

Decision No. **A141** /98 **ORIGINAL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal pursuant to s.121 of the Act

BETWEEN BP OIL NEW ZEALAND LIMITED

(RMA 868/95)

Appellant

AND THE MANUKAU CITY COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge Treadwell presiding
Environment Commissioner A H Hackett
Environment Commissioner J F Fitzmaurice

HEARING at AUCKLAND on 15, 16, 17 and 18 September 1998

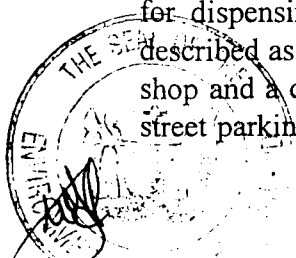
APPEARANCES

R A Fisher and W J Embling for BP Oil New Zealand Ltd
M J Dickey, V K Parre and N D Wright for Manukau City Council
G M Harrison for Shell New Zealand Ltd
J M Savage for the residents of Pakuranga Park Retirement Village
R M Donovan for St Marks Parish and St Marks School Board of Trustees

FINAL DECISION

This is an appeal pursuant to the provisions of s.120 of the Resource Management Act 1991 (RMA) in respect of a refusal of planning consent to enable the construction of a petrol service station to be operated by the appellant BP Oil NZ Ltd (BP) on part of a site comprising 322-330 Pakuranga Road and to develop four residential townhouses on the other part of that site. The construction of the residential units is not in issue, the council having consented to that part of the original application.

The service station proposed is a 24 hour seven day a week operation with an eight lane forecourt for dispensing motor spirits and diesel to private motor vehicles. The layout is sometimes described as a four island service station. As is usual with modern service stations, it contains a shop and a carwash. Ancillary to these activities is the underground storage of motor fuel; off street parking and manoeuvring; BP signage, and significant landscaping. The total site area is



4641m². We will discuss the zoning in a little more detail later but essentially under the Transitional Plan, 322 Pakuranga Road had a split zoning of Commercial 1 and Residential 1 with 330 Pakuranga Road being zoned Residential 1. Under the Proposed District Plan 322 Pakuranga Road had a zoning of Business 1 when publicly notified and 330 Pakuranga Road was zoned Main Residential. The council in its decision on submissions has now zoned the whole of the subject site Main Residential within which service stations are a discretionary activity subject to certain criteria.

The applicant, up to the stage of the decision zoning the whole site Main Residential, was proposing activities which were not technically in conformity with the zoning in that the service station was to be put on the Main Residential part of the site with the townhouses on the part of the site set aside for commercial and/or like activities. This had certain advantages in that it removed the service station as far as possible from true residential activities and provided a further residential buffer of four townhouses. The service station would be constructed first, therefore the owners and occupiers of those townhouses would be fully aware of the environment into which they were buying.

The council's decision to zone the whole area Main Residential has removed any artificial argument based on the precise line of zone boundaries and enabled the whole activity to be assessed as a discretionary activity. We record that the only relevant appeal lodged against the main residential zoning is an appeal lodged by BP. For the purposes of this decision we intend to regard the zoning as Main Residential. The council has notified the fact that it has made a decision thus the Proposed Plan is the relevant document.

BACKGROUND

We intend to traverse the background in a little detail because this matter has already been before the then Planning Tribunal in 1992 in respect of a zoning appeal in the case of BP Oil NZ Ltd v Manakau City Council, decision A89/92 (the BP 1992 case). This was a hearing in terms of the Town and Country Planning Act 1977 heard at Auckland in January and February of 1992. This particular judgment resulted in service stations becoming a conditional use upon the whole site presently under consideration. Within the commercial part of the subject site (which we will refer to as the Flower Market site, that being its then useage), service stations were not permitted but they were permitted as a conditional use on the residentially zoned part. The Tribunal decision removed that artificiality. The decision identified the site as a site suitable for consideration as a conditional use. The council decision in respect of submissions under the RMA zoning the site Main Residential has absorbed what was previously an isolated site subject to special zoning within the general concept of Main Residential.

The decision of the Tribunal in 1992 to which we have referred is therefore of limited interest but excerpts from it, together with our comments, may serve to highlight some of the differences which have arisen since the 1992 decision. In the BP 1992 case the Tribunal recorded its acceptance of service stations as a conditional use in a Residential 1 zone subject to locational criteria but went on to consider whether that status should apply to the Commercial 1 part of the split zoning applying to this site. It recorded the total area as being 1961m² as opposed to the present service station area proposed of 3000m² plus. The decision recorded a proposal for 3 pump islands which was smaller than presently proposed. Aspects of concern identified by the Tribunal were detracting from residential amenities, noise, lighting, fumes, and lack of need.



Although those issues were raised in the course of the present proceedings and cumulative effects are certainly of relevance, the main concern expressed before this Court was in respect of traffic issues. In the period between 1992 and 1998 Pakuranga Road, an arterial road, had changed. It is a road carrying upwards of 44,000 vehicles per day and at the time of the hearing before the Tribunal was a five lane highway. The service station site in 1992 fronted the two east-bound lanes which were of generous width. There was a liberal median separating those lanes from the three west-bound lanes. At the time of the present hearing the median strip within which turning traffic can pause, had narrowed to make way for a third east-bound lane. We are now faced with a six lane as opposed to a five lane highway. The BP 1992 case recorded:

“In respect of traffic issues there was no argument from any of the traffic or planning witnesses called on behalf of the parties (Messrs Bhana, Harries and Burton for the Oil Companies and Messrs O’Connor and C Freke traffic witnesses for the council) that the site was unsuitable from a traffic engineering point of view. No one alleged that there were any problems with the site either in terms of the frontage traffic environment or from the point of view of health or safety.”

We will discuss this in detail later but we record that there is now a substantial dispute between traffic engineers as to the safety aspect of a service station upon the appeal site. We also record that the council are actively involved in redesigning ingress and egress to the school / church site immediately to the east of the proposed service station and this will exacerbate difficulties which the council are presently trying to overcome.

In respect of noise the decision of the Tribunal recorded that there would be no car wash, which would have been one of the principal sources of noise. In the present proposal a car wash is proposed.

Lastly in respect of the BP 1992 decision, we are satisfied that the Tribunal was erring on the side of justice by giving BP the opportunity to apply for a conditional use (now a discretionary activity) thus enabling the issue to be fully considered. Comment made at page 15 of the decision in respect of the convenience of a service station on the appeal site recorded:-

“In assessing the overall traffic situation, we consider that the added convenience of a service station on the appeal site to service left-turning traffic into Fortunes Road may be sufficient to warrant consideration of a conditional use application under the Commercial 1/Residential 1 zoning. Mere convenience may not be enough. The real issue will be whether the effects of the use on the amenities of the area are likely to be more than minor, giving the existing uses, the nature of the proposed use, and the character of the neighbourhood when weighed up against the convenience factor.”

(emphasis was in the original decision)

We have recorded these comments because in our view the decision of the Tribunal in the BP 1992 case does not indicate that the site is suitable for the use proposed.



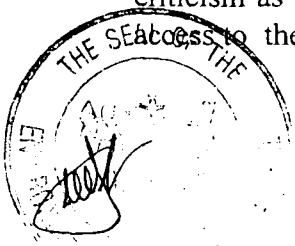
THE PROPOSAL IN DETAIL

The site will be cleared of the present commercial buildings and bowling club clubhouse. The existing commercial structures were described by most witnesses as residential in nature and scale but they nevertheless present an untidy conglomerate of buildings painted in colours which are alien to the earth colours of the comprehensively designed retirement village behind. That clash is exacerbated by the presence of many signs of doubtful legality. The proposal will undoubtedly improve the present amenity values of that commercial site because the buildings will be replaced by four attractive townhouses designed to blend with the village behind. To the east and immediately contiguous with the townhouses is the proposed site of the service station itself. It is bounded to the north by a carparking area associated with the retirement village with the nearest building on that northern side being a type of community centre which includes recreational facilities. This is of two storeys with the second floor previously occupied by a manager's flat, but presently vacant. A balcony on that second floor would have a view of the appeal site, despite the screening proposed. The carwash is to be located hard on the western boundary. Along that western boundary it is intended to construct a brick wall. The height of the wall will vary because the site slopes from Pakuranga Road towards the village at the rear. It is intended to level the site thus elevating the whole service station area above the land to the rear.

The brick wall will start from the road frontage at a height of some 1.9m. Calculations then tend to become a little difficult because the wall will be constructed at an RL ground level of 23.70 which is approximately 1-2m above the ground level of the proposed townhouses. Generally the wall on the townhouse side of the carwash will reach 4m in height. It will then slope down again as it progresses north towards the village carpark. The whole of the wall to the west of the carwash, from the road to the rear boundary will be built within the land of the applicant BP. A further fence will be constructed on the true boundary of residential height and appearance. As the wall returns at the rear of the property to run east-west along the boundary with the village carpark area, the top of the wall is now intended to be at an RL level of 26.525 which is some 3.4m above the planter box which separates it from the carpark. From the carpark itself, the top of the wall would be some 4m above the level of the seal taking into account the height of the planterbox. The applicant is prepared to reduce the height of the wall above the planter box to 3m.

Although of attractive design one cannot escape the fact that a continuous wall, broken from time to time by vegetation, will be erected on two sides of this site and such a wall is not the type of amenity one would expect to find in a largely residential environment. On the eastern boundary where the appeal site bounds the site of the St Marks Parish School, there will be extensive vegetation and a fence. The appeal site will be substantially screened with vegetation and, despite criticism by those opposed to the proposal, we consider that BP has paid great attention to mitigating the visual appearance of the proposed service station by this method.

