

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2018] NZEnvC 92

IN THE MATTER of the Local Government (Auckland
Transitional Provisions) Act 2010 (LGTPA)
AND the Resource Management Act 1991 (RMA)
IN THE MATTER of an appeal in relation to the Auckland
Proposed Unitary Plan
BETWEEN WALLACE GROUP LIMITED
(ENV-2016-AKL-241)
Appellant
AND AUCKLAND COUNCIL
Respondent

Court: Environment Judge J J M Hassan
Environment Commissioner A C E Leijnen
Environment Commissioner C J Wilkinson

Hearing: at Auckland on 21 February 2018

Appearances: J Brabant for the appellant
M Gribben for the respondent
B Matheson for Takanini Central Residential Limited

Date of Decision: 15 June 2018

Date of Issue: 15 June 2018

DECISION OF THE ENVIRONMENT COURT

- A: The appeal is dismissed and Residential-Mixed Housing Suburban zoning is confirmed for the Site.
- B: Costs are reserved and a timetable set, but our preliminary view is that there should be no order as to costs.



REASONS

Introduction

[1] This appeal by Wallace Group Limited ('Wallace') is against part of a decision by Auckland Council ('AC') on the proposed Auckland Unitary Plan ('PAUP'). It seeks a change to the zoning of a greenfields block of land in Takanini School Road, Takanini ('Site'). Wallace owns neighbouring land at 296 Porchester Road ('Wallace land'). The Site is owned by Takanini Central Residential Limited ('TCR'), a s274 party to the appeal.

[2] Briefly, the background is as follows:

- (a) the notified PAUP proposed a Business – Light Industry ('BLI') zoning for the Site;
- (b) the Independent Hearings Panel ('IHP') recommended as follows:¹

With respect to 55 Takanini School Road, the Panel agreed with the submitter to rezone the land Residential – Mixed Housing Suburban, given its general proximity to major arterial roads, the rail-line and employment centre.

- (c) AC accepted that recommendation and changed the Site's zoning to Residential-Mixed Housing Suburban ('RMHS');
- (d) Wallace appealed that decision to the High Court. The Court found AC's decision could not be sustained because the underpinning IHP recommendation was beyond the scope of any submission made on the relevant notified PAUP provisions. Therefore, the Court directed that Wallace has a right of appeal, on the merits, to this court.² Wallace's appeal is in exercise of that right;
- (e) we cover the respective parties' positions on zoning outcomes from this appeal shortly, but in summary:



¹ CB, Tab 28: Report to Auckland Council Hearing Topics 016, 017 – Changes to the Rural Urban Boundary, 080 Rezoning and precincts (General) and 081 Rezoning and precincts (Geographic areas), Annexure 3, Precincts South, July 2016.

² *Albany North Landowners v Auckland Council* [2017] NZHC 138, at [5](e); *Wallace Group Limited v Auckland Council* [2017] NZHC 372 at [1](a), (b).

- (i) Wallace's first preference is that the zoning revert to what it was in the notified PAUP, i.e. BLI (in essence, the same zoning as applies to the Wallace land);
- (ii) AC no longer supports the decision it made, but rather supports Wallace's first preference. AC changed its mind due to what it considered to be a material change in circumstances. That was the formation and establishment of Nancy Wake Street which it says the IHP did not take into account when making its decision;³
- (iii) TCR's first preference is that the zoning remain RMHS.

Statutory framework

[3] The appeal is governed by the Local Government (Auckland Transitional Provisions) Act 2010 ('LGATPA') which, in substance, provides that the various Resource Management Act 1991 ('RMA') provisions concerning plan appeals apply.⁴ In summary, therefore:⁵

- (a) we may confirm, amend or cancel the appealed decision; and
- (b) we have the same power, duty, and discretion as that conferred on AC (and, we infer, the IHP).

[4] We must have regard to AC's decision⁶ but do not accord it significant weight, given the above-noted High Court decision. The proper course in the circumstances, as the High Court's direction signals, is that we evaluate all options afresh on the evidence before us. That includes in our application of ss32 and 32AA RMA.

The environmental and planning context

[5] The following description of the local environmental context of the Site, and some relevant background matters, draws from the Agreed Statement, non-contentious evidence,⁷ and the court's site visit following the hearing.

³ Auckland Council opening submissions [1.8] and [1.9].

⁴ Section 156 LGATPA.

