BEFORE THE ENVIRONMENT COURT

Decision: [2016] NZEnvC 137

ENV-2016-WLG-000018

IN THE MATTER	of an application under section 311 of the Resource Management Act 1991
BETWEEN	KAPITI COAST AIRPORT HOLDINGS LIMITED Applicant
AND	ALPHA CORPORATION LIMITED
AND	COASTLANDS SHOPPINGTOWN LIMITED
AND	RICHARD PAUL MANSELL
AND	NGAHINA DEVELOPMENTS LIMITED
AND	NGAHINA TRUST
AND	SHEFFIELD PROPERTIES LIMITED Respondents

Court: Environment Judge B P Dwyer
Environment Commissioner K A Edmonds

Heard: at Wellington on 19 July 2016

Counsel: Ms B Carruthers and Mr A Cameron for Applicant
Mr M McClelland QC and Ms P Tancock for Respondents (except Ngahina Trust)
Mr J Tizard for Ngahina Trust

ORAL DECISION

Decision issued: Oral decision - 20 July 2016, written record – 22 July 2016

A: Declarations made (but not to the extent sought by the Applicant)

B: Costs reserved

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

[1] This is our decision in these proceedings. As with any oral decision we reserve the right to amend the written record to correct any minor errors or misquotations which do not affect the rationale for or outcome of the decision.

[2] The background facts giving rise to this application for declaration are set out in some detail in an agreed statement of facts of 4 July 2016, which will be appended to the written record. We summarise those facts in these terms:

- Kapiti Coast Airport Holdings Limited (the Applicant) owns land in and around Kapiti Coast Airport where a range of activities are undertaken. Among other things, the Applicant undertakes the activity of commercial land owner, developer and lessor. It leases approximately 18,000 square metres of land or buildings to various retailers;
- The Applicant's land is in the Airport Zone of the Kapiti Coast District Plan. There are four prohibited activities in that zone - certain noise sensitive activities, department stores, supermarkets and more than one store between 151 and 1500 square metres floor space retailing groceries or non-specified food lines;
- The Applicant has made a private plan change request (PC84) to the Council seeking to change the prohibited status of these activities;
- The Respondents have filed submissions in opposition to PC84;
- The Applicant contends that the Respondents are trade competitors to it and seeks declarations from the Court in the following terms:

A. That Coastlands Shoppingtown Limited, Alpha Corporation Limited, Sheffield Properties Limited, Ngahina Developments Limited, the Ngahina Trust, and Mr Richard Paul Mansell (together, the "Submitters") have breached clause 6(4) of Schedule 1 to the RMA and section 308B of the RMA by submitting ("Submissions") in opposition to KCAHL's private plan change request ("PC 84") when they are:

a. trade competitors; or

b. surrogates (in the manner described by section 308E of the RMA in respect of appeals to the Environment Court) of those submitters who are trade competitors;

in circumstances where none of the Submitters are affected (whether directly or indirectly) by effects of the plan change requested which do not relate to trade competition.

B. That the Kapiti District Council ("Council") is required under section 41C(7) of the RMA to strike out the Submissions as:

a. the Submissions disclose no reasonable or relevant case that the Council could lawfully have regard to under section 74(3) of the RMA; and

b. it would otherwise be an abuse of the hearing process to allow the Submissions to be taken further.

[3] Notwithstanding the wide scope of the declarations, it was agreed by all parties that the Court should first determine as a preliminary point whether or not the Respondents are trade competitors of the Applicant. This decision is limited to that question.

[4] The interests of the Respondents giving rise to the contention of trade competition can be summarised in these terms:

- Three of the Respondents, Coastlands Shopping Town Limited (Coastlands), Sheffield Properties Limited (Sheffield) and Ngahina Developments Limited (Ngahina), carry on business as commercial land owners, developers and lessors of land currently used for retailing at the Paraparaumu Town Centre about two and a half kilometres away from the Airport;
- Alpha Corporation Limited (Alpha) owns all the shares in Coastlands and Sheffield as well as 50 percent of the shares in Ngahina;
- The Ngahina Trust (the Trust) owns 50 percent of the shares in Ngahina and six percent of the shares in Alpha;
- Richard Paul Mansell (Mr Mansell) is a director of Alpha, Coastlands, Sheffield and Ngahina. He is also the Chief Executive Officer of Coastlands.

