BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL
INDEPENDENT HEARINGS COMMISSIONER

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an application under section 88 of the Act by K.D. Holdings Limited for land use consent to construct a six-storey mixed use building and remove a notable tree at 45, 49, 51 Brougham Street, 33 Devon Street West and 24 Powderham Street, New Plymouth

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RIGHT OF REPLY FOR THE APPLICANT KD HOLDINGS LIMITED

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MAY IT PLEASE THE INDEPENDENT HEARINGS COMMISSIONER

Reply to Issues/Queries Raised at Hearing

Sunstrike

1. This issue was further considered at the hearing by the only traffic expert, Mr Skerrett, Amtanz Limited who appeared for the Council (in support of the Officer and further to Mr Skerrett's written letter of 27 January 2021 included in the Officer's Report).

2. Mr Skerrett's expert view was that sunstrike was not likely to be a potential adverse effect in the facts and circumstances of this case for the reasons he elaborated on at the hearing; and he raised no concerns in this regard.

3. The applicant also consulted with Waka Kotahi NZ Transport Agency (NZTA) when preparing the application – and was advised by NZTA that it agreed that the impact of the proposal would be less than minor on its network (provided no future access would be allowed from the state highway, Powderham Street). A copy of that correspondence is attached to the application as Appendix M.

4. Further, Mr Bhaskar does not believe that sunstrike will be an issue due to the angles of sunlight coming over adjacent buildings and due to the transparency of the glass façade (i.e. the sun will go through the building more than it will reflect off the building) and fritting proposed.

Wind Tunneling

5. The Commissioner requested further information from the applicant (but not full evidence) – in response as follows:

- Wind tunnelling is a phenomenon usually caused by wind direction and it is usually an issue in large cities with significantly tall buildings often 20 storeys' high or more (in Mr Bhaskar's experience);
- Potential wind tunnelling effects from the proposed building on Brougham/Powderham Streets are not considered to be an issue of significance in this case as the site is situated in a dip in a relatively sheltered area, is surrounded by relatively high topography and is sheltered by Marsland Hill and other buildings nearby in various wind directions;
- Any such effects (if any) would be temporary in duration and, it is respectfully submitted, it would be disproportionate to, for example, reduce the height of the building because on some days of the year there might be a temporary effect (or there may be no effect) – moreover, the Operative District Plan and Proposed District Plan respectively contemplate 14m and 17m (or potentially higher) high buildings in this area;
- There is no evidence of wind tunnelling around New Plymouth city as far as the applicant and its expert consultants are aware, nor are there any specific provisions in the Operative District Plan and Proposed District Plan in respect of same. Further, no issues were raised about these issues during the course of the consent application and/or submissions process by the Council/consent authority and/or submitters - no further evidence and/or information was requested in this regard – and, as noted, the Operative District Plan and Proposed District Plan respectively contemplate 14m and 17m (or potentially higher)

high buildings in this area. Mr Balchin also confirmed at the hearing when questioned that he did not consider such effects to be an issue in this case – and also noted that there are no specific provisions in the Operative District Plan and Proposed District Plan in respect of same;

- The applicant is aware, however, that under NZS1170.2 Wind Actions there are various classifications for wind strength. These include Low, Medium, High, Very High, Extra High and Specific Engineering Design (SED). Mr Fraser (of Red Jacket Engineering Limited) has calculated that, at street level, the classification category for the proposed development is "High". However, the majority of classifications for locations in New Plymouth city (and many/most parts of the district) would also be expected to be at least "High" or above.

Right of Reply in Respect of matters raised by submitters

June Moseley

6. Based on the dictionary definition of mitigate, Mrs Moseley drew the conclusion that the effects of the building must be severe. This is too simplistic, draws a long bow and ignores the general duty of every person to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of the person no matter the severity (s. 17(1) RMA). Mrs Moseley contended that in her view the proposed height of the building was not "human in nature". However, there are many high-rise buildings already in the city and in thousands of cities around the world which are used and appreciated by people i.e. they are human in nature. Further, the permeable nature of the glazed façade with proposed visual interaction with tenants/residents and the public across all floors provides

a human connection. Also, the fact that all sides of the building can be engaged with, along with the cultural narrative that connects the exterior surface treatments with the interior surface treatments (especially on the Huatoki Awa side), means that this building provides substantial elements that consider human scale.

7. Mrs Moseley refers to a 2014 investigation into the New Plymouth central area and building heights by Kyle Ramsey. It is unclear what Mr Ramsey's expertise and/or experience is in this context? At the time that investigation was prepared, Mr Ramsey was a student at Unitec and had no formal qualification, as an architect, urban designer, licenced building practitioner or otherwise. He did not appear at the hearing as an expert in support of Mrs Moseley's submissions. He was not available for questioning by the Commissioner at the hearing. Further, none of the building height studies mentioned address current construction costs and feasibility - and do not address future objectives of how a vibrant central city can be achieved in real world scenarios - but only address a single perspective of trying to marry into, or be dictated by, historic building heights - as opposed to assessing an individual new activity on its individual merit. Mrs Moseley's evidence/submission, in this regard, ought to be given no weight in the circumstances.

8. In respect of Mrs Moseley's comments that she feels the heritage buildings in the area will be overwhelmed – the Applicant relies on the expert evidence of Mr Cullen. Moreover, Mrs Moseley does not (and nor do other submitters in opposition) acknowledge the cultural heritage that the building will introduce to the CBD - which is of significant importance to

Ngati te Whiti and Te Ati Awa (as clearly confirmed by those parties in evidence and at the hearing).

9. In terms of Mrs Moseley's contentions that there will be pedestrian safety issues on Brougham Street – those issues have not arisen with other buildings around the city as far as the applicant is aware – and Mr Skerrett was of a similar view (and did not consider this to be an issue). Mrs Moseley's reference to a person being killed on the street getting into her car in 2014 - refers to a very unfortunate incident where that lady was hit by a drunk driver who was well over the legal limit (and was subsequently convicted of manslaughter).

10. With regard to Mrs Moseley's comments on underground car parking being insufficient etc and an inadequate drop off zone – once again all that was addressed by Mr Skerrett at the hearing (who did not share her views).

11. In Mrs Moseley's concluding comments she again contends that that building is out of character for the CBD area and New Plymouth. The building is not endeavouring to portray a colonial European heritage character – but will reflect, through the cultural narrative process, the character of Mana Whenua on a modern and contemporary building.

