

IN THE MATTER OF The Resource Management Act 1991
AND
IN THE MATTER OF Private Plan Change 84 to the Operative
Kapiti Coast District Plan
BY Kapiti Coast Airport Holdings Ltd
Applicant
IN RESPECT OF The Reclassification of Activities in the Airport
Zone

**BRIEF OF EVIDENCE OF MATTHEW PETER HOLDER
ON BEHALF OF THE NGAHINA TRUST**

2 February 2017

Introduction

1. My name is Matthew Peter Holder. I hold a Bachelor's Degree in Resource and Environmental Planning conferred by Massey University. I am the Director of the firm "Development Nous Limited", which practices as a Town Planning and Multi-Disciplinary Consultancy based in Hastings. Previous to this I was the NZ Planning Manager for Cardno Ltd - a multi-disciplinary consultancy with offices through-out New Zealand and worldwide. I am a full member of the New Zealand Planning Institute, a Certified Resource Management Commissioner and a member of the Resource Management Law Association.
2. I have been engaged in the field of Resource and Environmental Management for approximately 21 years. My experience includes a particular emphasis on providing advice with respect to Resource Consents, Environmental Impact Assessments and District Plan Policy. My experience covers employment in both Local Government as well as the private sector in various parts of New Zealand. My current workload includes advising and acting for Government Organisations (such as the Crown Law Office), Local Government organisations (Regional and District Councils) Multi-nationals as well as private companies and individuals throughout New Zealand. I regularly provide expert planning evidence in Local Government Hearings and the Environment Court. I have also give evidence as an expert witness in the High Court and before the Land Valuation Tribunal.
3. This brief of evidence on relates to a submission made by the Ngahina Trust (**the Trust**) to the proposed Private Plan Change (PPC84) to the Operative Kapiti Coast District Plan notified on 24 February 2016. This submission opposes PPC84 for a number of reasons including (inter alia) a lack of consultation with the Trust who are an Ahu Whenua Trust under the Provisions of the Te Ture Whenua Maori Act 1993.
4. I confirm that I have read the Code of Conduct for Expert Witnesses contained within the current High Court, High Court Rules, Schedule 4 which I consider applies equally to this Proceeding before the Tribunal. I agree to comply with this Code of Conduct and confirm that my evidence is within my area of expertise. I understand that I have an overriding duty to assist impartially on relevant matters within my area of expertise (unless I state otherwise) and that I am not an advocate for the party which has engaged me. I also confirm that I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

5. I have been requested by the Trust to consider the matter of consultation in relation to the Trust and whether or not the Trust should have been formally consulted during the processing of this request- that is prior to its notification. Accordingly, my evidence is confined to this matter only with specific consideration to the Part 2 Matters and 1st Schedule of the Resource Management Act. I do not consider the wider Planning issues with respect to the Plan Change and the Trust's submission in respect of the requested change.

Matter of Consultation

6. In my opinion the Trust as Tangata Whenua of the area affected by this Plan Change Request should have been consulted prior to notification. My reasons are set out below. In my opinion Clause 3(1) (d) requires consultation before notification of a proposed variation.

Statutory Context- The Resource Management Act 1991

7. Under Section 73 (Preparation and change of district plans) of the Resource Management Act 1991-

(2) Any person may request a territorial authority to change a district plan, and the plan may be changed in the manner set out in Schedule 1.

8. Part 2 of the 1 Schedule¹, Clause 21 states-

(1) Any person may request a change to a district plan or a regional plan (including a regional coastal plan).

(2)

(3)

(4) Where a local authority proposes to prepare or change its policy statement or plan, the provisions of this Part shall not apply and the procedure set out in Part 1 shall apply.

9. Clause 3 of the Schedule 1 of the Resource Management Act states-

3 Consultation

¹ Resource Management Act 1991

(1) During the preparation² of a proposed policy statement or plan, the local authority concerned shall consult—

(a) the Minister for the Environment; and

(b) those other Ministers of the Crown who may be affected by the policy statement or plan; and

(c) local authorities who may be so affected; and

(d) the tangata whenua of the area who may be so affected, through iwi authorities; and

(e) any customary marine title group in the area.

