BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL HEARINGS PANEL

UNDER	the Resource Management Act 1991
IN THE MATTER	of the review of parts of the Queenstown Lakes District Council's District Plan under the First Schedule of the Act
AND	
IN THE MATTER	of submissions and further submissions by **REMARKABLES PARK LIMITED**

MEMORANDUM OF COUNSEL FOR REMARKABLES PARK LIMITED

DESIGNATIONS – QUEENSTOWN AIRPORT

21 OCTOBER 2016

BROOKFIELDS
LAWYERS
J D Young / C E Adams
Telephone No. 09 379 9350
Fax No. 09 379 3224
P O Box 240
DX CP24134
AUCKLAND

MAY IT PLEASE THE PANEL:

1. **Attached** and marked "**A**" are copies of the two decisions of the Environment Court relating to the Lot 6 NOR to which counsel for RPL referred yesterday[1]. For completeness, the other decisions of the Environment Court and High Court in relation to the Lot 6 NOR are:

   (a) **Queenstown Airport Corporation Ltd & Anor v Queenstown Lakes District Council** [2013] NZHC 2347;

   (b) **Re Queenstown Airport Corporation Ltd** [2014] NZEnvC 244; and

   (c) **Re Queenstown Airport Corporation Ltd** [2015] NZEnvC 222.

   The proceedings remain extant and no final determination has been made as to whether the NOR will be accepted or rejected (in whole or in part). When such a determination is made, all parties will have full rights of appeal.

2. Also **attached** and marked "**B**" is the decision **Waitakere City Council v Minister of Defence** [2006] NZRMA 253 to which counsel referred in respect of an appeal against a decision of a requiring authority under section 176A.

DATED the 21st day of October 2016

J D Young / C E Adams

Counsel for Remarkables Park Limited

[1] **Re Queenstown Airport Corporation Ltd** [2012] 18 ELRNZ 489, and **Re Queenstown Airport Corporation Ltd** [2013] NZEnvC 95.

“A”

Re Queenstown Airport Corp Ltd

[2012] NZEnvC 206

Environment Court, Wellington
(ENV-2011-WLG-41)
16-20, 23-26, 30, 31 July;
25 September 2012

Judge Borthwick, Commissioners Dunlop, Bunting

Resource management — Consents — Effects — Adverse environmental effects — Queenstown Airport Corp Ltd applied for notice of requirement to alter the District Plan to extend Queenstown aerodrome — Definition of "requirement" — Whether objective of notice of requirement could be met within the existing designation — Resource Management Act 1991, ss 7, 149U, 171(1)(a), 171(1)(b), 171(1)(c).

Resource management — Designations — Airports — Queenstown Airport Corp Ltd applied for notice of requirement to alter the District Plan to extend Queenstown aerodrome — Definition of "requirement" — Whether the objective of notice of requirement could be met within the existing designation — Resource Management Act 1991, ss 7, 149U, 171(1)(a), 171(1)(b), 171(1)(c).

Words and Phrases — "Requirement".

Words and Phrases — "Sustainable".

This was a partially successful application for a notice of requirement by Queenstown Airport Corp Ltd to alter an existing designation (D2) in the *Queenstown Lakes District Plan*. The notice of requirement was referred to the Environment Court by the Minister for the Environment. The applicant sought to alter D2 by extending the aerodrome at the Queenstown Airport by 19.1 ha to the south of the present boundary.

To accommodate growth, the existing passenger terminal and associated airside and landside facilities would be expanded. The appropriate location for the expansion of the passenger terminal and its associated facilities was south of the current terminal, and included part of the area where general aviation/helicopters presently operated. Developments that had a significant bearing on the notice of requirement provision requiring extending the aerodrome to the south included plans for a parallel taxiway, protection of aircraft with wider wingspan, and accelerated traffic growth.

The notice of requirement facilitated the relocation of general aviation to enable the expansion of the passenger terminal and its associated facilities. The notice of requirement was also important, as it determined the final location of the air noise boundary and outer control boundary that were the subject of *Plan Change 35*.

The notice of requirement was opposed by Air New Zealand Ltd and Remarkables Park Ltd. Both Air New Zealand Ltd and Remarkables Park Ltd contended that the objective of the notice of requirement could be met within the existing designation and they likewise sought that the notice of requirement be cancelled.

Held, (1) the definition of "requirement" in s 168(2) of the Resource Management Act 1991 did not mean "essential" as opposed to "desirable, feasible, practicable or preferable". This interpretation was consistent with the definition of designation in

s 166, that is, a provision made in the District Plan to give effect to a requirement made by a requiring authority. Moreover, if the definition of "requirement" meant "essential", this would render s 171(1)(c) otiose. (para 44)

(2) The term "requirement" was not to be construed in light of s 40 of the Public Works Act 1981. In this case neither the relevant term nor subject matter addressed in s 168 of the Resource Management Act 1991 and s 40 of the Public Works Act 1981 are the same, and "a requirement" did not have the same meaning as "required" (para 46)

(3) A central issue in the case was whether Queenstown Airport Corp Ltd gave adequate consideration to alternative sites, routes or methods. There was no authority under s 171(1)(b) of the Resource Management Act 1991 for the Court to substitute its own choice of alternative site. The territorial authority was not required to test each alternative against pt 2. It was sufficient for Queenstown Airport Corp Ltd to show that it did not act arbitrarily in its selection of alternatives. The Environment Court on direct referral may consider the extent to which the work was reasonably necessary for achieving the requiring Authority's objectives, and the Court may limit the extent of the designation accordingly. (paras 48, 50, 52)

Quay Property Management Ltd v Transit New Zealand EnvC Wellington W28/00, 29 May 2000, considered

(4) Section 16 of the Resource Management Act 1991, requires the occupier of the land to use the best practicable option to ensure that noise emission does not exceed a reasonable level. It is not to be applied as if it were an additional criterion to ss 171(1)(a) to 171(1)(d) of the Act. Subject to pt 2, the effects of noise on the environment of allowing the requirement were relevant, as were a range of other environmental effects in contention in this proceeding. (para 58)

Ngataringa Bay 2000 Inc v Attorney-General PT Decision A16/94, 11 March 1994, distinguished

(5) The suitability or otherwise of existing designated land was a question of fact and degree. Where suitable designated land exists there will be less tolerance around the issue of whether the work or designation is reasonably necessary to achieve the objective of the requiring authority. However, "reasonably necessary" does not mean "essential", as this ignored the qualification "reasonably". It also necessitates the local authority (or Environment Court) to determine the best site for the works whereas this is a decision for the requiring authority under s 171(1)(b). (para 94)

(6) In this particular case, s 171(1)(b) was satisfied as adequate consideration was given by Queenstown Airport Corp Ltd to alternative locations for the helicopter facility and for corporate jets. There was an array of factors, including safety, which militated against a northern location for a helicopter facility. Under s 171(1)(c) of the Resource Management Act 1991, a general aviation/helicopter precinct south of the main runway was reasonably necessary for achieving the notice of requirement's objective. (paras 112, 113, 115)

(7) On the issue of whether the works or designation was reasonably necessary for achieving the objective of Queenstown Airport Corp Ltd, the evidence was clear. With the exception of provisioning for an instrument precision approach runway and a Code D parallel taxiway, the works were reasonably necessary for achieving Queenstown Airport Corp Ltd's objective. (paras 139, 140)

(8) Regarding the possible adverse effects on the environment of allowing the notice of requirement, the Court considered the effects of noise, landscape and amenity, and traffic and transportation. The Court was satisfied that the noise mitigation measures in *Plan Change 35*, as agreed in the previous court decision, were adequate. However, the traffic management effects were most unsatisfactory. Leave was reserved for the

parties to call further evidence addressing traffic management. Regarding the landscape and amenity effects, the notice of requirement gave inadequate consideration to how development of the southern precinct addressed the surrounding landscape and urban context. Large scale utilitarian buildings could reduce views and visual amenity in conflict with the plan objectives and the purpose of the Resource Management Act 1991. (paras 157, 180, 202, 203)

(9) Evaluating the notice of requirement under s 7(b) of the Resource Management Act 1991, the instrument precision runway and Code D taxiway were inefficient uses of resources. The general aviation/helicopter precinct was an efficient use. It was efficient use to locate Code C corporate jets south of main runway. Overall, there were significant benefits to Queenstown Airport Corp Ltd and the wider community of using resources in the manner proposed. Subject to the modifications and conditions identified in the decision, the notice of requirement was consistent with the purpose of the Resource Management Act 1991. The notice of requirement provisions relating to the instrument precision runway and parallel taxiway were cancelled. The decision on the balance of the notice of requirement was reserved. (paras 226, 236, 237)

Friends and Community of Ngawha Inc v Minister of Corrections [2002] NZRMA 401 (HC), considered

Meridian Energy Ltd v Central Otago District Council [2011] 1 NZLR 482 (HC), considered

North Shore City Council v Auckland Regional Council (1996) 2 ELRNZ 305 (EnvC), considered

Port Gore Marine Farms v Marlborough District Council [2012] NZEnvC 72, considered

Cases referred to

Air New Zealand Ltd v Queenstown Lakes District Council [2012] NZEnvC 195

AMI Insurance Ltd v Christchurch City Council EnvC Christchurch A55/01, 22 June 2001

Auckland Volcanic Cone Society v Transit New Zealand [2003] NZRMA 316 (HC)

Bungalo Holdings Ltd v North Shore City Council EnvC A52/01, 7 June 2001

Ferrum Engineering Ltd v Otago Regional Council [2008] NZMA 233 (EnvC)

Friends and Community of Ngawha Inc v Minister of Corrections [2002] NZRMA 401 (HC)

Meridian Energy Ltd v Central Otago District Council [2011] 1 NZLR 482 (HC)

Ngataringa Bay 2000 Inc v Attorney-General PT Decision A16/94, 11 March 1994

North Shore City Council v Auckland Regional Council (1996) 2 ELRNZ 305 (EnvC)

Port Gore Marine Farms v Marlborough District Council [2012] NZEnvC 72

Quay Property Management Ltd v Transit New Zealand EnvC Wellington W28/00, 29 May 2000

Waitakere City Council v Brunel [2007] NZRMA 235 (HC)

Application

This was a partially successful application for a notice of requirement by Queenstown Airport Corp Ltd to alter the existing designation (D2) in the *Queenstown Lakes District Plan*.

D A Kirkpatrick and *R Wolt* for Queenstown Airport Corporation Ltd
D A Nolan and *M M E Wikaira* for Air New Zealand Ltd
J G A Winchester for Queenstown Lakes District Council (regulatory)

J E Macdonald for Queenstown Lakes District Council (non-regulatory) — present on 16 July 2012
R J Somerville QC and *J D Young* for Remarkables Park Ltd

Cur adv vult

JUDGE BORTHWICK, COMMISSIONERS DUNLOP, BUNTING

Introduction

[1] This proceeding concerns Queenstown Airport Corp Ltd's notice of requirement to alter an existing designation in the *Queenstown Lakes District Plan*. The notice of requirement was referred to the Environment Court by the Minister for the Environment.

[2] Quite simply, the notice of requirement seeks to alter Designation 2 of the District Plan by extending the aerodrome at Queenstown Airport by 19.1 ha. The activities enabled by Designation 2 are to remain the same.

[3] Queenstown Airport is owned by the Queenstown Lakes District Council and the Auckland International Airport Ltd.[1] It is one of the busiest airports in New Zealand, and is the country's largest regional airport. Each year, there are on average 40,000 aircraft movements and over one million scheduled and non-scheduled passenger movements through the Airport. The airport controllers handle upwards of 400 aircraft (domestic and international) movements per day, with growth in aircraft movements projected to increase over the next 25 years.

[4] To accommodate growth the existing passenger terminal and associated airside and landside facilities will be expanded. While the expansion of the passenger terminal and associated facilities can occur within the existing designation this will displace the general aviation from its present location.

[5] The notice of requirement facilitates the relocation of general aviation to enable the expansion of the passenger terminal and its associated facilities. The notice of requirement is also important, as it will determine the final location of the air noise boundary and outer control boundary that are the subject of *Plan Change 35*.

Attached documents to this decision

[6] Attached to this decision as Annexure 1 is a copy of a plan showing the subject land. While this plan records the total requirement of 19.08 ha, at the commencement of the hearing counsel for QAC corrected this requirement to 18.4 ha, the adjustment being made following the re-survey of the site and minor boundary adjustments.[2]

[7] Technical terms and abbreviations used in this decision are set out in Glossaries attached as Annexures 2 and 3.

The parties

[8] Four parties gave notice to be heard in relation to the proceeding. They are:

- Air New Zealand Ltd (**ANZL**);
- Remarkables Park Ltd (**RPL**);
- Queenstown Lakes District Council (in its regulatory capacity); and
- Queenstown Lakes District Council (in its non-regulatory capacity).

1 These companies own 75.1 per cent and 24.9 per cent of shares respectively.

2 QAC Opening submissions at [7].

Air New Zealand Ltd (ANZL)

[9] ANZL filed a submission opposing the notice of requirement (**NOR**). ANZL supports the objective of the NOR, but submits the NOR does not, in its present form, achieve that objective.[3]

[10] ANZL has five areas of concern. These are:

(a) The proposal to designate part of Lot 6 to accommodate a Code D parallel taxiway has no foundation;

(b) The proposal underlying the NOR that forward planning be based on a 300 m main runway strip width, likewise has no foundation;

(c) There has been inadequate consideration of alternatives, especially off-airport sites (other than Lot 6);

(d) There has been an omission to consider, or the inadequate consideration of, economic aspects of the NOR;

(e) There is already sufficient land available within QAC's existing designation to accommodate the relocation of the helicopters and general aviation.[4]

[11] ANZL submits that the NOR objective can be met within the existing designation and seeks that the NOR be cancelled.

Remarkables Park Ltd (RPL)

[12] RPL accepts that general aviation will need to move from its present location.[5] In common with ANZL, RPL contends that the objective of the NOR can be met within the existing designation and likewise seeks that the NOR be cancelled. More generally, RPL submits the location of the work on its land is contrary to ss 149U and 171(1)(a)-(c) of the Act.

[13] Pursuant to s 171(1)(d), RPL submits the Court should have particular regard to two matters which it says are reasonably necessary in order for the Court to make a determination on the requirement. They are:

(a) Against the earlier background of extensive land dealings between RPL and QAC, RPL's legitimate expectation that QAC would not seek to remove the benefits conferred to RPL under the contractual arrangements arising from these dealings; and

(b) In the context of those contractual arrangements RPL alleges a cause of action in estoppel.

QLDC (regulatory)

[14] QLDC in its regulatory capacity (**QLDC (regulatory)**) sought leave to become a party late in the proceeding. Counsel for QLDC (regulatory) describes its role "as assisting the court to ensure that the notice of requirement (**NOR**), if approved, achieves the purpose of the RMA and results in an appropriate environmental outcome".[6] (We note that the NOR cannot be approved if it does not achieve the purpose of the Act).

[15] QLDC (regulatory) called evidence on the topics of landscape/amenity, statutory planning, traffic and noise. Its witnesses supported additional conditions

3 ANZL Opening submissions at [2.1].

4 ANZL Closing submissions at [1.3(b)].

5 RPL Closing submissions at [4.1].

6 Winchester Opening submissions at [2].

required to address effects on the environment of allowing the requirement. Subject to those conditions, QLDC (regulatory) did not raise any issue that would support the cancellation of the NOR.[7]

QLDC (non-regulatory)

[16] QLDC in its non-regulatory capacity (**QLDC (non-regulatory)**) filed a submission in support of the NOR, which we have considered. While counsel for QLDC (non-regulatory) entered an appearance on the first day of the hearing, it took no further part in the hearing.

Description of the Queenstown Airport and the surrounding area

[17] Queenstown Airport is located at Frankton, some 7 kms by road to the centre of Queenstown. The Airport is situated in Frankton Flats which is bordered by the Remarkables to the south-east, Lake Wakatipu and Peninsula Hill to the west. More distant is Queenstown Hill, Sugar Loaf and Ferry Hill to the north-west, Slope Hill to the north-east and Queenstown Range to the north.[8]

[18] Immediately to the north of the Airport is the Frankton Golf Course (partly located within the aerodrome designation), the Event and Aquatic centres and outdoor playing fields (these facilities are partly located on land subject to two designations, including the earlier in time aerodrome designation), the Glenda Drive industrial area and land that is the subject of *Plan Change 19* (**PC19**). To the north-west is the settlement of Frankton.

[19] In the south-west is the Remarkables Park zone with its town centre and residential areas. This partly developed zone provides for commercial, residential and visitor accommodation, community and recreational facilities. The land (part of Lot 6) which is the subject of the NOR is zoned Remarkables Park (**RPZ**) Activity Area 8, and is presently used for grazing. Within RPZ and south of the Airport, and including Lot 6, is a large area of open space extending from the confluence of the Kawarau and Shotover Rivers to the boundary of the aerodrome designation.[9]

[20] The Airport and its immediate neighborhood are situated within an urban environment albeit one that has retained visual connection to the outstanding natural landscapes of the surrounding mountains. It is an environment which is undergoing rapid change with the runway extension, approval of the eastern access road, approval of *Plan Change 34*, and with the continuing development of the RPZ. This is to say, nothing of the development that would be enabled through *PC19*.

Description of the airfield

[21] The Queenstown Airport's aeronautical business falls into two main categories — scheduled airline passenger service and non-scheduled aircraft operations. Non-scheduled aircraft operations include helicopters, flightseeing and training, and smaller fixed wing aircraft and also private and military aircraft operations. Presently, scheduled airline services account for approximately 82 per cent of overall passenger traffic.[10]

[22] The Airport operates a two runway system. The main runway, for most of its 1,909 m length, is 30 m wide and has a runway strip width of 150 m. This runway is used by scheduled airlines and non-scheduled operators. The main runway is an

7 Winchester Closing submissions.

8 *General Aviation and Helicopter Precinct Updated Review Report* (December 2010) at [2.1].

9 There is a single building, a substation in Lot 6. It is not known whether this building will remain.

10 *General Aviation and Helicopter Precinct Updated Review Report* (December 2010) at [2.2].

instrument non-precision approach runway which can accommodate up to Code C aircraft. A parallel chip sealed taxiway to the south of the main runway is not able to be used by Code C aircraft.

[23] Nearly all general aviation and helicopter operations are located in the grass area south of the passenger terminal. Referred to as the "general aviation zone" it accommodates both fixed wing and helicopter operators with facilities and associated flight operations occurring in close proximity, and interspersed with each other. There is a second smaller general aviation precinct immediately north of the passenger terminal. The shorter 994 m cross-wind runway is used by general aviation (up to Code B) and helicopters.

[24] We understand that the accommodation of corporate jets is an informal arrangement.

Description of existing designations

[25] Three designations relevant to airport operations were drawn to our attention and these are:

(a) Designation 2 (the Aerodrome designation);

(b) Designation 3 (Air Noise Boundary designation); and

(c) Designation 4 (Approach and Land Use Controls).

[26] The purpose of Designation 2 is given in the District Plan as being:

> to protect the operational capability of the Airport while at the same time minimising adverse environmental effects from aircraft noise on the community at least to the year 2015.

[27] The extent of the aerodrome designation is shown on Planning Map 31a, and it is proposed in separate proceedings before the Court (**PC35**) to amend this map.

[28] The purpose of Designation 3 is to identify the area of airport operations where noise sensitive activities are prohibited. QAC intends to uplift Designation 3 upon approval of *PC35*. A final decision on *PC35* is to be released in conjunction with these proceedings.

[29] Designation 4 limits the construction of any structure or facility which may inhibit the safe and efficient operation of Queenstown Airport. The designation describes the obstacle limitation surfaces in place for the Airport, which consist of an approach and takeoff surface, a transitional surface, an inner horizontal surface and a conical surface.

Description of the works

[30] While the exact configuration of development on land the subject to the NOR has not been finalised (and there is nothing unusual in this), the key elements of the NOR are:

- A helicopter facility;
- A general aviation (fixed wing) facility for up to Code B aircraft;
- A private and corporate jet facility for up to Code C aircraft;
- A fixed based operator (to service jets and possibly general aviation);
- A Code D parallel taxiway adjacent to main runway;
- A Code B parallel taxiway adjacent to cross-wind runway;
- A precision approach runway with a 300 metre width runway strip;
- Ancillary activities, including landscaping, car parking, and an internal road network which includes two access roads to connect with Hawthorne Drive at the western end of the designation area and the Eastern Access Rd (**EAR**) at the eastern end.

[31] These works are to meet QAC's objective for the NOR which is:

> to provide for the expansion of Queenstown airport to meet projected growth while achieving the maximum operational efficiency as far as possible.[11]

[32] As presented to the Court the layout for the general aviation precinct occupies approximately one km frontage of the existing aerodrome south and parallel with the main runway.[12]

[33] Access to the NOR area is off Hawthorne Drive at the western most end of Lot 6, adjacent to the boundary of QAC land. A second access is proposed at the eastern most end of Lot 6 to the proposed Eastern Access Rd (**EAR**), although the timing of this depends upon the construction of the EAR.[13] An internal road would link the new general aviation/helicopter precinct to the passenger terminal.[14]

[34] In evidence QAC proffered three new conditions for the aerodrome designation, addressing the protocol for archaeological discovery, a landscape plan and building design control. Otherwise, no other changes are made to the aerodrome designation.

[35] Forecasting of growth in scheduled airline operations was given in the NOR documentation and updated in the evidence of QAC's airport planner, Mr I Munro. This evidence was uncontested and we accept it, as we do the evidence that in order to accommodate growth the passenger terminal and associated facilities will need to be expanded. The appropriate location for the expansion of the passenger terminal and its associated facilities is south of the current terminal, and includes part of the area where general aviation/helicopters presently operate. Growth entails also the need to expand airside facilities including a parallel taxiway for scheduled airline passenger services, at a location south of the main runway. Because of this we accept that the general aviation/helicopter precinct will need to be relocated; remaining in-situ is not an alternative.

The area of the requirement for the designation

[36] The area for the requirement is located adjacent to the aerodrome's main and cross-wind runways with access to the area off Hawthorne Drive (in the west) and secondly, the eastern access road (to be formed). Designation 2 (**the aerodrome designation**) is to be altered to include part of Lot 6, DP 304345 and a portion of an unformed road adjacent to the south-western corner of Lot 6, DP 304345.[15] Planning Map 31a of the District Plan would also be amended.[16]

[37] The Airport's southern boundary and the extent of the existing aerodrome designation adjacent to Lot 6 is located 201 m south of the main runway centerline.[17] The requirement is for a strip of Lot 6 approximately 160 m in depth, lying parallel to the entire one km length of the common boundary of the QAC and RPL land.[18]

---

11 NOR Annexure 2, Clause 2.1.4.

12 NOR, Annexure 3.

13 The EAR is an extension of Hawthorne Drive.

14 NOR, Form 18 at [2.5-2.6].

15 Kyle, Supplementary evidence 18 May 2012 Appendix H, clause D. The NOR does not require any proposed amendment to the designation. These changes were proffered in Appendices E and H of the supplementary evidence of Kyle dated 18 May 2012.

16 NOR Appendix U.

17 Munro EiC at [45].

18 Kyle, EiC at [4.2]. In NOR, Appendix N: *General Aviation and Helicopter Precinct Updated Review Report* the depth of land is given as 160 m.

The law

[38] The NOR was referred to the Environment Court by the Minister for the Environment pursuant to s 147(1)(b) of the Act. Section 149U requires the Environment Court to consider certain matters, being:

(a) The Minister's reasons for making the direction;

(b) The information provided by the EPA; and, as this case requires

(c) To act in accordance with subs (4).

[39] Section 149U(4) provides:

> (4) If considering a matter that is a notice of requirement for a designation or to alter a designation, the Court—
>
> (a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and
>
> (b) may—
>
> (i) cancel the requirement; or
>
> (ii) confirm the requirement; or
>
> (iii) confirm the requirement, but modify it or impose conditions on it as the Court thinks fit; and
>
> (c) may waive the requirement for an outline plan to be submitted under section 176A.

[40] Section 171(1A) and (1) provides:

> **[171. Recommendation by territorial authority**
>
> [[(1A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.]]
>
> (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—
>
> (a) any relevant provisions of—
>
> (i) a national policy statement:
>
> (ii) a New Zealand coastal policy statement:
>
> (iii) a regional policy statement or proposed regional policy statement:
>
> (iv) a plan or proposed plan; …
>
> (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if-
>
> (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
>
> (ii) it is likely that the work will have a significant adverse effect on the environment; and
>
> (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
>
> (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

[41] The relevant pt 2 provisions are the purpose of the Act (s 5) and s 7(b), (c) and (f). Section 7 provides that in achieving the purpose of the Act we are to have particular regard to:

> (b) the efficient use and development of natural and physical resources;
>
> (c) The maintenance and enhancement of amenity values;
>
> …
>
> (f) Maintenance and enhancement of the quality of the environment …

[42] We set out the law in relation to ss 168 and 171, as the meaning of these sections were the subject of submissions.

Section 168

[43] Section 168, notice of requirement to the territorial authority, relevantly provides:

> (2) A requiring authority [for the purposes] approved under section 167 may at any time give notice [in the prescribed form] to a territorial authority of its requirement for a designation-
>
> [(a) For a project or work; or]
>
> (b) In respect of any land, water, subsoil, or airspace where a restriction is reasonably necessary for the safe or efficient functioning or operation of such a project or work.
>
> …
>
> (4) A requiring authority may at any time withdraw a requirement by giving notice in writing to the territorial authority affected.
>
> (5) Upon receipt of notification under subsection (4), the territorial authority shall—
>
> (a) Publicly notify the withdrawal; and
>
> (b) Notify all persons upon whom the requirement has been served.

[44] RPL urged upon us a definition of requirement under s 168(2) that means "essential" as opposed to "desirable, feasible, practicable or preferable".[19] We do not accept this submission.

[45] The term "requirement" is not defined in the Act, but in context it appears in s 168 as a noun — the term given to a proposal for a designation.[20] In subss (2)(a) and (b) of s 168, the full term is given as "a requirement for a designation". In subs (4) this term is abbreviated to "a requirement". Our interpretation is consistent with the definition of designation in s 166; designation means a provision made in the District Plan to give effect to a requirement made by a requiring authority under s 168 or s 168A or clause 4 of Schedule 1. Moreover, if RPL's interpretation were correct this would render s 171(1)(c) otiose.

[46] Finally, we do not accept RPL's submission that the term "requirement" in s 168 RMA should be construed in light of s 40 Public Works Act 1981 (**PWA**). The matter and subject of these provisions are not, as submitted, *in pari materia*.[21] While the meanings of terms in one Act may sometimes be held to apply to the same terms used in another Act on the same subject, as the learned author of *Statute Laws in New Zealand* observes this is by no means an inevitable conclusion: "It is always dangerous to assume that words bear the same meaning in different Acts: the contexts and purposes may be different enough to make such analogies inapplicable".[22] In this case neither the relevant term nor subject matter addressed in s 168 RMA and s 40 PWA are the same and we do not accept RPL's submission that "a requirement" has the same meaning as "required" for the reasons we gave in [45] above.

[47] We comment next on s 171(1)(b), (c) and (d), but before doing so, we note that s 171(1A) is not relevant to these proceedings.

