

ORIGINAL

BEFORE THE ENVIRONMENT COURT

Decision No. A 023/2009

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal against decision of Requiring Authority under section 274 of the Act

BETWEEN VILLAGES OF NZ (MT WELLINGTON) LTD

(ENV-2007-AKL-000526)

Appellant

AND

AUCKLAND CITY COUNCIL

Respondent

Hearing at: Auckland on 3, 4, 5 and 6 November 2008

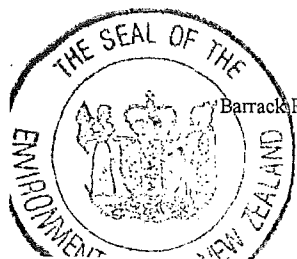
Court: Environment Judge L J Newhook (presiding)
Environment Commissioner H A McConachy
Environment Commissioner R M Dunlop

Counsel: Ms H Ash and Mr G Lanning for the Auckland City Council
Mr R Brabant for Villages of New Zealand (Mt Wellington) Limited

Issued: March 2009

INTERIM DECISION OF THE ENVIRONMENT COURT

- A. Appeal refused except to the extent that the respondent is required to modify some proposed traffic and parking conditions and amend the Concept Plan to better manage the effects of tree clearance.
- B. Costs reserved but applications are not encouraged.



Introduction

[1] The appeal is against a Notice of Requirement (NOR) issued by the Auckland City Council (council) to designate land for a proposed park at 30 - 44 Barrack Road, Mount Wellington, in Auckland City. The 2.9 hectare site is owned by the appellant (VONZ), which has land use consent to use the land for a retirement village. It was the council's case that the proposed sports fields are required to meet the recreational needs of a growing population and that the relevant statutory tests are satisfied. The appellant sought that the NOR be cancelled. It argued that the council has misjudged at least some of the park's likely effects on the environment and the site is better suited to the activity for which it holds consent.

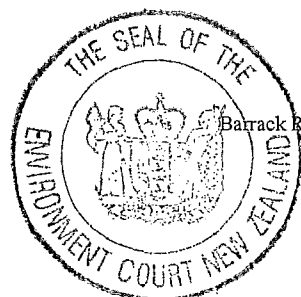
[2] No third parties participated in the hearing.

The Notice of Requirement

Proposed Work

[3] The NOR was publicly notified in September 2006 after the council had confirmed its objectives for the work and made an assessment of alternative sites and methods. The proposal is to meet a shortfall in playing fields as demonstrated by an analysis undertaken on behalf of council and feedback from soccer organisations. The East Auckland/Ellerslie district in particular is said to be experiencing a serious shortage of playing venues and as a result Ellerslie AFC, which operates in the area, is unable to meet current demand for membership. Key features of the proposed work, as illustrated in a concept plan attached to evidence called by the council, include:

- a) Two full sized soccer playing fields (60m x 90m) developed with a sand base capable of also being used as a "roll out" seasonal cricket ground with a 50m boundary;
- b) A three-quarters sized soccer training field (50m x 40m) to be utilised primarily for training on mid-week evenings.
- c) Toilet facilities;



- d) A childrens' playing area;
- e) A 70 space on-site car parking area; and
- f) Landscape planting.

Conditions proposed

[4] It is proposed that the NOR be subject to a number of conditions. These generally deal with the relevant matters and an outline plan of works is to be lodged prior to work commencing (s.176A). One way entry and exit points are proposed towards the northern and southern ends of the Barrack Road frontage. A centre line is to be marked in Barrack Road beginning at the Victorian Church (approximately 65m north of the subject site) and tying in with the existing pedestrian crossing to the south. On the eastern side of Barrack Road a no stopping line (NSAAT) is to be marked across the frontage of the subject site extending north past the Victorian Church for a total distance of some 180 – 190m. Mr Innes, a traffic engineer for the council, deposed that 114 parking spaces would be available for the sports fields between the Ellerslie -Panmure Highway and Banks Road; 70 on-site, 26 on the western side of Barrack Road and 18 on the eastern side. The outline plan is to include a Traffic Assessment as the basis for a Traffic Management Plan (TMP) prepared in consultation with Barrack Road residents and any other affected neighbourhood. Amongst other things, the TMP is to provide for upgraded pedestrian facilities in the vicinity of the site. The proposed 12 year implementation term was not disputed (s.184A(2)(c)). Because of the relief that VONZ sought, the details of few of the conditions were in contention. Those which were, are identified subsequently.

Council's Objectives

[5] The council's objectives for which the designation is sought are given in the NOR¹ as:

To increase the availability of active recreation facilities (sports fields) in the broader Ellerslie/Mt Wellington/St Johns area.

and, in addition, the following in respect of sports fields:

¹ NOR, 5 September 2006 page 4.



Acquire appropriately sized, located, undeveloped, contoured and accessible land for the future development of sports fields, within recognised areas of need.

[6] Ms C A Stewart, an open space planner called by the council, suggested a somewhat different set of objectives in evidence², namely:

- a) Provision of an open space with playground and toilet etc and passive use areas to meet the local community's need for access to open space.
- b) Provision of sports fields (cricket summer, soccer in winter, training and informal play all year round) to meet the active recreational needs of the community.
- c) Provision of open spaces which enable the local community to gather and enjoy their local environment, reducing the need to travel further a field [sic] for these purposes.
- d) Minimising displacement of occupants, residents and businesses.
- e) Facilitating opportunities to develop partnerships with local educational institutions and obtain a connection between the site and Malone Road Reserve (subject to discussions with affected parties)."

Ms Stewart cited the second NOR objective above as a "further relevant objective" but strangely made no reference to the first NOR objective in her evidence.

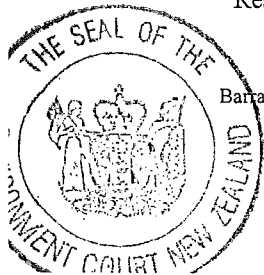
[7] Commenting on a perceived inconsistency as between council's NOR and the evidence, Mr Brabant submitted that the NOR establishes council's objective[s] and "*...it is not capable of amendment by a witness ...*". He contended that the position was analogous to a resource consent application in the sense that what you ask for is what you can expect to get.

[8] Ms Ash made two responses when requested by the Court to explain the apparent inconsistency:

- There is no statutory requirement that the council's objectives be set out in its NOR, including in Form 20³. (Our comment is that while this may be correct

² Ms Stewart, EIC para 3.2.

³ Resource Management (Forms, Fees and Procedure) Regulations 2003.



in a narrow legal sense, we have difficulty with the proposition. Failure to include a requiring authority's objectives in the Form 20 section on why "*the public work and designation (or alteration) are reasonably necessary for achieving the objectives of the territorial authority ...*" will invariably render the section nugatory. Whilst possibly not fatal⁴, it must certainly be good practice as Ms Ash ultimately conceded, for a requiring authority to do so).

- That "*...the objectives in the NOR are the primary objectives for this work*". The inference being that the additional objectives given by Ms Stewart are valid secondary objectives. In support of that proposition, Ms Ash provided a copy of a 2 August 2006 "decision" of the Requiring Authority which she submitted established that the Authority's objectives were as given by Ms Stewart. The "decision" to which Ms Ash referred is headed "Confidential Memorandum" and records, amongst other things, that at its 2 August 2006 meeting the Arts, Culture and Recreation Committee of council resolved:

"[Item] C. That the ...Committee endorses the statement of the **council's objectives**, the analysis of the relevant options and the consultation process contained in this report" [emphasis added].

[9] We recognise Item C as a bona fide resolution of the council on its objectives for which the designation is sought and note it was endorsed by subsequent, related resolutions of council's Planning and Regulatory Committee (7 August 2006) attached to Ms Ash's Reply. The resolution in Item C arose from the Arts, Culture and Recreation Committee's consideration of an officers' report entitled Notice of Requirement – Open Space Acquisition dated 24 July 2006, which under the heading "Council's objectives – Acquisition of Barrack Road site," has the following:

The proposed acquisition of 30 – 44 Barrack Road is ideally suited to meet a major shortfall in demand for soccer fields in the local area and its acquisition is consistent with objectives in the Sports Facility Strategy as outlined at Appendix D⁵. As discussed above, Barrack Road's acquisition is also consistent with new policy currently being developed in the open space strategy and the sport and recreation strategy.

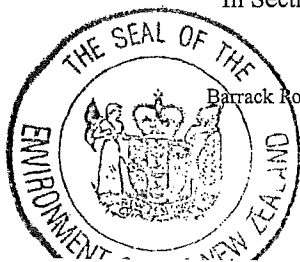
In terms of other benefits, the provision of sports fields on the Barrack Road site will assist in achieving the [five] following [matters]:

...

[10] The five matters which follow the last sentence of the preceding quote, replicate Ms Stewart's evidence ((a) – (e) at paragraph 6 above) and are accepted as valid council

⁴ Refer Bungalo Holdings Limited v North Shore City Council, A052/01 at paragraph 75.

⁵ In Section 3.10 References, Appendix D is given as "Objectives from the Sports Facility Strategy".



objectives. We also find that the introduction to the five matters generally aligns with the first of the objectives given in the NOR and validates it⁶. The second objective in the NOR does not come from the Objectives Section of the 24 July 2006 council report. However the report has an Appendix C: Options Available to Meet Sports Field Demand with a heading which is the same as the second NOR objective. While the latter path affords a less than perfect audit trail we accept, in light of the broad nature of council's resolutions⁷, that the words in question can be construed as a valid objective and find accordingly. We also acknowledge on balance, albeit with mild reservation, Ms Ash's submission that a person reading the NOR would have been put on notice that there was an accompanying AEE⁸ and, if sufficiently motivated, found appendicised a concept plan showing the full range of planned facilities.

[11] We have spent some considerable time on this aspect, which reflects two things. First, that the council speaks through its resolutions (not counsel or witnesses) and, secondly, the importance which the Court places on identifying a requiring authority's objectives for the purposes of performing our function under s.171(1)(c).

[12] The final aspect of this section of the decision about the NOR is that the council proposes that an appeal by one of its "operational" arms on the permitted height of lights for training purposes be settled by consent⁹.

The Parties' Positions

[13] Mr Brabant sought that the NOR be cancelled but made no plea on whether the work and designation are reasonably necessary for achieving council's objectives (s.171(1)(c)). He accepted that:

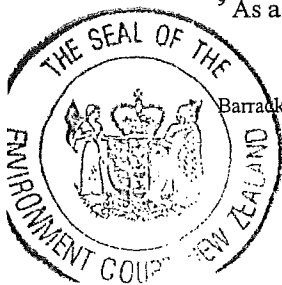
- A comparison of the relative merits of the proposed work and consented retirement village is not a valid test under s.171, and
- Widening the carriageway within Barrack Road was a potential way to mitigate traffic and parking effects.