Within the open sealed area will be the shop, pumps, refuse compound, tanker filling points, tank vents and sundry matters of that nature. There was some attention directed by opponents to the fact that a refuse truck can block access to some of the parking places required by the Proposed Plan but, having regard to the time such a vehicle will be on site, we regard that criticism as of no consequence. Immediately on the eastern boundary of the site is pedestrian access to the St Marks Primary School which is used by the young pupils.



The western vehicle entry to the service station is from Pakuranga Road and as presently planned is not particularly satisfactory. It was conceded by BP that a deceleration lane should be provided from the west, such lane passing in front of the proposed townhouses which are also to the west. It was generally agreed that this would be an advantage to service station traffic and would also be welcomed by the owners of the townhouses who would be able to exit the road without the fear of rear end collisions. The proposal was modified to provide for this. The eastern exit poses difficulties which we will later address.

THE NEIGHBOURHOOD

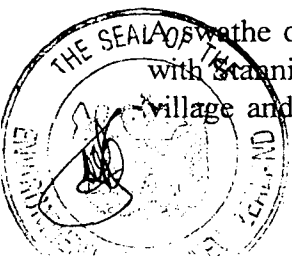
Before describing the neighbourhood one must keep in mind that the Transitional Plan and the Proposed Plan, which is now the dominant document, both permit a mixture of activities within residential areas. We do not intend to enter into a detailed assessment of the zone at this stage but the reader of this decision should bear in mind that the locational criteria for service stations in 13.14.2.2 refer to appropriate sites as being in locations where the activity will not introduce more than minor adverse effects into any area that has "*a substantially residential character*" and that such a suitable location may include sites which are adjacent to business zones or are adjacent to other major traffic generators, or non-residential activities where such activities create a focal point. The definition of "*residential activities*" reads:

"The use of premises land and buildings for any domestic or related purpose by persons living alone or in a whanau/family and/or non-family groups (whether any person is subject to care, supervision or not), but excludes homes for the aged, residential centres, home enterprises, hotels, motels, camping grounds, motor camps or other travellers' accommodation where residential accommodation for five or more travellers is offered at a daily tariff or other specified time."

It is to say the least, strange that homes for the aged and residential centres are excluded from this definition. Such centres are also defined in the plan as being premises in which board or lodging is provided or intended to be provided for boarders or lodgers and includes hostels, emergency housing, orphanages, refuge centres, halfway houses etc. Private and public hospitals are excluded from that definition.

From Fortunes Road to the appeal site on the northern Pakuranga Road frontage there is firstly a corner site occupied by Kentucky Fried Chicken (KFC) and its attendant parking. To the west is screen planting then a parking place to the west of that associated with a small community activity building which has heritage listing. To the west of that building is a large site presently unkempt and vacant, with a conglomeration of building materials and sheds at the rear not visible from the street. There is then a large roughly oblong block of land fronting Pakuranga Road which contains St Marks Parish Church and hall with the St Marks Primary School complex and playing grounds at the rear. To the west of that is a vacant site previously occupied by a bowling green (which has been relocated) which forms part of the appeal site. Then follows the balance of the appeal site. Beyond that all land to the west which could possibly be relevant to this appeal is in residential useage and presents a predominantly residential appearance.

The balance of land stretches from Fortunes Road round the perimeter of the school connecting with Staniland Street and circling round to meet Pakuranga Road. This contains the retirement village and would form the bulk of the land in the immediate relevant area west of Fortunes



Road. Within that land area there is a building which we do not have a great deal of information about but which was generally conceded to be a type of rest home. However there may be some units within it where the inhabitants may be reasonably self sufficient. Technically that may not be considered a residential activity because of the definitions contained in the plan to which we have referred. The bulk of the village / rest home area plus the townhouses at number 320 Pakuranga Road is wholly residential in nature, apart from the building used as a village centre and the bowling green which is now relocated behind the rest home.

On the opposite side of Pakuranga Road east of Cascades Road is Lloyd Elsmore Park, a park complex which comprises predominantly open land used for sporting purposes. There are some buildings upon it well back from Pakuranga Road. Bells Road passes through the park and meets Pakuranga Road opposite the eastern Church boundary. To the immediate west of Lloyd Elsmore Park the land again becomes predominantly residential in nature. The eastern part of the park faces a largely commercial environment. A large Shell service station is on the opposite side of the road on the corner of Fortunes Road and Pakuranga Road and to the north and east of that site the activity is predominantly non residential and visibly so. To the east of the park on the park side of Pakuranga Road retailing and allied uses are heavily concentrated and the land opposite is also commercially used. Were one to stand on the park immediately opposite the intersection of Fortunes Road and Pakuranga Road and look west, the vista would be residential in character with KFC presenting the only jarring non-residential aspect. That vista would be one of community halls, church, rest home, a small commercial enclave, residential buildings and pockets of vacant land on the northern side with park and residences on the southern side. Much of the retirement village is hidden from that viewpoint. If one then looked straight down Fortunes Road the immediate vicinity would present a commercial appearance with Kentucky Fried Chicken, the Shell service station and McDonalds occupying the foreground. Turning 90 degrees and looking down Pakuranga Road to the east, apart from the eastern end of the park there is a highly visible and predominant commercial flavour. In the middle of all this is an arterial carrying some 44,000 vehicles per day.

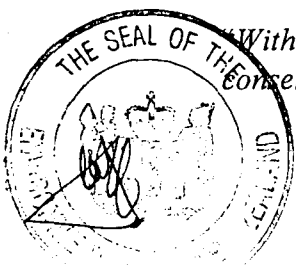
Were one to carry out the same exercise at night the distinction between areas west and east of Fortunes Road would be even more evident with a predominance of commercial lighting to the east.

THE TRANSITIONAL AND PROPOSED PLANS

There is not a great deal of difference between the two plans, particularly in relation to locational criteria. In respect of the subject site we have already recorded that the Proposed Plan has passed the stage of any challenge which could downgrade the standing of service stations on this particular site. Since the Tribunal decision in 1992 service stations have been conditional and/or discretionary activities. The Proposed Plan is now the predominant document with the property being zoned Main Residential wherein service stations are permitted subject to locational criteria.

We will first examine the locational criteria to ascertain the degree of compliance. The criteria for assessing service stations where they are permitted as discretionary activities in the residential zone are set out at s.13.14.2.2 namely:

Without limiting its discretion when assessing an application for a resource consent for a service station the Council shall consider the General Assessment



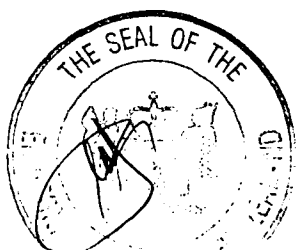
Criteria in Rule 13.14.1 and the following matters and may impose conditions in respect of each:

(a) Locational Criteria

- The site should be in a location where the activity will not introduce more than minor adverse effects into an area that has a substantially residential character.
- Suitable locations may therefore include sites which:
 - (i) are adjacent to business zones;
 - (ii) are adjacent to other major traffic generations or non-residential activities where such activities create a focal point; or
 - (iii) involve the redevelopment or upgrading of existing service stations.

(b) Site Development Criteria

- The extent to which the design and layout of the development meets the requirements of Chapter 8 - (Rule 8.11.7)
- That adequate separation distances of buildings and activities from residential boundaries are provided. As a general guide, 6m yards would be considered a minimum yard requirement.
- That the scale and intensity of development will not detract from the existing and foreseeable future residential qualities and character of the neighbourhood. Particular attention will be given to the size of buildings, the number, size and location of signs, the number of fuel outlets and the range of other activities proposed.
- That the appearance of buildings is sensitive in terms of design, materials and colour scheme with the existing or foreseeable future residential character of the neighbourhood.
- Generally a minimum of 6m front yard will be required which shall be landscaped in accordance with the following provisions:
 - (i) the front yard landscaping shall comprise a landscape strip adjoining and parallel to the front boundary and having a minimum width of 2m, but shall exclude the areas required for vehicle and pedestrian access; and
 - (ii) where a site is affected by a building line for amenity purposes, all of that part of the front of the site affected by the building line shall be landscaped, excluding the area required for vehicles and pedestrian access.
- Landscaping and/or screening of side and rear yards will be required to form a dense visual screen and a physical barrier between the service station and adjoining residentially zoned land. The following provisions shall be used as a guide:
 - (i) Where a side yard is required there shall be:
 - a 1.8 metre high block wall, fence or screen designed to the Council's satisfaction; or
 - a landscaped strip, planted to achieve a dense visual screen, adjoining and parallel with the boundary of the site and having a minimum width of 3 metres.
 - (ii) Where a rear yard is required there shall be:
 - a 1.8 metre high block wall, fence or screen designed to the Council's satisfaction; or
 - a landscaped strip, planted to achieve a dense visual screen adjoining and parallel with the boundary of the site and having a minimum width of 3 metres.



- *Any illumination on the site shall be required to meet the standards specified in Rules outlined in Section 5.18.2 set out in Chapter 5, General Procedures and Rules.”*

It can be seen that these are fairly detailed but the council has made perfectly clear in the opening words of 13.4.2.2 that the criteria do not limit the general council discretion when considering an application for a resource consent.

The opening words of the rule also refer to “*General Assessment Criteria*” for discretionary activities. Those criteria also do not limit the general exercise of discretion. The general criteria follow the provisions of the Act with considerations such as:

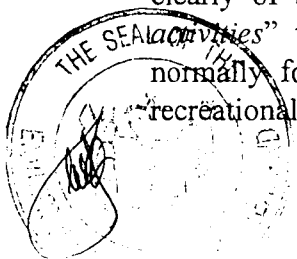
- Effects on people and communities
- Effects on social, economic and cultural conditions
- Effects on tangata whenua
- Effects on landscape values
- Effects on eco- systems
- Effects on natural and physical resources, with aesthetic, recreational, scientific, historical, spiritual or cultural value
- Discharge of contaminants to the environment
- Effects on traffic safety
- Effects on amenity values
- Cumulative effect

Essentially the matters listed in the General Assessment are covered by s.104 and by Part II of the Act and there is no necessity to list such matters at all.

