BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC 46

IN THE MATTER	of the Resource Management Act 1991
AND	of an application pursuant to s 149T of the Act
BETWEEN	QUEENSTOWN AIRPORT CORPORATION LIMITED
	(ENV-2011-WLG-41)
	Applicant

Court:	Environment Judge J E Borthwick Environment Commissioner R M Dunlop Environment Commissioner D J Bunting
Hearing:	at Christchurch on 27 and 28 February 2017
Appearances:	M Casey QC and C Somerville-Frost for Queenstown Airport Corporation Ltd Dr R J Somerville QC and B Milo for Remarkables Park Ltd
Date of Decision:	31 March 2017
Date of Issue:	31 March 2017

DECISION OF THE ENVIRONMENT COURT

A: Pursuant to s 149U(4) RMA the notice of requirement to extend Designation 2 is confirmed, subject to the conditions attached to and labelled "A" forming part of this decision. The extent of the designation that is confirmed is shown on Figure 1 also attached to and labelled "B" forming part of this decision.

B: Costs are reserved.

REASONS

Litigation history

[1] This is the final decision concerning Queenstown Airport Corporation Limited's notice of requirement to alter Designation 2 of the Queenstown Lakes District Plan to extend the aerodrome at Queenstown Airport.

[2] We appreciate that the litigation history is well known to the parties but it is necessary to recap on it here since it provides the context for this decision.

[3] The Environment Court released an Interim Decision in 2012[1] confirming the notice of requirement ("NOR"), modifying the same by reducing the extent of land to be designated. The reduction followed on from our finding that there was no nexus between the Airport's objective for the requirement and the enablement of Code D aircraft operating at Queenstown Airport. The predicted growth in regular passenger transport services could be achieved using Code C aircraft operating on an appropriately configured runway and single taxiway.

[4] More particularly the modification enabled all of the proposed works including a new parallel taxiway for Code C aircraft separated 93m from the main runway. After the Interim Decision was released, Queenstown Airport Corporation Limited resiled from its position that under the Civil Aviation Rules the runway-taxiway separation distance for Code C aircraft was 93m, contending the distance was at least 168m. If that was correct, then all of the land in the NOR was required.

[5] The Interim Decision was successfully appealed by Queenstown Airport Corporation Limited ("QAC") and Remarkables Park Limited ("RPL"). Notwithstanding the appeal the parties agreed that the court should release its final decision,[2] which confirmed the notice of requirement and attached conditions. As it turned out this was not to be the court's final decision for this proceeding.

[6] The High Court referred parts of the Interim Decision back to the Environment Court for further consideration.[3] In the first of two decisions following the High Court

[1] [2012] NZEnvC 206; (2012) 18 ELRNZ 489.
[2] [2013] NZEnvC 95.
[3] [2013] NZHC 2347.

appeal, which for convenience we refer to as the "Legitimate Expectation Decision",[4] we found that RPL could legitimately expect, other relevant considerations aside, that QAC would use its own land for airport purposes, and not RPL's land. However, we confirmed our earlier finding that, in accordance with s 171(1)(b) of the RMA, the QAC had given adequate consideration to alternative sites – including the use of its own land.[5]

[7] In the second decision following the High Court appeal ("the Separation Distance Decision")[6] we reconsidered the separation requirements for a Code C runway and taxiway. We found under the Civil Aviation Rules an acceptable means of compliance was a separation distance of 168m, and at Queenstown Airport this separation should be viewed as a minimum. This issue was overtaken during the hearing by evidence concerning the Airport's proposal for a dual parallel taxiway south of the main runway. The dual taxiway was the subject of very little evidence during the 2012 hearing and RPL responded on a broad front challenging the proposed works, including the proposal for general aviation and helicopter facilities located on Lot 6. RPL argued that in the absence of an aeronautical study the NOR should be cancelled or, at the very least, the court should defer the final resolution of this proceeding until any Civil Aviation determinations that are required have been made.

[8] In this decision we consider whether the designated land is able to be used for the purpose of achieving the requiring authority's objectives for which the designation is sought.

Is work and designation reasonably necessary?

[9] For the purposes of s 171(1)(c) RMA the work and designation are reasonably necessary where:

- there is a nexus between the works proposed and the achievement of the requiring authority's objectives for which the designation is sought;
- the spatial extent of land required is justified in relation to those works; and

[4] [2014] NZEnvC 244.
[5] [2014] NZEnvC 244.
[6] [2015] NZEnvC 222.

- the designated land is able to be used for the purpose of achieving the requiring authority's objectives for which the designation is sought.

[10] If any of the above statements proved negative, QAC could not say that the works and designation are reasonably necessary for achieving the objectives of the requiring authority under s 171(1)(c).[7] This list is not exhaustive; in other cases different considerations may apply.

[11] Our enquiry into whether QAC can use the land arose out of the following key findings in the Separation Distance decision:

- the designation is required to ensure the continued safe and efficient functioning of the Airport by the expansion of its aerodrome to meet projected growth. This is to be achieved by the integrated development of airport facilities;[8]
- the proposed expansion of the passenger terminal will displace the existing general aviation (GA) and helicopter facilities;[9]
- an array of factors – including safety – militate against a northern location of GA and/or helicopter facilities.[10] QAC gave adequate consideration under s 171(1)(b) RMA to locating the Code C taxiway together with a proposed new GA Precinct to the north of the main runway;[11]
- some of the proposed works require the approval of the Director of Civil Aviation and will be the subject matter of an aeronautical study. At that time the Airport had not formally consulted with its stakeholders regarding operational restrictions that may be imposed in relation to the new aerodrome configuration. It is possible that the configuration of the proposed aerodrome extension will be modified as a result of the aeronautical study and stakeholder consultation;[12]
- the court was not in a position to know whether the works could be operationalised (that is put into operation or use);[13]

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[7] [2015] NZEnvC 222 at [270].
[8] [2015] NZEnvC 222 at [244].
[9] [2015] NZEnvC 222 at [244].
[10] [2014] NZEnvC 244 at [103].
[11] [2015] NZEnvC 222 at [229] and [252].
[12] [2015] NZEnvC 222 at [232].
[13] [2015] NZEnvC 222 at [218] and [267].

- the Airport's response to the Director's approval for the works, including any operational restrictions recommended following the aeronautical study, are material to the consideration of s 171(1)(c) and, subject to Part 2, the ultimate determination of the proceedings;[14] and finally
- if the Airport was unable to obtain the Director's approval it was unlikely that the court would regard the designation as being reasonably necessary for achieving the objective for which the designation was sought.

