

## COMMERCE ACT 1986: BUSINESS ACQUISITION

### SECTION 66: NOTICE SEEKING CLEARANCE

22 June 2004

The Registrar  
Business Acquisitions and Authorisations  
Commerce Commission  
PO Box 2351  
WELLINGTON

Pursuant to section 66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

#### PART I: TRANSACTION DETAILS

##### 1 The Business Acquisition

1.1 The business acquisition for which clearance is sought is the acquisition by a yet to be formed joint venture company ("**NewCo**") owned 50% by Port of Tauranga Limited ("**POTL**") and 50% by Toll Limited ("**Toll**") of all of the shares in:

- (a) The Owens Cargo Company Limited ("**Owens Cargo**");
- (b) Toll Logistics (NZ) Limited ("**Toll Logistics**"); and
- (c) Leonard and Dingley Limited ("**Leonard & Dingley**").

1.2 We attach as Appendix A diagrams showing the companies affected by the proposed acquisition both prior to and following the proposed acquisition.

##### 2 The Person giving notice

2.1 This notice is given by:

- (a) Port of Tauranga Limited  
Salisbury Avenue  
Post Bag 1  
Mount Maunganui 3030  
Tauranga

Telephone: +64 7 572 8899  
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Attention: Tony Reynish

(b) Toll Limited  
 Wharf Road  
 Mount Maunganui 3030  
 Tauranga

Telephone: +64 7 572 9595  
 Facsimile: +64 7 574 4297  
 Attention: Philip Tonks

- 2.2 All correspondence and notices in respect of this application should be directed in the first instance to;

Chapman Tripp  
 1-13 Grey Street  
 PO Box 993  
 Wellington

Telephone: +64 4 499 5999  
 Facsimile: +64 7 472 7111  
 Email: grant.david@chapmantripp.com  
 neil.anderson@chapmantripp.com  
 Attention: Grant David/Neil Anderson

### 3 **Confidentiality**

#### ***The fact of the proposed acquisition?***

- 3.1 Confidentiality is not required for the fact of the proposed acquisition.

#### ***Specific information contained or attached to the notice***

- 3.2 Confidentiality is requested for all the information deleted on the "public copy" of this notice on the grounds that the information is commercially sensitive and its release will be prejudicial to NewCo, POTL and Toll (together the "**Applicants**"). In this respect, the Applicants rely on section 9(2)(b) of the Official Information Act 1982.

### 4 **Details of participants**

#### ***The Acquirer***

- 4.1 NewCo is a company yet to be formed. POTL and Toll will each hold 50% of the shares in NewCo. The Applicants will advise the Commission when the name to be given to NewCo is agreed.

#### ***Target***

- 4.2 The target companies are Owens Cargo, Toll Logistics and Leonard & Dingley.

- 4.3 Owens Cargo is a wholly-owned subsidiary of POTL. Its main services are log and general cargo marshalling, inventory management, storage, consolidation and container handling. The contact details for Owens Cargo are set out in paragraph 2.1(a) above.
- 4.4 Toll Logistics is a wholly-owned subsidiary of Toll, which is in turn ultimately wholly-owned by Toll Holdings Limited (Australia) ("**Toll Holdings**"). Toll Logistics' services include stevedoring and marshalling services in the ports of Whangarei, Auckland, Tauranga, New Plymouth, Gisborne, Napier, Wellington and Lyttelton. Contact details for Toll Logistics are set out in paragraph 2.1(b) above.
- 4.5 Leonard & Dingley is a wholly-owned subsidiary of Toll, and specialises in stevedoring services at the Port of Auckland. It was acquired by Toll in January 2004.

## 5 **Persons interconnected to or associated with the participants**

### **POTL**

- 5.1 Owens Cargo is currently a wholly-owned subsidiary of POTL. Following the proposed acquisition, Owens Cargo will be a wholly-owned subsidiary of NewCo, which will be 50% owned by POTL.
- 5.2 POTL is a Tauranga based port company listed on the New Zealand Stock Exchange, with other business and services extending throughout New Zealand. We discuss these activities at paragraph 8.2 below. The corporate structure of the POTL group is set out in a diagram attached as Appendix B.