[5] The significance of the Respondents allegedly being trade competitors of the Applicant arises out of the provisions of Part 2 of Schedule 1 RMA, which contains the process for privately requested plan changes. In particular, sub-cls 29(1A) and (1B) relevantly provide:

29 Procedure under this Part

(1A) Any person may make a submission but, if the person is a trade competitor of the person who made the request, the person's right to make a submission is limited by subclause (1B).

(1B) A trade competitor of the person who made the request may make a submission only if directly affected by an effect of the plan or change that-

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition.

(We note that the application for declaration refers to cl 6(4) of Schedule 1 rather than cl 29(1B). We do not think anything turns on that and to the extent necessary we allow amendment of the application.)

[6] Subsection 308B(3) relevantly provides that:

> Failure to comply with the limits on submissions set out in ... clause 6(4) or 29(1B) of Schedule 1 is a contravention of this Part.

It is the combination of these provisions which form the basis of the application for declaration as originally sought by the Applicant although, as we have noted previously, any declaration is now to be limited to the preliminary issue of whether the Respondents are trade competitors.

[7] Before considering that issue we firstly address a jurisdictional question raised by Mr Tizard on behalf of the Trust. It was his contention that there was no jurisdiction for the Court to make the declaration sought due to the operation of s 308G RMA, which provides as follows:

308G Declaration that Part contravened

(1) Proceedings may be brought in the Environment Court for a declaration that person A or person C-

(a) contravened any of the provisions in this Part:

(b) aided, abetted, counselled, induced, or procured the contravention of any of the provisions in this Part:

(c) conspired with any other person in the contravention of any of the provisions in this Part:

(d) was in any other way knowingly concerned in the contravention of any of the provisions in this Part.

(2) The proceedings may be brought by any person (other than person A or person C) who was-

(a) a party to an appeal against a decision under this Act in favour of person B; or

(b) a party to a proceeding before the Environment Court that was lodged by person B under section 87G, 149T, 165ZFE(9)(a)(ii), 198E, or 198K.

(3) The proceedings must not be commenced until the appeal or proceedings referred to in subsection (2) are determined.

(4) The proceedings must be commenced within 6 years after the contravention.

(5) The Environment Court may make the declaration.

[8] It was Mr Tizard's submission that s 308G provides the remedy for a declaration of the nature sought in this case, that such a remedy was only available once appeal proceedings had been before the Court and that prior to that the issue of trade competition was for the Council. Mr Tizard acknowledged that this submission was contrary to the finding of the Environment Court in *General Distributors Limited v Foodstuffs Properties (Wellington) Limited*[1] where Judge Thompson's division held that the Court was entitled to make a declaration of similar effect pursuant to the provisions of subss 310(c) and (h) notwithstanding the provisions of s 308G. Mr Tizard submitted that the amendment to RMA which came into force on 4 September 2013 was passed for the purpose of negating the decision in *General Distributors.* We have a number of observations to make on those propositions.

[9] Firstly, that the issue of the effect of s 308G on these proceedings has been rendered moot by limitation of the declaration to the question of whether or not the Respondents are trade competitors of the Applicant. Section 308G applies to declarations as to whether persons A or C contravene the Act which is a wider issue and the Court is now not being asked to make that declaration in this preliminary decision. We acknowledge that the full declaration remains alive but that is not the declaration under present consideration.

[10] Secondly, we are not bound by *General Distributors* and we are entitled to disagree with it should we have reason to do so. That said, we do not disagree with it and concur with the observations in paragraphs [9] to [13] of that decision.