[12] The upshot was that we declined to make a final decision on the notice of requirement and directed QAC report back on matters under the jurisdiction of the Director of Civil Aviation.[15]

Aeronautical study

[13] In response to the directions given in the Separation Distance Decision, QAC submitted an aeronautical study, including proposed changes to its exposition, to the Director of Civil Aviation on 20 August 2016. The aeronautical study was required under the Airport's exposition as the dual taxiway, final approach and take-off helicopter area ("FATO") establishment and the development of the GA Precinct would change the operating environment.[16] The study addressed how the Airport would be operated with these facilities in place[17] for the purpose of establishing whether the proposed operation of the dual taxiway is acceptable to the Director of Civil Aviation.[18]

[14] A copy of the draft aeronautical study was provided to RPL on 4 July 2016. Without having received a response from RPL within the timeframe indicated, QAC then submitted the final aeronautical study to the Director of Civil Aviation in August 2016. RPL provided feedback directly to the Director on 23 September 2016 in a report prepared by The Ambidji Group Pty Ltd entitled "A Review of the Draft Aeronautical Study New General Aviation Precinct, Proposed Dual Taxiway and FATO Operation."[19]

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[14] [2015] NZEnvC 222 at [270].
[15] [2015] NZEnvC 222at [272].
[16] Queenstown Airport – New General Aviation Precinct Aeronautical Study, 20 August 2016, Version V2 at [2.4].
[17] Queenstown Airport – New General Aviation Precinct Aeronautical Study, 20 August 2016, Version V2 at [3.2].
[18] Queenstown Airport – New General Aviation Precinct Aeronautical Study, 20 August 2016, Version V2 at [3.2].
[19] Dated September 2016.

The Ambidji Report was highly critical of the Aeronautical Study.[20]

[15] On 30 September 2016 the Manager of Aeronautical Services for the Civil Aviation Authority, Mr S Rogers, acting pursuant to a delegation by the Director, responded to the Aeronautical Study. He advised under the Civil Aviation Rules, pt 139.13, the proposal represents a significant change to the aerodrome layout. He confirmed the purpose of an aeronautical study prepared under AC 139-15 is to provide a holistic view of aerodrome operational environment from a macro perspective. Without referring to the Ambidji Report, Mr Rogers said the proposal was deemed acceptable in that it allows for the continued compliance with Civil Aviation Rules pt 139.51(d)(1)(i) to (vii), 139.51(d)(2) and 139.101(4). He noted that:

> ... a task Specific Case will be submitted to provide more detailed mitigation for the risk associated with each phase of the introduction to service of the new aerodrome layout. Specifically the risks associated with the dual taxiway, the new FATO and the GAP.[21]

Request for a final determination

[16] Following receipt of the Director's letter QAC requested the court release a final determination of the proceeding on the papers.[22] RPL on the other hand opposed this course and sought to call evidence to determine whether the Aeronautical Study satisfactorily addressed the operational issues identified by the court and second, whether it demonstrates the proposed arrangement can support acceptably safe airport operations in accordance with Aviation Circular 139-15. RPL contended the "veracity" of the Aeronautical Study is relevant to the court's consideration and recognition of RPL's legitimate expectation.[23]

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[20] The Ambidji Report reviewed the draft aeronautical study dated 1 July 2016 – Version V1. The final aeronautical study is dated August 2016 – Version V2. Mr E L Morgan for RPL states at [3.1] of his December 2016 brief that there is no material difference between the draft and final versions of the Aeronautical Studies. The Ambidji Report concludes, amongst other matters, that the study had not been conducted in accordance with the Civil Aviation Authority's standards and guidelines; no quantifiable data were presented to validate risk levels; presents insufficient operational information and assessment for an effective safety risk review (and approval) of the proposed changes; the proposed changes to the aerodrome layout do not represent best practice in delivering the efficiency gains required to meet forecast demands; the study does not apply fundamental safety design principles to minimise the major accident category (including runway or taxiway incursions); and fails to consider alternative options that could deliver enhanced safety.

[21] "GAP" means General Aviation Precinct.

[22] By memorandum dated 26 October 2016 QAC confirmed that it could make operational the works outlined in the Aeronautical Study and that it was "comfortable" with the changes proposed to its exposition (which will not be made operative until the works are established).

[23] RPL memorandum dated 9 November 2016.

[17] As the parties could not agree on how to proceed, the matter was set down for a pre-hearing conference. Having heard from counsel the court directed a hearing limited to the following matters:[24]

(1) how far does the court have to go to satisfy itself as to s 171(1)(c) and Part 2 of the Act?

(2) in its memorandum of 18 November 2016 at [12] QAC states that it cannot go further to progress the intended works, or establish any physical work (and actually amend its exposition), until the designation is approved by the court. Three questions arise from that statement:

  (a) is the statement correct?

  (b) if so, does the evidence before the court exhaust the proper extent of the court's enquiry?

  (c) if not, should QAC furnish the court (or the Director) with task specific safety case(s) to provide more detailed mitigation for risk associated with each phase of the introduction of the new aerodrome layout?

(3) whether the Director in accepting QAC's aeronautical study (August 2016) must be taken to have correctly addressed the relevant safety issues that arise under QAC's layout.[25]

[18] The court reiterated in a subsequent Minute that the evidence was limited to the assertion by QAC that it cannot progress the intended works, or establish any physical work, until the designation is approved by the court.[26]

[19] RPL subsequently filed extensive evidence challenging the Aeronautical Study; two witnesses going so far as to challenge the finding by CAA (Mr Rogers) as to compliance with Civil Aviation Rule pt 139.[27] The admissibility of most of RPL's evidence is challenged in turn by QAC.[28]

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[24] Record of PHC dated 23 November 2016.
[25] We have in mind that the maxim "all things are presumed to be done in due form" may apply.
[26] Minute dated 6 December 2016.
[27] Morgan at [3.4] and [5.4]. Selwyn EiC 22 December 2016 at [8.3].
[28] With the consent of the parties the witnesses were called and their evidence provisionally admitted subject to the court's determination of its relevance to any matter in issue.

Issue 1: How far does the court have to go to satisfy itself as to s 171(1)(c) and Part 2 of the Act

[20] RPL accepts the findings of the court that QAC did give adequate consideration to the use of alternative sites, including the use of its own land. It seeks to distinguish ss 171(1)(b) and 171(1)(c), saying the former is concerned with an inquiry into process and the latter an inquiry into outcome.