### *POTL subsidiaries*

- 5.3 Two of POTL's three 100% owned subsidiaries are not relevant to this application, namely
- (a) Port of Tauranga Services Company Limited, which owns some of the waterside land at Sulphur Point, Tauranga; and
  - (b) Port of Tauranga Trustee Company Limited, which is a trustee for POTL's employee share scheme.
- 5.4 The third of POTL's 100% subsidiaries, Owens Cargo (formerly Owens Services BOP Limited ("**OSBOP**")), was acquired by POTL in February 2002. That acquisition was subject to a clearance application in December 2001, with clearance being granted by the Commission pursuant to Decision 453. We discuss Owens Cargo's business activities further at paragraphs 8.9 to 8.17.

*Owens Cargo subsidiaries*

5.5 The following companies are subsidiaries of Owens Cargo:

- (a) Forestry Services N.Z. Limited ("**FSNZL**")

FSNZL is a wholly-owned subsidiary of Owens Cargo and operates inland scaling (measuring) activities at log yards in Kawerau, Murupara and Kaingaroa.

- (b) The Cargo Company Limited ("**TCCL**")

TCCL was previously a subsidiary jointly owned by OSBOP and POTL. Following the acquisition of OSBOP by POTL, TCCL has been fully merged with Owens Cargo and is now a dormant company.

- (c) Scaling Research International Limited ("**SRIL**")

SRIL is an external consulting business offering specialist forest mensuration services to the forest industry in Australasia. It employs one specialist employee and is owned 100% by Owens Cargo.

- (d) Tauranga Container Park Limited ("**TCPL**")

Owens Cargo is a 50% shareholder in TCPL. The other 50% shareholding is held by Owens Container Services Limited which is a subsidiary of Owens Group Limited. TCPL operates a container depot at Sulphur Point and is involved in cleaning, servicing and preparing containers for users. Owens Cargo has executed a sale and purchase agreement with United Container Storage Limited for the sale of its shares in TCPL, with due completion expected on 1 July 2004.

- (e) Forestry Services (Tapanui) Limited ("**FSTL**")

Owens Cargo owns 75% of the shares in FTSL which undertakes materials handling and is based inland at Blue Mountain lumber mill, Tapanui, Southland. The other shareholder is the local manager of this operation, Matthew Wyllie.

- (f) Owens Net Limited ("**ONL**")

Owens Cargo is a 50% shareholder in ONL, a small company holding shares in Woodnet Works Limited, an internet trading site developed for the log export industry. Owens Cargo have written off the value of this shareholding in its balance sheet. The other 50% shareholder

is Owens Group Limited which is a publicly listed company that is not currently related to Owens Cargo, although Toll Group (NZ) Limited, the immediate holding company of Toll, owns 11.88% of Owens Group Limited.

*Other relevant POTL/Owens entities*

- 5.6 Owens Cargo also has a 41.38% share in Kinleith Log Stackers Limited ("**KLSL**"), a company that operates at Kinleith Mill near Tokoroa. Operations include materials handling within the mill yard. The other shareholders are Mike Lambert Limited (a logging transport contractor) as to 41.38% with the balance of the shareholding made up by 9 other individuals.
- 5.7 POTL owns a 50% shareholding in Northport Limited ("**Northport**"). Northland Port Corporation Limited ("**NPC**") holds the remaining 50% shareholding. Northport operates a wharf facility at Marsden Point, Northland, opened in October 2002. Northport in turn holds:
- (a) a 67% share in Northport Services Limited ("**NPS**") with Carter Holt Harvey ("**CHH**") owning the remaining 33%. NPS runs all the on-wharf activities associated with Northport.
  - (b) a 50% share in North Tugz Limited ("**North Tugz**"), with the other 50% held by Ports of Auckland Limited ("**POAL**"). North Tugz operates piloting, tug and lines services for commercial shipping at Northport, the oil refinery at Marsden Point and Port Whangarei on the inner harbour.
- 5.8 POTL and Toll NZ Limited ("**TNZ**") each own 50% of Metrobox Auckland Limited ("**MAL**") which operates the container depot at Metroport – POTL's inland port operation in Auckland discussed at paragraph 8.6 below.

*POTL Shareholders*

- 5.9 The major shareholder (55.03%) in POTL is Quayside Securities Limited which is a Local Authority Trading Enterprise set up by the Bay of Plenty Regional Council.
- 5.10 The second most substantial shareholder is ANZ Nominees Limited which holds 7.54% of the shares in POTL on behalf of [ ].
- 5.11 No other shareholder owns more than 2%. The 20 largest shareholders are set out on page 52 of the POTL Annual Report which is attached as Appendix C.

