

**WAIPA DISTRICT COUNCIL**

**PROPOSED PLAN CHANGE NO 57**

**DECISION  
OF  
HEARINGS COMMISSIONERS**

**Doug Arcus  
Barrister  
HAMILTON**

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Planner  
AUCKLAND**

## **CONTENTS**

|                                   |           |
|-----------------------------------|-----------|
| <b>1. INTRODUCTION</b>            | <b>2</b>  |
| <b>2. PROPOSED PLAN CHANGE 57</b> | <b>8</b>  |
| <b>3. SUBMISSIONS</b>             | <b>9</b>  |
| <b>4. PRELIMINARY ISSUES</b>      | <b>11</b> |
| <b>5. STATUTORY FRAMEWORK</b>     | <b>13</b> |
| <b>6. PLANNING INSTRUMENTS</b>    | <b>17</b> |
| <b>7. MATTERS FOR DECISION</b>    | <b>21</b> |
| <b>8. DECISION</b>                | <b>56</b> |

# **WAIPA DISTRICT COUNCIL**

## **Proposed Plan Change No 57**

### **DECISION OF HEARINGS COMMISSIONERS ON PROPOSED PLAN CHANGE**

#### **1. INTRODUCTION**

##### **1.1 Appointment**

Section 34A of the Resource Management Act 1991 (RMA) allows a local authority to delegate to a Hearings Commissioner or Commissioners any of its functions, powers, or duties, including the power to hear and determine matters which effect a change to a district plan.

Waipa District Council would ordinarily hear and determine the issues on a proposed plan change. However, in this case there is a conflict of interest arising from Council being a part owner of the Waikato Regional Airport Limited the proponent of the Plan Change.

To ensure that the matter was considered independently, the Council as Consent Authority exercised its power of delegation to appoint us as Hearings Commissioners to hear and make a determination in respect of the submissions and further submissions. Because only two Commissioners were appointed and to avoid a split decision, Council accorded the chairperson Commissioner Arcus a casting vote. In the event a casting vote was unnecessary.

In addition Council contracted Beca Carter Hollings & Ferner Ltd (Beca) of Hamilton to make an assessment and provide the s42A Report.

Waipa District Council as Consent Authority has therefore been completely removed from the assessment and decision-making in this case.

##### **1.2 Proposed Plan Change 57**

A summary of Proposed Plan Change 57 is included in Section 2 of this Decision.

### **1.3 Notification**

Approval was given by Council on 24 September 2007 to publicly notify the Proposed Plan Change pursuant to Clause 5 of the First Schedule of the Resource Management Act 1991.

The Proposed Plan Change was publicly notified by Council on the 29<sup>th</sup> September 2007 with submissions closing on 30<sup>th</sup> October 2007.

A summary of submissions was prepared by the Council and notified on the 21 November 2007 with a closing date for further submissions on 19<sup>th</sup> December 2007.

### **1.4 Submissions and further Submissions**

A total of 25 primary submissions were received. Of these 2 were received after the closing date for submissions. We deal with the late submissions in Section 2 of this Decision.

Eight further submissions were received.

A brief summary of the submissions and further submissions is set out in Section 3 of this Decision.

### **1.5 Proposed Amendment to Airport Designation**

A process running in tandem with the Proposed Plan Change is three Notices of Requirement as follows:

- Minor alterations to the boundaries of the Airport designation for operational purposes to accommodate the rezoning and the development of the business park and to reflect the operational needs of the Airport;
- Alteration to the State Highway 3 access to the Airport;
- Alteration of State Highway 21 access to the Airport.

These designations are dealt with in a separate Recommendation delivered contemporaneously.

## 1.6 Hearing

We conducted the Hearing of both the Proposed Plan Change and the Notices of Requirement at the Council on June 25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup> 2008.

We are aware that under RMA First Schedule Clause 10 the purpose of the Hearing is to hear the submissions. However, we come to this matter completely afresh with no previous understanding of any of the issues pertaining to the proposal. That is the same position in which the Environment Court finds itself when it is considering plan making matters. We therefore elected to adopt the usual Environment Court procedure<sup>1</sup> and hear from the proponent of the Plan change first.

In the course of the Hearing we heard from:

(a) *Waikato Regional Airport Limited as Proponent of the Proposed Plan Change*

|                      |  |
|----------------------|--|
| Mr Phil Lang:        | Counsel for WRAL   |
| Mr Christopher Doak: | Chief Executive Officer of WRAL  |
| Mr Nigel Richards:   | McConnell Property Limited   |
| Mr Terence Morris:   | Morris Bray Architects Pty Limited   |
| Mr Nevil Hegley:     | Hegley Acoustic Consultants,<br>Acoustic Engineer  |
| Mr James Bentley:    | Isthmus Group Limited, Landscape<br>Architect  |
| Mr Timothy Heath:    | Property Economics Ltd, Consultant<br>on Retail, Industrial and Business<br>Forward Planning |
| Mr Cameron Inder:    | Bloxam Burnett & Olliver Ltd,<br>Transportation Engineer                                     |
| Mr Tony Keyte        | Bloxam Burnett & Olliver Ltd,<br>Senior Civil and Transportation<br>Engineer                 |
| Mr John Olliver      | Bloxam Burnett & Olliver Ltd,<br>Planning Consultant   |

(b) *Submitters and Further Submitters*

|                     |   |
|---------------------|---|
| Ashton Family Trust | Mr Jim Ashton<br>Mr Norm Robbins, Maunsell Ltd,<br>Traffic Engineer |
|---------------------|---|

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<sup>1</sup>See Environment Court practice note April 2006 para 4.1.2.

|  |  |
|--|--|
| Costenuff Family Trust<br>RSK & CT Ingram<br>Hamilton City Council | Mr Grant Eccles, Maunsell Ltd,<br>Consultant Planner<br>Mr Craig Clark, Resident<br>Mrs Carolyn Ingram, Resident<br>Mr Brent McAllister, Strategic<br>HCC, General Manager;<br>Mr Fraser Cameron, Changing<br>Stride Limited, Public Transport<br>Planner;<br>Mr Robert Speer, Market Research<br>Consultant;<br>Alan Matheson, C & M Planning<br>Limited, Consultant Planner; |
| National Fieldays<br>Tainui Developments Ltd                       | Mr Barry Quayle, General Manager;<br>Mr Eric van der Wel, Tainui Group<br>Holdings Ltd, Project Manager;   |
| Transit New Zealand  | Mr Philip Brown, Traffic Engineer;<br>Mr Brad Moore, Senior Resource<br>Planner.   |

(c) *Letters were tabled from the following submitters*

Air New Zealand Limited  
Kiwi Property Holdings Limited  
Westfield New Zealand Ltd

(d) *Waipa District Council  
(as Consent Authority)*

Mr Richard Douch, Beca Carter  
Hollings and Ferner (Beca), Senior  
Planner, author of the s42A Report;  
Mr Alasdair Gray, Gray Matter Ltd,  
Traffic Engineer;  
Mr John Mills, Assets and  
Community Facilities Manager,  
Waipa DC;  
Mr Karl Tutty, Environmental  
Officer, Waipa DC;  
Mr Wayne Allan, Planning  
Services Manager, Waipa DC.

## 1.7 Site Visit

In the morning prior to the Hearing commencing we undertook a brief locality orientation visit to familiarise ourselves with the general layout and key features in the locality.

On the afternoon of Thursday June 26<sup>th</sup> we undertook a full site visit. In particular we visited the properties of Messrs Clark (Costenuff) and Ashton. Accompanied by Mr Olliver we viewed most of the existing industrial development on the west side of the Airport. We also identified and drove to the entranceway of the Ingram property on State Highway 3.

## 1.8 Definitions

In this decision we use the following terms:

|                    |  |
|--------------------|--|
| AEE                | Assessment of effects on the environment   |
| ANB                | Airport Air Noise Boundary   |
| ANM                | Air Noise Margin being that area of land located between the Airport Air Noise Boundary (ANB) and the Airport Noise Outer Control Boundary (OCB) |
| Airport            | Hamilton International Airport owned and operated by Waikato Regional Airport Limited (WRAL)   |
| Council            | Waipa District Council in its capacity as Consent Authority.   |
| District Plan      | The District Plan of the Waipa District Council (operative December 1997)  |
| EW                 | Waikato Regional Council trading as Environment Waikato  |
| LGA                | The Local Government Act 2002.   |
| OCB                | Airport Noise Outer Control Boundary   |
| Plan Change        | Proposed Plan Change 57 proposed by Waikato Regional Airport Limited   |
| RMA                | The Resource Management Act 1991 and its amendments.   |
| Section 42A Report | The report prepared by Mr Douch in accordance with RMA s42A  |
| SH                 | State Highway  |
| WRAL               | Waikato Regional Airport Limited.  |

## **1.9 Format of this Decision**

There are some 139 individual submission points. Rather than deal with submission by submission we have instead elected to deal with the matters by issue and have reached a decision on each issue.

With the number of matters raised by the submissions we deal in detail only with the matters which remained at issue. Where matters are no longer at issue we have elected to simply adopt the recommendations and reasons in the s42A Report.

Appendix 1 sets out our decisions on individual submissions & further submissions.

Appendix 2 is the revised strike-through version of the relevant provisions of the Proposed Plan Change with the amendments we have determined included. Also included are some minor changes which we consider will make the Plan Change more workable, for example express reference to the default status of activities which do not comply with each particular rule and the applicable criteria by which such activities will be considered.

Appendix 3 is a “clean” version of the relevant provisions of the Proposed Plan Change with the amendments we have determined included.

Appendix 4 is the Structure Plan for the Airport area.

## **2. PROPOSED PLAN CHANGE 57**

### **2.1 Background.**

WRAL owns and operates Hamilton International Airport (the Airport) on the land between Airport Road (State Highway 21), Raynes Road and State Highway 3 at Rukuhia approximately 10 kilometres south of Hamilton City.

We set out in Section 6.1 of this Decision the present District Plan provisions relating to the Airport

### **2.2 Principal Provisions of Proposed Plan Change.**

WRAL has established its land needs for the future operation of the Airport and has approximately 173ha of land to provide for the long term needs of the Airport. An additional 117ha of land has been identified as surplus for the direct operational requirements of the Airport and potentially suitable for other forms of development.

WRAL seeks to rezone the land not needed for the operation of the Airport to enable the future development of an integrated business park around the Airport. This business park is to be known as Titanium Park. It is intended to be an employment area operating in conjunction with passengers and visitors to the Airport. To allow the business park to occur in the manner sought, WRAL has sought the Plan Change to the existing Waipa District Plan. The majority of the land involved is owned by WRAL, however some landholdings (particularly on the western side of the Airport) are in private ownership. The Plan Change has been notified and some of these parties have submitted on the specifics of it in relation to their properties.

