

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of the Kapiti Coast District Council's  
Proposed District Plan

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**MEMORANDUM OF COUNSEL ON BEHALF OF  
COASTLANDS SHOPPINGTOWN LTD IN RESPONSE TO  
HEARINGS PANEL MINUTE 4 DATED 30 MARCH 2016**

**Dated: 13<sup>th</sup> day of April 2016**

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**MAY IT PLEASE THE PANEL:**

1. In Minute 4 the Chair summarises responses received by Christopher Ruthe, Kapiti Coast Airport Holdings Ltd (KCAHL) and Coastlands.
2. Coastlands' position remains that for the reasons outlined in its previous two memoranda there may be a perception of bias arising out of the Chair's previous involvement in the Airport Zone. Coastlands believes that the decision that the Chair step aside for the hearing of submissions by Coastlands and KCAHL on Chapter 6 in respect of retailing in the Airport Zone only gives rise to further potential prejudice to Coastlands, and indeed KCAHL.
3. As per its previous submissions Coastlands is very supportive of the PDP process. It does not want to take any action that might interfere with or delay that process. It believes that it is in the best interests of all submitters and indeed the Kapiti Coast community (of which Coastlands is a part) that the PDP process continues without interference or delay.
4. Coastlands acknowledges that if it were to challenge the Chair's final decision this could only be by way of judicial review in the High Court and that if such an application were to be made it would almost inevitably interrupt or delay the PDP process. Coastlands notes that Schedule 1 clause 10(4)(a) of the Act requires the local authority to issue its decision on a plan review no later than two years after notifying the proposed plan. The plan was notified in 2012. In 2014 Council opted to extend this timeframe in

accordance with its power in section 37(1)(a). Section 37(1)(a) restricts further extension, with the practical effect being that the Panel has until November 2016 to issue a decision.

5. If Coastlands were to exercise its rights to review the Chair's final decision, the unintended effect of this would be to delay the hearings of the PDP to the extent that the statutory timeframe for the review could well be out of time and any decision issued after this date would be invalid and/or subject to challenge. Given the significant Council and community (including Coastlands) investment in the PDP to date and Coastlands' total commitment to the PDP process it has determined that the better way forward is not to challenge the Chair's final decision.
6. Given Coastlands' revised position (as above) it considers that it is important that the Panel as a whole should receive and consider all the evidence to be adduced by the submitters including in respect of retailing in the Airport Zone. In practical terms it cannot see how the Panel can reach an appropriate and informed decision when its Chair would only hear part, but not all of the evidence, particularly when much of that evidence (certainly from Coastlands) will be from experts.
7. In the circumstances and having reviewed all the material relevant to the memoranda and Minutes that have been filed to date, I can confirm that Coastlands therefore withdraws its objection to Mr Aburn receiving and considering evidence relevant to retailing in the Airport

Zone. Accordingly there is no need now for the Chair to step aside when hearing evidence relevant to retailing in the Airport Zone.

8. Coastlands respects the Chair's professional integrity and is confident that should the Chair in the course of the Panel receiving evidence and its deliberations, become alert to any issue that might compromise his ability to consider that evidence and approach the deliberations in anything other than an entirely independent and objective manner he will forthwith bring this to the attention of the other Panel members and the submitters generally.
9. Coastlands also withdraws its objection to the Chair being part of the Panel to consider Private Plan Change 84 for the same reasons as above.
10. Counsel is happy to respond to any issues that the Chair or Panel might wish to address arising out of this memorandum.



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**M F McCLELLAND QC/P D TANCOCK**  
Counsel for Coastlands Shoppingtown Ltd