Returning now to the locational criteria the first is that the service station should be in a location where the activity will not introduce more than minor adverse effects into an area that has a substantially residential character. It will be noted that this particular criteria does not use the expression “*residential activities*” which is defined in the plan as we have previously commented. The expression “*non-residential activities*” is used in the next part of the criteria where locations which may be suitable are instanced.

We are, therefore, in the first place, called upon to ascertain whether the area has a substantially residential character. The word “*character*” has some affinity with the expression “*amenity values*” as defined in the Act. That definition means those natural or physical qualities or characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes. This sits well with the definition of the word “*character*” in the Collins Dictionary (revised third edition) where it refers to “*the combination of traits and qualities distinguishing the individual nature of athing*”.

When assessing what is residential character one must take into account the sort of activities which are generally associated with pure residential uses. It is our opinion that the area relevant to the present case stretches from Fortunes Road to the west on both sides of Pakuranga Road. Within that particular area there is a predominance of single unit residential buildings which are clearly of a residential character. Despite the definition in the plan of “*non-residential activities*” the residential character of this area also encompasses many things which are normally found in, and add to the general character of a residential area. These include recreational parks and associated activities, a bowling green, a primary school, a church and



associated community hall, and a community centre within a heritage building housing kindergarten and similar activities. The KFC restaurant is on the periphery of this large residential area in a location where it can tap both commercial and residential population and also passing traffic. This is a fringe activity and its presence does not in our opinion taint the residential character of the main area we have defined. The only maverick is that part of the subject site which contains two small commercial activities. However, these are on a minor scale and do not offend the general residential character of the area either by their scale, or the type of activities carried on, nor do they offend the concept of the Main Residential zone which is aimed at a mixture of activities provided any non-residential activity does not affect the main residential amenity. In any event, those small scale activities are to a degree physically isolated by topography from the village behind and are certainly isolated to the south by Pakuranga Road.

With the greatest of respect to Mr Bhana, he produced a plan in his evidence which, in the view of the Court, tends to give a wrong impression of activities. He has taken the expression “*non-residential activities*” as opposed to the expression “*residential character*” and has coloured all non-residential activities in bright yellow upon a plan. That plan creates an overwhelming impression of non-residential areas intruding deep into the area of residential character. For the reasons we have advanced so far in this decision we do not agree with that approach.

The criteria for accepting a service station within an area of substantially residential character therefore rely on the service station not introducing more than minor adverse effects. Essentially the first bullet point under clause (a) of 13.14.2.2 is the overriding criterion. The next bullet point does not give locational criteria but gives three examples of locations which may comply. We agree with the submissions of counsel for the council in that regard.

The first instance of suitable locations in (i) no longer technically applies because the zone is now Main Residential but in practical terms the situation is the same. The second, under sub-clause (ii), is whether the proposed location is adjacent to other major traffic generators or non residential activities where such activities create a focal point.

We accept that schools, churches, community halls, takeaway outlets, flower shops and fish shops are non residential activities, although associated on many occasions with main residential activities. The school is a substantial traffic generator with a daily volume of traffic similar to a service station but with the generation concentrated at different times. The church is in a similar but lesser category because the frequency of generation is more scattered. Both those activities create a focal point. This however leads us to the main problem in this case which we will develop later, namely that the provisions of this plan relating to general amenities and to traffic in particular, give no encouragement to the concept that there should be a further concentration of major traffic generators in an already unacceptable location.

The third criteria (iii) does not apply.

Turning to site development criteria, we accept that the service station substantially complies with specifics or could be made to comply (ie limited hours for the carwash). In so far as illumination is concerned there appeared to be some dispute about that but we are satisfied that light spill and similar problems could be covered by conditions and appropriately mitigated. Landscaping in our opinion is more than adequate. The matters where there is debate we will



discuss later, namely the scale and intensity of the development in so far as detracting from existing and foreseeable residential qualities and character is concerned and to the appearance of buildings and sensitivity in terms of design etc.

TRAFFIC

We will discuss this at this point in the decision because it is the most important issue facing the Court. Many elements of Part II of the Act as well as s.104 issues are also relevant in this context.

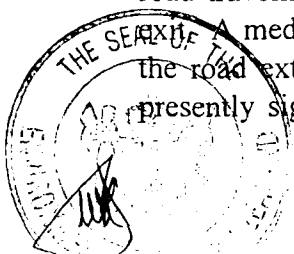
Pakuranga Road is an arterial road and despite locational criteria for service stations referring to use of such roads for that purpose there remains the prime consideration of safety and public convenience which must be addressed.

Pakuranga Road with six lanes and a traffic count in excess of 44,000 is a physical resource which requires sustainable management in terms of s.5(1) of the Act. That resource must be managed, used, developed and protected in a way which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety. The safe and efficient movement of vehicles within the greater Auckland region is critical to the people and communities of that region. Therefore the potential of Pakuranga Road to safely service the reasonably foreseeable needs of future generations is a matter for consideration in terms of s.5.

Having established the place of the road in the context of sustainable management of resources, any activity which may have adverse effects on it should only be approved if those adverse effects can be avoided or mitigated unless there is some important element of public interest which suggests otherwise. In the context of this present case mitigation must approach closely to complete avoidance of adverse effects.

In respect of s.6 of the Act there is nothing of particular relevance as an issue of national importance. In relation to s.7 one again must address the efficient use of the physical resource represented by the road and also the maintenance and enhancement of amenity values which to a degree brings one to the full circle of considering the physical qualities and characteristics of an area that contribute to peoples' appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes. The quality of the environment should be maintained and enhanced and the finite characteristics of the physical resource represented by the road is a matter for consideration in that context.

We will now turn to a general description of the traffic difficulties on this part of Pakuranga Road. The subject site is on the northern side of Pakuranga Road roughly half way between two intersections created by Cascades Road and Bells Road to the south. On the same side as the subject site but to the east is Fortunes Road. The large area surrounding the application site contains the retirement village, the church and the school. Traffic lights control the Cascades Road and Fortunes Road intersections. Traffic turning from Cascades Road and travelling east is led into the outside lane of the three lanes (kerbside, centre and outside) leading eastward. Traffic using the two inside lanes is not impeded by the traffic signals but traffic on Pakuranga road travelling west in the western three lanes is controlled to allow Cascades Road traffic to the road extends from Cascades Road to Fortunes Road. The Bells Road intersection is not presently signalised. The school and church have exit and entry points onto Pakuranga Road

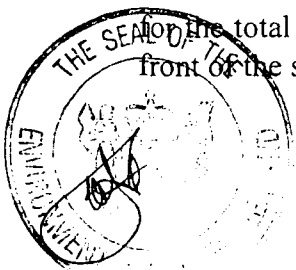


close to and opposite the Bells Road intersection. There is a secondary exit for the Church and school via a right of way (exit only) onto Fortunes Road. KFC and the Shell service station occupy respectively the western and eastern corners of the Fortunes Road / Pakuranga Road intersection. Motorists presently wishing to obtain fuel from the Shell service station and travelling east along Pakuranga Road have a short slipway into that service station immediately past the intersection of Fortunes Road. If they wish to exit and continue along Fortunes Road after entering the service station, they can be impeded from time to time by traffic queuing at the intersection waiting to enter Pakuranga Road, but from the evidence we have heard we do not consider these delays significant. The ease of entry and exit to the proposed service station for traffic wishing to continue along Fortunes Road would be superior to that offered by the Shell service station for traffic wishing to continue along the same course but the amount of traffic affected is not of great significance in numerical terms.

In respect of the availability of service stations there are plenty in the vicinity, particularly to the east of Fortunes Road, and there are service stations further to the west along Pakuranga Road. For traffic travelling east along Pakuranga Road past the Fortunes Road intersection there are ample refuelling stops. The BP service station would merely serve to intercept that traffic from an up-stream position.

For the purpose of considering the traffic aspects we hold that the proposed BP service station would be more convenient for a modest number of motorists wishing to continue north along Fortunes Road but its main catchment would be at the expense of other refuelling stops further to the east along Pakuranga Road. Thus in our opinion there is no necessity for a service station on the subject site and its desirability in terms of motorist convenience is marginal.

Annexed are two plans from the evidence of Mr J M Burgess. The plans are marked A and B. Attachment A shows previous and current road layouts. In the previous layout the BP site is shown as having an ingress and egress onto a 5.4 metre wide lane with a second east bound lane of 3.6 metres and a median of 3.4. It shows the school / church ingress egress as it was then and is at present. Vehicles would also have made use of the liberal 5.4 kerbside lane and the liberal median in the road centre. Conflicts could occur with school traffic entering the school having come from Bells Road if other vehicles are making use of the right turn median arrow to turn from Pakuranga Road into Bells Road. The present road layout is shown as the second diagram on Attachment A with a reduced central median barely wide enough for a motor vehicle to pause and a reduced lane width on the kerbside for traffic travelling east. The highway is now six lanes. Considerable difficulty had been experienced before with school traffic, even with the two / three lane configuration and school authorities became very alarmed when the highway was redesigned to the three / three configuration with reduced central median. In response to that concern, a proposed redesign is shown on Attachment B which has relocated the entry into the church / school some distance from Bells Road and prevented entry into the driveways closest to Bells Road. This could considerably reduce conflict within the vicinity of the Bells Road intersection. It will also be noted that the central median is to be increased in width by 0.5 metres at the expense of the kerbside lane which BP must rely upon for entry and exit. A bus stop is proposed between the entry and exits into the school to accommodate at least two buses. Another suggestion for that facility is to place the bus stop to the east of the eastern exit from the school and church. This is not acceptable to the school. We record that BP have agreed to pay the total cost of a bus parking bay. Buses at present tend to park in a "No Stopping" area in front of the school which we viewed with considerable alarm when inspecting the site.