Section 171(1)(b)

> (b) Whether adequate consideration has been given to alternative sites, routes,

19 RPL Opening Submission at [4.3].

20 See also *Ferrum Engineering Ltd v Otago Regional Council* [2008] NZMA 233 (EnvC) at [15].

21 RPL Opening submissions at [18] on the same matter.

22 JF Burrows *Statute Law in New Zealand* (4th ed, LexisNexis, Wellington, 2009) at 249.

or methods of undertaking the work if—

(i) The requiring authority does not have an interest in the land sufficient for undertaking the work; or

(ii) It is likely that the work will have a significant adverse effect on the environment; and

[48] As QAC does not own an interest in the subject land s 171(1)(b) is relevant. Indeed a central issue in this case is whether QAC gave adequate consideration to alternative sites, routes or methods.

[49] The *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* summarises the principles derived from case law interpreting this s 171(1)(b). We adopt what is said there as follows:

(a) the focus is on the process, not the outcome: whether the requiring authority has made sufficient investigations of alternatives to satisfy itself of the alternative proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration.

(b) the question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods.

(c) that there may be routes, sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant.

(d) the Act does not entrust to the decision-maker the policy function of deciding the most suitable site; the executive responsibility for selecting the site remains with the requiring authority.

(e) the Act does not require every alternative, however speculative, to have been fully considered; the requiring authority is not required to eliminate speculative alternatives or suppositious options.[23]

[50] Furthermore, s 171(1)(b) does not confer authority on us to substitute our own choice amongst the alternative sites, routes or methods for undertaking the work of the requiring authority.[24] The territorial authority (or on direct referral the Environment Court) is not required to test each alternative against pt II.[25] It is sufficient for QAC to show that it did not act arbitrarily in its selection of alternatives.[26] We keep in mind the warning given by Judge Kenderdine in *Quay Property Management Ltd v Transit New Zealand* — the territorial authority (here the Environment Court) should not cross the line into the adjudication of the merits, determining the best use of the alternatives and, by that measure, deciding whether the chosen alternative was reasonable.[27]

Section 171(1)(c)

(c) Whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and

[51] Again, we respectfully adopt the summary given in the *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* as to relevant considerations arising under s 171(1)(c) of the Act. These are:

---

23 *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* (Ministry for the Environment, Board of Inquiry, 4 September 2009) at [117] and [186].

24 *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* ibid at [183].

25 *Auckland Volcanic Cone Society v Transit New Zealand* [2003] NZRMA 316 (HC) at [60-61].

26 *Quay Property Management Ltd v Transit New Zealand* EnvC W28/00, 29 May 2000 at [152].

27 *Quay Property Management Ltd v Transit New Zealand* at [152].

(a) The consideration is limited to the requiring authority's objectives for which the designation is sought, rather than an enlarged examination of alternatives (the subject of section 171(1)(b)).

(b) In paragraph (c), the meaning of the word necessary falls between expedient or desirable on the one hand, and essential on the other; and the epithet reasonably qualifies it to allow some tolerance.

(c) The paragraph does not impose some higher threshold or standard of proof that would require a requiring authority to demonstrate that the project and designation would better achieve its objectives than an alternative project or means of seeking authorization; nor that they absolutely fulfil its objectives.

(d) The Act neither requires nor allows the merits of the objectives themselves to be judged by the territorial authority.

(e) On whether a designation is the preferable planning method to be used, the relevant factors may include that a designation signals potential for future changes; provides a clear method for those changes to occur (including the outline plan procedure where applicable); provides a uniform approach through various territorial authority districts and that it may not otherwise be possible to "freeze" the existing plan provisions.

(f) A designation may also be a desirable planning method to establish a clear corridor for mitigation of some effects; to restrict conflicting uses and structures pending completion of detailed design (especially for a long-term project); and a precursor to compulsory acquisition of land under the Public Works Act.[28]

[52] To this we add that the Environment Court on direct referral may consider the extent to which the work is reasonably necessary for achieving the requiring authority's objectives and may limit the extent of the designation accordingly.[29]

Other legal issues

Findings in relation to s 171(1)(d) and the Public Works Act

[53] The PWA governs the acquisition of land for public works by local authorities. Pursuant to s 18(1) of the PWA, QAC gave notice to RPL and the District Land Registrar on 30 November 2011 of its desire to acquire part of Lot 6. No steps have been taken by QAC in relation to the compulsory acquisition process of the PWA.[30] The NOR has a direct bearing on the outcome of other proceedings before the Environment Court, including *PC19*, *PC35* and the associated notice of requirement to alter Designation 2.

[54] We agree with counsel for QAC and QLDC (non-regulatory) that the compulsory acquisition process not having commenced, s 24 PWA is not directly relevant to our determination.[31] In particular, the three overlapping criteria[32] in s 24(7) of fairness, soundness and the reasonably necessity for achieving the objective of the local authority (here QAC) are not matters we need decide.

[55] We do not dismiss the opportunity yet open to the parties to reach agreement on the acquisition of land pursuant to ss 17-24 PWA or pursue other processes that may be available to them. Even if we are wrong, and the issue of fairness (in particular) is relevant under s 171(1)(d), there is no evidence upon which we could

28 *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* ibid at [198].

29 *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project* ibid at 204, *Bungalo Holdings Ltd v North Shore City Council* EnvC A52/01, 7 June 2001 at [67] and [70].

30 Lane Neave letter to the EPA dated 3 February 2011.

31 QAC Closing Submission at [90-97].

32 *Waitakere City Council v Brunel* [2007] NZRMA 235 (HC) at [47].

find that QAC agreed, as submitted by RPL counsel, not to designate the land.[33] Apart from the fact that QAC and RPL entered into contractual arrangements we have no evidence from RPL as to its reliance on the contracts or any representation made by QAC when subsequently planning to develop its land or that it held a legitimate expectation its "buffer" ie. Activity Area 8, would not be reduced. (The contracts were handed up to the Court as a bundle attached to counsel for RPL's opening submissions, which we were told "not to read").[34]

Findings in relation to the best practicable option (s 16 RMA)

[56] Referring to s 16 RMA, RPL criticises QAC for not using the best practical option as a method to assess the impact of alternate FATO locations.[35] *Ngataringa 2000 Inc v Attorney General*[36] was cited as authority that when seeking to achieve the best practical option this could include consideration of alternative sites, buffers to minimise noise emission, and the design of buildings or other works to incorporate the best practical option for noise mitigation features. A reading of the decision reveals that this was not the decision of the Planning Tribunal, but a submission of the applicant (for a declaration).[37]

[57] In *Ngataringa 2000 Inc* the Planning Tribunal held that those occupying designated land and responsible for activities on designated land are subject to s 16 of the Act.[38] Notwithstanding subsequent amendments to s 16, we accept that this interpretation remains correct. However, *Ngataringa 2000 Inc* is distinguishable from this case in that the requirement for a designation was confirmed and the requiring authority was in occupation of the land.

[58] We hold s 16 is not to be applied as if it were an additional criterion to subs (1)(a)-(d) of s 171. In some cases adopting the best practicable option may be useful check for the decision-maker, particularly when assessing the adequacy of the alternatives under consideration, but not in every case. The effect of RPL's submission would be to require the Environment Court to determine the "best" alternative in respect of helicopter noise emissions. This approach is inconsistent with the scheme of the Act, but in any event belies the complexity of decision-making by QAC having regard to the competing alternatives. Subject to pt 2, the effects of noise on the environment of allowing the requirement are relevant as are a range of other environmental effects in contention in this proceeding.

Statutory plans

[59] We set out next the policy context relevant to this notice of requirement; in particular the *Regional Policy Statement* and the *Queenstown Lakes District Plan* (s 171(1)(a)).

Regional Policy Statement (RPS)

[60] The RPS contains the objective to promote the sustainable management of Otago's foreseeable needs of its communities (objective 9.4.2). Policies elaborate on what is meant by "sustainable" and importantly in this case policy 9.5.2 is:

> To promote and encourage efficiency in the development and use of Otago's infrastructure through:

---

33 RPL Opening Submissions at [9.8].

34 Transcript at [75].

35 RPL Opening submissions at [7.5-7.10], RPL Closing submissions at [2.2.14-2.2.21].

36 PT Decision A16/94, 11 March 1994.

37 At [11].

38 Decision at [16] and [28].

(a) Encouraging development that maximizes the use of existing infrastructure while recognising the need for more appropriate technology; and

[61] The explanation for this policy emphasises sustainable use through consolidation and improved use of existing infrastructure prior to extensions or new development. This approach will "help reduce the costs to the community for providing and maintaining infrastructure and promote its more efficient use in the long term". In doing so, these provisions directly import considerations of efficient use and development of physical resources.

[62] Also relevant is the policy to maintain and where practicable enhance the quality of life for people and communities within Otago's built environment through, amongst other measures, the identification and provision of a level of amenity which is acceptable to the community (policy 9.5.5.).

Queenstown Lakes District Plan

[63] Frankton Flats is regarded as an important area in terms of providing for future urban growth. The Plan has a specific objective for Frankton in its District Wide Issues Chapter which is for:

> Integrated and attractive development of the Frankton Flats locality providing for airport operations, in association with residential, recreation, retail and industrial activity while retaining and enhancing the natural landscape approach to Frankton along State Highway No. 6.[39]

[64] The related policy is broadly stated in terms of providing for the efficient operation of the Queenstown Airport and related activities in the Airport Mixed Use Zone (policy 6.1).

[65] The Transport Chapter contains an objective and policies addressing specifically air transport. In this chapter the Queenstown Airport is recognised as a physical resource important to the social and economic wellbeing of the community and secondly, an important factor in the rate of growth in the District. The explanation and reasons for the objectives and policies recognises that there is a balance between airport operations and the community needs that are to be achieved:

> The District's airports must be able to operate effectively and in a manner which provides for the District's well being. At the same time any adverse effects on the community, particularly the resident community, must be mitigated. The Council is of the view that the operation of Queenstown Airport should not preclude opportunities for further development of activities in close proximity, provided that appropriate controls are implemented.[40]

[66] Responding to this, objective 8 provides that there are to be effective and controlled airports for the District, that are able to be properly managed as a valuable community asset in the long term.

[67] Several policies are relevant and include efficiency considerations relating to the use and development of the airport resource. These are:

> 8.1 To provide for appropriate growth and demand for air services for Queenstown.
>
> 8.2 To avoid or mitigate any adverse environmental effects from airports on surrounding activities.
>
> …
>
> 8.6 To ensure buildings at both airports have regard for and are sympathetic to the surrounding activities, and landscape and amenity values by way of external appearance of buildings and setback from neighbouring boundaries.
>
> …

39 Chapter 4, District Wide Issues, Objective 6 at [4-56].

40 Chapter 14, Explanation and principal reasons for adoption at [14-11].

> 8.8 To manage noise sensitive activities in areas with existing urban development surrounding the airport, while ensuring future noise sensitive activities in areas currently undeveloped and adjacent to airports are restricted.

[68] Relevant to these proceedings also is the underlying zoning for the land that is subject to the notice of requirement. Lot 6 is located within the RPZ's Activity Area 8. The RPZ is introduced as an area comprising "approximately 150 hectares of perimeter urban land in the vicinity of Frankton and occupies a strategic position".[41]

[69] Objective 1 for the zone is broadly stated as providing for the integrated management of the effects of residential, recreation, commercial, community, visitor accommodation, educational and Queenstown Airport activities.

[70] Several related policies address the relationship of the zone with the Queenstown Airport:

> (1) to require development to be undertaken in an integrated manner which maximises environmental and social benefits.
>
> …
>
> (4) to ensure that development takes place in a manner complementary to the operational capability of Queenstown Airport.
>
> …
>
> (5) to establish a buffer between the airport and noise sensitive activities in the Remarkables Park zone.

[71] Objective 2 provides for urban development to occur in a form which protects and enhances the surrounding landscape and natural resources. This is achieved through a series of Activity Areas identified in the zone's Structure Plan including Activity Area 8 where Lot 6 is located. This Activity Area is described in the following terms:

> Activity Area 8
>
> • To enable the establishment of activities of a rural/recreational nature, infrastructural utilities and parking, which are not sensitive to nearby airport operations.

[72] The explanation and principal reasons for adoption of these objectives and policies states:

> A significant "buffer" area of land formerly partly owned by Queenstown Airport Corporation Limited, this land is suitable for development for rural, recreational infrastructural facilities not of a noise sensitive nature. Much of it falls in close proximity to the airport and within higher noise control areas. As such residential activities, visitor accommodation and community activities are prohibited in this area within the Outer Control Boundary.

[73] While "buffer" is not explained in the District Plan, there was general agreement that these policies mutually benefited the RPZ and Queenstown Airport.

[74] Finally, an issue was raised by Mr Foster (RPL's planner) as to whether Designation 4's transitional surface provisions would need amending if provisioning for a 300 m width runway strip was approved. While we agree with the interpretation of the relevant provisions given by Mr Kyle in response, there is no issue arising in relation to the transitional surfaces as it is our decision to cancel part of the NOR.

---

41 Chapter 12, Remarkables Park zone at [12]-[65].

Section 171 evaluation

Introduction

[75] In 2003 QAC initiated a review of its existing land and airside facilities at Queenstown Airport. Since then it has commissioned no less than eight reports from airport planning consultants Airbiz Aero, Woodhead and Landrun and Brown.[42]

[76] The reports produced in 2005, 2006, 2007 and 2008 consider sites for a new general aviation/helicopter precinct located within the existing aerodrome designation north of the main runway. In four of the eight reports produced, consideration was given to relocating the general aviation/helicopter precinct south of the main runway. However, in each case the site of the proposed southern precinct is different from that supported by QAC in its NOR, albeit part of Lot 6 is included.[43]

[77] When preparing the reports at no time prior to the NOR did QAC consult with scheduled operators, and then not at all with its principal operator ANZL.

Master planning between 2005 and 2010

[78] Up until the *2010 Master Plan*, the airport planning parameters assumed that Code C aircraft were the design aircraft for the main runway and that Queenstown Airport would remain an instrument non-precision approach runway. In the first report produced by Airbiz (the *2005 Master Plan*) Code D aircraft were considered but discounted due to the terrain and runway length constraints.[44] The retention of the 150 m runway width strip was considered appropriate for Queenstown Airport as terrain would always be a limiting factor. Noting CAA's acknowledgement that due to significant terrain infringements to the Airport's obstacle limitation services, the report concludes that Airport would never be able to comply with the requirements for having an instrument runway.

[79] The *2005 Master Plan* considered alternative locations for a general aviation/helicopter precinct within Lot 6 but these were dismissed because:

(a) These options required protracted negotiations and change of designations without guarantee of outcome;

(b) There were no significant operational benefits; and finally

(c) The options were highly distracting to QAC management.[45]

April 2007 South East Zone Planning Report

[80] The *South East Zone Planning Report* is important in that it is the only report commissioned by QAC to consider possible uses of designated land south of the main runway. The assumed planning parameters include a Code C aircraft design and a non-precision approach to the main runway.

[81] Airbiz concludes that within an area approximately 74 m deep a range of developments were appropriate south of the main runway including corporate jets, private hangars, flightseeing and general aviation. However, there was likely to be insufficient land available to accommodate growth in helicopter businesses. For operational reasons associated with the interface of helicopters with other users of a proposed Code C parallel taxiway south of the main runway, Airbiz concluded the

42 These reports are attached to the NOR Appendix G, N and S.

43 See Airbiz *South East Zone Planning Report* (April 2007); Airbiz *General Aviation and Helicopter Location Review* (11 February 2009); Landrun and Brown *General Aviation and Helicopter Location Review — Peer Review* (13 February 2009); and the *Woodhead Master Plan* (2008). *Woodhead Master Plan* contains no text but is a single plan recording a southern general aviation precinct. The location of helicopter facility is not shown.

44 NOR Appendix G at [13-14] and Table 3.1.

45 NOR Appendix G at [35].

northern side was a better location for future helicopter facilities.[46] Airbiz also recommended that general aviation flightseeing operations be grouped north of the main runway.[47]

2010 Master Plan

[82] Finally, the *2010 Master Plan* reports on five developments that had a significant bearing on the NOR provision for a general aviation/helicopter precinct on part of Lot 6. These being:

(a) The protection of airfield runway/taxiway/object separation distances for a precision approach runway;

(b) Planning for a parallel taxiway;

(c) Consideration of protection for aircraft with wider wingspans;

(d) Accelerated traffic growth; and

(e) The decision to consider Lot 6 as an option for the general aviation/helicopter precinct.

[83] Of these five developments, three (a-c) are critical in determining the spatial requirement for the designation.

[84] The *2010 Master Report* evaluates two alternative locations for a general aviation/helicopter precinct:

(a) A north-east option comprising 22 ha of land owned by QAC situated north of the main runway and east of the cross-wind runway; and

(b) A 19.1 ha south-east option located on part of Lot 6.

[85] The *Master Plan* reports that as a consequence of adopting the revised planning parameters, land was no longer available for development within the existing aerodrome designation south-east of the main runway (as it had reported in the *South East Zone Planning Report*).[48]

[86] Finally the *2010 Master Plan* also reports on on-going stakeholder consultation with the majority of tenants and operators at the airport (principally helicopter operators) and their concern that the new precinct not compromise operational safety and efficiency. A qualitative evaluation of the two alternative precincts is provided and in the executive summary Airbiz concludes that the north-east precinct is distinctively inferior.[49]

Issue: was adequate consideration given to alternative sites, routes or methods of undertaking the work (s 171(1)(b))?

[87] RPL[50] and ANZL[51] identified five alternative sites or methods which they say were not adequately considered; these being:

(a) Locating the general aviation/helicopter precinct on land north of the main runway including on undesignated land owned by QAC and/or QLDC;

(b) Locating the general aviation/helicopter precinct on land north of the main runway within the aerodrome designation;

(c) Whether RPL land should have a building restriction strip placed on it for a distance of 15.5 m from the common boundary to satisfy taxiway

46 *South-East Zone Planning Report*, April 2007 at [9].

47 The reasons for this are given in the *Helicopter and General Aviation Facilities Planning Report*, dated November 2006.

48 *2010 Master Plan* at [13].

49 NOR Appendix N *2010 Master Report* at [1.6].

50 RPL Opening Submissions at [7.4].

51 ANZL Opening Submissions at [2.74].

separation distance requirements for a new southern taxiway or whether CAA dispensation could be obtained for this;

(d) The relocation of some or all of the general aviation and helicopter facilities off the Airport;

(e) Consideration of individual components of the work being accommodated within the existing aerodrome designation.

[88] We consider (a), (c) and (e) to be entirely suppositious for reasons that we set out next. However this is not true for (b) and (d) which we consider in more detail.

Locating the general aviation/helicopter precinct on land north of the main runway, including on undesignated land owned by QAC and/or QLDC

[89] Conceptual plans prepared by RPL for a general aviation/helicopter precinct north of the main runway included undesignated land owned by QAC within the area of *PC19*.[52] Under these plans a general aviation/helicopter precinct would displace up to 4.52 ha of industrial land within *PC19*. In proposing this option, RPL witnesses did not address the scarcity of industrial land within Queenstown (an important issue that *PC19 inter alia* seeks to address). There was some suggestion by the RPL planner, Mr M Foster, that aerodrome activities are industrial activities for the relevant activity areas within *PC19*.

[90] We doubt Mr Foster's interpretation is correct and in the absence of any evidence in this proceeding or *PC19* addressing the implications of an aviation precinct within *PC19*, particularly in relation to the urban form and function, we do not consider that *PC19* land should be available as part of an alternative location. Activities relating to an aviation precinct appear to be outside those contemplated by the District Council when promulgating *PC19*.

[91] The conceptual plans for a general aviation/helicopter precinct located partly on land designated for the Event Centre were not supported by Mr Foster. We agree with him that the presence of the Event Centre's designation would cause "serious trouble" and should be discarded.[53]

Locating the aviation/helicopter precinct on land north of the main runway within the aerodrome designation

[92] The crux of RPL's case is that if there is designated land on which QAC may develop a general aviation/helicopter precinct then it cannot be said this work or designation is reasonably necessary for achieving its objective (s 171(1)(c)). QAC responds submitting that "the existence of an alternative does not render a chosen option unnecessary and the choice of neighbouring land that is suitable can be reasonable where the requiring authority's land is less suitable."[54]

[93] The issue, and QAC's response to the issue, is framed in a way that concerns both the process (s 171(1)(b)) and secondly, the manner in which QAC's objectives are proposed to be given effect (s 171(1)(c)). It is practicable to respond to the issue in the manner it is framed, but in doing so we resist the invitation that is implicit in the evidence of RPL's aviation planner, Mr D Sachman, to adjudicate the merits of the alternative sites and, to paraphrase Judge Kenderdine in *Quay Property Management Ltd*, by that measure decide whether the chosen alternative is reasonable.

[94] The suitability or otherwise of existing designated land is a question of fact and degree and where suitable designated land exists there will be less tolerance around the issue of whether the work or designation is reasonably necessary to

52 Sachman EiC at Appendix E, Concept Plans 1 and 1a, and Exhibits 11A-D.

53 Transcript at [939].

54 QAC Closing at [70].

achieve the objective of the requiring authority. However, we do not go as far as to construe "reasonably necessary" to mean "essential" as submitted by RPL as this would ignore the qualification "reasonably" and secondly, it would necessitate the local authority (or Environment Court) to determine the best site for the works whereas this is a decision for the requiring authority (s 171(1)(b)).

[95] Before we commence our discussion of the central factual matter in contention, we give the following initial findings of fact:

(a) There is insufficient land within the aerodrome designation to develop an instrument precision approach runway and southern parallel taxiway for Code D aircraft and to develop a general aviation/helicopter precinct; and

(b) QAC has no firm development plans for designated land north of the main runway.[55]

Discussion and findings

[96] RPL and ANZL submit QAC failed to give adequate consideration to a general aviation/helicopter precinct on land north of the main runway within the aerodrome designation.

[97] Mr Sachman gave conceptual evidence that reflected his comprehensive airport planning experience, but at times demonstrated a lack of local knowledge. He canvassed several possible permutations for a northern precinct and while we refer here only to his key points we have considered all of his evidence. Mr Sachman supported a northern precinct as it would separate scheduled and non-scheduled aircraft operations on either side of the main runway. In his opinion the separation of these services would have greater operational efficiency[56] and would entail less risk of foreign object debris on the taxiway.[57] We note that he was critical of the aircraft type selected as the basis of planning building and infrastructure requirements, and secondly the forecasting undertaken for components of the aeronautical businesses.[58]

[98] It was his evidence that use by general aviation, helicopter and corporate jets of the southern parallel taxiway would cause delays both to scheduled airlines and also to helicopters using the proposed southern FATOs. Delays would also be experienced as a consequence of:

(a) Sixty per cent of all helicopter departures involving flight paths to the north and across the main runway;

(b) The co-location of the helicopter facility within the fixed wing operating area;

(c) The location of a second passenger terminal (FBO) between the general aviation and corporate jet facilities entailing complicated aircraft operations; and

(d) Use by scheduled and non-scheduled operators of the new parallel taxiway.

[99] Finally Mr Sachman expressed the opinion that the proposed southern FATOs and parallel taxiway would not comply with the Civil Aviation Authority's advisory circulars. Because these allegations were not directly addressed by QAC in evidence or in the joint conferencing of expert witnesses, the Environment Court commissioned

55 Transcript at [995] where QAC's former Chief Executive Officer, Mr S Sanderson discusses about maintaining the land for a buffer or perhaps to develop activities not sensitive to noise.

56 Sachman EiC at [18-28].

57 Sachman EiC at [35].

58 Sachman EiC at [29-65].

a report from the Civil Aviation Authority in response. A report was prepared by Mr M Haines, the manager of the Aeronautical Services Unit of CAA, who was then summonsed to attend the hearing.

[100] In his report Mr Haines confirmed that the proposed parallel taxiway complies with the separation distances in the CAA advisory circular (the advisory circulars being guidance materials). If simultaneous visual meteorological conditions operations are not allowed then the separation distance of a FATO from a runway or taxiway would not apply.[59] He foresaw no safety based reason which would prevent QAC from obtaining the appropriate certification should the southern precinct be developed.[60]

[101] Furthermore Mr Haines presented a quite different evaluation to that of Mr Sachman on certain key points of evidence. In his opinion locating general aviation north of the main runway could increase vehicle traffic across the main runway and could increase the risk of foreign object debris being deposited and separately the risk of runway incursions.[61] Air traffic controller, Mr B Macmillan, evidence was that helicopters departing the Airport in any direction from the southern and northern precincts would initially occupy the main runway.[62]

[102] While Mr Sachman gave detailed evidence comparing the flight paths for helicopters from northern and southern FATOs, we find this evidence to be of limited assistance as we have not accepted his Concept Plans for a precinct north of the main runway. All airport planners agreed that there are two peak periods of air traffic movement (early morning and mid to late afternoon). Outside of these periods there would be five to ten scheduled airline movements per hour during which helicopter operations could occur provided that there is no simultaneous use of the runway.[63]

[103] It is noteworthy that Mr Sachman (or RPL) does not give a substantive response to the operational reasons given by QAC for locating a helicopter facility south of the main runway.[64] Several issues present themselves against a northern precinct, including the transportation of dust into helicopter hangars carried by the prevailing westerly winds and the stronger lower frequency southern winds, increased exposure to the winds from the south and west during helicopter take off and landings, increased runway occupancy by helicopters to minimise or reduce exposure to prevailing winds; the geographical constraints north of the cross wind runway and the desirability for flight-paths over TALOs to be unobstructed by stacked (parked) helicopters.[65] All these are important factors which lead to the adoption by QAC of a southern precinct.[66]

[104] Having considered Mr Sachman's evidence, we gained no clear impression as to the relative operational efficiencies of locating a helicopter facility on either the north or south side of the main runway.

[105] For QAC we heard from Mr A Shaw of Oceania Aviation Ltd and Mr P West of Helicopters Queenstown Ltd who gave evidence as to why a northern helicopter facility was not suitable, and in Mr West's opinion, potentially unsafe.[67] The evidence

59 *Report* (9 July 2012) at [14-17].

60 Transcript at [246].

61 *Report* (9 July 2012) at [12-25].

62 Macmillan Rebuttal (29 May 2012) at [15].

63 Transcript at [357, 378].

64 Sachman EiC at [76].

65 West EiC and Rebuttal (in general).

66 Morgan Rebuttal at [102-105].

67 West EiC at [14], and Rebuttal in general.

Mr West gave in cross-examination impressed upon us the need not to over generalise when considering the operational efficiency of the two alternative precincts. Mr West's opinions were on matters well within his competence and experience as a helicopter pilot and on operational matters we prefer his evidence to that of Mr Sachman. (RPL did not call evidence from a helicopter operator).

Restricting the use of RPL land for a 15.5 m distance from the common boundary

[106] While explored in cross-examination with QAC witnesses, no evidence was led on behalf of RPL as to what restrictions were proposed on this 15.5 m strip of designated land including its intended purpose — although it is our understanding that this area would be to accommodate part of the obstacle clearance width for a Code D parallel taxiway. The relevance of this issue is moot given our decision is to cancel in part the NOR.

[107] That said, s 176 RMA would, subject to QAC approval, allow RPL to use designated land, although its use seems unlikely given Mr Morgan's advice that an airport security fence would be erected around the perimeter of the aerodrome as it is a security requirement of an international airport. And secondly, that a ring road, whether formed or not, is required for maintenance and inspection vehicles.[68]

The relocation of some or all of the general aviation (including flightseeing) and helicopter facilities from the Airport

[108] RPL and ANZL submit QAC failed to give adequate consideration to a possible relocation of general aviation (including flightseeing) and helicopter facilities from the Airport.[69] ANZL supports its submission relying on the evidence of Mr Morgan who said that the increased demand for scheduled passenger services would eventually constrain the airspace. ANZL did not identify any alternative locations for general aviation or a helicopter facility but said QAC should now consider any future land and airspace constraints and prioritise the elements of its business that it wishes to retain.[70]

[109] It was not suggested that the airspace constraints are such that there is an immediate need to relocate general aviation/helicopter facilities.[71] ANZL has not undertaken work to identify when any future airspace constraints may impact the operational efficiency of the Airport, rather it was Mr Morgan's "perception" that these constraints may arise.[72] We are not satisfied on the basis of his evidence that either the airspace is, or will be at some stage in the future, constrained. Airspace management is the responsibility of Airways New Zealand and we anticipate there could be a number of responses including, but not limited to, relocating elements of the aeronautical businesses from, or constraining their development at, Queenstown Airport. We do not consider QAC remiss for not exploring off-site locations for part of its aeronautical business.