⁶ There is an express reference to a shortfall in sports fields in the Ellerslie/St Johns/Mt Wellington areas in Section 3.3: Supply Gap of the 24 July 2006 officers' report.

⁷ Council Arts, Culture and Recreation Committee Resolution, 2 August 2006, Items B, C and D.

⁸ For example NOR page 4.

⁹ As advised by Ms Ash, Opening para 2.7.



[14] The prospective intensity of reserve use and related traffic effects were amongst the primary matters at issue. In response to evidence and questions - both in cross examination and from the Court - the council proposed the following amended conditions to manage potential adverse effects in the preceding areas¹⁰:

5A. Within the first April to August period following opening of the sports fields to competitive use, the requiring authority shall review the effectiveness of clauses v, vi, and vii of the Traffic Management Plan referred to in Conditions 5(a) and 5(b) in managing the road environment. The review shall be undertaken by a suitably qualified independent traffic engineer¹¹ and shall include the following:

- (a) Monitoring of the traffic environment on Barrack Road and the immediately adjacent road network to determine:
 - (i) Surveys of the level of on-street parking demand created by the sports fields;
 - (ii) Whether the level of parking demand is having a significant effect on the road environment, and in particular on traffic safety during the peak demand of the sports fields (winter season on Saturday between 8.00am and 12.00).
- (b) In the event that significant adverse effects are identified, the traffic engineer shall recommend measures to address any such effects. This may involve modifications to the measures outlined in clauses v, vi and vii of the Traffic Management Plan referred to in Condition 5a and 5b or other measures such as the need to widen the road carriageway (within the road reserve).

The requiring authority shall consult with the residents of Barrack Road and any other affected properties on the recommended traffic measures.

Within three months of the monitoring being completed, the results of the monitoring, including the recommendations of the traffic engineer, any other mitigation (if necessary) and evidence of the consultation undertaken shall be submitted to the Resource Consents Monitoring Leader who must be satisfied that either:

- (i) There are no significant adverse effects on the road environment created by the parking demand; or
- (ii) Any significant adverse effects will be addressed within a reasonable timeframe.

¹⁰ Ash, Closing para 7.1 and Annexure B.

¹¹ op cit line 6 - In Reply Ms Ash submitted this should be "someone who has not been involved with the case".



5B. The requiring authority will manage the use of the fields to ensure that no more than four competitive games of soccer (or competitive sport with equivalent number of players) are played at any one time.”

[15] In reply to a question from the Court Ms Ash advised that “... *in principle the council does not oppose road widening, especially where there is a demonstrated need*” and noted that, in the event of monitoring showing significant adverse effects, widening is given as a potential mitigation measure in proposed Condition 5A. It was also her position, relying on the evidence of Messrs Gallagher, Innes and Parker, that council was able to effectively implement proposed Condition 5B through its fields booking system.

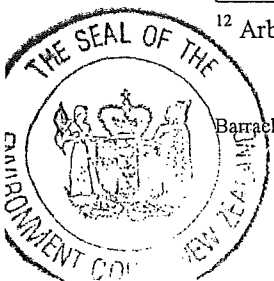
The site and Surrounds

[16] The subject site is zoned Residential 6a in council’s district plan. It is somewhat irregular in shape having a 75m frontage to Barrack Road and a 200m rear (eastern) boundary. The site falls relatively steeply over a short distance from the road frontage before flattening out over much of its balance area. No physical improvements of consequence exist apart from boundary fences. Much of the site was used in the past as a private sports field by an adjacent business.

[17] There are a number of fine trees on the property. An arborist’s report¹² submitted in evidence identifies some 59 individual specimens in five different areas. None are scheduled in the district plan but we apprehend from the report that all those identified are subject to the plan’s general tree protection rules. Twenty-five trees are recommended for removal to facilitate the proposed work, including a number on the south western margins of Field 1 in (deemed) Area 2. A 10m wide landscaping easement extends some 156m along the site’s eastern boundary. The dominant tenement is in favour of the adjoining business site. The easement generally comprises (deemed) Area 3 with 8 of the 20 identified trees on the eastern margins of Field 2 recommended for removal.

[18] Barrack Road is classified in the district plan as a “local road”. It runs parallel to the Mount Wellington Highway (a regional arterial) one block to the west, and connects the Ellerslie - Panmure Highway (regional arterial) at its northern end to Penrose Road (district arterial) at its southern end. On the opposite side of the Ellerslie Panmure

¹² Arbor Solutions Limited report dated 1.9.2006 appended to Mr Kensington’s EIC as Annex 1.



Highway from Barrack Road and slightly offset is Lunn Avenue, which is another district arterial. Banks Road runs between Barrack Road approximately 100 metres south of the subject site and the Ellerslie Panmure Highway. Banks Road has an 8.7m wide carriageway. Barrack Road has a 9.3.m wide carriageway, a footpath and berm on both sides and a pedestrian crossing approximately 45m south of the subject site. NSAAT lines are marked on either side of the crossing on alternate sides of the Road and on its western side at the junction with the Ellerslie-Panmure Highway.

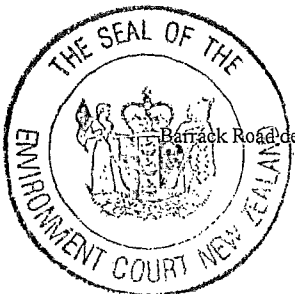
[19] In addition to its Barrack Road frontage, the site has pedestrian access via two other routes:

- A walkway which runs from Barrack Road to the site's southern boundary and Panmure District School.
- An area of open space that runs from Malone Road to much the same point being "*....partly Crown owned gazetted for local purpose (road)*".

[20] Mr B L Hall, a traffic engineer called by the appellant, presented the following traffic survey data (May 2008) for Barrack Road north of Banks Road. Flows exceed those for a local road (typically 1,000 but up to 5,000 vpd) and fall into the collector category (3,000 to 10,000 vpd).

Direction	Weekday	Saturday	Sunday	Weekday am peak hour	Weekday midday peak hour	Weekday pm peak hour
Northbound	2,343	2,251	1,845	193	183	274
Southbound	2,996	2,564	1,994	377	229	262
TOTAL	5,339	4,815	3,839	570	412	536

[21] Mr Hall also gave council data (November 2004) for Barrack Road south of the site in the vicinity of McCracken Road, which showed higher flows. For example, weekday and Saturday total flows of 8,146 vehicles and 6,214 vehicles respectively and a weekday am peak hour total of 826 vehicles. Mr Hall produced an hourly traffic flow profile along the subject section of Barrack Road. For Saturday mornings the profile shows flows building from approximately 50 vehicles per hour at 8am to a peak of approximately 400 per hour around noon.



[22] The crash data for Barrack Road between the Ellerslie - Panmure Highway and Banks Road includes two "incidents" where parked vehicles were hit by through traffic and Mr Hall accepted that, overall, there are no existing traffic safety problems on the road.

[23] A survey conducted by Mr Innes on a number of days showed existing parking demand on Barrack Road between the Highway and Banks Road "*in the order of a maximum of 8 vehicles*" which Mr Hall confirmed was specifically the case on Saturdays.

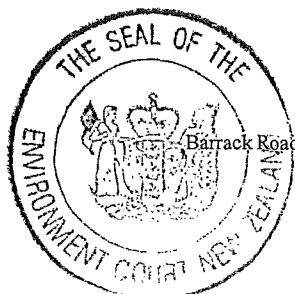
[24] Business 4 zoned activities are established on much of the land adjoining the site's eastern and northern boundaries. Along the balance of its northern boundary and to the south and west are Residential 6a zoned properties. The site has a relatively short common boundary with the Panmure District School on its south eastern corner. A significant sized church (the Victorian) is located on the opposite side of Barrack Road to the north. To the west (550m) is Thompson Park accessed via Banks Road and a cluster of business properties in the block between Banks Road and the Ellerslie Panmure Highway.

[25] Overall we consider the Barrack Road neighbourhood to have a residential character.

The Law

[26] As a requiring authority (s.166) the council may notify a requirement for the designation of a public work within its district for which it has financial responsibility (s.168A). When determining an appeal against such a NOR the Court is directed by s.174(4) to "*have regard to the matters set out in s.171*". That section provides as follows:

- (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2 consider the effects on the environment of allowing the requirement, having particular regard to -
 - (a) any relevant provisions of -
 - (i) a national policy statement:
 - (ii) a New Zealand coastal policy statement:



- (iii) a regional policy statement or proposed regional policy statement;
- (iv) a plan or proposed plan; and
- (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if –
 - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
 - (ii) it is likely that the work will have a significant adverse effect on the environment; and
- (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
- (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

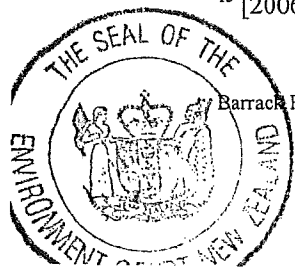
[27] Section 174 further provides that the Court may confirm or cancel a requirement or modify it in such manner, or impose such conditions, as the Court thinks fit (s.174(4)).

[28] As to “effects on the environment”, an issue arose during the hearing about the extent to which we should be cognizant of important findings of the Court of Appeal in *Queenstown Lakes District Council v Hawthorn Estates Limited*¹³, that is, whether we should consider the appellant’s retirement village consent as part of the “future environment” (loosely termed). The question was initially raised by Mr Brabant in his opening, and Ms Ash responded in her Reply. At Mr Brabant’s request, leave was granted for counsel to confer after the hearing and to use their best endeavours to file an agreed submission. Failing that, leave was granted for separate submissions to be lodged. In the event substantial submissions were filed by both counsel.

[29] In summary, it was Mr Brabant’s case that the Court is required to assess the effects on “the environment” of allowing the Requirement and that the term “environment” must be interpreted as determined by the CA in *Hawthorn*. More particularly, Mr Brabant contended that:

- The definition of “effects” (s.3(c)) requires consideration of effects arising over time.

¹³ [2006] NZRMA 424.



- The respondent failed to consider the appellant's unimplemented retirement village consent and in so doing overlooked the retirement village as part of the environment that would be affected by upholding the NOR. Our attention was drawn especially to the following passage in *Hawthorn*¹⁴:

In our view, the word "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity [sic] under a District Plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time that particular application is considered, **where it appears likely** that those resource consents will be implemented. (emphasis added)

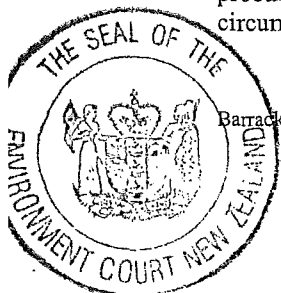
This statement of general principle was said to apply equally to consideration of the future environment of the subject site as to the environment beyond¹⁵.

