ORIGINAL

BEFORE THE ENVIRONMENT COURT

Decision No. W 069 /2009

IN THE MATTER of appeals pursuant to clause 14 of the First Schedule to the Resource Management Act 1991

BETWEEN B P CAMMACK and A M R EVANS
(ENV-2008-WLG-000103)
PARAPARAUMU AIRPORT COALITION INCORPORATED
(ENV-2008-WLG-000126)
TE WHANAU A TE NGARARA INC
(ENV-2008-WLG-000127)
Appellants

AND KAPITI COAST DISTRICT COUNCIL
Respondent

Court: Environment Judge B P Dwyer
Environment Commissioner J R Mills
Environment Commissioner H M Beaumont

Heard: at Wellington on 2-6, 9-12 March and 21 May 2009

Counsel/ Appearances:

L Watson for Paraparaumu Airport Coalition Incorporated and Te Whanau a Te Ngarara

C M Stevens for B Cammack and A Evans

J Winchester for Kapiti Coast District Council

B Matheson for Paraparaumu Airport Limited

INTERIM DECISION

Decision issued: 3 SEP 2009

A: Appeals are declined

B: An amendment to Plan Change 73 is directed

C: No Reservation of Costs

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Introduction

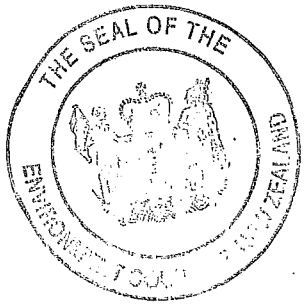
[1] Plan Change 73 to the Kapiti Coast District Plan (the District Plan) is a private plan change requested by Paraparaumu Airport Ltd (PAL) pursuant to Clause 21, Schedule 1 Resource Management Act 1991 (RMA). Plan Change 73 seeks to introduce new zoning provisions to the District Plan applicable to approximately 126 ha of land comprising Paraparaumu Airport.

[2] The Plan Change Request made by PAL seeks to provide for four precincts or activity areas at Paraparaumu Airport. The proposed precincts are:

- Airport Core (41.449 ha) where primarily airport related activities including hangers, cargo facilities, refuelling and maintenance areas, terminal buildings, runways etc are located.
- Airport Mixed Use (70.6429 ha) which is to provide for a range of light industrial, commercial and retail activities.
- Airport Heritage (0.32 ha) which contains an historic control tower, together with a museum and curtilage around those buildings.
- Airport Buffer (approximately 14.2429 ha) which will provide for stormwater control, wetland retention, ecological habitat and landscaping, as well as separating airport activities from surrounding residential uses.

[3] Paraparaumu Airport is already contained in an Airport Zone under the District Plan in its present form. The Airport Zone was introduced to the District Plan by Plan Change 18, which became operative on 20 January 2005.

[4] The question might be asked why PAL should be seeking a further change to the relevant District Plan provisions when the current provisions became operative only in 2005. The answer to that question is that in 2006 there was a change in the shareholding in PAL when Mr N S Robinson and interests associated with him purchased 100% shareholding in the company. Mr Robinson is the Chairman of Directors of PAL.



[5] In his evidence to the Court, Mr Robinson explained that Plan Change 18 although providing for core aviation activities, did not allow for *viable and complementary commercial development* of the airport land.[1] It was his contention that in order for the airport to remain a viable operation, PAL needed to be able to expand the ambit of activities allowed on the airport land in order to generate more income to invest in airport infrastructure and maintenance.

[6] Additionally, Mr Robinson contended that Plan Change 18 permitted substantial residential development around the airport periphery, which (he said) had two undesirable consequences:

- The development of noise sensitive residential activity in close proximity to an operating airport.
- Residential development would lead to sale of the airport land, thereby depriving the aerodrome of potential for a permanent income stream which might be achieved from commercial development.

[7] The new ownership regime determined that the way forward for Paraparaumu Airport lay in development of a *business park concept* containing a balanced mix of commercial, retail, distribution and manufacturing activities in conjunction with the airport operation. Mr Robinson has been involved in such a development in the Highbrook Business Park in Manukau City, a development which has apparently been very successful and in Mr Robinson's view provided a model for such a development on the airport land.

[8] Plan Change 18 does not permit a development of the type envisaged by Mr Robinson and it was the perceived shortcomings of the present District Plan provisions contained in Plan Change 18 which led to the Request for Plan Change 73.

[9] The key changes to the Airport Zone to be introduced by Plan Change 73 were summarised in these terms[2] by Mr A A Aburn (PAL's principal planning adviser):

i. 'restructuring' the Airport Zone to reduce the precincts from six to four;

[1] Para 4.1 EIC
[2] Para 6.1 EIC

ii. *restatement of the zone objectives, policies and anticipated environmental outcomes;*

iii. *broadening of the permitted activities in the new 'Airport Mixed Use Precinct';*

iv. *removing opportunities for residential development within the Airport Zone;*

v. *linking investment in the Airport Core Precinct with progressive development of the Airport Mixed Use Precinct;*

vi. *new permitted activity standards including those relating to building height;*

vii. *introducing design guidance;*

viii. *establishing an 'open space' buffer zone;*

ix. *ensuring that development progresses with the capacities of infrastructure; and*

x. *recognising the ancestral connection of Maori to the land.*

[10] PAL's Request for the adoption of Plan Change 73 was incorporated in a comprehensive document, dated 5 February 2007.

[11] The Plan Change Request was duly notified and attracted considerable public interest in the Paraparaumu/Kapiti area. A total of 1,323 submissions were received. 1,169 expressed outright opposition to the change, 86 supported the change without qualification, 12 supported the change if amendments were made, 48 did not specify any preferred outcome and a further eight submissions supported some aspects of the proposal but opposed others.

[12] In due course independent Hearings Commissioners appointed by the Council recommended approval of Plan Change 73 (subject to some amendments) and that recommendation was duly adopted by the Council. That process gave rise to the following appeals which were the subject of hearing before us.

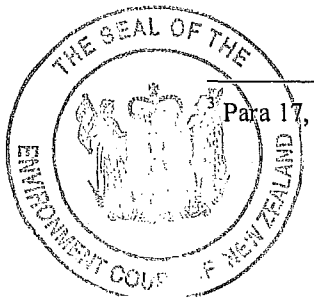
- Bernard Cammack and Ann Evans (Drs Cammack and Evans) filed a focused appeal directed specifically at issues of noise. These Appellants were concerned about what they considered to be a significant public health risk arising from the noise generated by airport activities and sought to restrict growth in airport activities, helicopter operations and circuiting activities.

- Paraparaumu Airport Coalition Incorporated (PAC) filed an appeal challenging a number of aspects of the Council decision. PAC is (according to its Counsel)[3] a diverse community group including members of the aviation community, the Kapiti Aero Club, environmentalists, persons who monitor development in Kapiti and citizens concerned at injustices which have occurred in the community.
- Te Whanau a te Ngarara Incorporated (Te Ngarara) is a group which represents the interests of the original owners of the land upon which the airport is now established. It filed an appeal raising similar issues to PAC although its concerns proved to be somewhat more narrowly centred.

[13] The issues arising out of the appeals which were the subject of debate before us fell into the following general categories.

- Airport safety;
- Airport noise;
- Economic issues;
- Tangata whenua issues;
- Traffic.

[14] We propose to consider those various matters in discrete blocks. We add to them the issue of resource management planning, which was the subject of evidence from PAL and the Council, although none of the Appellants called evidence from a planner. PAL's case included evidence from witnesses on other issues such as ecological, amenity, engineering and geotechnical matters which were not the subject of challenge. We will largely confine our discussion in this decision to the issues which were in dispute and we now turn to those issues.



[3] Para 17, opening submissions

Aviation Issues

[15] Paraparaumu Airport was originally established by the New Zealand Government in the late 1930's as military airfield. The land was compulsorily acquired for that purpose pursuant to the Public Works Act 1928.

[16] The airport was initially used as a wartime training field and staging point for aircraft in transit to the South Island. Later, civilian aircraft began using the airfield, which was a convenient stopover point for DC 3 aircraft on the Auckland/Christchurch run.

[17] Following World War II the airfield began to cater for regular passenger freight operations, aircraft maintenance activities and the like. By 1956 it was apparently the busiest airport in New Zealand in terms of aircraft movements and passengers handled.

[18] The development of Rongotai Airport at Wellington brought an end to most of the commercial activity in and out of Paraparaumu which was reduced to a role of providing for general and recreational aviation and as a safe transit airfield between the North and South Islands for light aircraft.

[19] Approximately 80 aircraft are presently based at the airport. These are mostly single engine training aircraft but there are some gliders and helicopters. Air2There (a small air transport operator) presently operates passenger services out of Paraparaumu using 13 seat Caravan aircraft.

[20] There are extensive flight training activities at the airport operated by (inter alia) the Kapiti District Aero Club, Helipro and Wellington Gliding Club. The Aero Club and Gliding Club also conduct recreational flying activities from the airport. Helipro operates a range of commercial activities as well as training.

[21] The airport operates seven days per week throughout the year and although no accurate air movement figures have been kept over the years we accept PAL's evidence that there are presently something like 45,000 aircraft movements per annum at the airport.

[22] Paraparaumu Airport does not operate using an air traffic control tower. It is located within a mandatory broadcast zone within which pilots must broadcast their location and intentions and operate in accordance with appropriate flying rules.

Runways

[23] At the time PAL commenced the Plan Change process, Paraparaumu Airport had four operative runways. These were:

- Sealed runway 16/34 which is 1397m long. The term 16/34 relates to alignment of the runway from the magnetic north point. In general terms this runway is aligned approximately north/south.
- Grass runway 16/34 which is 537m long, parallel to sealed runway 16/34.
- Sealed runway 11/29 (again referring to its alignment from magnetic north) which was 1016m long and ran approximately northwest/southeast, cutting across sealed runway 16/34 towards the northern end of that runway.
- Grass runway 11/29 which was 375m long and ran parallel with sealed runway 11/29.

[24] We understand that that the predominant wind directions at Paraparaumu are from the north or south so that the two runways 16/34 which ran in approximately those directions are regarded as into wind runways and are the most regularly used. The 11/29 runways were at a cross-direction to this and are accordingly referred to as crosswind or cross-runways. The crosswind runways enable aircraft to operate when wind conditions on the main runways are such that it is safer to use the crosswind runways due to a combination of factors such as wind direction, aircraft or pilot limitations.

[25] We have used past tense in describing the 11/29 crosswind runways as both of these runways have been either closed or proposed to be closed since commencement of the Plan Change process. Sealed runway 11/29 was formally closed on 12

December 2008. Grass runway 11/29 remained open at the conclusion of our hearing but it is PAL's intention to close that runway also.

[26] Closure of the runways is subject to the requirements of Part 157 of the Civil Aviation Rules (CARs). Rule 157.5 requires that any person who intends to:

> *(4) deactivate, discontinue using, or abandon an aerodrome or heliport to which this Part applies, or any landing or takeoff area of such an aerodrome or heliport, for a period of one year or more . . . shall notify the Director.*

[27] The Director referred to in the Rule is the Director of Civil Aviation who has responsibility for certification and regulatory oversight of airports within New Zealand. Rule 157.7(b) requires that notice to the Director be given at least 30 days before the date planned for deactivation, discontinuance of use or abandonment. The Director does not approve the change, but simply receives notice. The appropriate notice of closure of sealed runway 11/29 was given and accordingly for the purposes of CARs that runway is no longer an operating part of the airport.

[28] Plan Change 73 reflects the intended closure of both 11/29 runways by removing most of the land previously contained in these runways from the Airport Core area where aviation activities are to take place and including this land in the Airport Mixed Use Precinct where commercial development is to be allowed.

[29] PAC contends that the crosswind runways (particularly sealed runway 11/29) are necessary for safety purposes and should remain in place. It was their contention that these runways have been closed by PAL to free up the land contained within them for commercial development without appropriate regard to safety considerations.[4]

[30] PAL proposes to provide a new crosswind runway some distance to the south of and roughly parallel to the old 11/29 runways. The replacement crosswind runway is to be a grass runway 760m long with a 640m landing length. In relation to true

[4] Paras 46.8 and 49 PAC Opening Submissions

north, this runway runs on course 12/30 (as opposed to 11/29 for the previous crosswind runways).

[31] Use of runway 12/30 is to be considerably restricted. With the exception of a limited number of glider takeoffs, runway 12/30 will not be used for aircraft takeoffs. The runway will be available for landing on an *imperative use* basis. According to Mr A J Wackrow (PAL's airport manager) it is PAL's intention that an imperative use landing... *is when a light aircraft cannot land on either the sealed or grass runways 16/34 due to adverse crosswinds or obstruction, and landing is absolutely necessary or unavoidable and no suitable alternative is available.*[5]

[32] The new runway 12/30 is to intersect sealed runway 16/34, as did sealed runway 11/29.

[33] On 21 April 2009, PAL obtained an aerodrome operating certificate from CAA pursuant to Part 139 of CARs. This certificate enables expansion of aircraft operations at Paraparaumu Airport including an upgrade to accommodate proposed Air New Zealand services to and from Paraparaumu.

[34] Evidence was given by Mr E Morgan (Manager of Infrastructure Strategy for Air New Zealand) that if Plan Change 73 was approved and the necessary certification obtained for the airport, then Air New Zealand proposed to commence regular services between Auckland and Paraparaumu. It was anticipated that such services would expand to include other routes over time.

[35] Mr Morgan identified a number of upgrade works to the runway and other airport facilities which Air New Zealand requires, however it appears that the only substantial impediment to these works being undertaken and Air New Zealand services commencing is resolution of Plan Change 73.

[5] Para 5.2(a) EIC

[36] Air New Zealand's initial plans are for a total of 24 flights per week (four flights per week day and two flights per weekend day) using a Bombardier Q300 aeroplane. We understood the Q300 to have a capacity in excess of 50 passengers and Air New Zealand estimates that services to and from Paraparaumu would carry about 95,000 passengers per annum.