The Plan Change requests that the existing Rural and Airport Industrial zones which currently apply to this land are replaced with a new 'Airport Business Zone'. A specific suite of objectives, policies, rules and related provisions and criteria have been developed for this proposed zone, together with a Structure Plan, all of which are intended to guide development of Titanium Park.

A large proportion of the land subject to the Plan Change is already zoned Airport Industrial and can be developed for a range industrial activities. Of the 117ha proposed to be rezoned approximately 65ha is currently zoned Airport Industrial. The other 52ha is currently zoned Rural in the District Plan.

In addition to the Proposed Plan Change, three alterations to designations (to which we have already referred) have also been sought, by both WRAL and Transit NZ as requiring authorities pursuant to Part 8 of the RMA.

### **3. SUBMISSIONS**

#### **3.1 Submissions Received**

Twenty five submissions were received to the Plan Change, including two being received after the closing date for submissions. We discuss the late submissions in the next Section of this Decision. Eight further submissions were received following notification of the primary submissions.

The s42A Report contains a summary of each of the submissions which are otherwise summarised as below.

#### **3.2 Submissions in Support**

Two of the submissions were in support and sought the Plan Change be granted.

#### **3.3 Submissions in Qualified Support**

Eight of the submissions were in qualified support but sought the inclusion of details including:

- The upgrading of the intersection of SH 21/SH 23.
- The construction of all servicing infrastructure prior to the commencement of any additional activity.
- Amend rules in relation to building setbacks, building height, noise, odour and other emissions.
- Amend rules to reflect the existence of residential dwellings within the proposed Airport Business Zone.
- Decisions on the Plan Change to be undertaken following the completion of the Sub-Regional Growth Strategy due to concerns in relation to strategic planning, infrastructure integration, provision for retail and public transport.
- Amend rules to provide for assessment of traffic effects.
- Amend rules in relation to air traffic considerations.
- Incorporate a larger land area into the Plan Change.

#### **3.4 Submissions Neutral**

The seven submissions that were described as neutral raised issues in relation to:

- Amend rules regarding building setback, height of buildings and noise.
- Amend to show internal roading network is indicative only.

- Amend in relation to contaminated land policies.
- Amend in relation to reverse sensitivity considerations.
- Amend in relation to servicing infrastructure considerations.

### **3.5 Submissions Opposed**

The seven submissions in opposition raised issues in relation to:

- The retailing component and its impacts on other retail centres.
- Adverse traffic effects.
- Building heights, building setbacks, stormwater, visual amenity, noise, road access, and cost to ratepayers.
- Wait until the Waipa Urban Growth Strategy has been reviewed and a Structure Plan is prepared for the land around the Airport.
- Opposition unless amendments are made in relation to height of buildings, building setbacks, special noise area activities and floor space for retailing.
- Contrary to the centres-based focus of the District Plan.
- Wait until completion of the Sub-Regional Growth Strategy.
- Need for further archaeological assessment.

### **3.6 Consideration of Submissions**

The s42A Report identified a list of the broad categories by which the submissions were considered. We consider that list a convenient breakdown of the issues and we adopt it. The issues are as follows:

- Whole Plan Change (either general support or opposition)
- Growth Strategies
- Additional Land
- Activity Status
- Structure Plan
- Transportation
- Retail
- Setback
- Landscaping
- Height
- Signage
- Noise
- Odour & Contamination
- Engineering/Utilities Issues
- Archaeological.

## **4. PRELIMINARY ISSUES**

### **4.1 Issues**

There are two preliminary matters which we identified and can deal with at the outset. They are:

- Two late submissions
- Potential conflict of a Commissioner

### **4.2 Late Submissions**

Two of the primary submissions were recorded as being late:

- Acorn Farms
- Mr CE Turner

Mr Turner appeared to present evidence. He reported that on the last day for filing submissions he presented his submission to the Council offices in Cambridge. He was told by the Cambridge office that the appropriate office for filing is Te Awamutu. He accordingly sent the submission to Te Awamutu but it arrived the day after the closing date.

We consider that the advice given by Council staff at the Cambridge office was incorrect. A valid submission could have been filed at Council's Cambridge Office, being a properly constituted office of the Council. We are satisfied about the reason for the late filing of the submission. Mr Douch recommended that we exercise a waiver. There appeared to be no opposition from WRAL.

Accordingly we exercise a waiver in respect of the submission of Mr Turner so that his submission is valid.

No reasons for the lateness of the submission of Acorn Farms were provided and no application for waiver was made. We make no waiver in respect of that submission.

### **4.3 Conflict of Commissioner**

At the commencement of the Hearing Commissioner Arcus indicated that he had identified in the papers a possible conflict which he may have. The submissions of Hamilton City Council, Winstone Limited and Week Two Limited all requested that Proposed Plan Change 57 be deferred until completion of the Hamilton Sub-Regional Growth Strategy. The Hamilton Sub-Regional Growth Strategy is a joint initiative being taken by Hamilton

City Council, Waipa District Council, Waikato District Council and Waikato Regional Council to co-ordinate planning for the future across the sub region covered by the three territorial local authorities. The Hamilton Sub-Regional Growth Strategy has now been named “Future Proof”. Commissioner Arcus is currently the Independent Chairperson of “Future Proof”.

Prior to the Hearing we gave consideration as to whether Commissioner Arcus may have a conflict.

Commissioner Arcus’ involvement in “Future Proof” as an Independent Chairperson is in a facilitative capacity only and not deliberative. Our view at the commencement of the Hearing was that there was therefore no conflict.

WRAL for its part concurred with that view. No other party raised any issue or concern.

Both of us continued as Commissioners accordingly.

## 5. STATUTORY FRAMEWORK

### 5.1 RMA ss74, 75 -Criteria

RMA s74 sets out the matters to be considered by a territorial authority in preparing or changing its district plan. Subsection 1 provides:

*"(1) A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, its duty under section 32, and any regulations"*.

Section 74(2) further requires us to have regard to any other documents which may be relevant.

Section 75(2) requires us to ensure that the District Plan is not inconsistent with any regional policy statement or regional plan.

### 5.2 RMA s31-Functions

RMA Section 31 provides:

*"(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*

*(a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*

*(b) the control of any actual or potential effects of the use, development, or protection of land..."*

As the Court observed in *Kiwi Property Management Ltd v National Trading Coy of NZ*,<sup>2</sup> "[t]hese functions relate to the management and control of effects"<sup>3</sup>.

### 5.3 RMA s32

Section 32 provides for an evaluation to be made and:

*"(3) An evaluation must examine—*

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<sup>2</sup> Decision A045/2003, March 2003, Judge Whiting.

<sup>3</sup> Ibid, para 32.

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

#### **5.4 RMA Part 2**

- (a) The primary purpose of RMA is set out in s5 is "*to promote the sustainable management of natural and physical resources*". Sustainable management is then defined.
- (b) RMA s6 sets out matters of national importance which are to be recognised and provided for. However, we understand that there are no matters of national importance under s6 which are relevant to the consideration of the Plan Change.
- (c) Section 7 sets out other matters to which we are to have particular regard. The matters in s7 which may be of relevance to the Plan Change include:
  - (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:*
  - (g) *Any finite characteristics of natural and physical resources. "*
- (d) Section 8 requires us to take into account the principles of the Treaty of Waitangi.

No submissions were received to the Plan Change in relation to Maori issues beyond the archaeological issues we discuss in Section 7.17 of this Decision.

We consider that the provisions of Part 2 relating to Maori are satisfied.

## 5.5 RMA ss75 & 76-Contents of Plan

RMA s75 requires a district plan to state (among other things):

- (a) the significant resource management issues of the district; and
- (b) the objectives sought to be achieved by the plan; and
- (c) the policies for those issues and objectives, and an explanation of the policies; and
- (d) the methods being used or to be used to implement the policies, including any rules
- (e) RMA s76 allows a council to include rules in a district plan for the purpose of carrying out its functions under RMA, and to achieve the objectives and policies of the plan. In making a rule, a council is to “...have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect...”.

## 5.6 Summary

In *Infinity Group v Queenstown Lakes District Council*,<sup>4</sup> the Court accepted a submission summarising the basis for deciding a variation at that time as follows:

“...the variation has to –

- (a) *be necessary in achieving the purpose of the Act;*
- (b) *assist the Council to carry out its functions of the control of actual and potential effects of the use, development and protection of land in order to achieve the Act's purpose;*
- (c) *be the most appropriate means of exercising that function; and*
- (d) *have a purpose of achieving the objectives and policies of the Plan.”<sup>5</sup>*

Subject to the subsequent Amendment Acts, we are bound to adopt that approach in our consideration of the Plan Change.

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<sup>4</sup> Decision C010/05, Jan 2005, Judge Sheppard.

<sup>5</sup> Ibid, para 118.

## **5.7 Decision of Local Authority**

RMA Clause 10 of the First Schedule provides that the local authority

*"... shall give its decisions, which shall include the reasons for accepting or rejecting any submissions (grouped by subject-matter or individually) "*

Subsection 2 of Clause 10 of the First Schedule provides that the decisions of the local authority *"may include any consequential alterations arising out of submissions ..."*.

## 6. PLANNING INSTRUMENTS

### 6.1 District Plan

The principal planning document that relates to Hamilton Airport and its surrounds is the Waipa District Plan.

The Airport operational area is designated in the District Plan for “Airport Purposes” (Designation No.71). In addition, part of the operational area at the northern end of the main runway is designated as “Starter Extension and Runway End Safety Area” (Designation No.150) with a setback between the runway starter extension and the adjoining land being provided for by a separate designation (Designation No.151). The height of structures in the surrounding area is controlled by a designated “Obstacle Limitation Surface” (Designation No.39) which affects land around the Airport runway.

A small part of the land area subject to the Plan Change is also located within the Special Landscape Character Area overlay of the District Plan with that applying to an area of land adjacent to SH 3 and adjacent to its intersection with SH 21.

Most of the land relating to the Airport is zoned “Airport Industrial” with some being zoned “Rural”. The Airport Industrial Zone rules are quite restrictive and limit permitted activities to a narrow range of industrial and servicing activities that are associated with the Airport. Other industrial activities are listed as discretionary activities in the zone and are to be assessed against criteria that require consideration of the need to locate at the Airport rather than within another industrial zone.