- The adverse effects which upholding the designation would have on the consented retirement village and loss of accommodation for 242 older people, should be taken into account having particular regard to relevant provisions of the ARPS and Change 6 and the district plan that support the consented activity.
- It is irrelevant that the proposed sports fields would displace the consented retirement village and, by inference, prevent the village establishing. More particularly, Mr Brabant argued that s.178 (interim effect of NOR preventing incompatible work) is irrelevant in terms of gauging effects on the "future environment" because "*we are in that circumstance right now*" and until the appeal is determined there is an "*interim prohibition*". He contended that s.176 (effect of designation) is the critical provision because if the NOR were upheld the section would come into effect and prohibit VONZ from exercising its consent¹⁶.
- The retirement village consent is a relevant matter in terms of s.171(1)(d) – being "any other matter the [consent authority] considers reasonably necessary in order to [determine a NOR]".
- The consent and its place in a correct understanding of the "future environment" are relevant to the assessment of alternative sites (s.171(1)(b)) - including whether the subject site can properly be considered as vacant land.

¹⁴ From paragraph [84].

¹⁵ Brabant, Further Submission 12 November 2008 paras 9 and 11.

¹⁶ We do not accept that either s.176 or s.178 act as prohibitions. The opportunity to seek approval for work not contemplated by a designation indicates otherwise. However, we do accept in this case that it is probable the council would not consent to the retirement village, but that is a matter for the council and circumstances can change.



- The RMA does not preclude an application for resource consent being made and determined while land is subject to a designation. Giving effect to such a consent is another matter (s.178). Taking the existing unimplemented retirement village consent into account when considering the effect on the environment of allowing the designation does not “*provide an avenue for objectors to defeat designations by obtaining resource consents*”¹⁷ - it simply recognises that the unimplemented consent is part of the environment to be considered. This consideration is not fatal to the designation being approved but rather one of the matters the Court should consider.

[30] Ms Ash did not expressly address the matters raised by *Hawthorn* in opening, focusing instead on a Requiring Authority’s obligation to adequately consider (in this case) alternative sites for the work as opposed to alternative uses for a particular site, and the Court’s finding on related aspects in *Beda Family Trust v Transit New Zealand*¹⁸. Her submissions in reply and post-hearing submission however dealt with the subject in considerably greater detail, including:

- Acknowledgement that *Hawthorn* [paragraph 57] found when considering the actual and potential effects on the environment of allowing an activity “.....it is permissible, and will often be desirable or even necessary, for the consent authority to consider the future state of the environment, on which such effects will occur”.
- As there is no prospect of the sports park development and the retirement village both proceeding:

...it is not necessary to include the retirement village in the future receiving environment in order to properly assess the effects of the Notice of Requirement¹⁹.

- The current appeal is distinguishable from the *Hawthorn* findings because:
 - The retirement village is for an activity on the subject site and not an activity within the “receiving environment”
 - It is not “likely” that the retirement village resource consent will be implemented if the designation is confirmed²⁰.

¹⁷ As submitted by Ms Ash in Closing, para 9.2(f).

¹⁸ Decision A 139/2004

¹⁹ op cit para 9.2(d).



- Applying *Hawthorn* in the manner advocated by Mr Brabant would “... raise serious policy concerns as it would provide an avenue for objectors to defeat designations by obtaining resource consents for other activities on the subject site”²¹.
- That the proposed retirement village can properly be considered by the Court as part of its assessment under Part 2 RMA in which context it is relevant that “...the appellant will be compensated in accordance with the Public Works Act should [the] designation proceed”.

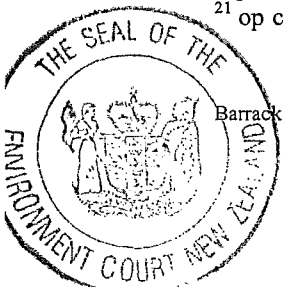
[31] We imply no disrespect in not summarising matters advanced in the further submissions of Ms Ash and Mr Lanning but have found that the most salient points were covered adequately in their earlier reply. In response to a question from the Court, Ms Ash said then that it was debateable whether the permitted baseline was relevant because the designation sought would override the district plan and site’s residential zoning (s.176(2)). In the event, we have not found it necessary to take that matter further.

[32] We accept, following *Hawthorn*, that we must consider the retirement village consent as part of the future environment for the purposes of s.171(1). The fact that the appeal concerns a NOR does not place it outside the findings in *Hawthorn*, which concerned the effect of the subject matter of resource consents on the future environment. Nor do we find it a point of difference that *Hawthorn* was concerned with an off-site future receiving environment whereas the focus here is on-site. It is highly relevant, however, that in *Hawthorn* the CA held that consideration should be given to whether a consent was likely to be implemented.

[33] In the present case, it must be a proper inference that the council has the intention of proceeding to establish and operate the sports fields should the NOR be confirmed, from the very promulgation of the NOR and the council’s resistance to this appeal. Indeed, its resolve in that regard was further tested shortly after the hearing in the following quite ironic fashion. Members of the Court became aware of media publicity about the council’s intention to retrench certain future public works, including some

²⁰ TOP pp 293 line 25 – p 294:- Ms Ash clarified this was not a reference to the interim effect of a requirement [s.178] but to the fact a retirement village and sports fields could not co-exist and for this reason [the case] differed from *Hawthorn*. The thrust of her submission, as we understand it, was that this aspect turned on whether the NOR was confirmed or not.

²¹ op cit para 9.2(f).



playing fields. Through the registrar we enquired of the council as to whether the present proposal was in that category, (so as to know whether our time would or would not be usefully employed in writing this decision!). Its response through counsel was that it wished to pursue the designation as the proposal was still to be funded by council. That information was not of course in the form of sworn evidence, but Mr Brabant did not seek to test or contest it.

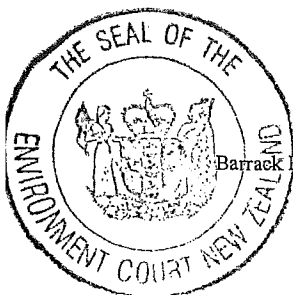
[34] We therefore find it unlikely that the retirement village consent would be implemented and for this reason do not take it into account when assessing the effects of the work provided for in the NOR, on the "future environment". We will however return to the unimplemented consent in our Part 2 assessment in respect of which Ms Ash accepted that it was relevant.

The Planning Instruments

[35] In this section we identify relevant aspects of the applicable instruments. We accept the evidence of the council's planning witness Ms T E Richmond that there are no relevant national policy statements or national environmental standards.

Regional Instruments

[36] Ms Richmond identified aspects of the Auckland Regional Policy Statement [RPS] which she considered most relevant, concentrating primarily on Proposed Change 6 – Giving Effect to the Regional Growth Concept and Integrating Land Use and Transport (decision version July 2007). She explained how the Change seeks to maintain and enhance various regional qualities while providing for sustainable development through planned and integrated intensification. Ms Richmond especially noted Urban Structure Strategic Policy 2.6.5.1, which provides that urban intensification is to occur in specified locations identified in Schedule 1A to the Change and Policy 2.6.5.1.5, which provides that such locations are to be developed for a range of activities - including residential and open space. Significantly, Schedule 1A (High Density Centres and Corridors) includes three areas (Mt Wellington Quarry, Mt Wellington/ Sylvia Park and Panmure) in reasonable proximity to the subject site. Ms Richmond also drew our attention to parts of the Change concerned with:



- Encouraging the efficient use of physical resources, including infrastructure and energy resources (Strategic Objectives 2.6.1.11) and managing resources in an integrated manner (2.6.1.13);
- Managing urban areas so public spaces make a positive contribution (Strategic Urban Design Policy 2.6.8(b)); improving the quality, quantity and distribution of public open space (2.6.8(g)); and safeguarding the health and wellbeing of communities (2.6.8(o)).

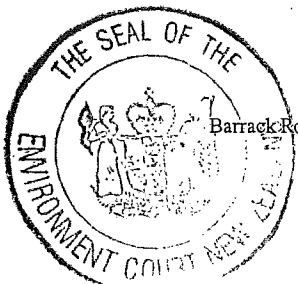
A key method for implementing the latter policy is Method 2.6.9.8 *“The ARC will implement relevant aspects of the Auckland Regional Open Space Strategy and encourage the Department of Conservation and other territorial authorities to do so”*. Ms Richmond explained how the Regional Open Space Strategy and its supporting technical publication recognise the pressure public authorities increasingly face in providing sufficient open space, including in Auckland City where it is anticipated the pressure will be greatest. She deposed that while the Strategy affords a regional “vision” territorial authorities remain largely responsible for meeting the open space needs of their communities. Notwithstanding its non-statutory status, we understand it was Ms Richmond’s opinion that the Strategy should be treated as an other “relevant matter” (s.171(1)(d)).

[37] Ms Richmond also drew our attention to the Auckland Regional Growth Strategy (RGS), which she deposed reflects in many of the objectives and policies of the Regional Policy Statement. Relevantly, the provision of appropriate “open space” is one of seven desired outcomes (out of 16) ranked as critically important.

[38] Mr J B Childs, the planning consultant called by the appellant, drew our attention to RPS provisions for intensifying urban development within defined metropolitan urban limits (Strategic Policy 2.5.2.3), providing for a varied housing stock and intensification within existing centres and around public transport mode. He also referred in general terms to aspects of proposed Change 6 to the RPS.

District Plan Provisions

[39] The operative Auckland City District Plan: Isthmus Section is the relevant plan. Ms Richmond identified the following relevant provisions;



- i) Clause 4A.3A which sets out the information to accompany a NOR. We note also Clause 4A.3B, which identifies matters potentially subject to conditions.
- ii) Objective 2.3.3 Community:
 - (i) To achieve a healthy and safe living environment for the citizens of the district;
 - (ii) To protect and enhance residential amenities; and
 - (iii) To encourage the wide use and provision of ...recreation and community resources and facilities.
- (iii) Proposed Change 175 intended to give effect to RPS Change 6. It allows for population intensification in each of the RPS Change 6 Schedule 1A "areas of change" and includes the following objectives:
 - (iv) 2.3.5 Urban Growth: "To manage urban growth and development in a manner that [inter alia] integrates land transport and land use provisions to support a quality, compact and contained urban form" and "To enhance the visual amenity and urban identity and character of identified growth areas, **by encouraging ... safe and attractive public spaces, [and] convenient pedestrian linkages ...**". (emphasis added)

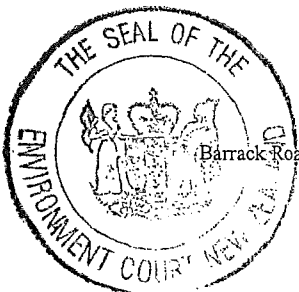
The subject site is not in an "area of change" but is relatively close to those identified above. Ms Richmond opined that although there are appeals (9) against aspects of proposed Change 175 none directly affect the NOR and for these reasons "some weight" should be given to the Change.