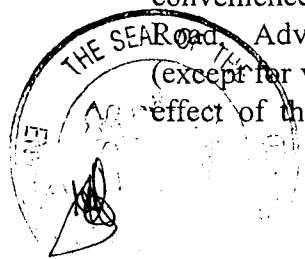


There is an existing walkway marked on the plans which is the main walkway for primary pupils exiting the school either with parents or for the purpose of connecting with buses. School children either turn to the east to where the buses will be parked, (thus crossing the new suggested school entry location) or move to the west to walk home where they would immediately cross the BP exit, and, a short distance later, the entry.

It is intended to modify the BP site entrance by designing an adequate deceleration lane which all the traffic engineers consider will work if the pedestrian way is modified. However, this does not address the problem of west bound vehicles wishing to turn right across three lanes of approaching traffic in order to enter the service station. The exit lane poses some problems. As presently designed tankers can only exit by crossing into the centre lane which is not the optimum design suggested in the Council's plan. To increase the angle of exit would, however, bring the exit point for traffic closer to the walkway used by primary children. Other drivers using that exit will be looking behind them to ensure that the lane into which they are entering is free of traffic which has an 85 percentile speed in excess of 69 kilometres per hour. When a gap is perceived and the driver accelerates the driver could be confronted by children exiting the walkway with the lack of attention often associated with young exuberant children whose schooling has ceased for the day. There is also the potential conflict of a driver exiting the BP site being confronted by a driver entering into the school entry point having arrived from the east. This could also result in a sudden confrontation with either one or both drivers being unaware until the last moment of the manoeuvre of the other. Should a driver exit from the BP site and cause a following east bound driver to move to the centre lane whilst an inbound school vehicle is proceeding to turn into the school, matters could become interesting to say the least and a potentially dangerous situation could be created.

The Court conducted a site inspection for approximately three quarters of an hour from 2.40 pm when parents and buses were arriving to pick up school children. We found the experience unnerving. There were gaps in the traffic as predicted by Mr Harries the Traffic Engineer called on behalf of BP. We found the gaps created accorded more with his evidence than with the evidence of other witnesses. It was nevertheless an alarming experience contributed to a degree by buses being illegally parked. The impatience of drivers trying to enter or exit the school became very evident as also were conflicting trafficator signals. Vehicles travelling east for instance were using their left hand trafficators to indicate a turn into Fortunes Road whereas drivers exiting the school took that signal to indicate the vehicle was entering the school thus clearing them for exit. Similarly, traffic exiting and intending to go into Bell Road had to first cross three lanes of east bound traffic and often entered the right turn refuge awaiting a gap in the west bound traffic at an angle which, because of the narrow width of the refuge, affected east bound traffic in the outer lane. The rear of the paused vehicle often intruded into that lane. One driver in fact exited the school, crossed the whole six lanes of traffic and executed a turn in the mouth of Bells Road and then travelled west. The situation for a main arterial was far from ideal and to us supported the concerns of Mr Burgess as given in his evidence. The new proposal for the school exit and entry should improve the existing situation to some degree.

We will now turn to an examination of the evidence of the engineers. In that context we must bear in mind the definition of "effect" in s.3 of the RMA. Taking the sub-sections of s.3 in turn we do not find that the presence of a service station has any positive effect except for the convenience of the modest number of homeward drivers travelling east and turning into Fortunes Road. Adverse effects can be mitigated in respect of ingress to the proposed service station (except for vehicles making right turns) but in respect of egress are incapable of mitigation. The effect of the service station will be permanent. Effects will be future effects and could be

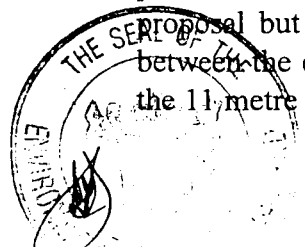


cumulative should the school and church add to their buildings for the purpose of accommodating an increased number of pupils and parishoners. This increase is probable - indeed inevitable. We do not consider accidents or fatalities to be of high probability although anecdotal evidence we received indicated that there have been a number of minor accidents not reported to the authorities. Lastly there is a potential effect of low probability whereby pupils could be killed or injured and that effect in terms of peoples and communities is an effect which has a high potential impact. Having regard to those matters we consider effective avoidance measures are imperative.

The first witness in support of BP was Mr Harries, a Traffic Engineer of considerable experience, comparable to that of Mr Burgess who was called by Shell. Mr Harries has been closely concerned with this particular project since the BP 1992 case. We found, however, that his evidence was not as persuasive as that of Mr Burgess because the initial evidence circulated by Mr Harries was based on the two lane configuration for east bound traffic. It was not until he received the evidence of other parties that he realised that the road was now three lane. His evidence was modified accordingly as to that factual change but he did not consider that the addition of a further lane made any difference to the situation. With the greatest of respect to Mr Harries we feel he did not address this additional factor but simply left his original evidence more or less unchanged as evidenced by the fact that the three lane scenario was largely addressed by him in rebuttal.

Mr Harries gave general evidence as to the siting of the proposed service station and to the status of Pakuranga Road. His conclusion was that the site was strategically located with respect to the high volumes of traffic associated with the large residential catchments nearby. It was on the preferred side of the street for homeward journeys. It was his opinion that the high traffic flows were generally broken into platoons by the operation of the SCATS controlled traffic signals. He considered this would result in calm periods of about 10-20 seconds duration when the road can be entered or crossed. He conceded that platooning was more noticeable in westbound traffic flows because the nature of the Pakuranga Road / Cascades Road intersection does not prevent a continuous flow eastbound. It is nevertheless influenced by traffic signals further to the west. He discussed peak hour flows and turning movements for the various peaks which coincided with the school peak in the morning but the after school peak is earlier than the evening road peak period. Travel speeds despite the then 60kph limit were in the vicinity of 68-69kph. There is now a 70 kph limit. Pedestrian flows in the vicinity are moderate with 15 primary school pupils in the morning and 12 in the afternoon. There had been 13 non-injury accidents and two injury accidents in the period 1993-1997. Six of these were at or in close proximity to the Bells Road intersection but there was no particular pattern of accident types. None appeared to involve St Marks school traffic but anecdotal evidence from witnesses on behalf of the school indicated that these figures may be suspect.

Mr Harries then turned his attention to the proposed service station and its potential effect upon the situation presently existing with some attention being paid also to the proposals as to rearrangement of the school exit / entry. In regard to this evidence we express no concern with the internal layout of the site except as regards tanker exit where the tanker will move into the second eastbound lane. This will be infrequent and is not unusual in Auckland. Despite the Council views on the question of tankers being able to exit into the lane immediately by the exit point we would not consider that that this factor alone would warrant rejection of this present proposal but it is a cumulative factor. Mr Harries was satisfied with the separation distance between the entry point of the service station and the residential driveway to the west and with the 11 metre separation from the St Marks School walkway to the east. With respect we do not



consider that sufficient attention has been paid to the fact that an exiting driver may not have his attention directed at the school walkway which in any event will be partially hidden by vegetation. The separation between the existing school driveways and the service station driveway is adequate but for general safety the school entry way may be positioned closer to the service station exit. In his paragraph 5.6 Mr Harries' conclusion was that the design and operation features of the service station driveways would ensure "*appropriate levels*" of safety and amenity for both passing pedestrians and cyclists and for other users of Pakuranga Road.

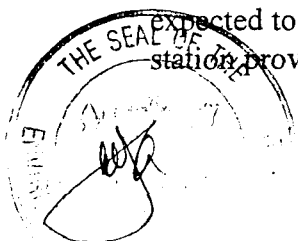
The forecourt flows anticipated for the service station will be an average of approximately 500 to 600 vehicles arriving into the forecourt per day with around 60 vehicle arrivals during the evening peaks. He concluded that this was not much different to the traffic generated by past retail activities upon site but other engineers disagreed with that particular conclusion.

Mr Harries then analysed data concerning pedestrian accidents associated with service stations and we accept that these results indicate a very low probability of accident. However, none of the witnesses were able to point us to a situation where excited young children may be shooting out of a walkway hidden from the view of a driver exiting a service station particularly when that driver has his attention focused on traffic approaching the exiting vehicle from behind.

He addressed the siting of the school bus stop which we intend to discount at this stage as being an adverse effect because wherever the bus stop is located pupils will be attracted away from the service station exit to locations further to the east. We record, however, that from our site inspection the bus companies cannot expect to have three buses parking in front of the school at the same time.

He discussed the movement of vehicles at peak school times but with respect we do not think he has paid sufficient attention to the many instant decisions motorists will have to make with the three lane situation now existing. Essentially two sets of drivers will be aiming for the same gap, namely, drivers exiting the service station and drivers trying to enter the school in the mornings. There will be similar potential tangles in the afternoon, although we accept the peaks will not be the same. We do not agree with the conclusions of Mr Harries that there will be little noticeable interaction between the two facilities because we feel that his comment is directed at what will generally happen rather than to the not too infrequent situations where there will in fact be an interaction.

On the question of desirability of a service station on this side of the road he recorded that two service stations are located near to the western end of Pakuranga Road being Mobil and BP on opposite sides of the road. Another three are located near to the Highland Park end being Mobil and Caltex serving westbound traffic. The very large Fortunes Road Shell station services eastbound traffic. The latter is some 260 metres to the east of the site on the same side of the road. Mr Harries concluded that there is a large group of motorists using Fortunes Road that pass only one service station on their home bound journey and that is some three kilometres to the west. 71% of all turning movements at Fortunes Road / Pakuranga Road intersection involve turns to or from the west and 19% of all Pakuranga Road traffic that passes the subject site originated from or is destined for Fortunes Road. This equates to 8000 vehicles per day passing the subject site which have entered from or are destined for Fortunes Road. Of this total some 3500 turn left from Pakuranga Road into Fortunes Road. Of those 3500 vehicles 6% could be expected to make use of the proposed service station. He does not consider that the Shell service station provides an alternative convenient refuelling option.