Activity Status/Bundling

12. Following the hearing counsel has had further time to reflect on the commissioner's queries (during the presentation of counsel's legal submissions) regarding these matters and has checked the relevant rules and law further.

13. While it is accepted that the more stringent activity status should be applied (i.e. applying the well settled "bundling" approach) – counsel does query whether or not Rule TREE-R10 under the Proposed District Plan (which has triggered the bundling approach being applied – given the notable tree removals non-complying status under the Proposed District Plan and consequently, overall) – should be deemed to be a rule with immediate legal effect under s. 86B(3) RMA?

14. It is not clear to counsel how Rule TREE-R10 of the Proposed District Plan fits within the ambit of sub-sections 86B(3)(a)-(e) RMA – as the notable tree under consideration in this case does not appear to clearly sit under any of those sub-sections? If the Council is linking Rule TREE-R10 to some element of protection of "historic heritage" (as defined under s. 2 RMA) in terms of sub-section 86B(3)(d) in this context – then on the facts and evidence of this case it does not appear that the subject tree is one of "historic heritage" requiring protection either – particularly when, on Mr MacDonald's evidence, it is an exotic, self-seeded tree with a limited future life and no record of having any historic significance? Mr Twigley also notes that Council's own Notable Trees Report for the tree under the criteria "*Does the tree have heritage values?*" scores the tree a 1 under the category Historic. A score of 1 equates to 'unknown' – on a scale of 2 = minor, 3= important, and 4 = very important.

15. There is, in any event, no obligation for an applicant to classify activities within an application – that is a matter for the consent authority: Westfield NZ Limited v Upper Hutt City Council[1] – copy **attached**. If the consent authority did determine that the application had been incorrectly processed as a non-complying

[1] (2000) 6 ELRNZ 335 (EnvC)

activity in this case for the reasons noted above – then obviously that would remove the s. 104D "gateway" considerations – and, counsel notes that the application has effectively already also been dealt with as a restricted discretionary activity under the Operative District Plan (and all relevant assessment criteria etc have been assessed in the application and evidence of the applicant; and under s. 104(5) RMA a consent authority may grant a resource consent regardless of what type of activity the application was expressed to be for).

Concluding comments

16. It is submitted that all other issues raised in the Hearing have already been thoroughly canvassed in the application, the applicant's evidence and further evidence (including of others such as Mr Skerrett) and discussions during the course of the hearing.

17. Finally, an agreed version of the consent conditions following joint witness conferencing by the planning experts (including Sarah Mako for the hapu and iwi) are being (or have been) filed by the relevant planning witnesses (via Mr Balchin for NPDC) as directed.

18. On that note, after further consideration and research the applicant has offered/agrees to a new condition of consent (replacing prior condition 33/34) in respect of the NABERSNZ certified rating. That is now proposed consent condition 6 in the latest version of consent conditions being filed. The applicant will also continue to target a 5-star rating as previously stated - but cannot commit to that at this time for reasons previously canvassed at the hearing.

19. Finally, if consent is granted the applicant expresses its wish to have Ngāti Te Whiti hapu, as Mana Whenua of the area, name the building in due course.

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SWA Grieve
Counsel for Applicant
5 March 2021

Appellants	**Westfield New Zealand Limited; Progressive Enterprises Limited; Foodstuffs Properties (Wellington) Limited; Lanchris Holdings Limited; Gibbs, Colin; Riding for the Disabled Association Hutt Valley Group Incorporated; Wellington Regional Council; Hutt City Council; Upper Hutt Promotions Limited; Horner, Mike; King, Matthew Robert Sherwood; Newell, Heather**
Respondents	**Upper Hutt City Council; Wellington Regional Council**
Applicant	**Valley Plaza Limited**
Decision Number	W055/00
Court	Judge Treadwell
Judgment Date	25/8/2000
Counsel/Appearances	Lynch J; Stevens C; Beatson A; Haden C; Ruru T; Bornholdt B; Butler D; Burrett J
Quoted	Aifric Developments v Wellington Regional Council, W111/94, [1995] NZRMA 97, 4 NZPTD 1; AJ Burr Ltd v Blenheim Borough Council, (1980) 2 NZLR 1; Attorney General ex rel Benfield v Wellington City Council, (1979) 2 NZLR 385; Curtis v Hutt City Council, W065/99, 4 NZED 584; Epsom Normal Primary School Board of Trustees v Auckland City Council, A011/95, 4 NZPTA 237, 4 NZPTD 237; Love & Robson v Porirua District Council, 10 NZTPA 53, (1984) (CA); Manos, C & S v Waitakere City Council & Ors, 28/6/94, Blanchard J, HC Auckland, AP17/93, 3 NZPTD 493; Matthews, GR v Marlborough District Council & Simmons Family Trust, Gendall J, HC Wellington, AP24/00, 5/5/00, 5 NZED 562; Pope & Hitchings v Wellington City Council, (1980) 8 NZTPA 3; Sauer & Ors v West Coast Regional Council, W084/94, 3 NZPTD 809; Sutton v Moule, 22/9/92, Cooke P, Gault J, Thomas J, CA22/92, (1992) 2 NZRMA 41
Statutes	Interpretation Act 1999, s33; Resource Management Act 1991, s34, s34(1), s34(3), s42A(1), s87, s88, s88(1), s88(4), s88(4)(a), s88(4)(d), s90, s92, s93, s93(1), s102, s102(2), s104, s105, s105(4), s120, [s279], s279(1)(b), s271(1)(e), s296, s310(a), First Schedule [cl 14]; Resource Management (Forms) Regulations 1991, cl 8, form 5, form 6; Town and Country Planning Act 1977, s166
Full text pages:	20 pgs + 4 appendices

Keywords

resource consent; shopping centre; jurisdictional issues; adequacy of application; adequacy of public notification; powers of commissioners; delegated authority

Significant in Law & Procedure, s34, s88, s102 RMA

Delegation of commissioners' powers to local authority councillors. Validity of combined resource consent application to multiple local authorities. Multiple resource consents specification of class of resource consent not required under s87.

SYNOPSIS

Preliminary jurisdictional issues relating to appeals to resource consent and references to Proposed Variation No 1.

The Upper Hutt City Council, acting under delegated authority under s34 RMA, appointed the councillors of the Upper Hutt City Council to jointly hear and consider resource consent applications from Promall for a comprehensive shopping centre.