[21] RPL submits under ss (1)(c) the court is to evaluate the "outcome".[29] The "outcome" – namely the proposed works and designation of Lot 6, can only be justified where there is a "satisfactory",[30] "sufficient"[31] or "overriding" reason"[32] for QAC not to give relief to RPL's expectation that QAC use its own land for airport purposes. The outcome would be justified where, for reasons of public safety and efficiency, QAC cannot use its own land and the need to acquire Lot 6 is therefore "pressing" or "essential".[33] Evidence that is capable or sufficient of proving that it is unsafe and inefficient to use QAC's own land must be "compelling".[34]

[22] While RPL accepts the findings of the court that QAC gave adequate consideration to the use of alternative sites under s 171(1)(b), it argues that in the absence of an aeronautical study fully assessing the operational safety and efficiency of the existing airport layout the court cannot be satisfied that it is unsafe and inefficient to locate the GA Precinct on QAC land. Without such a study the evidence cannot objectively prove the requirement for RPL's land is pressing or essential[35] and, it follows, the court cannot be satisfied that the NOR is reasonably necessary to designate Lot 6 land for the same works.[36]

[23] QAC does not agree with RPL that the works and designation must be "essential" in order for them to satisfy the criteria in s 171(1)(c). The orthodox approach, approved by Justice Whata, enables a court to apply a threshold assessment that is proportionate to the circumstances of the particular case. Thus provided that

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[29] Somerville, submissions 10 February 2017 at [2.12].
[30] *B v Waitemata District Health Board* [2016] NZCA 184 at [55].
[31] *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 at 525.
[32] Refer RPL 2015 submissions dated 15 June 2015 at [2.35] *Paponette v Attorney General of Trinidad and Tobago* [2010] UKPC 32 at [37]-[38].
[32] *R v North and East Devon Health Authority*, ex parte Coughlan [2001] QB 123 (Eng CA) at [57].
[33] Transcript at 78.
[34] Somerville, submissions 10 February 2017 at [2.31].
[35] Transcript at 79, Somerville, submissions 10 February 2017 at [2.32].
[36] Transcript at 79.

they are more than simply an expedient or desirable[37] way by which to achieve the objective,[38] the works and designation may be reasonably "necessary" even though they are not essential. We add, if the court is satisfied the works are clearly justified there is no error of law approaching the threshold test of reasonable necessity in this manner.[39] Given the now extensive evidence before the court and the findings it has made in the previous proceedings, QAC submits that the court has gone as far as it can in order to satisfy itself that the proposed NOR is reasonably necessary in terms of s 171(1)(c) and Part 2 of the Act.[40]

Discussion

[24] The fact that QAC owns designated land to the north of the main runway does not mean, as RPL contends, the designation of Lot 6 is not reasonably necessary.[41]

[25] We find that there is an error in RPL's reasoning arising through the definition of "outcome" in two ways: both in relation to the subject site (Lot 6) and also in relation to QAC's own land. Under RPL's approach the test in s 171(1)(c) can only be satisfied if the works and designation are essential to achieving the objective because the use of QAC's own land is excluded for reasons of public safety and efficiency. Separately, RPL is also saying something about the sufficiency of evidence contending that "compelling" evidence in the form of an aeronautical study is required to exclude the use of QAC's land.

[26] The considerations under s 171(1)(b) and (1)(c), while inter-related, are separate enquiries. In the 2012, 2014 and 2015 decisions we held that if there is an alternative site for undertaking the work that is owned by QAC, this begs the question whether the requirement for RPL's land is reasonably necessary.[42] In the Interim Decision, and again in the Legitimate Expectation decision, we found an array of factors – including safety and efficiency – militate against a northern location of GA and/or helicopter facilities.[43] We also found that the use of QAC land would not promote the sustainable management of natural and physical resources.[44] We made these findings based on the evidence before us; the findings were not informed by an aeronautical

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[37] *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2013] NZHC 2347 at [19].
[38] Casey, submissions 10 February 2017 at [48].
[39] [2013] NZHC 2347 at [94]-[95].
[40] Casey, submissions 10 February 2017 at [55].
[41] Somerville, submissions 10 February 2017 at [2.10].
[42] See [2012] NZEnvC 206 at [94], [2014] NZEnvC 244 at [90]-[91], [2015] NZEnvC 222 at [252].
[43] [2014] NZEnvC 244 at [103].
[44] [2014] NZEnvC 244 at [103].

study of QAC's land.[45] These findings have not been appealed.

[27] Once again RPL seeks to re-litigate matters that are the subject of earlier decision(s) by enlarging upon the examination of the alternative sites through the vehicle of s 171(1)(c) and indirectly challenging the adequacy of evidence which the court relied on in its earlier decisions. While RPL disavows an argument that the test under s 171(1)(c) is to examine whether a reasonable decision maker could arrive at a decision to locate GA facilities on Lot 6 land,[46] we consider this also a purpose in its argument.

[28] To substantiate its argument RPL focuses on the law of legitimate expectation although the court's jurisdiction is founded in the relevant sections of the RMA. While we have carefully considered the cases referred to us, we prefer Whata J's articulation of the law in *Queenstown Airport Corporation Limited v Queenstown Lakes District Council* [2013] NZHC 234, grounded as it is on the RMA. RPL may legitimately expect compliance with the assurance given by QAC, and upon which it has relied, subject only to an express statutory duty or power to do otherwise. At [106] Whata J stated:

> In the present case, that must mean satisfaction of the criteria expressed at s 171 and in particular at subs (1)(b) and (c), having regard to any relevant legitimate expectations, properly established. Fairness would then implore an outcome which is consistent with those expectations provided that the outcome met the statutory criteria and achieved the statutory purpose. Conversely, the Court, like QAC, cannot be bound to give effect to those expectations where to do so is inconsistent with the requirements of s 171. In short the Court's jurisdiction, though wide, is framed by the scheme and purpose of the RMA.
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> [Footnotes omitted].

[29] RPL is right to say the outcome in these proceedings must be a fair and proportionate response.[47] The law of legitimate expectation is based on fairness, the broad principle being that good administration requires that public bodies deal straightforwardly and consistently with the public.[48] Fairness implores an outcome which is consistent with those expectations provided, however, that the outcome meets the statutory criteria and achieves the statutory purpose.

[45] See [2015] NZEnvC 222 at [252].
[46] Somerville, submissions 10 February 2017 at [2.12].
[47] Transcript at 78.
[48] *Nadarajah* v *The Secretary of State for the Home Department* [2005] EWCA Civ 1363 at [68].