Consideration of individual components of the work being accommodated within the existing aerodrome designation

[110] Mr Munro's evidence was that the aeroclub and flight-training operators presently located on the northern side of the main runway have greater flexibility

68 Transcript at [276-279, 325].

69 RPL Opening Submissions at [7.4].

70 Transcript at [218-219].

71 Transcript at [220].

72 Transcript at [223-224].

around where they locate and that these activities could operate on or off the Airport.[73] Their location would affect, to some small extent, the area required for the designation.[74] Mr Sachman gives similar evidence.[75] QAC does not appear to have given consideration in its NOR to whether the aeroclub and flight-training operators can locate within the existing aerodrome designation.

[111] Furthermore, there appears to be no consideration given by QAC as to whether the provisioning for a future instrument precision approach runway or Code D aircraft operations can be made within the existing aerodrome; no doubt this is because it considered these facilities in conjunction with the proposed southern precinct.

Overall Conclusion

[112] We conclude that there is an array of factors, including safety, which militate against a northern location for a helicopter facility. Of these cost (to the helicopter operator and other users of the Airport) is an important consideration, but it is not determinative. Section 171(1)(b) is satisfied as we find that adequate consideration was given to alternative location of the helicopter facility.

[113] Likewise we are also satisfied that adequate consideration was given by QAC to alternative locations for corporate jets and that it is operationally efficient to locate these adjacent to the proposed Code C taxiway south of the main runway.

[114] Apart from the April 2007 study, none of the studies looked at the option of splitting the various aeronautical businesses north or south of the main runway within the existing aerodrome designation. But in the absence of any contrary evidence we conclude, like corporate jets, it is operationally efficient to locate fixed wing operators adjacent to a proposed Code C taxiway.

[115] We are also satisfied that under s 171(1)(c) that a general aviation/helicopter precinct south of the main runway is reasonably necessary for achieving the NOR's objective.

Issue: Is the work and designation reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought (s 171(1)(c))?

[116] Two sub-issues arise:

(a) The extent to which the work and designation are reasonably necessary for achieving the objective of QAC; and more generally

(b) Whether the works or designation are reasonably necessary for achieving the objective of QAC.

Extent of works or designation

Introduction

[117] The area of land required for the designation was influenced by two key decisions by QAC:

(a) The type of runway (whether an instrument non-precision or instrument precision runway); and

(b) The aircraft design parameters (whether Code D aircraft would operate at the Airport).

---

73 Transcript at [338].

74 Transcript at [338].

75 Sachman EiC at [68].

[118] We heard from Mr Morgan, for ANZL, who addressed, amongst other matters, the likelihood of Queenstown Airport runway becoming an instrument precision approach runway and of Code D aircraft operating at this Airport. His evidence is important in that it highlights QAC's assumptions that he says are wrong and, if he is correct in this, these assumptions may have had a significant bearing on the decision-making by QAC. QAC's *2010 Master Plan* records:

> However, on the basis of the recent recommendation that QAC should, in future, progressively adopt planning parameters for a precision approach runway, a recent decision has been made to revise the location for the future parallel taxiway to be at precision separation.
>
> This greater separation (75m) will position the taxiway significantly closer to the airport boundary at the southern side, adjacent to Lot 6, consuming all of the potentially available land for a SE Zone (74m) shown in Figure 3-3, and negating any possibility for limited precinct development for fixed wing GA that was indentified in the 2007 study.

[119] And later:

> It is considered quite possible that some future [aircraft] types that develop from the current B737 and A320 families may be well suited to operate on the relatively short Queenstown runway but will have wider wingspans to improve lift and fuel efficiency, "creeping" beyond Code C dimensions into the next category, Code D.
>
> Therefore, QAC has decided to adopt Code D precision runway separation and clearance distances for the taxiway, being:
>
> - Runway-taxiway separation 176.0m
> - Taxi-way-object clearance 40.5m[76]

[120] If, as ANZL contends, the appropriate main runway strip width is that for an instrument non-precision runway, that is 150 m, then the separation distance between the runway centre line and the taxiway centre line for Code C aircraft is 93 m, and for Code D aircraft, 101 m.[77] Taken together with a taxiway object clearance of 26 m or 40.5 m for Code C or Code D aircraft respectively, the parallel taxiway for Code C or Code D aircraft can be located well within the existing aerodrome designation. In the case of a Code C parallel taxiway, an 82 m wide strip of land would still be available outside of the taxiway and within the airport designation (and boundary) and for Code D there would be a 59.5 m wide strip available.

[121] If Queenstown Airport's main runway were to become an instrument precision runway with a runway strip width of 300 m, then the runway and taxiway separation distance including the object clearance for Code C aircraft would be 194 m or 216.5 for Code D aircraft. As Lot 6 is situated some 201 m from the main runway centerline, a Code C parallel taxiway including the object clearance could be accommodated within the existing aerodrome designation. However, under a Code D parallel taxiway and object clearance scenario, the aerodrome designation would extend 15.5 m into Lot 6.[78]

---

76 *2010 Master Plan* at [13].

77 Mr Morgan gave his supplementary evidence on 25 July 2012, after Messrs Morgan and Sachman. The line of cross-examination pursued by Mr Nolan in relation to Mr Munro proceeded upon a different understanding of the separation distance between the centreline of the main runway and taxiway (Transcript at [316-321]).

78 Morgan Supplementary at [5.28]. All planning aviation witnesses agree that the Code D parallel taxiway and object clearance would extend 15.5 m into Lot 6.

Precision approach runway

[122] Queenstown Airport is an instrument non-precision approach runway. CAA define a non-precision approach runway as being an instrument runway served by visual aids and a non-visual aid providing directional guidance adequate for a straight-in approach.

[123] A precision approach runway is an instrument runway served by (relevantly) Instrument Landing System (**ILS**) and visual aids intended for operations with a decision height not lower than 60 m (200 ft) and either a visibility of not less than 800 m or a runway visual range not less than 550 m.[79] An ILS controlled approach is a precision approach system and typically uses a combination of radio signals and high intensity lighting arrays to guide an aircraft approaching and landing on a runway.[80] This ground-based approach system requires a wider runway strip than a non-precision approach runway.[81]

[124] Three scheduled Queenstown Airport airline operators use the flight navigation system, Required Navigation Performance (**RNP**) technology. RNP is an aircraft based flight navigation system that is not designed to assist pilots during the landing phase and therefore cannot be described as a near precision technology.[82] Pilots, at the predetermined decision height establish visual contact with the runway when making their approach; if visual contact with the runway is not established the landing must be aborted.

[125] It was Mr Morgan's evidence for ANZL that Queenstown Airport would not become an instrument precision approach runway because of inter alia terrain constraints inhibiting ILS controlled approaches.[83] However, QAC is not suggesting that an ILS controlled approach will be made operational at Queenstown Airport. Indeed, Mr Munro accepts Mr Morgan's description of RPN and ILS technology.[84] Rather it is his advice that QAC protect for the possibility of a precision approach runway in the future.[85] As Mr Munro considers a RNP approach to be a "near-precision" approach, he recommends that airports with RNP operations adopt standards equivalent to those for a precision approach runway (ie as if ILS were installed).[86] His evidence was that a recent CAA circulatory advice strongly supports the adoption of standards for an instrument precision runway.[87]

Discussion and findings — precision approach runway

[126] No evidence was adduced that the scheduled airline operators flying into Queenstown Airport using RNP technology would (or sometime in the future could) operate down to 60 m (200 ft) decision height — being the standard for a precision approach runway, (Category I).[88] As we have no evidence to the contrary we accept ANZL's submission that similar landing outcomes as would occur with ILS technology do not, and would not, occur at Queenstown Airport for safety reasons.[89]

79 Morgan EiC at [7.7] and supplementary evidence at [5.24].

80 Morgan EiC at [7.14].

81 Morgan EiC at [7.8].

82 Morgan EiC at [7.24].

83 Transcript at [199-200].

84 Morgan Rebuttal at [156].

85 Munro Rebuttal at [153].

86 Munro EiC at [157].

87 Munro EiC at [158-9] discussing CAA AC 139-6, Rebuttal at [76].

88 Morgan Supplementary at [5.24], referring to AC139-6.

89 Nolan, Closing Submissions at [4.41].

While the approved decision height for RNP is 300 ft, for its own operating procedures, Air New Zealand has decided to use 400 ft as an additional safety precaution which is well above the minima specified for instrument precision runways.[90] The introduction of RNP technology has not displaced what Mr Munro describes as the "long-standing practical reality" that flight operations in and out of Queenstown Airport are conducted with visual procedures due to the proximity of mountainous terrain.[91] It follows that we accept Mr Morgan's evidence that:

> because of the terrain constraints inhibiting ILS approaches the final stage of an approach needs to be conducted by assuming a visual approach at 400ft above ground level, which also means no more than a 150m runway strip width is needed.[92]

Code D aircraft

[127] In QAC's application, the centerline separation distance between the main runway and the proposed southern taxiway is based on the largest Code D wingspan.

[128] Jet aircraft operating at Queenstown Airport fall into the Code C category, meaning that they have a wingspan of between 24 and 36 m (but not including 36 m). In his evidence-in-chief Mr Munro expands on the need to plan on the basis for aircraft with wider wingspans. He considers it plausible that future types of aircraft will be developed from the current Code C B737 and A320 families to aircraft that will have wider wingspans to improve lift and efficiency, thus "creeping" beyond the Code C dimensions into the next category, Code D.[93]

[129] Code D aircraft fall into two categories, those with smaller or larger wingspan between 36 m to 52 m. Code D aircraft with a larger wingspan would not likely operate at Queenstown Airport because of the physical size of the aircraft. However, Mr Munro considered it likely that at some time in the future a smaller Code D aircraft would operate and gave the timeframe for this to be towards the end of the 2020s or into the 2030s.[94]

[130] If planning is to consider not only what is known about the future, but also what is unknown but realistically possible, then Mr Munro recommended, and QAC adopted, precision runway separation and clearance distances for the Code D parallel taxiway.[95] In that regard Mr Munro emphasised the need to future-proof the Airport.[96]

[131] That said, Mr Munro agreed in response to the Court that there is no nexus between the use of Code D aircraft and the attainment of the NOR objective.[97] Indeed "growth projections are, in the timeframes we are looking at, based on aircraft growth size, which is broadly expected to be achievable through aircraft up to a Code C size".[98]

[132] While it is not discussed in the NOR or evidence of QAC witnesses, the existing airside facilities would likely need to be upgraded to accommodate Code D aircraft. This would include increasing both the width of the runway and its bearing capacity which would involve the reconstruction of the runway.[99] Code C aircraft operating at Queenstown Airport do so with CAA approval as the required runway

90 Transcript at [200].

91 Munro EiC at [151].

92 Morgan Supplementary at [5.40].

93 Munro EiC at [93-105, 167-173].

94 Transcript at [330].

95 Munro EiC at [171].

96 Munro Rebuttal at [83].

97 Transcript at [341].

98 Transcript at [341-2].

99 Morgan EiC at [7.20-7.21].

width is 45 m; not 30 m as presently exists. Mr Morgan picks up on this also when answering the Court's questions. For Code D aircraft to operate at Queenstown Airport the runway may need to be reconstructed, and possibly lengthened to accommodate the bigger planes.[100] He was unaware of any airport in the world where Code D aircraft operated on a 30 m wide runway (with the exception of military aircraft) and at the very least the runway would need to be widened to 45 m.[101] He said that in order to operate a Code D aircraft the runway would need to be widened and that, depending on the aircraft flying into Queenstown, the runway may also need to be lengthened and strengthened with fillets being provided at each end of the runway.[102] A reconfiguration of the terminal apron to accommodate the larger wingspan of these aircraft may also be required.

[133] Agreeing with Mr Morgan's evidence, RPL's aviation planner Mr Sachman recommended adopting Code C as the relevant planning parameter for aircraft design.[103] He noted the respect held by aircraft manufacturers for the Codes when designing airplanes in order to avoid impact on airport infrastructure.[104] He recommended planning for Code C aircraft, and if the use of Code D aircraft eventuates then to seek approval from CAA to operate the aircraft at this Airport.[105] Mr Munro accepted that it was one option to seek CAA approval, noting that if given, approval would involve restriction on the concurrent use of the runway and taxiway.[106]

Discussion and findings — Code D aircraft

[134] A smaller Code D aircraft of the type described by Mr Munro does not presently exist. (We exclude from our consideration the B757s which do not fly into Queenstown route and we were told are being phased out to be replaced by new generation Code C B737s and A320s).[107] Mr Munro's evidence proceeds very much on the basis that the Airport should plan for new generation aircraft which might emerge sometime in the future. While this might include airlines seeking to operate Code D aircraft at Queenstown Airport (and the evidence tends against the proposition), there is no suggestion of Code C aircraft being phased out — indeed the converse appears to be the case. On this matter we prefer the evidence of Mr Sachman that manufacturers will respect existing Codes when planning new and upgraded aircraft so that these can operate within the constraints of existing infrastructure at airports around the world, including Queenstown.

[135] If smaller Code D aircraft with improved lift and fuel efficiency were realistically possible, then we would have expected ANZL to support provision within the designation for this or at least explain why it could not. ANZL, while supporting within reason the need to "future proof" airports, does not consider it necessary (or appropriate) to provide for Code D aircraft at Queenstown.[108]

---

100 Transcript at [228-9].

101 Transcript at [229].

102 Transcript at [306].

103 Transcript at [353].

104 Transcript at [354].

105 Transcript at [353-4].

106 Transcript at [331].

107 Transcript at [355].

108 ANZL Opening Submissions at [2.6].

Sub-issue — whether the works or designation is reasonably necessary for achieving the objective of QAC

[136] The objective of the NOR is stated thus:

> QAC's specific objective for the NOR is to provide for the expansion of Queenstown airport to meet projected growth while achieving the maximum operational efficiency as far as possible.[109]

[137] QAC's planning witness, Mr J Kyle, gave evidence that the NOR has a single objective and we accept his evidence.[110] The objective is amplified upon in the NOR where it is stated that the NOR is required to ensure the continued safe and efficient functioning of the Queenstown Airport through expansion of the aerodrome to meet projected growth.[111] Growth means projected passenger and operational growth.[112]

[138] Mr Kyle conceded no connection was made by QAC's airport planner with an instrument precision runway. The provisioning is made because it was considered "sensible" to do so.[113] While acknowledging that it fell to him to say how these works fit with the objective, we can find no considered evaluation of this matter. Expressed in general terms he concludes that the designation is reasonably necessary to "enable QAC to meet its stated objective".[114]

Conclusion

[139] On the issue of whether the works or designation is reasonably necessary for achieving the objective of QAC the evidence is clear; within the planning horizon under consideration there is no nexus between the NOR objective and enablement of Code D aircraft operating at Queenstown Airport.[115] The predicted growth is able to be achieved using Code C aircraft.[116]

[140] For the same reason we find that there is no nexus between the NOR's objective and the provisioning for an instrument precision approach runway.

[141] The consequences of the findings are this: the provision of a instrument non-precision approach runway and Code C parallel taxiway would reduce the lateral extent of the land required by 97.5 m along the approximately 1,000 m length of the common boundary with RPZ, being a total land area of about 9.75 ha. Put another way, the land required for the designation would be reduced from around 160 m into the RPZ to around 60 m. We are not, however, required to approve the Code C parallel taxiway. Land within the existing designation is available for this purpose and it is a matter for QAC to decide whether to construct the same.

[142] Subject to what we say at [164] in all other respects we conclude that the work and designation is reasonably necessary for achieving QAC's objective. We prefer Mr Munro's assessment of the comparison of area requirements for the northern and southern precincts as it comprehensively addresses the proposed building and infrastructure.[117] We found limited assistance in the area requirements produced by RPL's witnesses as these do not include all components of the aviation precinct or use

109 NOR Annexure 2, Clause 2.1.4.

110 Counsel for QAC in closing submitted that there were two objectives; we do not accept this submission. Moreover the submission is not supported by the evidence or the NOR.

111 NOR Form 18 at [1.3].

112 NOR Form 18, Annexure 1, Clause 1.1.1.

113 Transcript at [871].

114 Kyle EiC at [7.72-7.76].

115 Transcript at [340-1].

116 Transcript at [342].

117 Munro Rebuttal, Table 3.

different measurements to assess the components. When reconciled, as Mr Munro has done, we are satisfied that any difference between the witnesses' assessments is at best inconsequential.[118]

[143] Finally, we find the proposal to extend the designation to accommodate an instrument precision approach runway and Code D parallel taxiway is inconsistent with objective 9.4.2 and policy 9.5.2 of the RPS which encourages development that maximizes the use of existing infrastructure while recognising the need for more appropriate technology. Furthermore, QAC has land within its existing designation which, undeveloped, could accommodate a instrument precision approach runway and Code D parallel taxiway.

Effects on the environment of allowing the requirement

[144] Section 171 provides that when considering a requirement and any submissions received, a territorial authority must, subject to pt 2, consider the effects on the environment of allowing the requirement whilst having regard to the matters in subs (1)(a-d).

[145] There are three categories of effects. These are:

(a) Noise;

(b) Landscape and amenity; and

(c) Traffic and transportation.

Noise

General aviation and helicopter noise

[146] The noise generated by helicopters was the focus of evidence given by three very experienced noise experts — Mr Hunt who gave evidence on behalf of RPL, Mr C Day for QAC and Mr N Hegley for QLDC. While the noise model inputs used by the witnesses were agreed, Mr Hunt and Messrs Day/Hegley differed on the relevance of the model outputs when considering the degree and relative effect of helicopter noise if one or other of the general aviation/helicopter precincts are developed.

[147] In his evidence-in-chief, Mr Day describes the Miedama and Oudshorn methodology used by the noise experts to compare the noise effects on local residents from three different precinct locations.[119] This methodology has been derived from a large number of studies undertaken to establish the relationship between aircraft noise levels and residential responses to this noise. The outcome of these studies is a graph which plots the percentage of people highly annoyed (over a range of 0 to 50 per cent) against aircraft noise levels (over a range from 40 dBA Ldn to 75 dBA Ldn).

[148] The noise experts, assisted by the planners, arrived at agreed densities for the type of development proposed in each activity area around the Airport. They then applied predicted occupation levels for each type of development to calculate the number of people who would end up living in each area for the three bands of aircraft noise (50-55 dBA Ldn, 55-60 dBA Ldn and 60-65 dBA Ldn). In the final step, they used the Miedama and Oudshorn graph to predict the number of highly annoyed people in each band of each area.

---

118 See Munro Rebuttal dated 29 April 2012 (in general).

119 Day EiC at [8.0].

[149] Following a number of iterations, Mr Day and Mr Hunt finally produced an agreed table of the numbers of people predicted to be highly affected within each noise band in the three precinct options.[120]

[150] Based on Mr Day's approach irrespective of the location of the general aviation/helicopter precinct, there will be people within the wider Frankton Flats area (in particular Frankton and *PC19*) predicted to be highly annoyed by noise. While the number of people who will be highly annoyed will be slightly less with a northern precinct, in his opinion the difference in those affected between the precincts is not significant.[121]

[151] Mr Hunt's evidence proceeded on the basis that noise would concentrate in the vicinity of the TALOs — the actual point that helicopters land and depart.[122] In contrast with Mr Day, Mr Hunt does not include the number of highly annoyed persons who will live in the 50-55 dBA Ldn noise band. He considers that the noise in this band will be dominated by the sound of aircraft from the main runway, and that these people would not be sensitive to the noise generated from the general aviation/helicopter precinct.[123] Mr Hunt finds it to be counter-intuitive that the number of highly annoyed persons in the 50 to 55 dBA Ldn noise band south of the main runway will increase if the general aviation/helicopter precinct is located north of the main runway. Again he says this points to the greater effect of noise from runway aircraft.[124] (Mr Day points out that the reason for this increase is that aircraft operations in the northern precinct result in a much wider 50 to 55 dBA Ldn band to the south and that as a result, more people are affected. This increase is offset by fewer people living in the much narrower 55 to 60 dBA Ldn band).[125]

[152] It is also Mr Hunt's opinion, that the noise generated by helicopters along agreed flight paths has an inconsequential effect on the overall shape of the 50 and 55 dBA Ldn noise contours[126] because helicopter noise is dispersed along the different flight paths.[127] Mr Day disagrees, pointing out that except for at the eastern border, the noise levels in the RPZ are being determined by the general aviation and helicopters using the cross-wind runway.[128]

[153] Taking a disaggregated approach and concentrating on RPZ, Mr Hunt concludes that if the general aviation/helicopter precinct was located south of the main runway, then more people would be highly annoyed within the RPZ than compared with those who would be highly annoyed in Frankton (if the precinct is retained in its present location) or *PC19* (if the precinct was located north of the runway). On that basis, in his opinion, the southern precinct is the least preferable option.[129]

---

120 Exhibit 5.

121 Day EiC at [61]. While the outputs in the EiC subsequently changed, we did not understand this to have affected Mr Day's opinion.

122 Transcript at [796].

123 Transcript at [791, 798].

124 Transcript at [791].

125 Transcript at [800].

126 Transcript at [794].

127 Transcript at [797].

128 Transcript at [800].

129 Hunt EiC at [65].

Discussion and findings — general aviation and helicopter noise

[154] The noise from helicopters travelling along the flight paths has been modelled and these levels are reflected in the noise contours in *PC35*.[130] The modelling includes with or without the Lot 6 option. The noise contours in the vicinity of the RPZ (including Lot 6), are a record of noise emanating from both the main runway and general aviation and helicopters using the cross-wind runway.[131] Modelling includes, but is not limited to, the noise and energy levels generated at the proposed FATOs and TALOs. Noise levels increase in proximity to the FATOs and TALOs and the air noise boundary show this change to be relatively localised.[132] Irrespective of where the aviation/helicopter precinct is located noise will be generated from this source. When under or near a flight path persons within the Frankton Flats area generally will be exposed to noise from general aviation and helicopters; the effects of noise are not restricted to the FATOs or TALOs.

[155] The incidence of residents within the 50-55 dBA Ldn noise band who are predicted to be highly annoyed by noise, even if the percentage is less than those who live in the higher noise bands, is of no less relevance than those highly annoyed people who live in these higher noise bands. Irrespective of where they live a percentage of people will be highly annoyed by noise.

[156] Of relevance also are the differences between the numbers of people predicted to be highly affected from noise if the general aviation precinct was to be retained in its present location compared with the precinct being located at the two alternative locations. On Mr Day's approach for the total number of people highly annoyed with the precinct in its current location, a greater number of people within the RPZ are predicted to be highly annoyed than compared with the people located at *PC19* or Frankton. But this would be the case irrespective of the location of the precinct. Messrs Day and Hegley's opinion is that when the total number of people who are highly annoyed are aggregated there is little difference where the precinct is located.

Overall conclusion — general aviation and helicopter noise

[157] In *PC35* (before this division of the Environment Court), RPL proposed, and the other parties agreed on mitigation measures for the attenuation of noise in defined areas inside of the 55 dBA Ldn contour in Activity Areas 6 and 7 of the RPZ to allow for residential and educational buildings. We are satisfied that with these measures in place, together with the amendments proposed by the Environment Court in the Interim Decision on *PC35*, the extension of the Airport will not preclude opportunities for future development within the RPZ. When compared with people living either now or in the future in Frankton or in residential areas north of the main runway, more people living within RPZ are predicted to be highly annoyed by noise as a consequence of growth in aircraft movements and this is so irrespective of the location of the general aviation/helicopter precinct. Overall we do not find this aspect of the NOR to locate the helicopter precinct on the southern side of the airport to be in tension with the planning instruments.

---

130 Transcript at [579].

131 Transcript at [800].

132 Transcript at [800].

Other noise matters

A single event level approach

[158] RPL is also concerned with the amenity effects of single event noise levels from helicopters and fixed wing aircraft on short take off along the cross-wind runway. Through cross-examination counsel explored with Mr Day the usefulness of the single event level as an assessment method.[133] Mr Day's response was that while single event levels are used to assess sleep disturbance effects at night (and that is its purpose), it is not a tool employed by noise experts to evaluate either the effects of noise on amenity nor is it an appropriate response to amenity effects. Mr Day did not support RPL's proposition that it could or should be used for this purpose and he did not see it assisting the evaluation of the best practicable option to mitigate noise.[134] Mr Hunt did not give evidence supporting the use of the single event levels for these purposes.

[159] In the absence of evidence to support the proposition that single event levels may be used as an alternative method to assess the effects of daytime noise, we accept the evidence of Mr Day.

Unplanned engine testing

[160] We accept Mr Day's evidence that unplanned engine testing is not a significant issue. The incidence of this is not expected to be higher than once per year and is to be managed through the *Noise Management Plan* provisions that are the subject of *PC35*.

Earth bund

[161] The reinstatement of an earth bund on the south side of the aerodrome was supported by Mr Hunt as a form of mitigation should buildings within the extended aerodrome designation not be constructed in a manner to form an acoustic barrier.[135] Mr Day's evidence was that the difference with or without the extant bund would be one dBA, a sound level which is not detectable. If additional mitigation is required he recommended an acoustic fence be built.[136]

The need for additional noise attenuation is to be assessed at the outline plan of works stage, and directions will be given that QAC include a condition in the designation to give this effect.

Traffic management

[162] We heard from three expert witnesses on the topic of traffic management: Mr N Williams (QAC), Mr S Woods (QLDC) and Mr T Penny (RPL). At the commencement of their evidence a second joint witness statement was tabled recording their agreement on all outstanding traffic management issues.[137]

[163] In particular the witnesses were agreed on the following:

(a) The cross-section of the western access road connecting the general aviation and helicopter precinct with Hawthorne Drive;

(b) That 450-600 car park spaces are required to service the 25,000 m^2 floor area of the proposed precinct's buildings;[138]

133 Transcript at [98].

134 Transcript at [464-479].

135 Hunt Rebuttal at [20-12].

136 Day Rebuttal at [20-24].

137 Dated 20 July 2012.

138 This is estimated on the basis that 1.8-2.4 spaces per 100 m^2 floor area.

(c) In addition to land required for the western access and its associated landscaping, 1.3-1.7 ha of land is required for carparking, circulation and landscaping and not 5.6 ha as previously estimated; and

(d) The balance 2.7-3.1 ha along the one km frontage to the RPZ (being some 27-31 m in depth), is no longer required for carparking, circulation and landscaping.

Land surplus for carparking, circulation and landscaping

[164] The traffic witnesses appeared to be of the view that this 5.6 ha of land at clause (c) differed from an estimate given by Mr Munro. We are not sure that is the case, but irrespective of that it appears that the area in the NOR required for carparking, circulation and landscaping (excluding the western access) is too large and not all of the land required is reasonably necessary to meet QAC's objective. The evidence is conflicting and it is not possible for us to reach a view as to the amount of surplus land. Consequently directions have been given that the parties file memoranda addressing whether the designation is to be cancelled in part by reducing the land area required. This should be considered in tandem with the landscape directions which may have a bearing on this extent of land required.