The Court stated that it is not correct, nor possible in terms of s34 to delegate commissioner powers to a local authority [6 ELRNZ 339 at 20]. The councillors who had heard the application, however, clearly understood that they were dealing with applications at both the district and regional level, although the decision had been incorrectly labelled as that of the Upper Hutt City Council rather than in the names of the individual Council commissioners.

The Court held that it did not have jurisdiction to strike down the Council's decision and, in accordance with the decisions of the Court of Appeal, proceeded on the basis that the Council decision continues to have at least de facto operation [6 ELRNZ 341 at 39]. The Court also declined jurisdiction in respect to the ground that not all appointed commissioners had heard the application.

A single application had been made to both the Upper Hutt City Council and Wellington Regional Council. The appeal challenged the fact that the application had not made a distinction as to which of the various consents was being sought from which local authority.

The Court held that combined applications are not prohibited in terms of the RMA. Also (from a practical viewpoint) it would be an onerous, if not an impossible task to separate the volume of material on large complex applications into separate categories for regional versus district consents [6 ELRNZ 343 at 42]. Likewise, the application does not need to specify the class of resource consent under s87 but merely that consent for an activity is required [6 ELRNZ 344 at 30]. If, however, an application is to both the regional and district council, the application and public notice must make it clear that an application to both consent authorities has been made [6 ELRNZ

347 at 40]. The Court accepted that the application as lodged, was not deficient.

Where a local authority identifies further consents that are required on a reading of the information supplied, it is permitted to increase the activities applied for in the public notification. Care must be taken, however, to ensure that those activities were clearly contemplated in the material supplied with the application [6 ELRNZ 352 at 4].

Applications for declarations declined

(Note: It would seem wise to list those consents sought from the Regional Council separately from those sought from the District Council otherwise confusion could arise).

FULL TEXT OF W055/00

These preliminary proceedings relate to appeals filed by the appellants in respect of resource consents granted by the Wellington Regional Council (Regional Council) and the Upper Hutt City Council (City Council). Related to these appeals are a series of references filed in relation to provisions of the City Council plan in respect of Proposed Variation No 1.

This hearing before Judge alone is to determine questions of law and was also with the consent of all parties. As well as the question of jurisdictional issues there is an application to strike out filed by the City Council.

I ruled that the jurisdictional matters should be determined first with the applications to strike out to be determined, if necessary, following determination of those other issues.

The following parties appeared in relation to these preliminary issues:

- The City Council
- The Regional Council which indicated that it abided the decision of the Court but was nevertheless represented by counsel.
- Valley Plaza Limited (successor to ProMall Limited) which will be referred to as "the applicant".
- Westfield New Zealand Limited (Westfield)
- Progressive Enterprises Limited (Progressive)
- Foodstuffs Properties (Wellington) Limited (Foodstuffs)
- Colin Gibbs and Lanchris Holdings Limited who appeared by counsel but asked leave to withdraw which was granted.

Foodstuffs opened the case for the appellants. Counsel dealt with each of the issues raised in the appeal separately but not necessarily in the order listed in the appeal document and I will follow that same course.

It must be borne in mind in the course of this decision that the Court has no jurisdiction beyond that conferred by the Resource Management Act 1991 (RMA). In relation to council decisions those powers are contained in s290 and that section does not confer power to declare that a decision is a nullity. It assumes that there is a valid decision and gives power to cancel. I will

cover this in more detail later.

The First Issue

Paragraph 7.1 (d) of the appeal states:

> *The Environment Committee of the Wellington Regional Council acting under delegated authority having determined to jointly hear the Application with the Upper Hutt City Council in accordance with s102 of the Resource Management Act 1991 then purposed to appoint "the Councillors of the Upper Hutt City Council" as commissioners pursuant to s.34(1) of the Resource Management Act 1991. Section 102 of that Act imposed a mandatory obligation on the Wellington Regional Council to participate in the hearing process. It is not possible to comply with a statutory requirement of a joint hearing, consideration and decision when one local authority alone hears the Application. The Hearing that took place without Wellington Regional Council representation was not a joint hearing as required by the Resource Management Act 1991.*

This essentially asks the Environment Court to exercise jurisdiction in the field of administrative law by determining the validity or otherwise of a council decision. I was not asked to make a declaration concerning delegation powers under s34 which appears to be a course available to me pursuant to s310(a). The application of this section was not argued before me or raised by those seeking to challenge jurisdiction and I refrain from expressing any further views on it and in particular refrain from discussing whether a declaration by a Judge of this court would extend to render a decision of a council or councils a nullity.

I will briefly set out the facts behind this ground of appeal.

The Wellington Regional Council following advice from its officers decided to appoint the Councillors of the City Council its commissioners pursuant to s34(1) of the RMA. That initial advice indicated that it would be advisable to appoint all councillors to cover situations of absence, sickness etc. The Regional Council then passed a resolution in relation to "Possible delegation of powers to the Upper Hutt City Council" in the following terms:

> *That pursuant to s34(3) of the Resource Management Act 1991 the Environment Committee, acting under authority delegated by the Wellington Regional Council under s34(1) of that Act, appoint the Councillors of the Upper Hutt City Council to jointly hear and consider resource consent applications WGN 990148 received by the Wellington Regional Council from ProMall Limited, the submissions on those applications and make a decision on those resource consent applications under s102, 104 and 105 of that Act.*

Whilst I do not intend to enter too far into this particular issue I am satisfied that this resolution achieved certain objectives namely:

1. By reason of the fact that it specifically referred to s34(1) it is clear

that the resolution appointed the councillors as commissioners.

2. Questions relating to the propriety or otherwise of that particular course of action are not for this court to decide.
3. That the purport of the resolution is to constitute those councillors who heard the matter on behalf of the City Council as commissioners and does not purport to make it a mandatory requirement that all councillors must hear the matter. Some councillors did not in fact attend the hearing and one in particular declared an interest being a submitter.

I therefore have concluded that the absence of councillors for legal or personal reasons would not invalidate the overall delegation of power to commissioners. The appellant Foodstuffs then submitted that the hearing was in breach of s102 which requires the consent authorities to jointly hear and consider applications. For the purposes of that section the presence of commissioners appointed under s34(3) would be an effective presence of the Regional Council at the meeting for the purposes of s102 therefore the provisions of that section would be complied with. I am however, a little concerned at confusion which appears to have arisen. The minutes of that meeting indicate that it is a joint hearing of an application for resource consents made to the City Council and the Regional Council and then states that the Regional Council has delegated to "the Upper Hutt City Council" power to hear and decide. That is not correct nor is it possible in terms of s34 to delegate commissioner powers to a local authority. Although this is merely a minute it was unfortunately carried through with a decision being issued by the City Council not separately signed by the individual councillors.