### ***Toll Logistics and Leonard & Dingley***

- 5.12 Both Toll Logistics and Leonard & Dingley are currently wholly-owned subsidiaries of Toll. Following the proposed acquisition, they will both be wholly-owned subsidiaries of NewCo, which will be 50% owned by Toll.
- 5.13 Toll Logistics is part of the Toll Holdings corporate group. Toll Holdings has subsidiaries and other investments in Australia, Thailand, Malaysia and New Zealand. Appendix D sets out the Toll Holdings group corporate structure.
- 5.14 The Toll Holdings group specialises in transport and logistics in a number of market sectors in Australia. Its business activities are described in detail in its Annual Report for 2003 attached as Appendix E. The business activities of Toll Logistics are discussed further at paragraph 8.19 below.

### ***Subsidiaries of Toll***

- 5.15 The New Zealand group structure is at page 5 of the Toll Group corporate structure attached as Appendix D. We set out below details of relevant Toll subsidiaries in the "Logistics" division of Toll's business, which are those most relevant to this acquisition. The other New Zealand Toll Holdings subsidiaries connected with the "Networks" division sit below Toll NZ Limited as represented on the Toll Holdings structure chart.
- 5.16 As stated above Toll Logistics and Leonard & Dingley are both wholly-owned subsidiaries of Toll. The only other subsidiary of Toll is Toll Logistics (CL) Limited ("**TLCL**"). Toll owns 75% of TLCL, formerly known as Southern Distribution, which it acquired in June 2002. The other 25% is owned by two shareholders. TLCL is a contract logistics business running primarily warehousing and distribution operations out of Christchurch and is run separately to Toll Logistics.

### ***Subsidiaries of Leonard & Dingley***

- 5.17 Leonard & Dingley has three subsidiaries, details of the activities of which are set out at paragraph 8.20 below, namely:
- (a) Cruise Line Services Limited ("**CLS**") and Allied Personnel Services Limited ("**APSL**") (both 100% owned by Leonard & Dingley); and
  - (b) Auckland Stevedoring Company Limited ("**ASC**"), of which Leonard & Dingley owns 50%, the other 50% being owned by Maritime Union.

### ***Toll Holdings Shareholders***

- 5.18 The six largest shareholders in Toll Holdings as at 17 June 2004 are as follows:
- (a) Mr Paul Alexander Little (11.25%)

- (b) JP Morgan Nominees Australia Limited (10.29%)
- (c) Mostia Dion Nominees Pty Ltd (9.21%)
- (d) National Nominees Limited (8.58%)
- (e) Westpac Custodian Nominees Limited (6.33%)
- (f) PGA (Investments) Pty Ltd (3.33%)

5.19 No other shareholder owns more than 3%. The twenty largest shareholders are set out on page 96 of the Toll Holdings Annual Report 2003 attached as Appendix E.

## 6 **Beneficial Interests/Entitlements between Participants**

There are no beneficial interests, entitlements or other pecuniary interests between Owens Cargo and Toll.

## 7 **Formal Links between Participants**

- 7.1 POTL has various contractual arrangements with TNZ with respect to the operation of Metroport and also the transportation of shipping containers to and from Metroport by rail.
- 7.2 Since April 2004, Owens Cargo has subcontracted Toll Logistics to provide stevedoring services at the Port of Napier.

## 8 **The business activities of each participant (and interconnected or associated parties)**

### ***NewCo***

- 8.1 The objectives of NewCo are set out at paragraphs 9.1 to 9.4.

### ***POTL***

- 8.2 The principal activities of POTL are the ownership and operation of the wharf infrastructure and marine services at the Port of Tauranga. This involves:
  - (a) on land, the provision of wharf front berthage and loading and marshalling area adjacent thereto from which other parties may store and load goods;
  - (b) at the rear of the immediate wharf face and marshalling areas, POTL owns property which is leased to wharf users requiring space for storage for industries related to the export or import of goods through the Port of Tauranga; and

- (c) on the seaward side POTL provides pilotage, towage and other services necessary to berth ships and it maintains dredged channels to an adequate depth.
- 8.3 The Mount Maunganui wharves are primarily used for non-containerised product such as logs, wood chips, cement, fertiliser, fuel and other conventional ship loading facilities.
- 8.4 The area at Port of Tauranga known as Sulphur Point is the container terminal, dedicated to the loading, unloading, storage and marshalling of containers and related facilities. The container terminal uses a sophisticated container marshalling and storage computer system which links in with an internationally recognised system used by most container lines. These systems are not used for log marshalling or product supply marshalling or distribution. POTL operates its own container services terminal, both using straddle carriers and hires labour to operate straddles from both Owens Cargo and P&O Ports.
- 8.5 Both the Mount Maunganui and Sulphur Point areas have road and rail access.

