

**BEFORE THE HEARING PANEL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of Proposed Plan Change 37 - Nukuhau (private) by AN Rajasingham LPT Trustees No 124 Limited anors to the Taupo District Council to rezone c.78ha of land in the Nukuhau area from Rural Environment to a mix of General Residential and Mixed Density Residential with a Neighbourhood Shopping Centre overlay.

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**REPLY STATEMENT OF EVIDENCE OF TIMOTHY JAMES HEATH (RESIDENTIAL  
LAND SUPPLY/RETAIL ECONOMIC EFFECTS)**

**Dated 5 November 2021**

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## INTRODUCTION

1. My full name is Timothy James Heath.
2. I have been engaged by the applicant to provide evidence in respect of Private Plan Change 37: Nukuhau Private Plan Change (**PC37**).
3. My qualifications and experience and commitment to comply with the Environment Court Expert Witness Code of Conduct are as set out in my primary statement of evidence dated 20 October 2021. I maintain that commitment.
4. I have read, and respond to, issues raised in the statements of evidence from the following expert witnesses on behalf of submitters to PC37 relating to the effects of the proposed Neighbourhood Shopping Centre overlay:
  - a) Mr Greaves on Behalf of Rangatira Blocks 8A17A5 and 8A17A6 and Rangatira 8A1T2X and 8A1T2Y and PT Rangatira A1T2 (**Rangatira 8A17A5 & Ors**); and
  - b) Mr Farquhar on behalf of Rangatira E Trust (**Rangatira E**).

## TRADE COMPETITION VS DISTRIBUTION EFFECTS

5. In terms of assessing potential retail economic effects under the Resource Management Act 1991 (**RMA**), there is first a need to differentiate between trade competition effects and flow-on retail distribution effects. By themselves, trade competition effects are not justification for declining a retail consent application under the RMA, unless they are of a level that generates significant adverse flow-on retail distribution effects on the existing centre

network of the area. It is within this broader context that the relative merits of the proposed commercial zone within PC37 and the submitters' concerns needs to be considered.

6. Trade competition effects focus especially on the impacts on individual trade competitors. They are direct store-on-store sales impacts on trade competitors. For example, where there is an existing florist in operation and another florist opens in proximity to that store, the existing florist would inevitably lose some custom to the new florist. Case law has established that any such adverse effects are not to be considered for the purposes of the RMA, unless they are significant or go beyond what is considered to be a 'normal' level of trade competition.
7. Retail distribution effects are generated by, and are the result of, consequential trade competition and retail activity disbenefit effects. These effects can range across the spectrum (positive and negative) depending on the level of effects generated, which are heavily dependent on the scale, type and location of the proposed activity, among other attributes.
8. As such, it is established case law, that Councils should have regard to significant effects on the amenity of the public caused by any reductions in the viability or vitality of the commercial centres that arise as a consequence of trade competition, i.e., often termed "distributional" or "consequential" effects.
9. Where the patterns of support and retail activity within an existing centre would not change dramatically within a locality as a consequence of a proposed activity, then the retail distribution effects are not considered to be significant.

10. Randerson J in *Northcote Mainstreet Inc v North Shore City Council* stated:<sup>1</sup>

The key point of distinction between the adverse effects of trade competition on trade competitors and adverse effects which may properly be considered under the RMA, is that trade competition effects focus especially on the impacts on individual trade competitors. In contrast, where a proposal is likely to have a more general effect on the wider community, then the RMA permits consideration of those effects.

11. The Supreme Court in *Discount Brands Limited v Westfield (New Zealand) Limited*<sup>2</sup> stated:

An important matter which the Council's Regulatory and Hearings Committee needed to inform itself upon was the effect which the activity proposed might have on the amenity values of the existing centres – on the natural or physical qualities and characteristics of those areas that contributed to people's appreciation of their pleasantness, aesthetic, coherence and cultural and recreational attributes. Such effects on amenity values would be those which had a greater impact on the people and their communities than would be caused simply by trade competition.