Reading the decision as a whole I am nevertheless perfectly satisfied that the councillors who heard the applications clearly understood that they were dealing with applications at both district and regional level by reason of the fact that the decision groups the matters to be decided into categories within the respective jurisdictions of the City Council and the Regional Council. In fact there can be no argument that the delegated Councillors heard the matter but were incorrectly labelled as "The Upper Hutt City Council".

I am further satisfied that there will be no benefit to anybody by pursuing this technicality any further because even at this stage the individual councillors who were delegated authority, could sign the decision if that were felt legally necessary. The only result flowing from that particular action would be the possibility of extending appeal periods further until the time for the filing of appeals had again passed.

The submissions on this issue appear largely to revolve around the propriety of one council exercising the functions of another. I have already recorded that I do not have jurisdiction in that regard.

It was also submitted that the delegation resolution was defective in that it

did not name the councillors. It is a matter of record as to who are councillors of a local authority and I do not consider that invalidates the delegation. It was further suggested that the Mayor was not a councillor. I can find no authority in the RMA which would enable me to embark upon judgment on that issue.

There is little decided authority. The only case which may be said to have some relevance is Aifric Developments v Wellington Regional Council [1995] NZRMA 97. This was a decision of the then Planning Tribunal and it discussed the Tribunal's jurisdiction to review a decision of a local authority to appoint commissioners. Planning Judge Willy and his commissioners discussed this issue and said at page 108:

> *"With respect to counsel, and having regard to the matters of general public interest involved in this appeal, we cannot agree that this Tribunal has any power to interfere in the decision of the council to appoint commissioners to carry out its duties in relation to the hearing of a resource consent application such as were made in this case. Absent any general powers of review (sic), we are not directed to any provision in the Resource Management Act which confers a right of appeal on any party to a resource consent application in relation to the council's decision to have the application heard by commissioners."*

The Court discussed s120 and observed that this only conferred powers to appeal "against the whole or any part of a decision" which, in the opinion of the Court, did not include decisions to appoint commissioners. The Court said:

> *"That is not a decision made in the course of deciding the application for resource consent. It relates only to the procedure by which the application will be adjudicated. It is, for example, similar to the power of the local authority to decide not to publicly notify an application. Just as there is no general right of appeal in respect of the exercise of such power, so in our view there is no right of appeal under this Act from what would be described in civil proceedings as an interlocutory step taken in the course of bringing the matter to a hearing."*

The only comment I would make in regard to the present case is whether there is in fact a "decision" in the absence of the signatures of the delegated councillors. I have noted previously that the RMA does not confer power for the Environment Court to determine that issue.

In that regard I now turn to the case of Love and Robson v Porirua City Council, 10 NZTPA 53 (1984) (CA). This case discussed, previous pronouncements of the Courts concerning the ability of this Court (then the Planning Tribunal) to review a council decision. It discussed s.166 of the Town and Country Planning Act 1977 which is now reflected in s296 of the RMA. The Court at page 55 stated (after discussing the fact that s166 does

not oust the jurisdiction of higher Courts):

> *"No doubt the policy reasons underlying the section turn upon the significance which is likely to be attached to the views of the Tribunal should the matter come in the end before the Court. There is also the fact that the appeal itself will enable a complete rehearing de novo, in the course of which any suggestion of earlier defect or error can be examined and where necessary corrected: ..."*

At page 56 the Court said:

> *"The second submission is at s166 can have no application in a case of a decision by a council which is void, whether for want of jurisdiction or otherwise. Here it is said that for reasons associated with one or both of the grounds advanced in support of the applications for judicial review the decision made by the council is to be regarded as a nullity and legally ineffective for all purposes including that of founding an appeal to the Tribunal ....*
>
> *If in the present context invalidity be assumed on one or both of the grounds advanced on behalf of the applicants, the decision of the council nonetheless has at least a de facto operation unless and until it is declared to be void or a nullity by a competent body or Court."*

The Court was firmly of the opinion that the decision cannot be considered as totally void in a sense of being legally non-existent.

The conclusions of the Court in that case confirmed the findings of the Court of Appeal in A J Burr Ltd v Blenheim Borough Council (1980) 2 NZLR 1. That case concerned inaccuracies in notices and contained a statement at page 4:

> *"When a decision of an administrative authority is affected by some defect or irregularity and the consequence has to be determined, the tendency now increasingly evident in administrative law is to avoid technical and apparently exact (yet deceptively so) terms such as void, voidable, nullity, ultra vires. Weight is given rather to the seriousness of the error and all circumstances of the case. Except perhaps in comparatively rare cases of flagrant invalidity, the decision in question is recognised as operative unless set aside. The determination by the Court whether to set the decision aside or not is acknowledged to depend less on clear and absolute rules than on overall evaluation; the discretionary nature of judicial remedies is taken into account."*

Those views of the Court of Appeal in 1980 still apply with some force to the present situation. Therefore I decline jurisdiction to strike down the council decision that being clearly the prerogative of higher courts. In accordance with the decisions of the Court of Appeal I intend to proceed on the basis that the council decision continues to have at least de facto operation.

For that reason I do not hold in favour of the appellants in respect of the

grounds of appeal set forth in paragraph 7.1 (d) of the appeal.

The Second Issue

Appeal ground 7. 1(f) states:

> *Without limitation of the foregoing ground of appeal (ground 7.1(d)) if it were possible to delegate a joint hearing function to "the councillors" of the other local authority involved then the delegation in this case was not to the Upper Hutt City Council" it was to the "Councillors of the Upper Hutt City Council". At the time of the delegation the Councillors of the Upper Hutt City Council were Councillors (then the names of the councillors are set out). In terms of the purported delegation all of those Councillors were appointed commissioners. In the event the Application was heard by the Mayor and some only of the Councillors. Councillors Meek and Newell did not hear the Application. All of the commissioners appointed did not participate in the Hearing."*

I have already briefly covered these issues in the foregoing part of this decision including some discussion on Aifric Developments Ltd (Supra) and do not intend to pursue that issue further save to say that in the present case there was some suggestion that the resolution did not specifically appoint the "Councillors" as "commissioners". I have concluded that the reference to s34(3) in the resolution conferring the delegation must clearly import into the resolution the concept that those appointed were in fact to be commissioners. In relation to this issue I decline jurisdiction.