Our conclusions on those aspects are that if that is the total benefit from the proposed service station then any adverse effects that it might generate must be examined very carefully indeed before consent should be granted.

Mr Harries then discussed the various traffic criteria contained in the Transitional and Proposed Plans relating to the proposed developed and concluded that it met all criteria. The only matters which were in issue was the tanker exit and some minor blocking of parking places by the occasional refuse truck.

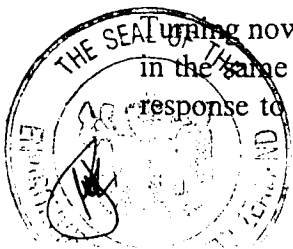
In rebuttal evidence Mr Harries addressed some matters raised by opponents to the scheme. He first addressed the changes to Pakuranga Road. It was his opinion that the BP development with new recessed bus stops and forecourt parking would improve the situation presently existing. We are not, however, satisfied that the BP proposal will improve the situation when one takes into account the proposals presently being discussed between the school authorities, the church authorities and the Council which will achieve all the improvement which Mr Harries considers necessary without the additional factor of service station traffic. He agrees that a left turn splay should be provided in advance of the western driveway into the service station but still considers this not essential and to be an overkill. In regard to right turns into the service station he conceded that whatever happens with design some drivers (some 10%) will make this manoeuvre.

As a comment on the projected percentage we record that Mr Burgess, in answer to questions in relation to motorists wishing to make right turns into the service station, pointed to the fact that data is now surfacing to show that service stations offering card facilities such as Shell with Fly Buys and BP with AA are creating a situation where motorists are more determined to access service stations carrying their card of choice. This may or may not increase the determination of drivers to execute right hand turns but it is nevertheless a matter to take into account. Mr Harries conceded 25% of users might make a right hand turn. However we agree with him where he said that if motorists can more easily obtain fuel from another source then they will avoid making difficult manoeuvres.

He did not however address a problem which we perceive which is that if a slip lane is created to enable drivers to enter the service lane by means of a deceleration lane a westbound driver wishing to turn into the service station will be effectively faced with potentially four lanes of traffic (i.e. three on the carriageway and one on the slipway) which we have some difficulty accepting will be safe. Admittedly such manoeuvres will be rare but is indicative of the fact that there are potential difficulties.

Mr Harries then discussed the new proposal by the school and church authorities (which we record has not yet been agreed to between those authorities and the Council) but considers that the separation distance from the service station driveway and the new school driveway at 12.5 metres still compares favourably with the 3 metre minimum separation required by the Proposed Plan. He discussed the question of gaps and we have already recorded that our site inspection in the mid-afternoon tended to support his conclusions. Lastly Mr Harries considered Mass times at the church with respect to traffic flows and could not find any great difference in main traffic flows at that time.

Turning now to the evidence of Mr J M Burgess we at first record that he is a Consultant to Shell in the same way as Mr Harries is a Consultant to BP. He was called on behalf of Shell but in response to questions made his involvement in these proceedings perfectly clear. He was first



consulted when Pakuranga Road was a five lane highway with the two eastbound lanes of liberal width as we have previously described. At this stage, in 1995, he stated that he would not support opposition to the BP site being used for service station purposes. Whether or not that related to the whole or part of the site is largely immaterial. At the time when the road was changed to a six lane highway Mr Burgess became involved firstly in discussions with the school, subsequently with the Council, and lastly with Shell. In answer to further questions he replied that it didn't matter who was employing him he would still be before the Court saying the same thing. We find it significant that Mr Burgess became concerned enough about the advent of another lane to effectively change his mind. After discussing the changes Mr Burgess stated in his evidence:

“As a result of these changes, which I shall discuss in more detail in my evidence, I believe that the situation has changed to the extent that concern must now be expressed in relation to the potential traffic impacts of a service station on the subject site.”

We have already annexed to our decision the two plans prepared by Mr Burgess and commented on the changes which have been made. He commented that the changes have provided greater opportunity for vehicles turning right out of Cascade Road to merge and weave with other Pakuranga Road traffic approaching from the west. Although he had no statistical data to support his observation he considered there was a perception that east bound traffic was now running more freely and at higher speeds. He commented on school peak activity as occurring between 8.00 am and 9.00 am and between 2.30 pm and 3.30 pm with in excess of 200 vehicles entering the school during the morning period and 100 exiting onto Pakuranga Road, the remainder leaving via the right of way onto Fortunes Road. In the 2.30 to 3.30 pm period 131 vehicles were recorded entering the school with 64 exiting onto Pakuranga Road. These figures are not precisely the same as those of Mr Harries but the exact figures are largely immaterial.

In relation to the general suitability of the traffic environment for a service station Mr Burgess considered that the potential development of an activity such as that on the traffic environment, is a particularly important consideration when related to major arterial roads, such as Pakuranga Road, where the safe and efficient movement of high volumes of traffic must take precedence over property access considerations. He conceded, however, that properties are entitled to access but not necessarily for every activity. He commented that free movement of traffic is of paramount importance and that was the very reason the Council added a sixth lane.

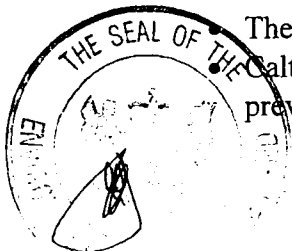
His evidence indicated acceptance of an approach on a first come first served basis in that he recognised that the school and the church were now facing traffic environments which they may have had no cause to initially expect and that they were being forced to adapt as well as possible. On the other hand he considered the proposed service station as a new activity should ideally not take place. Balanced against that observation was the fact that service stations were an important component in serving the travelling public.

In relation to other major commercial activities in the vicinity he commented:

- The KFC restaurant has its access confined to Fortunes Road.
- The Shell / McDonalds complex provides an appropriate left turn splay on Pakuranga Road as well as an alternative entry / exit on Fortunes Road.

The Shell facility replaced two separate and existing service stations on that site.

The Caltex to the east can serve westbound traffic only, with a solid median island preventing all right turn movements.



- The neighbouring Church and School have been experiencing difficulties associated with access on Pakuranga Road and are actively seeking ways to ease these difficulties.
- The BP proposal provides sole access on the Pakuranga Road frontage with no opportunity of providing alternative side road access and no specific treatments of the two access points.
- At the time of the original 1995 BP proposal the 3.4 metre wide painted flush median, which has now been narrowed, was considered appropriate.

Mr Burgess considered a deceleration lane essential and Mr Harries, while not conceding it to be necessary, is prepared to recommend that approach. BP can of course provide the deceleration lane (with the consent of Council) across the frontage of the properties to the west of the proposed service station because they own those properties. Mr Burgess was not greatly enamoured with the deceleration lane crossing residential frontages but from comments made by witnesses and from our site inspection we are of the view that the owners of the townhouses to be built would probably welcome a haven enabling entry to their properties out of the main traffic stream. Whatever happened Mr Burgess considered that an increased level of left hand turns into a service station would exacerbate an already bad situation.

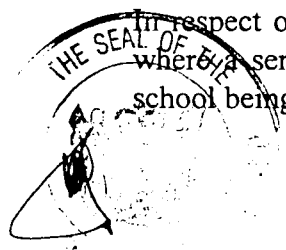
Mr Burgess pointed to Mr Harries original assessment which was that probably less than 10% of service station customers would be drawn from westbound traffic making right turns into the site and that no difficulty was anticipated because of the availability of the particularly wide 3.3 painted central median along the frontage. Whilst not agreeing with the percentage assessed by Mr Harries (Mr Burgess instanced one Shell service station attracting 25% through right turn entries) he supported Mr Harries general views in relation to the pre six lane environment in relation to right turning traffic and flush medians. He parted company, however, in respect of the new traffic environment and considered that uncontrolled right turning vehicles now having to cross three lanes of approaching traffic from a reduced median width in traffic terms must be considered undesirable. He stated in evidence:

“To unnecessarily exacerbate an already existing safety concern by promoting additional right turning traffic in close proximity would not be sensible from a traffic planning point of view.”

He instanced the Caltex site which we have previously mentioned and the prohibition of right turn exits from the Shell / McDonalds complex. We do not, however, consider the latter to be a fair companion because if such a right turn exit were permitted it would be into traffic lanes approaching traffic lights.

He then considered the school and the difficulties being experienced. We have discussed this already to a degree. Mr Burgess expressed concern that establishment of a service station combined with the new school entry / exit layout would mean that the pedestrian exit for children would lie between the exit from the service station and the entry into the school which in his view was “quite unsatisfactory”. He considered the presence of children at this location would simply exacerbate any potential distraction and conflict between turning vehicles. Furthermore he considered the establishment of a service station would have the potential to compromise the changes now considered necessary.

In respect of pedestrian safety, whilst agreeing with Mr Harries he said there was no instance where a service station was next door to a primary school with the pedestrian exit from the school being immediately adjacent to the exit point from a service station.



Both Mr Harries and Mr Burgess were subjected to extensive cross-examination but this did not affect the general thrust of their evidence.

The respondent Council called Mr A J Hunter, who does not possess the same qualifications as the other two traffic engineering witnesses, but he is a Traffic Systems Manager at the Manukau City Council with a Certificate in Engineering, membership of IPENZ, and experience gained both in practice and from attending courses in Transport Planning Management and Control at the University of New South Wales. He has also completed courses in SCATS, Road Safety, Traffic Engineering Fundamentals, and advanced fundamentals. His responsibility is to ensure safe and efficient operation of the Council's road network. He is largely responsible for the present road-marking of Pakuranga Road and for discussions with the school and church. He agrees with Mr Burgess that the subject site is not suitable for a service station because adverse effects on traffic and pedestrian safety and convenience cannot be adequately avoided, remedied or mitigated. He considers that the proposals now advanced to the school will adequately, although certainly not ideally, address problems with the school and the church.