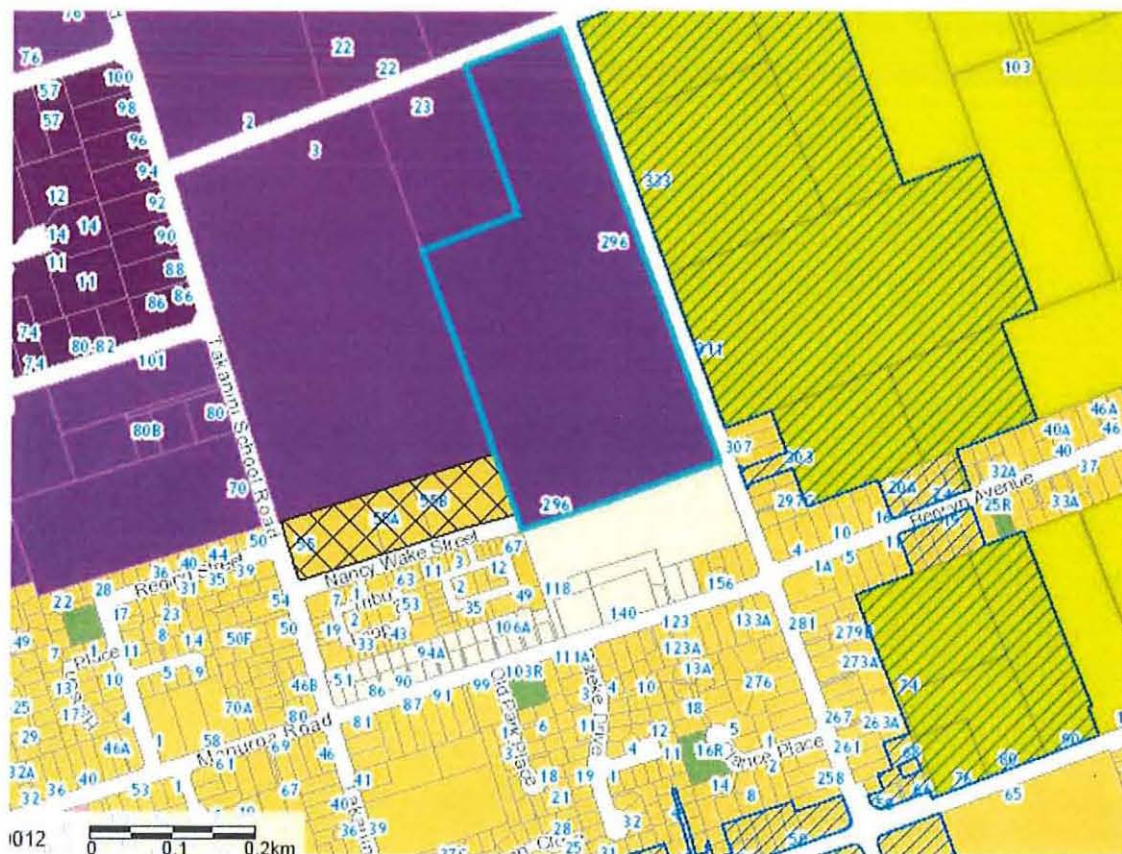
⁵ Section 156 LGATPA, ss290 and 290A RMA.

⁶ Section 290 RMA.

⁷ In addition to references to the Joint Witness Statement on Traffic and Transport, dated 29 November 2017 ('Traffic JWS'), there are various references to the evidence of the Council's traffic engineering witness, Martin Peake. In view of the non-contentious nature of the traffic evidence, the parties elected not to call their traffic witnesses and their evidence was entered by consent.



[6] Below is an extract from the relevant PAUP zoning maps ('Map Extract') reflecting the zoning position as of now.⁸ It is helpfully illustrative of key elements of the present local environment and the zoning patterns.



[7] We find that the immediate environmental and planning context of the Site is (relevantly) as follows:

- (a) the Site is approximately 2 ha in area and is currently configured as three lots (55, 55A, 55B Takanini School Road). It is the cross-hatched rectangle towards the centre of the Map Extract. Its ochre colouring signifies the RMHS zoning of AC's decision-version of the PAUP, being the subject of the appeal;



8

This extract is a reproduction of Fig 3 evidence-in-chief Mr Nicholas Rae on behalf of Wallace, dated 13 November 2017. The same figure appears as Fig 1 Agreed Statement of Facts and Issues, dated 27 November 2017.

- (b) the Wallace land (296 Porchester Road) is the large irregularly shaped block to the east of the Site (on the Map Extract, labelled '296' and coloured magenta to signify its BLI zoning under the PAUP);
- (c) the ochre coloured rectangle of land across Nancy Wake Street from the Site is a comprehensive residential development that, at the time of our site visit, was nearing completion ('Residential Development'). The ochre colouring depicts RMHS zoning. There are some 88 stand-alone dwellings in the development, most of which are modest two-storey dwellings (and some single ones) on small sections; several front Nancy Wake Street. Most appeared to be occupied at the time of our site visit. It can be observed that there are two narrow loop roads that run from Nancy Wake Street around the middle of the development. These serve as the principal vehicular access routes for the dwellings. Those that front Nancy Wake Street have their garages to the rear;
- (d) Nancy Wake Street (presently a cul-de-sac that terminates at the boundary of the Wallace land) and the Residential Development were both developed under the auspice of resource consents that were granted to Takanini Industrial Limited in 2013 ('2013 Consent'/ 'Consent'). That Consent was described as being to undertake "a comprehensive residential and mixed-use development" and to "subdivide the site in stages", "the site" being a 5.3 ha block. It was known as 55 Takanini School Road, but in addition to the Site, included the land of the Residential Developments and the land of Nancy Wake Street (now vested as road reserve);⁹
- (e) the 2013 Consent also enabled development of the Site. However, the only aspect that has been implemented is the Site's subdivision into three lots, i.e 55, 55A and 55B Takanini School Road. The Consent authorises the following further development of the Site:¹⁰

21 x two level studio/warehouse units
 27 x light industrial units
 2280m² of retail activity (in units of 200m² or less)
 32 x apartment units (above retail).



⁹ Agreed Statement [11]-[13], CB, tab 25.

¹⁰ Agreed Statement [47] CB, tab 25.