[37] Part 139 of CARs requires any airport serving aircraft with a seating capacity of more than 30 passengers engaged in regular air transport operations to be certified. Certification for Paraparaumu was issued on 21 April 2009 but is presently subject to a limitation on aircraft operations to aircraft with less than 30 seats which would exclude the Q300.

[38] We were advised by Mr J Haines (Manager of the Aeronautical Services Unit CAA) that this limitation was due to the present surface condition of runway 16/34. We understood that once upgrading of runway 16/34 was completed (as Air New Zealand requires and PAL intends) then the 30 passenger limitation would be removed so that Air New Zealand Q300 services can commence.

[39] The airport certification process pursuant to Part 139 was described to us in some detail by Mr Haines and by Mr D S Park, an aviation consultant who gave evidence on behalf of PAL. As part of the certification process, CAA requires the undertaking of an Aerodrome Airspace Risk Review which identifies risk factors for mid air collisions between aircraft in the airspace around an airport, models the risks and develops risk reduction strategies.

[40] A Risk Review was carried out on PAL's behalf by R2A, a Melbourne consultancy specialising in such reviews. The R2A Risk Review formed part of Mr Park's evidence. The Risk Review included a number of recommendations, some structural and some operational, which it considered ought be applied to Paraparaumu Airport. The structural recommendations included closure of both paved and grassed runways 11/29.

The Safety Issue

[41] As the evidence unfolded, consideration of safety issues relating to Paraparaumu Airport in this appeal ultimately revolved around a quite discrete and narrow issue. That issue was the need for provision of a crosswind runway at Paraparaumu Airport, the appropriate length of that runway and the replacement of sealed crosswind runway 11/29 by proposed grass runway 12/30.

[42] In making that comment, we do not mean to imply that this is the only safety issue relating to Paraparaumu Airport. There is obviously a myriad of safety issues involved in the operation of any airport. For example, at Paraparaumu, a matter of initial concern to the Court was that Air New Zealand flights of Q300 aircraft would be operating out of this airport with multiple runways and no control from an air traffic control tower. However, we understood from the various aviation witnesses who gave evidence to us that this is something which is not uncommon in New Zealand (we were given examples of Kaitaia, Hokitika, Taupo, Masterton and Wanganui where this situation prevails) and is appropriately controlled by the rules, procedures and priorities applicable in multiple runway use circumstances. It was the issue of the cross-wind runway which was in dispute before us.

[43] A range of witnesses gave evidence to us regarding this matter. The two primary witnesses in that regard were Mr R P Bull for the Appellants and Mr W L Sattler for PAL.

[44] Mr Bull is the Chief Flying Instructor, Chief Pilot and Operations Manager for the Kapiti District Aero Club based at Paraparaumu Airport. He has been flying professionally out of Paraparaumu for over 28 years and has accumulated 5,200 hours of piloting experience, the majority of which has been from and around Paraparaumu Airport. He has a wide range of professional qualifications.

[45] At the commencement of his evidence, Mr Bull acknowledged that he was a member of the Appellant PAC and therefore could not claim the necessary degree of objectivity expected of an expert witness. The Court is keenly aware of the requirements for expert witnesses in terms of their objectivity and impartiality. In addition to the longstanding and accepted rules in that regard we refer to the specific

requirements of the Court's Consolidated Practice Note 2006, in particular Practice Note 5.2.1, which requires an expert witness to impartially assist the Court on matters within his expertise. It is accepted that a party cannot (by definition) be impartial.

[46] There can be no question that Mr Bull is uniquely placed to give evidence as to factual matters pertaining to the operation of Paraparaumu Airport, based on his extensive professional experience at Paraparaumu. We did not understand there to be any challenge as to his evidence regarding flying conditions at Paraparaumu, airport operations or the like.

[47] Notwithstanding his interest in these proceedings, we considered that we would be ill-advised to simply disregard Mr Bull's professional opinions regarding the need for a crosswind runway and the concerns which he expressed regarding the closure of runways 11/29 and their replacement by runway 12/30. Ultimately this Court has power to regulate its own proceedings in such manner as it sees fit[6] and to receive anything in evidence that it considers appropriate to receive.[7] We have accordingly given serious consideration to the views expressed by Mr Bull on this important safety issue even acknowledging his declared interest in these proceedings.

[48] In saying that, we note that his position in respect of these matters differed from that of his employer, Kapiti District Aero Club, whose President Mr G Barrell appeared before us in support of Plan Change 73. The Aero Club has entered into a Heads of Agreement with PAL regarding a range of issues (Exhibit 7) and in spite of being challenged in cross-examination on this matter and in response to questions from the Court, Mr Barrell confirmed that the provision of runway 12/30 largely addressed the club's former safety concerns about provision of a crosswind runway.[8]

[49] Mr Sattler is similarly a highly experienced and qualified pilot. He is Chief Flying Instructor for Ardmore Flying School based at Ardmore Airport near Auckland. He has 40 years flying experience and in that period has accumulated over 25,000 flying hours. He has been Chief Flying Instructor at Ardmore since 1988. He

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6 Section 269 (1)
7 Section 276(1)(a)
8 Pages 286, 299 NOE

is currently Vice President of the Aviation Industry Association of New Zealand and Chairman of the Flight Training Division of that Association.

[50] Ardmore is apparently the busiest airfield in New Zealand in terms of general aircraft movements (somewhere in the order of 200,000 movements per annum). Mr Sattler obviously lacked the close familiarity with Paraparaumu that Mr Bull possessed, although he did have some knowledge and experience of the airport. In fact Mr Sattler proved to have an impressively wide range of knowledge regarding a number of New Zealand airports about which he was questioned.

[51] On 3 December 2008 there was a caucus of a number of the aviation witnesses in these proceedings. The participants for PAL were Messrs Park and Sattler. Participants on behalf of the Appellants were Messrs C Tayler and J S Spry. Mr Tayler is an experienced pilot and flying instructor. Mr Spry is a retired chartered accountant who gave evidence to the Court about financial issues but is also a holder of a private pilots' licence who completed his training at Paraparaumu Airport. Regrettably, one aviation witness who did not participate in the caucus was Mr Bull.

[52] The witnesses agreed on a number of issues, including that sealed runway 11/29 was not required and that a grass runway of orientation similar to 11/29 is required but that its use should be restricted to the greatest extent possible consistent with flight safety. The witnesses also agreed that the crosswind runway should have a length of 650m as opposed to the 500m initially proposed by PAL. For the record, we note that the views of the caucus members differ from those of Mr Bull.

[53] Mr Bull firstly described the local conditions at Paraparaumu including the extent of westerly winds and local topographical conditions which in his view made provision of a crosswind runway essential.

[54] Mr Bull strongly opposed the closure of runway(s) 11/29 and expressed the view that proposed runway 12/30 was an . . .*absolute minimum length under the circumstances* . . . [9] He considered crosswind limitations for a number of aircraft

[9] Para 13.2 EIC

commonly using Paraparaumu Airport and the wind speeds at which such aircraft would need to use a crosswind runway rather than runway 16/34.

[55] Mr Bull referred to a recommendation contained in CAA Advisory Circular, AC139-6 that the number and orientation of runways at an aerodrome should be such that its usability factor was not less than 95% for all of the aeroplanes that the aerodrome is intended to serve and further that where one runway could not accommodate the 95% usability factor a secondary runway should be provided of at least 85% of the length of the main runway. As we have noted, the main runway at Paraparaumu is 1,397m long so in order to comply with the 85% requirement the secondary runway would need to have a length of 1,187m. Crosswind runway 12/30 at 640m does not achieve that whereas runway 29/11 at 1,016m was very close to doing so.

[56] Mr Bull's evidence in this regard was contradicted by Mr Haines who advised that CAA applies this 85% factor only for regular Part 121 air transport operations (larger aircraft authorised under Part 121). The 85% length requirement applied only if larger aircraft required to use the second runway. The evidence given to us was that operators such as Air New Zealand would only use runway 16/34 and would not use the crosswind runway at all. Accordingly the 85% length requirement for a second runway was not applicable at Paraparaumu.

[57] We think that the substance of Mr Bull's concerns was expressed in these terms:

> *Paraparaumu Airport should be kept as widely functional as possible, and the closing of runway 29/11 and replacing it with a shortened grass runway does not fit with this need.*[10]

[58] In summary it was Mr Bull's contention that the longer the crosswind runway is the greater safety margin that existed. On that basis runway 11/29 is inherently *safer* than proposed runway 12/30.

[10] Para 68 EIC

[59] Mr Sattler on the other hand, considered that the proposed grass runway 12/30 at 640m was of sufficient length to provide adequate, safe landing conditions for persons having to use that runway. Indeed at the time of the Council hearing, he had accepted the adequacy of a 500m long runway which PAL had proposed at that time.

[60] Mr Sattler advised that crosswind runways were a feature of many New Zealand airports during the 1950s and 60s. Many of the aircraft used during this period operated with a rear tail wheel and were known as tail draggers. The commonly used DC3 was an example of a tail dragger. These aircraft were particularly sensitive to crosswinds and accordingly required the provision of crosswind runways so that they could take off and land into the wind at all times.

[61] Modern aircraft design has significantly improved the capabilities of both large and small aircraft to operate in crosswind conditions and consequently the need for crosswind runways has considerably diminished. Mr Sattler made the point that many airports such as Paraparaumu have crosswind runways as a historical legacy and they remain in use because they are there, not because they are essential.

[62] Ardmore Airport previously had a sealed crosswind runway. That runway has now been decommissioned but Ardmore still maintains a short grass runway for limited use when strong crosswind conditions exist on the main runway.

[63] Mr Sattler advised that exactly the same debate was undertaken at Ardmore as is currently being undertaken at Paraparaumu regarding the closure of the crosswind runway.[11] He said there was now *total agreement, it is the best thing that has ever happened.*[12] Apparently the crosswind runway is used so little that there is a question as to the need for it to remain available at all. He further advised that there was an advantage in trainee pilots being required to use the main runway during crosswind conditions in that they gained competence more rapidly in such conditions whereas previously they could avoid crosswinds altogether by use of the crosswind runway.

[11] Pages 269 and 270 NOE
[12] Page 270 NOE

[64] Mr Sattler was cross-examined at some considerable length by Mr Watson for the Appellants. Much of the cross-examination centred around the variables inherent in landing situations where various aircraft might be required to use the crosswind runway in a range of situations. The variables were numerous. They include the type of plane, its identified performance capabilities, the weight of the plane, weather conditions, wind speed, wind angle, turbulence, type of runway (grass/seal), height of approach, speed of approach, runway condition (dry/wet) and pilot capability.

[65] Mr Watson put to Mr Sattler the situation of a Cessna 172 aircraft making its landing approach into a 20 knot wind at a height of 100 feet (as opposed to recommended height of 50 feet) and a speed of 70 knots (as opposed to recommended 65 knots) which would require 720m in which to land assuming a range of other variables. Obviously an aircraft landing in that particular situation could not land on the 640m runway 12/30 (although the overall cleared area (750m) could theoretically accommodate it).

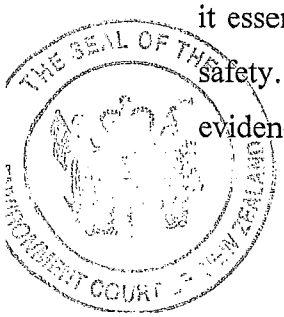
[66] Ultimately, Mr Sattler's response to that proposition was that the pilot would have to go around again, that is overshoot.

[67] Mr Sattler consistently maintained the position that PAL's current proposal for the restricted use of runway 12/30 was in fact safer than the previous situation of unrestricted use of runway 11/29, notwithstanding the reduced runway length.

[68] Both Messrs Bull and Sattler appeared to the Court to be highly experienced, competent and responsible pilots expressing honestly held views. Cross-examination did not diminish the credibility of either of the witnesses, expose any manifest error in their reasoning nor lead to a change in their opinions.

A Third Opinion

[69] The Court was sufficiently concerned as to the vast gulf between the views of two such qualified witnesses that we decided to seek a third opinion. We considered it essential to have the best information available to us on this vital issue of airport safety. We determined to exercise our powers pursuant to s276(1)(c) RMA to procure evidence from an appropriately qualified witness from CAA. Two witnesses were



actually provided by CAA. Firstly, Mr Haines who provided evidence as to the airport certification process which we have previously discussed and secondly, Mr A C Campbell who is employed as a Training Standards Development Officer and Flight Examiner for the Personnel Licensing Unit of CAA.

[70] Mr Campbell has 39 years' experience in the aviation industry in a wide range of capacities. He has over 10,000 hours flight experience, including over 8,000 hours of flight instructing. He has extensive flying experience in both the North and South Islands, including operating in remote regions and airstrips. He has used Paraparaumu Airport frequently as both an on-route refuelling destination and for local flying as a member of the Kapiti District Aero Club. Mr Campbell made it clear that the views expressed in his evidence were his own and did not necessarily represent the views of the Director of CAA.

[71] Mr Campbell commenced the substantive part of his evidence by dealing with the meaning of the term *demonstrated crosswind component* which had been used by some of the other aviation witnesses.

[72] The Pilots' Operating Handbook provided by aircraft manufacturers identifies crosswind speeds at which particular aircraft may be shown to be operated safely. That issue arose in the context of questions to Mr Sattler as to the crosswind velocities at which pilots would be forced to use runway 12/30 for landing instead of using runway 16/34.

[73] Mr Sattler made the observation that the demonstrated crosswind component identified in the Pilots' Operating Handbook is not a limitation as such, but rather identifies crosswind speeds at which it has been demonstrated that particular aircraft might be safely handled. Mr Sattler's point was that it should not be assumed that aircraft will need to use the crosswind runway simply because wind velocity exceeds any given aircraft's demonstrated crosswind component. Capacity to land on the main runway would be determined by pilot ability rather than the demonstrated crosswind component of the aircraft being flown.