Western access

[165] The witnesses addressed a potentially quite problematic issue concerning the western-most access to the proposed general aviation/helicopter precinct. Since February 2012 RPL and the Minister of Education have entered into a contractual arrangement to buy land in the RPZ adjacent to Red Oaks Drive south of Hawthorne Drive for the purpose of establishing a secondary school.

[166] Hawthorne Drive is yet to be formed in the vicinity of the western access. When it is, the southern precinct's traffic movements will likely be restricted by a concrete median strip to left in and left out turns. Drivers wanting to turn right will be required to do a U-turn at one of two intersections controlled by traffic lights.[139] To the east, some 70 m distance from the access, the intersection between Red Oaks Drive and Hawthorne Drive is very likely to experience significant pedestrian movement associated with children from the future secondary school crossing Hawthorne Drive. The desire to control movement across Hawthorne Drive (which will be a four lane road) is the reason for the traffic witnesses' recommendation that this intersection become signalised. The second signalised intersection is to be located some 200 m west of the access in the vicinity of the Remarkables Park Town Centre and would be used by west bound Hawthorne Drive traffic wishing to enter the precinct.

[167] We have noted the heavily qualified joint statement made by the traffic witnesses — that U-turns at these intersections would be less than desirable, but technically feasible, "at least in the short term". Mr Penny acknowledged that the U-turn would increase risk [we interpose of conflict between pedestrian and vehicular movements] and confusion at the intersections.[140] In his view, while physically feasible this movement is not desirable.[141]

[168] Critically, the traffic experts have not modelled the distribution (and timing) of traffic movement at the intersections.[142] Added to the traffic movement associated with the proposed southern precinct is traffic generated by *PC34* — which while under

139 Transcript at [620].

140 Transcript at [623].

141 Transcript at [620].

142 Transcript at [624].

appeal no change is expected to the additional 30,000 m^2 gross floor area for retail activity that it enables.[143] It was faintly suggested that the risks associated with the U-turns may be managed by constructing a right turn bay at the Hawthorne Drive/Red Oaks Drive intersection. However, there has been no assessment of this facility and in any event it is beyond the scope of the NOR. Also a right turn bay would not address the ability of traffic to safely cross two lanes to reach the right turn bay over a relatively short distance between the western access and Red Oaks Drive.

[169] Because of the concerns shared by the traffic witnesses about the management of traffic, particularly in relation to Red Oaks Drive intersection, it was their view that access to the designation area would be considerably improved if the access was to connect directly to an extension of Red Oaks Drive north of Hawthorne Drive.[144] This would entail an extension to Red Oaks Drive over land owned by RPL — although we note that the Court has no jurisdiction to direct this outcome. However, counsel for QAC agreed that the Court could require the access to connect with Red Oaks Drive if this road was extended to the boundary of the aerodrome designation.

Discussion and findings

[170] All this leaves the management of traffic in proximity to Red Oaks Drive in a most unsatisfactory state of affairs. Given this we were surprised by the evidence of QAC and QLDC planning witnesses. Ms Baker (for QLDC) gave evidence that from a planning perspective this outcome is acceptable. The potential environmental effects were "less than minor" and the proposal would meet "Part 2".[145] There is no evidence before the Court on which the Court could possibly reach this conclusion. Mr Kyle for QAC while characterising the recommendation by the traffic experts to signalise the intersections as "game changing",[146] concluded the proposed access was not necessarily inconsistent with the District Plan.[147] Neither witness proffered an evaluation of the plan to substantiate their opinions. In fairness to Mr Kyle and Ms Baker the issue of traffic management around the proposed school was raised for the first time during the hearing, but we would have thought these witnesses had sufficient time to consider the proposal in light of the District Plan and offer a considered opinion to the Court.

[171] We find that the proposal is inconsistent with pt 14 Transport, objective 1 — efficiency and associated policies 1.1 and 1.10 and also objective 2 — safety and accessibility, and its policy 2.6. The findings are not contingent on the secondary school establishing. We consider each of these provisions in turn:

> **Objective 1 — Efficiency**
>
> Efficient use of the District's existing and future transportation resource and of fossil fuel usage associated with transportation.
>
> Policy 1.1
>
> To encourage efficiency in the use of motor vehicles.

[172] Depending on the direction of their approach and their intended destination along the length of the designation, some vehicles could be required to travel nugatory distances in excess of 1 km to reach their destinations if an access/egress restriction is

143 While *PC34* enables has capacity for 30,000 m^2 gfa, we note that in *PC19* Messrs Heath and Tansley agreed that within the next 20 years the likely floorspace development would be 20,000 m^2.

144 Transcript at [613] (Williams), [619] (Penny) and [630] (Woods).

145 Transcript at [973].

146 Transcript at [878].

147 Transcript at [881].

in place at the western access intersection with Hawthorne Drive. Factored up for multiple journeys, the resulting inefficiencies would clearly be at odds with Policy 1.1.

> **Policy 1.10**
>
> To require access to property to be of a size, location and type to ensure safety and efficiency of road functioning.

[173] Safety and efficiency would be severely compromised if vehicles wishing to travel west from the western access exit at Hawthorne Drive were required to turn left, cross two lanes of traffic over a very short distance and then complete a U-turn at the Red Oaks Drive intersection in order to achieve their objective.

> **Objective 2 - Safety and Accessibility**
>
> Maintenance and improvement of access, ease and safety of pedestrian and vehicle movement throughout the District.
>
> Policy 2.6
>
> To ensure intersections and accessways are designed and located so:
>
> • …
>
> • they can accommodate vehicle manoeuvres.
>
> • …
>
> • are separated so as not to adversely affect the free flow of traffic on arterial roads.

[174] There would be considerable risks for the safety of pedestrian and vehicle movements if the only way for vehicles wishing to travel west after exiting the western access was to do a U-turn at the Red Oaks Drive/Hawthorne Drive intersection.

[175] The explanation and reasons for this objective also note that *the Council is committed to investigating the opportunity for new roads on Frankton Flats … to reduce the impact of development on State Highway No 6 and improve access to the airport and other activities.*

[176] The link between Frankton Flats and the Airport (as well as Remarkables Park) will be via the EAR and Hawthorne Drive. It seems highly likely that the EAR will be afforded arterial road status. The Court is concerned that if vehicles were permitted to exit the aerodrome's western access east bound onto Hawthorne Drive this would adversely affect the free and safe flow of traffic on Hawthorne Drive because of:

- The western accesses proximity to the Red Oaks Drive intersection;
- Vehicles wanting to turn right into Red Oaks Drive or do a U-turn to get back to Frankton changing lanes over a short distance; and
- The potential for U-turns to cause crashes.

[177] Similar safety and disruption concerns arise in respect of west bound vehicles on Hawthorne Drive making U-turns at a (to be) signalised intersection at (or near) Riverside Rd in order to get back to the western access.

[178] These concerns are compounded by the likelihood that some drivers using the general aviation/helicopter precinct may be visitors unfamiliar with local roads and, in some cases, driving on the left hand side.

[179] We have formed the preliminary view that there should be a condition that the western access be used for left hand entry turns only and that egress should be via the eastern access only. We recognise that there may be timing issues around construction of the latter for exercising the designation. Because this subject arose only during the course of the hearing and the evidence may have been incomplete we have extended the parties the further opportunities made in our directions. We have also formed the view that the optimal solution might be for the general

aviation/helicopter precinct to have ingress and egress to an extension of Red Oaks Drive north of Hawthorne Drive to the aerodrome boundary. However we understand that as no certainty attaches to this possibility it cannot be relied on.

[180] If there are difficulties with this proposal then leave will be reserved for the parties to call further evidence addressing traffic management this time in an holistic fashion having regard to the relevant traffic factors; and there are a number. The evidence is to include future volumes [vehicles/pedestrians including from any future secondary school, RPZ (including *PC34*), and southern precinct], intersection spacing, signalisation, Red Oaks Drive extension, EAR construction timing, the function of the site's eastern access onto the EAR, street pattern legibility and driver familiarity.

Landscape and visual amenity

Introduction

[181] The relevant visual and amenity effects of the NOR are those experienced from within the RPZ and from public places including the Airport. In this regard we heard from three landscape architects; Mr D Miskell (QAC), Mr B McKenzie (RPL) and Dr M Read (QLDC). The issues arising from the proposed development are best captured by QLDC's landscape architect, Dr M Read, as follows:

> Currently the most striking aspect of Lot 6, traversed by Mr McKenzie in his evidence, is the expansive views which can be gained to the outstanding natural landscapes which ring the Wakatipu Basin. This serves, in my opinion, to underline that the landscape importance of the Frankton Flats as a platform from which these views can be appreciated rather than for any qualities which it may so far have retained itself. It is the case, however, that the current expansive views from Lot 6 will become less expansive and with greater evidence of urban development in the fore and mid-grounds regardless of the consequences of this notice of requirement.[148]

[182] We understood Dr Read to refer to development enabled by *PC19* on the northern side of the aerodrome.

[183] Mr Miskell prepared an assessment of landscape effects attached to the NOR. In it he concluded that the potential adverse landscape effects resulting from the development would be "less than minor".[149] While he did not consider the viewing population within the RPZ site to be particularly sensitive to landscape change, he recommended a buffer of grasses, shrub and tree planting at the southern boundary of the NOR. As it transpires the NOR did not include any conditions addressing the built form, bulk and location of buildings within the proposed general aviation/helicopter precinct.

[184] In his evidence-in-chief Mr Miskell reviewed this earlier opinion. Upon reflection he now found the views to the north within Activity Area 8 to be an important consideration and recommended that landscape design controls be established; in particular conditions requiring:

(a) A 1.2 m high hedge planting on both sides of the proposed access road;

(b) An avenue planting at 20 m spacing of trees capable of growing up to 10 m as part of the access road development on the southern boundary of the designation; and

(c) Native beech planting within car-parking areas.[150]

[185] Mr Miskell also recommended that a landscape buffer be maintained between any infrastructure and buildings on the designated land and the balance of Lot 6. And

148 Read EiC at [3.2], McKenzie EiC at [23].

149 NOR Appendix D at [25].

150 Miskell EiC at [108].

finally, that there should be "thoughtful" siting and design of all buildings and infrastructure to create a high standard of visual amenity from public viewpoints.[151] While QAC's planner proposes a landscape condition in his evidence-in-chief, this does not fully pick up on all the recommendations made by Mr Miskell.

[186] The need for the precinct to appropriately address the environment in which it is to be located only really gained traction with QAC after the QLDC (non-regulatory) joined the proceedings in June 2012. That is so notwithstanding the recommendations made by RPL's landscape architect in his evidence and in the report prepared by the EPA.

Views from within Remarkables Park zone

[187] Unmitigated, the concerns arising from within the RPZ are:

(a) A possible built development that involves lineal arrangement of large, industrial scale buildings extending approximately one km along RPZ boundary;

(b) The obstruction of views to the surrounding mountains;

(c) The disruption of the current sequence of an undeveloped foreground to more distant mountainous views;

(d) The reduced opportunity for future development within the RPZ, through open space, to connect visually with the surrounding mountainous landscape; and

(e) Adverse visual effects associated with extensive car-parking.

[188] Mr Miskell estimated the viewing distance from the boundary of the NOR to RPZ's Activity Areas 6 and 7 to be between 200 to 250 m.[152] At this distance the southern general aviation/helicopter precinct would not intrude on the views of the skyline from either Activity Area. Views to the northern mountains from within RPZ become obscured at distances 125-150 m or less from the precinct.[153] If there are gaps between buildings the degree of this effect will be less again.[154]

[189] The extent to which the NOR car-parks and buildings are visible from these activity areas will depend on future development north of the EAR, including Activity Area 8. In that regard, the Structure Plan produced by RPL landscape architect, Mr B McKenzie, shows intensive residential development immediately north of the EAR within the RPZ.

[190] That said, RPL is less concerned with maintaining a view to a skyline than it is with maintaining visual connection with the surrounding mountainous landscape. Mr McKenzie's response to the proposed landscape design controls was that they would have limited effect in addressing the visual effects of the proposal, because of its built form.[155]

Views from within Queenstown Airport

[191] The views from Queenstown Airport to the surrounding mountains are expansive, and views south along the Coneburn Valley are rightly described by Dr Read as exceptional.[156] Dr Read's evidence was that the southern precinct would

151 Miskell EiC at [107].

152 Miskell EiC at [30].

153 Miskell EiC at [22],

154 Miskell EiC at [22].

155 McKenzie at [101].

156 Read EiC at [4.2.3].

partly obscure the base of the Remarkables Range (but not its "ice scoured face"), as it would also the Crown Terrace Escarpment. The development would narrow the field of vision and reduce the naturalness of the view.[157]

[192] Mr Miskell evaluated the effect on views and visual amenity as a consequence of this development. In his opinion The Remarkable mountains would "dwarf" the precinct development in the foreground.[158] At a distance of 300 m [we take that to be from areas which are accessible by the public] it is unlikely that the buildings within the southern precinct would significantly reduce the positive visual impact of the surrounding mountains.[159] Further, in his opinion the views towards Coneburn Valley from within the Airport would be disrupted by the proposed precinct, as they would also be by development within the RPZ, albeit development within RPZ may have a lesser effect. He concludes the presence of aircraft related activities and structures within close proximity to the Airport is not an unexpected addition to the landscape and conditions can be imposed to ensure that any adverse landscape effects are successfully addressed.[160]

Discussion and findings

[193] All three witnesses agreed that from a landscape perspective a location north of the main runway would be a better option for the proposed precinct; a northern location would have greater absorptive capacity as it would appear in the foreground of *PC19*'s proposed industrial and yard based activities.[161] However, the adjacent Events Centre and sports fields would give rise to similar amenity issues as could occur if the development was adjacent to RPZ's Activity Area 8.

[194] We agree with Dr Read and Mr McKenzie that the lack of control in the designation conditions over the form, bulk, location and exterior appearance of buildings could, unmitigated, create a significant adverse effect on the visual amenity of those parts of the RPZ located adjacent to the aerodrome. This is particularly so given that Designation 2's building height restriction of 9.0 m does not apply to hangars. We agree also with Dr Read that a lineal pattern of development along the one km boundary with the balance of RPZ would be a new and notable pattern within the landscape and without mitigation this would be neither pleasant nor attractive.[162]

[195] While development within the RPZ, including Activity Area 8, may obstruct views towards the north and, in the nature of any development, the remnant natural character of RPZ's undeveloped land will be diminished; this does not detract from the relevance or significance of the views and the derived visual amenity for this zone. We find this to be the case even without assuming that any particular pattern of development will emerge in Activity Area 8 (such as a golf course and other recreational facilities as discussed by several witnesses).

[196] However, we are satisfied that if development of the precinct, its land and buildings, addresses the surrounding environment including the Airport and the adjacent RPZ Activity Areas, these effects can be satisfactorily managed and would serve to visually integrate the precinct within the surrounding urban area in a manner which achieves the outcomes of the relevant objectives and policies of the District Plan.

---

157 Read EiC at [4.3.2.2].

158 Miskell EiC at [68].

159 Miskell EiC at [67].

160 Miskell Second Supplementary Statement at [9-10], Transcript at [720].

161 Read EiC at [7.4], McKenzie Rebuttal at [35], Miskell EiC at [35], Transcript at [720].

162 Read EiC at [4.2.8].

Outline plan of works

[197] Pursuant to s 176A QAC is directed to file an outline plan of works in accordance with that section.

[198] We do not impose an additional requirement that QAC consult with QLDC or other interested parties prior to lodgment. It is plainly in QAC's interests to do this and consultation accords with sound resource management practice. A condition requiring consultation is unnecessary, given the directions requiring QAC to directly address the landscape and visual amenity objectives for its buildings and infrastructure design, an integrated design and management plan and the assessment matters relevant to an outline plan of works.

Conditions on landscape and visual amenity

[199] The conditions proposed by the QAC and QLDC (regulatory) planners were not supported, and we find that is with good reason. The conditions essentially provide tools by which to address the visual and amenity effects of the development but with no objectives articulating the intended outcomes. So that these outcomes are brought into account we have made directions that QAC is to propose the landscape and visual amenity objectives for building and infrastructure design and location.

[200] QAC is also to prepare for the Court's approval:

(1) The proposed conditions for inclusion in Designation 2 which give effect to the Court's decision which will require:

(a) The preparation of an integrated design and management plan which states:

(i) The landscape and visual amenity objectives for building and infrastructure design and location and outcomes in relation to:

- A landscape planting, staging and maintenance plan addressing:
  - Roading, car-parking and buildings; and
  - The extent to which the landscape planting complements existing landscaping within the aerodrome designation and adjoining RPZ activity areas;
- Management of stormwater (including if relevant earthworks, retention ponds and landscaping);
- The management of signage, including the use of building colour as a corporate logo; and
- Standards for an acceptable range of building materials, colour, tones and reflectivity.

[201] For avoidance of doubt the content of the various plans (for example the planting plan) are not required, and we doubt this would be possible without knowing the proposed layout of the precinct.

(2) QAC is to propose conditions which require QLDC at the outline plan of works stage to consider the extent to which:

(a) The outline plan of works gives effect to the integrated design and management plan and achieves the stated landscape and visual amenity objectives for building and infrastructure design and location;

(b) Buildings appear recessive within the surrounding environment;

(c) Buildings complement existing or consented development within the Airport and adjacent RPZ activity areas;
(d) Buildings provide visual permeability;
(e) Views of surrounding mountainous landscape are maintained;
(f) Clustering of buildings may reduce a lineal arrangement of the precinct; and
(g) The use of landscape mounding as a tool to attenuate the bulk and form of the precinct buildings.[163]

Overall conclusion on landscape and visual amenity

[202] QAC has prioritised its operational requirements without giving adequate consideration to how the development of the southern precinct addresses the surrounding landscape and urban context.

[203] There is considerable potential for large scale utilitarian buildings to be developed within the designation, particularly in the absence of maximum building height controls in relation to hangars. The effect of this would be to reduce the views and visual amenity enjoyed by both persons arriving and departing from this airport and from within the RPZ. The deficiencies in the management of landscape and visual amenity do not reflect the importance attributed to Queenstown by the Minister for the Environment; that it is a world renowned tourist destination and a place of national significance.

[204] The fact that the precinct's buildings will have a functional purpose does not obviate the need to address the development in its context, although plainly the functionality of the buildings is a relevant consideration. Our concerns are such that we are unable to conclude that the NOR's confirmation as proposed by QAC achieves the purpose of the Act.

Direct referral to the Environment Court

[205] Finally, we are to have regard to the Minister for the Environment's reasons for making the direction and also any information provided by the Environmental Protection Agency.

[206] We understand that QAC initially requested the NOR be directed to a Board of Inquiry and that the EPA, finding that the NOR was a proposal of national significance, made this recommendation to the Minister for the Environment.[164] We have considered the EPA's report to the Minister, and note the advice that the NOR could be determined independently of other proceedings before the Court.[165] As recorded in this decision and elsewhere, we do not share this view.

[207] Immediately following the EPA's recommendation to the Minister, QAC requested the matter be referred to the Environment Court as it had been unable to acquire the land from RPL.[166] The Minister for the Environment decided to refer the NOR to the Court and his reasons for this included that there were a number of matters already before the Court related to this NOR and that the direction to the Court would facilitate an integrated decision-making process for Queenstown Airport.[167] In his ministerial direction, the Hon. Dr N Smith stated "Queenstown is a world renowned tourist destination and expansion of the Airport is likely to affect

163 While Mr Miskell in rebuttal at [54] did not consider the bund necessary and was a "land hungry" device, he was not opposed to it. This condition is not the same as a bund.

164 Recommendation of the EPA to the Minister for the Environment dated 2 February 2011.

165 Recommendation of the EPA to the Minister for the Environment dated 2 February 2011, at [17].

166 Letter from Lane Neave to EPA dated 3 February 2011.

167 Letter from Minister for the Environment to QAC dated 15 February 2011.

Queenstown, which is considered to be a place or area of national significance."[168] We agree with Dr Smith as to the role the Airport has in supporting and expanding Queenstown as a tourist destination and secondly, that the NOR should be considered in the wider context of other far reaching proceedings before the Environment Court. (As mentioned earlier these proceedings are QAC's privately initiated *PC35* and a second NOR also to amend Designation 2 and *PC19*).

Part 2 of the Act

[208] We commence our evaluation of the NOR under s 7 (no ss 6 and 8 matters are directly in play). Section 7 informs the purpose of the Act and we are to have particular regard to and accord such weight as we think fit to its provisions. Section 7 plays an important role but should not be approached in a way that obscures the purpose of the Act.

Section 7(b)

[209] RPL submits that it is not an efficient use of resources to seek to designate land owned by a third party for airport purposes, where QAC owns land that is designated for the same purpose.[169] The submission is relevant to:

(a) The objective for the designation, which includes the statement "achieving the maximum operational efficiency as far as possible";

(b) Section 7(b) of the Act which provides that in achieving the purpose of this Act we are to have particular regard to the efficient use and development of natural and physical resources; and

(c) Section 5.

[210] Counsel for QAC and RPL referred to the High Court decision of *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482 where the Court observed that on each occasion the Resource Management Act has imposed an obligation on the consent authority to consider alternative locations or methods, that obligation has been carefully spelt out in the Act.[170] Over time, a relatively narrow approach had been taken to s 7(b) in the context of a requirement for a designation. The courts have reviewed the decisions of territorial authorities with regard to whether alternatives have been properly considered, rather than whether alternatives had been excluded or the best alternative chosen. Justice Fogarty in *Meridian Energy Ltd v Central Otago District Council* reflected that it is difficult, if not impossible, to express some of the pt 2 criteria in terms of quantitative values.[171] In this case, the economists agreed that it was not possible to monetarise all the benefits or costs associated with the NOR.

[211] Decisions on costs and economic viability, or profitability of a project are not matters for the Court. As Justice Wild in *Friends and Community of Ngawha Inc v Minister of Corrections*[172] said, these matters should:

> sensibly be regarded as decisions for the promoter of the project. Otherwise, the Environment Court would be drawn into making, at least second-guessing, business decisions. That is surely not its task.

[212] The economists engaged by QAC and RPL considered it reasonable, if not essential, that we assume QAC would act rationally when making investment decisions.

---

168 Ministerial Direction dated 14 February 2011.

169 RPL Closing Submissions [7.12].

170 *Meridian Energy Ltd* at [77-78].

171 At [108].

172 [2002] NZRMA 401 (HC) at [20].

[213] RPL referred us to the Environment Court decision of *Port Gore Marine Farm v Marlborough District Council* [2012] NZEnv C72 at [119] where, obiter dicta, the court commented that while a cost-benefit analysis is not a compulsory consideration under s 7(b) of the Act it may be very useful. The Court goes on to state that without it an assessment of efficiency under s 7(b) tends to be rather empty.

[214] We find, for reasons that we give later, a cost-benefit analysis may be relevant and informative of matters in s 171(1)(b) and s 7(b), but that does not elevate the matter into a criterion to be fulfilled.

The evidence

[215] Dr T Hazeldine, Professor of Economics at the University of Auckland, gave evidence on behalf of RPL which proceeds on the basis that QAC has not made out the case whether the designation is reasonably necessary to achieve its objective.[173] As that is not our conclusion, at least in relation to the general aviation/helicopter precinct, we found his concluding remarks to be of limited assistance.

[216] Mr Ballingall, an economist employed by the New Zealand Institute of Economic Research Inc, gave evidence on behalf of ANZL. He sets out his understanding that these proceedings require consideration of alternatives and the cost-benefits issues, although he states correctly that a s 32 analysis is not required.[174] QAC did not present a cost-benefit analysis in support of the NOR.[175]

[217] Mr Ballingall supports a cost-benefit analysis as providing a "formal, structured method of systematically assessing proposals in terms of their outcomes relative to their use of resources".[176] For these proceedings he suggests an analysis at the level of a regional perspective is required as this is where the majority of costs and benefits would accrue.[177] With reference to the cost-benefit analysis framework produced by the New Zealand Treasury, he analysed the NOR documentation in terms of (a) its definition of the problem — that is the challenge to be addressed, (b) the objective of the NOR and (c) the identification and analysis of the options which address the challenge. All of this he found inadequately detailed, commencing with the vague nature of the NOR objective. The NOR, he concludes, fails to explain how the capital costs of acquiring Lot 6 would be funded, and how this might affect the charges to scheduled airlines and non-scheduled operators and demand for their services.

[218] A key difference between Mr Ballingall and QAC's economist, Mr M Copeland, lies in the relevance of a cost-benefit analysis for options which have been considered and discounted by a requiring authority.[178] Mr Copeland's approach is like an economic impact assessment considering the use of the aerodrome with or without Lot 6.[179] Even then his focus is on the benefits of the proposal, excluding consideration of the opportunity cost to RPL in not being able to use this land and the cost of the land. He concludes that an increase in ticketing prices as a consequence of acquiring Lot 6 is not an externality but rather an imperfection in the market place — ie people perceive that the price for airline tickets is too high or too inefficient.[180]

173 Hazeldine EiC at [17, 55].

174 Ballingall EiC at [3.4].

175 Transcript at [633].

176 Ballingall EiC at [3.19].

177 Ballingall EiC at [3.22].

178 Copeland Rebuttal at [10].

179 Copeland EiC at [29].

180 Transcript at [637].

Discussion and findings

[219] We agree with Mr Copeland that QAC is not subject to any requirement of NZ Treasury or any other government agency when presenting this NOR. However, the value of Mr Ballingall's evidence is that it presents a tool for structured decision-making by a requiring authority. (There may of course be other tools.) In this regard, we would have been better assisted had the witnesses agreed in their expert conference on a costs-benefits tool for use in these proceedings. As it was several assessments were presented with different witnesses employing different metrics which made parts of their evidence impossible to compare. QAC's simple cross/tick method was inadequately described and conveyed no understanding of the parameters of each of the categories assessed.

[220] A cost-benefit analysis of the alternatives may be relevant and informative of matters in s 171(1)(b) in particular whether adequate consideration was given to alternatives in the circumstances where a requiring authority either does not have an interest in the land or the work will have a significant adverse effect on the environment. This could be presented in a qualitative or quantitative format (or a mixture of both) and could include consideration of the opportunity cost of the Airport using its own land versus the opportunity cost to RPL should the NOR be approved. Secondly, it has the advantage of increased transparency of decision-making and here we refer to RPL's concern that QAC's decision-making was weighted to maximise its other business opportunities within the existing designation.

[221] In these proceedings efficiency can be understood in terms of allocative, social and operational efficiency. Allocative efficiency seems to accord with a general rule of economics given by Mr Ballingall — that an efficient level of any activity occurs where its marginal costs matches its marginal benefits[181] and social efficiency, where the externality costs are identified and if possible, quantified and brought to account. While we are not concerned with the financial effect on QAC, the effect on people and communities which use the services provided by Queenstown Airport is relevant. Also relevant is the use of the existing designation for some or all of the proposed works when compared with the use of RPL land.

[222] We do not understand Mr Copeland's conclusion that higher ticketing costs, should they transpire, may be regarded as an imperfection in the market when he says the Airport is unlikely to employ monopolist pricing.[182] This response does not directly address the ANZL's concern about the effects on people and communities who would bear these costs. That said, except in the most general sense the sensitivity of the Queenstown tourism market to higher pricing charges was not addressed in evidence. In order to reach a view, this matter would need to be considered in the wider context of any welfare enhancing benefits associated with increased levels of economic activity[183] and the opportunity for effective competition between scheduled airline operators with the expansion of the passenger terminal.[184]

[223] The use and development of natural and physical resources may be inefficient where they do not avoid, remedy or mitigate the adverse effects of the activity on the environment and as a consequence impose costs on neighboring landowners or the community in general. Here we are concerned with the effects associated with the proposed use and development of land.