The Third Issue

Paragraph 7.1 (a) of the appeal document states:

> *The proposals of the Applicant required separate resource consent Applications to the Upper Hutt City and the Wellington Regional Council. A single omnibus application was made to both local authorities without any distinction being drawn as to which of the various Consents being sought was being sought from which local authority. The form of the Application being used by the Applicant was insufficient for the purposes of the Resource Management Act 1991 (ss87, 88, 90, 93 and 102).*

The Applicant in the present case made one application which was a document of 104 pages. The first eight pages set out the type of resource consents sought and the activities to which the application relates. It stated that no additional resource consents were required. The Application did not specify the territorial authority or regional authority from which the particular consents were required. The Application was lodged with both the City Council and the Regional Council. Both councils, after receipt of the Application, identified the specific consents required from each and, following a request for additional information which produced another 77 pages of material plus appendices, the Regional and District Council then publicly notified the proposal with a

joint advertisement carrying the logos of both councils but clearly stating that the address for service of both was at the offices of the City Council. The public notification placed the activities contained in the Application in their appropriate resource consent category, based on the material contained in the Application and in Assessment of Environmental Effects. Both of those documents were available to be examined with a view to assessing the whole gamut of the activities proposed.

I record at this stage that the whole concept of a retail and recreation centre, to which the Application relates is a discretionary use. The Application does not specify the categories of consent ie permitted, discretionary, controlled, or non-conforming) because all activities are discretionary. Having regard to the provisions of s105(4) of the RMA (which gives to the consent authority the ability to grant or refuse an application under whatever category is considered applicable) it does not appear to matter very much whether the type of activity is placed in a particular category within the original application. The main issue of importance is whether the public are aware that they have rights of submission. In my opinion the mere fact that an application was publicly notified in the manner in which this application was notified, would be more than sufficient to alert the public to its rights.

To return now to the application as filed which has been called by the appellants an "omnibus" application. I will adopt that expression for convenience.

The RMA is silent on whether an omnibus application can or cannot be filed. S87 sets out the type of resource consents which can be applied for and s88(1) allows any person to apply for such consents in the manner set out in ss4 of that section. That subsection requires an application for a resource consent to be in the prescribed form and sets forth the matters which shall be included. The prescribed form is Form No 5 in the Resource Management (Forms) Regulations 1991. That form has a provision for "the type of resource consent(s) sought is/are: ..." and then requests the applicant to specify whether it be a coastal permit if in the coastal marine area or otherwise to specify one of the following: land use consent, subdivision consent, water permit, or discharge permit. The form also requires a statement specifying all other resource consents that the applicant may require from any consent authority in respect of the activity to which the application relates and whether or not the applicant has applied for such consents.

Clause 8 of the Regulations states that every application for a resource consent under s88 shall be in Form 5 in the Schedule or to like effect. Clause 8 also contains a provision that where two or more resource consents are required for the same proposal the application for those consents may be made together in the same form. This brings one back to s87 of the RMA which defines a resource consent as meaning "any of the following". Then follows a list of five types of resource consent. Reading Clause 8 of the Regulations and s87 together it appears to me that omnibus applications are not prohibited in terms

of the RMA. Indeed from a practical viewpoint it would an onerous, if not an impossible task, to separate the volume of material to which I have referred previously namely the application and additional information into separate categories for that purpose. Such separation could lead to confusion in the minds of a potential submitter in relation to proposed activities of this magnitude where the whole concept is discretionary.

I accept that there is no reference to an omnibus type of application in sections such as s90 relating to distribution of the application to other authorities. Also s93 and Form 6 do not specifically refer to an omnibus application. The appellants also refer to the part of Form 5 which requires the applicant to differentiate between the types of consent sought and from which local authority they are being sought which by implication suggests separate consents.

The District Council for its part takes a more robust approach to the provisions of the Act. In relation to s88 RMA the only requirement in the view of the applicant is that the application must be made to the relevant local authority. It submits that it clearly complies because it is addressed:

> To Upper Hutt City Council ...
> And to Wellington Regional Council ...
>
> Separate addresses are given for each.

Counsel for the District Council further submitted that the purpose of s88(4)(d) (which requires an applicant to specify all other resource consents that the applicant may require from any consent authority in respect of the activity to which the application relates and whether or not the applicant has applied for such consents) is to ensure that decision-makers and participants in the RMA process are aware of all the issues (whether district or regional) relevant to a particular proposal. It submits that amalgamating applications, as was done in this case, can only be helpful in promoting an understanding of district and regional issues.

A significant issue raised by counsel for the City Council was the wording of s88(4)(a) which only requires a description of the "activity" for which consent is sought and its location. It does not require the activities to be categorised under s87. The other matters contained in that subsection, apart from the requirement to specify all other resource consents required, are clearly directed at bringing to the notice of the consent authority the particular activities proposed.

There is little case law on this question with only two authorities being cited to me. In C & S Manos v Waitakere City Council and Others 1994 AP 17/93 (HC) Blanchard J made some observations on the joint application issue. He observed at page 8 of the decision:

> *"The Act separates land use consents from discharge permits. Separate applications must be made in respect of each and to different bodies,*

although joint hearings may be held for the sake of convenience ..."

I do not consider that quote helpful in the present case because it was made in a totally different context. In the Manos case the Tribunal made observations concerning sewage and stormwater disposal as being part of a cumulative adverse effect. In that case no application had been made for those activities and it was quite properly observed that the Act separates land use consents from discharge permits and that a consent authority in respect of a land use must confine itself to considerations relating to the land use consent sought. It was stated:

"Thus it is not concerned with problems of pollution which may arise in the course of the use of the land because of the discharge of contaminants into the environment. That is a matter for the other consent authority."

I take no issue with those comments. In the case presently before me there is no suggestion that the omnibus application seeks to oust the jurisdiction of one or other of the other local authorities. There is no suggestion in the application that the City Council could for instance adjudicate on matters appropriately within the jurisdiction of the Regional Council. The application does not however, specify which council is to address which issue.