[74] Mr Campbell confirmed Mr Sattler's observations in that regard. He referred to the handbooks for the Cessna 172M and N aircraft (presumably) because it was the performance of such an aircraft in particular that Mr Watson had put to Mr Sattler in cross-examination. It is clear from the extracts from the handbooks provided by Mr Campbell that Mr Sattler's view is correct and that ultimately maximum allowable crosswind for landing is dependent upon pilot capability in any given circumstances. Less current, less competent or less experienced pilots might need to operate in lower crosswinds than those identified in the handbook whereas other pilots might be able to operate in conditions in excess of those identified.

[75] Mr Campbell also identified the range of variables which might influence a pilot's decision to take off and land. A range of manuals and performance guides provide the material for pilots to determine the safety of any available runway for landing in given circumstances. He stated that:

> *The pilot's training requires a predetermined aim point for the landing and in the event this aim point is not to be successfully achieved, unless sufficient runway remains available, then full power is applied and a 'go-around' initiated to re-circuit for another approach.*[13]

That evidence appeared to confirm Mr Sattler's evidence as to what would happen in the situation put to him by Mr Watson to which we have previously referred.[14]

[76] In terms of runway length and design issues, we refer to specific portions of Mr Campbell's evidence:

- *A runway is neither "safe" nor "unsafe" based on its length alone. With respect to Mr Bull's SOE, Paragraph 30, in simple terms it is fair to say that the longer the runway the greater the safety margin available to a pilot. Clearly a 640m runway allows for greater latitude than the original 500m proposed and therefore could be viewed as "safer". However, it is not correct to say or imply that a shorter runway "reduces" safety. It is only unsafe if a pilot elects to operate outside the parameters of the aircraft and pilot capabilities.*[15]

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[13] Para 40 EIC
[14] Para 66 (Supra)
[15] Para 63 EIC

- *If an aerodrome and associated runways are built in accordance with CAA AC 139-6 and AC 139-7 then it is designed to the minimum safety standards. PAL has designed all runways, including the 12/30 to the applicable CAA AC Standards. The undershoot and overshoot areas are clear, but the runway length is shorter than the previous 11/29 vectors. In an ideal world, pilots would wish for runway length and approach and overshoot areas to have the greatest clearance possible, in excess of the minimum standard required. However, provided the minimum design standards are met then the aerodrome is considered for aviation purposes to be safe, subject to the assessment that is required by pilots before electing to use a runway to land an aircraft on any given day.*[16]

[77] Mr Campbell's view in that regard was consistent with that expressed by Mr Haines who said... *Runway length alone does not dictate the safety or otherwise of an aerodrome and cannot be viewed in isolation. It (is) one of a number of factors that may be considered in assessing the safety of the aerodrome.*[17]

[78] In addition to the comments above, Mr Campbell gave a helpful overview on a number of other issues, including the likely need for use of the crosswind runway, the circumstances in which it might be used, the benefits of seal and grass runways and issues of pilot judgment as to conditions in which it is appropriate to take off.

[79] Mr Campbell also referred to a document CASO 4, Part 1, Section 6 (5 Jan 1995). This document included a table giving basic take-off and landing distances at two representative weights for 106 aeroplane types, which we understood covered most aeroplanes currently operating in New Zealand. Mr Campbell advised that only three of the aircraft listed had take off or landing distances equal to or greater than 640m and therefore could not operate on runway 12/30 unless performance parameters on the day were favourable.

[80] Another point made by Mr Campbell was the importance of Paraparaumu Airport in terms of its geographic location. He was concerned that it should remain

[16] Para 69 EIC
[17] Para 34 (c) EIC

available to aviators such as cross-country training pilots and others because of its strategic position.

[81] As with the other aviation witnesses, the Court was impressed with the professionalism of Messrs Haines and Campbell. The objectivity of both witnesses was apparent and their evidence was of considerable assistance to the Court.

[82] It was accepted by all parties to these proceedings that this Court has authority to consider issues relating to the safety of Paraparaumu Airport, notwithstanding the specific jurisdiction of CAA in such matters. Both Mr Matheson for PAL and Mr Watson for PAC referred the Court to the High Court decision in *Director of Civil Aviation v Planning Tribunal.*[18] For the sake of completeness we refer to the quotation from that case cited by Mr Watson, as it appears to succinctly summarise the respective functions of the Court and CAA:

> *Section 5 continues to define "sustainable management" as providing for the (among other things) social and economic wellbeing and safety of communities. In considering the present application by Glacier Helicopters Limited, both the Council and the Tribunal are bound by s104 to have regard to "any actual and potential effects on the environment of allowing the activity" (s104(1)(a)). "Environment" is defined in s2 as including the social and economic conditions which affect people and communities. The meaning of "effect" is given in s3 and includes "any potential effect of low probability which has a high potential impact". In this case the Tribunal directed itself precisely to these matters and concluded that an air accident in this area, although of low probability, would have a high potential impact on the social and economic conditions of the local communities dependent on the tourist trade. Plainly air safety must be considered by the Council and the Tribunal. While the essential function of the Director is to set the minimum safety standards that are acceptable, and that must involve some degree of risk, and while in the ordinary situation that would normally satisfy a Council or the Tribunal, nevertheless the Tribunal is entitled to take a more particular look at the communities affected. I think too as a matter of law it is open to the Tribunal to require a higher degree of safety than that required by the*

[18] [1997] NZRMA 513

Director. A Council and the Tribunal is not necessarily thereby contradicting the Director, as the issues are not identical.

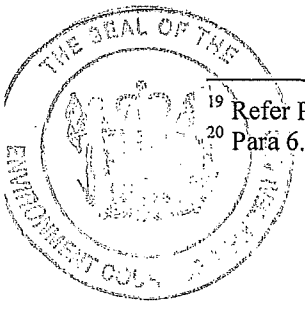
[83] As we have noted, the safety aspect which was at issue in this case was extremely limited. It related to the appropriate length and conditions of use of the crosswind runway 12/30. There were no suggestions made to the Court that there were any safety concerns in respect of the wider community, such as persons living around the airport, due to the positioning of runway 12/30. The debate before us was confined to the narrow issue which we have identified.

Restrictions On Runway Use

[84] Assessment of the adequacy of the crosswind runway must be made having regard to the restrictions on use which PAL, as the airport operator, is to impose on it. The NZ Aeronautical Information Publication (AIP) relating to Paraparaumu Airport is to specify that runway 12/30 is only available for imperative landings and is not to be used for air transport operations.

[85] The AIP is a book which pilots must carry and use for planning purposes. It is updated regularly and provides (inter alia) maps of the airport, instrument approaches for the pilots and general operating information. Mr Wackrow explained the restrictions which were to apply to use of the crosswind runway 12/30[19] and Mr Morgan confirmed that Air New Zealand, which will be flying the larger aircraft into Paraparaumu, will only use runway 16/34 and will not require use of the crosswind runway.[20]

[86] We have reached the conclusion that proposed runway 12/30 is a safe runway if it is operated on the imperative landing basis proposed by PAL. Although this Court is entitled to take a wider view of safety issues than CAA might do when considering runway 12/30, there is simply no evidential basis for us to do so in this case.



[19] Refer Para 31 (Supra)
[20] Para 6.1 EIC

[87] In making that finding, we are not simply relying on the fact that CAA has issued a Part 139 Aerodrome Operating Certificate to PAL and will in due course be required to consider a Part 157 determination in respect of runway 12/30. Messrs Campbell's and Sattler's direct evidence to the Court satisfied us as to the safety of runway 12/30. Neither are we suggesting that the operation of Paraparaumu Airport (or any other airport) is not a potentially hazardous exercise. As Mr Campbell made clear, safe operation of an airport is very much dependent on compliance with the appropriate rules, procedures and priorities applicable to flying operations.

Additional Controls

[88] In his opening for PAC, Mr Watson submitted that the Court has jurisdiction to address matters of operational safety and could require a higher degree of safety than required under the Civil Aviation Act. The High Court decision *Dome Valley Residents' Society Inc v Rodney District Council*[21] appears to support that proposition insofar as control of the effects of planes taking off and landing is concerned. In considering whether or not it is appropriate for the Court to impose any such additional controls on take off and landing effects, we have had regard to the potentially catastrophic nature of such effects in the event of landing or take off accidents.

[89] The only additional controls (over and above standard operating rules, procedures and protocols) suggested by any party to these proceedings were those controls which PAL itself advised it intended to implement. The principal controls relevant to our considerations were the restrictions on operation of crosswind runway 12/30 identified in Mr Wackrow's evidence and previously described.[22] As we have noted, these restrictions will be incorporated in the AIP and additionally, PAL proposed to include advice of the restrictions in notices to airmen (NOTAMs) which are advisory documents issued by Airways Corporation as they come to hand.

[90] In addition to the restrictions on use of the crosswind runway which PAL proposes, it proposes other measures to improve air safety at Paraparaumu. These

[21] [2008] 3 NZLR 821
[22] Para 31 (Supra)

were described in Mr Wackrow's evidence and include the mandatory use of transponders, expanding and raising the height of mandatory broadcast zone at Paraparaumu and other similar measures. There seemed to be no challenge to the proposition that the measures identified by Mr Wackrow represent a significant improvement in the management of air space above Paraparaumu. Many of these go to matters beyond our jurisdiction pursuant to s9(8) RMA.

[91] We gave some consideration to the extent to which we ought to write the imperative use controls which PAL proposed to include in the AIP for Paraparaumu Airport into Plan Change 73 (to the extent the controls are within our jurisdiction). Ultimately, we determined that such matters must be left to PAL as the airport operating authority. The AIP is the document which pilots will refer to in order to identify any restrictions on the use of Paraparaumu Airport and in our view that is where operating control should lie.

Conclusion

[92] Finally, on the issue of safety, we advised the parties during the course of the hearing that we did not propose to undertake our safety assessment on the basis of a comparison between sealed runway 11/29 and proposed grass runway 12/30.

[93] Runway 11/29 is no longer an operational runway and has been closed by PAL pursuant to Part 157 Procedures. It could not be reopened by PAL without the approval of CAA irrespective of any views the Court might have on the matter. There was no challenge to Mr Wackrow's evidence that the deterioration of the runway was becoming a safety factor, nor was there any challenge to his estimate as to the cost of resealing the runway ($435,000).

[94] Current District Plan Rules do not require PAL to keep runway 11/29 open and this Court cannot compel PAL to undertake the runway maintenance which is required to restore it to or maintain it in a safe condition. The runway has been legally closed in accordance with CARs. It presently does not exist as a runway.

[95] If this Court was to decline Plan Change 73, the status quo in respect of runway 11/29 would simply continue. The Court would, in effect, be imposing a

negative control on the land presently comprising runway 11/29 in that it would not be available to PAL to use for other purposes as it now proposes, but that would not lead to the runway being reopened.

[96] The Court understands Mr Bull's preference for the ongoing operation of sealed runway 11/29 as opposed to runway 12/30. It seems self-evident that the longer the length of crosswind runway that is available, the greater the degree of flexibility there will be available to pilots using it. However, the evidence which we heard has satisfied us that proposed runway 12/30 will provide adequate and safe crosswind landing facilities on the imperative use basis which PAL proposes.

[97] We accordingly determine that there are no aviation safety factors arising out of Plan Change 73 which mean we should decline the Plan Change.

Noise and Public Health *(This section of the decision was written by Commissioner Beaumont)*

[98] Doctors Cammack and Evans are general practitioners working in the Paraparaumu community. Their key concern is the effect of noise on community health. They contend that the annoyance experienced by some people when exposed to airport noise may lead to chronic impairment of well-being[23]. They seek that the noise contours are re-drawn to prevent significant growth in aircraft activity plus further restrictions on circuiting aircraft and helicopter activity.

[99] The Council contends that Plan Change 73 provides a better environmental outcome than existing provisions as fewer residential properties are affected and the noise contours are more limited than provided for in the operative plan[24].

[100] PAL does not accept that there is any public health risk and contends that the noise contours should be set with future growth in mind. PAL does not accept the need to further limit circuiting aircraft or helicopter operations[25].

[23] Stevens opening submissions 4
[24] Winchester opening submissions 6.4
[25] Matheson opening submissions 1.12(d)

The Noise Contours and Numbers of Aircraft

[101] Ms L J Smith (an acoustical consultant advising PAL) explained[26] the noise boundary concept used in the New Zealand Standard NZS 6805:1992 *Airport noise management and land use planning* (NZS 6805). The Outer Control Boundary (OCB) is used to establish areas for compatible land use and the Air Noise Boundary (ANB) to set noise limits for the operation (aircraft arrivals and departures) of the airport. Typically the OCB is based on a day/night noise exposure level[27] of 55 dBA L_{dn} and the ANB on 65 dBA L_{dn}. The noise exposure is calculated as an average over a 3 month period to allow for daily fluctuations.

[102] Ms Smith outlined[28] the land use planning criteria of NZS 6805:

Between the ANB and the OCB (55 – 65 dBA L_{dn}):

- *New noise sensitive uses (including residential) should be prohibited unless the District Plan permits such use subject to appropriate sound insulation*
- *Alterations and additions to existing noise sensitive uses (including residential) should include appropriate sound insulation*

Inside the ANB (>65 dBA L_{dn}):

- *New noise sensitive activities (including residential) should be prohibited*
- *Existing residential buildings and subsequent alterations should have appropriate sound insulation*

At higher noise levels between 70 and 75 dBA L_{dn} the standard recommends "consideration should be given to purchasing existing homes or relocating residents and rezoning the area to non-residential use only". Above 75 dBA L_{dn} the standard states "there is a high possibility of adverse health effects. Land shall not be used for residential or other noise sensitive uses".