[11] Thirdly, we do not agree with Mr Tizard's submission as to the effect of the 2013 amendment. Nothing in that amendment suggests that Parliament was seeking to negate the outcome of *General Distributors.* The primary amendment made was the addition of s 308G(2)(b) which had the effect of bringing direct

[1] *General Distributors Ltd v Foodstuffs Properties (Wellington) Ltd* [2011] NZEnvC 212, [2012] NZRMA 215.

referrals and applications under Parts 6AA, 7A and 8 within the scope of s 308G. Mr Tizard pointed to the fact that the amendment provided that declaration proceedings could not be commenced until all proceedings in the Environment Court had concluded, but that provision was already in s 308G in a nearly identical form. The limited ambit of the amendment suggests that Parliament did not seek to negate *General Distributors* at all.

[12] Those observations bring us to the central question now before the Court, namely, whether or not the Respondents are trade competitors of the Applicant. There is no statutory definition of what constitutes trade competition. Whether or not a particular activity is trade competition is something which must be determined on the facts at any given instance. Sometimes, such as in the case of rival supermarket operators that determination will be easy, at other times it will be less easy.

[13] Ms Carruthers referred to definitions of trade competition given in a number of cases. We respectfully consider that at a general level the conclusion arrived at by Baragwanath J in *Montessori Pre-school Charitable Trust v Waikato District Council*[2] provides a useful test:

> In characterising the respective activities as of "trade competition" or not, I have concluded that what matters is that there be a competitive activity having a commercial element.[3]

[14] We consider that there is unquestionably a competitive activity having a commercial element in this case, at least insofar as some of the Respondents are concerned. The Applicant, Coastlands, Sheffield and Ngahina are all in the business of commercial landowners, developers and lessors. They compete for lessees to rent their premises in Paraparaumu. At first blush that makes them trade competitors. Such a finding would be consistent with findings of this Court in *Queenstown Property Holdings Limited v Queenstown Lakes District Council*[4] and *Baker Boys Limited v Christchurch City Council*[5]. Both of those cases held specifically that owners of commercial properties could be trade competitors.

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[2] *Montessori Pre-school Charitable Trust v Waikato District Council* [2007] NZRMA 55 (HC).
[3] [2007] NZRMA 55 at [19].
[4] *Queenstown Property Holdings Ltd v Queenstown Lakes District Council* [1998] NZRMA 145 (NZEnvC).
[5] *Baker Boys Ltd v Christchurch City Council* [1998] NZRMA 433 (NZEnvC).

[15] Ms Carruthers contended that these decisions were cited with approval by the High Court in the *Montessori* case but that is going too far. In *Montessori,* Baragwanath J simply observed that his finding that the operators of two Montessori schools were in trade competition was not inconsistent with the Environment Court decisions. In any event, this Court's findings as to there being trade competition between commercial property owners in both *Queenstown Property Holdings* and *Baker Boys* are very clear and entirely logical.

[16] Those observations bring us to consider the more recent decision of the High Court in *Queenstown Central Limited v Queenstown Lakes District Council*[6] which was advanced by the Respondents in support of their contention that they are not trade competitors.

[17] *Queenstown Central* involved consideration of the status of two property developers who own land in the Frankton Flats area of Queenstown. Both of them sought to have approvals granted enabling the construction of commercial premises for lease on land they owned which was suitable for industrial use (a scarce resource in Queenstown). In the Environment Court, Judge Jackson classified one of those developers as a trade competitor of the other, although that issue was not central to the ultimate findings in the proceedings in anyway. Fogarty J, in the High Court, disagreed with that classification.

[18] Mr McClelland and Ms Tancock submitted that:

> In finding the Environment Court had erred Fogarty J noted at [160] that land owners competing to get their land zoned for the highest value use is not "trade competition" ...

Counsel went to some pains to remind the Court that it was bound by the High Court decision. We are grateful for the reminder, but it was unnecessary.