The Airport has strong recognition in the District Plan through the following policy:

*“To recognize the importance of Hamilton Airport for the District and the Region and to provide for the efficient and safe operation of Hamilton Airport.” (Policy TR11)*

The key existing District Plan objective relating to development of the land around the Airport is:

*“To provide for the needs of industrial and service activities associated with the Airport.” (Objective IN7)*

The related policy states:

*“To identify a special industrial zone at Hamilton Airport for industrial and service activities associated with the Airport, with rules to protect the limited land with access to the runway for activities (such as goods handling) which need this access”.* (Policy IN 4)

It can be seen from the above that while the existing zoning and District Plan provisions specifically contemplate development around the Airport, they do not provide for the development of a fully integrated business park that benefits from the operation of the Airport, one that also supports the Airport as a wider transport and business hub, and provides for a wide range of associated activities.

While the current District Plan provisions correctly reflect the regional importance of the Airport we accept they are too restrictive to allow a modern business park to develop. WRAL’s ownership of much of the land around the Airport also means it is in a position to manage the development and use of that land in such a way that it does not undermine the operation of the Airport.

## **6.2 Waikato Regional Policy Statement (RPS)**

The RPS was made operative in October 2000 and provides an overview of resource management issues in the Waikato Region. It provides objectives and a range of policies and methods to achieve integrated management of natural and physical resources across different resources, jurisdictional boundaries and agency functions, and guides the development of sub-ordinate plans and the consideration of resource consents. The issues discussed traverse matters such as rural and urban land use and development, management of the soil resource, network utilities and infrastructure, and, surface water quality.

The RPS identifies “infrastructure” as a particular issue of importance to the region and refers to concerns for any conflicts and incompatibilities which may significantly compromise the operation of regionally significant infrastructure. The associated objective and policy that seek the continued operation of regionally significant infrastructure be maintained or enhanced, and the avoidance of significant adverse effects upon that infrastructure, clearly applies to the Hamilton International Airport and to the State Highways around the Airport. The Plan Change needs to be considered in the context of this objective and policy.

The RPS also identifies soil health and versatility as an issue with an associated objective and a policy that seeks to maintain versatility and productive capacity of the region's soils resources and avoid, remedy or mitigate any degradation of soil versatility and productive capacity.

We see the Plan Change as being entirely consistent with the RPS considerations regarding regionally significant infrastructure. The development of a business park around the Airport will support and enhance the function and growth of this regionally significant asset and the Plan Change (particularly as the Plan Change is amended as part of this Decision) will serve to ensure that effects on the safe and efficient operation of surrounding roads are appropriately avoided, remedied and mitigated.

In relation to the issue of soil health and versatility, we accept that the proposal will result in the permanent loss of prime agricultural land through the development of an additional 52ha of Rural zoned land for commercial/industrial purposes. That land will be lost to agricultural production but that needs to be seen in the context of the circumstances of its unique location adjoining the Airport, rendering such land as scarce resource in its own right in terms of providing for further development of the Airport.

### **6.3 The Proposed Waikato Regional Plan (WRP)**

The WRP is operative in part. Those parts of the WRP yet to become operative do not affect the matters before us.

The purpose of the WRP is to manage the natural and physical resources of the Waikato Region, and to implement the provisions of the RPS.

The Plan Change must not be inconsistent with the WRP (Section 75 RMA). The Plan Change does not involve the undertaking of any activities that fall under the administration of the WRP, and should any resource consents for aspects such as earthworks, stormwater disposal and sewage disposal be necessary, they can be applied for as the land is developed.

We consider the Plan Change is not inconsistent with the WRP.

### **6.4 Regional Land Transport Strategy (RLTS) for Waikato Region**

The Regional Land Transport Strategy was adopted by the EW in November 2006. Its purpose is to establish a set of policies and actions and an investment programme to guide the local, regional and national agencies developing and maintaining the transport system in the Waikato.

The Airport is recognized as a key part of the region's infrastructure in the RLTS. It states:

*“There are development plans for the Airport which includes the opening up of more commercial and industrial land. The Airport has potential to become an important regional freight and logistics hub, and as such safe and efficient access to the Airport is an important consideration for the strategy.”* (Section 2.3.6)

The RLTS, when referring to economic development policies, states:

*“Ensure the region's key economic sectors, principal population centres, ports and Airports are well connected to an integrated strategic corridor network both within and connecting to the region.”* (Section 7.2.1).

The RLTA gives strong support to the role of the Airport as a key transport hub in the Waikato region's multi-modal transport network. It also provides specific support for its future development as a freight and logistics centre. The Plan Change will assist in implementing these policies and actions by rezoning sufficient land and creating a suitable Business zone for a freight and logistics centre to be developed, as well as supporting the future wider transport role of the Airport for the region.

We consider the Plan Change to be in accordance with the RLTS, particularly by ensuring it addresses the future need for upgrading of the SH 3/SH 21 intersection (as we discuss in Section 7.8 of this Decision).

## **6.5 Conclusion on Planning Instruments**

We consider the Plan Change is consistent with the above planning instruments and indeed give effect to many of the provisions contained within each of these planning instruments

## **7. MATTERS FOR DECISION**

### **7.1 Introduction**

Rather than deal with submission point by submission point, in the s42A Report, Mr Douch conveniently identified a number of issues and then dealt with each of those issues.

We consider that Mr Douch correctly identified all the relevant issues and in making our decisions on the principal issues relating to the Plan Change we adopt Mr Douch's analysis headings.

### **7.2 Whole Plan Change**

#### **(a) Support**

Honey New Zealand and McConnell Developments Ltd supported the Plan Change in its entirety but did not present evidence at the Hearing. Their submissions were opposed in the further submission by National Trading Co for reasons relating to adverse traffic, social and economic effects resulting from the enablement of retail activities.

In Section 7.9 of this Decision we discuss the retail provisions in the Plan Change. Sufficient to say here that WRAL modified its proposal in respect of retail by significantly reducing the area available for that purpose. We consider WRAL's reduction in the provision for retailing in the Plan Change addresses the concerns of the further submitter.

Our decision to approve the Plan Change, along with amendments, is consistent with the primary submissions. The proposal to rezone the land for Airport business purposes is providing for a suitable use of the land, subject to amendments being made to the Plan Change as notified, particularly with regards to reducing the permitted level of retail floor space.

#### **(b) Opposition**

Westfield New Zealand Limited sought the Plan Change be declined for reasons largely relating to the amount of retailing provided for in the proposed zone. In Section 7.9 of this Decision we discuss the retail provisions in the Plan Change. Sufficient to say here that WRAL modified its proposal in respect of retail by significantly reducing the area available for that purpose. Westfield advised in a letter to the Hearing that following that action by

WRAL it no longer opposed the Plan Change in its entirety but sought that the retail-related provisions be decided in accordance with that reduction.

The associated concerns of the submitter in relation to the purpose of the RMA, the objectives and policies of the District Plan and an insufficient Section 32 RMA assessment appear to stem from the retail floor space originally proposed by WRAL. We do not find that the Plan Change is contrary to the purpose and principles of the RMA, nor the objectives and policies of the District Plan and that the Section 32 assessment is satisfactory as a basis for advancing the Plan Change.

We consider, from the above, that the concerns of this submitter have therefore been accommodated in the decision we have made on the Plan Change which maintains the reduced retail component.

### **7.3 Growth Strategies**

#### **(a) Waipa Urban Growth Strategy**

The Waipa Urban Growth Strategy (WUGS) prepared in 2003 identified potential future growth cells for industrial and residential developments. An addendum report to consider commercial land options was subsequently prepared in June 2006. This later report addresses the issue of commercial land with a particular focus on the Large Format Retail land requirements that were not covered in the original WUGS. The report concluded that there was severe retail leakage out of the two commercial centres of Te Awamutu and Cambridge, in the order of 40,000m<sup>2</sup> of retail floor space. A number of options were considered in this report for the potential location of additional commercial land. One of these options was a 'midway' option (midway between the two town centres), with the Airport considered a potential option. The conclusion by the Council was that this option was neither supported, nor opposed, with a determination made that it would let the market decide whether this was a feasible option under the guidance of the RMA.

The Plan Change is therefore not inconsistent with the conclusions of the WUGS.

#### **(b) Hamilton City**

In the course of its presentation to us in support of its submissions and further submissions, Hamilton City referred to its own growth provisions. The planned city growth in closest proximity to the airport is in the Peacocke area. That area comprises approximately 740 hectares of rural land on the southern fringe of Hamilton. It lies approximately 3 kms south of the city's central business district and is broadly oval in shape extending approximately 4.5 km

from north to south and 3 km east to west. The area is defined to the south west and south east by the city's administrative boundary with Waipa District along Ohaupo Road and Peacockes and Gainsford Roads. To the east and north east Peacockes is divided by the Waikato River, and to the north west by the Glenview and Fitzroy residential areas of the city.

We were provided with a copy of the Peacocke Structure Plan dated July 2007.

It is evident from the Peacocke Structure Plan that ultimately there will be significant development in the area including small areas of commercial activity, higher density residential, community facilities and the like. Significant though that ultimate development may be it will remain at least 3 km away from the nearest point of the Airport.

We do not see anything about the Plan Change which interferes with that potential growth in Hamilton City nor vice versa. Indeed, we see the two as being complementary to each other in terms of activities and land use.

(c) **“Future Proof”**

There is currently a joint initiative being undertaken by the Councils of Waipa District, Waikato District, Hamilton City and Waikato Region to prepare a Hamilton Sub-Regional Growth Strategy. The project is now known as “Future Proof”.

Each of those Councils has been undertaking its own growth strategic thinking. What is new in this project is that it is a co-operative venture between the four Councils to achieve some consensus about growth in the sub-region covered by the three Territorial Local Authorities.

Although that project is currently underway it will be some time yet before strategies are agreed, and preferred options formulated. It will be even further away before the “Future Proof” strategies will be brought into the relevant planning documents in the form of a Regional Land Transport Plan, the Long Term Council Community Plans or any planning instruments, particularly the Waipa District Plan. Beyond the retail issues which we refer to in Section 7.9 of this Decision, the deliberations of “Future Proof” are not sufficiently advanced for them to be significant in our decisions on the Plan Change.

**Conclusion on Growth Strategies**

We consider that the Plan Change is not inconsistent with any of the growth strategies.

## 7.4 Additional Land

(a) Emma and Peter Lewis requested that their land be rezoned.

The Lewis' submission was opposed by Air NZ and Transit NZ. The Lewis' land is within the area to be proposed to be rezoned Airport Business but is included on the Structure Plan included in the Plan Change, as part of a small Special Amenity Area with frontage to Ohaupo Road. The existence of the dwellings in this small area is acknowledged in the Plan Change. Specific provisions are included to mitigate potential adverse effects on the Special Amenity Area. Higher standards of visual amenity and landscaping controls are included in the proposed zone and at the zone boundaries where it adjoins these existing dwellings by the application of related building setback, landscaping and height controls.

