Airport Development, that are identified in future years within the Council's LTP Capex programme, prior approval will be required in the form of a resolution from Council. Once

such an agreement is entered with PAL there will be a future liability created through Contribution Credits and Council may be required to fund operational expenses. Therefore bringing such work forward may require public consultation through an LTP or Annual Plan process.

- 7.2 Unless otherwise approved by Council, contribution Credits for Forward-funding Capital Works may only be claimed by PAL starting from the financial year the works were budgeted for in the LTP Capex Programme.

8. HYPOTHETICAL EXAMPLES OF CONTRIBUTIONS CREDIT.

- 8.1 The following explanation and table is an example of how a separate agreement for a Contributions Credit might work in practice:

- (a) Council, in its LTP, planned a \$120,000 Reserve development (CPI Adjusted) in year 3 and \$850,000 (CPI Adjusted) of Roading improvements in year 5.
- (b) PAL submits to Council that, with Council's approval, it will provide the reserve facilities identified and budgeted for in year 3 of the LTP in the current financial year. Council agrees and PAL completes the Public Works and gains \$115,000 in Contribution Credits for developing the reserve. The credit is only redeemable when it was budgeted for in the LTP, which is in year 3.
- (c) During the first year, PAL undertakes a development that results in fees of \$100,000 for Reserve Contributions and \$67,000 in Roading Contributions. PAL needs to pay these contributions. The same applies to any development in year 2, even though it is in credit for Development Contributions.
- (d) In year 2 PAL submits to Council that it would also like to bring forward roading improvements Council budgeted for in year 5. Council approves that Public Works, again with credits redeemable only when Council had budgeted to do the work. PAL also undertakes further work that results in more Development Contributions and Financial Contributions amounting to \$270, 541 for which it is unable to use its credits.
- (e) In year 3 Council had budgeted to undertake the capital works for reserve facilities already undertaken by PAL (see (a) above). Therefore there is no capital investment or loan required to be taken out by Council at that time for that work as it has already been constructed. PAL has a Development Credit for Financial Contributions that it can now apply to future developments within the Airport site. PAL undertakes a development that incurs \$337,813 of Development Contributions and \$120,000 related to Reserves Contributions. PAL has a Development Credit of \$120,000 related to the Reserves activity

(\$115,000 credit from year 1 plus CPI of \$5,000) which is applied to the new development. There is no change to Council's budgeted cashflow or borrowing, but the benefits of the reserve were provided to residents two years earlier than budgeted.

- (f) The balance of the Development Contributions from year 3 (the Public Works road) is owed to Council as the credit PAL received from the roading capital works is not available to off-set Development Contributions in year 3 or year 4. PAL must wait until year 5 to be able to utilise this credit.
- (g) In year 5 PAL is able to draw down on the Roding Credits if it carries out developments that incur Development Contributions. In the example, PAL's developments that year incur \$250,000 of Development Contributions. The Roding Credit is applied to this full amount, as each area had budgeted expenditure that does not exceed the value of the Credits available to PAL.
- (h) At the end of year 5, PAL still has a credit of \$462,000 for the Roding Activity (\$800k credit - \$338k used credit).