[19] We are well aware that *Queenstown Central* is binding on this Court, however the real issue is, what is the decision which was made in that case which is binding? We do not perceive the finding to be that commercial lessors cannot ever be trade competitors with other commercial lessors. It seems to us that the findings of the

[6] *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZRMA 239 (HC).

High Court in *Queenstown Central* were not directed at that point. We refer to a number of comments in the High Court decision in that regard:

- Para [154] (the last two sentences):

  > As a matter of fact there is no doubt that QCL and SPL are in competition for the best uses of appropriately zoned land in the Frankton area. QCL is the owner of around about 23 ha of land.

- Para [155]:

  > QCL and SPL are disagreeing on the appropriate zoning of their respective parcels of land. Let us allow that to be described as a form of competition or competing with each other. It does not follow that they are in trade competition.

- Para [160]:

  > Where the total amount of land is a limited resource, choices have to be made. The situation in Queenstown is a classic example of that. There is a very limited amount of flat land available in the Queenstown urban environment. There is a contest for the use of that land.

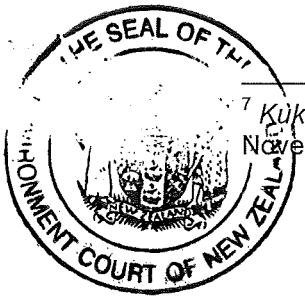
- And then further, also in para [160]:

  > It is in this context that owners of land located in Frankton Flats compete to get their land zoned for the highest value use. That is not trade competition, as that word is used in the RMA. If it were numerous planning disputes would be wrongly categorised as trade competition.

[20] We consider that it is clear from those comments that the competition under consideration in the *Queenstown Central* case was competition for use of a resource (the limited resource of flat land in the Queenstown urban environment). His Honour found that such competition is not trade competition. The distinction which he made is one which had previously been recognised in this Court.

[21] In *Kuku Mara Partnership v Marlborough District Council*[7], Judge Kenderdine found:

> Competition for resources is not 'trade competition'. I accept the purpose of s.104(8) is to prevent trade competitors frustrating legitimate activities purely for the purpose of avoiding commercial competition. The purpose of s.104(8) is to prevent the RMA being used for anti competitive purposes, not to prevent competition for the use and



[7] *Kuku Mara Partnership v Marlborough District Council* NZEnvC Wellington W 50/2002, 14 November 2002.

enjoyment of resources between resource use competitors, or the avoidance or mitigation of adverse effects on the environment.[8]

[22] In the words of Judge Kenderdine, the competition being considered in *Queenstown Central* was competition for the use and enjoyment of the limited resource of flat land at Frankton Flats, that is, the parties were resource use competitors. It seems to us that is precisely what Fogarty J found, in similar words. That is not the situation in Paraparaumu. The Respondents (who are unquestionably in competition with the Applicants as commercial lessors) seek to restrict the commercial activities which the Applicant may apply to undertake on its land. That is not competition for a resource but trade competition related directly to the competing uses which they undertake on their respective areas of land at the Airport and Town Centre.

[23] For these reasons, we determine that the Respondents, Coastlands, Sheffield and Ngahina are trade competitors of the Applicant in the sense intended to be captured by Part 11A RMA and **we declare that accordingly**.

[24] We are unable to reach similar conclusions about Alpha, the Trust or Mr Mansell.

[25] Alpha is the most difficult to determine. Although it does not compete in the commercial lease market, two of its wholly owned subsidiaries (Coastlands and Sheffield) do and we have declared them to be trade competitors of the Applicant. We are fully conscious of the incongruity of the situation where wholly owned subsidiaries might be deemed to be competitors but the primary entity is not. However it appears to us that the trade which Alpha is engaged in is that of investor, not commercial lessor. The extent to which any submission or evidence which Alpha might advance in support of a submission is motivated by commercial concerns may well be something for the Council or Court to take into account when considering that submission, but that goes to weight rather than making Alpha a trade competitor in its own right. To the extent that our determination in that regard is contestable, we record that we have taken a restrictive and literal approach to interpreting a statutory provision which seeks to limit the right of participation in the RMA process.