The ability to continue to use these properties for residential activities is available through existing use rights. We do not consider it is appropriate to zone them as Residential given the current and potential effects on them from the adjacent business and Airport activities. The Lewis's did not attend the Hearing and we understand they acknowledge the controls that have been provided within the proposed Airport Business Zone that address the relationship of their properties with that proposed zone.

(b) The Ashton Family Trust and Campbell Turner requested that their land on the eastern side of SH 21 be included in the proposed Airport Business Zone.

The Ashton land is the former Gremara sand extraction site which has recently been rehabilitated. In further submissions support was provided by NZ National Fieldays; partial support by David Hayes; and, opposition from Transit NZ.

Legal submissions and expert traffic and planning evidence, along with evidence from Mr Jim Ashton, was presented providing supporting reasons for including the Ashton land in the Plan Change. In particular:

- The desire to provide for a restricted number of activities that are focused on industrial, transport and logistics activities which are complementary to and necessary for the on-going operation of the Airport.
- The nature of neighbouring land uses including a go-kart track, the Mystery Creek Events Centre, the Lochiel Golf Club, the Gun Club and the former Power Beat building.
- The impacts upon the property associated with noise from the operation of the Airport and from neighbouring properties.

- The property having no future as an economic farming or cropping unit due to its small size and the quality of the soil.
- The property having for some years been used for commercial purposes as a trucking depot and sand mining site, that sand resource now being close to being exhausted, and it therefore being appropriate to make suitable zoning provision now for the future use of the property.
- Future use of the land being compatible with the proposed relocation of the roundabout on SH 21 and activities in accordance with the future zoning sought resulting in no adverse traffic effects.
- Such a rezoning having no unforeseen adverse effects, no un-coordinated development, or significant adverse effects on the productive rural land resource of the district.
- The relocated roundabout providing a direct link between the property and the Airport in a manner that does not apply to any other land in the neighbourhood.

Mr Grant Eccles, consultant planner, distinguished the Ashton land from other land by virtue of having direct road access (via the proposed roundabout on SH 21) to the Airport and the area proposed to be rezoned about it such that it would be readily integrated with it and be able to provide for complementary activities. Further, he considered it should be dealt with now, rather than later as part of any District Plan review exercise, because all relevant considerations had been given to it – there was nothing more a review exercise would do.

We acknowledge the case for the Ashtons and the opinions of both Mr Ashton and his expert advisors. However, we consider the Ashton site should not be rezoned as part of the current proceedings for several reasons:

- The Ashton land is a significant size (17ha) so that would allow a quantum increase on the area of business zoning contemplated in the Plan Change
- While the Ashton case may have merit, we are not prepared to accede to the Ashton request without having a much broader understanding of the requirements for that kind of development over the whole district or indeed the sub-region.
- We see the Airport land as being different in that (for the most part) it is owned by WRAL who is in a position to some extent of controlling the nature of development over and above the planning instruments. The WRAL land is directly contiguous with the Airport but the Ashton land is on the opposite side of SH 21

- We are concerned that a business-type zoning would in our opinion provide a basis for other neighbouring landowners to similarly seek rezoning of their sites. They would no doubt point to various additional circumstances including the current activities on their sites, the activities on neighbouring sites and their proximity to SH 21 and the Airport.

We note the comprehensive work carried out by Mr Eccles and his view that it is not necessary to wait for a review of the District Plan. We disagree however because such a review, or other consideration of the neighbourhood and wider area, does provide the opportunity to consider the site in the context of the area within which it lies, the wider district and the roading situation. Further, and importantly, we have no evidence that there is a demand or need for the activities proposed on the Ashton land sought to be rezoned.

The submitter seeks a rezoning to Airport Business Zone to provide particularly for permitted activities focused on industrial, transport and logistic type activities all of which are complementary to and necessary for the on-going operation of an Airport. We however did not hear that such uses could not be accommodated at the existing Airport, or in the proposed Airport Business Zone without extending that zoning to another area across SH 21.

Whilst we acknowledge the comprehensive presentation by the Ashtons, we are not prepared to consider rezoning of their land in the circumstances of uncertainty over the need for its use and its use in the context of the local area and the wider district and roading situation. Future consideration of this land is most appropriately in the context of all the neighbouring properties on this side of SH 21 which may well form part of a future District Plan review exercise or a similar form of planning exercise.

The Commissioners had the opportunity to closely examine this site as part of their main site visit when they took the opportunity to drive from the SH 21 entrance to the property across the former sand extraction area to the Mystery Creek site.

Mr Turner raised similar matters in relation to the Ashton site in his submission supporting the Plan Change subject to that additional land being included within it. The submission was opposed in the further submission from Transit NZ. We do not accept the Turner submission for the same reasons we have provided above for the Lewis' submission.

### **Conclusion on Additional Land**

We consider any change of zoning to Residential or an extension of the proposed Airport Business Zone is unwarranted.

## **7.5 Zone Statement**

The submission from Allan and Delwyn McPherson sought an amendment to the zone statement to reflect the existence of residential dwellings within the proposed Airport Business Zone. This was opposed in the further submission from Air NZ Ltd.

There are a number of existing residences within the area proposed to be rezoned, with these largely located along SH 3 and towards the northern end of the area sought to be rezoned. We consider their existence should be recognized. The existence of one of the two groupings of residential properties, is acknowledged in the Plan Change by the Special Amenity Area.

We agree that an amendment to the zone statement in 7A.1 should therefore be made to acknowledge the existence of residential activities within the proposed Airport Business Zone. There are controls also included in the zone provisions that have particular regard to these residential properties.

### **Conclusion on Zone Statement**

We include as part of our Decision an additional comment in the Zone Statement acknowledging there are a few existing dwellings within the Airport Business Zone that may be affected by development close by.

## **7.6 Activity Status**

Waipa District Council sought new rules to require all buildings, alterations and additions to buildings and structures to be a controlled activity in respect of design, external appearance and siting with the written approval of affected persons not necessary and any such application not needing to be notified. This was opposed in the further submission from David Hayes. We note that there are a range of development standards included in the Plan Change and these are further amended by our decisions on submissions to include specific landscaping provisions and further controls on signage. We are of the view that the visual appearance of development in the proposed zone can be adequately controlled in these respects, recognizing the nature of it as a business related zone, without the specific need for each activity to be a controlled activity under the District Plan.

The Costenuff Family Trust submission requested clarification of the meaning of “other business activities” which forms part of Objective AB1 under 4A.1.2. The permitted activity list within Rule 7A.3.1a) does however provide details of the range of activities provided for within the proposed zone and an

indication of the other business activities referred to within Objective AB1. No change is needed in our view to the Plan Change on that basis.

The Macpherson submission sought additional restricted discretionary activities for activities located on land adjoining residential uses that are likely to generate adverse or harmful effects. The proposed rules do identify the level of acceptable effects to be generated in terms of the standards that are to apply to permitted activities with any activity that is permitted but does not comply with those standards, falling for consideration as a restricted discretionary activity. This means that any activities that would not be consistent with the standards for permitted activities do require specific consideration as a restricted discretionary activity. This is in our view sufficient to address the Macpherson submission.

In relation to all of the above, we find the design and quality of the proposed business park can be adequately controlled to a reasonable and uniform level based on development standards including landscaping and signage, without the need to assess each development or activity on a case by case basis.

### **Conclusion on Activity Status**

We consider no amendments are needed to the rules in the Plan Change.

## **7.7 Structure Plan**

Hamilton City Council requested the Structure Plan associated with the Plan Change be amended to incorporate the principles of good urban design relating to “gateways” and public spaces” as set out in its City Design Guide and to incorporate the intent of development as outlined in the Master Plans submitted as part of the Plan Change, which may include the development of precincts for certain activities. Partial support was provided in the further submission from Waipa District Council and support in the further submission from Transit NZ.

We are of the opinion that the development standards, together with the landscaping provisions and further controls on signage, will be adequate in providing a sufficient quality of environment and as such do not consider there is a need to develop specific urban design guidelines for incorporation into the proposed zone. We recognize that the existing industrial zone within the area provides a baseline of development which could reasonably be expected within the area, which is a zone with no design criteria afforded to it, and the nature of the proposed rezoning which is for a business park. The rationalizing of the access points and the cross-sections for the internal collector roads will assist in providing sufficient “gateways” to the business park and defining the “public place”.

In relation to the Master Plans, we are of the opinion that these were provided to assist with understanding the likely mix of activities and to assist in setting the proposed rules without intending to provide a firm basis for future development. The Structure Plan provides the plan component of what needs to be carried through into the District Plan with such Master Plans serving to show the manner in which development could proceed based on the Structure Plan. Unlike the Structure Plan the Master Plans are capable of being changed without any formality. Having said that however, and in response to submissions, more detail is to now be provided on the Structure Plan in relation to details such as the landscaping proposed, the cycle/walkway connection and the Stage 1 area of development off SH 21 in order to address some of these points.

We therefore find that the design and quality of the proposed business park can be adequately controlled to a reasonable level based on the development standards, and on landscaping and signage controls, and note the limitation on access points and the standardization of cross-sections for the internal collector roads that will assist in creating a gateway to the business park. Development on the site can be managed without adherence to an indicative Master Plan layout, it is the Structure Plan that identifies the key features proposed as part of the overall development.

### **Conclusion on Structure Plan**

We consider the proposed controls largely deal with the concerns of the submitters although we do, as part of our Decision, provide for more detail to be provided on the Structure Plan, as was proposed by WRAL, to show the landscaping proposed, the cycle/walkway connection and the Stage I area of development off SH 21 in order to address some of the points raised in submissions.

## **7.8 Traffic**

Included with the AEE was a Transportation Assessment and Access Strategy prepared by Mr Cameron Inder, Transportation Engineer with Bloxam Burnett & Olliver<sup>6</sup>. Mr Inder also gave evidence at the Hearing in support of WRAL, generally confirming the position set out in the Assessment, and addressing key issues arising from the transportation changes since the Plan Change was notified.

Having considered the transportation effects Mr Inder proposed the following Airport access strategy:

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<sup>6</sup> AEE Appendix 6

- There is to be one long-term strategic State Highway access to the proposed Airport Business Park each side of the airport and State Highway existing accesses are to be rationalised and internalised;
- On the east side on State Highway 21 the proposed access would be by way of a new roundabout intersection at the intersection of Lochiel Road/SH21. We refer to this proposed access as the Airport Eastern Access.
- On the west side on State Highway 3 the existing sub-standard SH3/IngramRoad intersection would be closed and replaced with a new intersection to the south of the current “No exit” road. The new intersection can be upgraded initially to a full “T” (seagull) intersection. As its capacity is reached, a partial grade separation can be added.
- In addition there is to be a further access off Raynes Road to serve a limited number of sites in the north eastern corner of Airport Business Zone
- Traffic generated by all premises within the Airport Business Park, including the passenger terminal, but excepting the north eastern corner served from Raynes Road, is directed through one or other of the two new State Highway access points.