[30] RPL submits the only way to justify interference with its private property rights on a "proportionality review" is on the basis of a "compelling case" in the public interest or "compelling evidence"[49] to show that confirming Lot 6 in breach of the substantive legitimate expectation is justified in the public interest.[50]

[31] RPL does not explain what it means by "proportionality review". The phrase "proportionate response" occurs in the English Court of Appeal case of *Nadarajah v The Secretary of State for the Home Department*.[51] Laws LJ, discussing the law of legitimate expectation (obiter), said at [68]:

> A public body's promise or practice as to future conduct may only be denied, and thus the standard departed from, in circumstances where to do so is on the public body's legal duty or is otherwise a proportionate response having regard to a legitimate aim pursued by the public body in the public interest. The court is the judge of whether it is a proportionate response.

[32] When expressed in the language of the RMA, the question of whether the NOR is a "proportionate response" under s 171(1)(c) is to be considered relative to QAC's objectives.

[33] Since 2012 we have sought clear justification from QAC that it has given adequate consideration to alternative sites and, separately, that the works and designation are reasonably necessary to achieve the objective for the designation. We have been mindful of the fact that QAC does not own the land to be designated. Bringing RPL's legitimate expectation to account in the particular context of s 171(1)(c), the NOR would not be a proportionate response in circumstances where there is either no nexus between the works proposed and the achievement of the requiring authority's objectives or where the spatial extent of land to be designated exceeds the land required by the works. It would also be unfair to RPL to designate the land if QAC were unable to use the same for the proposed works. In each of these circumstances it could not be said that the works and designation are reasonably necessary to achieve QAC's objective under s 171(1)(c) which brings us back to the first issue raised at the beginning of this section.

[49] Somerville, 10 February 2017 at [2.18].
[50] Somerville, 10 February 2017 at [2.22].
[51] *Nadarajah v The Secretary of State for the Home Department* [2005] EWCA Civ 1363.

Outcome

[34] Section 171(1)(c) is concerned with whether the proposed works and designation for the subject site are reasonably necessary for achieving the requiring authority's objective. The enquiry does not extend to an examination of the existing aerodrome, including land owned by QAC. Accordingly, the court does not require QAC to conduct a further aeronautical study examining the use of its own land for GA and the other services.

Issue 2: Can QAC progress the intended works, or establish any physical work (and actually amend its exposition), before the designation is confirmed?

[35] Opposing QAC's request that the court make a final determination on the papers confirming the NOR, RPL submitted that the Aeronautical Study that was prepared by QAC was deficient and even though the Study was accepted by the Director of Civil Aviation, it does not address the operational issues highlighted in the Separation Distance decision and demonstrate acceptably safe airport operations. RPL sought to call evidence and be heard on these issues.[52]

[36] QAC responded stating that the requirements under the Civil Aviation Act 1990 are, to the extent that they are able to be, met at this stage of the process. It cannot go further to progress the intended works, or establish any physical works (and actually amend its exposition), until the designation is approved by the court.[53] If correct, this bears on how far the court can go to satisfy itself as to s 171(1)(c) and Part 2 of the Act.

[37] Mr Clay, the General Manager Operations and Safety for Queenstown Airport gave evidence that there will be changes to the rest of the Airport's operational infrastructure consequential upon the construction of a Code C taxiway within the existing airport designation. Airport operations are made up of multiple interdependent processes; changes to the passenger terminal and apron stands will encroach upon the existing GA precinct. It would be irresponsible of the Airport to incur the cost of constructing the Code C taxiway (a cost largely born by the airlines) without being in a position to realise the NOR objectives.[54]

[52] RPL memorandum dated 9 November 2016.
[53] QAC memorandum dated 18 November 2016 at [12].
[54] Clay, EiC dated 22 January 2017 at [23]-[26].

[38] Mr Clay's observation that the Airport's operations are made up of multiple interdependent processes accords with the observations we made in an earlier decision as to the integrated development of airport facilities:[55]

> The NOR is required to ensure the continued safe and efficient functioning of the Airport through the expansion of its aerodrome to meet projected growth.[56] When the whole of the NOR is considered it is plain this is to be achieved by the integrated development of airport facilities. Amongst the many changes to the physical characteristics of the aerodrome proposed to achieve its objective, the expansion of the passenger terminal and associated facilities will displace the GA (including helicopters) from its present location.

[39] It is therefore not entirely correct for Mr Casey to say that QAC can go no further to progress the intended works or establish any physical works until the designation is approved by the court.[57] Rather, the decision to go no further pending the court's final determination is a decision that is open to a prudent airport operator. However, that is not the end of the matter and we consider next whether the evidence before the court establishes, subject to Part 2 of the Act, that QAC can actually achieve its objective were the Lot 6 land to be designated, having particular regard to the need for the Director to consider (at least) task specific safety cases for components of the work.

[40] One final comment before we move on. RPL argued the confirmation of the NOR was irrelevant to the issue whether QAC can or cannot progress works within the existing designation. QAC could progress the works associated with the Code C taxiway as this would be constructed within the existing designation, with the GA Precinct to be constructed after its formation. For reasons that are not entirely clear RPL called evidence intended to prove that the airspace capacity is limiting growth in regular passenger transport services. The constraints in airspace capacity are addressed in the Separation Distance decision. Mr Clay's evidence at this hearing, which was unshaken in cross-examination, was that airspace would be enhanced through the introduction of the parallel taxiway. This accords with the observations we made on the same topic in the Separation Distance decision from [178] et ff, including in particular [193].

[55] [2015] NZEnvC 222 at [244].
[56] NOR, Form 18 at [1.3].
[57] We accept QAC cannot amend its exposition until the works have been constructed.

Issue 3: Should QAC furnish the court (or the Director) with task specific safety case(s) to provide more detailed mitigation for risk associated with each phase of the introduction of the new aerodrome layout?

[41] In the Separation Distance decision, subject to appropriate restrictions on aircraft movements, we were satisfied that the dual taxiway could operate safely.[58] At RPL's instigation we declined to issue a final determination giving QAC an opportunity to complete an Aeronautical Study and seek the Director's approval (or more accurately "acceptance") of the proposal.

[42] The principal elements of the NOR works and their indicative layout are described in the Aeronautical Study. The works and layout are the same as those presented to the court at earlier hearings. Attached to the Study is a copy of the 2015 decision and the Study records the court's wish to know what approvals may be required from the Director.