#### ***Metroport***

- 8.6 The container terminal at Tauranga is linked through a rail link to Metroport in Wiri, South Auckland where containers are delivered and marshalled for uplifting by customers in Auckland. Metroport provides Auckland customers with an inland terminal, in competition with POAL. Metroport also accepts containers for export which are railed to Tauranga. Tauranga and Metroport container terminals are linked by daily freight trains.

#### ***Northport***

- 8.7 POTL and NPC each own a 50% shareholding in Northport. This is a joint venture company established for the operation of port infrastructure at Marsden Point, Whangarei. Northport primarily handles an incoming stream of logs from the Northland region.

#### ***NPS***

- 8.8 NPS is the joint venture company which carries out wharf operations at the Marsden Point wharves. These include all services required by Northport.

#### ***Owens Cargo***

- 8.9 The following are the business activities carried out by Owens Cargo:
- Log marshalling
  - Materials handling



- Mechanical services workshop
- Allied Wagner agency
- Ships agency.

#### *Log Marshalling*

- 8.10 Log marshalling is the most significant part of Owens Cargo's operations, accounting for around [ ] of the total revenue of the company.
- 8.11 Log marshalling involves primarily the scaling (measurement), assembling and stockpiling of logs on the wharf hinterland, selection of logs in accordance with the shippers instructions as to type of cargo into ship loads, and arranging those ship loads near the berth face so that they can be loaded on to the vessel by stevedores. This activity is supported by information systems that collect and process relevant data and prepare shipping summaries of logs loaded to each vessel.
- 8.12 Log marshalling falls into 2 broad categories:
- (a) Inland or on site forest log scaling and marshalling; and
  - (b) Port or wharf log marshalling.
- 8.13 Approximately [ ] of Owens Cargo's revenue is derived from inland log scaling at forest sites at Kaingaroa, Murupara and Kawerau where logs are assembled ready for transportation to various ports but primarily Port of Tauranga. This activity is undertaken through FSNZL.
- 8.14 Inland log marshalling activities are also undertaken through related companies such as KLSL at Kinleith and FSTL in Tapanui, Southland.
- 8.15 Owens Cargo is the largest log marshalling operator in New Zealand with a market share of approximately [ ]. It has no competitors in any of the ports at which it provides services except at the Port of Tauranga. In that port Quality Marshalling (Mount Maunganui) Limited ("**Quality Marshalling**") is the only competitor. Quality Marshalling currently marshals CHH log volume for Silva Forest Products Limited ("**Silva**") – a log marketing company owned 50% by CHH and 50% by Harvard Management Group Incorporated.

#### *General Cargo Marshalling*

- 8.16 Owens Cargo also operates as a marshaller of general cargo in various ports. In particular, it currently marshalls:

- (a) woodchips in Whangarei;
- (b) salt in Picton;
- (c) sawn timber, vegetables and fertiliser in Tauranga; and
- (d) sawn timber in Port Chalmers.

*Other Owens Cargo activities*

8.17 Owens Cargo's other activities outside log marshalling are:

- (a) *Materials handling* – Owens Cargo operates a fleet of forklifts for cargo marshalling on the Mount Maunganui and Sulphur Point wharves. At the Sulphur Point container terminal, Owens Cargo also provides:
  - (i) secure warehousing space for the transit of dried goods (predominantly paper and wood products);
  - (ii) materials handling; and
  - (iii) distribution services (such as container loading).
- (b) *Mechanical services workshops* – Owens Cargo operates workshops to service and repair forklifts, log stackers, straddles and other vehicles at the Port of Tauranga.
- (c) *Allied Wagner Agency* – Owens Cargo is the sole distributor and servicing agent of Allied Wagner heavy logging and marshalling equipment (including parts) for New Zealand, Australia and South Africa.
- (d) *Ships agency* – Owens Cargo acts nationwide as a port agent for ship owners and charters. This activity is incidental and ancillary to supporting the major operations relating to port services, representing approximately [ ] of Owens Cargo's revenues. [ ].