For the Consent Authority, Mr Alasdair Gray of Gray Matter Limited reviewed the Transportation Assessment prepared by Mr Inder. Mr Gray’s report was included with the S42A Report<sup>7</sup>. Mr Gray suggested a number of amendments to the Plan Change.

For the Ashton Family Trust, Traffic Engineer Mr Norm Robins, made a traffic impact assessment and gave evidence at the Hearing. His evidence was primarily directed to changes that might be required to Airport Eastern Access to accommodate potential subdivision on the Ashton land. His suggestion was that the intersection should be shifted some 150m west on SH21 from the position as notified.

Mr Philip Brown, Chartered Professional Engineer with experience in traffic engineering and management gave evidence for Tainui Group Holdings Limited. He addressed a major matter not considered in detail by the other traffic engineers, namely adverse traffic effects of the Plan Change anticipated at the SH3/SH21 intersection. The other traffic engineers had not considered

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<sup>7</sup> S42A Report, Appendix B

that intersection in detail as the State highways which form the intersection are controlled by Transit and Transit had lodged a submission advising that the intersection did not require upgrading now and that any future upgrading was the responsibility of Transits. As road controlling authority that advice was accepted by the other traffic engineers.

Overall therefore we had the benefit of no less than 4 traffic engineers. There was general agreement amongst all four engineers on the matters of principle articulated by Mr Inder and to which we referred above, namely that:

- There be only two State Highway Airport access points. One on the west to State Highway 3 and one on the east to State Highway 21;
- There be a further access off Raynes Road to serve a limited number of sites in the north eastern corner of Airport Business Zone;
- All other roads be internalised including to the airport terminal.

The substantive traffic issues requiring decision from us are:

- The location of the Airport Eastern Access on SH 21; and
- The traffic effects of the Plan Change on the intersections of State Highways 3 and 21 as well as Raynes Road.

In addition there are several other less significant issues. In respect of those lesser issues we adopt the reasons and recommendation of Mr Douch.

We now address the two principal issues in turn.

**a) Airport Eastern Access.**

After public notification of the Plan Change and the NoRs, the possibility of a relocation of the Airport Eastern Access was actively considered. Both WRAL and Ashton supported the relocation of the roundabout and Transit was neutral on the issue. A number of witnesses provided good reasons for a relocation.

**(i) Jurisdiction to Relocate Lochiel Road Roundabout**

Before we can consider seriously the merits of relocating the roundabout we must first consider whether we have jurisdiction to even consider doing so.

The initial view of Mr Gallie, Counsel for the Council was that the relocation of the Airport Eastern Access falls outside of the permissible scope of the allowable modifications.

Both Mr Lang Counsel for WRAL and Mr Milne Counsel for Ashton disagreed with that view and considered that we had jurisdiction to consider the relocation proposed. We understood that subsequently, once Mr Gallie was provided with further detail, he modified his view.

Having considered the legal submissions made to us, we see the legal position as follows:

- In *Haslam v Selwyn District Council*<sup>8</sup> the Environment Court set the test of the extent of permissible amendment to a notified proposal as being whether it is “plausible” that any person who did not make a submission would have done so if the application information available for examination had incorporated the amendment.
- The Haslam Decision was followed by a High Court Decision in *Countdown Properties (Northland) Ltd v Dunedin City Council*<sup>9</sup>. There the High Court’s view was that the local authority “...must make a decision based upon its own view of the extent of the submissions and whether the amendments come fairly and reasonably within them”<sup>10</sup>.
- Significant in the WRAL case before us is that Lochiel Road is a very short section of road providing access to a very limited number of properties. WRAL was able to obtain the approval to the relocation of the roundabout from every person having access to Lochiel Road except for Costenuff/Clark. Mr Clark gave evidence about the location of the Airport Eastern Access. From that, and more particularly, in the course of our site visit, we were left in no doubt that for their part Costenuff/Clark would much prefer the proposed roundabout to be relocated (for reasons we discuss in Section 7.11(d) of this Decision). In these circumstances we find it difficult to see exactly who could have been affected significantly by the amendment other than those persons.
- If the test were one of plausible intervention by a third party to the proceedings, then we find that it is not plausible that any person who did not make a submission would have done so if the application information available for examination had incorporated the amendment.

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<sup>8</sup> (1993) 2 NZRMA 629

<sup>9</sup> (1994) NZRMA 145

<sup>10</sup> Ibid pg 167

- When considering a notice of requirement, RMA s171(2) gives a territorial authority not only options to recommend confirming or withdrawing the requirement, but also to modify it.
- RMA s172(2) allows a requiring authority to modify a requirement “...if, and only if that modification is recommended by the territorial authority or is not inconsistent with the requirement as notified”. We agree with Mr Milne that the use of the word “or” indicates that there are two jurisdictional foundations, not one. The requiring authority itself may modify a requirement so long as it is not inconsistent with the requirement as notified. Secondly, the territorial authority may modify a requirement in which case there is no requirement that the amendment not be inconsistent with the requirement as notified.
- We note that the submission lodged by the Ashton Family Trust in respect of the NoR specifically requested relocation of the proposed Airport Eastern Access. We consider that the relocation now proposed comes “*fairly and reasonably within..*” that submission.
- Even if inconsistency were the test, we consider we were provided with compelling reasons for the relocation which we discuss below.

We conclude that the modification to the NoR by the relocation of the Airport Eastern Access is within the scope of the submissions and within our jurisdiction.

**(ii) Merits of Relocation of Airport Eastern Access**

In both its submission and in its presentation at the Hearing the Ashton Family Trust requested that the Airport Eastern Access be relocated to a position approximately 150 metres south on SH21 so that it would also provide access to the Trust’s property on the east side of State Highway 21. Mr Inder for WRAL considered that possibility identified a number of reasons for relocating the Access as follows:

- *Lochiel Road will still connect to the roundabout via a short realignment and the current Lochiel Road intersection with State Highway 21 will be closed;*

- *it provides [WRAL] a better balance of developable land between State Highway 21 and the Runway zone;*
- *... it is situated closer to the airport terminal;*
- *... reduces the adverse effects on the adjacent land owners Hays and Clark;*
- *an increased separation distance between the roundabout and Range Road/SH21 intersection (now 950 m);*
- *the more centralised location to serve the Titanium Park development.*
- *The impact on sight line distance compared with the previous roundabout location will be minimal;*
- *there will be no reduction to the capacity or performance of the intersection;*
- *The alternative location also helps to increase the distance between the State Highway roundabout and the first internal roundabout in Titanium Park;*
- *improved internal management of traffic flows<sup>11</sup>.*

Mr Robins also supported the relocation. He was called to consider the relocation in relation to providing appropriate access to the Ashton property on the basis that it too would be zoned Airport Business Zone. We have discussed the appropriateness of that zoning for the Ashton land in Section 7.4 of our Decision above and have concluded that we are not prepared at present to accede to the Ashton zoning request. However, that is not to say that such zoning may not occur in the future. Because the Ashton land is of a significant size we consider it would be prudent to make better provision for appropriate access to SH21 anyway. In addition, we are mindful of the significant requirement of the National Field Days (confirmed by Mr Quayle) and the possibility that it may be looking for alternative access from SH21 through the Ashton property. We note it is already doing that on an informal basis.

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<sup>11</sup> Inder ev. para. 4.2 and 4.3

Despite the fact that we are not prepared at the moment to rezone the Ashton land, it is nevertheless prudent to make provision for better access to the east of SH21 in that locality.

We understood that Mr Gray also supported the relocation of the Airport Eastern Access.

The Transit position is that it has no preference over the location of the proposed Airport Eastern Access.

We find all of this sufficiently compelling to modify the requirement to the new location proposed on BBO Plan 136830/P/124 produced by Mr Robbins.

### **Conclusion on Airport Eastern Access**

We consider that:

- (a) We have jurisdiction to consider a relocation of the Airport Eastern Access.
- (b) The Airport Eastern Access should be relocated to the position identified by Mr Robins.
- (c) With the Airport Eastern Access in its relocated position any adverse traffic effects are minor.

### **b) SH3/SH21 Intersection**

Neither Mr Inder nor Mr Gray addressed in any detail any adverse traffic difficulties which may arise at the intersection of SH3/SH21 as a result of the activities permitted by the Plan Change. Both engineers as well as Transit recognised that there may be adverse effects but with the apparent agreement with Transit they accepted that there are presently a number of fundamental unknowns relating to:

- future traffic volumes on both SH3 and SH21;
- how these are influenced by the Hamilton City Council's Peacockes Growth Cell;
- Transit's future state highway "Southern Links" network.

It was Mr Inder's opinion that it is premature to programme large scale works to the intersection. Mr Inder also noted that the Transit submission confirmed that this intersection is Transit's responsibility to resolve.

Mr Brown took a different view. He considered that

*"...both SH3 and SH21 provide strategically important access to the area subject to the Plan Change. Despite the strategic role and the proximity to the new intersections, no design solutions have been put forward with timelines/staging triggers for various works to mitigate the anticipated effects."*<sup>12</sup>

He expressed the view that

*"...the need to upgrade the SG3/SH21 intersection forms an important part of the improvements needed to the roading infrastructure to accommodate this Plan Change."*

Mr Brown considered the traffic information associated with the intersection. It was his view that the intersection as it is, would be unable to accommodate the anticipated future demands.

Mr Brown expressed the view that in respect of

*"...in..any development that could be a significant generator of traffic, if a strategically important intersection in the immediate vicinity of a studied area is expected to be subjected to anticipated traffic loadings that are well beyond what it is capable of accommodating, the question as to who/what the roading controlling is that looks after the intersection, should not be grounds to dismiss the need to address the issues created by the proposal."*<sup>13</sup>

Having heard Mr Brown's evidence we expressed the preliminary view that we considered Mr Brown had a valid point and invited both WRAL and the Council to consider that matter.

In presenting its case as Consent Authority, Mr Douch offered an amendment to the Plan Change to take this into account.

Rule 7A.4.1 sets out a number of conditions precedent which are required to be met prior to development proceeding in accordance with the Structure Plan. This is the mechanism by which the upgrade of the

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<sup>12</sup> Brown ev. para. 18

<sup>13</sup> Brown ev. para. 13

Airport access points on SH 21 and SH3 are required. Mr Gray suggested that, in addition to those access points being upgraded, reference also be made in those conditions precedent to any necessary intersection upgrade at SH3/SH21.

Although the submitter Tainui Group Holdings Limited subsequently intimated that it did not consider that to be a satisfactory solution, for ourselves, we consider it is.

We will include it in our Decision so that the Tainui submission on the point is accepted in part.