- (f) at the time of granting the 2013 Consent, the present PAUP zoning was not operative. Rather, zoning was as provided for under the then operative, now relevantly superseded, district plan. Under that former plan (the 'Legacy Plan' as the parties termed it):
- (i) the Site was zoned Industrial 1 (under what was then Plan Change 15 – Takanini Area 6);
 - (ii) the Residential Development land was zoned Residential 6 (under the same plan change).
- (g) Nancy Wake Street is intended as the Site's access. It is presently a relatively narrow and quiet residential street, but that could well change during the life of the PAUP. Its 7.8m carriageway is designed to be suitable for both residential and commercial usage, in terms of Auckland Transport Code of Practice ('ATCOP') typical road widths.¹¹ Further development can be reasonably anticipated to occur on the blocks of land zoned for industrial purposes in the vicinity (for example, the Wallace land). That development can be anticipated to make Nancy Wake Street busier, including with heavy trucks ('HCV'). Potentially, there could be an associated further extension of Nancy Wake Street through to Porchester Street, as is indicated in the PAUP's Takanini Structure Plan Area 6 and the Takanini Precinct Plan (1438).¹²

[8] Looking at the wider environs, the Map Extract reveals a relatively wide-spread pattern of BLI and RMHS zoning. A notable feature of this is that those zones commonly abut each other. The existing pattern of development in the wider environs is essentially consistent with that zoning pattern:

- (a) north of the Site and adjacent to the Wallace land is several hectares of BLI zoned land extending as far as Popes Road. Much of this has yet to be developed in accordance with this zoning, despite it having had an industrial zoning under the Legacy Plan. An exception is a relatively recent data centre development on a 2.4 ha site at 23 Popes Road (to the northwest above the Wallace land);



¹¹
¹²

Martin John Peake evidence-in-chief for AC, dated 24 October 2017, at [4.8].
Agreed Statement [54] CB, tab 25.

- (b) south and east of the Residential Development down to Manuroa Road and beyond, the land is residentially zoned and largely developed for residential neighbourhoods. A 2.3 ha site immediately to the south of the Wallace land (and to the east of the Residential Development) is also residentially zoned, but presently undeveloped and of rural appearance. Once developed, that block will continue the pattern we have noted of residential development abutting BLI zoned land;
- (c) west of Takanini Road, north of Manuroa Road, RMHS zoning continues as far north as a line parallel to the Site's northern boundary. A 72 lot residential development, consented in 2007, runs off Reding Street just opposite from the Site's lot 55. This development is now completed and most dwellings are occupied. The court's site visit revealed these were a mix of single and double storey dwellings;
- (d) north of the Reding Street development, the zoning is BLI. Adjacent some of the dwellings there, a Sikh Temple occupies a 3.5 ha BLI zoned site at 70 Takanini School Road. Land further north of the temple is also industrially zoned (some BLI, some Heavy Industry) and there are a number of established industrial properties there (some of which the court viewed on the site visit).

The zoning options for the Site

[9] It is not contentious that, under ss32 and 32AA RMA, we are to evaluate the "reasonably practicable options for achieving the objectives"¹³ (being the relevant PAUP objectives). We find the various zoning options proposed by parties, which follow, to be the relevant range of options for our consideration, or variations to the same or materially similar effect ('Zoning Options' if plural, 'Zoning Option' if singular):

- (a) BLI;
- (b) BLI with additional interface controls to protect residential amenity for houses fronting Nancy Wake Street ('BLI + Residential Interface Controls');
- (c) BLI + Residential Interface Controls with additional residential, office and retail activities provided for within the Takanini Precinct Rules ('BLI + additional activities + Residential Interface Controls');



- (d) RMHS;
- (e) split RMHS and BLI with RMHS for the majority of the Site but BLI zoning either for a 38-42m strip on lot 55B adjacent to the Wallace land or for the entirety of lot 55B ('RMHS/BLI zoning');
- (f) RMHS plus Site-specific rules in the Takanini Precinct that reverse the interface controls in effect so that they apply to the Site (rather than limit the Wallace land) ('RMHS + Additional Wallace land Interface Controls').

Wider environmental considerations

[10] As the evidence has traversed, the evaluation of the zoning options under ss32 and 32AA RMA is in terms of their relative "efficiency and effectiveness" in "achieving" relevant PAUP objectives.¹⁴ Section 32(2) further specifies that such an evaluation is to involve the identification and assessment of "the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions" (i.e. those provisions that apply through the particular Zoning Options). It further specifies that as including the opportunities for "economic growth" and employment (and whether those are anticipated to be provided or reduced).¹⁵

[11] In terms of our consideration of effects and related benefits and costs, we now set out various matters that the evidence demonstrates to be not determinative in the choice of most appropriate Zoning Option.

No material economic effects, benefits and costs

[12] No economist was called to give evidence about economic effects. No party argued that there was any issue of significance in this matter, even at a local scale. That is unsurprising on a confined zoning appeal such as this. We are mindful that the IHP recommended RMHS zoning (over BLI zoning), given the Site's general proximity to major arterial roads, the rail-line and an employment centre. However, the joint statement by the planning and urban design experts, following facilitated expert conferencing



¹⁴ Section 32(1)(b)(ii). The further requirement in s32(1)(b)(iii) to summarise reasons is fulfilled by this decision.

¹⁵ Section 32(2) RMA.

('Planning and Urban Design JWS'/'Statement'),¹⁶ helpfully records the following points of agreement:¹⁷

[RMHS zoning] ... would be effective in achieving the relevant regional growth related objectives and policies of the [PAUP] ... relating to regional growth (JH; VS; JL; not applicable to the urban design experts).