**Toll**

8.18 Toll Holdings is an Australian-based transport and distribution company. In New Zealand Toll Holdings has an integrated national network of rail, road and sea freight transportation, distribution and logistics management services, and interisland and urban passenger services.

*Toll Logistics*

8.19 Toll Logistics operates in the following areas in New Zealand:

- (a) *Stevedoring* - Toll Logistics operates in the ports of Whangarei, Auckland, Tauranga, New Plymouth, Gisborne, Napier, Wellington and Lyttelton. We discuss Leonard & Dingley's activities further at paragraph 8.20 below.
- (b) *On-wharf logistics* – Toll provides logistical services throughout New Zealand including receipt and delivery, devanning and packing of containers/bases, inventory management and information systems tailored to customer requirements. Toll provides marshalling services in relation to exported sawn timber and imported iron and steel at the ports of Tauranga, Napier and Lyttelton. It also marshals imported vehicles at Lyttelton.

*Leonard & Dingley*

8.20 Leonard & Dingley specialises in stevedoring services at the Port of Auckland. It was acquired by Toll in February 2004. Leonard & Dingley will continue to have three subsidiaries after being acquired by NewCo under the proposed acquisition. In particular:

- (a) CLS provides services in the exchange of ship stores and passenger baggage to and from cruise vessels calling at the Port of Auckland;
- (b) APSL is a casual recruitment company that provides Leonard & Dingley with casual stevedoring employees as required from time to time; and
- (c) ASC (50% owned by Leonard & Dingley) will provide stevedoring services at the Port of Auckland. ASC currently operates under independent management at the Port of Auckland as a separate entity to Leonard & Dingley and will continue to do so after the proposed acquisition.

*Toll Other*

8.21 Toll Holdings has an 84% share (via Toll Group (NZ) Limited) in TNZ. TNZ is the rail freight forwarding and linehaul, and distribution arm of Toll Holdings' operations in New Zealand, being made up of former Tranz Rail entities providing integrated road, rail and sea networks.

8.22 Toll NZ's distribution arm operates via the Toll Tranz Link business unit. Toll Tranz Link operates primarily road transport specialising in LCL ("less than container load") and FCL ("full container load") distribution. It is a comprehensive service that covers most regional and local areas. Toll

Tranz Link can process all swinglift, hiab, container tipping and specialised bulk movements anywhere within New Zealand. Included in Toll Tranz Link are the trans Tasman services such as customs clearance, bulk liquid logistics, ships agency, airfreight forwarding and information technology.

8.23 Toll NZ's rail activities include:

- (a) *Line Haul* - Toll NZ provides linehaul service for the movement of bulk commodities or containerised freight. It is integrated into the Tranz Link system to fulfil transport and distribution demands, and also services other freight companies.
- (b) *Passenger Rail* - Toll NZ operates Tranz Metro, which provides suburban rail passenger services in Auckland and Wellington and Tranz Scenic, which is the domestic rail passenger network that operates throughout New Zealand.

**9 The reasons for the proposal and the intentions in respect of the acquired or merged business**

- 9.1 Owens Cargo's business interests are primarily focused in the field of marshalling bulk cargo (particularly logs) for export both inland and at ports throughout New Zealand.
- 9.2 Toll Logistics has a significant interest in the field of stevedoring cargo at various ports throughout New Zealand.
- 9.3 The parties consider there are efficiencies and savings to be made, and a better service to be provided to customers, if these businesses are combined into a single joint venture entity.
- 9.4 In particular, the cost savings inherent in supply chain integration are becoming a competitive focus for those looking to service exporters of bulk goods. In this regard, customers are demanding a single operation of marshalling and stevedoring services, as opposed to separate contracting between these services. Some industry participants already offer this type of integrated service. For example, POAL undertakes both marshalling and stevedoring at its Auckland facility. In addition P&O Ports and International Stevedoring Operations Limited ("**ISO**") provide both marshalling and stevedoring services with respect to general cargo at Tauranga.