[103] Ms Smith explained that the Operative District Plan set the OCB and ANB based on the 55 dBA L_{dn} and 65 dBA L_{dn} noise contours in accordance with the standard. The rules for land between the ANB and OCB require sound insulation for

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[26] L E Smith EIC paras 3.1 – 3.7

[27] L_{dn} is the average night-weighted sound exposure over a 24 hour period with noise events between 10pm and 7am weighted or penalised by 10 decibels to account for increase sensitivity to noise at night

[28] L E Smith EIC para 3.11 – 3.12

new dwellings and additions to existing dwellings to reduce aircraft noise by 15 dBA inside bedrooms and living areas. Ms Smith considered that normal construction materials would be adequate (typically reducing noise by 15-18 dBA) and therefore the practical effect of the current sound insulation standard to be negligible[29].

[104] The new noise contours were calculated for a total of 86,200 air movements (including 11,567 (or 13%) helicopter movements) for the year 2026[30]. Ms Smith used the United States Federal Aviation Administration Integrated Noise Model (INM) to predict the aircraft noise levels and to calculate the contours[31]. Plan Change 73 proposed three airport noise boundaries:

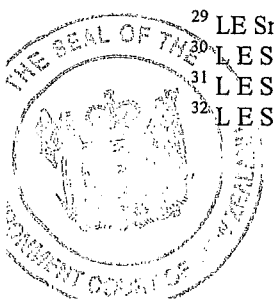
- Air Noise Boundary (ANB) defined by the 65 dBA L_{dn} contour
- Outer Control Boundary (OCB) defined by the 58 dBA L_{dn} contour
- Noise Notification Boundary (NNB) defined by the 55 dBA L_{dn} contour.

The boundary for the OCB as delineated in the District Plan is adapted from the contour to follow cadastral boundaries for ease of application of the associated land-use planning controls. The NNB identifies the area beyond the OCB where there is the potential for annoyance effects from the noise levels and notification of property owners is required.

[105] Ms Smith outlined the differences between the proposed noise boundaries and those in the operative plan[32]:

- The area within the ANB would decrease from 0.5 km^2 to 0.4 km^2
- The area of land within the OCB and subject to land use controls would decrease from 1.4 km^2 to 1.0 km^2 (as controls take effect at 58 not 55 dBA)
- The area of land within the NNB at the 55 dBA L_{dn} contour would increase from 1.4 km^2 to 1.6 km^2.

[29] LE Smith EIC para 4.1 – 4.7
[30] L E Smith EIC Appendix B Table 2
[31] L E Smith EIC 3.22 – 3.24
[32] L E Smith EIC paras 5.22 – 5.23



[106] The number of houses within the airport noise contours also changes[33]:

	Houses inside 65 dBA	Houses inside 55 dBA
Operative DP	42	320
Plan Change 73	0	514

[107] Ms Smith noted that the contours had both shifted and changed shape[34]:

> *The shape of the current contours is quite different to the future contours due to the different runway configurations and the different aircraft mix. Therefore the change in noise level for residents will vary depending on the location of the property.*

[108] Mr M J Hunt (an acoustic engineer called by the Council) reviewed the noise assessment reports and noise contours for Paraparaumu airport prepared by Ms Smith[35]. He considered that Plan Change 73 would authorise an increase in noise levels in the future and this increase would not be out *of scale* with the noise effects set out in the operative plan[36]. Two minor changes were agreed following his review – a 15-hour assessment period for engine testing (originally to be 7 days) and a new method for specifying acoustic insulation for new or altered dwellings[37].

[109] Ms Smith explained that the OCB was set at the 58 rather than 55 dBA L_{dn} contour as house insulation studies have shown that a noise reduction of 18 dBA (outside to inside) can be achieved in a standard house with the windows ajar for ventilation[38]. Between the OCB and ANB new noise sensitive activities are discretionary (restricted) and additions are permitted subject to the sound insulation standard[39].

[110] During cross-examination Mr Hunt endorsed the location of the OCB at the 58 dBA L_{dn} contour and agreed that adequate protection was provided by standard house

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[33] L E Smith Rebuttal para 3.9
[34] L E Smith EIC para 6.2
[35] M J Hunt EIC 17 – 20
[36] M J Hunt EIC 21
[37] M J Hunt EIC 22 - 24
[38] L E Smith EIC 9.6
[39] L E Smith EIC 9.7

construction (with little benefit from extra insulation) at noise levels below this[40]. In response to questions from the Court he explained that he favoured setting an acoustic insulation standard rather than specifying (and then having to monitor) a specific reduction in noise levels to be achieved. He considered that the standard specified in Plan Change 73 would achieve, approximately, a 30 dBA reduction (outdoors to indoors) for aircraft noise and allow for low frequency noise to be controlled[41].

[111] Ms Smith noted that NZS 6805 recommends that noise boundaries be based on aircraft operations projected at least 10 years into the future[42]. During cross-examination Ms Smith confirmed that she had relied on the projections given to her by Airbiz Aviation Strategies Ltd (Airbiz) for the growth in aircraft movements at the airport by 2026 and acknowledged that the numbers for both the current operations and projected growth had changed since the initial proposal[43]. Airbiz is a specialist consultant company on planning, design and development of airports.

[112] Mr I R M Munro (an engineer with Airbiz) provided the estimates of current activity at the airport and the forecasts for future demand. He estimated current movements at approximately 45,000 per annum – 72% general aviation, 18% helicopter, 3% scheduled passenger and 7% military or other[44].

[113] Mr Munro provided a forecast for future aircraft movements per annum: 65,000 by 2016, 86,000 by 2026 and 103,000 by 2036 and noted[45]:

> *By its very nature, airport traffic forecasting is an imprecise art or science, being at best a general indication of future levels or patterns of activity. The view of the future I have described represents a combination of outcomes for the various components of traffic at the airport. In my view these are realistic outcomes if the various businesses at the airport are generally successful in their own right over the forecast period.*

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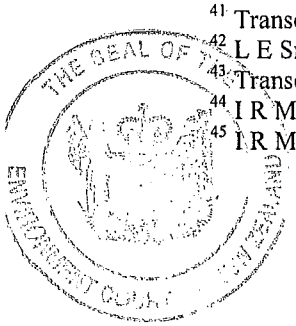
[40] Transcript page 524
[41] Transcript page 525 *ff*
[42] L E Smith EIC para 3.16
[43] Transcript page 309
[44] I R M Munro EIC paras 4.2 – 4.3
[45] I R M Munro EIC para 4.5



[114] During cross-examination Mr Munro agreed that the forecasts were not precise and provided general guidance in order to produce a conservative noise envelope on the high side of potential aircraft activity[46].

[115] Dr Cammack noted that the actual aircraft activity over the last two years had been extremely variable[47]. He acknowledged that noise contours should be based on projected future traffic but challenged the projections put forward by Airbiz[48]. He considered that the use of the airport should be constrained to recreational flyers, New Zealand trainee pilots and some increased scheduled passenger flights with a total of 44,308 movements (including 1000 for helicopters) per annum[49]. He noted that this scenario would not provide the capacity to train overseas students and that helicopter operations would need to be scaled down[50].

[116] We accept the evidence of Mr Munro on the projected aircraft movements and future growth scenarios to 2026, for the purposes of calculating the noise contours. It is appropriate that these should be at the high end of potential aircraft activity to adequately consider the potential adverse effects of noise and to ensure that planning controls for the location of dwellings and specifications for sound insulation provide appropriate protection for residents in the area.

[117] We note that the proposed OCB and ANB are very similar to those in the operative plan albeit with some changes in shape. Therefore the proposed plan change does not significantly change the effects anticipated nor the controls on dwellings compared with the operative plan. In addition there is to be the NNB at 55 dBA L_{dn} although no land-use controls are associated with this. While not made explicit in Plan Change 73 we presume that appropriate mention of the noise issue will be made on the LIM for properties within the NNB.

[118] Before we consider the appropriateness of the definition of and planning controls for the OCB and NNB, and Dr Cammack's proposed scenario for a reduction

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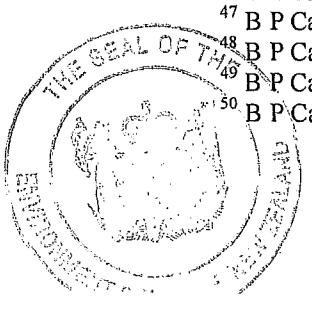
[46] Transcript page 183
[47] B P Cammack EIC paras 179 – 180
[48] B P Cammack EIC para 229
[49] B P Cammack EIC paras 493 – 494
[50] B P Cammack EIC paras 273 – 274



in helicopter numbers and constraints on future growth, we must consider the effect of noise on community health.

Helicopter operations

[119] Ms Smith noted that the New Zealand Standard NZS 6807:1994 *Noise management and land use planning for helicopter landing areas* (NZS 6807) recognises that helicopter noise is considered to be more annoying than fixed wing aircraft noise[51]. The noise model that she used included helicopter movements in the calculation of the noise contours[52].

[120] Ms Smith explained that her general approach was to use NZS 6805 for airport noise boundaries where helicopter activity was less than 40% of the airport operations[53]. During cross-examination she agreed that this 40% was not defined in NZS 6807 which specified use of the standard whenever there were more than 10 helicopter movements per month. She further agreed that helicopter movements at Paraparaumu were greatly in excess of 10 per month[54]. Ms Smith gave Masterton as an example of an airport where helicopter operations were predicted to be more than 50% and the noise contours were calculated according to NZS 6805 with a 5 dB weighting for helicopter activity[55].

[121] During cross-examination Ms Smith expanded on her reasons for not applying both 6805 and 6807. She considered that two sets of boundaries would be more complicated and unnecessary[56]. She argued that NZS 6807 was intended for single operator heliports in rural areas where operations could be managed on a daily or weekly basis to meet the 7 day averaging approach, compared with the three month average for a mixed use airport[57].

[122] Ms Smith had initially considered that the 50 dBA L_{dn} contour from helicopter operations would have the same shape as the proposed boundaries but with a bulge

[51] L E Smith EIC 3.18
[52] L E Smith EIC 3.24
[53] L E Smith EIC 3.21
[54] Transcript page 317
[55] Transcript page 318
[56] Transcript page 313
[57] Transcript page 314

extending further away from the airport. She concluded that the proposed OCB at the 58 dBA L_{dn} contour would have the same result as a 50 dBA L_{dn} helinoise boundary[58].

[123] Mr Hunt noted that the version of the Integrated Noise Model used by Ms Smith incorporated helicopter noise and provided the best current method for calculating noise from mixed aircraft movements, that is fixed wing and helicopters using the same airport area[59]. Relying on Ms Smith's conclusions on the location of the helinoise boundary Mr Hunt endorsed the application of NZS 6805 and accepted the location of the OCB at the 58 dBa L_{dn} contour. He did not support the use of a separate helinoise boundary or accept the need for a limitation on helicopter movements[60].

[124] During cross-examination Mr Hunt confirmed his view that NZS 6807 was intended for helipads and helicopter landing areas and not for airports[61]. He accepted that clause 5.3.8 of NZS 6807 urged consistency between the two standards in setting the OCB[62]. We quote NZS 6807 clause 5.3.8 in full:

> *In some cases, an area may be subject to land use planning measures associated with the application of NZS 6805 Airport noise management and land use planning. To ensure consistency between the application of the two Standards, the position of the outer control boundary set according to NZS 6805 should take into account the position of the helinoise boundary for noise from helicopter landing areas. The land use planning measures recommended in 5.3 are the same as those recommended in NZS 6805 for areas within the outer control boundary.*

[125] Dr Cammack agreed with Ms Smith that a separate helinoise boundary would be unnecessary as it would be wholly or largely contained within the OCB[63]. Dr Cammack further considered helicopter noise to be particular obtrusive and that noise contours would be poor predictors of the impact of that noise[64]. Dr Cammack

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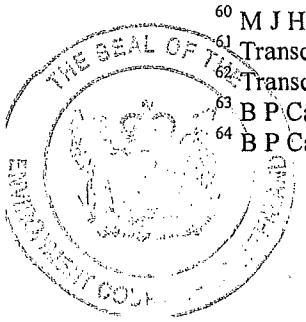
[58] L E Smith EIC 11.7
[59] M J Hunt EIC 38
[60] M J Hunt EIC 73
[61] Transcript page 900
[62] Transcript page 904
[63] B P Cammack EIC 341
[64] B P Cammack EIC 342



similarly challenged the use of an A-weighted L_{dn} noise metric for helicopter noise although he noted that a 5dB weighting was added to take account of the noise characteristics[65].

[126] Dr Cammack considered that non-acoustic factors were particularly important in considering the impact of noise on the Kapiti community, particularly with respect to helicopter activity and the training of overseas pilots[66]. Given the importance of non-acoustic factors and his criticisms of the noise metrics and noise contour approach Dr Cammack concluded that helicopter noise should be controlled by placing a numerical limit on helicopter operations[67].

[127] Ms Smith agreed that non-acoustic factors were an important component and considered that the airport noise management committee was the appropriate method to address and manage these factors[68].

[128] In response to questions from the Court[69] Ms Smith plotted the 50 and 60 dBA L_{dn} noise contours for helicopter activity on a map of the airport and surrounding area, also showing the proposed ANB at the 65, OCB at the 58 and NNB at the 55 dBA L_{dn} contours[70]. Ms Smith observed[71] that including the 50 dBA L_{dn} contour from helicopter noise in the OCB would increase the area of land use controls. Ms Smith commented further that implementing two separate boundaries in accordance with NZS 6807 clause 5.3.8 would complicate monitoring for compliance. She agreed that an OCB could be delineated to include the helinoise contour at 53 dBA L_{dn} (to be consistent with the 58 dBA Ldn for general aircraft activity) and the proposed land-use controls specifying acoustic insulation performance would be applicable to helicopter noise. Despite this Ms Smith still considered the recommendation in clause 5.3.8 to be *impractical*[72].

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[65] B P Cammack EIC 317 – 318
[66] B P Cammack 319 – 322
[67] B P Cammack
[68] L E Smith Rebuttal 3.47
[69] Transcript page 355
[70] Exhibit 14 Paraparaumu Airport – 2026 Forecast helicopter activity contours and proposed noise control boundaries
[71] Transcript page 955
[72] Transcript page 955

[129] Also in response to questions from the Court both Ms Smith[73] and Mr Hunt[74] confirmed their view that the practice of noise professionals in New Zealand was to apply NZS 6807 to pure helicopter operations and NZS 6805 to mixed-use airports with some helicopter activity.