Another problem perceived by Mr Hunter is if a convenience shop arrives on the subject site, users of Lloyd Elsmore Park directly opposite may be tempted to avoid the pedestrian crossings and lights and attempt to cross the arterial road, presumably using the painted median as a refuge. He is of the opinion that the accident history in the vicinity is not satisfactory because anecdotal evidence suggested a higher level of accidents with the additional lane creating further risk of nose to tail accidents at the school.

In respect to the existing Flower Market and Delking (Prawn) Shop he does not agree with Mr Harries as to the vehicle movements from those outlets being somewhat the same as a service station.

Generally his evidence is supportive of the evidence of Mr Burgess.

Our own observations at the site inspection support the evidence of Mr Burgess and Mr Hunter.

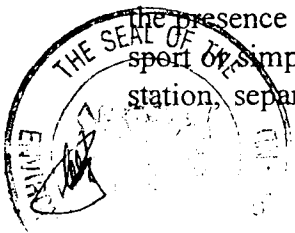
Our conclusion on traffic aspects is that, taking into account the definition of the word "effect", the effect of a service station on this site would be undesirable, adverse, and potentially dangerous. The traffic problems which will be created are not beneficial to the free and unimpeded flow of traffic upon Pakuranga Road. There is also no public benefit of sufficient moment to warrant the creation of any impediment, hazard or danger to, or within, this road system.

OTHER EFFECTS

We now intend to briefly cover other aspects which were of concern.

Visual Effects

We have no problems with the visual effects of the service station viewed from the west. From the west the persons occupying the new townhouses will have purchased with the knowledge of the presence of the service station. From Lloyd Elsmore Park most persons will be engaged in a sport or simply enjoying the park atmosphere and we do not consider the presence of the service station, separated from them by six lanes of traffic, is likely to have any great adverse visual



effect. The houses on the Lloyd Elsmore Park side of Pakuranga Road to the west are sufficiently distanced and screened to prevent any particular adverse effect upon the visual amenities they presently enjoy. When viewed from the village we doubt if there will be any particular visual indication of the presence of a service station except possibly from the first floor of the community building. Those closest to the service station site will have views of a continuous wall broken by plantings but the most severe aspect of that wall will face those occupying two of the new proposed townhouses. Nevertheless a wall of this size and length would not normally be expected in a totally residential environment and would tend to be oppressive if close to residences. The main part of the wall, which could have an adverse effect of an oppressive or overbearing nature, is the part of the wall paralleling the village carpark and the parking area may be regarded as a transitory type of activity upon which the bulk of the wall would have little effect. One village residence is immediately behind the new townhouse development and residents in that building could have a reasonably close view of the wall but the positioning of that building in relation to the wall, together with its different elevation, would lessen the adverse effect. Nevertheless, a modern service station certainly does not fit well with the present residential character. At night the contrast would be even starker with the service station forming a brightly lit commercial island.

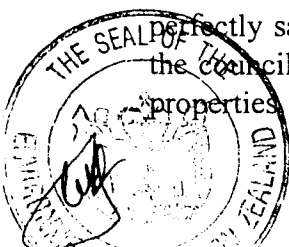
When viewed from the village the service station itself will not be visible when screening has attained its optimum height. The lighting along the edge of the forecourt canopy, ie a narrow neon strip, will not be positioned on the north western or northern face of the canopy. The BP sign at the road frontage will also be screened from the village behind because of differences in topography, sight line and substantial screening. That screening will consist of established trees shifted onto site. From the school and the church screening will again prevent any but the most fleeting views of the service station structure itself. Those views, if any, will be of the very top of the canopy. Activities within the site will not be visible. The main BP sign will however be visible from the church and from the school. Father Kelly, speaking on behalf of the parish, found this offensive particularly as redesign of the church may result in parishioners seated in some parts of the redesigned building having a view of this sign. Although this sign is now the normal sign associated with BP, some BP service stations have signs of lesser height. We are of the opinion that from the viewpoint of the school and the church a reduction in sign height would mitigate the visual presence of the service station to such a degree that the sign could not be held to substantially detract from neighbourhood amenities.

The Accessway

There is presently an informal accessway from Pakuranga Road through to the village used by village residents. BP is under no legal obligation to keep that accessway open and intends to close it. It has offered an alternative right of way on the eastern side of the subject site if residents desired such access for the purpose of making use of the BP shop. This would be a matter for the parties to resolve between themselves and this Court would not make any orders requiring such access. BP cannot be held to be causing any adverse effect upon the village residents merely by exercising rights as a property owner.

Light

The final lighting design has not been formulated but the lighting engineer advising BP is perfectly satisfied that a lighting plan can be designed which will accord with the provisions of the Council plan, both transitional and proposed, for activities such as this adjoining residential properties. BP are prepared to accept a condition that the lighting plan be approved by a suitably



qualified engineer and be certified as achieving compliance with the provisions of the plan. We do not consider this to be an issue.

Noise

BP are prepared to accept a condition concerning noise and in particular conditions relating to the carwash and its hours of operation.

Fumes

The evidence on this was to a degree inconclusive. Generally the evidence of Dr Jones persuaded us that any fume escape from the service station site would be rare and if winds carried it into the village itself or towards the school or church then the fumes would be so dissipated as to be virtually imperceptible. The major cause of fume venting is when the tanks are being filled and this occurs for only a short time approximately twice a week. On a rough calculation Dr Jones considered that fumes would only be noticeable 0.06% of the time if they were indeed perceptible at all. He did not consider statistics relating to health problems with benzene were appropriate when considering the effects of fume escapes from a petrol service station. The evidence of Ms Broadbent was directed at the dangers of benzene fumes in relation to public health. She directed her evidence at petrol vapour since benzene is a constituent of petrol. Her evidence was directed to the carcinogenic nature of these fumes and of the dangers of such fumes particularly to the very young. Her evidence was well researched but we are not persuaded that the evidence produced to us by her sufficiently addressed the intermittent nature of fumes from this particular site nor the degree of dilution of such fumes by distance and/or wind.

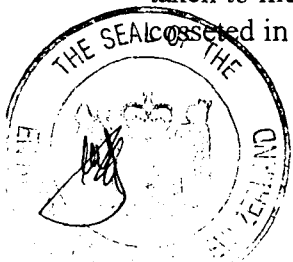
The Court generally observed at the end of her evidence that if the escape of petrol vapours from service stations is to be considered as a major health issue then it should be addressed in a global fashion rather than in a one-off situation such as in the present case. There are so many variables that the Court effectively cannot take this into account as a potentially adverse effect.

Landscaping

The landscaping design is imaginative and although subjected to some criticism that criticism is largely directed at doubt about the survival of the vegetation. This can adequately be covered by the provision of a bond for a period of years and causes us no concern. Final design would be subject to the approval of the Parks and Reserves arm of the respondent council.

CONCLUSIONS

Although each of the elements of a service station activity can be addressed separately, as has happened in the present case, the fact remains that if a service station were upon this site the surrounding residents, particularly those closest to its boundaries, would be very much aware of its presence. The residents, school and church authorities obviously do not consider they should be placed in a defensive position because they are of the opinion that generally the plan does not support the intrusion of such an activity into a residential environment no matter what steps are taken to hide its presence. Indeed, one might observe that if it is to be camouflaged, hidden, and



PLANNING EVIDENCE

This is an example of a case where one is essentially driven back to the traffic evidence in order to assess the weight to be given to the evidence of the various planners called before us. We have previously indicated that we do not favour the evidence of Mr Harries above the evidence of the other traffic engineers. Mr H F Bhana called on behalf of BP was clear in his evidence that he accepted the evidence of Mr Harries for the purposes of forming his opinions. Nevertheless, he is also a very experienced planner which gives him the ability to assess to a degree the value of that evidence. Mr R J Burton based his evidence on acceptance of the traffic evidence of the other engineers and he also has considerable experience enabling him to likewise evaluate such evidence. Ms C Ward accepted the evidence of the engineers opposed to the proposal but we found her entrenched in her views when subjected to cross examination and she almost adopted an advocate approach as opposed to the approach of Mr Bhana and Mr Burton.

We will now discuss the evidence of the planners in turn and for the purposes of this decision we intend to concentrate on the evidence of Mr Bhana and Mr Burton. However we do not intend to dwell at any length on this carefully prepared evidence having concluded that traffic issues essentially determine our decision. We also do not intend to assess the matter in terms of the Transitional District Plan which we consider now to be of merely academic interest. In any event the provisions of that plan would make the position of BP a little more difficult.

As we have recorded, the site is now zoned Main Residential in which service stations are a discretionary activity on sites that front a regional arterial road. The plan commences with a series of plan provisions relating to the residential zone. These objectives and policies commence at clause 13.3.1 of the plan. The first six objectives relate to protection of natural environment from the adverse effects of development in residential areas and to promote the efficient use and development of the city's resources. The objectives which follow are:

"13.3.2 to promote diversity and choice for different lifestyle options in the residential environment.

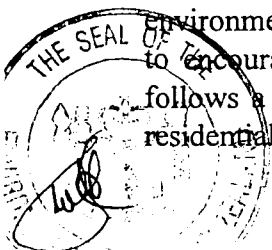
13.3.3 to maintain and enhance the pleasantness and aesthetic qualities of the city's residential environment

13.3.4 to ensure that development in residential areas contributes to people's sense of person safety and maintains and enhances pedestrian and vehicular safety.

13.3.5 to facilitate the establishment of non residential activities in residential areas where these activities are compatible with the character and qualities of residential areas and resident's health and safety.

13.3.6 to protect and enhance unique and representative natural and cultural resources within the city's residential areas."