[43] The purpose of the Aeronautical Study is stated – it is to establish whether all relevant Civil Aviation requirements can be satisfied or addressed in a manner that is acceptable to the Director of Civil Aviation. The Study uses a methodology evidently agreed upon between CAA and QAC. The methodology employs a qualitative, not numerical, risk assessment (a matter of some considerable criticism by RPL's witnesses).

[44] In response the Director confirmed under Civil Aviation Rules, pt 139.131 the proposal entails significant change to the aerodrome layout and that it was practical (in this case) for an aeronautical study to be submitted to the CAA before project commencement. As the proposal is compliant with the relevant Civil Aviation rules it is deemed acceptable. The Director elaborates, not only are the proposed physical characteristics obstacle limitation surfaces, visual aids, equipment and installations compliant with the Civil Aviation Rules (pt 139.51(1)(i) to (vii)), but they are also acceptable to the Director (pt 139.51(d)(2)).

[58] [2015] NZEnvC 222 at [267].

[45] Importantly, the Director determined QAC will continue to meet the standards and comply with the requirements of Subpart B of the Civil Aviation Rules prescribed for aerodrome certification (pt 139.101(4)). QAC cannot operate the aerodrome except under the authority of an aerodrome operator certificate granted by the Director under the Civil Aviation Act and in accordance with the relevant rules (pt 139.5).

[46] The Director's decision makes clear that the continued compliance with the aerodrome certification does not mean that the operation of the dual taxiway and runway in conjunction with the proposed helicopter and GA facilities on Lot 6 is without risk. How risk is to be managed is to be addressed in the task specific safety cases.

[47] RPL submits QAC should furnish the court (or Director) with the task specific safety cases before a decision on the NOR is made[59] as the safety cases may result in design changes to mitigate potential risks or unacceptable design outcomes;[60] may bear on the amount of Lot 6 land required[61] or even as to whether the proposal can be operationalised.[62] In the absence of evidence on how risks are to be managed on Lot 6 it says the court is not in a position to make a decision under s 171(1)(c) or be satisfied in terms of Part 2.[63] RPL submits that the safety cases are needed irrespective of its legitimate expectation that QAC would use its own land.

Discussion

[48] We commence by making a general observation: the court cannot abrogate its decision-making under the RMA to the Director of the Civil Aviation Authority. Indeed the Environment Court cannot delegate its function in relation to safety issues in so far as they are a relevant RMA matter.[64] The court is entitled to hear expert evidence and come to its own conclusions.[65]

[49] The NOR is not an application for resource consent wherein QAC seeks authorisation for certain activities, with the actual and potential effects of those activities

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[59] Selwyn, EiC dated 22 December 2017 at [8.5(b)]. Morgan, EiC 22 December 2016 at [6.10]. Sachman, EiC 22 December 2016 at [7.9].
[60] Morgan, EiC 22 December 2016 at [6.10].
[61] Selwyn, EiC dated 22 December 2017 at [8.5(b)].
[62] Transcript at 119.
[63] Transcript at 77.
[64] *Dart River Safaris Ltd v Kemp* [2001] NZRMA 433 (HC); *Southern Alps Air Ltd v Queenstown Lakes District Council* [2008] NZRMA 47.
[65] *Cammack v Kapiti Coast District Council* (EC) W069/09; *Dome Valley District Residents Society Inc v Rodney District Council* (EC) A099/07; *Director of Civil Aviation v Planning Tribunal* [1997] 3 NZLR 335.

on the environment being a matter which the decision-maker is to have regard (s 104). The wording in s 171(1) is different and, subject to Part 2, we are to consider the effects on the environment of allowing the requirement having particular regard to the matters stated in ss (1)(a)-(d).

[50] There is no bright line distinguishing between matters that may be properly regarded as "the effects on the environment of allowing the requirement" under s 171 and the consenting process under s 104 which is to consider "actual and potential effects on the environment of allowing the activity". Where we draw the line in this case is at the task specific safety cases. While both resource consent applications and notices of requirement are broadly concerned with proposed works, NORs have two key distinguishing features that are relevant to the scope of our deliberations.

[51] The first feature is that the final layout and design of the work may be a matter left for a future outline plan (s 176A). We do not recollect RPL having previously taken issue with the proposal being subject to an outline plan, and this is the subject of agreed conditions. The point being the content of the outline plan will overlap with the subject matter of the task specific safety cases, and this work has not yet been done.

[52] The second feature concerns the effect of including a designation in a district plan; namely the exemption of the work from the restrictions that otherwise apply to the use of land under s 9(3). Section 176 is enabling of the use and development of land, as it exempts the requiring authority's work from land use controls in the District Plan. "Use" in relation to land is defined in the Act.[66] The matters to be addressed in the task specific safety cases are only indirectly (if that) concerned with the use of land, and would not typically be the subject matter of rules in a district plan (for example, the timing and sequencing of work or the bringing into service of the new facilities). In this case the court has closely examined the proposed use of land and the effects, including on safety, arising from the use of land for activities such as the taxiways, FATOs and buildings. Our approach to safety is informed by the Act, including s 171 and Part 2.

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[66] use, —
(a)means in ss 9, 10, 10A, 10B, 81(2), 176(1)(b)(i), and 193(a), means—
(i) alter, demolish, erect, extend, place, reconstruct, remove, or use a structure or part of a structure in, on, under, or over land:
(ii)drill, excavate, or tunnel land or disturb land in a similar way:
(iii)damage, destroy, or disturb the habitats of plants or animals in, on, or under land:
(iv)deposit a substance in, on, or under land:
(v)any other use of land; and
(b)in sections 9, 10A, 81(2), 176(1)(b)(i), and 193(a), also means to enter onto or pass across the surface of water in a lake or river.

We have been careful to consider not only the risk to public safety arising out of the use of land, but to be satisfied that QAC can still achieve its objective for the NOR subject to any future restrictions that may be imposed to adequately mitigate those risks.[67] We have drawn the line at the point of mitigating any residual risk as that is an operational matter, only indirectly related to the use of land, for QAC and the Director of CAA.

[53] The furnishing of the task specific safety cases is not a complete answer to RPL's submission that we are to evaluate the "outcomes" under s 171(1)(c). As we have previously observed, risk is managed within a known context. The management of risk responds on an ongoing basis to changes within the environment. Evidently what is meant by "task specific safety case" is not defined in the Civil Aviation Act or its Rules. However, the Advisory Circular AC 139-15 attempts to draw a distinction between an aeronautical study and a task specific safety case, stating that aeronautical studies should be viewed as providing "a holistic view of an aerodrome's operational environment e.g. the macro perspective as compared to a safety case study which is a task specific document e.g. the micro view."