---

181 Ballingall EiC at [3.7-3.8].

182 Transcript at [638].

183 See Copeland EiC at [49] where a range of benefits are discussed.

184 Copeland EiC at [66].

[224] In this case there may be a negative opportunity cost to RPL if it is unable to use or develop its land in the manner enabled under the District Plan prior to the NOR (we refer to the possible displacement of a golf course to more valuable land zoned AA-4 and 7).[185] There may also be externality costs imposed on RPL as a consequence of unmitigated adverse effects emanating from the southern precinct. And externality costs imposed on the public in general if vehicle movement in the vicinity of the signalized intersections, particularly at Red Oaks Drive, is unsafe for pedestrians and motorists.

[225] While the compensation payable for the acquisition of land and any injurious affection to the balance are matters for the PWA forum, and we tend to the view that this is where the opportunity cost to RPL should be addressed, in the context of s 7(b) we can consider any inefficiency caused by the failure to avoid, remedy or mitigate adverse effects of activities on the environment as these may disenable people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety. When exercising our broad overall judgment under s 5 it is the scale and significance of any inefficiency that is to be brought into account, together with the benefits of the NOR. We consider this approach consistent with the High Court's findings in *Meridian Energy Ltd v Central Otago District Council* at [210].

[226] We have had to make what we can of all of the evidence presented. As we do not have any cost-benefit analysis our findings do not concern this measurement. Instead, we have reached the following conclusions qualitatively on operational efficiency and externality costs:

Operational efficiency

(a) an instrument precision runway and a Code D taxiway is an *inefficient* use of part of the Lot 6 land when it is unlikely these uses will establish;

(b) a general aviation/helicopter precinct including air and landside buildings, infrastructure and landscaping is an *efficient* use of part of the Lot 6 land;

(c) it would be an *efficient* use of land to co-locate the Code C corporate jets south of the main runway in proximity to the Code C taxiway on the basis that QAC elect to build a Code C taxiway in this location;

(d) a hybrid alternative would be *inefficient* in that it would compromise the benefits which would accrue from the collocation of all operations on one site, including for example, shared support services, shared parking, shared accessways within the precinct, proximity for day to day interactions among operators and for customers, many of whom will be unfamiliar with the Airport, knowing that all flightseeing and helicopter operations are located in one precinct.

Externality costs

If the development were to proceed in the manner proposed by QAC then it is our preliminary view that use of the western access imposes an unacceptably high cost on the public in general, these costs being associated with the safety of pedestrians and motorists in the vicinity of two signalised intersections, particularly the intersection at Red Oaks Drive. Likewise, the inadequate level of landscape mitigation proposed by QAC would create externality costs to the public using the airport facility and RPL in the development of its land. However, the effects of noise are able to be adequately mitigated in the manner proposed by the Environment Court in its Interim Decision on *PC35*.

Section 7 (c and f)

[227] Our findings in relation to the effect on the environment of confirming the requirement are relevant to s 7(c) and (f), and do not require any further elaboration.

185 Given our decision to reduce the extent of the NOR we do not know whether this remains an issue.

[228] Without the imposition of conditions the quality of the environment is likely to be appreciably affected by the closer proximity of aircraft operations to the RPZ. In particular, there is likely to be significant adverse effects on the visual amenity and views of activity areas adjacent to the extended aerodrome if conditions addressing the form, bulk, location and exterior appearance of buildings are not imposed. Even with such conditions, the amenity values and quality of the environment within RPZ will not be fully maintained and that outcome we take into consideration when making our ultimate determination on the NOR.

Section 5

[229] We remind ourselves that the single purpose of the RMA as expressed in s 5(1) is to promote the sustainable management of natural and physical resources. This case has raised considerations to which we must attach statutory weight that argue both for and against the NOR. In exercising our judgment it has been necessary to carefully weigh these matters and in the words of *North Shore City Council v Auckland Regional Council (Okura)*[186] compare the conflicting considerations, their scale and degree and relative significance or proportion in arriving at the final outcome.

[230] The designation amended in the manner we have intimated will enable the QAC, Queenstown Lakes and wider national and international communities to provide for their social and economic wellbeing by using the natural and physical resources concerned in ways that fulfill the QAC's objective of providing for expansion of the aerodrome to meet projected growth and, as far as possible, achieving maximum operational efficiency. We judge these to be major benefits in the context of the affected resources and having regard to the likely effects on the environment when avoided or mitigated by conditions.

[231] For the reasons we have given, an insufficient nexus has been established between fulfilling the QAC's objective and making provision for an instrument precision approach runway and Code D parallel taxiway to support the use of RPL's land for these purposes. The balance of the work will be achieved at the cost to RPL of not being able to use the affected resources it owns for purposes authorized by the District Plan. This is recognized and if required there is legislation to deal with any related considerations which may arise (such as compensation).

[232] We have satisfied ourselves as carefully as is possible relying on the evidence and submissions made, that the aviation activities enabled by the designation provide for those aspects of the communities' safety which can properly be dealt with under the Act. Similarly, we have formed the view that the health of potentially affected people, and more particularly the degree to which they are subjected to noise as a result of the location of the aviation activities enabled by the amended designation, can be appropriately managed through the finalized provisions of *PC35*, if approved.[187] We have only been able to make these findings in the knowledge that adverse effects on the environment likely to result from the activities authorised can be avoided, remedied or mitigated to a degree consistent with the Act's purpose.

[233] The adverse landscape and visual amenity effects of the linear general aviation/helicopter precinct, which would otherwise result, can be avoided or mitigated by the imposition of more effective conditions than those proposed by the QAC and the District Council. Such conditions are necessary to recognise and provide for the protection of views to the outstanding natural landscapes and features in which the development will sit and to manage anticipated effects on RPZ amenities in

186 *North Shore City Council v Auckland Regional Council (Okura)* (1996) 2 ELRNZ 305 (EnvC).

187 *Air New Zealand Ltd v Queenstown Lakes District Council* [2012] NZEnvC 195.

neighbouring Activity Areas. The integrated design and management plan to be produced by QAC for the Court's approval prior to a final decision can secure these matters. We are not confident that the probable effects of concern would otherwise be managed effectively or the purpose of the Act necessarily fulfilled if these aspects were left solely to future outline plans of works.

[234] Potential adverse traffic effects identified during the course of the hearing are more difficult to assess in terms of their severity. We are confident however that the potential effect of exiting traffic on the free and safe flow of traffic in the vicinity of the proposed western access can be managed by the imposition of a condition limiting its use to entry only. Egress would be via the proposal's eastern access. We retain an open mind on whether the effects of concern may be able to be avoided or mitigated sufficiently by other means to secure the Act's purpose. To this end the parties are afforded the opportunity should they wish to submit alternative control measures based on a holistic understanding and assessment of existing and likely future traffic conditions on the local network.

[235] From the "other matters" specified for achieving the purpose of the Act we have identified s 7(b), (c) and (f) as relevant. The latter two matters go generically to the effects on noise, landscape and visual amenity and traffic conditions which we have taken into account in our overall judgment in preceding paragraphs. We have previously reviewed the degree to which the NOR allows for the efficient use and development of natural and physical resources (s 7(b)) and found that efficiency is not the sole preserve of monetarised costs/benefits and may also be assessed in terms of operational efficiency or indeed social efficiency (in particular relation to externality costs). Faced with incomplete information we are satisfied on the basis that QAC can reasonably be assumed to act rationally in its own interest that the NOR is consistent with aerodrome operational efficiency. We assume also that QAC will act rationally in respect of allocating its sovereign natural and physical resources. The extension to the aerodrome can equally be expected to efficiently meet (at least in part) social needs through the disposition and range of activities allowed for — but we can go no further than that absent evidence addressing any externality costs. Regrettably we were not assisted by a common approach on how economic efficiency might be appropriately assessed. A cost benefit analysis using a mix of quantitative and qualitative measures as appropriate may have lent an enhanced understanding of the relative degree of economic efficiency between alternatives for meeting QAC's objective by the use of airport and non airport land. Be that as it may, there is no statutory requirement for such and we do not find its absence material to the ultimate outcome in this case. We are concerned, however, that QAC satisfactorily address the externality costs associated with the adverse effects on landscape, and the adverse effects of noise and traffic as discussed in this decision.

[236] Overall we find the significant benefits to QAC and the wider community of developing and using the affected resources in the manner proposed, subject to the modifications and the conditions we have identified to avoid, remedy or mitigate adverse effects on the environment, to be consistent with the sustainable management purpose of the Act.

Outcome

[237] Pursuant to s 149(U)(4)(b)(iii) the land required for a precision approach runway and Code D parallel taxiway is *cancelled*.

[238] The decision on the balance of land required for the designation is reserved pending confirmation as to the practicality of restricting the western access to allow for entry only or otherwise satisfactorily addressing the Court's concerns about the

management of traffic at this location, approval by the Court of an integrated design and management plan and finally the formulation of revised designation conditions as directed by the Court as to the proposed assessment matters for an outline plan of works.

[239] Any decision to extend the aerodrome is for the purpose of establishing a general aviation/helicopter precinct. Other activities enabled by Designation 2 within the area of the extended aerodrome have not been considered by the Court.

[240] The lapsing period will be addressed in the final decision subject to the Court confirming the modified designation. For the lapsing clause to be effective, it is our tentative view that the Designation 2 should be amended by the inclusion of a statement that land within the aerodrome extension is to be used for the purpose of a general aviation/helicopter facility, and associated air and landside buildings and infrastructure and landscaping. This area will need to be separately identified in Planning Map 31a and Figure 1. In anticipation that QAC can address the Court's concerns a direction has been given it propose a suitably worded statement.

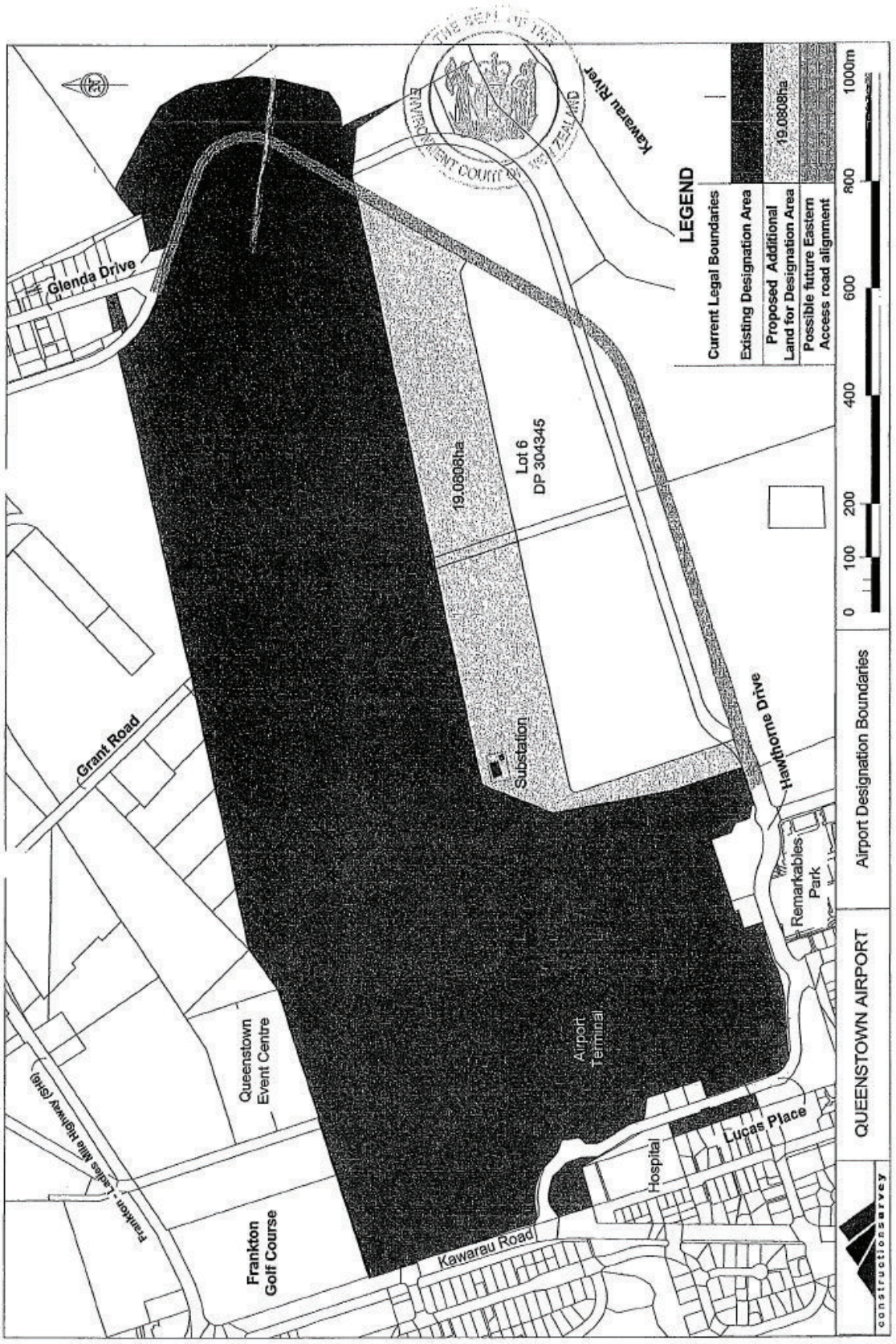
[241] Consideration needs also to be given to the surplus land identified by the traffic witnesses at [164] and whether this is to be confirmed or cancelled (cancelled as this part of the work and designation is not reasonably necessary for achieving QAC's objective).

[242] Finally, confirmation of the modified designation will entail consequential changes to Planning Map 31a. If approved, the planning map will need to identify separately the area of the extension and amended air noise boundaries. Further directions will follow.

Application granted in part

Reported by Philippa Breaden

ANNEXURE 1


LEGEND
Current Legal Boundaries
Existing Designation Area
Proposed Additional Land for Designation Area
Possible future Eastern Access road alignment
19.0808ha
0 100 200 400 600 800 1000m
QUEENSTOWN AIRPORT
Airport Designation Boundaries
constructionsurvey
Glenda Drive
Kawarau River
Grant Road
Lot 6 DP 304345
19.0808ha
Substation
Hawthorne Drive
Remarkables Park
Airport Terminal
Queenstown Event Centre
Lucas Place
Hospital
Kawarau Road
Frankton Golf Course
Frankton - Ladies Mile Highway (SH6)

ANNEXURE 2

Glossary of Terms

Area Navigation (RNAV)	RNAV is a method of Instrument Flight Rules (IFR) navigation which permits aircraft navigation along any desired flight path within the coverage of either station-referenced navigation aids or within the limits of the capability of self-contained aids, or a combination of both methods.
Aerodrome	A defined area of land used wholly or partly for the landing, departure, and surface movement of aircraft, including any buildings, installations and equipment on or adjacent to any such area used in connection with the aerodrome or its administration.
Aircraft stand	An aircraft stand is the term used to refer to a defined parking position for an aircraft.
Airfield	The network of runways and taxiways at an airport.
Airport	The broader environs of an aerodrome and its associated non-aviation commercial and industrial activities.
Airside	The movement area of an aerodrome, adjacent terrain and buildings or portions thereof, access to which is controlled.
Apron	A defined area on an aerodrome, intended to accommodate aircraft for the purposes of loading or unloading passengers or cargo, refuelling, parking or maintenance.
Capacity	The measure of an airport system's capability to accommodate a designated level of demand.
Decision Height	A decision height is a specified height or altitude in an aircraft approach at which a missed approach must be initiated If the required visual reference, such as the runway, to continue the approach has not been acquired. This allows the pilot sufficient time to safely re-configure the aircraft to climb and execute the missed approach procedures while avoiding terrain and obstacles.
Final Approach and Take-off areas (FATOs)	A defined area over which the final phase of a helicopter approach manoeuvre to hover or land is completed and from which the takeoff manoeuvre Is commenced and, In some circumstances, including the rejected takeoff area available.
General Aviation (ga)	Refers to all civil aviation flights other than scheduled airline and regular cargo flights, and In these proceedings are grouped into three aircraft types; helicopters, fixed wing (principally flight school and sight-seeing) and corporate jet aircraft (principally Code C).

General aviation/ helicopter precinct	In these proceedings QAC proposes the general aviation/helicopter precinct accommodate the three (ga) aircraft types. There are three general aviation precincts under consideration: the existing precinct; QAC's proposed southern precinct located south of the main runway; and a proposed northern precinct (located north of the main runway).
Helicopter	An aircraft whose lift is generated by the action of a rotary wing.
Instrument Approach Runway	A runway equipped with visual and electronic navigational aids for which a precision or a non-precision approach has been approved.
Instrument Flight Rules (IFR)	Rules governing flight in certain limited visibility and cloud conditions.
Instrument Landing System (ILS)	An Instrument Landing System (ILS) is a ground-based instrument approach system that provides precision guidance laterally and vertically to an aircraft approaching and landing on a runway.
Landside	Areas of an airport to which the travelling and non-travelling public have generally unrestricted access.
Movement area	The part of the aerodrome used for the take-off, landing and taxiing of aircraft, consisting of the airfield and the aprons.
Movement (passenger)	One passenger movement is one arrival or one departure of a passenger at an Airport.
Movement (aircraft)	One aircraft movement is one arrival or one departure of an aircraft at an Airport.
Non-instrument Approach Runway	A Non-instrument Approach Runway is a runway intended for the operation of aircraft using visual approach procedures.
Non-precision Approach	A non precision approach is an approach to an instrument runway served by visual aids and a non visual aid providing at least directional guidance adequate for a straight-in approach.
Non-scheduled Aircraft operations	Generally synonymous with "General Aviation".
New Zealand Civil Aviation Authority (NZCAA)	The New Zealand Civil Aviation Authority is responsible for the administration of Civil Aviation Regulations promulgated under the Civil Aviation Act 1990.
Precinct	Has the same meaning as general aviation/helicopter precinct.
Passenger Terminal	The building and its Immediate surrounds in which facilities are provided for processing the departure, arrival or transit of passengers and their baggage.

Precision Approach	A precision approach is an approach to a runway where an instrument approach system provides guidance laterally and vertically to an aircraft approaching and landing on a runway.
Required Navigation Performance (RNP)	RNP is a statement of the navigation performance standards necessary for operation within a defined airspace, in the context of Area Navigation (RNAV).
Runway	A defined rectangular area on an aerodrome prepared for the landing and takeoff of aircraft.
Runway incursion	A runway incursion is "any occurrence at an aerodrome Involving the incorrect presence of an aircraft, vehicle, or person on the protected area of a surface designated for the landing and take-off of aircraft".
Runway strip	A runway strip is a defined graded area surrounding and including the runway, intended to reduce the risk of damage to aircraft running off a runway; and to protect aircraft flying over it during take-off or landing operations.
Scheduled airline operators	"Scheduled" airline passenger services refers to the regular scheduled movements operated by major airlines; and scheduled aircraft refers to the aircraft operated by such airlines.
Taxiway (and taxi, taxiing)	A defined path on an aerodrome for the taxiing of aircraft and intended to provide a link between one part of the aerodrome and another.
Terminal Precinct	The wider environs surrounding and including the Passenger Terminal including aircraft aprons, kerbside, car parking, road circulation, and hotels and commercial facilities drawing business from being in close proximity to the Passenger Terminal.
Visual Flight Rules (VFR)	Rules governing flight In during periods of generally good visibility and limited cloud cover.

ANNEXURE 3

Glossary of Acronyms

ANB	Air Noise Boundary
ANZL	Air New Zealand Ltd
ASAN	Activity Sensitive to Aircraft Noise
CAA	New Zealand Civil Aviation Authority
dBA	Decibel
EAR	Eastern Access Rd
EPA	Environmental Protection Agency
FATO	Final Approach and Take-off Areas
FBO	Fixed Base Operator
GA	General Aviation
ILS	Instrument Landing System
OCB	Outer Control Boundary
NOR	Notice of Requirement
PC19	*Plan Change 19 — Frankton Flats (B)*
PC34	*Plan Change 34 — Remarkables Park*
PC35	*Plan Change 35 — Queenstown Airport Aircraft Noise Boundaries*
PWA	Public Works Act 1981
QAC	Queenstown Airport Corp
QLDC	Queenstown Lakes District Council
RESA	Runway End Safety Areas
RMA	Resource Management Act 1991
RNP	Required Navigation Performance
RPL	Remarkables Park Ltd
RPS	Regional Policy Statement
RPZ	Remarkables Park Zone
TALO	Touch-down And Lift Off area

BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 95

IN THE MATTER	of the Resource Management Act 1991 (**the Act**) and of an application under section 149T of the Act
BETWEEN	QUEENSTOWN AIRPORT CORPORATION LIMITED (ENV-2011-WLG-41) Applicant

Resumed Hearing: at Christchurch on 6 and 7 December 2012

Court: Environment Judge J E Borthwick
Environment Commissioner R M Dunlop
Environment Commissioner D J Bunting

Final Submissions: April 2013

Appearances: D A Kirkpatrick and R M Wolt for Queenstown Airport Corporation Ltd
J G A Winchester for Queenstown Lakes District Council (regulatory)
Dr R J Somerville QC and R A Davidson for Remarkables Park Ltd

Date of Decision: 8 May 2013

Date of Issue: 8 May 2013

FINAL DECISION OF THE ENVIRONMENT COURT

A: The notice of requirement is modified by excluding land required for works associated with either the operation of Code D aircraft or the operation of a precision approach instrument runway. The extent of the Designation is shown in Figure 1 *Aviation Precinct Concept Detail (Optimised) Code C Taxiway*

Separation 93m, dated 9 November 2012, attached to and forming part of this decision.

B: Subject to the modification of the notice of requirement and the conditions attached to this decision, the notice of requirement to extend Designation 2 is otherwise confirmed.

REASONS

Introduction

[1] This is the Final Decision of the court in respect of Queenstown Airport Corporation Limited's notice of requirement to extend Designation 2 (the Aerodrome Designation). The court released its Interim Decision[1] on this proceeding in September 2012 and the hearing was resumed for the purpose of determining the conditions on the Designation and the lapsing period that is to apply.

[2] Notwithstanding the fact that the Interim Decision has been appealed, all parties are agreed that the court should release its final decision and, in the circumstances, we also consider this an appropriate course. And so in this decision we address the conditions that are to apply to the designation extension, the lapsing period for the designation and a legal issue raised by Remarkables Park Ltd during the resumed hearing, namely the cancellation of the designation.

The cancellation in part of the notice of requirement

[3] During the course of the resumed hearing on conditions, RPL submitted that the court did not have jurisdiction to confirm the notice of requirement; it submitted that the court could only cancel the notice of requirement because of the wording of Order A in the court's Interim Decision. As all other parties were caught by surprise with this submission, directions were made that counsel identify the issues to be determined in relation to the scope of the court's powers and file further submissions.

[4] The issues identified for the court's determination are as follows:

[1] *Queenstown Airport Corporation Ltd* [2012] NZEnvC 206.

(a) does the Environment Court have jurisdiction to part confirm, modify or impose conditions in respect of the balance land?

(b) can the word "cancellation" in Order A be read to mean "modification"?

(c) can Order A be recalled and amended to read "modified" under the slip rule?[2]

[5] Submissions were filed by Queenstown Airport Corporation (**QAC**), Remarkables Park Ltd (**RPL**), Queenstown Lakes District Council (**QLDC**) and Air New Zealand Ltd (**Air New Zealand**).

Context of the legal arguments

[6] QAC has given notice of its requirement to extend Designation 2 (the "Aerodrome Designation"). The location of the extension is described in the notice and its attachments (Figure 1 and Appendix 1).[3] The notice of requirement states that it is "required to ensure the continued safe and efficient functioning of the Queenstown Airport through expansion of the Aerodrome to meet projected growth".[4] Secondly, the requirement to expand the Designation is the result of growth projections for aircraft operations and operational requirements over the next 30 years.

[7] The objective for the notice of requirement is found in Annexure 2 and states "...this NOR is to provide for the expansion of Queenstown Airport to meet projected growth while achieving the maximum operational efficiency as far as practicable".[5] The nature of the works within the aerodrome designation is described in the notice; these works do not include those associated with either the operation of Code D aircraft from Queenstown Airport or the operation of a precision approach instrument runway.[6] The parties will recall their submissions on this matter, RPL drawing the court's attention to the fact that these activities were not included within the scope of works.[7]

[8] In the Interim Decision the court found (relevantly):

---

[2] District Court Rules 2009, rule 1.15 and RMA section 278.
[3] Notice of Requirement dated 21 December 2010 at [1.2].
[4] Notice of Requirement dated 21 December 2010 at [1.3].
[5] Notice of Requirement dated 21 December 2010. Annexure 2 at [2.1.4].
[6] Notice of Requirement dated 21 December 2010 at [3.1].
[7] RPL Opening submissions at [4.2].

(a) the objective of the notice of requirement is "to provide for the expansion of Queenstown airport to meet growth while achieving maximum operational efficiency as far as possible";

(b) there is insufficient land within the aerodrome designation to develop an instrument precision approach runway, southern parallel taxiway for Code D aircraft and to develop a general aviation/helicopter precinct;

(c) Queenstown Airport is, and will remain, an instrument non-precision approach runway;

(d) airline manufacturers will respect the existing Codes when planning new and upgraded aircraft so that aircraft can continue to operate within the constraints of existing airport infrastructure.[8] The evidence tended against the proposition airlines would seek to operate Code D at Queenstown Airport;

(e) the court noted that the traffic witnesses appeared to have identified a smaller area of land required for carparking, circulation and landscaping than had been required under the notice of requirement. The parties were directed to file memoranda addressing whether this land was surplus to the requirement. This particular land requirement was to be considered together with the court's general directions on landscaping;

(f) pursuant to section 171(1)(c) the court held that a general aviation/helicopter precinct south of the main runway is reasonably necessary in order for the notice of requirement's objective to be achieved.[9] However, there is no nexus between this objective and the enablement of Code D aircraft operating at Queenstown Airport. And likewise, there is no nexus between this objective and the provisioning for an instrument precision approach runway. Therefore, these works and designation are not reasonably necessary for achieving QAC's objective.[10] Of the original 19.1 hectares of land proposed to be designated, approximately 9.75 hectares of land was not required.[11]

[8] Interim Decision at [134].
[9] Interim Decision at [115].
[10] Interim Decision at [139-140].
[11] Interim Decision at [141].

[9] The court was unable to make a final decision in relation to the balance of the land and reserved its decision. As noted above, pursuant to section 171(1)(c) the court held that a general aviation/helicopter precinct south of the main runway is reasonably necessary in order for the notice of requirement's objective to be achieved.[12] However, on the evidence, the court found the proposal inconsistent with relevant provisions of the District Plan in that the proposed traffic management arrangements for the western access created risk to the safety of pedestrians and to the motoring public. The court presented a solution for the consideration of the parties, with leave reserved for the parties to call further evidence addressing this topic.[13] The court also found that QAC had prioritised its operational requirements without giving adequate consideration to how development of the precinct would address the surrounding landscape and urban context. Because of that the court was unable to conclude that confirming the notice of requirement would achieve the purpose of the Act.[14] In relation to the topic of landscape the Court directed that the parties confer and propose an Integrated Design Management Plan. Confirmation of the requirement was contingent upon QAC satisfactorily addressing the court's concerns.[15]

[10] This decision has been delayed as the conditions proposed by the parties following the resumed hearing were unworkable and did not adequately address the court's concerns in relation to the management of access to the new precinct.