...

Housing on the subject site is in a good location to access local employment (all experts agree).

...

The [BLI zoning] ... would be effective in achieving the relevant regional growth related objectives and policies of the [PAUP] ... relating to industrial growth (JH; VS; JL; not applicable to the urban design experts).

...

The subject site is in a good location to access local employment (all experts agree).

[13] Those agreed opinions suggest that regional growth or other regional economic wellbeing considerations do not provide any relevant point of distinction between the Zoning Options. The Statement indicates that the witnesses consider that the broad choices as between BLI or RMHS could both be regarded as compatible with the strategic directions given by the PAUP on regional economic growth priorities. However, it is important not to lose sight of underlying community wellbeing needs and the evidence concerning whether the Site is commercially viable as a development prospect under each Zoning Option. We return to these matters from [46].

[14] Similarly, nor did any party make a case that any Zoning Option would fail to give effect to the National Policy Statement on Urban Development Capacity 2016 ('NPSUDC'). In one respect, that is unsurprising in the fact that the NPSUDC gives policy direction about both housing and business development capacity and, in that sense, pertains to both sides of the zoning choice equation before us. However, we note the emphasis in the NPSUDC on development capacity having to be feasible. Again, we should not lose sight of what the evidence indicates concerning that matter. We return to that at [48]-[50].



¹⁶

Joint Witness Statement – Planning and Urban Design Conferencing Statement, dated 4 December 2017. We record our thanks to the facilitator (Environment Commissioner Edmonds).

¹⁷

Planning and Urban Design JWS, at [8.1](e), (g), [9.1](d), (g). Our square-bracketed interpolations are to update various acronyms to those we use in this decision.

[15] We acknowledge that the various Zoning Options have different consequences in terms of the allocation of costs and benefits as between Wallace and TCR. We also acknowledge TCR's case concerning the priority accorded to housing development both at Central Government and by AC. Those are relevant considerations for our purposes, and we return to them at [31] and [46]-[50].

No material effects on natural values nor on Māori cultural values or wellbeing

[16] For completeness, we note that no party argued that any Zoning Option would have significant consequences for any of the priorities accorded by pt 2 RMA. Nor did any party call evidence pertaining to Māori cultural wellbeing, or the relationship of Māori to land, waters, wāhi tapu or other taonga, kaitiakitanga or the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) or s8 RMA. On that basis, and from our consideration of the evidence and our site visit, we find that none of those ss5 – 8 matters bears on the choice of the most appropriate Zoning Option.

No material effects on the efficient operation of the transport network

[17] AC's planning witness, Ms LaNauze, noted the PAUP's indication that Nancy Wake Street would become a through road, its designed suitability for BLI traffic, and the suitability of that design for serving that traffic from the BLI-zoned land at Porchester Road.¹⁸

[18] However, the evidence of the traffic and transport witnesses on these matters was ultimately uncontentious. It satisfies us that none of the Zoning Options would have any material implications for the intended functioning of the roading network. In particular, their evidence was taken as read, by consent, and they recorded agreement in the Traffic and Transport JWS in essence to the effect that a choice of BLI or residential zoning would be essentially neutral insofar as the future functioning of Nancy Wake Street is concerned.¹⁹ On the basis of the Traffic and Transport JWS, we find that:

- (a) Nancy Wake Street has sufficient carriageway width and capacity to accommodate the forecast total and HCV traffic from any of the Zoning



¹⁸ Joy Martha LaNauze evidence-in-chief for AC, dated 24 October 2017, at [11.37].

¹⁹ Joint Witness Statement Traffic and Transport, dated 29 November 2017, at [8](b), (j), (k) and (l).

Options such that none of them would materially impact on its intended function as a collector road;

- (b) there would not be any traffic and transport effects on the wider road network of concern for any of the Zoning Options; and
- (c) hence, we reach a different view from AC in finding the formation of Nancy Wake Street does not materially bear on the zoning choice.

Effects on amenity values of Nancy Wake Street dwellings

[19] In considering environmental effects, we are directed to have particular regard to the maintenance and enhancement of amenity values and the quality of the environment.²⁰ The RMA defines 'amenity values' as follows:

amenity values means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

[20] An issue in the hearing was as to the most appropriate zoning approach for the maintenance of residential amenity, particularly for 27 dwellings that face the Site on Nancy Wake Street.

[21] It is unnecessary for us to traverse in any detail the various points and counter points advanced in the evidence of the urban design and planning witnesses for the parties on these matters. That is because we find none of that evidence materially counts for or against any of the Zoning Options. Our reasons for that finding are as follows.

[22] There were two broad propositions advanced on these matters:

- (a) TCR argued that the amenity value expectations for the 27 dwellings were a reason why RHMS zoning of the Site was the most appropriate; and
- (b) Wallace and the Council argued that BLI zoning would not compromise those amenity values given the present 9 Nancy Wake Street as a buffer, historical expectations and, if need be, a capacity to add interface controls to protect amenity values.



²⁰ RMA s7(c), (f).

[23] It is appropriate that the various planning and urban design witnesses acknowledged that RMHS zoning of the Site would achieve a higher level of amenity, than would BLI zoning, for the 27 dwellings that would face the Site on Nancy Wake Street. However, while we must have particular regard to the maintenance and enhancement of amenity values, that is not to the exclusion of other relevant resource management considerations.