(2) A local authority may consult anyone else during the preparation of a proposed policy statement or plan.

(3)

(4) In consulting persons for the purposes of subclause (2), a local authority must undertake the consultation in accordance with section 82 of the Local Government Act 2002.

10. Clause 3B³ of the Resource Management Act specifically addresses Consultation with iwi authorities. It reads-

For the purposes of clause 3(1)(d), a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A, if the local authority—

(a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and

(b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and

(c) consults with those iwi authorities; and

(d) enables those iwi authorities to identify resource management issues of concern to them; and

(e) indicates how those issues have been or are to be addressed.

² *emphasis added*

³ *Schedule 1*

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11. In terms of Clause 3(1)(d) and as defined under Section 2(1) of the Resource Management Act the Trust are an Iwi Authority.

Iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so.

12. The members of the Trust are of the Te Atiawa iwi who are identified by the Kapiti District Council⁴ as Iwi in the region.

13. In my opinion there is a specific requirement in the RMA to consult with iwi in the preparation of a Plan Change request and any such consultation should precede notification. On the advice I have received from the Trust's representatives, I believe that this has not occurred based.

14. Under Sections 6, 7 and 8 of the Resource Management Act there is a specific requirement *in achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources:*

- to recognise and provide for the following matters of national importance:
 - *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (section 6(e)); and*
- have particular regard to:
 - *kaitiakitanga: (section 7a)*
 - *the ethic of stewardship (section 7a)*
 - *the efficient use and development of natural and physical resources (section 7(b))*
- take into account:
 - *the principles of the Treaty of Waitangi*

15. In the past, the Council (KCDC) had taken land from the Trust for public works, which was in part offered back to the Trust following a decision of the High Court (CIV-2008-

⁴ <http://www.kapiticoast.govt.nz/Our-District/Tangata-Whenua/Iwi-and-Hapu/>
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485-1657)⁵ 31 May 2010. I understand, the agreement between KCDC and the Trust to transfer back the land to the Trust was signed on 14 December 2103 in a ceremony held at the offices of KCDC, with a formal acknowledgment that the land going back to the traditional owners for future development of the town centre.

16. This is land that will be directly or indirectly affected by the proposed Plan Change. Accordingly, in my opinion the Trust had a right to be consulted, not only in terms of a right under the RMA and Treaty of Waitangi (Section 8) but also to properly ascertain any actual or potential effects on the Trust's interests in respect to Sections 6(e), 7(a), 7(aa) and more specifically Section 7(b) "*the efficient use and development of natural and physical resources*".
17. By neglecting to consult with the Trust, the Plan Change has not properly considered the above sections in any meaningful way. In terms of Section 6.0 Mr Israelson's evidence⁶ there is no recognition of this fact, other than concurrence with the Section 42A report. The Section 42A report states "*there is no evidence that PC84 is contrary to to section 7(a) kaitiakitanga, section 7(aa) the ethic of stewardship, and the Treaty of Waitangi*".⁷ In my opinion without consulting with the Trust as an iwi authority, I do not see how such a conclusion can be reached.
18. On this basis, the request should have not notified.
19. I note that in Sections 3.0⁸ and 4.0⁹ of the Section 42A report considers the matter of trade competition and Mr Schofield identifies he has (correctly) taken no consideration of trade competition in his consideration of PPC84. In my opinion the Trust submission is not one of a trade competitor. They are not directly engaged in commercial activities *per se*; they are owners of the land upon which businesses trade.



Matthew Holder

Development Nous Ltd

⁵ *Ngahina Trust and ORS v Kapiti District Council. Judgement*

⁶ *Paragraph's 6.1 and 6.2*

⁷ *Paragraph 6.30(e) page 46 Section 42A report.*

⁸ *Paragraphs 3.20- 3.24*

⁹ *Paragraphs 4.32-4.49*

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