Appeals to the High Court

[11] While QAC and RPL have appealed the Interim Decision the court understands QAC's position to be that the notice of requirement's objective can be achieved notwithstanding the court's decision that land is not required for works associated with either Code D aircraft or the operation of a precision approach instrument runway.

[12] With this background outlined, we turn next to the three issues posed for the court's determination.

[12] Interim Decision at [115].
[13] Interim Decision at [165-180].
[14] Interim Decision at [202-205].
[15] Interim Decision at [238].

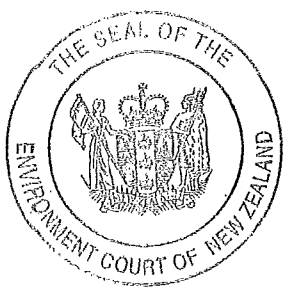
Issue: ***Does the Environment Court have jurisdiction to part confirm, modify or impose conditions in respect of the balance land?***

RPL's position

[13] RPL submits that section 149U(4)(b)(iii) is clear; while a notice of requirement can be confirmed with or without modifications and conditions being imposed, the modifications and conditions must relate to the confirmation of the requirement and not a confirmation of part of a requirement. As the court did not confirm approximately 9.75 hectares of a total 19.1 hectares of land, the requirement has been effectively cancelled. Alternatively, the decision not to confirm the 9.75 hectares alters the essential nature or character of the requirement such that the requirement must now be cancelled. RPL submits that the proper course now is for QAC to lodge a new notice of requirement in relation to the balance of the land.[16]

[14] As to whether the essential nature or character of the requirement has been altered as a consequence of the court's findings, RPL referred to, and we have considered, the line of authorities proceeding from *Quay Property Management Ltd v Transit New Zealand Ltd*[17] which interpreted "modification" in section 174(4) of the Act to mean "an act of making changes to something without altering its essential nature or character". We have noted, in particular, the *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project*, Ministry for the Environment, Board of Inquiry, 4 September 2009 where the Board accepted in relation to the power to modify that:

> [174] The Board accepts that its power to modify the requirement is limited to modifications that do not render the requirement inconsistent with what was notified; and that applying this limitation calls for comparison between the substance of the notified requirement and the requirement as it would be modified. A judgement of fact and degree in the specific case is needed to decide whether modifying a requirement to mitigate adverse effects is within the statutory limit.



[16] Submissions dated 6 December 2012 at [6.12-6.15].
[17] Decision No W28/2000 at [167].

> [175] Judgements on the plausibility of someone lodging a submission if the modified proposal had been notified can only be relevant if they assist in deciding the test set by the Act, whether a modification is not inconsistent with the requirement as notified.

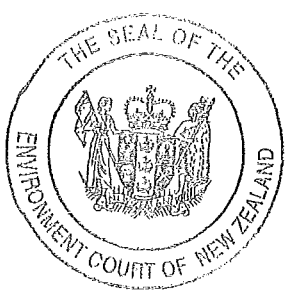
[15] RPL did not address the authorities referred to in the Interim Decision for reducing the extent of a requirement, by modifying the requirement, and referred instead to two High Court decisions of *Takamore Trustees v Kapiti District Council*[18] and *Waikanae Christian Holiday Park v Kapiti District Council* which are concerned with the cancellation of a requirement. We turn to these authorities next in the context of the replies of the other parties.

Replies of the other parties

[16] QAC, QLDC and Air New Zealand regard the issue raised by RPL to be one of semantics, rather than substance. All were of the view that the reduction of the area of the designation is a modification, rather than cancellation. If it were necessary to avoid confusion, then the Interim Decision could be recalled and amended to read "modified" under the slip rule.[19]

[17] QAC, QLDC and Air New Zealand submit that the two High Court authorities relied on by RPL are distinguishable on their facts. Both High Court proceedings are concerned with the construction of a proposed link road on the Kapiti Coast. The objective of the designation for a road corridor appears to be the provision of a number of linkages convenient for local road users along existing roads, and to provide the principal north-south arterial route for local traffic within the district. A minority of the Environment Court held that a section of the notice of requirement should be withdrawn.[20] On appeal the appellants in *Takamore Trustees v Kapiti District Council* claimed that the Environment Court could have modified or withdrawn part of the intended route.

[18] In *Takamore Trustees v Kapiti District Council* Justice R Young at [36-37] found that the Environment Court did not have power to cancel part of a requirement "in the way proposed" (we assume Young J is referring here to the proposed modification or



[18] High Court Wellington CIV-2003-485-1764.
[19] District Court Rules 2009, rule 1.15 and RMA section 278.
[20] *Te Runanga O Ati Awa Ki Whakarongotaia v Kapiti District Council* (2002) 8 ELRNZ 265.

withdrawal of part of the requirement). Secondly, the cancellation of what Young J considered a significant part of the notice of requirement was not a modification of the overall scheme. Moreover, the court could not confirm part of the requirement and still achieve the objective for the notice of requirement. The court's task was to refuse or confirm the notice of requirement. The court had no power to substitute its own alternative route.

[19] The same notice of requirement was considered on appeal in the High Court proceedings of *Waikanae Christian Holiday Park v Kapiti District Council.* Justice MacKenzie, referring to the decision of *Takamore Trustees v Kapiti District Council,* held at [142] that the Environment Court is required to determine, having regard to all relevant factors, including those under Part II, and those in section 171, whether to confirm the NOR, or to cancel the NOR, in its entirety. The court could not modify the proposal by making changes which would require further steps to comply with RMA procedures.

Discussion and findings

[20] It is our view that *Takamore Trustees v Kapiti District Council*[21] and *Waikanae Christian Holiday Park v Kapiti District Council* are concerned with quite different factual circumstances.

[21] In this case:

(a) while the extent of the land required for certain works is not confirmed, QAC is able to achieve its objective for the requirement;
(b) the court's modifications do not render the requirement inconsistent with what was notified; and
(c) the court has not modified the proposal by making changes that would require QAC to take further steps to comply with RMA procedures.

[22] While we agree with counsel that the two cases relied upon by RPL have different facts, it does not necessarily follow that the legal principles enunciated by the High Court are of no application. We follow the High Court's decision that a notice of

[21] High Court Wellington CIV-2003-485-1764.

requirement cannot be cancelled in part. Section 149U(4) requires that the court must either cancel or confirm the notice of requirement. If it confirms, then it may modify or impose conditions.

[23] In the Interim Decision the court held that on a direct referral the Environment Court may consider the extent to which the work is reasonably necessary for achieving the requiring authority's objectives and may limit the extent of the designation accordingly.[22] It found support for this proposition in the decisions of Judge Sheppard: *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project*, Ministry for the Environment, Board of Inquiry, 4 September 2009 at [204] and secondly, *Bungalo Holdings Ltd v North Shore City Council* Decision No A055/01 at [67] and [70].

[24] As noted earlier, frustratingly, at the conclusion of the hearing, the court was unable to make a final decision on the evidence presented. Instead it made the findings that were open to it, amongst other matters directing Figure 1 showing the extent of the designation be amended. In so doing it has infelicitously employed the term "cancelled" to record in Order A and elsewhere, its findings in relation to the extent of land required for the enablement of Code D aircraft and the operation of an instrument precision approach runway. In particular, the court ordered "[t]hat part of the NOR required for [an] instrument precision approach runway and Code D parallel taxiway is cancelled".[23]

[25] RPL's submissions about whether the court intended to cancel or modify the requirement are subtle. In particular, RPL conflates the quite separate concepts in section 171(1)(c) of "work and designation" – that is the works and designation associated with Code D aircraft and the precision approach instrument runway, with the "objectives" of the requiring authority. It does so in the following submissions:

- at paragraph [2.13] that the "objective covered in Order A was actively pursued by the Queenstown Airport";

[22] Interim Decision at [52].
[23] Order A.

- at paragraph [2.17] it says "[t]he QAC elected to seek the requirement of a specified area of Lot 6 for a particular purpose and it has not succeeded"; and
- at paragraph [2.20] where RPL states that "[t]he power to modify has not been used where over 50% of the land is to be removed from the requirement because a principal objective has not been reasonably necessary".

[26] In making these submissions RPL has not addressed either the notice of requirement which is to extend Designation 2 or the objective for the requirement set out in the notice of requirement - namely "to provide for the expansion of Queenstown airport to meet growth while achieving maximum operational efficiency as far as possible".[24] The notice of requirement to extend the Aerodrome Designation is not for the objective of enabling either Code D aircraft or a precision approach instrument runway, but rather it is to meet projected growth while achieving the maximum operational efficiency.

[27] It is plain from reading the Interim Decision that Order A concerns the extent of land required and not the notice of requirement per se. This is confirmed at [237] where the court specifically refers to the land required for a precision approach runway and Code D taxiway. That the outcome of this Order is a modification to the notice of requirement is expressly stated at [242]. When the decision is read as a whole, and its words are not considered in isolation from their context, that is the only possible meaning of Order A. Some parties suggested that if the Orders did not properly express what was decided (and intended) then the decision could be recalled and corrected by amending Order A to read [instead] "modified". However, we do not consider that recalling is necessary.

[28] As QLDC rightly submits, the court cannot be said to be *functus officio* in terms of Order A because it could not know with any certainty what precise area of land was not to be confirmed and therefore cancelled or modified. This is self-evident given Direction B(1)(a) requires QAC to amend by reducing the area of the Aerodrome

[24] At clause 2.1.4 of Annexure 2.

Designation by excluding provision for an instrument precision runway and Code D parallel taxiway and secondly, any land no longer required for carparking, circulation and landscaping.

[29] Nor do we accept RPL's submission that limiting the extent of the designation cannot be said to be a modification as it would alter the essential nature or character of the requirement.[25] The works proposed at the hearing to achieve this objective include, inter alia, those associated with the operation of Code D aircraft at the airport or operation of a precision approach instrument runway. The court has found that the objective may be achieved without these works.

[30] Finally, we do not accept RPL's submission to the effect that a submitter could not have anticipated the outcome of these proceedings.[26] We observe a modification of a notice of requirement is an outcome allowed under section 149U.

Outcome

[31] It is an inefficient and costly exercise to require QAC to lodge a new notice of requirement where the court has a power to modify the notice by reducing the extent of land required and where the court is satisfied that the modification does not render the requirement inconsistent with what was notified. More particularly, the issues for determination are answered as follows:

(a) does the Environment Court have jurisdiction to part confirm, modify or impose conditions in respect of the balance land?

Court's finding: Pursuant to section 149U(4) the court may confirm the requirement, and modify it or impose conditions as the court thinks fit. A modification to the requirement may include limiting the extent of the designation where the proposed works and designation are found not to be reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.

[25] RPL submissions dated 14 December 2012 at [2.13-2.20].
[26] RPL submissions dated 14 December 2012 at [2.21].

(b) can the word "cancellation" in Order A be read to mean "modification"?

Court's finding: Yes. When the decision is read as a whole, and its words are not read in isolation from their context, that is the only possible meaning of Order A.

(c) can Order A be recalled and amended to read "modified" under the slip rule?

Court's finding: Yes. However, we consider that Order A, when read together with the other Orders and reasons given in the Interim Decision, is only capable of being understood this way, and therefore a recall is not necessary.

[32] We turn next to the designation's conditions.

Issue: What is the lapsing period of the designation?

[33] QAC seeks a lapsing period of 10 years by which the extension to the Aerodrome Designation is to be given effect. RPL prefers a five year lapsing period as is consistent with section 184 and submits that no case has been made out by any party for a longer or shorter period.[27] This submission is mostly correct – as the only evidence on this topic came from QAC planner, Mr J Kyle, in response to the court's questions. While he was unable to recall QAC's reasons for the 10 year lapse period, he thought that as the precinct would likely be developed in stages this period was reasonable, particularly if there would be a progressive relocation of existing general aviation/helicopter businesses from their current site within the existing Aerodrome Designation.

[34] A designation will lapse on the expiry of five years after the date on which it is included in the District Plan (s 184) unless one of subsections 1(a) – (c) apply. In *Beda Family Trust & Ors v Transit New Zealand*[28] Judge Whiting considered a request for a lapse period of 20 years for a designation for the Hamilton Bypass. At [112] he said:

[27] RPL memorandum dated 19 December 2012 at [7].
[28] Environment Court A139/04.

(112) No guidance is given as to the principles that are to be applied in determining a period different to the 1-5 year period mentioned in the Statute. To extend the period beyond 5 years a territorial authority, and this Court, is thus given a wide discretion.

(113) The discretion has to be exercised in a principled manner, after considering all of the circumstances of a particular case. There may be circumstances where a longer period than the statutory 5 years is required to secure the route for a major roading project. Such circumstances need to be balanced against the prejudicial effects to directly affected property owners who are required to endure the blighting effects on their properties for an indeterminate period. The exercise of the discretion needs to be underlain by fairness.

[35] In *Hernon & Ors v Vector Gas Limited* [2010] NZENVC 203 Judge Smith applied *Beda* to an application by Vector to extend the lapse period to 10 years. He summarised the principles to be applied and considered as follows:

> [26] The particular issues raised in *Beda* supporting a longer term related to:
>
> [a] The time frame in which the project is likely to be constructed;
>
> [b] Safeguarding the alignment from inappropriate use and development;
>
> [c] Certainty for affected landowners and the local community; and
>
> [d] The ability to implement the designation in due course.

[36] Mr Kyle did not know QAC's reasons for the 10 year lapse period, therefore his evidence was only speculative at best. In the absence of any cogent evidence addressing these matters, the statutory lapse period of five years is confirmed.

Issue: ***Which version of the designation's purpose statement accurately records the works permitted within the extended designation?***

[37] At the court's direction the parties have proposed an additional purpose statement for Designation 2, but are not agreed on its wording (clause 1(f)). Moreover, QAC and RPL differ on whether the purpose statement and related conditions of the designation should refer to a "General Aviation Precinct" or "Aviation Precinct". RPL points out that QAC has agreed to the term "General Aviation Precinct" in the traffic and access conditions. Both parties agree whatever its label the precinct would accommodate general aviation, helicopters and aircraft hangars, including hangars for Code C aircraft, which is consistent with the evidence.

[38] While QLDC says this particular argument does not address any matter of substance, given the fact that the argument is made we wonder whether this is correct. Fundamentally we agree with RPL's submission that the purpose statement should accurately reflect the work for which the designation is sought. We have amended clause 1(f) to record that Lot 6 is required for a General Aviation Precinct and includes hangars for Code C aircraft.

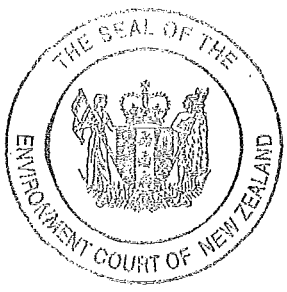
Issue: ***Which version of the landscape conditions is to be approved?***

[39] To provide context, we briefly recap the Interim Decision (the relevant parts of which are set out at [181-204]). While we found that the effects of development of the precinct, its land and buildings, on the surrounding environment could be satisfactorily managed, we were not satisfied with the proposed conditions. QAC's proposed conditions listed tools available to manage visual and amenity effects but without stating the objective to be achieved by this work. The court made clear that it was not seeking the content of any landscape plan, and doubted this would be possible without knowing the final layout of the precinct. Rather, the QAC was directed to prepare an Integrated Design Management Plan which would state the landscape and visual amenity objectives for building and infrastructure design and location and that this was to be done for a number of variables that were specified. QAC was also to propose assessment matters for the future outline plans of work.

RPL/QAC condition 1(a)

[40] The wording proposed by RPL and QAC for condition 1(a) is similar, save that QAC seeks to ensure that "intermittent views to the mountains" are maintained. In contrast RPL and the QLDC would have "key views" to the mountains maintained.

[41] When addressing this issue, all counsel overlooked the purpose of the Integrated Design Management Plan which is to provide a structure plan showing, inter alia, areas of landscaping, open space and, we emphasise, key view corridors. What is meant by "intermittent views" or "key views" will be interpreted in light of the purpose of the Integrated Design Management Plan. The words proposed by all of the parties for condition (1)(a) have the potential to confound the purpose of the Plan – as counsel's submissions demonstrate.



[42] It is sufficient that condition (1)(a) refers to views to the surrounding mountains, including outstanding natural landscapes. In practice what views are afforded of the landscape cannot be known until the Integrated Design Management Plan is developed with the layout of the precinct's buildings and infrastructure shown in broad terms. What is important is that the Integrated Design Management Plan addresses views through the General Aviation Precinct to the surrounding mountains, including outstanding natural landscapes, and this will be achieved by the Plan identifying key view corridors. It is reasonable to assume that views over the precinct will not be impeded, save to the degree allowed, through the bulk and height of buildings to be located within it.

[43] In the context of the Remarkables Park Zone the District Plan identifies important landscapes and features and has as an objective that urban development is to be in a form which protects and enhances the surrounding landscape and natural resources (objective 2). The landscapes mentioned in the introduction to the Zone[29] and secondly, the Explanation and Principal Reasons for adoption[30] include:

- views of The Remarkables mountains to the south-east;
- views of Coronet Peak to the north;
- views of the Crown Range; and
- views of all other local hills and mountains.

[44] We agree with all of the parties that there should be specific reference to the Remarkables Park Zone in this condition as it is difficult to understand how the General Aviation Precinct could be developed appropriately without having regard to the outcomes anticipated for the neighbouring Zone. Indeed, the proposed objective for the design and location of buildings is that they appear recessive and integrate with the surrounding landscape – including the Remarkables Park Zone which is specifically mentioned.

[29] Section 12, clause 12.10.1 Resources, Activities and Values.
[30] Section 12, objective 2.

[45] QLDC seeks to remove RPL's reference in the condition to "the District Plan" as it says the District Plan does not actually identify outstanding natural landscapes. We found this submission perplexing and we were not assisted by any explanation for QLDC's position in this regard.[31] We put this issue aside as we are not required to determine the matter of whether the Queenstown Lakes District Plan identifies outstanding natural landscapes. We hold that the words "in the District Plan" may be omitted from the condition as the matter is adequately addressed by referencing the Remarkables Park Zone in the condition.

RPL condition 1(c)(iii)

[46] RPL and QAC's wording of this condition is similar, save that RPL qualifies the condition by adding the prefix "mid" to the range of colours.

[47] We agree with QLDC that the qualification is unnecessary. We expect, as does QLDC, that the colour palette and reflectivity tools are well understood within the District and that the prefix "mid" could add confusion and uncertainty to the condition.

RPL/QAC condition 1(c)(iv)

[48] We agree with QLDC that RPL and QCL's proposed condition 1(c)(iv) should be amended so that consistent wording as with (iii) is employed.

QAC condition 1(b)(i) and (ii)

[49] It is not clear what QAC intends with conditions 1(b)(i) and (ii) which read in turn "...and where possible practicable..." and "...where necessary appropriate...". The editing of the conditions appears to be remiss.

[50] Consequently we approve the final wording proposed by QLDC and RPL for these conditions.

Condition 1(d)(i)

[51] RPL and QAC differ on whether the wording of this condition should refer to the matter at hand being significantly impractical or just impractical. QAC's specific issue

[31] QLDC memorandum dated 20 December 2012 at [4].

with the phrase "significantly impractical" includes lack of certainty – what is meant by significant is unclear and the proposed wording uncertain due to grammatical expression.

[52] We agree with QAC that the use of the word "significantly" is not insightful, particularly where it is applied as it is here to an adjective such as "impractical".

[53] Furthermore, the court does not understand why the parties use practicality as a metric when deciding whether infrastructure should be integrated into the development by appropriate landscape measures. The practicality of a measure imports a discretion on the part of QAC which is not readily amenable to examination and may include considerations such as efficiency or cost.

[54] If it is possible to integrate infrastructure into the development then this should be considered. In many instances it may not be possible due, say, to Civil Aviation Authority regulations. However, where such considerations do not preclude integration then QAC is to address this possibility in the Integrated Design Management Plan. We have amended condition 1(d)(i) accordingly.

RPL proposed condition 2

[55] Notwithstanding that the court's finding at [198] of the Interim Decision was not to impose the additional requirement upon QAC to consult with QLDC or any other interested person before lodgment of an outline plan of works, RPL has again come back on this matter by proposing a condition to that effect. The issue of a condition requiring QAC to consult was decided in the Interim Decision and we are not revisiting our decision.

[56] The statements made out at paragraph [4.3] of RPL's memorandum dated 19 December 2012, some of which we do not wholly agree with, would not have been capable of changing our view on this matter. What is important is that the objective of the Integrated Design and Management Plan is clearly articulated and we are satisfied that has now been done.

RPL proposed condition 3

[57] RPL proposes a condition requiring that the Integrated Design Management Plan include a report by a suitably qualified and experienced landscape architect addressing how the design achieves the objectives for outstanding natural landscapes, landscaping, buildings and signage and finally infrastructure. The condition is opposed by QAC which considers the requirement would merely repeat the process of formulating the conditions for the designation. QLDC also considers this condition unnecessary.

[58] The placement of the proposed condition by RPL in the suite of conditions is unfortunate as it appears unrelated to the outline plan process. The wording of the condition talks about "how the design achieves the objectives...including how the design achieves good interface with surrounding areas...". In practice this cannot be known until the precinct is developed.

[59] In the Interim Decision at [201(2)] we directed QAC propose conditions which require QLDC at the outline plan of works stage to consider, inter alia, the extent to which the outline plan of works gives effect to the Integrated Design Management Plan and achieves the relevant objectives. We have noted QAC's advice that it is highly likely it will engage a landscape architect at this stage. It is our view that a report from a landscape architect is an important step in establishing achievement of these objectives and that the requirement to produce a report should be tied to the relevant condition. We have amended and repositioned RPL's proposed condition accordingly.

QAC condition 3/RPL condition 5

[60] Because the wording of the "Integrated Design Management Plan" adds clarity to the condition these words are approved, as proposed by QLDC and RPL.

Issue: Which version of the conditions relating to traffic and access arrangements is to be approved?

[61] In our Interim Decision,[32] we set out our concerns over safety issues arising from traffic wishing to turn right when exiting the western access. Once Hawthorne Drive has been formed with a raised central median, this traffic would be required to turn left

[32] Interim decision at [165-167].

onto Hawthorne Drive, drive some 70 metres east to the intersection with Red Oaks Drive and then do a U-turn at this intersection. In addition to road traffic, we were told that this intersection would be a busy crossing point for pedestrians including children from the future secondary school.

[62] Given our concerns over safety, in our Interim Decision, leave was reserved for all parties to call expert evidence addressing the management of traffic using this western access. The parties did call expert traffic evidence, but agreement was not reached between them on traffic management conditions. In response to the court's concerns on the enforceability of some of the conditions which had been proposed, later in December 2012 the parties submitted a set of five traffic management conditions agreed in all respects except for two matters in condition 5 as follows:

(a) QLDC (supported by QAC) seeks that provision be made for the future Hawthorne Drive/Red Oaks Drive intersection to have either a roundabout or be signal controlled. This is not supported by RPL which seeks that this be restricted to signal control only; and

(b) RPL seeks that QAC be made responsible for installing pre-signals at the western access. This is not supported by QLDC or QAC.

[63] QLDC/QAC also proposed an Advice Note to the effect that all intersections and roading improvements are to be designed and constructed to QLDC standards and approval as the road controlling authority. All of the parties agree with QLDC's proposed Advice Note, as do we.

[64] For the Hawthorne Drive/Red Oaks Drive intersection, QLDC argues that flexibility should be maintained to provide for either a roundabout or traffic lights. We see no good reason for not providing for this flexibility and uphold QLDC on this matter. For the pre-signals, it is QLDC's view that these conditions are intended to respond to the management of the roading network with responsibility for funding being left until the implementation stage.[33] We agree.

[33] QLDC Closing submission at [6].

[65] Apart from these three matters, in the December 2012 conditions, we had difficulty in distinguishing the difference intended between condition 4 and condition 5 and the related Figures 2 and 3. It appears that the parties and their experts had become stuck on the trigger that determines the level of mitigation required in the vicinity of the General Aviation Precinct. Figure 2 shows Hawthorne Drive extending past Red Oaks Drive as does Figure 3. Condition 4 refers to Hawthorne Drive extending "*...beyond its current termination...*" while condition 5 refers to Hawthorne Drive extended "*...east to or beyond the intersection with Red Oaks Drive...*". In response to the court's concerns, the three parties proposed that condition 5 be amended by replacing the words "*...east to or beyond the intersection...*" with "*...formed and operational east to and beyond the intersection...*".[34] Even with this proposed amendment we continued to have difficulty in distinguishing the difference between the two conditions (and their related figures) as we conveyed to the parties in our minute of 15 March 2013 and elaborated on in the teleconference of 22 March 2013.

[66] Following the telephone conference, QAC proposed a condition which would allow full ingress and egress at the western access including both left and right turns until such time as signals are installed at the Red Oaks Drive intersection.[35] This is on the basis that prior to these traffic signals being required, traffic volumes will be sufficiently low so as to not compromise safety. We do not agree with this condition. In effect, if Hawthorne Drive was extended to Red Oaks Drive then prior to the installation of the signals, the condition would allow full turning movements at two intersections within about 70 metres of each other. Further, QAC appears to have discounted that condition 5 requires as a minimum that a roundabout be constructed from the outset at the Red Oaks Drive/Hawthorne Drive intersection.

[67] On the other hand, RPL's amended conditions has merit to the extent that it identifies a trigger that could be applied to determine the level of safety mitigation required as vehicle and pedestrian movements increase, as they are expected to, in the vicinity of the General Aviation Precinct.[36] The trigger being (perhaps unlikely) where Hawthorne Drive is extended past the western access but not as far as Red Oaks Drive in order to provide access to land between the western access and Red Oaks Drive. In

[34] Joint memorandum of counsel dated 3 March 2013.
[35] Memorandum dated 12 April 2013.
[36] Memorandum dated 12 April 2013.

circumstances where the Red Oaks Drive intersection has yet to be constructed we accept that the volume of traffic will unlikely be at a level that warrants additional safety mitigation measures. As this is an appropriate workable trigger, condition 4 (as amended by the court) is approved:

> If development within the GAP occurs prior to the construction and operation of an eastern access, and Hawthorne Drive has been extended eastwards beyond its current termination past the western access but not as far as Red Oaks Drive, then full ingress and egress will be allowed at the western access.

It follows from this that proposed Figure 2 will no longer apply, and because of that it will be necessary to renumber Figure 3 as Figure 2 and to amend condition 5 to suit.

[68] We have presumed that condition 5 includes the wording "*...and Hawthorne Drive is extended to or beyond the intersection with Red Oaks Drive (which is either a roundabout or signal controlled)...*" (underlining is our emphasis). It is quite clear from this wording that from the outset Hawthorne Drive/Red Oaks Drive is to have either a roundabout or signals irrespective of whether it is formed as a T-junction or an intersection. As for a roundabout at Red Oaks Drive it is our assumption that a roundabout would be designed to safely accommodate the required weaving movements for U-turning westward bound vehicles exiting from the GAP. For clarity, in condition 5 the words "*...which is either a roundabout...*" should be replaced with "*...which is to be either a roundabout...*". It is not for this court to determine what might be required to provide safe pedestrian conditions for future land use activities.

[69] With these amendments to the conditions, our concerns on traffic safety have been satisfactorily addressed. As such, we have found it unnecessary to respond to the detail of RPL's proposed conditions.