[24] One difficulty we find with the opinions and counter-opinions of the urban design and planning witnesses on these issues is that these were not informed by what the residents themselves appreciate. No resident participated under s274 RMA or gave evidence. While we respect the experts' professional opinions, we are also mindful that there can be a range of expectations amongst people as to their amenity values. Some would appreciate significantly different values from others and we should resist imposing any presumptions on this by an approach of simply preferring one expert's opinion over another. Nor do we find persuasive Mr Knight's observation, as a representative for TCR, that purchasers of dwellings in the Residential Development "would be very upset at the prospect of the Site being rezoned and developed for Light Industrial". We find that view speculative in the face of TCR not calling any resident to give evidence.

[25] We find that the PAUP's now operative BLI provisions are the most relevant indicators of the level of residential amenity that should be reasonably anticipated for established dwellings on adjacent RMHS zoned land. We acknowledge Mr Hook's observations as to the fact that the 27 dwellings were developed under a set of consents granted under the Legacy Plan which had interface controls that could be fairly characterised as more protective of residential amenity than the replacement PAUP controls. That is particularly the case for its specified permitted activity height limits and yard controls.²¹ Consistent with that, the yet-to-be-exercised land use consent for the Site imposed various controls on the authorised land uses (including light industry) that would help to maintain the present amenity values to a large extent. We refer there to its various conditions and other controls on matters such as bulk, location, layout and landscape treatment.²² On the other hand, Wallace's urban design expert, Mr Nicholas Rae, placed some reliance on the historical intentions of PC15 of the Legacy Plan that



²¹ James Ronald Hook supplementary evidence for TCR, dated 11 December 2017, at [16]-[18].
²² CB, Tabs 25-27: Attachment 1-55 Takanini School Road – Land use resource consent granted May 2013 (LU9629); Attachment 2-55 Takanini School Road – Environment Court Consent Order (ENV-2013-AKL-000103); Attachment 3-55 Takanini School Road – Land Use Consent variation granted 25 January 2017 (R/VCC/2010/108447/3).

its so-called "east-west road" (now Nancy Wake Street) provide a boundary between residential and industrial activities.²³ For this, he referred to the "commissioners' decision report" for PC15 which indicates this thinking at least informed the reasoning in that decision.

[26] In the final analysis we find such historical analysis does not advance the position for or against RHMS zoning for the Site. In essence, that is because the Legacy Plan has been overtaken by the operative PAUP provisions. Those provisions were informed through public submissions. They are properly to be treated as having reset expectations for residential amenity. That includes the fact that the PAUP's zoning pattern includes a number of direct BLI/RMHS interfaces along property boundaries not separated by road reserve. Hence, nor do we agree with Ms LaNauze that Nancy Wake Street is necessarily "the best form of buffer between residential and industrial activities and provides the best interface between the two zones". Similar to Mr Rae, Ms LaNauze based that opinion on what she understands to have been the pattern of zoning of the Legacy Plan which we find is overtaken by the PAUP.

[27] We accept Mr Rae's evidence that Nancy Wake Street would provide practical physical separation as would achieve closely similar amenity outcomes, in terms of sunlight and daylight access, as the PAUP has determined appropriate for other areas.²⁴ On that basis, we find that the related amenity values for the 27 dwellings would be largely maintained to the extent anticipated by the PAUP for circumstances when BLI zoned land directly abuts RMHS zoned land.

[28] We acknowledge that, if BLI zoning is applied to the Site, the effective separation distance that Nancy Wake Street would provide would not avoid a loss of visual amenity or outlook. That is, as Mr Knott (TCR's urban designer) explained, BLI zoning could mean large, visually dominant buildings up to 20m high set behind extensive service and parking areas and minimal landscaping (of a 2m setback). As he also noted, such zoning could result in significant on-street parking (unless this was controlled) and large vehicle movements, in relation to the Site access, in the vicinity of the dwellings.²⁵ We accept that, in those terms, BLI zoning could mean a loss of the present amenity values enjoyed by those dwellings in terms of both outlook and the relative quiet of the street.



²³ Nicholas James Rae rebuttal evidence for Wallace, dated 15 November 2017, at [13] and [14].

²⁴ Nicholas James Rae evidence-in-chief for Wallace, dated 13 November 2017, at [93].

²⁵ Richard Knott evidence-in-chief for TCR, dated 13 November 2017, at [7.1]-[7.4].

[29] However, we find no policy or other direction in the PAUP that the amenity values identified by Mr Knott are intended to be maintained. Rather, although the PAUP zoning pattern includes extensive areas where land parcels zoned BLI abut land parcels zoned RMHS, the PAUP's interface controls on permitted BLI activities provide less protection of residential outlook than did the Legacy Plan. That is not to find fault with the PAUP. Rather, it simply reflects the range of evidence-based trade-offs that inform its provisions. In any case, the present quiet amenity of Nancy Wake Street is largely as a result of BLI and other land development opportunity provided for by the PAUP not yet being taken up. As such, the status quo cannot reasonably be anticipated to remain unchanged. That is particularly given the fact that Nancy Wake Street is designed to cater for HCV movements and to serve both RMHS and BLI zoned land (including, for example, the Wallace land) and to potentially be extended through to Porchester Street.