Clause 8 of the Regulations in relation to forms contains a "like effect" proviso. It is clear to me that the material provided to the councils and to the public at large was perfectly adequate to allow the councils to address their minds to the question of the type of consents sought. The public at large and potential submitters would also be able to ascertain that consent was being sought to a range of activities and that if they took issue with any of those activities they could in terms of the public notification address their submissions to the local authority specified in the notice namely the Upper Hutt City Council. That council was the address for service of both councils. The public notification, which I will consider later, in any event specified the types of consents sought in terms of s87 of the Act. The type of consents required had been decided upon by the respective councils from the material contained in the application and AEE.

The application is the first document to set in train the complex provisions of this Act. I can find nothing in the Act to prevent the filing of an omnibus application and indeed, having regard to the provisions for joint hearings in s102, agree with counsel for the City Council that such an approach is consistent with the objectives of this Act. That is what in effect has happened. I am also reluctant to strike the proceedings down at this stage of the process unless there is a clear provision in the RMA which rules out omnibus applications.

In relation to omnibus applications there is one decision of the Environment Court to which I will refer. Sauer & Others v West Coast Regional Council Decision W84/94. In this case Judge Kenderdine was dealing with an

application which was approved at a joint hearing by separate commissioners appointed by both councils pursuant to s34 of the Act. The facts were briefly that the Regional Council undertook on its own behalf and on behalf of the District Council the responsibility of receiving the application, notifying the hearings on the application, setting the procedures, providing administrative services and serving the two decisions which resulted.

In Sauer Her Honour discussed s93 in respect of deficiencies as to location or description of land and commented that the Regional Council simply stated that it had received an application for resource consent, gave the name of the applicant and stated in a general way that it was to continue goldmining operations on the outskirts of Kumara Township. Her Honour commented that the advertisement indicated that both Regional and District Councils had received an application for land use consent but whilst the advertisement referred to the District Council's involvement in the application it appeared to indicate that the Regional Council was the only consent authority. The public notification only carried the Regional Council's logo not a joint one. It was therefore apparent that the Regional Council had not advertised the District Council's involvement in the resource consent process.

The decision continued:

> *"It seems to us that the emphasis in s93(1) is on making the notification personal to each concerned authority which on consideration must be correct for consent authorities will inevitably evaluate different aspects of the proposal for which they have responsibility."*

As will be discussed later in this decision this is precisely what the District Council and Regional Council did in the present case and they appear to have had no difficulty in evaluating their respective areas of responsibility.

I do not therefore accept that Sauer closed the door on omnibus applications. I am therefore not prepared to rule that the application as filed is so deficient in its content and form to the extent that the proceedings are void ab initio. The Application and its Assessment of Environment Effects cover in considerable detail the types of activity proposed as required by s88(4)(a). I am not prepared to hold that the application does not comply with s88 of the RMA and Clause 8 of the Regulations. There is a long line of case law which I do not intend to quote which supports considerable flexibility in approach to the material required in forms provided:

(a) the spirit and intention of the Act is followed and
(b) that the public and those wishing to make submissions are not in any way disadvantaged.

It is also of some interest to note that s88(1) refers to applying "to the relevant local authority". When one applies s33 of the Interpretation Act 1999 which provides that "words in the singular include the plural ..." that section can be taken to read "to the relevant authorities".

Issue No 5

Paragraph 7.1 (b) of the appeal states:

> *"The Upper Hutt City Council and the Wellington Regional Council gave a single joint notification of the application. There is no provision in the Resource Management Act 1991 enabling such a joint notification."*

Sauer (supra) was again referred to in this regard and in particular a comment at page 8 which drew attention to certain differences between ss93 and 102. The comment is:

> *"There is a distinction to be made between notifying an application for resource consent by the relevant consent authority under s93(1)(a)-(i) and taking responsibility to notify joint hearings pursuant to s102(2)."*

Later at page 10:

> *"S93(1)(i) allows the council to give the notice of application in such other manner as it considers appropriate. We determine that this provision relates to the manner, ie. service, in which the notice is given - such as by being posted. We consider the word given in s93(2)(b) re-enforces this decision. We do not perceive it to allow the Regional Council to take over another council's responsibility in the notification process."*

The differences Her Honour was referring to are the fact that s102(2) sets the procedures to be followed when a joint hearing is to be held and makes a Regional Council responsible unless the consent authorities involved in the hearing agree that another authority should be so responsible. That subsection however, relates to notifying the hearing, setting the procedure, providing administrative services and matters of that nature. I perceive that subsection as intended to avoid cost arguments between councils in relation to a major hearing in the absence of joint agreements as to alternative procedures etc to be adopted. S93 on the other hand refers to the consent authority concerned and the wording is:

> *"Once a consent authority is satisfied that it has received adequate information, it shall ensure that notice of every application for a resource consent made to it in accordance with this Act is -*
>
> *... (g) publicly notified; ..."*

It is notable that this particular section ie 93 does not use the words "the consent authority shall publicly notify". It merely requires that the consent authorities shall "ensure" that the matter is publicly notified. The Oxford English Reference Dictionary Second Edition defines that word as (inter alia) "make certain".

I can therefore see no problem with two local authorities for the purpose of clarity and administrative cost choosing to publish a joint public notification provided potential submitters are not in any way misled. The format of the public notification given clearly identified that it was given by two authorities

namely the Regional Council and the District Council. It set out the activities proposed and then clearly subdivided those activities into consents which were the responsibility of the District Council and activities which were the responsibility of the Regional Council. The notice then specified the District Council as being the address to which submissions should be sent.

In my mind this is a common sense approach to a situation which had every potential for becoming complicated and confusing to the public if submitters were required to deal with two separate authorities. Indeed this is precisely what happened in Sauer where confusion in the advertising led would be submitters to conclude that land use consents required from the District Council were not in fact part of the particular activity proposed in that case. I have concluded that there is nothing in the Act to prohibit a joint public notification and I thus do not hold that the public notification is defective.

Issue No 6

Paragraph 7.1 (c) of the appeal states:

> *"There was significant differences between the consents sought as described in the application and as described in the public notification. Further the number of consents sought was expanded from five to eight and the consents were allocated between the 2 consent authorities in a manner not contained in the application. There were changes made in the public notice in the description and nature of the matters for which consent was sought in the application."*

For convenience I have annexed the public notification to this decision.

The Application in paragraphs 3 and 4 covered respectively the type of resource consents sought and the activities to which the application relates. The type of resource consents sought were:

(i) Land use consent for the regional shopping and entertainment centre and relocation of existing golf driving range.
(ii) Subdivision consent.
(iii) Water permit for work in the bed of the stream and stream realignment of Mawaihakona Stream.
(iv) Water permit for diversion of water from the Mawaihakona Stream.
(v) Water permit for removal of bridge structure and construction of five new bridge structures over the Mawaihakona Stream.