**c) State Highway 3 Access.**

The alteration to the Designation in relation to the State Highway 3 Access was publically notified but attracted only one submission and that submission was in support. No adverse effects were identified by any submitter to either the Designation or the Plan Change. The traffic effects of this amendment were considered by both Mr Inder and Mr Gray.

We accept the evidence of those two qualified traffic engineers that the provisions proposed in the alteration to the designation will adequately mitigate the traffic effects that will be generated by the rezoning of the Airport land.

**d) Raynes Road.**

The proposed access on to Raynes Road will serve a very limited number of sites in the north eastern corner of the Airport Business Zone. That access road is not intended to link with the other internal roading in the Zone on the eastern side. The amount of traffic generated by that limited number of sites will be low. None of the traffic engineers who appeared before us were concerned about the Raynes Road link.

We conclude that the traffic effects from that component of the Plan Change will be minor.

## 7.9 Retail

The proposed Plan Change as originally notified contemplated a total of 14,600m<sup>2</sup> of retail space. That is a significant amount of retail space and one in which large format (“big box”) retail could be established. It is not surprising therefore that that proposal drew opposition from Westfield NZ Limited, and Kiwi Property Holdings Limited both of which companies are involved in large format retail development. In addition Hamilton City opposed the retail element of the Plan Change on the basis that such a large area of retail may have significant consequences on retail shopping within the Hamilton City boundary. Transit was also concerned on the basis of the traffic it would generate independently of airport traffic.

Faced with this opposition WRAL, prior to the Hearing, entered into negotiations with the submitters opposed and subsequently modified its aspirations relating to retail. At the commencement of the Hearing, Counsel for WRAL indicated that the proposed Plan Change was modified on the basis that there was a reduction in the proposed extent and range of retail activities, the total area of retail space that is provided for as a permitted or controlled activity in the Airport Business Zone had been reduced and provisions for a supermarket had been removed. The provision now proposed was a maximum of 5,300m<sup>2</sup> with this to be made up of retail outlets each of less than 450m<sup>2</sup> with an allowance given for one tenant up to 1,000m<sup>2</sup>.

By letters tabled at the Hearing on behalf of both Kiwi Property Holdings Limited and Westfield NZ Limited indicated that with that change to the retail provisions of the Plan Change, they did not wish to pursue their opposition to the Plan Change provided the recommendations in the s42A Report relating to total retail floor area and the definition of supermarkets were incorporated into the Plan Change.

In the course of the presentation of the Hamilton City Council submission Mr Speer, Market Research Consultant, confirmed that while he would have been concerned with an amount of retail space as much as 14,600m<sup>2</sup>, he was unconcerned about the area now proposed at 5,300m<sup>2</sup>.

For ourselves we consider that if retail space of greater than the order 5,300m<sup>2</sup> is to be considered then that should be in the context of at least district-wide consideration of retail requirements but more probably as part of the sub-regional growth strategy “Future Proof”.

## **Conclusion on Retail**

Reduce the level of retailing permitted in the Airport Business Zone from 14,600m<sup>2</sup> to 5,300m<sup>2</sup>.

### **7.10 Building Setbacks**

#### **(a) Internal setbacks**

A number of submitters (Lewis, Bowler and Hastings, McPherson, Plagge) raised concerns related to internal setbacks from residential property boundaries within the proposed new Airport Business Zone. The proposed new rules required no internal setback, except for specified activities where 1.2m would be required, which would potentially reduce privacy and have adverse amenity effects on existing residential dwellings that would be within the proposed zone. The concerns include this allowing undesirable visually intrusive buildings immediately next to land in residential use which may also restrict the amount of light which is available to these properties. A setback rule was sought accordingly. David Hayes was a further submitter in support of all these primary submissions.

WRAL itself recognised that there was an issue with the setbacks along the Special Amenity Area boundary. It sought an amendment so that the internal setback rule required a minimum building setback of 5m from a site which contains an existing dwelling. This was opposed in the further submission by Mr Hayes.

We note that privacy and visual effects of large buildings can have adverse effects on the amenity of neighbouring properties. This could particularly apply in this case where there is a need to consider the potential for adverse effects on residential sites within an industrially zoned area. The cluster of residential dwellings currently on Rural zoned land, at the northern end of the area sought to be rezoned along Ohaupo Road, does in our opinion require special consideration in relation to the internal setback distances that would apply to them. These properties are sought to be identified as a Special Amenity Area on the Structure Plan with the Plan Change following consideration of submissions by WRAL, and for there to be a 5m internal setback applying in relation to them. This is consistent with the current building setback requirement for industrial activities from a residential boundary.

We consider that this setback control, in addition to other controls that apply in relation to this residential cluster, will assist in maintaining the amenity of this area. Collectively these controls provide a balance between recognizing the existence of those residential sites and the current and future activities associated with the Airport in this location.

Our decision to include the 5m internal setback in the Plan Change recognizes the concerns expressed by the submitters.

**(b) Road boundary setbacks**

Two submitters raised concerns stating these should be increased to 15m (David Hayes) while Waipa District Council sought that buildings, structures and vegetation in the vicinity of Raynes Road be setback enough to ensure sight distances are maintained. Concerns also related to reductions in the building setback from road boundaries. Transit NZ was a further submitter supporting Mr Hayes and raising concerns in relation to the setback provision for sites fronting the State Highways.

We recognize that the placement of buildings too close to road boundaries can have adverse effects relating to the visual appearance of the site and in relation to road safety. It is therefore appropriate to maintain building setbacks from the two State Highway boundaries and from Raynes Road. Mr Douch stated in his s42A Report that a building setback of 15m from these boundaries is appropriate. Mr Olliver addressed this matter in evidence pointing out that developing appropriate building bulk and location requirements and landscaping standards for the proposed zone had proved to be a challenging exercise for reasons relating to:

- The long narrow shape of the site dictated by the shape of the runway which lead to difficulties creating regular-shaped development lots that can accommodate generous building setbacks.
- The existing Airport Industrial Zone rules set a baseline of 5m for setbacks from State Highways and 3m from internal roads.
- The design effort being put into Titanium Park means that for the majority of the land minimum District Plan standards are not going to be the main driver of the quality and appearance of development, the developers own internal design guidelines will.
- The area is not a pristine rural environment but is in fact one where there are already a mix of rural and non-rural activities so visual impacts of development on the periphery are not such a significant issue.

In the opinion of Mr Olliver the main issue in relation to these main road frontages is the bulk of buildings, that is, their height, breadth and closeness to the boundary. He did not support the recommended 15m building setback in the s42A Report which he saw would severely impact on the ability to develop the narrow strips of land created by the runway and the internal roading pattern, particularly on the SH 21 side of the Airport land. Mr Olliver was of the view that a 5m yard combined with a 45 degree recession plane (from a point 7m above the site boundary) that resulted in a 12m maximum building height at the 5m setback, is an appropriate solution. That could be integrated with a 5m minimum landscaping strip. He saw this approach being based upon the evidence of the urban designer and landscape architect called on behalf of WRAL.

This matter was the subject of much discussion between the parties during the course of the Hearing. The proposals to address the matter ranged from the notified 5m building setback from the State Highway and Raynes Road boundaries; the retention of the rule but introducing an associated recession plane; and, introducing a 15m building setback. Transit NZ representatives noted that a 15m building setback was more critical along SH 3 considering the importance of retaining a maximum 100km/hr speed limit for that highway.

Mr Douch, in addressing the Hearing, pointed out the 15m setback along Raynes Road was to maintain the rural amenity whilst for the State Highways it was to protect the visual amenity from those viewing corridors. He did not believe that a “wall” of 12m high buildings set back 5m from the boundary is a view that should be afforded to what would essentially be a gateway to the region. He suggested a compromise, and in our opinion a more reasoned solution, as being the retention of a 15m setback for what he described as the major viewing areas. He highlighted these on a plan as being along the SH 3 frontage of the Airport land; from the corner of the SH 3/SH 21 intersection to the western edge of the Airport; and from proposed roundabout on SH 21 northward and around into Raynes Road. Otherwise he recommended a 5m building setback could be adopted along the major part of SH 21 to the south of the new roundabout location on the basis that this is not currently a major viewing corridor.

Mr Douch provided on the basis of his recommendation, a revised wording to Rule 7A.4.2. We adopt that as part of our decision on the Plan Change.

We acknowledge the concerns of submitters in relation to visual and traffic considerations, including the concerns of Transit NZ in relation to traffic safety, and consider, in all the circumstances, that this is an effective outcome of these setback considerations.

It is essential to ensure adequate road setbacks are imposed to avoid adverse effects in relation to visual and traffic considerations and the amended internal road boundary setbacks are considered to be sufficient for the proposed business park. The 15m road setback, in the locations required, will have an additional benefit in acting as a further buffer between the Airport business activities and the more sensitive activities opposite along the roads where it is to be applied.

### **Conclusion on Building Setbacks**

(a) Internal Set-backs.

We consider there is a need to provide an improved internal setback to protect existing residential activity within the Airport Business Zone. We think a 5m internal setback should be imposed where any proposed buildings in the Airport Business Zone adjoin the properties in residential use in the Special Amenity Area.

(b) Road Set-backs

- We concur with the retention of a 3m setback from internal roads.
- We also concur with the recommended “compromise” presented by Mr Douch in relation to sites fronting the State Highways and Raynes Road that the setback be 15m for frontages deemed to be major viewing areas (as he highlighted on a plan and which will be shown on the Structure Plan for the Plan Change) and where greater protection is needed, but that the road set-back otherwise be 5m.

## **7.8 Landscaping**

The Macphersons raised the issue of landscaping, seeking Rule 7A.2.5 be amended to require sufficient landscaping to ensure adverse effects on residential uses are mitigated.

We recognize that landscaping particularly in the form of planting, can assist in mitigating adverse visual effects. Appropriate landscape planting can be used to achieve higher standards of visual amenity. In this case, landscaping planting was included in the Plan Change as notified to a minimum depth of 3m on site boundaries and to a minimum depth of 2m on internal street boundaries. It was recommended in the s42A Report that this be widened to a minimum depth of 5m in relation to site boundaries adjacent to either a Rural zone, State Highway 3, State Highway 21, Raynes Road or to the residential properties within the Special Amenity Area. That was accepted by WRAL.

We accept those amendments as part of our decision on the basis they will serve to ensure a high standard of visual amenity and landscaping and will be appropriate at the boundary of residential and rural activities.

### **Conclusion on Landscaping**

We consider an increase in the depth of landscaping required, from 3m to 5m, on site boundaries other than to internal roads is appropriate and have provided for that in our Decision.