[30] Therefore, we reach the following overall conclusions on the evidence concerning the residential amenity values for dwellings facing Nancy Wake Street:

- (a) the residential amenity values and the quality of the local environment for those dwellings would be largely maintained if the Site were zoned BLI and enhanced if the Site were zoned RMHS; however
- (b) the ultimate judgment on the most appropriate zoning outcome (including in terms of whether it should be one of the modified BLI or RMHS Zoning Options) is determined by other issues traversed in evidence to which we now turn.

Competing opportunity costs for development of the Site and the Wallace land

[31] The competing interests of Wallace and TCR were explained in their legal submissions and evidence.

[32] Mr Robert Wallace explained the long historical association the Wallace family has had with the area. The Wallace land was subdivided from a larger block that extended through to Pope Street. Historically, it was a location for the Wallace family's equestrian activities. After that ceased, and the zoning of its land changed to allow for light industrial activities, Wallace undertook various steps towards its development. In 2013, it subdivided a block to the north-west which was purchased by Spark for a data



centre. Spark has since constructed a three-storey building there and has made provision for two further data centre pods to be constructed.

[33] Wallace lodged a resource consent for the Wallace land in 2017. This seeks consent for ten buildings and associated parking for warehousing, office and production activities for motion pictures, in essence using the entirety of the Wallace land. It would allow for 24hr/7day operation. Three connections are proposed to the surrounding road network – two to Porchester Street and a third via a turning head to Nancy Wake Street (which would remain a cul-de-sac, although the proposal would not preclude its further extension to Porchester Street). The buildings are designed to comply with the PAUP's built form restrictions including the interface controls pertaining to its boundary with the Site (i.e. as would apply if the RMHS zoning in AC's decision-version of the PAUP remains). That includes a large span 13m high industrial building for use as a mill shop/warehouse/engineering workspace.²⁶

[34] Mr Wallace noted that the consent application is in relation to commercial negotiations underway with other parties whose identity remained confidential. As such, the proposal does not necessarily represent the final position on how the Wallace land might be developed. He also noted that, from Wallace's perspective, the layout of the development as proposed in the consent application was not "preferred" as the boundary setback resulted in less usable space in the centre of the site. As such, were Wallace to succeed in this appeal, it would seek a variation of the consent involving shifting the locations for some proposed buildings further westward. On the other hand, should the consent be declined or suitable commercial arrangements not be concluded, Wallace would then want to be best positioned to develop its land according to market demand. Wallace is concerned about the potential limiting effect of the interface controls that would apply if the Site zoning was confirmed to be RMHS. Hence, Mr Wallace explained that his preference is to avoid an outcome where additional restrictions apply to BLI zoned land.²⁷

[35] Wallace's planning witness, Mr Vaughan Smith, explained the various development limitations that would arise for it from the PAUP's interface controls in the event that RMHS zoning was applied to the Site.²⁸



²⁶ Robert James Wallace evidence-in-chief for Wallace, dated 13 November 2018, at [5]-[14], [16].

²⁷ Robert James Wallace evidence-in-chief for Wallace, dated 13 November 2018, at [16].

²⁸ Vaughan Arthur Smith evidence-in-chief for Wallace, at [7.8] and Attachment C.

[36] Mr Wallace was cross-examined on behalf of TCR about the extent to which the interface controls impact on the Wallace site. When Mr Wallace was referred to the resource consent application plans,²⁹ he accepted that the controls impacted some 2% of the Wallace land as so depicted. He also accepted that Wallace was aware that the AC decision was for the Site to be zoned RMHS at the time the application was lodged, and that Wallace satisfied itself that it could satisfactorily accommodate the interface controls in its design of the proposal in its consent application (although noting the much lower night-time noise limits were some impediment, albeit that Wallace could comply with them).³⁰ In light of the concessions made by Mr Wallace, we do not need to traverse the acoustic evidence of Mr Jon Styles.³¹ It is sufficient that we record that we found him a reliable expert but we have reached a different conclusion from his as to the appropriateness of the zoning choice we make, for the reasons we set out in this decision.

[37] Mr Wallace also conceded that the Site, as an undeveloped greenfield site, probably would be worth less if zoned BLI than if zoned RMHS.³² We observe that this sits in contrast to his evidence that, at the local level in Takanini, light industrial land is in short supply, as compared to residential land.³³

[38] It was explained by TCR's rebuttal witness, Mr Kerry Knight (a co-owner of Equinox Group) that Equinox Group used TCR as its entity for the purchase and intended development of the Site. At the time of the purchase (in 2012), the block was going through rezoning and the comprehensive resource consent application to which we refer at [7] was underway. As explained at [7], that application also authorised the 88 stand-alone dwellings constructed in the nearby Residential Development (including the 27 dwellings that face Nancy Wake Street). As also explained there, the consent saw the subdivision of the Site into the current three lots (and allowed for mixed use development of the Site). Mr Knight explained that TCR considered that the AC's decision to accept the IHP's recommendation of RMHS zoning of the Site was logical in reflecting the resource consent situation as well as the zoning pattern of land on the other site of Takanini School Road.



²⁹ Exhibits RW1 and RW2.

³⁰ Transcript, p 15, l 1-34, p 16, l 1-34, p 17, l 1-33, p 18, l 1-32, p 19, l 1-33, p 20, l 1-33, p 21, l 1-33, p 22, l 1-16.

³¹ Jon Robert Styles evidence-in-chief for Wallace, dated 13 November 2017.

³² Transcript, p 22, l 18-20.