[54] RPL has not sought a judicial review of the Director's decision, but nevertheless is highly critical of the same. While RPL's witnesses would have preferred to see risk exhaustively addressed in the Aeronautical Study, it is not a purpose of an aeronautical study to address the micro level management of risk (although we accept in individual cases this may be done). The approach taken by QAC is supported by AC 139-15.

[55] Mr Clay explains in his evidence[68] that the safety of the new aerodrome layout and how it is intended to be operationalised by QAC has been assessed through the Aeronautical Study which the CAA has deemed acceptable. The task specific safety cases will ensure that the development of the airport is implemented and made operational in a safe way. He says that a task specific safety case is the mechanism the CAA uses to ensure compliance with the Aeronautical Study and to have progressive overview of QAC's management of risk. We accept Mr Clay's statement that the management of risk inherently needs to be progressive, with continual

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[67] See, for example, discussion in [2015] NZEnvC 222 at [157]-[158]. A similar approach was taken by Judge Dwyer in *Cammack and Evans & ors v Kapiti Coast District Council* (EC) W069/2009 at [41] et ff, and in particular the limits to jurisdiction discussed at [90]-[91]. In that case Judge Dwyer was considering a plan change. The court held that there are limits to the court's jurisdiction under the former section, s 9(8). Declining to introduce certain rules outside the scope of s 9(8) in the plan change left operational controls for the airport authority.

[68] Clay, EiC 10 February 2017 at [10]-[12].

assessment, review and feedback, especially as elements of the proposal are sequenced and constructed.[69]

[56] It is not suggested by RPL or by its witnesses that the Director has failed to take into account a relevant CAA rule (or the converse). RPL aviation consultant, Mr Morgan, expressly acknowledged the proposal was deemed acceptable under the relevant rules, the majority of which are design elements that have a material effect on the final design.[70] While RPL's witnesses are concerned that the Aeronautical Study does not achieve its purpose and provide a holistic view of the aerodrome operational environment, their concerns were addressed through the Director's guidance that a detailed safety case will need to be provided for each stage of the introduction to service of the proposed airport changes.[71] We conclude that the Director has not gone through a simple tick the box exercise but has considered the Aeronautical Study in accordance with AC 139-15 and Civil Aviation Rules pt 139.

[57] We take notice of the powers and functions of the Director of Civil Aviation which include enforcing statutory and regulatory requirements of the Civil Aviation Act. It is a purpose of the Civil Aviation Act to promote aviation safety through the rules of operation and assigned responsibilities and auditing participants' performance against the prescribed safety standards and procedures. The Court of Appeal recently noted this function is likened to oversight responsibility, rather than one which requires participation in operational issues which are the province of the airline operators.[72] We anticipate there is an ongoing requirement to produce task specific safety cases as part of the concomitant obligation on QAC as the holder of an aerodrome operator certificate to continue to meet the standards and comply with the requirements prescribed for aerodrome certification under the rules (pt 139.101).

[58] Finally, we do not accept RPL's mild suggestion that the Director's acceptance of the proposal was conditional upon the presentation of the task specific safety cases. That submission is not open to us on our reading of the decision.[73] While Ms Selwyn seems to revisit that argument by suggesting that the safety cases may have a bearing

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[69] Clay, rebuttal 10 February 2017 at [11.6]
[70] Morgan, EiC 22 December 2016 at [5.1]-[5.2].
[71] Selwyn, EiC 22 December 2017 at [6.5]. Morgan, EiC 22 December 2016 at [5.10].
[72] *New Zealand Air Line Pilots' Association Industrial Union of Workers Inc v Director of Civil Aviation* [2017] NZCA 27 at [14]-[17].
[73] CAA letter dated 30 September 2016.

on the amount of Lot 6 required,[74] we found in the last decision there is no evidence to support this proposition. Nothing we have heard during this hearing has changed our view on this.

Outcome

[59] In the Separation Distance decision the court declined to make a final determination because we were concerned that if QAC could not use the land for the works the designation would not be reasonably necessary for achieving the objectives for which the designation is sought (ss 171(1)(c)). The Director's confirmation that QAC will remain compliant with its aerodrome operating certificate answers our question in the affirmative: the proposal can be operationalised. How this is to be achieved, in micro terms, will appropriately be the subject matter of the task specific safety case(s) in accordance with the Civil Aviation Act and its rules.[75]

[60] For the reasons that we have given on this occasion we do not require QAC to furnish the court with the task specific safety cases.

[61] Pursuant to s 171(1)(c) we find that the works and designation are reasonably necessary to achieve the requiring authority's objective.

Red Oaks Drive

[62] The proposed GA Precinct is to have separate road access from the aerodrome terminal. Determining how that is appropriately provided is complicated by existing road conditions and the timing of planned improvements. QAC advises that Red Oaks Drive has (still) not been extended to provide for a connection to the boundary of the area to be designated. This was not disputed by RPL. The area of land required for access from Hawthorne Drive to the General Aviation Precinct is therefore to be included within the area to be designated. Condition B(1)–(5) in the court's 2013 decision is confirmed.

[74] Selwyn, EiC 22 December 2016 at [8.5(b)].
[75] We note Dr Somerville addresses the Safety Case in terms of "how" risk is to be managed at Transcript 13.

Activities and lapse period for the designation

[63] Condition 1 contains a statement of the activities which are permitted within the area to be designated. The fact that the designation will be included in the District Plan does not mean that the implementation of these activities will proceed or that QAC has a timeframe in mind.

[64] Mr Clay, for QAC, would not be drawn on a statement contained in the Aeronautical Study that QAC anticipates the Code C taxiway to be built within five years and prior to the development of the GA Precinct. We remind QAC under s 184 RMA the designation will lapse after the expiry of five years unless one of ss (1)(a)-(c) applies.[76]

Part 2

[65] RPL argues that as there is a conflict between the s 171(1)(b) and (c) considerations Part 2 should be used to resolve that conflict. Consequently the NOR should not be confirmed because it does not meet the objective of sustainable management.[77] We have not, however, found any conflict.