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[8] *Kuku Mara Partnership v Marlborough District Council* NZEnvC Wellington W 50/2002, 14 November 2002, at [33].

We decline to make a declaration that Alpha is a trade competitor of the Applicant.

[26] We reach a similar conclusion in the case of the Trust which is an investor in Ngahina as a 50 percent shareholder. **We decline to make a declaration that the Trust is a trade competitor of the Applicant.**

[27] Mr Mansell's position is different again. The interest which he was identified as having in these matters is as a director of the four corporate entities and CEO of Coastlands. We expressed the view to Ms Carruthers during the course of our hearing that those interests could not make Mr Mansell personally a trade competitor of the Applicant and we understood her to concede that as being so. **We decline to declare that Mr Mansell is a trade competitor of the Applicant.**

[28] The Applicant has raised the issue that even if some of the Respondents were not trade competitors of the Applicant they were acting as surrogates for those Respondents which were trade competitors. Although the matter of surrogacy was not a subject of the limited declaration proceedings at this stage, we consider it is appropriate to make the following observations on this topic:

- Firstly, that there is no evidence at all before the Court to establish the proposition that any of the non-trade competitor entities are surrogates of the trade competitor entities. The fact that there are connections between them and that they might advance a joint case at hearing does not of itself raise an implication of surrogacy which the alleged surrogates might be called upon to refute;
- Secondly, it should be noted (as the Application does) that the provisions of ss 308E and 308F which relate to surrogacy apply only to proceedings in the Environment Court, not to the submission process at Council level. Even if some of the non-trade competitor Respondents were acting as surrogates for trade competitors (and we repeat that there is no evidence that is the case) they are not precluded from lodging submissions on PC84 and participating in the hearing process. They would be precluded from receiving direct or indirect help from trade competitors should they wish to bring an appeal or file a s 274 Notice.

[29] We observe that the consequence of our declaring Coastlands, Sheffield and Ngahina to be trade competitors does not *ipso facto* exclude them from the Council

hearing process. They are entitled to participate in that process, except to the extent that their submissions are in contravention of s 308B(2). That is a matter to be determined by the Council, either under s 41C or when hearing the parties' cases. We concur with Mr Tizard's submission that it is not appropriate for the Court to attempt to usurp that function through the declaration process and we would not do so.

[30] Finally, we formally reserve costs in favour of the Respondents. Any costs application to be made and responded to in accordance with the Courts Practice Note 2014.

DATED at WELLINGTON this 22nd day of July 2016.

For the Court:

B P Dwyer
Environment Judge

IN THE ENVIRONMENT COURT
AT WELLINGTON

ENV-2016-WLG-18

UNDER	the Resource Management Act 1991
IN THE MATTER	of an application for declarations under sections 310 and 311 of the Resource Management Act 1991
BETWEEN	**KAPITI COAST AIRPORT HOLDINGS LIMITED**
	Applicant
AND	**COASTLANDS SHOPPINGTOWN LIMITED**
	First Respondent
	ALPHA CORPORATION LIMITED
	Second Respondent
	SHEFFIELD PROPERTIES LIMITED
	Third Respondent
	NGAHINA DEVELOPMENTS LIMITED
	Fourth Respondent
	(continued overleaf)

AGREED STATEMENT OF FACTS

4 JULY 2016

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AND	**NGAHINA TRUST**
	Fifth Respondent
	RICHARD PAUL MANSELL
	Sixth Respondent

MAY IT PLEASE THE COURT:

Introduction

1. Further to His Honour Judge Dwyer's Minute dated 22 June 2016, the parties have prepared an agreed statement of facts on the first issue of whether the respondents are trade competitors of the applicant.

2. The parties have agreed this statement on the status of the respondents set out in **Appendix 1** below under the following sub-headings:

   (a) The applicant.

   (b) Plan Change 84.