³³ Robert James Wallace evidence-in-chief for Wallace, dated 13 November 2018, at [18].

[39] Mr Knight perceived that Wallace, as a neighbouring landowner, was seeking to “dictate the zoning of the land we want to develop”. He noted that each of the alternatives that TCR’s planning witness Mr Hook put up, would impose an opportunity cost on the development of the Site. He commented:³⁴

We were willing to accept that on the basis of a residential zoning that far better met our needs, the needs of the market, and preserved to a far greater extent the amenity of the properties opposite the Site on Nancy Wake Street.

[40] The respective submissions for Wallace and TCR on these matters generally reflects their different perspectives on where the balance of opportunity costs should lie in relation to their land development opportunities. Wallace noted as a key factor “avoiding interface controls impacting upon use and development of the operative [BLI] zoned ... land”.³⁵ TCR referred to Wallace and AC as “standing in the way” of its preferred RMHS zoning. It emphasised that it could not identify a feasible/commercially attractive light industry proposition for the Site.³⁶

[41] We find on the evidence that, on the matter of the different land development opportunity costs for the Site and the Wallace land, the balance lies strongly in favour of RMHS zoning for the Site. Our reasons are as follows.

[42] TCR’s evidence that RMHS zoning far better meets its needs, in terms of development of its Site, was essentially unchallenged. Indeed, it was significantly supported in the concession made by Mr Wallace in cross-examination that he expected that the Site would be worth less as an undeveloped greenfields site if zoned BLI than if it were zoned RMHS. In any case, given that TCR as landowner bears the development risk for the Site, we find its evidence on these matters carries greater weight. We accept TCR’s submission that it could not identify a feasible/commercially attractive light industry proposition for the Site. These findings lead us to find that BLI would likely stymie development of the Site, whereas RMHS zoning would likely assist to enable its development.

³⁴ Kerry Knight rebuttal for TCR, dated 18 December 2018, at [14], [15].

³⁵ Opening submissions for Wallace, dated 21 February 2018, at [32].

³⁶ Submissions for TCR, dated 22 February 2018, at [4].



[43] Wallace's evidence does not persuade us there would be any significant impediment from RMHS zoning of the Site for development of the Wallace land. The land has inherent advantages as a large flat site with frontages to Porchester Road, Popes Road and Nancy Wake Street. The evidence as to Wallace's resource consent application demonstrates it can be viably configured for light industrial development in accordance with the intentions of the BLI zone and without significant impediment from the RMHS zoning of the Site. As Mr Wallace accepted, that is on a basis that takes proper account of the PAUP's controls for an interface with neighbouring RMHS-zoned land. Its generous proportions and its location and access advantages mean it would be readily able to be reconfigured to meet other market offerings, in the event that the current proposal the subject of Wallace's resource consent application does not proceed. In essence, we find nothing about the Wallace land, or its relationship to the Site, as would unreasonably limit its development according to the PAUP's intentions for BLI zoned land.

[44] In reaching those findings, we acknowledge that the PAUP's BLI zone controls would limit usage of some parts of the Wallace land. However, that is not, of itself, an indication that RMHS zoning of the Site would be inappropriate. It is commonly the case that zoning both enables and constrains development. Particularly in an urban setting, there is a need to find an appropriate balance that provides reasonable development opportunity for adjacent land parcels. Whereas a BLI zoning of the Site would stymie its development and likely reduce its value, we find a RMHS zoning of the Site would not significantly hinder the development potential of the Wallace land.

[45] Therefore, we find that RMHS zoning of the Site would be more appropriate than BLI zoning in that it would better enable efficient and effective development of the Site without significantly disabling those outcomes for the Wallace land or other resources. In those terms, it would represent a more efficient use and development of natural and physical resources (s7(b) RMA).

The wider community needs for land for housing and industrial uses

[46] At [13], we record that the planning witnesses agree that each of the Zoning Options would properly assist to achieve the PAUP's objectives and policies on regional growth and give effect to the NPSUDC. However, it remains relevant for us to consider which of the Zoning Options would best enable the community to provide for its housing



and business development needs. That is simply in the sense that social and economic wellbeing are both relevant sustainable management dimensions, under s5 RMA.

[47] We accept TCR's submission that Auckland desperately needs more housing and that this is both an Auckland and Central Government priority. Both are well known facts and, hence, the submission is sound notwithstanding that TCR did not lead evidence on those matters. On the basis of our evidential findings, we also accept TCR's submission that it is ready, willing and able to develop the Site for residential purposes. We also accept its submission that the Site is serviced and 'ready' for immediate provision of housing.³⁷

[48] We find the evidence supports the IHP's finding that the Site is suited to residential development in the fact that it is in general proximity to major arterial roads, the rail-line and the employment centre. We acknowledge those attributes also make it suitable for light industry. However, we put that in the context of our acceptance of TCR's evidence as to its inability to identify a feasible commercially attractive light industry proposition for the Site.

[49] On the other hand, as we explain at [42], the evidence does not satisfy us that zoning the Site BLI would assist the community to provide for its needs for light industrial land. In particular, we are not persuaded by Wallace's argument that there is significant un-met demand for BLI zoned land at Takanini. As we have noted, Mr Wallace's concession that he expected that the value of the Site would likely be less under such a zoning than it would under a RMHS zoning calls into question TCR's evidence as to un-met demand. At one level, there is always demand. However, development is contingent on whether the price offered is viable for the seller. We find TCR is best placed to know what are realistic development prospects for the land and its evidence on this is firmly that BLI zoning would stymie its development whereas RMHS zoning would enable it.