## **7.9 Height**

Four of the six submitters addressing this issue sought the maximum height rule to be amended to reduce it from 20m. The Lewis' sought a maximum height of 15m and a recession plane control. Mr Hayes sought as part of his primary submission that the maximum building height be 10m. Michael Bowler and Anna Hastings requested amendment so that any buildings to be built near to residential dwellings are lower to prevent sunlight shadowing and protect residential amenity. Ronald Plagge sought the maximum building height be less than 20m and was partially supported in the further submission from David Hayes.

The other height related issue raised by them was the imposition of a height recession plane or daylighting rule. David Hayes supported a recession plane .

The Waipa District Council, both in its primary submission and in its further submissions sought a maximum height of 20m but subject to a recession plane control. The Council suggested that any activity not complying with either maximum height or the daylighting recession plane should be a discretionary activity.

The submission by WRAL sought a new rule which ensured buildings and structures do not penetrate a height recession plane measured at 45 degrees from the horizontal and commencing at 2.7m above ground level along the boundary of a site containing a residential dwelling. This was partially opposed by Mr Hayes in his further submission.

WRAL also sought an amendment to Rule 7A.6.7 so that the appropriate air traffic services are consulted as part of any application for buildings exceeding 20m. This was supported in the further submission from Air NZ.

Whilst special height requirements apply in the Airport area, as a result of considerations for approach surfaces and radar and similar matters, no height recession plane had been specified by WRAL in the height rules in the notified

Plan Change. On that basis, buildings of 20m maximum height would be able to be built in close proximity to residential lots and other buildings and structures within the proposed zone.

Mr Douch, in the s42A Report, recommended that a height recession plane of 45 degrees at a point 10m above the internal road boundaries be applied, to assist in reducing bulk internally. In respect of the residential dwellings within the Special Amenity Area and the perimeter sites, this point should commence 2.7m above the boundary, to assist in shadowing effects on the residential properties, together with minimizing the bulk of buildings in close proximity to the perimeter of the proposed business park.

In considering building setbacks and building heights, Mr Olliver for WRAL, sought an additional recession plane control at right angles to any external boundary with State Highway 3, State Highway 21 and Raynes Road being 45 degrees from a point 7m above the road boundary. This was largely however directed towards being combined with a 5m yard setback in those locations as compared to an alternative 15m yard setback that was being debated.

We recognize that the height of buildings in an area can have an adverse effect on the amenity of neighbouring properties, especially residential properties. In addition, 20m high buildings have the potential to be intrusive and are likely to cause overshadowing effects. It is also important, given the nature of the zone and the proximity of the Airport, to consider the effect of tall buildings on air operations, and in that respect a note requiring consultation with the appropriate air traffic service if additional heights are applied for is appropriate.

We had the opportunity to question the parties on these matters, and particularly Mr Douch when he presented towards the end of the Hearing. We raised the matter of whether both setbacks and recession planes were necessary, given, to a large degree, they achieve the same end. His view was that the recession planes were appropriate in the sense that together with the setback controls, they would serve to achieve the result of ensuring the height and bulk of buildings does not impact in an adverse manner upon the visual, road safety or residential amenity concerns that had been raised by submitters. From all the information available to us we concur with the advice provided by Mr Douch. This provides an arguably stricter approach to controlling the height of buildings but one that we believe is appropriate given the concerns expressed by submitters and our assessment of the situation.

## **Conclusion on Height**

- (a) We do not see any need to reduce the maximum height of buildings to less than 20m and we therefore retain the 20m maximum height control in the Plan Change; and
- (b) We concur with submitters that the introduction of a recession plane control is appropriate to ensure that the height and bulk of buildings does not result in adverse effects in relation to visual bulk and appearance, road safety and residential amenity.. We therefore introduce a recession plane control (7m plus 45degrees) for external road boundaries and a further similar control (2.7m plus 45 degrees) relating to the boundary with the residential properties in the Special Amenity Area.
- (c) We retain all the Airport Obstacle Limitation Surfaces which are the height requirements around the Airport that recognise safety concerns in relation to the operation of it.

## **7.10 Signage**

Waipa District Council sought an amendment to Rule 7A.4.10 so that signage related to an activity on-site is permitted only if it faces onto the road frontage from which that site is accessed. That submission was supported by Transit NZ as a further submitter. Transit requested further that signs should be positioned so that they are not visible from the State Highway.

It was recommended in the s42A Report that all signage is orientated towards the site's vehicular access and that all signage is non-illuminated.

WRAL proposed during the Hearing that reference to illumination be deleted and that some signage, to a maximum of 15m<sup>2</sup>, attached to the façade of a building can be orientated away from the site's vehicular entrance. Mr Olliver addressed this in evidence stating his opinion that the proposed business park development could accommodate controlled signage facing towards the State Highways and Raynes Road without significant adverse effects. He did not agree with Mr Douch's s42A Report that recommended all signage to face towards internal roads.

Based on the recommendations of WRAL's urban designer (Mr Terry Morris), Mr Olliver had developed appropriate rules and included them in recommended amendments. Those amendments proposed to limit one sign of up to 15m<sup>2</sup> in area on the face of a building on each site facing towards the external roads. Mr Olliver was also supported by WRAL's landscape architect

(Mr James Bentley) who considered that such signage would not adversely affect the visual amenity of the road corridor.

This was a matter that was addressed in detail during the course of the Hearing, with the Transit NZ representatives expressing concerns in relation to road safety and any proliferation of signage facing the State Highways.

We are conscious that some signage could affect the visual amenity of the area. We accept that the area proposed for rezoning is visible from the State Highways. We understand that the objective is to create a high quality business park at an entry/exit point to the region. It was explained to us that the purpose of limiting signage to facing the site's vehicular entrance is to enable signage to serve the purpose of identifying the location of a business whereas signage facing beyond that will likely lend itself to non-related signage rather than identifying a business location.

In order to avoid the concerns expressed about signs being visible from the State Highways and Raynes Road we consider that Rule 7A.4.10 should limit signage, other than where specifically provided for in the Rule, so that signage is oriented towards the road from which the site obtains its vehicular access. The specified exceptions that are provided for in the Rule are one freestanding sign with a maximum height of 7.5m and maximum width of 2m at each road entrance to the business park, in accordance with the notified version of the Plan Change.

In relation to illumination of signs, WRAL had proposed that reference to illumination be deleted whilst Mr Douch considered signage should be restricted to being lit by constant illumination (if at all) and sought to avoid the opportunity for high intensity illumination involving potentially flashing objects. We consider it to be reasonable that signs can be illuminated but that signs should be designed in a manner that avoids the potential adverse visual effects associated with high intensity lighting or flashing. We therefore provide for signs to be illuminated with limitations to address these concerns. An appropriate provision as part of Rule 7A.4.10 is "*No sign may be illuminated such that it involves any flashing or moving objects or its illumination is not constant*".

The Plan Change provides for any proposed signs that do not comply with these rules to be considered as restricted discretionary activities. That provides the opportunity for consideration of a proposed sign where an applicant is of the view that it will not impact on the concerns for signs in this location.

## **Conclusion on Signage**

We consider that the Rules for signage need to recognise the nature of this area, at an entry/exit point for the region, and include some limitations on signage accordingly whilst still providing for identification of the business park and the activities within it.

Sign provisions should include:

- Signage permitted facing the road from which vehicle access is attained; and
- Additional but area restricted signage at each main road entrance to the Business Park; and
- No signage facing the State Highways or Raynes Road; and
- Any illumination to be constant;

### **7.11 Noise**

Noise was raised as an issue by several submitters.

- Mr McPherson as well as Mr and Mrs Ingram were concerned at the provisions relating to aircraft engine testing as part of the Airport operations;
- Mr Clark is concerned about noise from the proposed State Highway 21 roundabout;
- Several submitters endeavoured to use the occasion to further restrict the general noise levels generated by the Airport activity as measured from off-site.
- The Ingrams challenged the activity status of some noise generating activities. They suggested that engine testing, military force depots, helicopter pads and servicing are not provided for as permitted activities.
- Reverse sensitivity issues were raised in the submissions and further submissions of Hayes and Air New Zealand.

We deal with each of these separately.

#### **(a) Engine Testing**

In our experience both with Hamilton Airport and other provincial airports, engine testing is always a likely issue where regular operational

maintenance is conducted. The difficulty is that commuter airlines based at provincial airports need to conduct maintenance on operational aircraft overnight. If engine testing has to be confined to daytime hours then airline schedules nationwide are likely to be disrupted. That is not in the public interest.

If engine testing is conducted during night time hours it is inevitable it will be heard by people in the locality of the Airport. The question is not whether the engine testing can be heard but rather what level is reasonable. Specific District Plan provisions for engine testing at Hamilton Airport were introduced at the time that the District Plan was promulgated in the mid 1990's. The level of engine testing was at issue at that time and was finally settled at the levels now provided in the District Plan.

In the Plan Change the proposals for engine testing at the Airport remain the same as before the change. It is proposed to bring forward into the Plan Change the previous noise standards without amendment.

Engine testing is conducted at a specially-built three-sided bay of sufficient size to have the aircraft contained within the three sides. Mr and Mrs Ingram are resident at 3400 Ohaupo Rd (State Highway 3) Rukuhia some 1,000 metres from the engine testing facility. Mr and Mrs Ingram are concerned that they continue to hear engine testing in the early hours of the morning.

Mr Hegley, Acoustic Consultant for WRAL, confirmed that the Ingram's were likely to hear the engine testing but he identified the issue as being whether or not the engine testing noise standards were reasonable. We questioned him specifically on that. He considered that the current provisions in the District Plan were reasonable.

Mr and Mrs Ingram also asserted that engine testing was not currently complying with the District Plan. They led no evidence supporting that allegation.

We see noise compliance as being a matter different from the provisions of the Plan Change. If engine testing is not currently complying, then that is an enforcement matter under RMA. Enforcement action can be taken by either the Council or the Ingrams. In the event, however, the Council led evidence from Mr Tutty which indicated to us that although complaints had been recently received about engine testing noise, engine testing was currently complying with the noise standards. We also noted the comment of Mr Tutty that the Ingrams' house would also be

adversely affected by two other significant noise sources – State Highway 3 and the North Island Main Trunk Railway Line.

### **Conclusion on Engine Testing**

Having considered all of this we conclude that by importing the existing District Plan noise provisions into the area to be covered by the Plan Change, those provisions relating to engine testing are reasonable and appropriate. We consider no amendment is required.

#### **(b) General Noise Levels**

The noise levels proposed in the Plan Change are the same noise standards as are currently listed in the District Plan for the Airport Industrial Zone.

Submitters Bowler and Hastings sought further particulars about how businesses within the Airport Business Zone would minimise their noise levels near the existing residential dwellings within the proposed zone. No specifics were provided in the notified Plan Change.