**PART II: IDENTIFICATION OF MARKETS AFFECTED**

**10 Market definition**

- 10.1 Having considered POTL's application for clearance of its acquisition of OSBOP in early 2002, the Commission is familiar with many of the features

of markets connected with ports in New Zealand. We also understand that the Commission is familiar with the extensive study of ports in New Zealand undertaken by Charles River Associates ("**CRA**") for the Ministry of Transport and the Ministry of Economic Development, entitled "*Port Companies and Market Power – a qualitative analysis*", 29 April 2002 ("**CRA report**"). For this reason, the application focuses on those markets most directly and significantly affected by the proposed acquisition, rather than attempting to provide an exhaustive narrative of all at-port activities.

10.2 For the reasons set out in paragraphs 10.3 to 10.8 below, the relevant product markets affected by this acquisition are:

- (a) Provision of marshalling services in general cargo, both inland and at ports;
- (b) Provision of log marshalling services, both inland and at ports;
- (c) Provision of stevedoring services in general cargo; and
- (d) Provision of log stevedoring services.

10.3 Marshalling involves identifying cargo, measuring (scaling) the cargo in the case of logs, unloading it from land transport at the port, aggregating it for ship loads, dividing it into types for different types of customers, delivery to the ship side and the reverse operation for imports. Marshalling generally involves heavy machinery and comparatively sophisticated tracking systems. However, as outlined in the CRA report, the barriers to entry are not significant.

10.4 Stevedoring involves providing the labour and administration to load from the ship's side into the ship's hold and vice versa. Although stevedoring is a skilled service involving stowing different shaped cargoes into different sized holds to the maximum efficiency, it generally uses ship's cranes and gear and is not capital intensive.

10.5 In terms of the distinction between marshalling and stevedoring, the Commission found in Decision 453 (at paragraph 58) that "log stevedoring and marshalling are quite different activities, with the former in particular being quite specialised". The Applicants support this distinction but also see value in the potential for a vertically integrated entity to provide both marshalling and stevedoring in an efficient and effective manner.

10.6 In marshalling, the Commission has found separate markets for marshalling of logs as compared with general cargoes, such as sawn timber, iron and steel, cement and woodchips. In particular, the Commission found in

Decision 453 (at paragraph 56) that “given that log marshalling machinery is not suited to the movement of other product types, the Commission accepts that the appropriate product level is in relation to logs”. The Commission also recognised that marshalling “inland” is distinct in terms of function from marshalling at-port. Again, the Applicants support this finding but note that the entry barriers are low in marshalling of both logs and general cargo whether undertaken at-port or inland.

- 10.7 In terms of the geographic dimension of the relevant marshalling markets specified above, it is noted in the CRA report that “given the need for proximity to port infrastructure, the geographic market for marshalling is confined to the port in question” (paragraph 4.4.1). This conclusion was reached largely on the basis of the findings of the Commission in Decision 453.
- 10.8 The CRA report makes a similar finding with respect to stevedoring (paragraph 4.4.2), in particular that the “geographic dimension is confined generally to be at or near the port infrastructure location”. Having said that, CRA also noted that a practice has developed for key port customers to fly in stevedores from other ports to undertake specific projects. It should be noted that Toll provides this type of service from time to time at New Plymouth, Gisborne and Wellington. However, any temporary deployment of staff on an occasional basis is undertaken in response to the specific demands of customers at the relevant port. For example, a temporary need may arise out of a lack of particular expertise required for a particular shipment. Accordingly, the Applicants remain of the view that stevedoring, like marshalling, should be considered to be undertaken on a “port by port” basis.
- 11 Horizontal aggregation**
- 11.1 POTL (and/or any interconnected or associated companies) and Toll (and/or any interconnected or associated companies) are both engaged in the marshalling of general cargo at Tauranga.
- 11.2 In terms of the particular products marshalled, the one area of “cross-over” occurs with respect to sawn timber, which represents less than [ ] of the total export product volume through the Port of Tauranga. More detailed data is provided in the tables attached as Appendix F. It can be seen that following the proposed acquisition, NewCo will operate [ ] of the marshalling in sawn timber at the Port of Tauranga, made up of [ ] currently undertaken by Owens Cargo, and [ ] by Toll. The remaining [ ] is carried out by P&O Ports and Tauranga Stevedores Limited.
- 11.3 In Decision 453, the Commission acknowledged (at paragraph 122) that exporters of timber are able to switch throughput of timber from Port of

Tauranga to Port of Auckland. This market feature effectively counters any potential competition issues associated with the aggregation described above.

- 11.4 The proposed acquisition will not result in any further aggregation of business activities in the markets in which Toll and Owens Cargo currently operate.