[130] We accept the evidence of Ms Smith and Mr Hunt that the noise modelling approach and the calculation of noise contours is appropriate for the Paraparaumu airport. We accept the approach of the New Zealand Standards and the concept of noise boundaries to set noise limits for the airport operation and to establish compatible land-use areas and appropriate land-use controls.

[131] We have carefully considered the arguments for and against the application of the helinoise boundary when considering the delineation of the OCB. We accept that helicopter noise has different and potentially more annoying characteristics than fixed wing aircraft activity. We find that the helinoise boundaries should be taken into account, in accordance with clause 5.3.8 of NZS 6807, when setting both the OCB and the NNB for the airport. We note the added complexity in modelling and the practical difficulties monitoring two different noise contours. We return to the issue of monitoring later in this decision.

Noise, Annoyance and Health

[132] Dr Cammack had reviewed the international literature on aircraft noise and quoted extensively from that research in support of his contention that annoyance, in the long term, leads to chronic impairment of well-being[75]. He contended that annoyance could also cause ill health through stress leading to physiological and psychological changes which in turn potentially lead to physical and psychiatric

[73] Transcript page 956
[74] Transcript page 906
[75] B P Cammack EIC 11 – 12

illness[76]. Dr Cammack noted that the impact of environmental noise on health was difficult to identify and quantify[77]. From his review Dr Cammack concluded[78]:

> *Research of the specific health effects of noise exposure is still at an early stage. As more evidence unfolds significant health problems are being revealed at lower levels of exposure. It appears that there are significant health problems at exposures down to 50 dBA.*

[133] Dr D R Black, a medical specialist in occupational and environmental medicine with substantial experience in the aviation industry gave rebuttal evidence on PAL's behalf. He reviewed the evidence on noise and familiarised himself with the airport and its surrounds. He considered that annoyance refers to effects on amenity and did not necessarily equate to effects on public health[79]. He reviewed the key scientific papers quoted by Dr Cammack and considered that there was insufficient evidence to give weight to claims for significant health problems at noise exposures down to 50 dBA[80]. During cross-examination he commented that the papers cited by Dr Cammack could be useful in the future when reviewing the noise standards[81]. He considered that the approach proposed in Plan Change 73 for the Paraparaumu airport reflected good contemporary public health practice[82]. He concluded[83]:

> *In my opinion the presence of the airport in the Paraparaumu community poses no significant public health risk whilst offering substantial benefits.*

[134] Drs Black and Cammack were agreed on the importance of a night-time curfew on air operations. In response to questions from the Court Dr Cammack said[84]:

> *Well, obviously the curfew is very, very important but, in a sense, that has not been an issue because, apart for a few brief intervals when there was some freight going off at night, the curfew has been strictly observed.*

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[76] B P Cammack EIC 154
[77] B P Cammack EIC 155
[78] B P Cammack EIC 167
[79] D R Black EIC 3.4
[80] D R Black EIC 3.27
[81] Transcript page 484
[82] D R Black EIC 3.37
[83] D R Black EIC 5.1
[84] Transcript page 624

[135] And Dr Black commented[85]:

> *The really important thing, to my mind, about this airport is that it does not have night flying, overnight flying, because where there are health effects from airports is where you get sleep disturbance. And the controls on this airport do, in my opinion, adequately prevent the airport causing sleep disturbance and so, in that case, I think it is reasonable to have taken the practical steps, which they have in the way it has been presented.*

[136] We accept the evidence of Dr Black that the presence of the airport within the Paraparaumu community, with the appropriate noise limits and land-use controls, does not pose a significant public health risk. While Dr Cammack has raised several interesting areas of research we do not consider that the scientific studies provide a sufficient basis to depart from the general approach recommended in the New Zealand standards. We agree with Drs Cammack and Black that the night-time curfew is a critical management action with respect to reducing the effects of noise.

Monitoring at the ANB and OCB

[137] In NZS 6805 the OCB is used to establish areas for compatible land use and the ANB to set noise limits for the operation (aircraft arrivals and departures) of the airport. Ms Smith explained that in the decisions version of Plan Change 73 monitoring was proposed at the ANB in accordance with NZS 6805. Following mediation a further control was added requiring monitoring at the OCB to demonstrate that the noise did not exceed 58 dBA L_{dn} with annual monitoring required when the aircraft movements reached 75% of the total used for setting the noise boundaries[86]. Dr Cammack described the additional monitoring as an extra safeguard against inaccuracies in the modelling process[87].

[85] Transcript page 487
[86] L E Smith EIC 8.5 – 8.9
[87] B P Cammack EIC 479

[138] In response to questions from the Court Ms Smith explained that the additional monitoring was agreed to in response to concerns raised by residents that the effects of certain aircraft would not be picked up at the ANB. She noted that modelling was not always correct and aircraft do deviate from the flight tracks assigned[88].

[139] Mr Hunt advised[89] the Court on the monitoring costs. He made an *educated guess* that the costs for monitoring at a regional airport would be of the order of $20,000 to $40,000. He considered that to be a lot of extra expense which may not be necessary to ensure that the effects of aircraft noise were adequately controlled. In response to questions from the Court Mr Hunt agreed with Ms Smith that there would only be an advantage in the extra monitoring if aircraft were not following the flight paths and flight tracks upon which the noise boundaries were predicated. And he considered that issue would be better addressed through the noise management plan. Mr Hunt concluded by saying that he would prefer to monitor a number of locations on the 65 dBA L_{dn} contour as it was wholly contained within the airport property and avoided the difficulties with non-aircraft noise at lower limits[90].

[140] We accept that monitoring at both the ANB and the OCB would provide additional information and a check on the modelling process for the noise contours. However we have found that the OCB should be adjusted to include the helinoise boundary and this adds to the complexity and therefore to the costs of any monitoring required at the OCB. We understand that the dual monitoring regime was agreed as a result of mediation and we appreciate that it was an appropriate response to the concerns raised. Unfortunately the exploration and resolution of other issues has made this additional monitoring requirement an impractical and expensive solution. Therefore we set aside this aspect of the mediation agreement. On balance we consider that monitoring and compliance should only be required at the ANB. This is in accordance with NZS 6805 and the standard practice at many other airports around New Zealand.

[88] Transcript page 354
[89] Transcript page 519
[90] Transcript page 528

Overall Findings and Directions on Noise

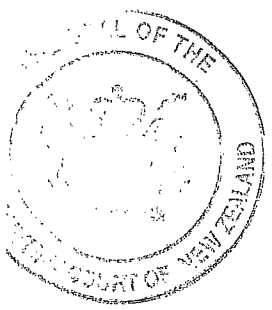
[141] We find that the provisions of Plan Change 73, with some amendments, are appropriate to manage the effects of noise from the airport operations. We agree that the ANB should be set at the 65 dBA L_{dn} contour in accordance with NZS 6805 and the modelling carried out by Ms Smith. The day/night noise level from aircraft operations shall not exceed 65 dBA outside this boundary.

[142] We confirm the restrictions on night flying and circuit training as agreed by PAL and set out in the final version of the Plan Change submitted to us.

[143] We direct that the monitoring requirements be amended such that monitoring shall include the 65 dBA L_{dn} contour and is no longer required at the 58 dBA L_{dn} contour.

[144] We direct that the OCB should be set at the 58 dBA L_{dn} contour for general aircraft operation and adjusted in accordance with the location of the 53 dBA heliniose boundary where the helinoise boundary is further away from the airport. In practice we consider that this will result in the inclusion of a number of additional residential properties, mainly located on the east side of the airport. We note that the exact location of the OCB is determined with reference to cadastral boundaries and defined on the Planning Maps.

[145] We direct that the NNB should be set at the 55 dBA L_{dn} contour for general aircraft operations and adjusted in accordance with the location of the 50 dBA heliniose boundary where the helinoise boundary is further away from the airport. A definition of the NNB should be added to the District Plan and a form of words noted for inclusion on the LIM for properties within this boundary – such as...*this land is subject to higher than usual levels of aircraft noise which some people may find annoying.*



Financial/Economic Issues

[146] The financial/economic issues in dispute fell into two categories:

- Firstly, the financial viability of the existing airport operation;
- Secondly, the economic consequences of approving Plan Change 73 in terms of effect on the Paraparaumu Town Centre.

[147] PAL is a private company. At the time of incorporation the shares were held by the Crown, which was also the owner of the airport.

[148] In 1991 the Government directed the Ministry of Transport to devolve its operation of six New Zealand aerodromes, including Paraparaumu. The mechanism which the Crown used to dispose of the airport was firstly its transfer from the Crown to PAL and then the sale of the shares in PAL to a third party purchaser.

[149] Prior to sale of the shares, PAL was designated an *airport company* by Order in Council pursuant to s3, Airport Authorities Act 1966. The provisions of s3(A) of that Act enabled the Crown's interest in the airport lands to be transferred to an airport company without the need to satisfy the offer back provisions of the Public Works Act to which such a transfer would otherwise be subject. Thereafter (as we understand it) as long as transfer of ownership of the airport is effected by transfer of shares in PAL itself rather than by a direct transfer of the land to a new entity, the offer back provisions of the Public Works Act are not applicable.

[150] The information memorandum issued by the Crown prior to the sale of Paraparaumu Airport[91] noted that . . . *Paraparaumu Aerodrome should be sold to parties who will continue operating the facility for as long as it remains commercially viable.*

Economic Viability

[151] Much of the debate before us revolved around the issue of whether or not Paraparaumu Airport was economically viable in its present operating form under its present zoning restrictions and controls. PAC called two witnesses to address that

[91] Exhibit 17

issue. They were Dr E A Hudson, an economist, and Mr J S Spry, a retired chartered accountant. Dr Hudson endeavoured to calculate PAL's typical operating cash flow by reference to the company's 2008 accounts. Mr Spry analysed PAL's annual financial reports for the years 2000-2008.

[152] PAC's evidence was in response to the proposition advanced by Mr Robinson for PAL that revenue from general aviation landing fees and existing rental income was simply not sufficient to enable the airport to continue operating nor to expand the range of services it might provide. Mr Robinson contended that it was necessary for the airport to increase its revenue streams by establishing commercial activities over a wider area as proposed by Plan Change 73 in order to ensure the ongoing viability of the core airport operation.

[153] PAL seeks to increase revenue from ground rentals paid by commercial developers to whom land not required for core airport activities will be leased (rather than sold). Commercial development is to form part of an integrated development plan for the airport including the upgrade of runway and terminal facilities to accommodate Air New Zealand operations which we have discussed earlier.

[154] Mr Robinson's evidence was confirmed by that of Mr G J Horsley a registered valuer and company director. Mr Horsley has 20 years involvement in preparation of airport valuations and pricing studies in both New Zealand and Australia. He was an advisor to the Ministry of Transport during the corporatisation of New Zealand airports and continues to advise national and regional companies on valuation and pricing matters. He was the lead partner in Ernst and Young's Corporate Finance Practice and has prepared financial models for a number of provincial airports in New Zealand. Although he is neither an accountant nor an economist, in our view he is a witness well qualified to comment on the economic issues relating to Paraparaumu Airport.

[155] Mr Horsley undertook an assessment of PAL accounts over the period 1999-2008 as Mr Spry had done. His assessment was that Paraparaumu Airport was not a commercially viable operation and has only managed to stay afloat through the sale of land around the periphery of the airport.

[156] It was Mr Horsley's view that the airport was not economically viable as it operates today and would continue to operate at an after tax loss, unless additional non-aeronautical revenue could be derived from commercial land areas. Mr Horsley identified that PAL had received income totalling $2,552,872 from asset sales over the past 10 years and that it could not continue to sell assets to operate profitably. We were not told how such asset sales were achieved in light of Public Works Act offer back requirements but understand that any future commercial development will be on a ground lease basis.

[157] The reluctance of the Court to enter into accounting judgments is well known. The Court's common position is that these are matters for the boardroom.[92]

[158] Much of the debate between Dr Hudson and Mr Spry on the one hand and Mr Horsley on the other revolved around whether or not it was appropriate to include depreciation as a real cost in assessing the financial viability of the airport and whether or not the PAL operation would have been viable if it were not for land sales which had occurred in the past. However, those matters aside, what became apparent to us during the course of the hearing was an erroneous approach on the part of PAC's witnesses to what constituted sustainable management and where economic/financial issues sat within that.

[159] Dr Hudson had this to say on these issues:

> *28* *In this section I examine whether Paraparaumu Airport Ltd is economically viable in terms of the meaning associated with the Resource Management Act 1991.*
>
> *29* *The question of economic viability under the Resource Management Act is actually the question of sustainability. The core concern is whether a business, in this case Paraparaumu Airport Ltd (PAL), is economically sustainable looking into the future. Sustainability means that the business can continue to operate, providing the same set of airport related services it currently provides.*
>
> *30* *The question of sustainability reduces to the question whether the business can continue into the long run. The business will be able to continue if it can pay its*

[92] *New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70

bills. This depends on whether there is enough money coming in to cover the money paid out in running the business. This is a matter of cash flow. Accordingly, the appropriate indicator for sustainability is cash flow. The business is economically sustainable if the cash flow to the owners of the business is positive.[93]

[160] Mr Spry had this to say:

30 Put simply, economic sustainability means operating a business in a manner that allows it to stay in business over time.

31 It has to do with the maintenance of economic capital, whilst at the same time providing a stable, but not necessarily increasing level of outputs to meet the expectations of its customers.

32 There is no requirement for growth and the phrase should not be confused with economic sustainable development.[94]

[161] We do not think that either of the witnesses was familiar with the definition of sustainable management contained in RMA. Dr Hudson acknowledged as much.