(iv) Objective 9.3.2 Open Space and Recreation Activity:

To provide sufficient land for open space and recreational opportunities to serve the present and future needs of the district."

and its related Policies:

- (v) By adopting a strategic management approach to open space and recreation needs; and
- (vi) By securing further land for open space needs and recreation use where possible, when particular needs have been identified" (emphasis added).



- (v) Section 9.4.3 sets out the council's strategy for adding to the Isthmus' open space resources:

The council's strategy is to promote an appropriate level of residential redevelopment and infill throughout the Isthmus. This is expected to place greater demands on the existing open space and recreation resource. The council recognises the need for additional open space and recreational resources to meet these demands. The council will take advantage of the opportunities provided through its own fiscal management ... to appropriately increase the district's stock of open space and recreation land. ...

... Whereas a quantifiable guideline for the provision of reserve land was used in the past, the new guideline will aim to achieve distribution of open space land on a fair basis, with consideration being given to sustaining the qualities of open space, population density and community preferences. (See Clause 9.9 RECREATION RESERVE STANDARDS).

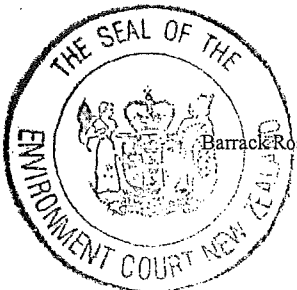
Criteria will be used to consider future land acquisition for reserves and recreation activities (See Clause 9.9 RECREATION RESERVE STANDARDS). The council will need to prioritise the land to be purchased or developed for reserves to ensure that community needs are being met and that special qualities of open space are retained. This detailed planning will be carried out under other corporate planning mechanisms, including the Annual Plan"

- (vi) Section 9.9: General Strategy applies to recreation reserve standards and includes the following:

Rather than identify specific areas of land which will be purchased for reserves, the council will take an opportunity driven approach for such purchases. This approach will attempt to purchase future reserve land on the open market as opportunities and as local needs determine. Notwithstanding the above position, **in the case of land of exceptional value for recreation, heritage, landscape or environmental reasons, council may designate future reserve land for sake of protecting these values.** Such designation will be undertaken in consultation with affected land owners". (emphasis added)

- (vii) Clause 9.9.1 contains a list of matters to be taken into account in selecting land for future reserve use.

1. Whether there are deficiencies in the present provision of particular types of open space in a local area.
2. Whether future development forecasts have indicated the likelihood of there being additional open space needs.



3. Whether the land under consideration is the preferred option given the existing pattern of development and foreseeable opportunities to acquire or protect alternative sites.
4. Whether the land has intrinsic qualities which merit reserve qualities regardless of recreation potential (scenic, heritage, natural or habitat value).
5. Whether there is other reserve land in the vicinity. Unless the land has qualities under Criteria [sic] 4 or meets a particular recreational need which has been identified in the locality, there should generally be no similar reserve within a radius of 800m from the potential reserve.
6. Whether or not the land will contribute to consolidating the council's reserve network through linkages, walkways, protection of landscape features or sites of public interest.
7. Whether lower cost alternatives for securing recreation facilities are available".

(viii) Clause 9.9.2 sets out criteria for assessing the suitability of a particular parcel of land for reserve purposes. The plan notes that they may not all be relevant in a given circumstance.

1. The area of land should be of a sufficient size to meet its proposed function.
2. The reserve should have a wide frontage to the street.
3. Open space areas should be within a reasonable walking distance from residential zoned land.
4. 60 percent or more of the land area of the proposed reserve should be well exposed to the sun.
5. The type of proposed reserve should be compatible with surrounding land activities.
6. The potential of social and physical risks should be low.
7. The cost of acquiring the land should be below or compatible with professional valuation.
8. Expected maintenance costs must be justified given the site's intended use.
9. The area contains significant habitats and indigenous fauna or areas of indigenous vegetation.
10. The contribution of the area to the local landscape and natural environment.



[40] Mr Childs was, we thought, rather selective in the district plan provisions which he identified, concentrating almost exclusively on the provisions of the Residential 6a zone and making only passing reference to the Open Space 3 zone (which is after all that which applies to land for organised recreation), and paying even less attention to Part 9: Open Space and Recreational [sic] Activity. Objectives and policies for the Residential 6a zone include the following:

Objective 7.6.6.1

To provide for medium density residential neighbourhoods in appropriate locations.

Policies include: By permitting a wide range of activities in the locations than is permitted in the lower intensity zone while maintaining the appreciated amenity.

By directing these zones to areas where the environment is able to sustain residential development at medium intensity.

Retirement villages are a discretionary activity in the Residential 6a zone.

Section s.171 Tests

[41] We deal with the respective tests in the same order as did Ms Ash in her opening.

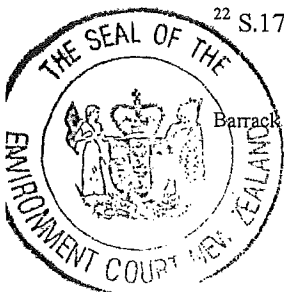
Whether the Work and Designation are Reasonably Necessary for achieving Council's Objectives

[42] This test was not contested and we accept that it is satisfied for the reasons submitted by Ms Ash and supported by evidence called by the council from Ms J R Longdill, an experienced market researcher, and Mr D A Parker, chief executive of the Auckland Football Federation.

Whether Adequate Consideration given to Alternative Sites, Routes or Methods

[43] The test is relevant because at least one of the prerequisite circumstances in s.171(1)(b) applies²².

²² S.171(1)(b)(i) – council does not have a sufficient interest in the land to undertake the proposed work.



[44] Ms Ash provided a helpful summary of relevant case law in her opening. We have found the following decisions particularly instructive in defining our task and adopt the following findings, while recognising that one was made under an earlier statute:

- i) The Planning Tribunal is not required to be satisfied that the possible alternatives have been excluded, or that the best alternative has been chosen. ... The Tribunal's enquiry is to see that the requiring authority has not decided on the chosen site and method in an arbitrary or cursory way without giving responsible consideration to alternatives. ***Stop Action Group v Auckland Regional Council***²³.
- ii) We understand that section 171(1)(b) calls for a decision-maker to have particular regard to whether the proponent has made sufficient investigations of alternatives to satisfy itself of the alternative proposed, rather than acting arbitrarily or giving only cursory consideration to alternatives. The proponent is not required to eliminate speculative or suppositious options. ***Bungalo Holdings v North Shore City Council***²⁴.

And latter in the same decision at paragraph 119 "...[the evidence] did not reveal any methodical consideration....of alternative methods of developing [the work in question] that would occupy less of the subject land".

- iii) The word "adequate" is a perfectly simple word and we have no doubt has been deliberately used in this context. It does not mean "meticulous". It does not mean "exhaustive". It means "sufficient" or "satisfactory". Indeed one of its definitions in the Oxford English Reference Dictionary (1996) is "barely sufficient" – a definition we do not intend to follow because it does not accord with the general thrust of judicial authority. It does, however, support the concept that a District Council is not required to go to unreasonable lengths to support a chosen route or site for a particular public work. ***Takamore Trustees v Kapiti District Council***²⁵.

[45] Ms Ash submitted that the council had considered a range of alternative options for achieving its objective[s], including enhancing the use of existing facilities. More specifically, the council was said to have considered four indicative alternative site options not proceeded with for reasons given in evidence by its witness Ms Stewart. Ms Ash explained that the council had focused on those options which involve a single site, and as a matter of policy, those with little or no existing development. She submitted that this was entirely appropriate because it "(a) achieves the council's objectives, (b) reduces

²³ Stop Action Group v Auckland Regional Authority, His Honour Justice Chilwell (M514/85, 28 July 1987 page 80).

²⁴ Bungalo Holdings Limited v North Shore City Council, A52/01 para 111.

²⁵ Takamore Trustees v Kapiti District Council, W23/02 para 111.



the impacts on the environment and directly affected owners/occupiers, and (c) reduces the costs associated with acquiring and developing the land". Ms Ash contended that available sports field options are becoming increasingly rare as the City's development intensifies and that :

...the present proposal is the culmination of diligent work that, in light of the circumstances, cannot be described as either arbitrary or cursory.

[46] In her reply, Ms Ash developed these themes in greater detail, referring to specific information on alternative sites large enough for 2 to 3 sports fields reported to the council by officers (including numbers of properties potentially affected, their total area and "minimum acquisition costs". Ms Ash identified how a particular option (the Banks Road site(s) would require the demolition of buildings, disruption of affected businesses, and costs associated with their relocation. Although possibly implicit, she might have added "and the acquisition of multiple sites"²⁶. In Ms Ash's words to expect the council to undertake more detailed analysis of sites, which it would not contemplate pursuing as a matter of policy, would equate to:

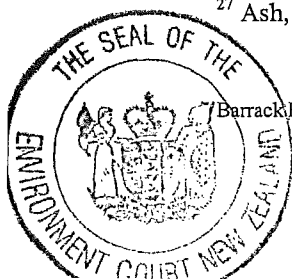
...requiring the council to "eliminate speculative or supposititious options" or requiring the council to "go to unreasonable lengths to support" the chosen option²⁷.

[47] Ms Ash submitted that the obligation to consider alternatives applied prior to a NOR issuing and it was not incumbent on council to re-visit the subject after the retirement village consent was granted. She rejected Mr Brabant's submission that there were similarities between the council's approach in this case and what the Court observed in Bungalo because, in the latter "*..... there was little (if any) evidence of any assessment of alternatives by Council*".

[48] Mr Brabant submitted that the council's evidence, the NOR and accompanying reports, and the report on alternative sites which the council relied on when resolving to designate the Barrack Road site, "*.....[do] not disclose a consideration of alternative sites that meets the requirements of s.171(1)(b)*" and the case law. He traced the process followed and criteria applied by council in identifying and evaluating alternative sites by reference to the NOR and evidence of Ms Stewart, summarising these as:

²⁶ As demonstrated by Exhibit 7.

²⁷ Ash, Reply para 3.8.



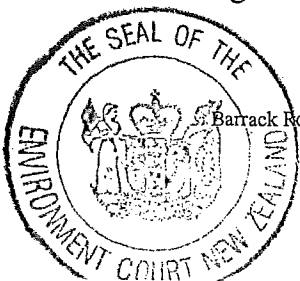
- (a) A search for properties greater than 2.5ha in the Mt Wellington and Eastern Bays area.
- (b) This included looking for suitable properties that could be amalgamated into a single reserve.
- (c) Several 3ha blocks of properties ... were identified and initial valuations were undertaken”

[49] Mr Brabant implied a criticism of the report on alternative sites prepared for council’s Arts, Culture and Recreation Committee Meeting in March 2006, in not considering such factors as the possible layout of playing fields and other facilities, including car parking or road frontage and vehicle access arrangements. Council’s investigations, in his submission, had not progressed beyond “.....a preference for a single title ownership, and an undeveloped site that is free of buildings or structures”.