## 12 **Vertical integration**

- 12.1 This acquisition will result in vertical integration at each of the ports at which both POTL operates marshalling services and Toll operates stevedoring services. Those ports include:

- Whangarei
- Tauranga
- Gisborne
- Napier
- Lyttelton

- 12.2 However, importantly, such vertical integration will be limited by the fact that Owens Cargo's marshalling operations are focused largely on logs, with its general cargo marshalling activities being limited to those specified in paragraph 8.16 above.

- 12.3 No vertical integration will occur by virtue of the proposed acquisition at Auckland, New Plymouth, Wellington, Nelson, Picton, Timaru, Port Chalmers and Bluff. However, it is envisaged NewCo will be alert to any future commercial opportunities that may arise with respect to stevedoring in these ports.

- 12.4 Additional vertical integration will occur:

- (a) at both Port of Tauranga and Metroport where POTL is the supplier of port infrastructure services; and
- (b) at any port with a rail link, due to the presence of other subsidiaries of Toll Holdings in relevant transport markets. Those ports in which both Toll and POTL operate which are linked by rail are Auckland, Tauranga, New Plymouth, Napier, Wellington, Picton, Lyttelton, Timaru, Port Chalmers and Bluff.

*Co-ordination effects and access*

12.5 In Decision 453, the Commission noted (at paragraphs 94 and 95) two concerns with respect to vertical integration:

- (a) The potential facilitation of co-ordination effects; and
- (b) Foreclosure and access.

12.6 With regard to the first concern, these effects are submitted to be unlikely given that this is a "complementary" merger. Collusion between POTL, Toll and any other party is not significantly more likely as a result of the proposed acquisition because, except in those exceptional cases discussed above at paragraph 11, neither POTL nor Toll, outside of their joint venture with NewCo, will be in competition with each other in any relevant markets.

12.7 With respect to foreclosure and access to port infrastructure, as the Commission noted in Decision 453 (at paragraph 95):

*...log marshalling operators at Tauranga do not pay for access to the wharves. The only payment that the marshallers make to POTL is in respect of any land leased from POTL. The bulk of the storage land involved in exporting logs is leased from the port company by the exporter. Furthermore, log marshallers are required to conform to port user operating rules, which apply to all port users.*

12.8 Also of relevance to the Commission's finding in Decision 453 were the following factors:

- (a) exporters would resist the imposition of an "access charge" to the extent that it provided an opportunity for discriminatory pricing (see paragraph 96 of Decision 453 and also further discussion of the countervailing market power of exporters below); and
- (b) anti-competitive "bundling" at ports would be subject to the application of Part II of the Commerce Act.

12.9 For its part, POTL has been well aware of both the ability of exporters to assert countervailing market power and the legal difficulties faced by Port Nelson in the 1990s. In any case, POTL has always consciously operated on an "open access" basis, essentially taking a "wider view" of the value of its overall competitive offering as compared with other ports, particularly the Port of Auckland.

12.10 With respect to foreclosure of access to the port via any mode other than rail (due to the proposed joint venture relationship between POTL and Toll),



this possibility is effectively removed by the intense competition existing as between different modes of transportation. Large road transport firms such as the Lambert Group, which also owns Quality Marshalling, combined with the presence of many individual truck owner/operators, ensure that Toll Holdings' rail services are priced competitively. This factor will be unaffected by the proposed acquisition.

12.11 To illustrate the levels of competition as between rail and road currently, we set out below a breakdown of logs transported to the Port of Tauranga on rail as compared with road based on POTL's best current trade estimates for the year ending 30 June 2004.

[ ]

[ ]

Note: JASM<sup>3</sup> = Japanese Agricultural Standard Metres<sup>3</sup>.

12.12 It is also telling that both Silva and Tenon, the two largest log exporting customers of Port of Tauranga, currently split their use of rail and road as follows:

Silva [ ]

Tenon & Kiwi Forests [ ]

The balance of the customers are [ ]

12.13 As can be seen from the extent of road transport, it would not be commercially feasible for POTL to foreclose entry to its port by road, regardless of Toll's position within NewCo. Similarly, due to strong competition from providers of road transportation, it would not be feasible for Toll's network division to raise the price of transport services to customers of alternative providers of marshalling or stevedoring services. In addition, the significant presence of Toll Tranz Link in the road transport business is not seen as affecting the ability of other road transport operators to constrain commercial conduct with respect to rail.