[162] Section 5 RMA provides as follows:

5 Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

*(2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –*

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

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[93] Hudson, Paras 28-30 EIC
[94] Paras 30-32 EIC

[163] For the sake of completeness we refer to the definition of natural and physical resources contained in s2 RMA, namely:

> ***Natural and physical resources*** *includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures.*

Again for the sake of completeness, we note that Paraparaumu Airport is a natural and physical resource as defined.

[164] It was the view of both Dr Hudson and Mr Spry that the operation of Paraparaumu Airport was economically sustainable as long as it can continue to operate at the level it currently does. That may or may not be right as an economic or accounting proposition, however it is certainly not the correct approach to sustainable management provided by s5. Section 5 is not about retention of the status quo as both Dr Hudson and Mr Spry appeared to think. Management of the development of natural and physical resources is specifically contemplated by s5(2). It is precisely such development that PAL seeks to enable through Plan Change 73.

[165] Although Mr Watson contended in opening that PAC was not taking a position that there should be no development on the airport land or that the airport lands should be *locked up,* it was apparent that PAC's economic/financial witnesses approached their assessment of Plan Change 73 on a basis of sustainability meaning... *that PAL could continue to provide the same level of airport related services as it currently provides*[95]...and... *that there was no need to increase level of outputs and no requirement for growth.*[96] Those contentions are simply wrong in RMA terms.

[166] Even if the views of Dr Hudson and Mr Spry in that regard were correct, we consider that their analysis of PAL's financial accounts was wrong. Mr Spry undertook his analysis of the accounts on an EBITDA basis (earnings before interest, taxation, depreciation and amortization). Mr Spry specifically excluded the cost of depreciation of airport facilities from his calculations in assessing the economic viability of Paraparaumu Airport in its current state. Mr Horsley stated that interest,

[95] Cf Hudson, EIC Para 29 (Supra)
[96] Paras 31 and 32 Spry EIC (Supra)

taxation, depreciation and amortisation are real costs in the operation of infrastructure companies.

[167] In considering the issue of whether or not Paraparaumu Airport was a commercially viable operation, Mr Horsley contended that . . . *the only way PAL has managed to stay "afloat" has been through the sale of assets, mainly land, around the periphery of the Airport and this cannot continue without prejudicing the aeronautical operations of the airport.*[97] He identified the significant upgrade costs which PAL must incur if the airport was to continue to operate as a *safe and viable regional aeronautical facility.* These total some $2.8 m. He was of the opinion that current operational revenues did not allow for undertaking such upgrading and could not be recovered from aeronautical users of the airport. There was insufficient surplus revenue to meet the costs of the upgrade.

[168] We accept Mr Horsley's evidence with regard to those matters. He is highly experienced in the operation of infrastructure companies and airport companies in particular. He did not take the narrow approach to sustainable management of airport resources that Dr Hudson and Mr Spry did but we accept his analysis of the inadequacies of their evidence on even that narrow basis.

[169] We also refer to the evidence of Mr Munro of Airbiz regarding the viability of general aviation airports. Airbiz investigated whether or not revenue from aviation sources could be increased sufficiently to enable Paraparaumu airport to operate as a viable business. It was Mr Munro's view that it could not and further that this situation was typical of small general aviation airports which need to generate income and return from other sources.

[170] We accept the evidence of Messrs Robinson, Horsley and Munro on this issue. Messrs Horsley and Munro have a high degree of familiarity with airport operations and their financial requirements. It does not seem a startling proposition that for Paraparaumu Airport to continue to operate into the future and provide a high level of

[97] Para 29, EIC

aviation services it needs to develop its airport facilities and diversify and maximise its sources of income.

[171] Even if we concluded that PAL could carry on at its present level and standard of operation without any sources of income other than those which it presently has (and we do not conclude that), the concept of sustainable management does not require the status quo to simply continue. Provided the imperatives contained in s5 (a)-(c) can be satisfied, RMA contemplates management of use, development and protection, not just retention of the status quo. PAL proposes such development to enable it and the community to provide for their economic wellbeing.

Effect on Paraparaumu Town Centre

[172] The second aspect of PAC's economic case was the contention that development at the airport would have adverse effects on the Paraparaumu Town Centre. Dr Hudson addressed that matter. It was his opinion that development of the airport land would have the effect of increasing the supply of commercial land in the Kapiti District by some 206%. He contended further that development of the airport land would run the risk of constructing an alternative retail and commercial hub away from the Coastlands Shopping Centre, which is intended to be the commercial centre of the region.

[173] PAL's economic evidence in this regard was from Dr J D M Fairgray. Insofar as the oversupply of commercial land aspect was concerned, Dr Fairgray noted that Dr Hudson's 206% figure came from a document known as the McDermott Miller Report which had considered the demand and supply of retail and commercial space in the district. This report had been produced in 2007 to assess the combined effects of Plan Change 73 and another Plan Change 72A, which also provided for further commercial development in Kapiti.

[174] Dr Fairgray pointed to two basic flaws in Dr Hudson's use of the McDermott Miller Report, namely that:

- The Report included combined total additions to commercial/retail floor space which might arise out of Plan Change 73 and Plan Change

72A, with floor space from both plan changes being included in its calculations;

- On a worst case scenario the airport total of additional retail/commercial floor space (57,400m^2) is 44% of existing floor space rather than the 206% cited by Dr Hudson. Dr Fairgray contended that the actual increase of floor space for comparison retailing brought about by Plan Change 73 would in fact be a 19% increase in such floor space.

[175] Dr Hudson accepted that his 206% figure was not correct but would not concede that Dr Fairgray's figure was correct. He contended that the correct figure was somewhere between 19 and 206%.

[176] Ultimately we have considerable difficulty with Dr Hudson's evidence. There are a number of reasons for that:

- In his evidence-in-chief he referred to the fact that the District Plan focused on Coastlands as the commercial centre of the region. In cross-examination he acknowledged that he had not actually read the District Plan.
- He further acknowledged in cross-examination that he had not read the provisions of Plan Change 73 as it had emerged following the Council hearing and as it had been further amended prior to this hearing.
- Dr Hudson contended that he had received information from property owners that there was already an excess supply of commercial land in the Kapiti Coast area.[98] It appears that information came to him *orally some time ago.*[99] There was no evidence whatever that he had made any attempt to verify this information.

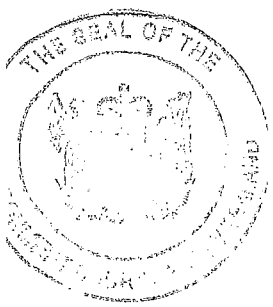
[177] We consider that there were manifest inadequacies and inaccuracies in Dr Hudson's evidence and that we cannot place any reliance on it. A particularly significant aspect of Plan Change 73 is a series of restrictions and spatial limitations on the type, scope and size of retail or commercial activity which might be undertaken

[98] Para 15, EIC
[99] Page 801, NOE

in the Airport Zone. These restrictions and limitations were included in Plan Change 73 and were expanded by the Council Hearings Commissioners, to ensure that development at the airport was not in competition with the Town Centre. Assessment of the effect of Plan Change 73 on the Town Centre needed to be based on the restrictions and limitations imposed on retail/commercial activities by the Plan Change. Dr Hudson simply had no regard to those restrictions and limitations. (We address these matters in more detail in our discussion on planning issues).

[178] We do not consider that there was any credible challenge to the economic evidence given by Dr Fairgray on behalf of PAL. We record the conclusions reached by Dr Fairgray as follows:

> *7.1 I have examined the Plan Change, in relation to the role of the Airport in the economy, the implications for Kapiti's economic growth, and the potential effects for the retail sector.*
>
> *7.2 The Airport currently has a minor role in the Kapiti Coast economy. This role may increase in the future, given the sound growth prospects for air transport, and I consider it will be of benefit to the economy if the airport function is maintained. I do not consider that the use of part of the airport land area for other business uses will materially limit the potential for air transport sector growth. Rather, additional business activity in Kapiti enabled on the airport will provide additional demand for air services.*
>
> *7.3 I consider that the development enabled on the Airport is likely to enhance economic growth and employment within Kapiti Coast, and thereby contribute to economic wellbeing in the community.*
>
> *7.4 The provision for trade activity and limited retail activity will be a catalyst for the overall development of the Airport into the long term, and is an important component in achieving the wider economic growth potential.*
>
> *7.5 I consider that the proposed provisions will mean that significant impacts on the Town Centre, and other retail centres in the District would be avoided.*
>
> *7.6 On this basis I support the Plan Change.*



We accept Dr Fairgray's conclusions.

[179] Accordingly, for the various reasons set out in the preceding paragraphs of this section we do not accept the economic case advanced by PAC. Dr Fairgray's conclusions above and our findings in para [171] represent our conclusions on these issues.

Tangata Whenua Issues

[180] Te Ngarara represents the interests of persons who have an ancestral relationship with the land now occupied by the airport. Mr A W White (one of PAL's planning advisors) contended that Te Ngarara did not represent all of the descendents of the original owners of the airport land, however we did not understand there to be any dispute that Te Ngarara represents a substantial body of those descendents.

[181] As we have noted previously, Paraparaumu Airport was compulsorily acquired from its then owners in the late 1930s as a military airfield.

[182] At the time the airport land was taken it was owned by members of Puketapu Hapu. The airport land was part of a wider parcel of land known as Ngarara West B Block. Members of Puketapu had occupied this land from the time they arrived in the area from Taranaki in the 1820s.

[183] Evidence detailing the individual connections of hapu members with the airport land was given by a number of witnesses. The only one of these witnesses who was cross-examined was Mr G Jenkins, the current chairperson of Te Ngarara. He explained that Te Ngarara was incorporated in 1995 to take forward with the Crown issues concerning the rights of the original land owners of the airport.

[184] Mr Jenkins advised that Paraparaumu Airport represented . . . *the single largest taking of land from Maori in the greater Wellington area.*[100] He and other hapu members expressed their concerns as to the way in which Paraparaumu Airport has devolved from an airport established for military aviation purposes and owned by

[100] Para 6 EIC

the Government, into a privately owned general aviation facility on which a range of developments has occurred and where further development (including development of a commercial nature) is now proposed.

[185] The evidence of the witnesses for Te Ngarara and the continued presence of a number of hapu members throughout the hearing testified to the strong sense of grievance and bewilderment which they felt as to loss of the airport lands. As Te Ngarara formally conceded, however, matters relating to ownership of the land are beyond this Court's jurisdiction to consider and it would be inappropriate for us to make any comment regarding them.

[186] To the extent necessary, we hold that the lands occupied by Paraparaumu Airport are Maori ancestral lands as referred to in s6(e) RMA and defined by the High Court in *Royal Forest & Bird Protection Society Inc v W A Habgood Ltd and Others.*[101] as being *...land which has been owned by ancestors.* We say to the extent necessary because the history of the airport land, the connection of Te Ngarara members with that land and its ongoing significance to them were uncontroverted before us.

[187] The concerns of Te Ngarara with regard to Plan Change 73 were presented to us as falling into two categories:

- Consultation/mandate issues; and
- Physical works issues.

Consultation/Mandate Issues

[188] Insofar as the former is concerned it was Te Ngarara's position that they had not been consulted about Plan Change 73 and that as a consequence the matters identified in ss6(e),7(a) and 8 RMA were not appropriately provided for by the Plan Change. During the course of the hearing we expressed concerns to the parties as to whether there was any value in a debate about adequate consultation.

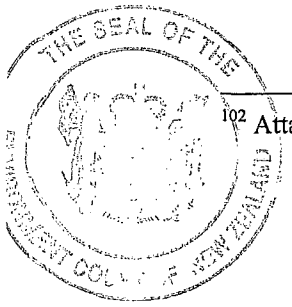
[101] (1987) 12 NZTPA 76

[189] We indicated an initial view that Schedule 1, RMA does not impose any obligation on a requestor for a private plan change to consult and that the failure to do so does not invalidate a plan change. That is not to say that the Court approves of or recommends plan change (or other RMA) processes being undertaken without appropriate consultation with interested parties. Requestors or applicants who fail to consult with interested parties may find themselves subject to the accusation that their proposal does not adequately accommodate those interested parties because of a failure to consult. That is what Te Ngarara is saying in this instance.

[190] The issue of consultation was dealt with in some detail in the evidence of Messrs Robinson and White for PAL. Their evidence established that when PAL made enquiry as to the appropriate organisation to consult over issues of interest to tangata whenua, they were advised that Te Runanga o Ati Awa ki Whakarongotai Incorporated (Te Runanga) was the mandated iwi organisation with whom consultation would be undertaken in connection with airport land.

[191] Consultation with Te Runanga was extensive. Among other things the consultation included a hui at Whakarongotai Marae on 4 April 2007 which was attended by the then chairman of Te Ngarara and other members.

[192] The ultimate outcome of that consultation has been the execution of a relationship agreement between Te Runanga, Ati Awa ki Whakarongotai Charitable Trust and PAL dated 17 November 2008, which Mr Robinson produced to the Court.[102] The relationship agreement envisages an ongoing relationship between PAL and Te Runanga, so that the airport land might be developed in a way which recognises the relationship of Maori with that land. The relationship agreement identifies a number of mechanisms to enable that to happen. Some (but not all) of those mechanisms go beyond the scope of the Plan Change, but the agreement establishes a co-operative relationship between Te Runanga and PAL regarding a range of airport issues.



[102] Attachment 6 EIC

[193] Te Ngarara expressed vehement opposition to the existence of the relationship agreement, which they say was entered into without their knowledge or approval and that PAL should not have been negotiating at all with Te Runanga over the airport land but rather with Te Ngarara.

[194] PAL was well aware of the interest of Te Ngarara in the airport lands. The opening provision of the relationship agreement states:

> *(1) **ACKNOWLEDGEMENT OF GRIEVANCE FELT BY ORIGINAL LAND OWNERS***
>
> *1.1 PAL acknowledges that the Original Land owners feel aggrieved towards the Crown in relation to the taking of the Airport Land under the Public Works Act 1928.*

[195] The evidence of Messrs Robinson and White established that from the early stages of their contact with Te Runanga, PAL was made aware of the interests of the past owners in the airport lands.