We consider the matter raised is a fair question particularly for those houses which will be within the proposed Special Amenity Area.

Mr Hegley recommended that the noise standard for those properties should be the same that are to be applied to the boundary of any rural zone. That was accepted by WRAL.

### **Conclusion on General Noise Standards**

We consider that an amendment to the Plan Change should be made accordingly.

#### **(c) Reverse Sensitivity**

Rule 7A.4.12 as originally proposed (as Rule 7A.4.11) made provision for prohibited activities within the air noise boundary and permitted within the air noise margin subject to conditions requiring acoustic treatment of buildings to meet specified sound levels.

After notification, WRAL recognised that the Rule could be improved by the introduction of a Table 7A.1: Activity Status of Noise Sensitive Activities.

During the course of the Hearing there was discussion about whether or not some items should be included in the proposed Table but by the end of the Hearing there appeared to be agreement on that.

In addition new clauses 2 and 3 no longer referred to non industrial activities nor noise sensitive activities but rather to activities in the Table.

We consider all of that a significant improvement and we adopt it.

(d) **Traffic Noise**

Mr Clark the resident in the Costenuff property on the corner of Lochiel Road and SH21 was concerned about traffic noise from the proposed roundabout on that intersection.

Mr Clark's position became very clear to us during the site visit. Although not immediately apparent, the existing road reserve already cuts substantially into the currently fenced Costenuff property. With the proposed additional land required for the proposed roundabout a significant chamfer will be taken off the north-eastern corner of the existing house curtilage. That means that the road boundary will be very close indeed to the house itself.

Recognising this, Mr Hegley recommended an acoustic fence along that boundary. In the event of the roundabout being located at the present intersection of Lochiel Road and SH21 we regard such a fence as imperative. However, from a noise point of view it is desirable to shift the proposed roundabout westward. We have discussed that issue in more detail above. We consider that the adverse effects of noise at the Costenuff/Clark property is a good reason to relocate the Airport Eastern Access.

(e) **Conclusion on Noise**

We consider that:

- a) the same noise standard (including engine testing) that is to be applied to the boundary of the Rural Zone should also apply to the boundary of the Proposed Special Amenity Area;
- b) Engine testing at military force depots, helicopter pads and servicing are appropriate within the Airport Business Zone.

- c) Adopt new proposed Rule 7A.4.12 (as amended by the end of the Hearing) to deal with activity status inside the a) ANB b) and the air noise margin.

## 7.12 Air Discharge and Contamination

- a) Odour, Smoke, Fumes and Dust

In his submission Mr Lewis was concerned about air discharges from the Airport Business Zone. We note that RMA s15 does not allow such discharges unless they are authorised by either the Regional Plan or a resource consent. The Regional Plan deals with such emissions.

In addition we note that Rule 7A.4.13 provides:

*“Activities shall not produce any odour discernable without instruments from a dwelling on land in the Rural Zone.”*

We consider that the combination of these provisions is adequate to cover the concerns raised by Mr Lewis.

- b) Contaminated Land

Included with the AEE for the Plan Change was a report by Tonkin and Taylor<sup>14</sup> entitled “Preliminary Contamination Assessment by Tonkin and Taylor”.

The results of that investigation showed that the potential for ground contamination to adversely affect industrial/commercial site workers over much of the study area is low to moderate. Two areas of high contamination potential were identified as being the Pacific Aero Corporation site on Airport Road and the former asphalt depot on Ohaupo Road. Several potential contamination hot spots were also identified due to the likelihood of the potentially contaminated activities with industries having occurred at those sites.

In its submission EW sought a new rule that requires additional contamination assessments for those sites specified in the Tonkin Taylor report. It also identified further potential contaminated sites.

For its part WRAL recognises there is a potential contamination issue and indicated it is prepared to work with EW in dealing with that issue.

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<sup>14</sup> AEE Appendix 12

Mr Douch recommended that no additional specific provision in the Plan Change need be made. We accept that recommendation.

### **Conclusions on Air Discharges and Contamination**

No amendment required to the Plan Change in respect of odour, smoke, fumes and dust.

#### **7.13 Engineering/Utility**

Tainui Group Holdings Ltd sought that the Plan Change be approved subject to the construction of all water supply, stormwater and wastewater reticulation and associated works including the provision of connection points to each property, prior to the commencement of any additional activity. It was supported by the Waipa District Council as a further submitter.

The Plan Change is clear that reticulated services are required before development within the zone can take place (Rule 7A.4.16) and the Regional Council will otherwise deal with any proposals that require resource consent from it in relation to the management of stormwater discharges. We consider that specific connections to each property boundary prior to any development commencing is not appropriate due to the likely changes in property boundaries that will result from the rezoning.

Waipa District Council also sought an additional policy provision to note that the individual developer should be responsible for the costs of implementing, maintaining and servicing the wastewater reticulation system and that it would agree to a connection between the proposed trunk rising main from Titanium Park and the Cambridge Wastewater Treatment Plant. This relies on an agreement between WRAL and the Waipa District Council and in that respect we heard evidence from the Council's Assets and Development Manager, Mr John Mills, that agreement had been reached in that respect.

The Plagge submission sought that activities be required to be serviced with reticulated stormwater and that existing residents should not be disadvantaged by the proposed zoning change leading to increased sewerage and stormwater requirements. It is the case that the Plan Change rules only apply to new developments and accordingly we do not anticipate any impacts on existing residents.

Hamilton City Council considered the Plan Change should be amended following further investigation of effects of wastewater treatment and disposal factoring in the Peacocke Structure Plan. That Structure Plan notes the restriction on urban development due to the lack of suitable wastewater treatment and disposal. There is a suggestion that the wastewater from the

Structure Plan area and the proposed zone may be able to be dealt with together but that needs further investigation.

The Plan Change requires all development to be connected to a reticulated system and just how that connection is established is a matter for the developer in each case. We consider no changes are necessary to the Plan Change in this respect.

From our considerations relating to engineering/utility issues there is a need to insert a new Policy AB5 to note that the cost of providing infrastructural services to the proposed zone will be met by those parties that create the need for the services, with the method for dealing with this best undertaken through an agreement between Waipa District Council and WRAL. This is included as part of our Decision. Further we consider a note should also be added, to Rule 7A.4.16 advising that the provision of reticulated sewerage and water is subject to an agreement being in place between Waipa DC and WRAL and the subsequent implementation of that agreement by WRAL.

Waipa District Council also sought that the proposed location of swale drains be shown on plans for all internal roads within the proposed development because such drains are integral to the stormwater management of the site. We accept that detail can be provided at the development approval, land use or subdivision consent stage, with the Council being able then to require a holistic Stormwater Management Plan to adequately deal with the effects of a single development if it cannot be treated in isolation. The Council as local planning authority can request this information as part of any future approvals providing it with the greater certainty and detail over location of swales that it seeks by its submission. We accordingly make no change to the Plan Change in this respect.

### **Conclusion on Engineering/Utility**

We consider no amendments are needed to the Plan Change.

## **7.14 Archaeological**

Included with the AEE was an Archaeological Assessment by CFG Heritage Limited (Author Warren Gumbley)<sup>15</sup>. Also included with the AEE was a Cultural Evaluation Report prepared by Nga Iwi Toopu O Waipa and Nga Mana Toopu O Kirikiriroa<sup>16</sup>. From these reports it is clear that:

- no archaeological surveys have been carried out on the land covered by the Plan Change and subsequent development;

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<sup>15</sup> AEE Appendix 10

<sup>16</sup> AEE Appendix 11

- no archaeological sites have been recorded in the New Zealand Archaeological Association Site Recording file in the vicinity;
- there may be prehistoric garden soils in the vicinity;
- a kainga called Te Tireke is known to have existed in the general area but its exact location and extent are unknown. There have been some suggestions of its locality being intersected by SH 21 but there is uncertainty about the size and location of Te Tireke kainga. That raises the possibility that it may be located west of SH21 within the proposed development area.

Mr Gumbley's report recommended a management plan relating to archaeological sites and related cultural values. That management plan should be agreed by representatives of tangata whenua, WRAL, New Zealand Historic Places Trust, and Waipa District Council.

The legal position is that all archaeological sites are protected by the provisions of the Historic Places Act 1993 and may be destroyed, damaged or modified only under an authority granted by New Zealand Historic Places Trust under the Act. The New Zealand Historic Places Trust requested the development of a management plan relating to archaeological sites and related cultural values. It requested that the plan be agreed by tangata whenua, WRAL, NZHPT and Waipa District Council.

We note that such a management plan and the requirement to consult with tangata whenua is more than the cultural evaluation report requested.

In the Section 42 Report Mr Douch considered that no amendment was required to the Plan Change but noted there is a rule in the Regional Plan relating to earthworks which would require application to the New Zealand Historic Places Trust.

WRAL accepted the proposal for a management plan suggested in the cultural assessment and requested by NZHPT.

We agree with Mr Douch that the most appropriate method for dealing with this is through the separate preparation of a management plan to be prepared and implemented independently of the Plan Change process.

On this basis no change is necessary to the Plan Change as drafted.

### **7.15 Miscellaneous**

Mr Douch included the submission of Mr McPherson relating to rates. Mr McPherson requested confirmation that his rates would not be affected by the Plan Change.

Rates assessments are undertaken not under RMA but under the Local Government (Rating) Act 2002. That is a different process than a Plan Change under RMA.

We consider Mr McPherson's submission is beyond the scope of Plan Change.

It is rejected.

**8. DECISION**

Having had regard to the provisions of the Resource Management Act 1991 and in particular to s74 (matters to be considered by a territorial authority), s31(functions of territorial authorities under this Act), s32 (consideration of alternatives, benefits and costs), and s75 (contents of district plans); and

Having considered the effects on the environment of the Proposed Plan Change 57 to the Waipa District Plan and the management of those effects; and

Having considered the evidence of Waikato Regional Airport Limited, the submissions, the further submissions, and the evidence tendered in support of those submissions and further submissions; and

Acting under a delegation from Waipa District Council to hear and determine these submissions and further submissions relating to the Proposed Plan Change; and

For the reasons set out in the text of this Decision; and

Pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991:

1. Submissions and further submissions to Plan Change 57 are accepted, accepted in part or rejected as set out in Appendix 1 to this Decision ; and
2. Consequential alterations to the text of the Proposed Plan Change 57 which are required are set out as a “strike-through” version of Plan Change 57 in Appendix 2 to this Decision; and
3. A “clean” and final version of Plan Change 57 is Appendix 3 of this Decision; and
4. The Structure Plan for the Airport Area referred to in Plan Change 57 is Appendix 4 to this Decision.

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**C D ARCUS**

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**A R WATSON**

**29<sup>th</sup> August, 2008**