[66] Following the High Court decision of *New Zealand Transport Authority v Architectural Centre Inc*[78] (referred to as the *Basin Reserve* decision) the phrase "subject to Part 2" as it occurs in s 171 is a specific statutory direction to consider and apply Part 2 in making a determination on a designation. It follows Part 2 is relevant, whether or not there are conflicting assessments under ss(1)(a)-(d).[79]

[67] Mr Casey submits the law is now less clear with the recent High Court decision of *Davidson Family Trust v Marlborough District Council,*[80] an appeal against a decision declining resource consent. He submits that Justice Cull having noted the similarities between ss 171 and 104 RMA in that they both list matters "subject to Part 2", does not explain why in *Davidson Family Trust* she adopts an interpretation of "subject to Part 2" that is inconsistent with the *Basin Reserve* decision. We suggest the observation made in *Basin Reserve* as to the different role that planning documents may play in RMA proceedings (in that case comparing and contrasting NOR and plan change

[76] [2012] NZEnvC 95 at [33]-[36].
[77] Somerville, submissions 10 February 2017 at [2.56].
[78] [2015] NZHC 1991.
[79] At [112-7].
[80] [2017] NZHC 52.

proceedings) may be pertinent to the interpretation taken in *Davidson Family Trust* which was considering an application for resource consent. In this case although we are to pay particular regard to the planning documents they do not determine the outcome of a notice of requirement; per *Basin Reserve.*[81]

[68] We are aware that *Davidson Family Trust* has been appealed to the Court of Appeal but regardless of the outcome we distinguish it on the basis that it is a resource consent appeal and deals with different provisions of the Act. We consider we are bound by the High Court decision of *Basin Reserve* since it is a designation proceeding.

[69] Ultimately the exercise of any decision-making discretion under s 149U(4) RMA is to be undertaken in a principled manner. The discretion is to be exercised for the purpose that it was conferred and unless the context clearly indicates otherwise, under the RMA this will be for the purpose of promoting the sustainable management of natural and physical resources.

[70] QAC's objective is to "provide for the expansion of Queenstown airport to meet projected growth while achieving the maximum operational efficiency as far as possible." In order to achieve that objective, operations at the aerodrome must, as "far as possible," be both safe and efficient.

[71] We conclude with the words of Whata J. The court, like QAC, cannot be bound to give effect to RPL's expectations where to do so is inconsistent with the requirements of s 171. Regrettably for RPL we have found the use of QAC land would not achieve the statutory criteria and achieve the statutory purpose.[82]

[72] The matter does not end there. We have reconsidered our findings in light of the directions in Part 2, including the further planning evidence produced during the Separation Distance hearing (which we said we would return to in the final decision).[83] Having done so we are satisfied that the NOR, subject to the conditions we approved earlier, will promote the sustainable management of natural and physical resources.

[81] *New Zealand Transport Authority v Architectural Centre Inc* at [117].
[82] [2014] NZEnvC 244 at [103].
[83] [2015] NZEnvC 222 at [34].

Admissibility of evidence called on behalf of RPL

[73] Finally, the Evidence Act 2006 sets out the fundamental principle that all relevant evidence is admissible[84] in a proceeding (s 7(1)). Evidence that is not relevant is not admissible in a proceeding (s 7(2)). Evidence is relevant in a proceeding if it has a tendency to prove or disprove anything that is of consequence to the determination of the proceeding (s 7(3)).

[74] While the Environment Court is not bound by the rules of law about evidence that apply to judicial proceedings (s 276(2) RMA), and may receive anything in evidence that it considers appropriate to receive (s 276(1)(a) RMA), that does not mean that it has no regard for the Evidence Act and that "anything goes".[85]

[75] We have carefully considered the evidence Mr Douglas Sachman, Mr Eric Morgan and Ms Heather Selwyn called on behalf of RPL. To the extent that each of them respond to evidence given by Mr Michael Clay, General Manager, Operations and Safety for QAC, the evidence is relevant and is admitted.[86]

[76] Our present enquiry does not necessitate an examination of alternative sites. We have found in earlier decisions that QAC gave adequate consideration under s 171(1)(b) RMA to locating the Code C taxiway together with a proposed new General Aviation (GA) Precinct to the north of the main runway.[87] The evidence on this issue is not relevant to any issue before the court, and we have not had regard to it.

[77] The balance of the evidence addresses the Aeronautical Study and in particular the absence of a risk assessment supporting detailed design of the aerodrome. This is relevant to the issue whether the works can be operationalised, and is admitted. Having had regard to the evidence, we place little weight on the opinions expressed by RPL's witnesses criticising the Aeronautical Study. The Study has been accepted by the Director of CAA, and RPL has not sought a judicial review of his decision. Second, and notwithstanding the witnesses' criticism, any residual safety risk is able to be addressed in the task specific safety cases.

[84] Subject to the two exceptions stated in s 7(1) of the Evidence Act.
[85] *Re Meridian Energy Ltd* [2013] NZEnvC 59 at [60].
[86] Mr Clay addresses the issue presented by the court, namely QAC's asserted inability of progress the intended works until the designation is approved by the court.
[87] [2015] NZEnvC 222 at [229] and [252].

RPL memorandum filed after the reserve of the court's decision

[78] After we reserved this decision RPL filed further submissions addressing the recent Court of Appeal decision *New Zealand Air Line Pilots' Association Industrial Union of Workers Inc v Director of Aviation* [2017] NZCA 27 and attaching a press release concerning QAC's purchase of land adjacent to Wanaka Airport.[88] QAC objected as RPL did not seek the prior leave of the court and was concerned that RPL was endeavouring to delay the release of this decision and distract the court from the matters in issue.[89] While it does not say RPL's conduct amounts to an abuse of the court's process, it has throughout these proceedings raised concern that RPL was prosecuting its interests without due regard to the matters referred back for reconsideration by the High Court and to the directions of this court.

[79] RPL should have sought prior leave of the court before filing its memorandum. That said, we have had regard to RPL and QAC's memoranda as, first, the earlier judgment of the High Court ([2016] NZHC 1528) was the subject of submissions and, second we heard evidence concerning the Wanaka land purchase. The evidence before us does not support an inference that the requirement for Lot 6 is no longer reasonably necessary as QAC has an alternative site for GA at Wanaka Airport. RPL also submits that the Director needs to carry out an Aeronautical Study on all aspect of relevant airport layout safety issues. We find this is what QAC has done (with an emphasis on "relevant" and of the Director's acceptance of the Study). The Court of Appeal decision is not authority for the proposition that the task specific safety cases must be included as part of an aeronautical study.