Paragraph 4 then described the activities to which the application related in some more detail. Specifically there is a reference to the realignment of 200 metres of the Mawaihakona Stream and associated works in the bed of the stream and a question of taking 4000 litres of water to fill two lakes adjacent to that stream and the diversion of up to five litres per second from that stream to circulate through the two lakes. Storm water discharge was not covered in the original application.

I record at this stage that the realignment should have related to two stretches of the stream each of 200 metres. The activity of taking of 4000 litres of water was not publicly notified.

The applicant advised that in so far as those issues are concerned if it does not obtain consent it will not affect the proposal in any material way and in particular the 4000 litres of water can be provided from rainwater sources on site.

I have previously commented on the material required to be in the application and have discussed what should or should not be in the documentation provided to council. I am of the view that the present opponents to the proposal are taking an unnecessarily technical approach.

The first point I wish to make is that upon a reading of all the documentation provided (prior to the additional information elicited by the councils pursuant to s92) it is abundantly clear to any person reading that documentation what activities are intended and where those activities are to be located. I except from that comment the stormwater discharge and the two lengths of diversion. These details were supplied by way of additional information and at that stage the applicant asked that the application be amended. The applicant in its application identified the consents which it thought were required at the stage of application. The respective councils have considered the material provided and have concluded that further consents are required. These are as set forth in the public notification. I have concluded that there is nothing in the public notification as to consents required which is not apparent from reading the application documents as originally filed. The only matter which appeared in the public notices and which did not appear in the original application were the reference to two reaches of the Mowaihakona Stream and the reference to stormwater outlets. These matters in the context of the application as a whole are not of such consequence as to persuade me to conclude that the applicant should reapply; that there should be a further public notification; and that the whole matter should again be heard before council.

The remaining issue of consequence is the question of activities within the flood plain which were not specifically referred to in the application as requiring consent.

In respect of the flood plain the Regional Council Transitional Plan which is presently operative appears to have come from a bylaw and reads:

> *No person shall without the written permission of the Board deposit or place or build or cause or suffer to be deposited, placed or built any timber, house, shed, fence or other building or structure or any stones, earth or any other material or refuse in the bed or on the banks of any water course or of any flood way or in any other place where they or any of them may obstruct the flow of waters in a water course of flood way or directly or indirectly cause or be likely to cause soil erosion or restrict*

the execution of the maintenance of the water course or flood way.

By virtue of the transitional provisions of the Act a provision couched in these terms becomes a discretionary activity and I am in no doubt that placement of any structures or earthworks within the flood way (flood plain as it now is) cannot be commenced without consent. I am, however, of the opinion that the application and supporting documents clearly indicate the activities are proposed in the flood plain area and that the Regional Council in the carrying out of its functions has properly extrapolated those proposed activities from the documents and publicly notified that they require consent. I place no weight on the fact that the question of "consent" is not specifically addressed in the application. The case of Pope & Hitchings v Wellington City Council (1980) 8 NZTPA 3 was quoted in support of the fact that specific reference to the consent sought is required within the original application. This was a case under the Town and Country Planning Act 1977 where the regulations required the application to "state fully what is proposed".
The application in that case merely indicated that the applicants wished permission to move a building from one site to another. The public notification nevertheless extended this far beyond what was in the original application by setting out the future activities to be carried on within that building when removed to the new site. The public notice referred to such things as shops, restaurants, carparks etc.
The Tribunal said:

> *"From that notice it is immediately apparent that it introduces a major new element to the matter which was not alluded to in any way, in the application - viz, that the building as proposed be converted to three shops and a restaurant on the ground floor, these uses being non-permitted uses in the applicable zones."*

Following from that the Tribunal made clear that it had no jurisdiction to grant consent to anything more than is sought in the application and that the application merely sought consent to moving the building.
If anything this particular decision supports my view of the present proceedings. The application in the present case when read in its entirety, including the assessment of environment effects, most certainly "alludes" to all matters the subject of public notification. I therefore do not find it supportive of the viewpoint of the appellants. I take the same view of the other cases quoted to me such as Curtis v Hutt City Council W65/99 and Epsom Normal Primary School Board of Trustees v Auckland City Council 4 NZPTD 237. In that latter case the activity had merely been referred to as "removal of existing trees complying with general tree protection control - see report". Accompanying that application was a memorandum of a city traffic engineer giving approval in principle to a proposed driveway position. Apart from that somewhat cryptic information there was no reference in the Epsom School

case to consent being sought for a driveway in a particular position. The public notice did not refer to the driveway situation either. This again is therefore an example of an application which contained no adequate reference to the activity proposed.

It is interesting that in the course of that case the case of Attorney General ex rel Benfield v Wellington City Council (1979) 2 NZLR 385, was referred to where Davison CJ in discussing the application in relation to the building subject to that case, namely the Bank of New Zealand building in Wellington, said:

> *"It is true that if the application and notice had also referred to the height of the building exceeding that permitted by the Code of Ordinances in that the encroachment areas exceeded the voids, the fact that building height was under consideration might have been more readily apparent. The application was however, technically correct in relation to the Code and described accurately the matter in respect of which the owners of the building sought a consent to conditional use ....*
>
> *The application and notice made it plain that a conditional use consent was being sought in respect of the bank building on that site ..."*

I would observe that those comments cover to a degree the matters which here concern me namely that the application and accompanying documents make abundantly clear to anyone who wishes to read them that it is a very large project and that it is governed by discretionary use requirements.

The Epsom School case also contains a convenient summary of Sutton v Moule (1992) 2 NZRMA 41 (CA). In that case the Court did not place too greater reliance on precise detail provided the public were not in any way misled. The Epsom School case page 5:

> *"In the latter case the Tribunal held that the description of the proposed activity has to be described in detail sufficient to enable effects of carrying it on to be assessed in the way described in the Fourth Schedule; and that the description is intended to include whatever information is required for a consent authority to understand its nature and the effects it would have on the environment, because advisors to consent authorities and would be submitters should not themselves have to engage in detailed investigations to enable them to assess the effects."*

That is a convenient summary again of the present case. I have no doubt that the application and assessment of environmental effects clearly indicated the proposed activities with the exception of one of the stream diversions; the stormwater disposal; and the 4000 litre extraction relating to an artificial pond. Counsel for the applicant took me carefully through the documentation forming the application and it is abundantly clear to me that on many occasions the question of the presence of the flood plain was referred to. The plans also show the areas to be occupied by various activities and the flood plain issue

again becomes apparent. The Regional Council was certainly not the least misled by the application as evidenced by the material contained in the public notification. Also the public were not misled as evidenced by the extent to which flood plain issues were raised in submissions.