   (c) The status of the respondents.

   (d) The respondents' relationship to retail traders.

DATED 4 July 2016

Bronwyn Carruthers / Aidan Cameron
Counsel for the Applicant

Matthew McClelland QC / Pheriane Tancock
Counsel for the First to Fourth and Sixth Respondents

John Tizard
Counsel for the Fifth Respondent

MAY IT PLEASE THE COURT:

Introduction

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DATED 4 July 2016

Bronwyn Carruthers / Aidan Cameron
Counsel for the Applicant

Matthew McClelland QC / Phernne Tancock
Counsel for the First to Fourth and Sixth Respondents

John Tizard
Counsel for the Fifth Respondent

APPENDIX 1

The applicant

1. The applicant is the owner and operator of Kapiti Landing, a mixed use development in Paraparaumu. This is a master planned development comprising a mix of activities including the Kapiti Coast Airport, office and warehousing space. The applicant currently leases approximately 18,000m^2 to various retailers. There is currently a New World supermarket (Foodstuffs) operating from the site.

2. The applicant's landholdings are shown in the map attached at **Appendix 1.** The land is zoned Airport Zone under the relevant District Plan.

Plan Change 84

3. The applicant requested a site-specific private plan change (Plan Change 84) from the Kapiti Coast District Council.

4. At present, there are four prohibited activities within the Airport Zone. These are:

   (a) noise sensitive activities not specifically provided for as a permitted activity (whether or not within the Air Noise Boundary, Outer Control Boundary, or outside any of the noise contours);

   (b) department stores;

   (c) supermarkets; and

   (d) more than one store of between 151m^2 and 1,500m^2 gross floor area that retails groceries or non-specified food lines.

5. Plan Change 84 proposes to change the activity statuses for those prohibited activities so that:

   (a) the activities described in paragraph 4(a) above are discretionary activities;

   (b) one (only) department store is a non-complying activity;

   (c) one (only) supermarket is a discretionary activity; and

   (d) the activities described in paragraph 4(d) above are discretionary activities.

The respondents

6. The respondents to the application lodged submissions on Plan Change 84.

7. The six respondents are:

   (a) Coastlands Shoppingtown Ltd ("**Coastlands**");

   (b) Alpha Corporation Ltd;

   (c) Sheffield Properties Ltd;

(d) Ngahina Developments Ltd;

(e) the Ngahina Trust; and

(f) Richard Mansell.

8. The landholdings of the third, fourth respondents are shown in the map at **Appendix 2.**

9. The first to fifth respondents have the following shareholding or governance arrangements:

Entity	Directors / Trustees	Shareholders / Beneficiaries
Alpha Corporation Ltd	Richard Mansell Richard Cathie (Chairman) Barry Clevely Takiri Cotterill Alastair Mansell	97 shareholders, with approximately 80% held either personally or in Trusts benefiting the extended Mansell family. 6% held by the Ngahina Trust.
Coastlands Shoppingtown Ltd	Richard Mansell (Chief Executive Officer) Richard Cathie (Chairman) Barry Clevely Takiri Cotterill Alastair Mansell	Wholly owned subsidiary of Alpha Corporation Ltd
Sheffield Properties Ltd	Richard Mansell Richard Cathie (Chairman) Barry Clevely Takiri Cotterill Alastair Mansell	Wholly owned subsidiary of Alpha Corporation Ltd
Ngahina Developments Ltd	Richard Mansell Barry Clevely (Chairman) Alastair Mansell Basil Tapuke (Ngahina Trust representative) Adrian Taylor (Ngahina Trust Representative) Kura Taylor (Ngahina Trust Representative)	50% Alpha Corporation Ltd 50% Kura Taylor, Maikara Taipuke, Adrian Taylor, Basil Tapuke (As trustees of Ngahina Trust).
Ngahina Trust	Basil Tapuke Adrian Taylor Kura Taylor Maikara Taipuke	The beneficiaries of the Trust are descendants of Ihakara te Ngarara who was the original (ancestral) owner or part owner of land at Paraparaumu including land now owned by the Applicant and the Third and Fourth Respondents. The Trust has protocols (approved by the Maori land Court) whereby beneficial interests devolve by whakapapa from Ihakara te Ngarara to the living descendants in equal shares of the parent who had the preceding beneficial interest and cannot be alienated or disposed of by sale, will or gift.