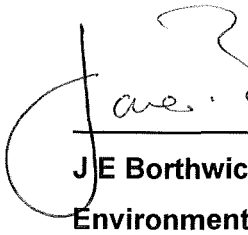
Decision

[80] Pursuant to s 149U(4) RMA we confirm the notice of requirement to extend Designation 2, subject to the conditions attached to this decision and approved by the court in its decision [2013] NZEnvC 95. The extent of the designation is shown on Figure 1 attached. For completeness, we confirm that the designation is to have a lapse period of five years from when it is included in the District Plan (s 184).[90]

[88] Dated 17 March 2017.
[89] Dated 21 March 2017.
[90] [2013] NZEnvC 95 at [36].

[81] Costs are reserved, but not encouraged. Any application for costs is to be filed by 21 April 2017, with replies by 5 May 2017.

For the court:



J E Borthwick
Environment Judge

Annexure A
Conditions of the extension to designation 2

A. Purpose of the Designation

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

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

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

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

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

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

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

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

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

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

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

C. Approved Landscape and Design Conditions

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

Outstanding Natural Landscapes:

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

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

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

(iii) Clustering of buildings.

Landscaping:

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

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

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

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

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

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

Buildings and Signage:

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

(i) avoiding linear arrangements of buildings where practicable;

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

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

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

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

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

(vii) the identification of signage platforms on buildings.

Infrastructure:

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

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

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

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

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

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

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

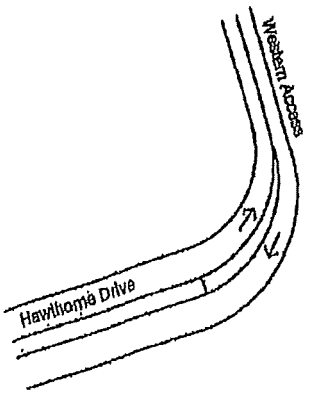


Figure 1

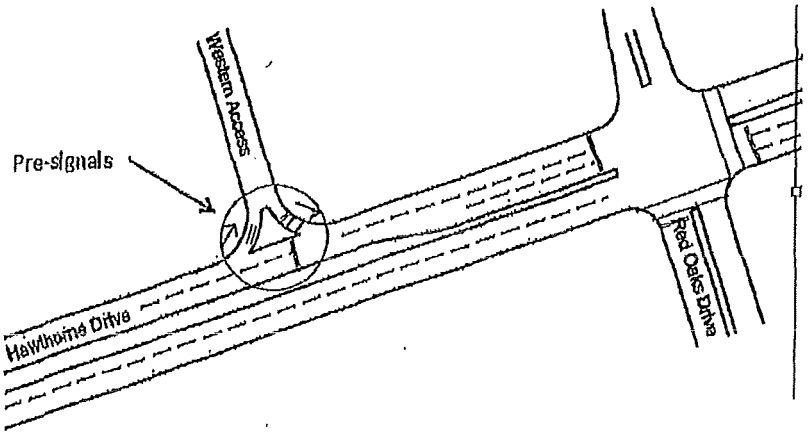
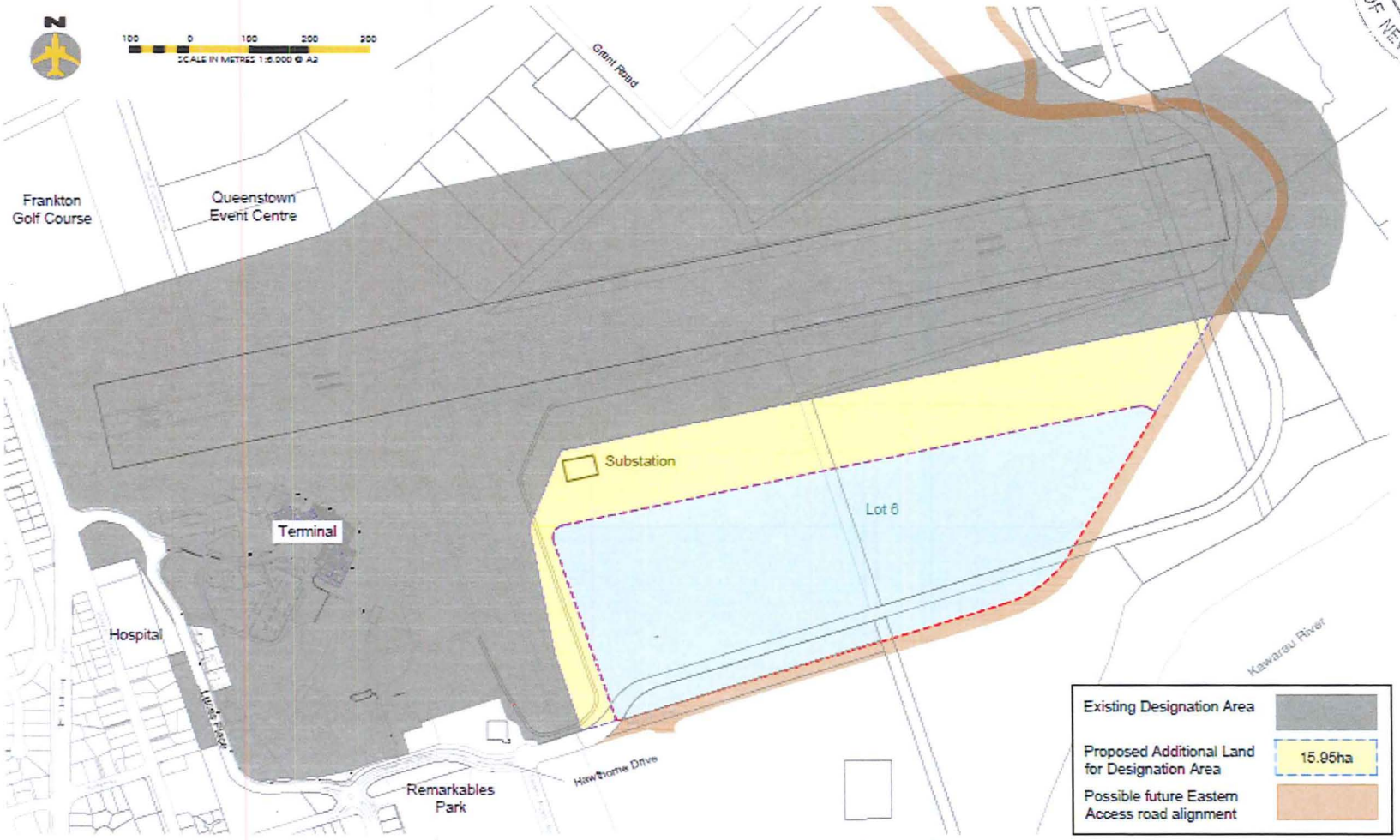


Figure 2

Traffic Management Conditions



THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

Annexure B