[50] We have difficulty with that submission because, as Mr Brabant acknowledged himself, the Barrack Road site was recognised in the report as having at least four other relevant attributes (large land area, flat, wide street frontage and on a passenger transport route). Mr Brabant elected to focus on one of the four alternative sites (to Barrack Road) identified in the 2006 Report known as 19 to 45 Banks Road. He noted that Ms C A Stewart (a council open space planner called to give evidence) had agreed it had the same attributes as the Barrack Road site with the difference being “.....multiple titles and buildings on the land”. In our view these are significant factors, which we would expect to impact materially on site acquisition, timing, cost and potentially s.5(2) matters (social and economic wellbeing). It is not unreasonable for council to have factored them into its decision-making policy.

[51] Nor do we accept Mr Brabant’s submissions on the relative per hectare cost of council acquiring the Banks Road and Barrack Road properties. Even if this consideration were relevant to Part 2 (s.5(2)) we consider it a policy matter for council, and the 2006 report data to be an outdated and incomplete basis for comparative purposes.

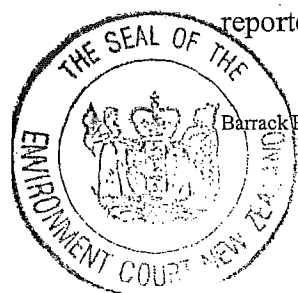
[52] We also reject Mr Brabant’s submission that the 2006 report misled council on the question of whether achieving an alternative (to Barrack Road) 2.5 – 3ha site would require up to 50 residential properties (presumably of about 50 x 600m²). While the figure has a very strong, theoretical, upper limit flavour, it is qualified by the words “up



to” and “residential”. Although ultimately not a matter for this Court, Mr Brabant’s criticism does not overcome the fact that the site he adopted for comparative purposes (Banks Road) would require land to be purchased from 3 to 8 land owners as opposed to one at Barrack Road.

[53] Mr Brabant further submitted that for a sufficient and methodical examination of alternatives to be undertaken the council needed to have the alternatives looked at by a traffic engineer given the importance of access to a reserve of this nature from the adjoining street network and the suitability of the site to accommodate sufficient on-site car parking given the intended use of the playing fields. He noted that both the section on traffic in the NOR and council’s traffic evidence on the appeal “targeted” the Barrack Road site without reference to alternative sites. Mr Brabant identified a similar, singular focus in council’s evidence presented by landscape architect Mr P N Kensington, and noted Ms Richmond’s reliance on Ms Stewart’s evidence as a basis for her opinions on the adequacy and scope of council’s consideration of alternatives.

[54] We heard evidence from a number of witnesses on the adequacy of council’s consideration of alternatives. Ms Stewart, who intriguingly while being an open space planner for the council, has qualifications in entomology and horticultural science, described the process followed by the council drawing largely on the *Sites Considered* section of the previously cited February 2006 report. The Report describes how council’s search focused on properties larger than 2.5 ha in the Mt Wellington and Eastern Bays areas, most of which were found to be in institutional ownership (Crown, church, education). Consideration was also given to smaller properties that could be amalgamated into a single reserve. She described how it is council’s preference, as expressed in its *Public Open Space Acquisition Plan*, to obtain sites that are “*large, multi-field sites which provide economies of scale in provisions and maintenance*” and “*are of a size and configuration to allow flexibility in use by a range of sporting codes*”. Five candidate sites were identified in the 2006 report and initial valuations obtained. The Barrack Road site was considered to have unique features unable to be replicated in any of the other alternatives, namely “*..... large land area, relatively free of buildings/structures, flat, wide street frontage and on a public transport route*”. Ms Stewart opined that assembling a suitably sized site by amalgamation was likely to have a considerable social and economic impact on the multiple owners affected and create land purchase complexities. Also, taking this approach would not be consistent with council’s reported policy “*.....to avoid disrupting existing residential and business activities*”. Ms

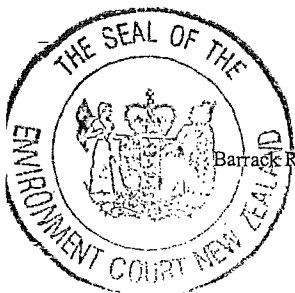


Stewart further explained how the council is continuously assessing options for open space acquisition in the City, but with one possible exception there are currently no other known sites available that would meet the council's objective in the relevant area. That site, being some 7,300m², would not by itself meet council's objectives and it was Ms Stewart's uncontroverted evidence that "*....even with both sites, the future likely demand [for sports fields] will not be fully met*".

[55] As noted, Ms Stewart accepted in cross examination that the distinctive difference between the subject site and an alternative at 19 – 45 Banks Road identified by council "*....is that the Barrack Road site is relatively free of buildings and structures and the Banks Road site has got structures on it*" and gave the opinion that in looking for sports field sites an important consideration is that they should be free of buildings because of the disruption and cost inherent in displacing occupants. Ms Stewart also deposed that the minimum acquisition costs (2004) given in council's February 2006 Report were net of any "*compensation costs for relocating a business*". Ms Stewart also indicated that she was unaware from an examination of council files, of council taking advice on the potential layout of sports fields, traffic engineering or suitability for sports reserve purposes when considering site alternatives.

[56] Mr M C Gallagher, Parks Adviser Active Recreation, also gave evidence for the council relevant to its consideration of alternatives, including methods founded on enhancing or securing access to existing facilities. Mr Gallagher has a Diploma of Turf Management and 24 years experience in sports park management. He explained that the greatest problem council faces is in catering for winter sport and that, for this reason, winter sports fields are most relevant to the appeal. He identified three methods that the council is pursuing to increase the use of existing fields:

- Installation of sand carpets. This enables utilisation [hours/week usage] to increase from 10.7 hours for an average full-sized soil field to 17.1 hours for an average full-sized sand field. Even if the council were to sand-carpet a further 100 fields by 2016 it would gain just over half of the predicted shortfall in capacity leaving a shortfall of 590 hours per week.
- Installation of artificial playing fields. Manufacturers guarantee the latest surfaces for 30 hours use per week and the council is considering installing two at reserves in proximity to Barrack Road. As full-sized fields cost approximately \$1.5m to install Mr Gallagher did not expect their adoption to



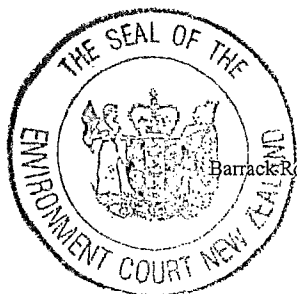
become widespread “.....*due to the high capital cost and the marginal gain in actual use*”.

- A “smorgasbord” of re-allocating fields between codes to address imbalances, re-configuring existing parks to increase the number of fields, experimenting with warm season grasses to increase capacity, and trialling alternative maintenance regimes for sand fields.

[57] In summary, it was his evidence that increasing the capacity of existing fields would not alone prove sufficient to meet future demand across the City. Finally, Mr. Gallagher explained how the council is actively seeking opportunities to partner with other organisations to provide sports fields on land it does not own. Agreements with a small number of schools are already in place. However, because institutions of this type invariably have their own growth needs Mr Gallagher concluded that security of tenure for public use is quite limited and cannot be counted on as a long-term solution. Although not strictly relevant to an assessment of the adequacy of council’s consideration of alternatives, we also acknowledge Mr Gallagher’s evidence on desirable features for additional sports fields and the characteristics which in his opinion make the Barrack Road site suitable.

[58] In cross examination Mr Gallagher stated that when assessing alternative sports field site options, those reporting to council would typically study aerial photographs, site geometry, topography, field layouts and have someone with suitable expertise look at access and parking.

[59] Ms Richmond summarised the alternative methods that the council had considered to meet its objectives and the consideration that it had given to alternative sites. Relying on the evidence of Ms Stewart and Mr Gallagher in these regards she gave the opinion that “.....*the requiring authority has given adequate considered [sic] all reasonable alternatives of undertaking the work*”. Ms Richmond’s concurred with Ms Stewart’s opinion on the difficulty of assessing alternatives involving the aggregation of multiple sites - because of the “*potentially endless permutations*” this would create - and acknowledged in cross examination that she had not been briefed to independently review the adequacy of council’s assessment of alternatives.



[60] Mr Childs acknowledged that the council had “... *looked at other sites and methods*”, but did not give an opinion on the adequacy of such.

[61] We find that the council did not act in an arbitrary or cursory way in its consideration of alternatives. Investigations of the type in question typically proceed in stages, beginning with a broad screening of options against fundamental criteria and progress to the consideration of a wider range of factors. We find the council’s approach to have been “adequate” with one exception. Regard should have been paid at an early stage to traffic and parking considerations when first assessing alternative sites. We are satisfied adequate consideration was given to alternative methods as described by Mr Gallagher. The Banks Road site, which Mr Brabant targeted, demonstrated sufficient uncertainty on fundamental criteria to be categorised as speculative or suppositious. The single omission which we have noted, whilst material, is not necessarily fatal, as the traffic issues can be met. We shall return to the subject of traffic when considering environmental effects and in our overall judgement.

Relevant Provisions of Statutory Planning Instruments

[62] Ms Ash submitted that the relevant regional and district planning documents were those identified in Ms Richmond’s evidence and that they recognise the contribution which open space/recreation facilities make to community wellbeing, especially in areas such as Mt Wellington where urban growth is expected. She noted that the documents support the need to maintain and enhance open space, including the provision of new facilities. Ms Ash contended that the Residential 6a zoning of the subject site, and the proposal’s non-complying activity status, are of limited relevance

...because the purpose of designations is to provide land use authorisation for public works which are not necessarily anticipated in the district plan. Rather, what is relevant, are the district plan provisions applying to the surrounding environment as these inform the assessment of effects of the proposed public work.

In Ms Ash’s submission the effects of the proposal are entirely compatible with the activities allowed for in the adjoining zones (Business 4, Special Purpose 2 (school) and Residential 6a).

[63] In cross examination Ms Richmond agreed that the appellant’s proposed retirement village was equally compatible (as with the NOR) with intensification



provisions in the relevant instruments. She accepted that the Court should have particular regard to the Residential 6A zone provisions in Part 7 of the district plan and that if the designation were upheld Objective 7.6.6.1 *“To provide for medium intensity residential neighbourhoods in appropriate locations”* would not be able to be implemented on the subject site. She found it a “reasonable conclusion” that the retirement village proposal was consistent with Objectives and Policies 7.3.1, 7.3.3 and 7.6.6.1 and agreed that the subject site is a *“very rare site in the locality...a scarce resource”* that enables new development to be achieved under the Residential 6A zone target densities.