Coastlands

10. Coastlands was established in 1969. Coastlands leases land and buildings from Sheffield Properties and on-leases to approximately 100 individual tenants within the existing Coastlands Shopping Mall complex.

Coastlands does not undertake any retailing itself. Coastlands is a wholly owned subsidiary of Alpha Corporation Ltd.

11. Coastlands has long term leases with both main supermarket chains – Progressive Enterprises Ltd (Countdown) and Foodstuffs North Island (Pak n' Save), as well as two department stores - Farmers Trading Company and the Warehouse. It leases the buildings and the sites to Countdown, Farmers and the Warehouse and leases the land to Pak n' Save and KFC who own their buildings.

Alpha Corporation

12. Alpha Corporation Ltd was established in 1985. Its assets are its ownership of Coastlands and Sheffield Properties Ltd and a 50% shareholding in Ngahina Developments Ltd.

Sheffield Properties Ltd

13. Sheffield Properties Ltd was established in 1974. It is now a wholly owned subsidiary of Alpha Corporation Ltd. Sheffield Properties Ltd has interests within the Paraparaumu Town Centre. It owns the land and buildings to the Northern side of the Wharemauku Stream and leases land to the Southern side of the Wharemauku Stream from Ngahina Developments Ltd.

Ngahina Developments Ltd

14. Ngahina Developments Ltd was formed in 1984 and is a joint venture between the Ngahina Trust and Alpha Corporation Ltd. It has three directors from each organisation. It owns land originally owned by the Ngahina Trust or acquired by Ngahina Trust from the Kapiti Coast District Council pursuant to s. 40 of the Public Works Act 1981, including a large portion of the Wharemauku Precinct and land south of the Wharemauku Stream. It also owns land in Ihakara Street and Trieste Way. It has rules prohibiting the sale of its Māori-owned land. Most of the land is leased to Sheffield Properties Ltd, but it does have one piece of land in Ihakara Street which is leased directly to 6 different tenants.

Ngahina Trust

15. The Ngahina Trust is an ahu whenua trust under s 244 of the Te Ture Whenua Māori Act 1993, originally established in 1981 under s 438(1) of the Māori Affairs Act 1953). The Trust has a historic and continuing interest in much of the land within the Paraparaumu Town Centre, including its 50% shareholding in Ngahina Developments Ltd.

16. Some of the beneficiaries of Ngahina Trust are amongst the original owners of the Airport land, and as claimants against the Crown under the Public Works Act 1981 in respect of that land, assigned such rights to a predecessor in title to the applicant. The Ngahina Trust remains a party to a Waitangi Tribunal claim (yet to be determined) in respect of that land.

Mr Richard Mansell

17. Mr Mansell's family, including his late father Bruce Mansell, have been actively involved in the Paraparaumu Town Centre and the wider Kapiti community for four decades.

The respondents' commercial activities

18. None of the respondents sell retail goods directly to the public. Nor does the applicant.

19. The first, third and fourth respondents are all either commercial landowners, developers, and/or landlords of land zoned and currently used for retailing within the Paraparaumu Town Centre Zone.

20. The second respondent is the parent company of the first and third respondents. It does not undertake the activities set out at paragraph 19 above, other than by virtue of its ownership in the first and third Respondents.

21. The fifth respondent has no interest in any commercial activities within the Kapiti Coast district other than its shareholding in the Second and Fourth Respondents.

22. Mr Richard Mansell holds offices in the first-fourth respondents (and undertakes activities in those roles) and has shareholdings in the second respondent. His submission asserts that he is lodging it in his personal capacity.