[70] To summarise the traffic conditions are to read as follows:

> (1) In the event that the Eastern Access Road (EAR) is formed and operational from Hawthorne Drive through to Glenda Drive, and access from the EAR to the eastern end of the General Aviation (including helicopters and Code C aircraft hangers) Precinct (the GAP) is constructed and operational then the eastern access shall become the primary

access to the GAP. The eastern access shall have a controlled intersection with the EAR approved by the road controlling authority and allow all movements from all approaches. Any access arrangement at the western (Hawthorne Drive) access shall revert to left-in access only.

(2) In the event that a connection to the GAP is constructed and operational from a northern extension of Red Oaks Drive, then the western access from Hawthorne Drive shall be closed and full access and egress to the precinct shall be made from the Red Oaks Drive connection, irrespective of whether an eastern access to the precinct is constructed and operational.

(3) If development within the GAP occurs prior to the construction and operation of an eastern access, and no extension from the current termination of Hawthorne Drive toward the western access has occurred, then access to the GAP shall occur through an extension of Hawthorne Drive by the QAC to the western access point, in a manner generally consistent with Figure 1.

(4) If development within the GAP occurs prior to the construction and operation of an eastern access, and Hawthorne Drive has been extended beyond its current termination past the western access but not as far as Red Oaks Drive, then full ingress and egress will be allowed at the western access.

(5) If development within the GAP occurs prior to the construction and operation of an eastern access and Hawthorne Drive is extended to or beyond Red Oaks Drive (which is to be either a roundabout or signal controlled at the discretion of the road control authority) then the western access at the connection with Hawthorne Drive shall operate on a left in and left out basis with pre-signals controlling traffic travelling east on Hawthorne Drive to enable egress from the western access in a manner generally consistent with Figure 2.

Lot 6 NOR Parking

[71] Attached to Mr Munro's rebuttal evidence of 23 April 2012 was *Table 1 Assessment of Area Requirements for Aviation Precinct.* This table detailed the make-up of the amended 18.4 hectares of land applied for by QAC under the NOR.

[72] In its memorandum of 9 November 2012, QAC submitted an updated version of Table 1 which excluded the instrument approach runway, the Code D parallel taxiway and land no longer required for car parking, circulation and landscaping. The reduction in the land requirement from 18.4 hectares to 8.07 hectares was based on a further attachment to this same memorandum titled *Aviation Precinct Concept Detail (Optimised) Code C Taxiway Separation 93m* dated 9 November 2012.

[73] At the resumed hearing on 6 and 7 December 2012, Mr Penny, the traffic expert for RPL, provided evidence in support of a yet further reduction in QAC's hectare requirement from 8.07 hectares to 6.27 hectares. He proposed that this could be achieved through a combination of realigning the access road to the north of the substation and a tighter configuration of parking around the aviation buildings.[37] We understand that this plan was developed by Mr Penny from the plans attached to Mr Williams' supplementary statement of evidence dated 19 November 2012.

[74] We accept QAC's advice that the building layout shown on Mr Williams' plans is at best indicative and that these documents have been prepared for planning purposes only. We also accept that QAC must be provided with reasonable flexibility to make adjustments to their indicative General Aviation Precinct layout when the time comes for it to develop final details of this at the outline plan of works stage. This is particularly important if the objectives for the Integrated Design Management Plan are to be achieved.

[75] We therefore direct that the land requirement for the General Aviation Precinct is to be 8.07 hectares as shown on the attachment to QAC's memorandum dated 9 November 2012, titled *Aviation Precinct Concept Detail (Optimised) Code C Taxiway Separation 93m* dated 9 November 2012, and that Figure 1 is to be amended accordingly.

Final Comments

[76] We have made minor word changes to some conditions that are not discussed above. This is not to change the meaning of those conditions, but to improve sense. In the case of the landscape conditions we have used RPL's conditions as our base document. All changes are tracked.

Outcome

[77] The notice of requirement is confirmed, subject to modification described below and secondly, the conditions **attached** to this decision.

[37] As shown on a plan titled *RPL NOR Designation* included as Attachment C to RPL's memorandum dated 18 December 2012.

[78] The requirement is to be modified by excluding land required for works associated with either the operation of Code D aircraft or the operation of a precision approach instrument runway. The extent of the Designation is shown in Figure 1 *Aviation Precinct Concept Detail (Optimised) Code C Taxiway Separation 93m* attached and dated 9 November 2012.

For the Court:

J E Borthwick
Environment Judge

Issued:[38] - 8 MAY 2013

[38] JEB\DD\Lot 6 NOR Final Decision May 2013.doc

Annexure A
Conditions of the extension to designation 2

A. Purpose of the Designation

[1] Insert into Designation 2 clause 1(f) the following statement of activities permitted within the Aerodrome Designation:

Within the General Aviation Precinct located on Part Lot 6 DP 304345:

- general aviation operations, including private aircraft traffic, rotary wing and helicopter operations, and
- hangars, including those for Code C aircraft; and
- associated activities, offices, aircraft servicing, fuel supply and storage, maintenance, buildings, signage and infrastructure, navigational aids and lighting, vehicle access, car parking, and landscaping.

B. Approved conditions for Traffic/Access Arrangements to Lot 6

[1] In the event that the Eastern Access Road (EAR) is formed and operational from Hawthorne Drive through to Glenda Drive, and access from the EAR to the eastern end of the General Aviation Precinct (the GAP) is constructed and operational then the eastern access shall become the primary access to the GAP. The eastern access shall have a controlled intersection with the EAR approved by the road controlling authority and allow all movements from all approaches. Any access arrangement at the western (Hawthorne Drive) access shall revert to left-in access only.

[2] In the event that a connection to the GAP is constructed and operational from a northern extension of Red Oaks Drive, then the western access from Hawthorne Drive shall be closed and full access and egress to the precinct shall be made from the Red Oaks Drive connection, irrespective of whether an eastern access to the precinct is constructed and operational.

[3] If development within the GAP occurs prior to the construction and operation of an eastern access, and no extension from the current termination of Hawthorne Drive

toward the western access has occurred, then access to the GAP shall occur through an extension of Hawthorne Drive by the QAC to the western access point, in a manner generally consistent with Figure 1.

[4] If development within the GAP occurs prior to the construction and operation of an eastern access, and Hawthorne Drive has been extended beyond its current termination past the western access but not as far as Red Oaks Drive, then full ingress and egress will be allowed at the western access.

[5] If development within the GAP occurs prior to the construction and operation of an eastern access and Hawthorne Drive is extended to or beyond Red Oaks Drive (which is to be either a roundabout or signal controlled at the discretion of the road control authority) then the western access at the connection with Hawthorne Drive shall operate on a left in and left out basis with pre-signals controlling traffic travelling east on Hawthorne Drive to enable egress from the western access in a manner generally consistent with Figure 2.

Advice Note: all intersections and roading improvements shall be designed and constructed to Council standards and be subject to Council approval as road controlling authority.

C. Approved Landscape and Design Conditions

[1] Not less than three (3) months prior to an outline plan for the GAP being submitted to the territorial authority pursuant to section 176A of the Act, the requiring authority shall prepare and submit to the territorial authority for certification an "Integrated Design Management Plan". The purpose of the Integrated Design Management Plan shall be to provide a structure plan showing the general configuration of roading, parking and areas of landscaping, open space and key view corridors and to determine the approach to be adopted ~~to~~ for the design and development of buildings and infrastructure (including signage). No outline plan shall be submitted by the requiring authority until such time as the territorial authority has certified that the Integrated Design Management Plan achieves the following objectives:

Outstanding Natural Landscapes:

(a) Identify and maintain ~~key~~ views to the surrounding mountains ~~including~~ and Outstanding Natural Landscapes ~~identified in the District Plan, and~~ including those referred to in the Remarkables Park Zone. This may be achieved by:

(i) providing sufficient separation between buildings and infrastructure to ensure that identified views to the mountains from neighbouring land to the south and north of the GAP are maintained;

(ii) Interspersing ~~carparking and/or open space with~~ buildings and infrastructure with carparking and/or open space;

(iii) Clustering of buildings.

Landscaping:

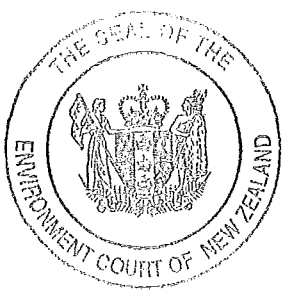
(b) Provide landscaping within the GAP that achieves a high level of onsite and offsite amenity and ensures that any adverse effects on neighbouring land arising from development of the GAP are appropriately mitigated. This may be achieved by:

(i) landscaping of buildings, infrastructure and carparking areas that softens, integrates and where possible screens built form when viewed from neighbouring land and from the airport passenger terminal;

(ii) where necessary, planting along the boundary of the GAP to provide for the screening of buildings and infrastructure within the site and/or visual integration within the surrounding landscape;

(iii) a planting palette with sufficient range to enable the creation of character areas, but with elements that remain consistent throughout the GAP so as to create a consistent theme;

(iv) a hard landscaping ~~element~~ palette including paving, retaining structures, drainage grates, kerb profiles, bollards, fencing , light standards and any other ~~public~~ GAP infrastructure. More than one paving type may be included to enable the creation of character areas but all other hard elements should be consistent so as to create a consistent theme;



(v) a consistent carpark design, including soft and hard landscaping in all locations but allowing for some variation to enable the development of character areas.

Buildings and Signage:

(c) Design and locate buildings so they are recessive and integrated within the surrounding landscape (including the immediately adjoining Remarkables Park Zone), whilst recognising and providing for the buildings' function and use. This may be achieved by:

(i) avoiding linear arrangements of buildings where practicable;

(ii) varied rooflines that avoid uniformity, particularly when viewed from the south and elevated viewpoints;

(iii) limiting roof colours to ~~mid~~-browns, ~~mid~~-greens and ~~mid~~-greys with a reflectivity of less than 36%, with no signage permitted on the roofs of buildings;

(iv) limiting the external colour of the material used for walls of ~~reflectivity of all external colours and materials used on~~ buildings to a natural range of browns, greens and greys with a reflectivity of ~~to~~ less than 36%, with the exception that the trims, highlights and signage totalling up to 10% of the façade area may exceed this level and be of contrasting colours in order to add visual interest;

(v) ensuring variation in the bulk, form and scale of buildings;

(vi) providing interesting detailing and articulation of building facades, particularly when viewed from the south;

(vii) the identification of signage platforms on buildings.

Infrastructure:

(d) Mitigate any adverse visual and amenity effects of infrastructure for visitors to the airport and users of neighbouring land. This may be achieved by:

(i) locating aviation related infrastructure on the airside part of the GAP land where practicable and where possible ~~not significantly impractical,~~ ensuring such infrastructure is integrated into the development by appropriate landscaping measures;

(ii) providing details of methods for managing stormwater and earthworks for the purpose of avoiding, remedying or mitigating any relevant adverse effect.

[2] The Integrated Design Management Plan shall allow for staged implementation of development within the GAP. If staged development is provided for then an overall plan showing the ~~various~~ likely stages and the method for ensuring a consistency of design and landscaping approach across the development of the entire GAP shall be included in the Integrated Design Management Plan. If the development is to be staged then the development of a precinct accessway ~~the road corridor~~ shall be part of Stage 1.

[3] The requiring authority shall ensure that all outline plans submitted pursuant to section 176A of the Resource Management Act 1991 ~~shall~~ demonstrate that the works subject to it are to be developed in a manner that achieves the objectives of the Integrated Design Management Plan. Outline plans shall contain a detailed landscape design plan including planting and maintenance plans to achieve objectives (a) and (b) of the Integrated Design Management Plan on an on-going basis. Each outline plan shall also contain details of buildings, signage, parking, and other built infrastructure to demonstrate how objectives (c) and (d) of the Integrated Design Management Plan are to be achieved. Each outline plan shall be accompanied by a report from a suitably qualified and experienced landscape architect addressing how the outline plan achieves the objectives of the Integrated Design Management Plan.

[4] The requiring authority may seek the approval of the territorial authority to make any necessary amendment to the Integrated Design Management Plan, without an application under the Resource Management Act 1991 to make such a change, provided that such amendments do not result in changing the purpose, or derogating 0from the purpose and the objectives of the Integrated Design Management Plan set out in condition [1].~~without an explicit application to make such a~~ change.

[5] If a review of the Integrated Design Management Plan is undertaken by the requiring authority then that review shall be undertaken in consultation with the consent authority.

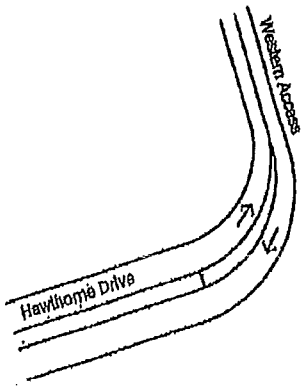


Figure 1

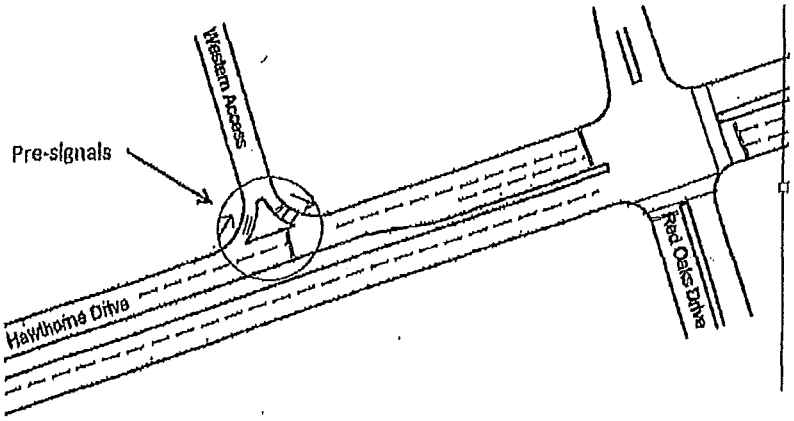
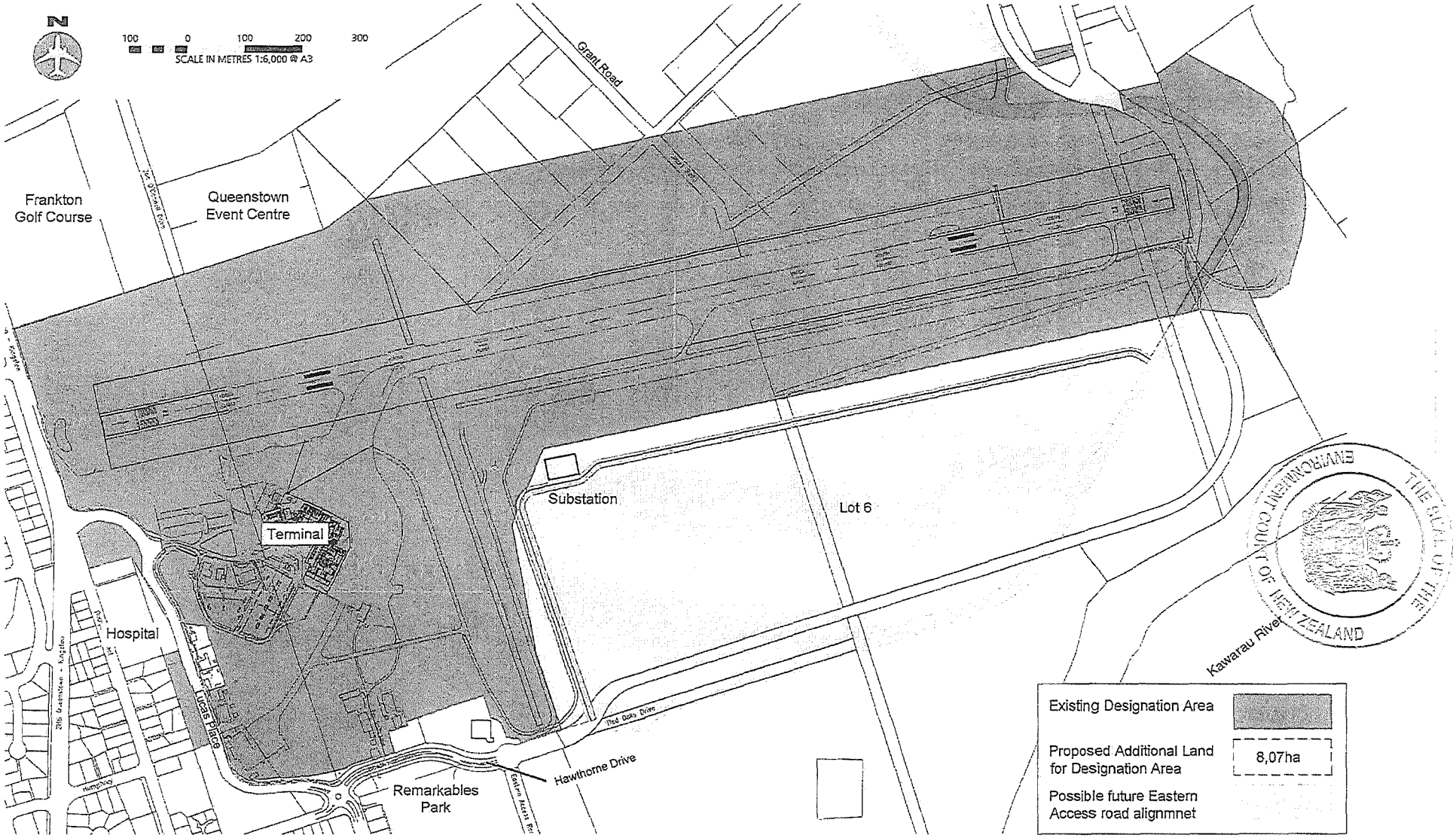


Figure 2

Traffic Management Conditions


N
100 0 100 200 300
SCALE IN METRES 1:6,000 @ A3
Grant Road
Frankton Golf Course
Queenstown Event Centre
Substation
Lot 6
Terminal
Hospital
Remarkables Park
Hawthorne Drive
Kawarau River
Existing Designation Area
Proposed Additional Land for Designation Area
8,07ha
Possible future Eastern Access road alignmnet
AIRBIZ
QUEENSTOWN AIRPORT
11317 300
09 November 2012
Aviation Precinct Concept Detail (Optimised)
Code C Taxiway Separation 93m

“B”

Waitakere City Council v Minister of Defence

Environment Court Auckland A 190/05
7, 8, 9, 29 November 2005
Judge Sheppard, Environment Commissioner Catchpole and Deputy Environment Commissioner Fookes

Declaration — Designation — Removal of structure within terms of the designation — Meaning of "construction" — Necessity for outline plan — Refusal of outline plan not permissible — Application of s 17 to designation — Operation of district plan — Resource Management Act 1991, ss 6(f), 17, 176, 176A, 311; Defence Act 1990.

Within the partially operative Waitakere city district plan, the Hobsonville Airbase (the base) was zoned Countryside Environment and designated for "Defence Purposes – RNZAF air bases and associated defence activities". St Mark's Chapel (the chapel), a heritage building, was located on the base. The district plan contained conditions relating to the designation and provided for the protection of the heritage buildings situated on the base. In particular, the plan stated that removal of the chapel was a discretionary activity. The Minister of Defence decided to close the base and submitted an outline plan to the Waitakere City Council (the council) proposing the removal of the chapel to the Papakura Military Camp. The council did not agree with this proposed course of action and suggested that the Minister should withdraw or amend the outline plan. The Minister refused. As a consequence, the council appealed to the Court pursuant to s 176A of the Resource Management Act 1991 (the Act) against the decision of the Minister. In addition, the council sought a declaration pursuant to s 311 of the Act that the removal of the chapel required a discretionary resource consent or, alternatively, that the removal would breach s 17 of the Act.

Held (dismissing the appeal and declining the application for a declaration)

1 In determining the meaning of the designation for defence purposes and associated defence activities, the Court did not need to refer to the Defence Act 1990. The test was what an "ordinary, reasonable member of the public" would understand the designation to mean (see paras [21], [22], [23], [24], [25]).

Waimairi County Council v Hogan [1978] NZLR 587 followed.

2 The defence personnel had used the chapel for many years and would continue to do so at the new base. Accordingly, the removal of the chapel was required for defence purposes and associated defence activities and thus came within the terms of the designation (see paras [31], [33], [34]).

3 The removal of the chapel did not constitute construction of a work or project within the terms of s 176A of the Act. Accordingly, the outline plan process was not available or necessary for the removal of a structure (see para [46], [47]).

4 If, contrary to the above, an outline plan was required, the council could request changes to a plan in accordance with s 176A(4) – (6) of the Act but could not refuse it outright (see paras [55], [56], [57]).

5 As the removal of the Chapel fell within the designation, the provisions of the district plan concerning resource consents did not apply (see para [61]).

6 Section 17 of the Act applies to activitied, even if they were carried out within the terms of a designation. However, on the facts of the case, the Minister's proposal in relation to the chapel did not breach the duty contained in s 17, nor was it contrary to s 6(f) of the Act (see para [85]).

Other cases mentioned in judgment

Ngataringa Bay 2000 (Inc) v Attorney-General (Planning Tribunal, Auckland A 10/95, 27 February 1995, Judge Sheppard).

Watercare Services v Minhinnick [1998] NZRMA 113 (CA).

Appeal and application for a declaration

This was an appeal against the decision of the Minister of Defence, and an application for a declaration that a resource consent was required to remove a chapel building from designated land.

R B Enright and *B E McDonald* for the Waitakere City Council.

B H Arthur for the Minister of Defence.

JUDGE SHEPPARD.

Introduction

[1] These proceedings concern the Minister of Defence's proposal to remove a chapel building from the air force base at Hobsonville (in the district of the Waitakere City Council), with a view to moving it to the Papakura Military Camp.

[2] There are two separate proceedings before the Court on this issue, and they were heard together. The council had requested that an outline plan for relocation of the building be withdrawn or changed, to allow retention of the chapel building on its original site. There is an appeal by the council under s 176A of the Resource Management Act 1991 (the Act) against a decision by the Minister declining that request. There is also an application by the council under s 311 of the Act for declarations that the removal of the chapel requires a discretionary resource consent; and alternatively that removing it would breach s 17 of the Act, and would be contrary to Part II of the Act. The council's case was founded on the building's heritage value at its original location.

[3] The outcome of the proceedings partly depends on questions over the application of provisions of the Act and of the partly operative district plan. Before we consider those questions, we give brief findings about the history of the building and the use that has been made of it; and relevant provisions of the partly operative Waitakere city district plan. We will state more detailed findings in the context of considering particular questions.

A brief history of the chapel

[4] The Hobsonville air force station was originally established in the 1920s, and was expanded in the later 1930s and in 1940. The chapel building for the station was provided by the National Patriotic Fund Board (as were chapels at other Air Force stations at about the same time), and was erected in 1942 on what had been a pony paddock, and near a large house (Mill House, later the base commander's house) then occupied by servicewomen of the Women's Auxiliary air force. The chapel building was transferred from the Patriotic Fund Board to the Air Ministry in 1946 or 1947.

[5] The chapel (known as St Mark's) was provided with altar, pews, a font, and other furniture, and has capacity for about 80 worshippers. A bell was donated for the chapel in 1966, and the building itself was extensively refurbished in about 1984.

[6] The chapel was used for regular services of worship and for occasional services (weddings, christenings and funerals) for Air Force and civilian personnel serving at the station and their families, and also by former service personnel and their families. When from 1991 to 2002 the Special Air Service (SAS) were stationed at the Hobsonville Air Force Base, their personnel and families also used the chapel.

[7] By 2002 the Minister of Defence had decided to close the Hobsonville air force base, and to dispose of the land. The chapel ceased to be used for regular services in December 2003, and was subsequently used by defence personnel and their families for weddings, baptisms and funerals until February 2005 when it was closed, in preparation for the intended removal to Papakura Military Camp (where the SAS are now stationed). The chapel is on land of the former air force base at Hobsonville that has since been transferred to Housing New Zealand; and some of it (including the chapel site) leased back to the Defence Force on terms that allow the Defence Force to remove some buildings (including the chapel).

The district plan

[8] The partly operative district plan was notified in October 1995. In that plan the land of the Whenuapai and Hobsonville Airbases is zoned Countryside Environment, and is designated "Defence Purposes – RNZAF air bases and associated defence activities". The plan contains conditions relating to the designation (which is identified as MD 1), including these:

1. To ensure that section 176A(3)(f) of the Resource Management Act 1991 has been adequately addressed, an outline plan shall include, as appropriate:

(a) a statement on the relevant District Plan objectives, policies and rules; and
(b) a statement on any adverse effects the works will have on the environment and the mitigation measures to be carried out.

. . .

4. Where an outline plan of works is submitted in accordance with s 176A of the Act in respect of a building or site within MD 1 and which is listed in the Heritage Appendix to this plan, that outline plan of works shall be accompanied by a heritage management plan generally in accordance with the NZDF heritage policy document.

[9] With reference to the mention in condition 4 of the NZDF heritage policy document, the Defence Force adopted a heritage policy (identified as DFO 32) in September 2002.

[10] The plan contains provisions about heritage. There is an objective of protecting the links between heritage objects and surrounding objects, and integrating the city's heritage with people's everyday life. There is a policy of avoiding demolition of listed heritage buildings. The plan lists items that are subject to heritage protection rules in three classes. The Hobsonville chapel is listed in category III. Removal of a heritage item in category III is a discretionary activity. The rules provide criteria for assessment of applications for consent to do so.

Proposed plan change 13

[11] The council has proposed a change to the district plan for management of the redevelopment of the Hobsonville Peninsula following closing of the airbase. The proposed change would create a new Hobsonville Base Village Special Area zone. The chapel site is within what is described by the proposed change as the Parade Ground Precinct, for which a comprehensive development plan complying with certain standards would be assessed as a limited discretionary activity. The development plan would have to provide details of retaining Mill House, the chapel, and associated land and gardens as heritage buildings and open space. The chapel would be identified as a notable building, and an area that includes the chapel site would be identified on a concept plan as open space.

[12] Additions or alterations to a building identified as a heritage building would be a discretionary activity, and change of use of a heritage building would be a limited discretionary activity.

[13] The time for lodging submissions on the proposed plan change has expired, but the council has not yet published a summary of submissions to allow the lodging of further submissions in support or opposition. A submission by the Auckland Regional Council sought some amendments on heritage buildings; but did not seek deletion of the references to retaining the chapel as a notable heritage building. No submission was lodged by the Minister of Defence, or by Housing New Zealand, relating to the provisions of the proposed change affecting the chapel building.

Legal questions

[14] There are some legal points on which the parties joined issue. We need to decide them before we can consider the main issues in the case.

Is the relevant aspect of the proposal relocation of the chapel or removal of it?

[15] The Minister's outline plan describes the proposal as "Relocation of St Mark's Chapel, Base Hobsonville, to Papakura". An accompanying letter to the council contained this explanation:

> RNZAF has relocated from its Hobsonville base and has no further use for much of the base infrastructure; specifically RNZAF have made St Mark's Chapel available to NZ Army. NZ Army intends to relocate and preserve the Hobsonville Chapel in its current form for use adjacent to the Special Air Service Memorial at Papakura Military Camp.

[16] Counsel for the city council submitted that the end use at Papakura is not relevant to whether the activity is covered by the Hobsonville designation.

[17] We accept that, for the purpose of deciding the legal questions on the status of the proposal, it is the removal of the building from its present site and from the airbase that is relevant. The intention to relocate the building at Papakura Military Camp will be relevant to forming any discretionary judgment.

Is removal of the chapel within the ambit of the designation?

[18] Counsel for the Minister contended that the proposed work (removal of the chapel building) is in accordance with the designation. Ms Arthur argued that the meaning of the designation for defence purposes and associated defence activities can be understood from the Defence Act 1990; and that includes removal and relocation of buildings both on and off a site that is designated.