[64] Ms Richmond deposed that the Part 9 Open Space provisions identified in her evidence were relevant because it is generally council policy to re-zone designated sports fields as Open Space and, we infer, the provisions provide a relevant basis for assessing future reserve areas. We are cognisant that the subject land is not zoned Open Space but this is not surprising for the reasons Ms Ash gave.

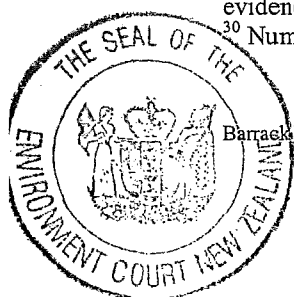
[65] We generally accept Ms Richmond’s analysis of the NOR’s compatibility with relevant aspects of the ARPS, particularly the provisions for managing and providing open space in conjunction with intensification proposals. We place only limited weight on these considerations, however, as appeals against Change 6 are still to be determined. Ms Richmond’s answers to questions on the relevance of the district plan’s Residential 6A zone provisions were commendably fair but did not sit “all square” with Ms Ash’s submission on that subject, which we prefer for the reasons that she gave. We find that the NOR is generally consistent with the district plan’s Open Space General Strategy (Section 9.9)²⁸ and that at least four of the seven matters to be taken into account in selecting land for future reserves are satisfied (Clause 9.9.1)²⁹. We also find that most of the criteria for assessing the suitability of land for reserve (Clause 9.9.2) are met with some³⁰ unable to be determined on the evidence. Finally, we note that Mr Childs accepted the district plan’s high level Open Space objectives (Section 9.3) afford a “strategic basis” for the council to provide open space.

[66] Overall, we find the proposal to be consistent with relevant aspects of the regional instruments in their current form. Although not presently zoned for open space purposes,

²⁸ Whilst acknowledging the subject site may not demonstrate “exceptional value”.

²⁹ One criterion is a matter of council policy [#3: preferred option] and for another there is insufficient evidence [#7:cost].

³⁰ Numbers 7–8.



the NOR would assist implementation of higher order district plan provisions (Objective 2.3.3) and relevant aspects of the Open Space and Recreation provisions.

Effects on the Environment

[67] As noted, council submitted revised its suggested conditions designed to manage the proposal's adverse effects during the hearing³¹. Although Ms Ash was substantially correct in submitting that only traffic and parking effects were at issue there are also some aspects of what Ms Richmond termed "Landscape and Tree clearance" which must be considered. The planning witnesses also gave comprehensive evidence on a broad range of other potential effects,³² including earthworks, sedimentation, noise, site stability, visual and lighting. These matters were not in contention and we make no further reference to them.

Positive Effects

[68] Ms Ash and Ms Richmond provided assessments of the proposal's likely positive effects should the NOR be confirmed. These were not challenged by Mr Brabant, who accepted that "*.....the establishment of additional public open space (primarily targeted to organised sporting activities) would constitute a positive effect on the environment*". We find accordingly.

Parking and Traffic

[69] By the end of the hearing there was a measure of agreement between the parties' respective traffic engineering witnesses on likely effects, which we shall shortly summarise. Where the parties differed significantly was the impact that the effects would have on the road environment, the acceptability of those effects in terms of sustainable management and the merits of the council's proposed conditions.

[70] There was general agreement that peak demand would occur on Saturday mornings when junior soccer was played (April – September). By proposed condition 5B the council intends that no more than four "competitive" games be played on the fields at

³¹ Final amended version dated 6 November 2008.

³² In Mr Child's case on the mistaken basis of comparing the effects of his client's consented proposal with those of the council's proposed sports fields.



one time and the evidence ultimately focused on this scenario. On Saturday mornings “peak demand” typically involves an overlap of persons (players, supporters, administrators) arriving, participating in concurrent matches and departing. The peak is predicted to occur over approximately 4 hours (8am – noon) when parking demand is expected to exceed the number of on-site spaces.

[71] In response to concerns expressed at the first instance hearing, the council increased the number of on-site parking spaces to 70 complemented by a marked centre line on Barrack Road and an approximately 225m NSAAT line on the eastern side of Barrack Road (Exhibit 4).

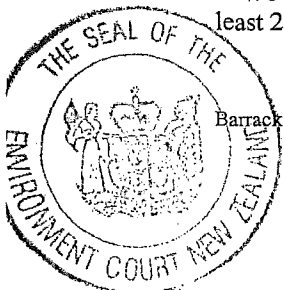
[72] Both traffic engineers deposed that the district plan parking requirement (Clause 12.4.2.1) of 13 - 16 spaces was [too] low. Mr Hall drew two other assessment standards to our attention³³. The second standard, based on measurements taken at an Auckland soccer venue, would “...*equate to a peak parking demand of 110 vehicles*”.

[73] It was therefore helpful that both traffic engineering witnesses conducted surveys of peak parking demand at actual Auckland junior soccer venues potentially comparable to the proposal. It is unnecessary for us to record the detailed results of these surveys. We note that Mr T B Innes, a transport planner called by the council, forecast an average maximum demand of 120 parking spaces. Mr Hall gave a similar figure of approximately 115 which includes an allowance for some quarter field usage. Both witnesses were agreed that the 85th percentile demand figure would be in the order of 140 – 150 spaces³⁴.

[74] There was a difference between Mr Innes and Mr Hall on whether peak demand should be assessed on the basis of average maximum demand or the 85th percentile. Mr Innes considered that an average of the maximum parking demand at each of the three grounds he surveyed was a suitable “measure” for Barrack Road because junior soccer there was expected to approximate that at Michaels Avenue Reserve, where the Ellerslie Football Club also operates, and Michaels Avenue Reserve had the lowest surveyed maximum “*peak hour parking demand by match*”. Mr Hall considered the 85th percentile a more appropriate measure because “...*it ensures that the potential parking effects can*

³³ Transfund NZ Research Report (TRR) 209 and 210 “Trips and Parking Related to Land Use”.

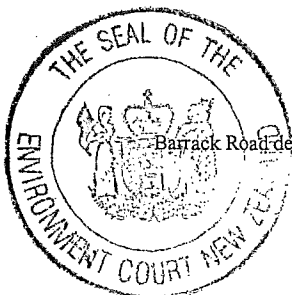
³⁴ We accept Mr Innes’ explanation that the predicted demand allows for an element of passive use as at least 2 of the reserves surveyed for prediction purposes have playgrounds [TOP p114 line 15ff].



be adequately assessed and that generally these would only be exceeded 15% of the time while an average value would suggest that the parking effects are likely to be exceeded 50% of the time". In other circumstances we might be inclined to accept Mr Hall's argument for use of the 85th percentile figure but in this case we are mindful that Mr Innes' average maximum figure has a conservative element. We are also mindful that forecasting parking demand for facilities of the type in question is an inexact science, as demonstrated by the spread of values produced by the various standards drawn to our attention and the witnesses' survey results. For the purpose of advancing our decision we find there is a high probability that peak parking demand will be in the range of 120 – 145 spaces to which should be added an allowance for existing on-street Barrack Road Saturday morning demand (a maximum of 8 spaces). On this basis we find that peak demand for off-site parking is likely to be in the order of 58 to 83 spaces [128 – 70 = 58 or 153 -70 = 83].

[75] Exhibit 4 produced by Mr Innes shows that with existing and proposed NSAAT controls in place 44 spaces are available on Barrack Road between the pedestrian crossing and the Ellerslie - Panmure Highway. The number increases to 46 spaces if Mr Hall's Attachment 1 is correct and there are another 2 spaces on the western side of the Road. This gives a parking "deficit" in the range of 12 to 37 spaces. For example, 128 – [70 + 46] = 12. We find that the effects of council's proposal on the traffic environment in Barrack Road and neighbouring streets at peak demand would:

- i) Reduce Barrack Road (9.3m wide) to a single lane for approximately 30m (5 car lengths) to the north of the subject site in the vicinity of Numbers 10 – 16. Depending on where vehicles chose to park the same effect may result south of the pedestrian crossing. In cross examination Mr Innes conceded that to maintain satisfactory operating conditions it would be undesirable for on-street parking to reduce potentially affected streets to a single lane for more than three or four car lengths on either side. And Mr Hall deposed that in determining an acceptable distance regard should be given to the volume of traffic – *"If you have a higher level of traffic then the distances need to be shorterif the sports field goes ahead that [congestion] situation will arise very commonly over the course of that Saturday morning period"*.

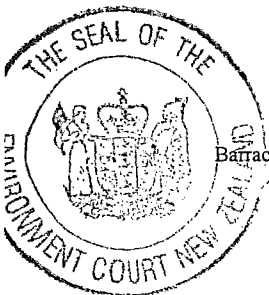


- ii) Cause some drivers to park on Banks Road (especially those approaching from the west) where the 8.7m carriageway would be unable to accommodate parking on both sides with two lanes of traffic. The severity of this effect would obviously be a function of the number of parked vehicles.
- iii) Cause some drivers to park on Malone Road (especially those approaching from the south) and as Mr Hall accepted use the existing walkway to access the fields. We had no evidence on traffic conditions on that street but from our site inspection find it to be a typical residential street with a relatively narrow carriageway. It may also be relevant that at least a section of the walkway leading to the subject site is "*....partly Crown owned gazetted for local purpose (road)*".

[76] The council maintained that the traffic management measures it proposes, together with monitoring and a requirement to address any significant effects identified, are a sufficient response to the adverse effects that we have identified. We are less certain that that is the case especially if the parking deficit were to be at the upper end of the range that we have identified, ie 37 spaces spread over a distance of say 222m (37 x 6m making no allowance for driveways). Even at the lower bound (12 spaces) there is the potential for a significant adverse effect if the parked vehicles were to be concentrated in one location - notwithstanding their presence for a limited number of hours per week over a part of the year.

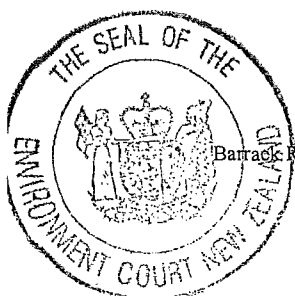
How Might the Deficit be Redressed?

[77] In cross examination Mr Innes accepted that the provision of more on-site parking was an option for addressing the identified shortfall. We have turned our mind to that option. The only candidate area, without completely re-working the Concept Plan, would appear to be west of the training field classified in the arborist's report as Area 5. It has 13 established trees nine of which are recommended for retention including a number of natives (pohutukawa and a tōtara). Given the significance of these trees, and their potential amenity value to passive park use, we consider that their removal would not be consistent with the purpose of the Act.