Then under 13.4 are a series of policies. The first is aimed at the development of residential areas in a way that avoids, remedies or mitigates adverse effects of activities on the natural environment then various matters of importance are identified. The next is aimed at site design to encourage energy efficiency and utilise existing social and physical infrastructure. Then follows a policy concerning diversity of subdivision and design of buildings and structures in residential areas and the siting of such structures in a way as to avoid, remedy or mitigate adverse



effects on personal, pedestrian and vehicular safety. That of course is of particular relevance in the present instance and we have discussed that in previous parts of this decision.

Policy 13.4.5 requires that buildings and other structures in residential areas should be designed and/or located in such a way as to:

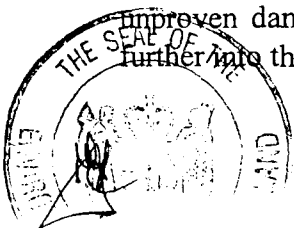
- “(a) Respect any existing qualities in the built form such as proportion, scale, style, unity and coherence;*
- (b) Contribute to the visual amenity of the streetscape;*
- (c) Enable a reasonable on-site amenity, including privacy and access to daylight and sunlight;*
- (d) Avoid, remedy or mitigate adverse effects on the acoustic environment;*
- (e) Protect any identified heritage qualities in the residential neighbourhood.”*

Although service stations are an accepted part of the amenities of any particular area they are not designed to meet the standards of this policy. If they wish to maintain corporate design they should not be in a dominant location within a residential area.

Then follow open space requirements and development requirements concerning land form and vegetation.

Policy 13.4.8 requires that activities within residential areas should be compatible with human activity such as sleep and the learning process. This policy is incorporated in the plan specifically relating to noise with which we have already dealt. Nuisances are addressed as are heritage values and potentially objectionable, noxious or dangerous business activities. Such an activity requires separation. Business activities are particularly addressed and there is a requirement that the siting and design must be such that adverse effects on the visual amenity, the acoustic environment, air quality, pedestrian and vehicular safety etc are avoided, remedied or mitigated. There are then a series of policies relating to business activities few of which are of particular relevance to this particular appeal other than a policy requiring retail activity to be located in a manner which consolidates integrated business centres - a policy with which this service station cannot hope to comply. However it has managed to mitigate its appearance by virtual concealment other than from the street and Lloyd Elsmore Park.

The plan then addresses traffic which we have already discussed in some detail. Signs are also addressed and the presence of signs is acknowledged but again the environmental impact is stressed. The rules at times are selective in respect of the mixed type of activities encouraged in the residential zone but the emphasis throughout the plan is on the protection of residential amenities and on the safety and welfare of residents. Mr Bhana in his evidence expressed himself as satisfied that the proposed development complies with the objectives and policies for the residential zone and indeed there is nothing specific we could point to other than design with which it appears directly in conflict. That is, of course, setting aside the question of traffic. Generally the service station also complies with rules and criteria. We agree with Mr Bhana that, setting traffic to one side, the effects on peoples and communities as represented by the motorist is marginally beneficial. Nevertheless the effect on the immediate community is adverse particularly from the viewpoint of those persons resident or working in the area who resent a service station in their midst. However, their resentment is mainly directed at perceived but unimproved dangers and to visual, acoustic and/or olfactory matters. We do not intend to go further into the question of effects because all are essentially a question of fact.



In respect of traffic safety Mr Bhana relied on the evidence of Mr Harries but in response to a question stated that if it were found that a service station could not operate safely he would have to accept that the service station no longer met that criteria. Mr Bhana discussed the question of cumulative effects. We accept that there is some cumulative effect with the perimeter wall; the 24 hour activity; occasional fume drift; occasional noise from motorists refuelling at night; visual effect caused by the sign as at present designed; and traffic matters.

We accept that apart from traffic most of these matters can be mitigated but there still remains a service station upon this site with all its attendant activity, lighting etc and this totality of effect, even if individual aspects can be mitigated, is one aspect which concerns residents and church / school authorities.

Mr Bhana covered the question of the need for the service station which we have previously addressed. He concluded that there was need for a further two service stations to serve the immediate catchment. Nevertheless, whilst it may enhance the convenience of some motorists, we do not consider that this global approach should be used to justify a service station on this site. Mr Bhana addressed the question of commercial creep, which may well occur, but the plan does not set out to prevent acceptable commercial uses in the main residential zone.

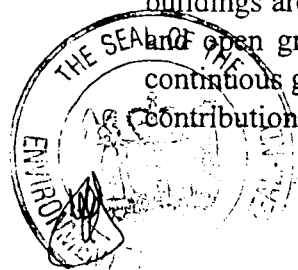
Taken in isolation from the Pakuranga Road aspect of this development, we accept that Mr Bhana made out a good case and were it not for the presence of Pakuranga Road we would tend to agree that most of the plan criteria have been met, other than the locational criteria directed at the residential character of the area generally.

Turning to the evidence of Mr R J Burton he confined his comments to an evaluation of how existing and foreseeable future uses contribute to the character and amenity values of the environment in the vicinity of the site. He considered the village to be part of the wider environment of Pakuranga Road and compared the environment from Fortunes Road east to Pigeon Mountain Roads and commented that frontage uses are fully commercial, except for the Trinity Methodist Church, despite the zoning which is mainly residential. On the opposite side commercial development extended in a continuous line and that development is of an intensive nature. He commented that the closest communal buildings on the opposite side of the road within the park are changing rooms, toilets, sports club pavilion, and a croquet club, and are between 270 metres and 380 metres distant from the appeal site.

It was Mr Burton's opinion that the environment comprised two distinct "*character areas*". We found his opinions on this of assistance in assessing the expression "*residential character*" as it appears in the locational criteria. He stated:

"The school, church, bowling green, community hall and park are all activities which are typically associated with residential neighbours and in my opinion are distinctly different in character from the commercial uses further east commencing with KFC."

He referred to the space previously occupied by the bowling green, the existing brick wall which hid the bowling green, mature shrubs and matters of that nature. He observed that the church buildings are set well back from the road with the property landscaped with mature trees, shrubs and open grassed areas. The school is not visible from the road. These features result in a continuous green landscaped frontage of about 200 metres which he considers made an important contribution to the amenities of the area and contrasted starkly with the exposed frontages of the



commercial area further east. He considered the activities already present were activities which one would expect to find in a residential area and in his opinion were entirely compatible with residential localities in terms of scale, visual appearance and landscape treatment. We agree with his comments in that regard and also with his opinion that the wide open frontage proposed for the service station which will present a 24 hour vehicle activity in place of the present amenities, an activity clearly designed to attract the attention of motorists, is not compatible with or similar to the existing residential character.

In commenting on the proposed service station use Mr Burton firstly distinguished the church building and its materials from the type of building material intended for the service station. He was not concerned with the existing commercial use on the subject site which he considered to be of residential design and appearance, albeit somewhat untidy. He discussed the various differences, which we need not go into, because one could repeat comments on the appearance of service stations ad nauseum. The fact remains that they are a large advertisement in themselves; are intended to be fully visible; and are intended to attract attention.

Mr Burton then discussed the locational criteria and we have already commented on these matters in the previous parts of this decision. Our conclusion in that regard was that the locality did have a residential character apart from the existing commercial use and Mr Burton's evidence supports that observation. He stated:

"It essentially replaces one commercial use with another. The existing shop is a stand alone activity and is 260 metres away from the nearest commercial use (KFC) on Pakuranga Road. A service station development would similarly be perceived as a stand alone commercial activity that would be physically and visually separated from other activities of similar character."

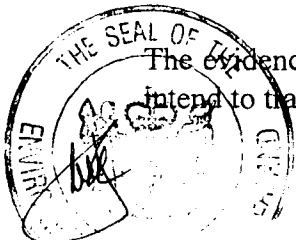
Mr Burton also concluded that the church and school were not major traffic generators in terms of the provisions of this plan having more localised peaks. He excepted the existing shops from that comment. In relation to the question of focal points in the locational criteria he stated:

"In the case of the appeal site, any focal point considered to exist by virtue of the school, church and park is in my opinion of such different character as to result in incongruity and lack of aesthetic coherence, should a service station be established there."

He commented on the lack of cohesion of service station buildings in terms of the provisions of the plan and in particular did not consider it sensitive if residential amenities and character are to be protected. He then commented on the questions of safety and largely adopted the evidence of Mr Burgess.

In respect of site development criteria he again was of the opinion that in relation to General Assessment Criteria the appearance of service station buildings were not appropriate in this locality. Most of the rest of his comments were concerned with the provisions of the plan. He expressed particular concern that the cumulative effect of locating an activity on a site adjoining or already accommodating an activity which may currently generate traffic or noise was not in keeping with the residential area. He considered that Pakuranga Road was already largely modified further to the east and was not similar to the appeal site neighbourhood.

The evidence of Mr Burton was supported by the evidence of Ms Cynthia Ward but we do not intend to traverse her evidence in any detail.



It is against the various views of the planners (which we have necessarily abbreviated to a considerable degree) that we must view the matter under Part II and s.104.

PART II AND SECTION 104

Our conclusions are that the purpose of the Act, as set forth in s.5, would be best served by not permitting a service station upon this site. In particular, the safety of the travelling public and those concerned with the school and the church will not benefit from the presence of a service station which will add a potentially life-threatening hazard to the vehicular environment. The fact that there are already some traffic generators nearby which are already causing problems is no reason for exacerbating the situation.

The social environment of those in the vicinity would be best served by the absence of a service station which is an alien enterprise on this particular part of the road frontage of Pakuranga Road. The large body of opposition is also indicative of resentment at the intrusion of this busy and brightly lit commercial enterprise in their midst. Whilst individual elements of the operation can be mitigated this does not allay hostility to its presence, an hostility which need not be present were the service station to establish, as have the service stations, further to the east in the midst of activities more sympathetic.