[196] The evidence established that PAL did engage actively with Te Ngarara with respect to its claim with the Crown for compensation for loss of the airport lands. Mr Robinson testified that PAL had spent somewhere in the order of $200,000[103] in assisting that claim by the provision of research.

[197] Mr Watson however put it to Mr Robinson that this involvement was completely separate from the matter of Plan Change 73 and that having engaged with Te Ngarara in respect of their land claim, PAL ought similarly have engaged with them in respect of Plan Change 73, as opposed to dealing with Te Runanga.

[198] Mr Watson challenged Mr Robinson on the appropriateness of entering into the relationship agreement with Te Runanga when he was aware of Te Ngarara's interests in the airport land. It was Mr Watson's contention that by entering into the relationship agreement with Te Runanga, PAL had failed to adequately address Te Ngarara's ancestral connection with the airport lands.[104]

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[103] Page 43, NOE
[104] Pages 47 and 48 NOE

[199] Mr Robinson appeared somewhat bemused with this line of questioning. He testified as to the extent of his attempts to negotiate directly with Te Ngarara and some of its members, as did Mr White. We accept that evidence although, for the reasons which we have previously given, the issue of consultation is not directly relevant to our decision as to whether or not to grant approval to the Plan Change. The real issue is the extent to which Plan Change 73 recognises and provides for the relationship of Maori with their ancestral lands.

[200] A further aspect of the consultation between PAL and Te Runanga was addressed in the planning evidence of Mr Aburn for PAL. He referred to the Iwi Management Plan which Te Runanga has brought down for its rohe. Mr Aburn advised that the Iwi Management Plan identified four issues of primary concern to iwi being:

- Earth/Whenua;
- Water/Wai;
- Air/Hou;
- Fire/Ahi kaa.

[201] Mr Aburn's evidence went on to address the manner in which Plan Change 73 dealt with these issues of primary concern and also identified various amendments which were made to the Plan Change following discussions between PAL and Te Runanga. Mr Aburn concluded that the Plan Change did have due regard to the relationship of Maori with their ancestral lands . . . *insofar as this is possible through the tenets of the RMA.*[105]

[202] There was no challenge to Mr Aburn's evidence that Plan Change 73 accommodated those aspects of the Iwi Management Plan which he had identified.

[203] Mr Watson's cross-examination of Mr Aburn did not address the conclusion which he had reached but rather was addressed at the relationship between Runanga

[105] Para 8.116 EIC

and hapu. Exhibit 13 was a copy of the Iwi Management Plan. Relevant provisions included the following:

- *The first test or filter of any action from the Runanga and any of its contingent business units is to ask "how will this benefit the hapu"?*
- *The basis function of a Runanga is to provide for the development of hapu. In this sense the Runanga is a collective channel for information, funds and efforts on behalf of the hapu. It follows that the Runanga then needs to develop a structure and system that seeks hapu views and representation as well as disseminate information back out to the hapu.*
- *The Runanga structure must never preclude the rights of whanau and hapu members as individuals to seek representation or develop agreements alongside the iwi authority (Runanga).*[106]

[204] We consider that it was entirely appropriate for PAL to negotiate with Te Runanga in respect of the Plan Change. Te Runanga is the recognised iwi authority for this part of the Kapiti Coast and is the author of the Iwi Management Plan, which provides that Te Runanga is a channel for information on behalf of hapu. One of the functions of Te Runanga is to seek hapu views and to disseminate information to hapu.

[205] The evidence satisfied us that PAL did not deal with Te Runanga in an endeavour to bypass or avoid Te Ngarara's interests in the airport lands and it was entitled to anticipate that Te Runanga would act in its role as a channel of information for hapu. In any event, the evidence established that PAL did make reasonable attempts to engage directly with Te Ngarara over Plan Change 73.

[206] We consider that finding is borne out by Te Ngarara's approach to these proceedings. In his closing submissions for PAL, Mr Matheson described Te Ngarara's attitude to Plan Change 73 as one of *implacable opposition.* We think that is correct.

[207] We invited Mr Watson to identify exactly what it was that Te Ngarara sought in respect of Plan Change 73. He advised that Te Ngarara maintained the position

[106] Objective 1, Iwi Management Plan

that the Plan Change ought to be *cancelled.*[107] We think that ultimately Te Ngarara's position was made clear in the cross-examination of Mr Jenkins by Mr Matheson and in particular the conclusion to that cross-examination where Mr Jenkins stated:

> *Simple common sense approach to the matter would be, you guys know all about airports, you run the business at the airport. We as original landowners simply sit underneath you. Our relationship with the land is guaranteed for our future generations. No longer disenfranchised. Providing so much more opportunities for our families to work together. Not as cleaners, not as contractors, but as land owners.*

And further:

> *What we truly seek is a resolution to this matter along those lines. We wish to return to the status of landowners . . .* [108]

[208] Notwithstanding Mr Watson's advice to the Court that Te Ngarara recognised that the Court could not deal with ownership issues, it became apparent that ownership issues were in fact at the heart of what Te Ngarara sought. That observation is entirely consistent with the initial submission which Te Ngarara filed in respect of Plan Change 73. The only issue raised in that submission related to ownership.

[209] It was only when filing its appeal that Te Ngarara raised resource management issues which went beyond questions of ownership. PAL sought to strike out Te Ngarara's appeal on the basis that it raised issues not encompassed in the original submission. The Court declined to strike out the Te Ngarara appeal, holding that it was open to an appellant to raise grounds or reasons for appeal beyond those identified in its initial submission, although the relief available was confined to the initial submission.[109]

[210] Mr Watson maintained a position that Plan Change 73 failed to adequately provide for the relationship of Te Ngarara with their ancestral lands. That in itself is a proposition which is within the jurisdiction of the Court to consider. However when pressed as to how Plan Change 73 might accommodate that relationship, Te Ngarara's position came back to one of ownership. No other means of recognising the

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[107] Page 879 NOE
[108] Page 892 NOE
[109] Decision W 078/2008

relationship was identified by Te Ngarara, notwithstanding PAL's advice that it is prepared to discuss such issues with Te Ngarara.

[211] The Court is simply unable to accommodate Te Ngarara's wishes in this regard. If Te Ngarara had suggested ways in which their relationship with the (now) airport land might be recognised other than through ownership reverting to descendants of the original owners, we would have considered such proposals and PAL similarly indicated a willingness to do so. No such suggestions were made to us.

Physical Works Issues

[212] The second issue arising out of the Te Ngarara appeal might be described as an archaeological issue or rather a concern as to how development on the airport lands might affect sites of concern to Maori.

[213] Comprehensive briefs were filed with the Court from two archaeologists, Ms M P O'Keefe for PAL and Ms S Forbes for Te Ngarara. The archaeologists' evidence must be considered in conjunction with the evidence of Mr B Stirling, a historian, who gave evidence on behalf of Te Ngarara regarding Maori occupation and settlement of the Ngarara West B Block.

[214] The evidence established that the airport land (together with other areas of land at Paraparaumu and Kapiti generally) was intensively occupied and used by Maori.

[215] The airport land was made up of coastal dunes and wetlands. Establishment of the airport in the late 1930s involved massive earthworks and alteration to the physical landscape. It appears that the airport development works devastated the sand dune/wetland system and were carried out with no reference to archaeological or Maori concerns. At least part of an urupa in the northwest of the airport lands was disturbed and bodies apparently just reburied elsewhere.

[216] These works were carried out extensively across the (now) airport land. To the casual observer today, the airport generally represents a large, flat, clear area typical of airports and airfields anywhere. The evidence before us, including photos,

maps and plans which witnesses produced, established that the present day picture is vastly different in a physical sense to that which existed prior to the airport development.

[217] Ms Forbes and Ms O'Keefe were both cross-examined at length. Ultimately, however, the matters in dispute between them seemed to come down to a couple of discrete issues.

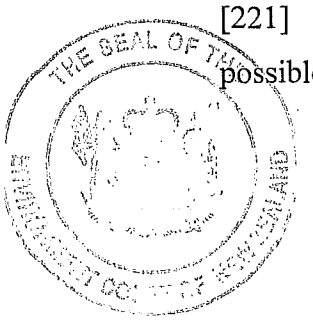
[218] The archaeologists agreed that the airport land will certainly include archaeological sites as defined in the Historic Places Act 1993, namely:

> . . . *any place in New Zealand that:*
>
> *(a) Either -*
>
> *(i) Was associated with human activity that occurred before 1900; or*
>
> *(ii) Is the site of the wreck of any vessel where that wreck occurred before 1900; and*
>
> *(b) Is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand:*

[219] Ms O'Keefe noted that only one archaeological site had been recorded within the airport itself (a pa site) and that had been levelled in the course of the airport development. However she considered that there was a high degree of likelihood that further archaeological sites might be uncovered in the course of development of the airport land proposed by PAL and that associated earthworks would trigger the need for a consent to modify pursuant to s12, Historic Places Act. Ms O'Keefe was of the view that any development works on the airport would be subject to that process.

[220] Two areas in particular were the subject of some focus in archaeological terms. These were identified as areas X and Y on an Area Precinct Plan, which Mr Matheson had put to Ms Forbes as Exhibit 25 and which is now to be incorporated into the Plan Change.

[221] Area X is situated in the northwest corner of the airport lands and identifies a possible urupa site.

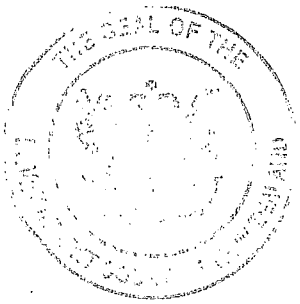


[222] Area Y incorporates the south-eastern most corner of airport land and contains a largely unmodified area of sand dunes where PAL proposes to undertake further runway extensions and related works. Although Ms Forbes queried the identification of Exhibit Y as a discrete area, we understood it to be Ms O'Keefe's view that this area of remnant sand dunes is likely to contain archaeological sites, probably middens and ovens.

[223] During the course of the hearing, a discussion took place between Ms O'Keefe and Ms Forbes and they signed an agreed statement on archaeological matters. The statement read as follows:

Following discussion between the two archaeological witnesses, the following statement about the archaeological matters to do with the proposed plan change for Paraparaumu Airport has been agreed on:

1. *The following recorded archaeological sites are within the land that is the subject of this plan change hearing:*
   - *Beckett's pa 3, located in the middle of the main runway*
   - *R26/386, archaeological evidence of a midden and possible pits*
2. *The following recorded sites are located close to the land that is the subject of this plan change hearing:*
   - *R26/290, middens, food preparation areas (including hearths)*
   - *R26/407, middens*
   - *Beckett's pa 7*
   - *Beckett's pa 2 (possibly the location of Te Uruhi)*
3. *Many other recorded and unrecorded sites exist in the heritage landscape of the airport lands.*
4. *There are numerous other recorded sites located within the wider vicinity of the area, that are not affected by this plan change hearing except through their physical and associative relationships with evidence and heritage places inside land covered by the proposed plan change.*
5. *Ms Forbes acknowledges than some of the sites shown on her annexed plan are incorrectly marked as NZAA recorded sites and should be noted as unrecorded evidence and that R26/386 was not correctly positioned. It is also noted that the position of R26/290 on the O'Keeffe map is also slightly incorrect. Precise positioning of NZAA sites is often difficult because map*



co-ordinates only mark one part of a site. R26/290 extended over a wide area of dunes.

6. *There is an urupa/cemetery located on land at the north of the current runway.*
7. *The urupa was almost certainly larger than the surveyed cemetery shown on the CT plan.*
8. *Much of the area to the south of the runway will be left unmodified, through the planned stream rehabilitation programme. Earthworks for landscaping and stream rehabilitation have the potential to modify unrecorded archaeological evidence but may also afford opportunities for protection if archaeological testing can help avoid modification or damage.*

The witnesses could not agree on the following matters:

1. *The extent of the urupa/cemetery located on land to the north of the runway.*
2. *Means of mitigating effects on known and likely evidence.*[110]

[224] It will be seen that the matters which the witnesses did not agree on were:

- The extent of the urupa to the north of the main runway (Area X); and
- Means of mitigating effects on known and likely evidence (of archaeological sites).

[225] Insofar as Area X is concerned there was no dispute between the witnesses that an urupa existed in this vicinity. The argument between them was as to where this started and finished. At some time in the past a part of the urupa had been surveyed as a cemetery, but both witnesses agreed that the urupa extended beyond the surveyed cemetery.

[226] The urupa/cemetery would have encompassed land now incorporated in a residential development at McGrath Avenue, which extended into the urupa. There was evidence of bodies being removed during the course of that development. However Area X extended well beyond the area where bodies had previously been discovered.

[110] Exhibit 24

[227] Attached to Exhibit 24 was an aerial photograph of this corner of the airport and surrounding lands. The area where residents had said burials had been uncovered was outlined in red on the photograph. This red area incorporates only a very small corner of the airport land and only a small portion of Area X. We understand that the (approximately) eastern boundary of the red area followed the toe of a sand dune and that the sand dune was the most likely burial site.

[228] We appreciate that it is difficult to be precise as to the extent of the urupa. We understood that other than the very north-western most corner of Area X, no bodies had been uncovered in the balance of that area. The significance of identifying Area X was that PAL proposed a rule for this area that unless disturbance consent pursuant to s12, Historic Places Act had been granted, the undertaking of any earthworks within the area would require restricted discretionary activity consent, as opposed to a controlled activity consent which Plan Change 73 would otherwise require.

[229] The evidence satisfied us that Area X contains a considerable margin of safety beyond any area where bodies have previously been discovered. The restricted discretionary activity rule would enable the Council to consider the possible effect of any earthworks on the urupa in this vicinity should a consent from the New Zealand Historic Places Trust (NZHPT) for such works not have been obtained and if need be decline such application. Even if a consent had been obtained from NZHPT, the Council will still have the power to impose additional conditions on a controlled activity consent over and above those imposed by NZHPT.