[78] Another option canvassed during the hearing was to extend the length of road subject to a NSAAT control or, perhaps more appropriately, a clearway on Saturday mornings during the soccer season. Such might logically apply to the eastern end of Banks Road and Barrack Road south of the pedestrian crossing, being the locations closest to the sports field entrance. We are not confident that this would provide a satisfactory solution on Banks Road over any significant distance because its 8.7m carriageway is scarcely wide enough for kerbside parking on one side and two traffic lanes (2.1m + 6.4m); especially if a clearway needed to be enforced by the use of traffic cones placed on the carriageway. We accept a clearway could work on Barrack Road south of the pedestrian crossing where the carriageway is marginally wider at 9.3m. We are uncertain what the effect might be on Malone Road should a clearway be proposed there.

[79] The Court raised the further option of widening Barrack Road sufficiently to enable parking on both sides and two lanes of traffic. Mr Innes stated this could be achieved by increasing the carriageway width to 11.2m within the existing road reserve. Mr Hall did not seriously challenge Mr Innes' assessment that widening was feasible. From Exhibit 5 we estimate that this would produce approximately another 9 parks (in addition to those on Exhibit 4) when space required for access to rear lots is deducted. It would also avoid local residents being affected by the proposed NSAAT control and widen the carriageway to better reflect existing and projected traffic volumes. An additional 9 parks would reduce our "lower bound" forecast deficit to 3 [12 – 9] which is within the prevailing bounds of accuracy, and subject to monitoring, we expect the additional vehicles could be accommodated at any of the alternative parking locations we have discussed previously without causing a significant adverse effect. The same does not necessarily hold for our "upper bound" deficit which reduces to 28 spaces [37 – 9]. If this number of vehicles were required to park on-street their effect would depend on where their drivers chose to park, council's proposed monitoring and its response to any identified problems. We come to those matters next but first record our finding that that if the NOR were confirmed it should be subject to a condition requiring that the Barrack Road carriageway be widened to not less than 11.2m between the Ellerslie – Panmure Highway and pedestrian crossing. We have no firm view on which side(s) of the Road this should occur but acknowledge the engineers' initial preference for the eastern side, which would be acceptable to the Court.



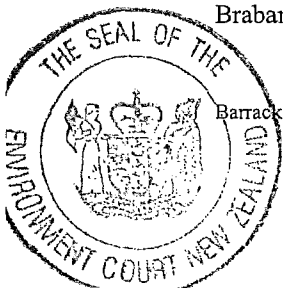
Council's Proposed Monitoring of Traffic and Parking

[80] Ms Ash submitted that if the effects of on-street parking proved to be greater than anticipated the position would be managed satisfactorily through proposed Conditions 5A and 5B. The conditions allow for a review of the proposed Traffic Management Plan within the first April – August period following opening of the fields to competitive use, including monitoring of traffic and parking effects; the imposition of further mitigation measures if found necessary; and limiting the use of the sports fields as set out in paragraph 14 above. Ms Richmond opined in cross examination that a review condition like Condition 5A was an appropriate technique “..... where the nature of the effects cannot be fully identified at the time of the decisionand [here] we do not know to any great degree of certainty exactly what the effects will be”. In addition to “physical traffic measures” - which we take to mean such things as road widening and off-street parking - Ms Richmond endorsed Mr Innes’ reference to other potential measures like field management controls, directing parking “elsewhere” and “working with the clubs”. She gave as an example of field management, council’s ability to use its booking system to stagger the times that games are held to reduce parking demand. Ms Richmond also considered it appropriate that potentially affected residents be consulted by the council about any proposed street environment changes that might result from traffic and parking monitoring.

[81] The likely efficacy and lawfulness of the two conditions was contested strongly by the appellant. Mr Brabant outlined the problems that he anticipated before Ms Ash gave her Reply. On proposed Condition 5A Mr Brabant submitted that:

- Council could not “review” the effectiveness of the proposed traffic management plan because there is no review provision in the Act for designations and “if there was a review opportunity then it is a review opportunity that involves [no]³⁵ third party participation this clause involves internal review”.
- Although the condition stipulates that the review be undertaken by an “independent traffic engineer” the council would make the appointment without third party input. Interested and/or affected parties would not have an opportunity to make submissions to the independent engineer when the review was being undertaken.

³⁵ The Court believes the word “no” has been omitted from the Transcript in error as evidenced by Mr Brabant’s further submission at p248 line 3 on the same matter.



- It is unclear whether the condition requires the council's Resource Consent Monitoring Leader to act as "...an arbitrator or a certifier"³⁶ or - because of a lack of precision - what outcome(s) might result beyond sight distance requirements, parking restrictions along the site frontage and road markings.
- It is uncertain who the council would consult on recommended traffic measures if the "review" were to reveal significant adverse effects. More persons than "the residents of Barrack Road and any other affected properties" could be affected and should be given the opportunity to participate in related decision-making.
- For the condition to be effective, the Resource Consent Monitoring Leader would have to be authorised to require the implementation of any further traffic measures found necessary having first evaluated the inputs specified [monitoring results, independent engineer's report, any other mitigation and consultation findings]. Mr Brabant submitted this would take the Leader's function beyond that of a certifier into the arbitral or adjudicative role found invalid in *Turner v Allison*.

[82] Mr Brabant further submitted that "... there could be real difficulties with [the] enforcement" of council's proposed Condition 5B because of the way junior soccer operates, as described by witnesses. He suggested there would be a conflict between the level of use allowed by Condition 5B, and:

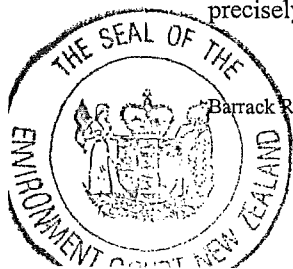
- The requirement in Part 2 to have particular regard to the "efficient use and development of natural and physical resources" (s.7(b)), and
- Council's NOR objective of increasing the availability of active recreation facilities (sports fields) in the subject area.

[83] When invited by the Court to explain why proposed Condition 5A(b) and in particular its sub-clause (b) should not be considered a review clause Ms Ash (relevantly) submitted³⁷ that:

- s.128 does not apply to s.168A notices and s.174(4) authorises the Court to "impose such conditions as the [Court] thinks fit". In support of that position

³⁶ See for example, *Pine Tree Park Limited v North Shore City Council*, HC 26/96 and *Turner v Allison* [1971] COA 1 NZLR 833.

³⁷ TOP p283 line 35ff - Ms Ash also observed that the term "within a reasonable timeframe" could be more precisely worded, which we note should it remain relevant.



our attention was drawn to a general editorial statement in *Brookers*³⁸ on s.171 that for the validity of conditions regard should be had to the commentary on s.108 and “*The principles appear to be generally applicable to conditions imposed on designations*”.

- If the Court were minded to view the condition as a review condition there was “no issue” with the Court requiring such.

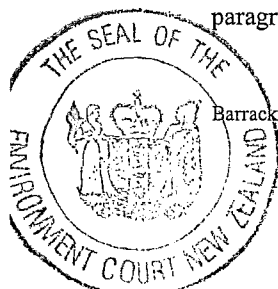
[84] Ms Ash further submitted³⁹ that “assess” or “reassess” might be appropriately substituted for “review” to better reflect that a monitoring condition was intended (as opposed to a s.128 review). Ms Ash also indicated that, although the council had no objection in principle to a review condition, the outline plan and traffic monitoring processes provided for by proposed conditions should be sufficient – “*Our fundamental position is that this Court could actually [confirm the NOR] without any monitoring condition, and rely on s.16 and the council’s general powers to control roads*”. She accepted that unlike s.128 proposed Condition 5A as worded does not allow for public notification [s.130] but contended the proposed condition was consistent with the Act’s scheme for designations which have “[a] slightly different driver and framework”. Generally speaking, we understand Ms Ash to be saying that the Court has a broad discretion to impose conditions notwithstanding that the NOR provisions of the Act do not have the equivalent of s.128.

[85] On whether Condition 5A offended the findings of the Superior Courts in *Turner v Allison* and *Pine Tree Park* Ms Ash submitted that what was allowed for was “*within the council officer’s expertise*”, was something council managers do on a regular basis and would not constitute an arbitral or adjudicative function. In support of that submission, Ms Ash drew the Court’s attention to operative designations in the district plan which allow for a council officer - generally in consultation with affected interests - to receive monitoring data on the implementation of a work and determine remediation action.

[86] We accept Ms Ash’s submission that the Court is not constrained in imposing a review-type condition on a designation and agree that to avoid any possible confusion with s.128 it would be preferable if the words “*further assess*” and/or “*further assessment*” were substituted for “*review*” wherever the latter occurs in proposed

³⁸ *Brookers Resource Management*, Wellington, *Brookers*, 1999.

³⁹ TOP p281 lines 10 – 45. We assume the reference is to where “review” is used in the introductory paragraph of proposed Condition 5A.

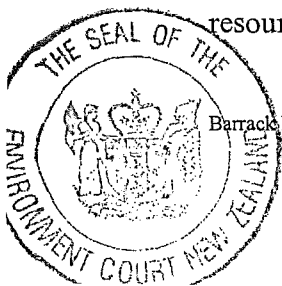


Condition 5A. We do not however accept Ms Ash's submission that the situation could be managed satisfactorily without a monitoring condition and by relying instead on s.16 and council's general powers in respect of roads. The council was correct to agree at least with "*further assessment*", monitoring, and a requirement for further mitigation if found necessary. Should the NOR be confirmed we would require no less.

[87] We accept Mr Brabant's submission that the role contemplated for the Resource Consent Monitoring Leader is incompatible with the principles enunciated in *Turner v Allison* and *Pine Tree Park* because the multiple factors, which the officer would have to weigh and determine, would cross the threshold between the role of a certifier and that of an adjudicator.

[88] Simply put, too much discretion is contemplated. If the Consent Monitoring Leader is to act correctly as a certifier it is necessary that his/her discretion be limited to determining whether a specific mitigation measure would achieve a specified traffic outcome - such as maintaining two way flows except over short distances (eg 5 car lengths). We do not share Mr Brabant's concerns about council's ability to appoint an independent traffic engineer to undertake "*further assessments*" but agree the consultation proposed should be wider than Barrack Road and include, potentially affected Banks Road and Malone Road residents. We are also inclined to agree that "*further assessments*" should allow for third party submissions at the front-end of the process as opposed to commenting on any measures that might ultimately be recommended (although that might also be necessary). Finally we are concerned that only one "*further assessment*" is provided for and that this is limited to the winter sports season, reflecting current expectations of peak usage, but which could change over time.

[89] We accept Mr Brabant's submission that there are problems with proposed Condition 5B as currently worded. Firstly, traffic and parking effects will potentially be the same irrespective of whether the fields are being used for "*competitive*" games, whatever that term may mean. As Ms Ash accepted, the wording would create enforcement difficulties best avoided, and deflect the focus from where it should be. That is, on maintaining acceptable traffic and parking conditions on the local street network. Ascertaining "*equivalent number[s] of players*" is also a fraught prospect. We are further concerned that there is an inconsistency between proposed Condition 5B and the requirements of s.7(b) for the efficient use and development of natural and physical resources, which we address below.