12. Collectively, these decisions emphasise and establish that where trade competition produces social and economic effects that are not significant and are not beyond the effects ordinarily associated with trade competition, those effects are to be disregarded when assessing an application.
13. Put another way, retail distribution effects would occur where a new business (or cluster of businesses) affects an existing centre to such a degree that it would erode a centre's viability, causing a decline in its function and amenity,

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<sup>1</sup> *Northcote Mainstreet Inc v North Shore City Council* (2004) 10 ELRNZ 146 at [60].

<sup>2</sup> *Discount Brands Limited v Westfield (New Zealand) Limited* (2005) 2 NZLR 597(SC) also reported as *Westfield (NZ) Ltd v North Shore CC* [2005] NZSC 17; [2005] NZRMA 337 (SC).

and disabling the people and communities who rely upon those existing (declining) centres for their social and economic wellbeing.

14. Retail distributional effects are differentiated from the effects of trade competition on trade competitors, which are to be disregarded pursuant to s74(3) of the RMA when assessing a plan change. Although retail distributional effects are a relevant consideration for a consent authority, it should be noted that Environment Court case law has made it clear that those effects must be significant<sup>3</sup> (but not necessarily ruinous) before they could properly be regarded as going beyond the effects ordinarily associated with trade competition.
15. It is within this context that the potential retail effects of PC37 are considered.

#### **PROPOSED NEIGHBOURHOOD CENTRE**

16. The proposed Neighbourhood Centre overlay only encompasses approximately 2,500sqm of land and is appropriately located, from an accessibility and economic performance perspective, at one of the main entrances to PC37. This zoned land, being central to the wider PC37 development, enables easy accessibility and is positioned to optimise economic performance by being able to service the PC37 market and passing traffic on Acacia Bay Road.
17. A land area of 2,500sqm is likely to yield a commercial building footprint around 1,100sqm GFA if efficiently developed. This represents a ground level

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<sup>3</sup> *Northcote Mainstreet vs North Shore City Council* (High Court, CIV-2003-404-5292), Randerson J stated:

“In regard to shopping centres, I would not, with respect, subscribe to the view that the adverse effects of some competing retail development must be such, as to be ruinous before they could be considered. But they must, at the least, seriously threaten the viability of the centre as a whole with on-going consequential effects for the community served by that centre.”

GFA to land area ratio of 45%, which based on my experience of assessing small convenience retail centres across the country for the past two decades is the appropriate ratio to adopt.

18. Small convenience centres such as that proposed in PC37 play a different role and function in the market, are subservient to other centres in the network, and are scaled to service the needs of its immediate surrounding market, which in this case is PC37 and immediate surrounds. Centres of such limited size draw the vast majority spend from a localised area and are tenanted by convenience retailers.
19. Convenience retailing can be generally defined as stores used for quick stop and frequently required shopping, used primarily due to their close proximity and easy accessibility for the customer.
20. Neighbourhood centres are typically a small cluster of shops located in residential neighbourhoods. This commonly includes your local takeaway shops, bakery, café, liquor store, dairy and convenience services like hairdressers. These centres provide retail and commercial service needs to local community and passers-by and as such are scattered through residential areas.
21. These small convenience centre types are evident in all urban areas across the country and are an economically efficient way of delivering frequently required or 'top up' goods and services to a local community. Ideally, residents are able to walk or have to drive only a short distance to their local Neighbourhood Centre.
22. The proposed PC37 Neighbourhood Centre would play a different role and function to the larger supermarket-based convenience centres such as Taupo Village, and the larger Taupo Town Centre. The PC37 Neighbourhood Centre

will have a significantly smaller trade catchment and is not of a scale that would have the propensity to generate a significant diversion of spend away from other centres in Taupo.

23. The nearest similar centre is located on the corner of Mansell and Acacia Bay Roads. This centre may experience some trade competition effects but these would be quickly offset by growth in PC37 and the wider Acacia Bay area which will create demand for additional local convenience services. As such, the proposed PC37 Neighbourhood Centre would not cause adverse trade competition effects to a level that would flow over into wider retail distribution effects in the context of the RMA, particularly given development within PC37 is still a few years away applying typical development lead times.

**Timothy James Heath**

**5 November 2021**