[19] Counsel for the city council contended that relocation of the chapel falls outside the scope of the designation, and does not meet the defence purposes requirement of the designation, because the relocation is not to fulfil any defence purpose at Hobsonville. The building is being transferred for purposes associated with another designation. Mr Enright argued that to be within the designation, the site to which the building is to be relocated must also be within the designation footprint, being "the land" and "the site" referred to in s 176A.

[20] Mr Enright questioned whether the term "defence purposes" in the district plan should be defined by reference to the Defence Act. He also submitted that the phrase should be narrowly construed, given that where a requiring authority acts under a designation, it is not required to comply with the general duty imposed by s 9; and that in other litigation[1] the Minister had conceded that a designation for "defence purposes" was not adequate in terms of the Act.

---

1 *Ngataringa Bay 2000 v Attorney-General* (Planning Tribunal, Auckland A10/95, 27 February 1995, Judge Jackson).

[21] In considering the meaning of the Hobsonville designation we apply the test stated by the Court of Appeal in *Waimairi County Council v Hogan*[2] at p 590:

> What would an ordinary, reasonable member of the public, examining the scheme, have taken from the designation?

[22] We also apply the test to be inferred from the judgment of Tipping J in *Watercare Services v Minhinnick*[3] at p 122. (cited by Mr Enright):

> The position might be different if the way in which Watercare intended to do the works implicitly authorised by the designation was outside anything reasonably contemplated by the designation.

[23] Although the designation falls short of describing with the desirable particularity the works and activities intended, the city council did not at the time challenge the Minister's notice requiring that the designation be included in the district plan in those terms. Despite the concession made on the Minister's behalf in other litigation, these proceedings do not provide an appropriate opportunity for the council to challenge the adequacy of the designation, and in them the Court has to construe the designation as it is.

[24] We do not accept Mr Enright's submission to the effect that the phrase "defence purposes" should be narrowly construed on the ground that where a requiring authority acts under a designation, it is not required to comply with the general duty imposed by s 9. Although that is indeed the effect of a designation on activity within its scope, the test in *Hogan* does not indicate that a strict construction is required.

[25] We do not consider that an ordinary member of the public would feel any need to consult the Defence Act to understand what is meant by the term "defence purposes", or the words "associated defence activities". In our opinion an ordinary, reasonable member of the public would have taken from those words that they might include buildings used as chapels for defence personnel when required; and would also include removal of buildings designed for and formerly used as chapels for defence personnel when no longer required – particularly when required for defence personnel elsewhere.

[26] We now come to Mr Enright's submission that to be within the designation, the site to which the building is to be relocated must also be within the designation footprint, being "the land" and "the site" referred to in s 176A. Counsel contended that as the relocation is not to fulfil any defence purposes at Hobsonville, but is for purposes associated with another designation (we took him to mean the designation of Papakura Military Camp).

---

2 [1978] NZLR 587.
3 [1998] NZRMA 113 (CA).

[27] We quote s 176:

> **176. Effect of designation** — (1) If a designation is included in a district plan, then —
>
> (a) section 9(1) does not apply to a public work or project or work undertaken by a requiring authority under the designation; and
>
> (b) no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or hinder a public work or project or work to which the designation relates, including —
>
> (i) undertaking any use of the land described in section 9(4); and
>
> (ii) subdividing the land; and
>
> (iii) changing the character, intensity, or scale of the use of the land.
>
> (2) The provisions of a district plan or proposed district plan shall apply in relation to any land that is subject to a designation only to the extent that the land is used for a purpose other than the designated purpose.
>
> (3) This section is subject to section 177.

[28] Evidently that section was written having in mind activities and works *on* the designated land; and its language does not expressly and directly apply to the removal of buildings or other works from designated land. When considering the application of those provisions to removal of a building *from* designated land, the provisions have to be applied with the necessary modifications.

[29] We hold that the modification to s 176 that is necessary to apply the section to the case of removal of a building from designated land is to consider whether the removal is "under" the designation in the sense that it does not prevent or hinder the public work, project or work to which the designation relates. Modified as necessary for application to removal of a building from the designated land, the section cannot be confined to relocation of a building from one part of the designated land to another. It has to allow for removal from the designated land altogether, provided that is "under" the designation.

[30] There is no scope for doubting that relocating the chapel building from Hobsonville Airbase to Whenuapai Airbase (to which the designation also applies) would be "under" the designation. But there is already a chapel at Whenuapai Airbase. It is Papakura Military Camp that lacks one.

[31] We see no room for doubt, either, that where a body of defence personnel are posted to another defence establishment, their taking with them their weapons, vehicles, training equipment and stores would be within the phrase "defence purposes", whether or not the destination is within the same or another designation, or none, and whether or not it is within the same territorial authority district. As the city council itself submitted, the focus is not on the destination, but on being under the designation applicable to the origin.

[32] It is our opinion that in the same way, an ordinary, reasonable member of the public would also take from the words "defence purposes" that where members of a body of defence personnel had been using a defence building as a chapel and there is no chapel at an establishment to

which they are posted, the phrase could include removing the building to take it with them.

[33] Finally we should test the proposal in the way put by Justice Tipping J in *Minhinnick*. Is the *way* in which the Minister intends to do work implicitly authorised by the designation (that is, remove the chapel building from the designated land) outside anything reasonably contemplated by the designation?

[34] The city council's contended that the Minister's outline plan did not comply with conditions of the designation. If on consideration we uphold that contention, then we should consider the implications by reference to *Minhinnick*. Subject to that, we hold that the proposed removal of the chapel is within the ambit of the designation; and proceed to consider the application of s 176A.

Was an outline plan available and necessary?

[35] The Minister adopted the procedure of submitting to the city council an outline plan describing the proposal. That process is the subject of s 176A, of which we quote material provisions:

> **176A. Outline plan** — (1) Subject to subsection (2), an outline plan of the public work, project, or work to be constructed on designated land must be submitted by the requiring authority to the territorial authority to allow the territorial authority to request changes before construction is commenced.
>
> (2) An outline plan need not be submitted to the territorial authority if —
>
> (a) the proposed public work, project, or work has been otherwise approved under this Act; or
> (b) the details of the proposed public work, project, or work, as referred to in subsection (3), are incorporated into the designation; or
> (c) the territorial authority waives the requirement for an outline plan.
>
> (3) An outline plan must show —
>
> (a) the height, shape, and bulk of the public work, project, or work; and
> (b) the location on the site of the public work, project, or work; and
> (c) the likely finished contour of the site; and
> (d) the vehicular access, circulation, and the provision for parking; and
> (e) the landscaping proposed; and
> (f) any other matters to avoid, remedy, or mitigate any adverse effects on the environment.
>
> . . .

[36] We have to consider whether that procedure was available to the Minister in respect of the removal of the chapel building from the designated land; and whether an outline plan was necessary in respect of the removal. There is no doubt that an outline plan was available and necessary in respect of the Minister's unchallenged proposals for rehabilitation of the site following removal, including erection of a seat and a plaque.

[37] Section 176A does not directly define the classes of case in which the requirement to submit an outline plan applies. It is to be inferred from the last four words of subs (1) that the requirement applies where a public work, project, or work is intended to be constructed on designated land, where "construction" is intended; and from subs (2) that

the requirement to do so does not apply in a case in any of the classes described by paras (a), (b) and (c). The removal of the chapel building is not in any of those classes, so we have to consider whether the removal is construction of a work or project within the meaning intended for that word in subs (1).

Is removal of the building "construction" within s 176A?

[38] Ms Arthur submitted that the outline plan process was the correct process for the Minister to have followed as removal of the chapel on behalf of the Minister as requiring authority is an aspect of the public work of defence purposes. Counsel did not accept that "constructed" in subs (1) should be given a narrow meaning, but submitted that if the meaning is limited to the act of building, the Minister did not need to submit an outline plan for the removal of the building at all.

[39] Mr Enright submitted that removal of a building is not "construction" within the meaning of s 176A, arguing that it is not within the ordinary meaning of the word, and that the meaning given to the word in the Building Act 1991 does not assist.

[40] Counsel submitted an extract from the *Concise Oxford Dictionary* in which the relevant meaning of "construct" is given:

> make by fitting parts together; build, form (something physical or abstract).

[41] We accept that the removal of a building is not within the ordinary meaning of the word "construct". We also accept that the content of the Building Act is a different code, not corresponding sufficiently closely to the Act that the defined meaning of "construct" in that Act could assist in understanding the intended meaning of construction in s 176A of the Act.

[42] In the ordinary use of words, removal of buildings may be a project or work, or part of one. Where a verb is used to describe the general act of implementing such a project or work, "carry out" or "undertake" may be chosen; but it strains the word "construct" beyond its normal meaning to use it in respect of removal of a building from its site. We consider that the choice of the word "construct" in subs (1) indicates an intention that the requirement for an outline plan applies where the project or work involves making by fitting parts together, building, or forming a physical thing. That is the opposite meaning from removing something.

[43] The matters that are required by paras (a) and (b) of subs (3) to be shown on an outline plan correspond with the subject of the outline plan being a structure that has height, shape, bulk and location. They cannot sensibly be required in respect of the removal of a structure.

[44] A designation can only be required by a requiring authority, which must be a Minister of the Crown, a local authority or a network utility operator.[4] A designation may be for a public work, project or work, or for a restriction necessary for the safe or efficient functioning or

---

4 See the definition of "requiring authority" in s 166.

operation of a public work.[5] The subject of a designation is land use, construction or restriction; and that is the context of the outline plan requirement of s 176A. That process allows the territorial authority to consider the outline of the proposal in the respects listed in subs (3), and to request changes to them. By confining the requirement to construction, the legislature should be taken to have deliberately intended that it not extend even to the other topics of designation specifically identified by the Act: being land use and restrictions necessary for safe and efficient operating of public works, projects or works. We consider that giving the word "construct" a meaning that extends to removal of structures from designated land would be inconsistent with the evident intention.

[45] In summary, we find:

(a) that removal of a building is not within the ordinary meaning of the word "construct";
(b) that the context in which the word "construct" is used in s 176A does not indicate that a different meaning was intended; and
(c) that giving the word a meaning that extends to removal of a structure from designated land would be inconsistent with the evident intention.

[46] So we hold that removal of the building is not "construction" within the intent of s 176A.

[47] As s 176A only requires an outline plan where work is to be constructed, and as the removal of the chapel building is not construction within the meaning intended by that section, we hold that the outline plan process is not intended for the removal, and is not available or necessary for it.

[48] We can now return to the question whether the *way* in which the Minister intends to do the work authorised by the designation (that is, remove the chapel building from the designated land) is outside anything reasonably contemplated by the designation. As the removal is within the ambit of the designation, and (not being a construction) an outline plan is not required, any deficiency in compliance with conditions of an outline plan does not arise. So we hold that the question whether the outline plan process was available or necessary for removal of the chapel building should be answered in the negative.

Can a territorial authority seek that proposed work not proceed?

[49] Another question of law was whether a territorial authority can request changes to the extent that the construction not proceed at all.

[50] In response to the Minister's outline plan for removal of the chapel building, the city council requested that the outline plan be withdrawn or changed to allow for retention of the chapel on its present site. By its appeal the council sought that the outline plan be dismissed, or otherwise amended, to ensure that the chapel is retained on site.

---

5 See s 168.

[51] The Minister contended that the council's request was not for a change to the outline plan, and was not valid; and that on the council's appeal, the Court does not have power to grant the relief sought. Ms Arthur submitted that the council's ability to request changes to the outline plan was limited to requesting changes to the proposed work. Counsel argued that the council was not entitled to request that the outline plan be withdrawn, or that the chapel remain on its current site, which would not change the proposal, but negate it; and would deny the Minister's authority to act in accordance with the designation.

[52] Mr Enright responded that there are no express fetters on the changes that a territorial authority may request to an outline plan, and that the sole guiding criterion on appeal is that the changes sought must "give effect to the purposes of Act". Counsel argued that the purpose of the Act allows for consideration of effects of implementing the outline plan, as well as impacts on relevant values identified by Part II, including s 6(f).

[53] Mr Enright conceded that any changes requested would have to relate fairly and reasonably to the outline plan, have a relevant resource management purpose, and not be unreasonable in the *Wednesbury* sense. He contended that the change sought by the council was within those limits, and argued that an inability to remove the chapel would not negate the designation.

[54] The provisions for a territorial authority to request changes to an outline plan, and to appeal to the Court, are contained in subss (4) – (6) of s 176A, which we now quote:

> (4) Within 20 working days after receiving the outline plan, the territorial authority may request the requiring authority to make changes to the outline plan.
>
> (5) If the requiring authority decides not to make the changes requested under subsection (4), the territorial authority may, within 15 working days after being notified of the requiring authority's decision, appeal against the decision to the Environment Court.
>
> (6) In determining any such appeal, the Environment Court must consider whether the changes requested by the territorial authority will give effect to the purpose of this Act.

[55] On an application for resource consent to construct a project or work, the consent authority generally[6] has authority to "grant or refuse the application"[7]; and on appeal the Court has the same power, duty and discretion[8]; and may confirm, amend, or cancel the decision to which an appeal relates.[9]

[56] Parliament has used different language to describe what territorial authorities and the Court can do in respect of outline plans. The territorial authority can request 'changes' to an outline plan; and on appeal the Court is to consider whether "the changes requested" will give effect to the purposes of the Act. Assuming that the different language indicates

---

6 Except where the proposal is a consent authority.
7 See eg ss 104B(a) and 104C(b).
8 Section 290(1).
9 Section 290(2).

a different intention, we accept that the changes are not intended to extend to refusing outright the proposed construction described in the outline plan. Rather, they might (in the ordinary meaning of the word "change"[10]) make different, alter, or modify the proposed construction, without denying it altogether.

[57] So even if (contrary to our conclusion) the Minister was required to submit an outline plan to the council for removal of the chapel building, we hold that it was not open to the council, under the power to request changes, to request that the plan be withdrawn or that it be changed to allow for retention of the chapel on its present site. It follows that on the council's appeal, the Court would not have authority to grant the relief sought by the council that the outline plan be dismissed, or otherwise amended, to ensure that the chapel is retained on site.

Is resource consent required for removal of the chapel?

[58] The next question of law is whether resource consent is required for removal of the chapel from its site on the Hobsonville Airbase.

[59] The council contended the Minister is not entitled to remove the chapel building without having obtained resource consent, because doing so is not covered by the designation, and removal of a category III heritage item is a discretionary activity.

[60] The Minister contended that resource consent is not required, because the removal is covered by the designation.

[61] We have found that removal of the chapel is within the ambit of the designation. The provisions of the district plan only apply in relation to designated land to the extent that the land is used for a purpose other than the designated purpose.[11] The land on which the chapel building is located is designated for defence purposes, and is not used for a purpose other than the designated purpose. So we hold that the heritage provisions of the district plan (by which removal of the chapel building would be a discretionary activity) do not apply to the removal, and resource consent is not required for it.

Could removal of the chapel breach s 17?

[62] Finally we consider whether removal of the chapel building under the designation could be a breach of the Minister's duty under s 17.

[63] The council contended that it would, because it would remove a significant heritage building from Waitakere city, and such adverse effect would not be avoided, remedied or mitigated. It argued that the only practical means for the Minister to comply with the duty imposed by that section of avoiding adverse heritage effects would be by not relocating the chapel.

[64] The Minister acknowledged that the duty imposed by s 17 applies even to activity carried out in accordance with a designation, and

---

10 See *Concise Oxford Dictionary*, *Collins Concise English Dictionary, Chambers Dictionary*: "change".

11 Section 176(2).

contended that as location of a heritage item is an aspect of its value, an adverse effect on the chapel's heritage value would be adversely affected by removing it from its original site to another district. The Minister contended that the loss of the locational value would be mitigated by ensuring that the chapel continues to be used for its historic purpose for defence personnel and at a defence base.

[65] We quote s 17[12]:

> **17. Duty to avoid, remedy, or mitigate adverse effects** — (1) Every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of that person, whether or not the activity is in accordance with a rule in a plan, a resource consent, a designation, section 10, section 10A, or section 20A.
>
> (2) The duty referred to in subsection (1) is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty.
>
> (3) Notwithstanding subsection (2), an enforcement order or abatement notice may be made or served under Part 12 to —
>
> (a) require a person to cease, or prohibit a person from commencing, anything that, in the opinion of the Environment Court or an enforcement officer, is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment; or
>
> (b) Require a person to do something that, in the opinion of the Environment Court or an enforcement officer, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by, or on behalf of, that person.
>
> (4) Subsection (3) is subject to section 319(2) (which specifies when an Environment Court shall not make an enforcement order).

[66] The point of law is not disputed: although the Minister's proposed removal of the chapel is in accordance with a designation, s 17 could apply to the activity. Whether or not that activity would contravene the duty imposed by that section is a question of fact and judgment to be decided on consideration of evidence. So we have now to review the evidence and make a finding.

Would removal of the chapel breach s 17?

The issue

[67] The Minister acknowledged that in general, removal of heritage buildings from their sites may not be desirable; but contended that continuation of the original use of the building in question as a chapel for defence personnel is paramount. The Minister maintained that the proposed site rehabilitation works would satisfactorily remedy or mitigate the adverse effects on the environment of removing the building from its original site; and that the loss of locational value would be mitigated by continuing to use the building as a chapel for defence personnel, including members of a body who have had a recent association with use of the building as a chapel.

---

12 As amended by the Resource Management Amendment Act 2003, s 7.

[68] The council maintained that the proposed removal of a significant heritage building from Waitakere city would have adverse effects of loss of amenity and social values that cannot be avoided, remedied or mitigated by any positive effects of relocation of the building at Papakura Military Camp. It asserted that the proximity of the chapel site and Mill House creates a precinct of heritage significance.

[69] There was no material conflict on the primary facts. The building was constructed in 1942 as a chapel to serve the Hobsonville Airbase. It was used primarily by defence personnel and their families until it was closed in February 2005 as part of the closing of the airbase. It is no longer required at Hobsonville (or at the Whenuapai Airbase nearby) for use by defence personnel. A chapel is needed at Papakura Military Camp, to which the SAS (who, with their families, had used the building as a chapel from 1991 to 2002) have returned. There are ex-service personnel and their families who have past associations with the chapel, and who would value it remaining on its present site. If the building is retained on its original site, it might be used for occasional services. However there is another heritage chapel building at Hobsonville (constructed in 1875, and recently refurbished) available for occasional services; and a chapel at Whenuapai Airbase which continues to serve defence personnel and their families, and former servicemen and women in the locality.

[70] The main difference between the parties on the evidence is a matter of opinion: whether the site rehabilitation works proposed by the Minister satisfactorily remedy or mitigate the adverse effect on the environment arising from removing the building from its original site.

The evidence

[71] Mrs L A Cooper, an elected member of the council, gave an account of her own association with the chapel, and those of others who had relayed their experiences to her; and gave her opinion that the chapel should remain in its current location to be restored to its former condition and to be enjoyed by future generations. She described the removal of the chapel as damage to the cultural heritage; and her expectation that if not removed, the chapel would have a future for community ceremonies and services well after the air force vacates the base.

[72] Mrs D Holman, an experienced heritage planning consultant, gave the opinion that removal of the chapel from its current location would create significant adverse effects on the environment, particularly in terms of the precinct in which the chapel is currently situated and in respect of the chapel's local significance for Waitakere city generally; and that those effects could not be avoided, remedied or mitigated. This witness explained that relocation of heritage buildings inevitably disrupts and reduces cultural heritage value. She considered that relocation of the chapel would have the effect that its history, and part of the history of the airbase, would disappear from that locality; and at the Papakura Military Camp would be camouflaged by new and different surroundings. Mrs Holman gave the opinion that the removal would be contrary to the

best heritage conservation practice and the wider interests of the community, Waitakere city and the Auckland region.

[73] Mr P D Reaburn, an experienced resource management planning consultant, accepted that maintaining the association of defence personnel with the chapel is relevant, and that the proposed site at Papakura Military Camp would be appropriate. He also acknowledged that relocating the chapel building would be cheaper than building a new one at Papakura. However he urged that these should be weighed against other matters, mentioning retaining the chapel in its original setting, where he thought it likely that the building would be used for religious and other services, and where the Hobsonville community could maintain an association with it. He too considered that the balance favours retaining the building at Hobsonville.

[74] Chaplain L E Lukin acknowledged that expediency of making use of a surplus resource was part of the reason for the proposed relocation of the chapel building. He added to that the long establishment the SAS already has with the chapel, the fact that many serving members have strong associations with it because they had been married in it, or had children dedicated there, or had departed on operational deployments from that chapel, gives them a strong heritage connection with it. Moving the building means that those personnel and their families would be able to maintain that connection.

[75] Chaplain R K Horton reported that although services at the chapel at Whenuapai airbase are for base personnel and their dependants, members of the public of the local community are permitted to attend Sunday services there too. He observed that they are generally people who have had past association with the air force. The chaplain expressed concern that if the chapel is not moved to another Defence Force establishment, it might not continue to be a "working" chapel (as he preferred), rather than remain in its current location as an unused and neglected monument, or used for purposes that do not represent the Christian faith and tradition, such as a cafe.

[76] Mr M P Kelly, an historic heritage management consultant, gave evidence that although internationally there is a generally established principle that moving built heritage is not desirable, the *ICOMOS New Zealand Charter for Conservation of Places of Cultural Heritage Value* acknowledges a tradition in this country of moving (predominantly timber) buildings. The charter states that relocation can be a legitimate part of the conservation process where the site is not of associated value, or relocation is the only means of saving the structure, or relocation provides continuity of cultural heritage value.

[77] Mr Kelly accepted that moving the Hobsonville chapel would sever historical connections with the base and associated buildings, and the wider community, in local residents who have had a relationship with it; and would end the long connection with Mill House. He observed that moving the chapel offers the opportunity to maintain its original purpose as a military chapel, and although originally erected for use by air force personnel, the SAS draws on all three armed services, including the air force. Mr Kelly gave the opinions that in this case the certainty of

continued use and care, and the maintenance of the building's traditional purpose and historical associations, are compelling reasons to support moving it to Papakura; and that ultimately this would maintain and enhance its heritage values more than leaving it at its present site.

[78] Mr C A Hansen, an experienced resource management planning consultant, gave the opinion that as the chapel has already been closed for services, any minor effect on those members of the defence service community that remain in the Hobsonville area would already have occurred. The witness also gave the opinion that if the building remains on its site, its future use is uncertain, and although resource consent would be required for a change of use, it may not be protected from inappropriate use and development, which would diminish its heritage value. Mr Hansen acknowledged that there may be positive benefits of retaining the building on site (which he would struggle to call significant), depending on what happens to it, but he considered that speculative. He gave the opinion that keeping the valued heritage supported relocation of the building to a place where that heritage is to continue.

Consideration

[79] In considering this issue, we are to recognise and provide for the protection of historic heritage from inappropriate use and development, as a matter of national importance.[13] We are also to have particular regard to the efficient use and development of natural and physical resources;[14] to the maintenance and enhancement of amenity values;[15] and to maintenance and enhancement of the quality of the environment.[16] In doing so, we bear in mind that the building has been classified in the district plan as a category III heritage item; and we accept that the *ICOMOS New Zealand Charter for Conservation of Places of Cultural Heritage Value* is an appropriate guide to accepted good practice in that respect.

[80] If the building is not removed from its original site, that would:

(a) respond to the general principle that heritage buildings should be kept on their original sites;
(b) retain the historic association of the building with the nearby Mill House; and
(c) allow people in the locality who have historic affinity with the building to continue their connection with it.

[81] In evaluating those advantages, we take into account that in this country, moving timber buildings can be acceptable in some circumstances, including where relocation provides continuity of cultural heritage value. Although traditionally finished in similar colours, and having some other superficial common features, we place little weight on the association of the chapel building with Mill House because the

---

13 RMA s 6(f).
14 Section 7(b).
15 Section 7(c).
16 RMA s 7(f).

buildings have not been functionally linked, and the removal of one would not affect the significance of the other. Without belittling the connection that some people have with the building on its original site, the evidence does not establish that there are many who would miss it. The original connection of the chapel with the air force will be lost anyway, with the closing of the Hobsonville Airbase. Finally, the evidence does not give us any assurance that the building would be maintained and used in a way that would be appropriate and respectful of its history as a place of worship. Many secular uses would not be.

[82] If the Minister's proposal to remove the building from the site and relocate it at Papakura Military Camp is carried out, that would:

(a) provide continuity of the building's cultural heritage value;
(b) provide continuity with the building's purpose as a place of worship for defence personnel and their families;
(c) meet an existing need as a chapel for a body of defence personnel with recent association with the building; and
(d) disrupt the heritage value derived from the building standing on its original site.

[83] In evaluating those advantages, we accept that the building's heritage value would be marked by retention of the name (St Mark's Chapel), by appropriate signage recording its history, by reinstating of the chapel furniture temporarily stored pending relocation, and by restoration of the building and maintenance of it generally in its original condition. The continued use as a chapel there would represent an efficient use of the physical resource, would maintain and enhance its amenity value, and in that way contribute to the quality of the environment.

[84] The heritage experts Mrs Holman and Mr Kelly did not regard the proposed rehabilitation work at Hobsonville as significant mitigation of the adverse environmental effect of removing the building. Even so, in coming to a judgment on the issue whether it should be removed as proposed, we take into account that rehabilitation of the site, and the erection of a seat and plaque, would be appropriate. However inadequate to those who wish that the building remain on its original site, we treat those measures as some mitigation of the adverse effects of removing it.

[85] We have compared the advantages and disadvantages of leaving the building on its original site, with those of the proposed removal and relocation of it. We unanimously judge that the Minister's proposal for removing the building from its original site at the Hobsonville Airbase now being closed, for relocation at Papakura Military Camp as a chapel for defence personnel stationed there, is more consistent with the Minister's duty to avoid, remedy or mitigate adverse effects on the environment than would leaving the building on its site on the final closing of the airbase. In short, we do not accept that the Minister's proposal would contravene the duty described in s 17 of the Act, nor that it would be contrary to s 6(f) of it.

Conclusions and determinations

[86] In this decision we have given our reasoning for our findings:

(a) That the proposed removal of the St Mark's Chapel building from Hobsonville Airbase (with a view to relocating it at Papakura Military Camp) is within the ambit of the designation of the site for defence purposes and associated activities.
(b) That the proposal is not construction within the meaning of s 176A of the Act.
(c) That the outline plan process described in that section was not available or necessary in carrying out that proposal.
(d) That even if the outline plan process had been necessary, it was not open to the council in exercise of the power to request changes, to request that the plan be withdrawn or changed to allow for retention of the chapel on its present site.
(e) That on the council's appeal under s 176A, the Court did not have authority to grant the relief sought by the council that the outline plan be dismissed, or otherwise amended, to ensure that the chapel is retained on site.
(f) That the chapel site not being used for a purpose other than the designated purpose, the heritage provisions of the district plan do not apply to the removal of the building, and resource consent is not required for that activity.
(g) That s 17 could apply to the activity, but on balance in the circumstances of the case, the Minister's proposal would not contravene the duty described in that section, nor be contrary to s 6(f).

[87] From those findings the Court makes the following determinations:

(a) Appeal ENV A 0054/05 by the Waitakere City Council is dismissed.
(b) Application ENV A 0173/05 by the Waitakere City Council is declined.

Costs

[88] If either party seeks an order for payment by the other of costs, a written application is to be lodged and served within 20 working days of the date of this decision. A party against whom an order is sought may lodge and serve written submissions in reply within 15 working days of receiving such an application.