In essence the applicant has produced a detailed document to the respective councils setting forth with precision the activities it proposes to carry out upon the land in question. It is abundantly clear where that land is. The applicant has then set forth in its application the consents it considers it needs for those activities. The councils have then carefully assessed the activity information before it together with further information supplied as a result of s92 requests and has concluded that some of those activities need further formal consents and advised the public by the public notification procedures of the consents which the council consider necessary.

I can find nothing in the material before me to suggest that any member of the public or any authority interested in these proceedings has in any way been misled or disadvantaged.

In conclusion the applicant is prepared to proceed and, if some activities are not covered by the application or are subject to defective public notification and are later found to be incapable of consent by this Court then the applicant is still willing to proceed with its project and resolve those difficulties as it thinks fit without being directed by this Court (if indeed I have such power) to file further applications.

Lastly in this part of my decision I am conscious of the fact that the applicant is not responsible for the public notification procedures. It has relied on the councils to appropriately notify, although I understand it has had some input in that regard. Following that notification it has embarked upon a full public hearing at considerable cost. Both the applicant and the councils were alerted to some of the matters now before me at the time of the council hearing but nevertheless the applicant chose to proceed. Unless there is some clear breach of the Act, and I do not believe that any such breach has been shown to me, I am of the view that proceedings should not be halted at this stage particularly in view of the fact that the applicant is prepared to take what risks may be present if it chooses to proceed.

I do not find the public notification defective.

Issue No 7

Paragraph 7. l(g) of the appeal states:

> *"Amongst the reports obtained by the Wellington Regional Council is a report from Truebridge Calendar Beach. It was not among the copy reports provided to the appellant. Failure to do so was a breach of s42A(3) of the Resource Management Act 1991 ."*

It is not accepted by either of the councils or by the applicant that this was a report commissioned by the council. I have no evidence to suggest otherwise.

That being so I am not prepared to hold that there was a breach but even if I were prepared to so hold I am unable to see what particular relevance that would have in view of the fact that the appeal is a hearing de novo and that all parties are now clearly aware of the contents of that report. I place in the same category Paragraph 7.1 (h) of the appeal in relation to a document containing legal advice from Mr J D Lynch Solicitor for the City Council. This was advice given as a result of submissions received during the course of the hearing before councils and to suggest that it is a report in terms of s42A(1) is patently untenable. How a report or opinion on matters taking place during the course of a hearing could be sent to parties five working days before the hearing escapes me. If the parties were taken by surprise then that can again be cured during the course of the appeal hearing.

Issue No 8

Paragraph 7.1(e) of the appeal states:

> *"As a result of the Wellington Regional Council having abrogated its statutory function to jointly hear the application expert evidence in relation to water and regional matters was considered solely by those of the Upper Hutt City Councillors who took place in the hearing. Those Councillors were:*
>
> *(i) Unfamiliar with the Regional Plan.*
>
> *(ii) Possessed of no special or any resource management expertise that might be expected of a commissioner; and*
>
> *(iii) Make decisions on matters where the interests of Upper Hutt City or actually or potentially in conflict with the interests the Wellington Regional Council is charged with protecting.*

I have already ruled that the Regional Council did not abrogate its statutory, function to jointly hear the application therefore the latter part of this particular ground is largely irrelevant. However, I would comment that it is certainly not the function of the Environment Court to enter into issues such as this and in particular issues such as bias or conflict of interest. If the appellants wish to pursue this type of ground they must do so before a Court of competent jurisdiction.

Essentially this is a breach of natural justice submission which, if accepted by me, would give the Environment Court powers equivalent to the High Court in respect of such matters. The cases quoted to me in support of this ground of appeal such as G R Matthews v Marlborough District Council and Simmons Family Trust (HC) Gendall J AP 24/00 whilst enunciating the principle that the Environment Court itself is bound by principles of natural justice most certainly does not lead to the conclusion that the Environment Court can then assume unto itself jurisdiction to rule upon the actions of other statutory authorities. In any event the basis of this submission were the two reports I have previously referred to and any concerns surrounding those

reports can be cured at appellate level.

In relation to breaches of natural justice I also note the concession properly made by counsel for Westfield that a breach of natural justice may be capable of being cured by a hearing de novo. In the context of the failure to provide the solicitor's report or the engineer's report to submitters, counsel for the appellants nevertheless noted:

> *The appellants note that this breach of both the Act and the procedural requirement to act in accordance with the principles of natural justice is symptomatic of the flawed approach adopted throughout the council hearings. It is in that context and in the context of the other issues of concern to the appellants raised herein that this matter is raised.*

I must make clear that it is not my function to try the council for its alleged misdeeds. The law is clear as to the importance of a hearing de novo. None of the issues raised in respect of these reports in my opinion constitute such a fundamental defect in original proceedings as to render those proceedings a nullity and even if it may be argued that they did then I simply repeat that that is not a matter for me to determine.

Conclusions

I am not prepared to make any orders or declarations in favour of the appellants in respect of the matters raised in the appeal which I have discussed in the course of this decision. I remain firmly of the view that no injustice has been done to any party and that no possible submitter has been prejudiced. The hearing before the Environment Court is a hearing de novo and any matters of concern can be addressed and remedied at that stage of proceedings. To start these proceedings all over again before the respective councils would merely cause delay which would not benefit any one other than the present appellants who would be protected from commercial competition for the period of that delay.

The whole bulk of case law relating to the RMA and its predecessors show an increasing tendency to adopt a broad brush approach (an issue discussed by the Court of Appeal in A J Burr Ltd v Blenheim Borough Council (Supra). The whole thrust of the law is to take a robust approach to the RMA and to applications filed pursuant to that Act with a view to achieving justice and an expeditious resolution of issues which can in some cases, involve very large amounts of capital expenditure. I can see no purpose in prolonging these proceedings further.

Lastly I direct that evidence be exchanged ten working days before the date of hearing.

Questions of costs are reserved.