[50] Returning to the matter of the PAUP's regional growth objectives and the NPSUDC, our findings on the evidence differ somewhat from the opinion that the planning witnesses record on the Planning Urban Design JWS:

- (a) we agree that both RMHS and BLI zoning would assist to achieve the PAUP's regional growth objectives;



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Submissions for TCR, dated 22 February 2018, at [2].

- (b) however, we agree with Mr Hook³⁸ in finding that RMHS zoning would be superior in doing so. That is, in the fact that it will enable more immediate and commercially viable housing development in response to a clear and urgent need;
- (c) for the same reason, we find RMHS zoning would better give effect to the NPSUDC.

BLI zoning is inappropriate and a form of RMHS zoning is most appropriate

[51] For those reasons, we are overwhelmingly satisfied that BLI zoning of the Site is inappropriate and we reject it.

[52] Our findings at [31]-[50] lead us to also find that there is nothing about the Wallace land as would make RMHS zoning inappropriate.

[53] That leaves for consideration whether any of the Zoning Options that would qualify the RMHS zoning of the Site would be more appropriate than simple RMHS zoning.

Comparison of the Zoning Options in terms of the PAUP's zoning pattern

[54] In dealing with a site-specific zoning appeal, it is important that we keep in mind how well each of the Zoning Options fits with the zoning approach of the PAUP. That is particularly for those Zoning Options that would add variation to the PAUP's RMHS and BLI zones. Providing a site-specific zoning approach could risk undermining confidence in the design of the PAUP as a coherent planning instrument, at least insofar as the site is not a true exception.

[55] We find that either a RMHS or a BLI zoning of the Site would sit compatibly with the pattern of zoning and land use in the wider Takanini environs that are set out at [6]-[8]. In that respect, we do not agree with Mr Knight, for TCR, that there is any particular significance in the fact that there would be an alignment with boundaries of RMHS/BLI zoning, on the other side of Takanini School Road and Porchester Street, if the Site is zoned RMHS. We observe that Mr Hook, TCR's planning expert, did not seek to make



³⁸ James Ronald Hook evidence-in-chief for TCR, dated 13 November 2017, at [76].

anything of that point. In essence, keeping zoning lines parallel is not a sufficiently weighty planning consideration. What is important is maintaining material consistency in the relationship between RMHS and BLI zoning. We find that consistency would be maintained with either a RMHS or BLI zoning of the Site.

[56] The further point Ms LaNauze raised was she considered Nancy Wake Street a more efficient place for achieving setback mitigation than within private land. However, as we have noted, the PAUP provides for direct property interfaces between BLI and RMHS zoned land on a basis that places interface controls upon the BLI zoned land. As we record at [43]-[45], we find nothing about the Wallace land that would warrant any departure from that approach vis-à-vis the Site.

[57] Ms LaNauze recommended that, if BLI/RMHS zoning is applied to the Site, the boundary should be set at the cadastral boundary. In this case, that would see it being taken to the interior boundary of Lot 55B. We agree that, in a comparative sense, that would be more coherent and consistent with the PAUP's zoning pattern than would the approach suggested by Mr Hook of the boundary being some 38-42m from the Site's boundary with the Wallace land. Whilst it can be anticipated that the Site would be subdivided into much smaller lots as part of a comprehensive residential development, Mr Hook's line would be anomalous for so long as the present configuration of lots endured. However, we find there would be significant and unjustified opportunity cost with Ms LaNauze's suggested split zoning approach. It would add further complexity to developing the Site. For example, unless the Site owner elected not to develop lot 55B, it would create further interface restrictions within the site. We find that unjustified in relation to any benefits it would offer for development of the Wallace land for the reasons we have discussed.

[58] We find that the Zoning Option we term 'RMHS + Additional Wallace land Interface Controls' even less compatible with the PAUP's wider zoning pattern. It would be immediately open for question why such an approach is not applied to other land nearby where there is a similar interface. Hence it would risk undermining public confidence in the PAUP's interface regime. We find nothing in the evidence to justify that.

Conclusions

[59] Therefore, we find:



- (a) RHMS zoning is the most appropriate for achieving the PAUP's related objectives and policies and giving effect to the NPSUDC and, hence, also for promoting sustainable management in accordance with pt 2 RMA;
- (b) the interface controls that apply to the Wallace land under the BLI zoning are also the most appropriate in those terms and will properly assist the efficient use and development of the land resource of the Site and the Wallace land.

[60] Therefore, we decline the appeal and confirm RHMS zoning for the Site direct as follows:

- (a) AC must (insofar as necessary) update the relevant PAUP zoning maps as soon as practicable to show the Site as zoned RHMS; and
- (b) AC must file and serve a reporting memorandum on this by Monday 2 July 2018.

[61] Costs are reserved, but applications are not encouraged. In particular, we observe that our consideration afresh of the Zoning Options was in the interests of all parties, and the public interest, given the findings in the High Court decision. Further, we were assisted by the constructive approach of the planning, urban design, traffic engineering, and noise experts in narrowing differences, and by all counsels' submissions. Any costs' application(s) must be filed and served within ten working days of the date of this decision and any replies by a further five working days.

For the court:



J J M Hassan
Environment Judge