Landscape and Tree Clearance

[89] Proposed Condition 5(d) provides for a Landscape Plan detailing planting and maintenance programmes to form part of the outline plan. The NOR⁴⁰ states that through the outline plan process restrictions will be imposed on “*planting [to] be retained, transplanted trees, trees for removal*” but Condition 5(d) does not expressly address these matters. We are especially concerned that the Concept Plan requires significant trees on the south western side of Field 1 and on the eastern side of Field 2 to be removed or otherwise impacted. Separately and collectively they are impressive specimens, which would contribute significantly to passive enjoyment of the park. Amongst those requiring removal to form Field 1 are⁴¹ a Mexican pine (T13), a moreton bay fig (T14) reported to be in declining health, a pin oak (T15) described as a superior specimen, a spruce with slightly suppressed form (T16), and possibly a semi-mature blue atlas cedar (T17)⁴². Mr Kensington, council’s landscape architect witness, specifically identified a coral tree (T25) and a titoki (T31) on the eastern side of Field 2 “*requiring further investigation during developed design phase*”⁴³ because of the potential “*effects of civil works around [their] root zone*”⁴⁴. The Concept Plan shows these trees and others on the eastern edge of Field 2 extending into the landscape easement held by the neighbour.

[90] Ms Ash acknowledged the flexibility which FIFA rules afford to narrow the proposed fields from 60m to 45m. If the work is to proceed, we find that the width of the fields should be adjusted within the constraints of the FIFA rules to avoid adversely affecting trees T14 – 18 and T19, 25, 31 and 33 to the maximum extent reasonably achievable. We recognise that this might also impact, albeit to a lesser degree on the proposed boundary dimension for the cricket field. The adjustments indicated would need to reflect in the Concept Plan prior to formulation of the outline plan of works and Landscape Plan (Proposed Condition 5) and be made in consultation with the easement holder.

⁴⁰ NOR, p2 Nature of Restrictions No 8b.

⁴¹ Kensington EIC, Arborist’s Report at Attachment B p6.

⁴² op cit p2 Area 2 table and Kensington EIC para 3.11.

⁴³ Kensington, EIC Exhibit C: Landscape Concept Plan.

⁴⁴ op cit para 3.12.



Part 2 and Overall Judgement

[91] We have considered the matters to which we are required to have particular regard under s.171(1) and made individual findings on them progressively. We now turn our mind to Part 2 and weigh the competing considerations against its relevant provisions. We accept Mr Brabant's submission that no relevant issues arise under either Section 6 or Section 8. We shall deal with the relevant aspects of s.7 before moving to Section 5 and our overall judgement.

Section 7

[92] Mr Brabant submitted that the proposed use would not be "*.....an efficient use and development of the land resourcebecause the council is promoting some restraint on the use of the reserve to try and deal with an off-site effect*" (s.7(b)).

[93] During the course of the hearing this proposition assumed the characteristic of a "double edged sword". At the Court's request, Ms Ash addressed us in reply on the subject, and in particular whether it would be consistent with the matter to which we are to have particular regard in s.7(b), if use of the sports fields were limited – as council proposes – to four half fields or some similar permutation. Ms Ash submitted that, short of installing artificial surfaces, the sand-based pitches council intends would optimise the fields' usage. She noted that, while there is pressure for mini midget soccer⁴⁵ in the fields' "catchment," matches under the Auckland Football Federation's control are routinely played on half fields and there is sufficient flexibility in the allocation of fields to direct the latter to Barrack Road as described by Mr Parker.

[94] The NOR also contemplates and allows for passive recreational use of the resource. Section 5 would not be well served, Ms Ash submitted, if the proposal for limited use were to cause the NOR to fail. It would be tantamount in her words to "*tipping the baby out with the bath water*". In cross examination Ms Richmond maintained her position that the proposal was consistent with s.7(b) although neither her evidence nor answer were particularly reasoned.

⁴⁵ Typically played on quarter sized pitches.



[95] As the Court found in *Long Bay*⁴⁶ there is still doubt over what “*efficiency*” means in the RMA. We were not assisted materially on interpretative aspects by either submissions or evidence but note the reported evidence of Dr T Hazeldine, an economist, in *Long Bay* that, amongst other things:

...the more efficient, and thus to be preferred option is the one which is assessed to be likely to yield the highest net benefits (total benefits minus total costs), all relevant factors considered.

[95] The evidence which we heard in this case fell well short of an analysis of that type. We found much of what Ms Ash submitted in Reply compelling insofar as it applied to development of the proposed reserve, but less so in terms of its use. We have previously commented on the enforcement problems inherent in the proposed wording of Condition 5B. We are mindful that the traffic engineers ultimately based their assessments of traffic and parking effects on a maximum number of four games of junior soccer, but there can be no certainty that in future that level of usage will constitute an efficient use of the subject resources. If the NOR is to be confirmed, we find that s.7(b), s.5(2) and the sustainable management purpose of the Act would be better served by deleting Condition 5B and amending Condition 5A in the manner we have indicated previously, that is by inserting a suitable traffic performance measure. The council would then be free to manage the intensity of sports field use having regard to the resources required to maintain specified conditions on the local street network.

[96] Ms Ash submitted that evidence called by the council demonstrated that the NOR was consistent with Sections 7(c) and (f) (maintaining and enhancing amenity values and the quality of the environment) and that any short term traffic effects would be outweighed by long term public benefits. We accept that submission, subject to the adverse effects that we have identified being avoided, remedied or mitigated by the imposition of appropriate conditions.

Section 5 and Overall Judgement

[97] We find that the NOR is consistent with the single purpose of the Act, namely “[*promotion*] of the sustainable management of natural and physical resources”. The site is physically suitable to its intended use and appropriately located to help meet the

⁴⁶ *Long Bay – Oakura Great Park Society Inc and others v North Shore City Council*, A078/2008 para 285.



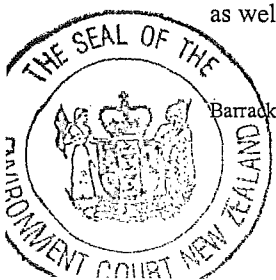
public's recreation and open space needs both now and in the future as the City continues its planned development. In these ways it will enable individuals and the community to provide for their social and economic wellbeing and (through exercise and relaxation) for their health. We anticipate that the sports fields will also help meet the recreational needs of future generations. Subject to suitable conditions, we are satisfied that these outcomes can be achieved while avoiding or mitigating any adverse effects of the proposed land use on the environment. The council may have formulated (and presented) its objectives for the work in an imperfect fashion but we have satisfied ourselves that the objectives given in evidence on its behalf are valid and that the proposed work and designation are reasonably necessary for achieving them. Similarly we are satisfied that the council has given adequate consideration to the matters specified in s.171(1)(b) and not acted in an arbitrary or cursory way.

[98] We have found nothing in the relevant statutory instruments to impede the proposal. Indeed, it will assist the implementation of some higher order and open space provisions of the district plan.

[99] Finally, in the interests of completeness, we record that we have not found it necessary to take any other matter into account beyond those identified thus far in our decision (s.171(1)(d)). Council witnesses referred to various non-statutory plans, particularly in the open space planning area. Whilst sometimes helpful in providing "context" they are not matters to which we attach particular weight.

[100] In case we are wrong in our finding on the relevance of the retirement village consent to a correct assessment of the NOR's effects on the "future environment", we record our finding that the community's social, economic and cultural wellbeing and health would be better served by the sports field complex council proposes than by providing accommodation on the subject site for 242 retired persons; albeit 24 hours/day as Mr Childs emphasised. Purpose-built accommodation for the elderly would doubtless provide for the residents' social wellbeing and we expect the consent allows for the sustainable management of affected natural and physical resources. The sports field complex, however, will serve a significantly greater number of persons in the community⁴⁷ and has somewhat more demanding site requirements. We do not overlook the impact on the social and economic wellbeing on the consent holder in making this

⁴⁷ Acknowledging however that this is not simply a "numbers game". There are qualitative aspects involved as well, for instance the range of age-groups and game types.

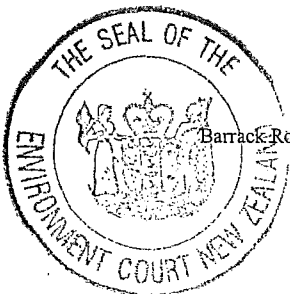


finding, but accept that such effects are amenable to compensation through the land purchase process.

Conditions

[99] The final revised conditions submitted by council are confirmed except in the following areas, where attention is to be given to matters along the following lines :

- i) Traffic and parking. The Barrack Road carriageway is to be widened to not less than 11.2m over the length described in paragraph [79]. It is recognised that this may necessitate additional resource consents. The wording of proposed Condition 5A is to be amended so that:
- The potential ambiguity which attaches to the use of a “*review*” is avoided;
 - A specific performance measure is inserted requiring that two way traffic flows be maintained on all parts of Barrack, Banks and Malone Roads used for sports field parking except for a maximum distance of 5 car lengths on any of the individual roads;
 - The council is to monitor on-street parking not less than twice a year at times agreed by its Regulatory arm to determine peak off-site parking in the winter and summer sports seasons. If the results show that there is a high probability of traffic on Barrack, Banks or Malone Roads being regularly restricted by on-street parking for 5 vehicle lengths or more in any season (the trigger level) the council shall further assess and implement sports field management and/or road management measures (potentially including further widening) to keep the restriction below the trigger level.
 - The role of the Resource Consent Monitoring Leader is to be limited to determining whether any additional mitigation found necessary by “*further assessments*” will avoid, remedy or mitigate adverse effects identified by the independent traffic engineer and maintain the performance measure specified in the preceding bullet point.
 - Potentially affected residents and property owners on Barrack, Banks and Malone Roads are to be consulted by council before “further



assessments” are undertaken and any additional mitigation measures are adopted.

Proposed Condition 5B is to be deleted.

- ii) Landscape and Tree Clearance. The Concept Plan is to be changed by council in the manner indicated in paragraph [90] and submitted to the Court with an explanatory statement describing proposed changes, their implications for specific trees and sports field use, and any related matters pertaining to the eastern landscape easement.

Directions and General

[100] The council is to file with the Court and the appellant an amended draft set of proposed conditions and an amended draft Concept Plan giving effect to this decision, within 20 working days of it issuing. The appellant may file any comments it may wish to make within a further 10 working days.

[101] The presiding Judge expresses his gratitude to Commissioner Dunlop for his significant input in the writing of this decision.

Costs

[102] Costs are reserved but applications are not encouraged given the nature of the proceedings and outcome.

DATED at Auckland this *20th* day of March 2009.

For the Court:



L J Newhook
Environment Judge