[230] We note further that Area X largely encompasses land included in the proposed Airport Buffer Precinct and that development is not proposed in this Buffer Precinct in any event. The purposes of the Buffer Precinct include, the protection of amenity, provision of public access, provision of open space and protection and enhancement of ecological and conservation values. A proposed Ihakara Street extension runs along the eastern boundary of Area X but does not intrude into it. We understood PAL to accept that the earthworks which will be required for the Ihakara Street extension will certainly trigger the need for NZHPT consents totally outside of any District Plan processes.

[231] The second issue about which Ms O'Keefe and Ms Forbes disagreed (mitigating effects) related to Ms Forbes' contention that a comprehensive archaeological investigation of the airport lands ought to have been undertaken before Plan Change 73 proceeded. We do not consider that to be the case. That proposition appears to overlook the fact that the vast majority of the airport land has already been developed and subjected to extensive modification. PAL accepts that such modification notwithstanding, any further development works on the airport land (including land already developed) will still require NZHPT approval and if it exceeds permitted activity standards (as any extensive works will do),at least controlled activity consent under the District Plan.

[232] We refer to our earlier discussion about Area X. To the extent that any development does take place in Area X (and development is not anticipated in that area), such works will be subject to a restricted discretionary activity consent application, unless permission for the works has first been obtained from NZHPT in which case controlled activity consent will be required. Appropriate investigations will need to be undertaken for any one or all of these consents.

[233] Insofar as Area Y is concerned, Ms Forbes questioned why similar controls as were proposed for Area Y should not apply over all other areas of the airport. However, we felt that the answer to that was clear. PAL proposes the extension of the airport runway into Area Y giving rise to substantial physical works. Area Y represents one of the last unmodified areas of sand dune still remaining on the airport land.

[234] The works proposed at this southern end of the airport land include:

- Extension of runway;
- Establishment of grassed safety overrun area;
- Extension of Ihakara Street around the safety area;
- Diversion of Wharemauku Stream;
- Stream rehabilitation and creation of an ecological area for public use and recreation.

This work will lead to substantial modification of the dunes in Area Y. Ms O'Keefe accepted that it was possible that there would be archaeological sites in Area Y, most likely middens and ovens. She did not consider discovery of burial sites likely in this area, although she acknowledged that could not be discounted.

[235] As with Area X, it was PAL's position that if earthworks are to be undertaken in Area Y (and they are to be) such works will require restricted discretionary activity consent, unless an authority pursuant to s12, Historic Places Act has been granted, in which case the works would be a controlled activity. Rules to this effect (Rules D.9.1.2(vi) and 9.1.3(vi)) were inserted into the final proposed version of Plan Change 73 submitted by PAL at the conclusion of the hearing.

[236] Furthermore, Rule D.9.1.2(vi) provides that controlled activity earthworks are subject to permitted activity standards which require that...*no earthworks shall involve the disturbance of more than 100m3 (volume) of land and shall alter the existing ground level by more than 1.0 metre, measured vertically, in any 10 year period.* Accordingly, any earthworks involving more than quite limited disturbance will automatically require restricted discretionary activity consent under the District Plan quite outside of the need to have obtained disturbance consent from NZHPT. Effects on archaeological values and sites of significance to iwi are the matters in respect of which discretion is reserved.

[237] Additionally we note that the controlled (permitted) activity standard contains the following protocol:

> *Should a waahi tapu or other cultural site be unearthed during earthworks the operator and/or owner shall:*
>
> *a) Cease operations in the vicinity immediately;*
>
> *b) Inform local iwi;*
>
> *c) Inform the NZ Historic Places Trust (NZHPT) and apply for the appropriate authority if required; and*
>
> *d) Take appropriate action, after discussion with NZHPT, Council and Tangata Whenua (in particular a representative of those tangata whenua who have an ancestral connection to the Airport land), to remedy damage and/or restore the site.*

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

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

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

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

- Firstly, earthworks are not permitted activities in Areas X and Y.
- Secondly, earthworks are controlled activities in Areas X and Y only if they have an approval under the Historic Places Act and involve disturbance of less than $100m^3$ of earth and do not alter the ground level by more than 1.0 metre over any 10 year period. Earthworks which do not comply with these standards require restricted discretionary activity consent with discretion directed to effects on archaeological values and sites of significance to tangata whenua.
- Thirdly, earthworks involving disturbance of more than $100m^3$ and altering ground level by more than 1.0 metre anywhere else on the airport land or earthworks closer than 20 metres to a water body require controlled activity consent.
- Fourthly, if any earthworks unexpectedly disturb any cultural site, notwithstanding the other controls in place, then the disturbance protocol is applicable. The protocol now makes specific provision for the involvement of tangata whenua with ancestral connections to the airport land in subsequent processes.
- Fifthly, the footnotes to the permitted activity standard in Plan Change 73 give specific warnings about archaeological sites and the need for NZHPT approval.

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

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

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

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

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

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

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

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

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[111] Page 441 NOE

[112] Notice of Appeal (25 June 2008) Para 6.2

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

Mr T M Kelly on behalf of PAL.

Mr P R Brown provided peer review evidence for PAL.

Mr G P Clark, on behalf of PAC.

Mr D J Dunlop, on behalf of the Council.

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

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

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

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

[6] Summary

6.1

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

6.2

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

6.3

In the light of this caucusing we believe that there are no points of disagreement regarding the traffic related impacts of Proposed Plan Change 73.

[113] MOE, page 10

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

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

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

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

> *The Airport Land is currently serviced by Kapiti Road. As the main route in the district linking coastal residential communities with Paraparaumu town centre, Kapiti Road carries significant volumes of traffic and congestion is a regular occurrence. The dual function of State Highway 1 as both a strategic State highway and a local north – south distributor road also results in high traffic volumes with some congestion at peak periods*
>
> *The proposed Western Link Road ("WLR") will provide a new local north-south route through the district. This Council-led project will provide a significant degree of traffic relief to the State highway and much of the local road network. The WLR alignment is fully designated and construction is programmed to commence in 2009, irrespective of the outcome of Plan Change 73 to the Kapiti Coast District Plan ("Plan Change").*
>
> *The WLR includes a link between Ihakara Street and the WLR itself, to be constructed by the Council. As part of the proposed Airport development (and hence reliant upon the Plan Change), this route would be continued through the development area, connecting to Kapiti Road close to*

[114] Kelly, NOE, page 495
[115] Watson O/S para 57

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

The combined effect of these improvements to the road network will be to ensure that the additional traffic movements associated with development in the Airport area (up to a development threshold of 102,900^2 floor-space) can be accommodated with a level of effect on the transportation network which is acceptable.

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

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

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

***Methods** (p9) ADD the following bullet point:*

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

[116] Kelly EIC 2.1 – 2.6

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

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

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

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

Extent of Control:
Impacts on the existing road network

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

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

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

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

[117] Exhibit 23 Page 2
[118] Exhibit 23 Page 1

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

And further Mr Dunlop said:

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

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

[258] Mr Clark's evidence was that while the risks of adverse traffic effects as a result of the KCDC failing to implement the identified traffic management techniques, such as traffic signal timings, is low the impacts of such inaction are high[122] and for that reason a Rule in the Plan is required. It was Mr Clark's opinion that the Council may bow to pressure from some sectors of the community and delay implementation of the traffic management techniques or not act at all.

[259] Mr Aburn was unequivocal:

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

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[119] NOE page 515
[120] NOE page 517
[121] NOE, page 502
[122] NOE, page 725
[123] NOE, Page 751

Discussion

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

(1) Development completed on the airport site (beyond specified thresholds) prior to WLR becoming operational.

(2) The Council, for whatever reason, failing to implement traffic management measures, such as traffic signal timing. (A combination even Mr Clark agrees is of low probability and we believe unlikely).

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

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

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

He replied:

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

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

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

[124] NOE, page 739
[125] NOE, page 740
[126] NOE, page 741

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

- Eastern intersection
- Langdale intersection
- Hurley Road intersection

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

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

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

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

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[127] Proposed Plan Change 73. D 9 2.2. Traffic and Development Thresholds

[128] NOE, page 735

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

Finding

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

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

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

Planning Issues

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

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

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

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

Strategic Issues

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

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

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

- Transportation Resource Management Issues B.19.4 (iv),p76
  Paraparaumu Airport is a well established facility of strategic importance providing the district and wider region with a range of aviation services;

- Airport Zone C.19, p.C19-1
  Paraparaumu Airport is an important strategic facility for the District. It represents a significant physical and economic resource that needs to be managed to enable the continued use and development of a range of aviation, aviation related, and weather monitoring services.

[129] Para 74 EIC

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

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

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

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

Existing Plan Provisions

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

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

- Aviation and aviation activities;
- Recreation Activities;
- General business activities, including retailing but with permitted activity retailing limited to premises not exceeding 249m^2;
- Warehousing, storage and distribution activities;
- Residential activities;

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

[282] In response to questions from the Court, Mr Guerin acknowledged that the existing provisions of the District Plan do not impose an obligation on the airport operator to keep Runway 11/29 open. Any control in that regard is presently a negative control which precludes the area of the runway being used for other purposes[130], but cannot compel the airport operator to retain the runway.

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

Plan Change 73

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

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

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

[130] Page 559 NOE

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

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

- Rule D.9.1.1 (ii) provides that within the Airport Mixed Use Precinct permitted activities include:
  Commercial activity, (including logistics or distribution uses) provided that retail activity shall be limited to:
  - *Retail activity ancillary to Industrial or Warehousing activities within the Precinct;*
  - *Large Format Retail activity;*
  - *Home Improvement Retail activity;*
  - *Automotive and Marine Equipment Retail activity;*
  - *Small Scale Convenience Retail activity;*
  - *Small Scale Commercial Services activity;*
  - *Retail activity permitted by the definition of "Service Station"*

  (The Definitions section of the Plan defines the various categories of activity referred to above and sets standards or limitations as to the types of goods which might be sold and maximum and minimum floor areas for those activities within the Zone).
- Controlled Activity Rule D.9.1.2 enables...*Within the "Airport Mixed Use Precinct", any Development where the gross floor area in the Precinct does not exceed 102,900m^2 of development...* as a controlled activity.
- Rule D.9.1.3 provides that activities resulting in the gross floor area of development in the Airport Mixed Use Precinct being greater than 102,900m^2 but less than 282,450m^2 are restricted discretionary activities, with the matters of discretion being restricted to transport issues;
- Rule D.9.1.5 provides that retailing /commercial services activities which are not prohibited and are not listed as permitted activities or do not comply with permitted activity standards are non-complying activities;

- Rule D.9.1.6 prohibits the following activities in the Airport Zone:
    - Department stores;
    - Supermarkets;
    - More than one store of between 151m^2 and 1500m^2 gross floor area that retails groceries or non-specified food lines;
- Permitted activity standard 9.2 then imposes a series of threshold standards for retail and commercial activity within the Airport Mixed Use Precinct. It limits the total areas which can be given over to Large Format Retail activity, Home Improvement Retail activity, Small Scale Retail activity and Small Scale Commercial Services. The standard also limits the number of Small Scale Retail and Commercial Service activities which could be located in a single node.

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

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

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

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

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

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

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

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

[131] Para 176 (Supra)

Section 32

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

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

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

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

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

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

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

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

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

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

[300] Disbenefits identified in Option 1 were:

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

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

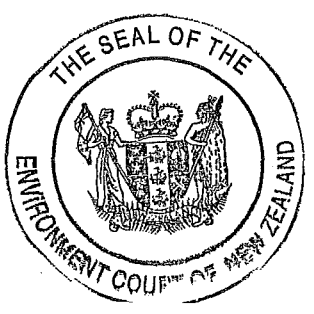
[302] Insofar as Option 2 was concerned, the following benefits were identified:

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

[303] Disbenefits identified in Option 2 were:

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

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



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

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

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

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

airport buffer and increased recession planes relative to residential properties;

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

[308] Disbenefits identified were:

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

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

> ***2.0 PREFERRED OPTION***
>
> *In terms of the scale, intensity and ambience components of this area, the modified zoning policies and methods (Option 3) are a more appropriate way of achieving the plan's objectives and policies than the notified plan change (Option 2).*
>
> *The viability of the airport is considered to be of strategic importance to the community. Making provision for non-aviation activities in the Airport Zone will allow the aviation facilities to be developed to a standard envisaged by the District Plan, and importantly where regular scheduled air services are a definite prospect. Option 3 ensures that the level and nature of these commercial activities are such that adverse effects on the viability of the Town Centre will be avoided.*

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

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

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

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

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

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

[314] Section 290A RMA provides:

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

[132] Para 309 (Supra)

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

Part 2 RMA

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

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

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

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

[133] Para 162 (Supra)

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

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

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

> ***6 Matters of National Importance***
>
> *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*
>
> *(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
>
> *(f) The protection of historic heritage from inappropriate subdivision, use, and development.*

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

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

[323] The relevant provisions of s7 RMA provide:

> *7 **Other Matters***
>
> *In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –*
>
> *(a) Kaitiakitanga:*
>
> *(aa) The ethic of stewardship:*
>
> *(b) The efficient use and development of natural and physical resources:*
>
> *(c) The maintenance and enhancement of amenity values:*
>
> *(d) Intrinsic values of ecosystems:*
>
> *(f) Maintenance and enhancement of the quality of the environment:*
>
> *(g) Any finite characteristics of natural and physical resources.*

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

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

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

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

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

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

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

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

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

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

[333] Section 8 RMA provides:

> ***8 Treaty of Waitangi***
>
> *In achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).*

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

Conclusion

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

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

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

[134] Paras 143, 144 and 145 (Supra)

DATED at WELLINGTON this 3rd day of September 2009

For the Court:

H M Beaumont
Environment Commissioner

J R Mills
Environment Commissioner

B P Dwyer
Environment Judge