SCHEDULE 2 – SAMPLE RECORD OF CONTRIBUTIONS CREDIT	Stages of Airport Development					
	Year 1	Year 2	Year 3	Year 4	Year 5	Balance @ EOY 5
Examples:						
LTP Reserves Capital Programme	25,000	30,000	120,000	60,000	90,000	
LTP Road Capital Programme	900,000	800,000	500,000	2,000,000	800,000	
LTP Stormwater Capital Programme	3,500,000	350,000	3,500,000	3,500,000	3,500,000	
Bringing Forward Reserves Programme from year 3.	-\$115,000					
Credits claimed			\$120,000			
CPI		-\$3,450	-\$3,554	-\$60	-\$62	
Balance of Reserves Credits	-\$115,000	-\$118,450	-\$2,004	-\$2,064	-\$2,126	-\$2,126
Brining Forward Roding Enhancements from year 5		-\$800,000				
Credits Claimed					\$337,813	
CPI		\$0	-\$24,000	-\$24,720	-\$25,462	
Balance of Roding Credits	\$0	-\$800,000	-\$824,000	-\$848,720	-\$536,369	-\$536,369
Total Credits	-\$115,000	-\$918,450	-\$826,004	-\$850,784	-\$538,494	-\$538,494
Urban Reserves Contribution	\$100,000	\$80,000	\$95,000	\$95,000	\$95,000	
Water Supply	\$72,507	\$50,586	\$72,507	\$72,507	\$72,507	
Sewerage	\$33,724	\$25,293	\$33,724	\$33,724	\$33,724	
Community Facilities	\$67,448	\$59,017	\$67,448	\$67,448	\$67,448	
Road/CWB	\$30,352	\$23,607	\$30,352	\$30,352	\$30,352	
Flood Mitigation works	\$38,783	\$32,038	\$38,783	\$38,783	\$38,783	
Total Contributions Payable by PAL	\$342,813	\$270,541	\$337,813	\$337,813	\$337,813	
Less Credits Claimed	\$0	\$0	-\$120,000	\$0	-\$337,813	
Total Contributions Paid by PAL	\$342,813	\$270,541	\$217,813	\$337,813	-\$0	

9. GENERAL PROVISIONS

Continuing rights

- 9.1 The Parties acknowledge that nothing in this Agreement shall limit:
- (a) the Council's ability to carry out its statutory functions in relation to the LTP, Annual Plan, District Plan and RMA;
 - (b) PAL's right to participate in the public submission process in relation to the LTP, or right to challenge the quantum or seek a further exemption from any Financial Contribution or Development Contribution that might become payable.
- 9.2 Notwithstanding clause 9.1(b), PAL agrees that once a separate agreement has been entered in which confirms the value of a Public Work, it will not challenge that valuation through any appeal process as outlined in 9.1(b).

Dispute resolution

- 9.3 If any dispute arises between the parties under this Agreement, the Parties shall in good faith, without any prejudice to any other right or entitlement they may have under this Agreement or otherwise, use prompt efforts to resolve such dispute by agreement between themselves.
- 9.4 If such dispute is not resolved by such agreement through negotiations between the parties within a period of 10 Working Days of written notice by one party to the other of the dispute, and the Chief Executives can not resolve the issue within another 10 working days, then the issue shall be escalated to a Council's Hearing Committee, as referred to in the Development Contribution Policy.

Severability

- 9.5 If any term or condition of this Agreement or the application of this Agreement to any person or circumstances is, or becomes invalid or unenforceable, the remaining terms and conditions are not affected.

Costs

- 9.6 Each party must pay their own costs incurred for the negotiation, preparation and execution of this Agreement.

Entire Agreement

- 9.7 This Agreement is the entire agreement between the Parties in relation to the matters dealt with in this Agreement, and in that regard it replaces all earlier negotiations, representations, warranties, understandings and agreements, whether oral or written, between the Parties.

Termination

- 9.8 This Agreement may only be terminated through joint agreement of the parties, acting reasonably.

Expiry

9.9 On expiry of this Agreement any residual credits will be retained by Council for the benefit of the local community. This agreement will expire on the earlier of the following:

- (a) 30 years following execution or;
- (b) Development Completion.

EXECUTED AS AN AGREEMENT

PARAPARAUMU AIRPORT LIMITED by:

and witnessed by:

Signature of Authorised Signatory

Signature of witness

Occupation

City/town of residence

KAPITI COAST DISTRICT COUNCIL by:

and witnessed by:

Signature of Authorised Signatory

Signature of witness

Occupation

City/town of residence

SCHEDULE 1 – AIRPORT PRECINCT PLAN A

SCHEDULE 3 – OVERALL PARAPARAUMU AIRPORT CERTIFICATE OF TITLE PLAN