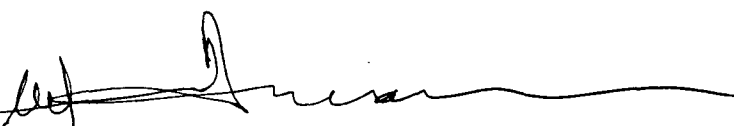
Matters such as fumes, noise, visual aspects etc may not of themselves have been sufficient to cause the Court to reach a decision adverse to BP but the added traffic factor with the potential for death or injury of primary school pupils have influenced the Court in deciding that this site is unsuitable for the use proposed. We have already recorded in the course of this decision the matters contained in s.7 of the Act and consider the main point in that section is the maintenance and enhancement of amenity values and the maintenance and enhancement of the quality of the environment. In this particular location the presence of a large eight pump service station does not assist in either of those objectives - objectives to which the Court must have particular regard. We have previously commented that a service station is alien to this particular part of Pakuranga Road.

Turning to s.104 we have already commented on the actual and potential effects on the environments; the relevant objectives, policies, rules or other provisions of the Proposed Plan and the Transitional Plan. Other matters such as need etc have been commented on in the course of this decision.

Conclusion

For the foregoing reasons the appeal is dismissed and the decision of the respondent council confirmed. The question of costs is reserved.

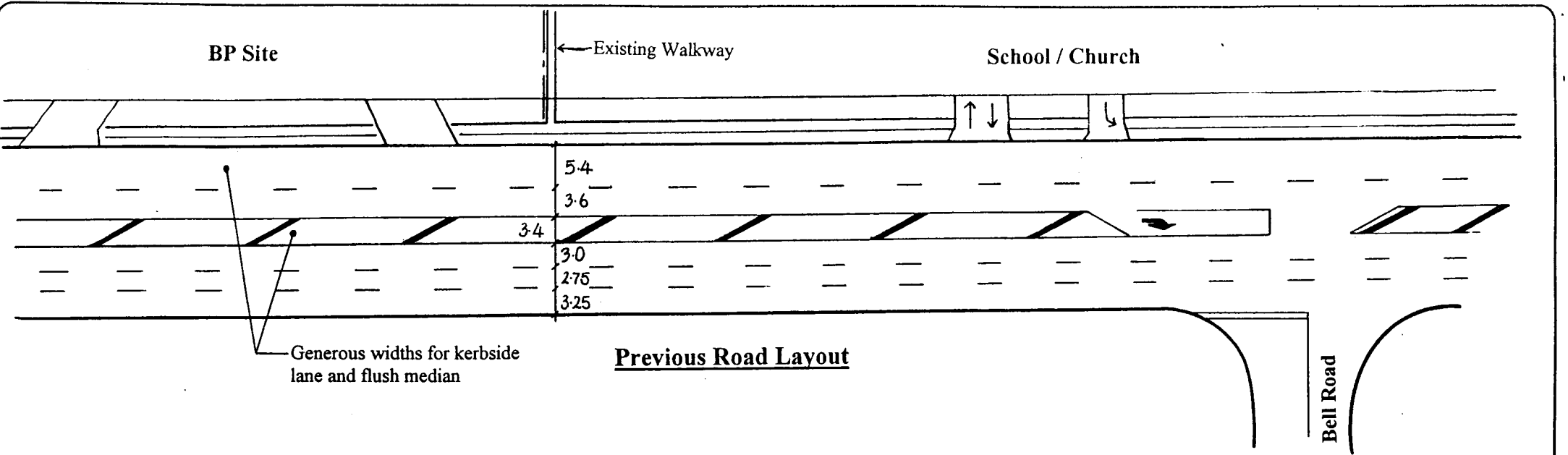
DATED at AUCKLAND this 3rd day of December 1998


 W. J. M. Readwell
 Environment Judge

BP Site

Existing Walkway

School / Church



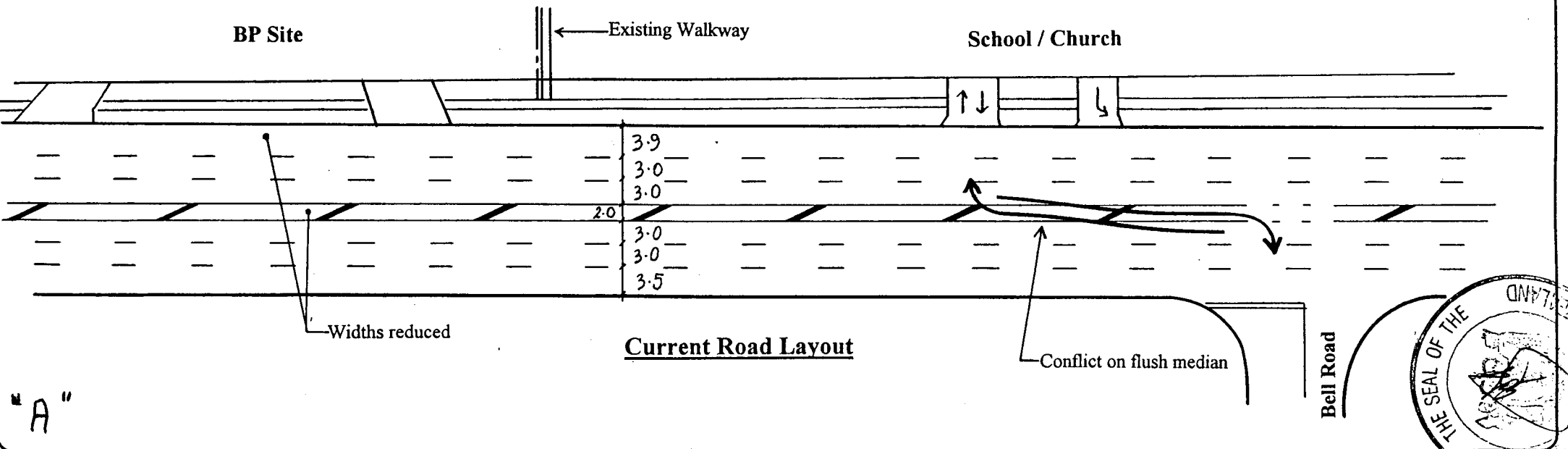
Generous widths for kerbside lane and flush median

Previous Road Layout

BP Site

Existing Walkway

School / Church

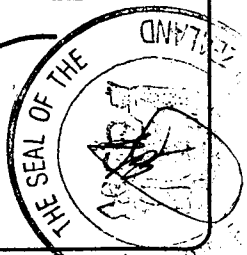


Widths reduced

Current Road Layout

Conflict on flush median

"A"

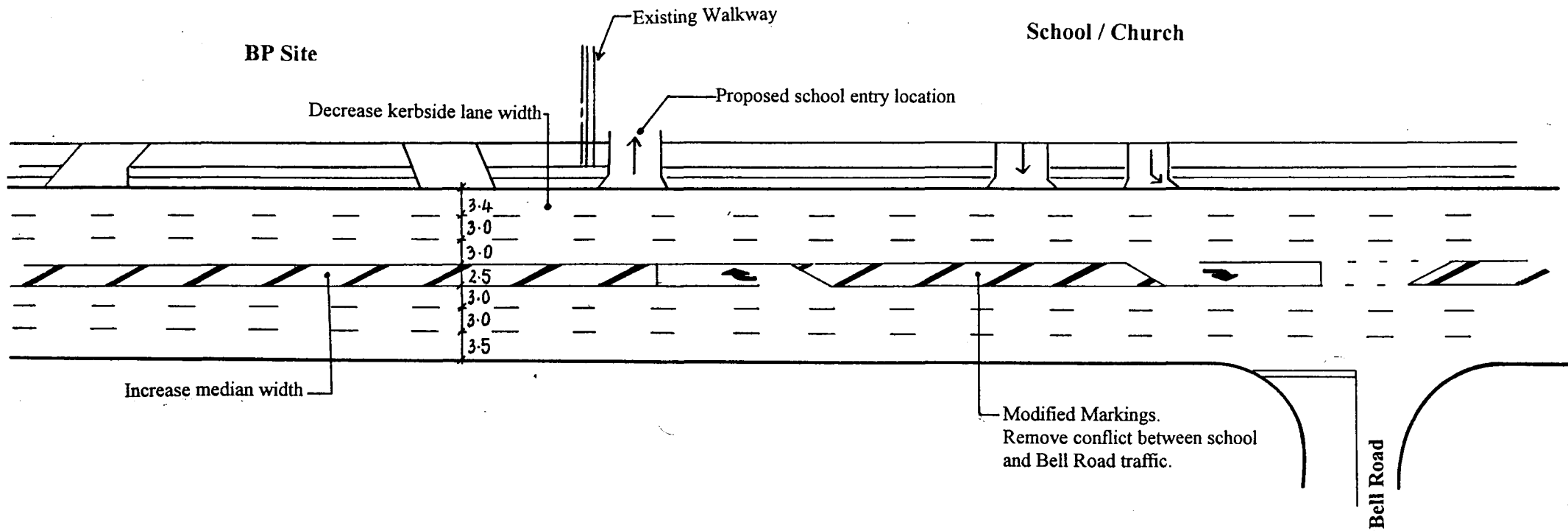


TPC TRAFFIC PLANNING CONSULTANTS LTD

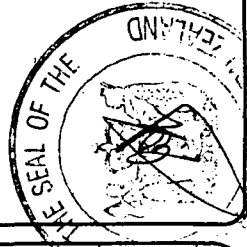
Pakuranga Road
Previous and Current Road Layout

DRAWN			CHECKED	SCALE	SHEET
TRACED			DATE		Attachment A
					SERIES OF
					REF

design Art



B



TPC TRAFFIC PLANNING CONSULTANTS LTD

Pakuranga Road
**Proposed Changes to School Access
 & Road Layout**

DRAWN		CHECKED	SCALE	SHEET
TRACED		DATE		Attachment B
				SERIES OF
				REF

20/03/2014