12.14 In addition, the management structure of Toll Holdings' New Zealand activities ensures that the logistics and networks divisions are operated quite separately. As a practical matter, communication as between the logistics and networks divisions of Toll Holdings' New Zealand operations exist at a high level only. Their respective day-to-day commercial activities, however, are under taken independently of each other.

Accordingly, there is little prospect of any kind of attempt by Toll to encourage POTL to foreclose road access to its port in favour of rail.

***Countervailing market power***

12.15 The relative ease of entry into the markets of marshalling is noted by the Commission in Decision 453. In particular, it finds (at paragraph 107) that:

*Most parties spoken to conclude that entry barriers into this market are not significant, although this is based on there being two large log exporters at Tauranga.*

12.16 There continues to be significant log exporter presence at Port of Tauranga. Currently, the breakdown by exporter of logs put through Port of Tauranga is as follows:

<b>EXPORTER</b>	<b>CARGO TONNAGE</b>
Silva (including CHH Forests Limited)	[ ]
Tenon Limited	[ ]
New Zealand Forest Managers Limited	[ ]
Ernslaw One Limited	[ ]
Pacific Forest Products Limited	[ ]
Forestry New Zealand Limited	[ ]
Rayonier New Zealand Limited	[ ]
Trans Pacific Trading Company Limited	[ ]
Sojitz New Zealand Limited	[ ]
Pentarch Forest Products Limited	[ ]
Matrex Limited	[ ]
Transcontinental Forest Products Limited	[ ]
Sundry Importer/Exporter	[ ]
<b>TOTAL</b>	[ ]

Annual forecast  
based on 11 months  
ended 31 May 2004

12.17 It is also relevant that many key log exporting customers also export products other than logs through Port of Tauranga. For example:

- (a) CHH export significant volumes in sawn timber, wood pulp, paper products, wood panels and wood chips; and
- (b) Tenon export significant volumes in sawn timber, wood panels and wood chips.

12.18 In this regard, specific details of volumes of other export wood products by cargo tonnage is attached as Appendix G. In addition, large exporters around New Zealand of general cargo are able to exercise significant countervailing market power with respect to other products. For example:

- (a) Zespri with kiwifruit at Tauranga;
- (b) Fonterra with dairy products, in particular at Tauranga, New Plymouth, Timaru and Port Chalmers; and
- (c) various meat companies with meat, in particular at Auckland, Tauranga, Napier and Port Chalmers.

12.19 Accordingly, regardless of any perceived "capture" of the log exporting business at Port of Tauranga, customers are able to exert commercial pressure by their ability to divert non-log exports to other ports. The Commission noted this factor in Decision 453 at paragraph 132:

*It therefore appears that the major exporters currently using Tauranga possess countervailing power that is likely to constrain the combined entity. This is on account of the size of CHH and FCF in particular, and the fact that both these companies export a variety of products, some of which is contested between ports. Such countervailing power would likely be significantly diminished if port usage was characterised by smaller, disparate exporters.*

12.20 Due to the relatively low capital requirements, the barriers to entry or expansion in stevedoring are submitted to be, if anything, lower than those in marshalling. In particular, the CRA report found (at paragraph 4.4.2):

*Stevedoring is a labour intensive activity with reasonably limited costs of entry, especially where equipment (cranes, etc.) are the ship's own or where access is available through multi-user arrangements. In discussions with major port users it has been suggested that entry into stevedoring is a feasible option for them in situations where the performance of existing stevedores is unsatisfactory.*

12.21 Quality Marshalling's entry into log marshalling at the Port of Tauranga, as discussed in Decision 453, is an example of the combined effects of low barriers and the strong countervailing market power of exporters. This entry was funded by CHH as a major log exporter, demonstrating the countervailing power of customer demands in the market. Should a large customer such as a major forestry exporter wish to change providers of a marshalling or stevedoring service, it is feasible simply to establish an entity precisely for that purpose.

12.22 Similarly, in ports other than Tauranga, port companies themselves are able to enter relevant marshalling and stevedoring markets if NewCo is not performing and thereby compromising the overall commercial proposition of

the relevant port. This occurred in recent years at the ports of Picton (Asset Forestry Limited) and Lyttelton (Wrightson Forestry Limited and Asset Forestry Limited). John Ray Limited is also based in an off-port marshalling yard at Waitane, in Napier.

12.23 Countervailing market power also exists in marshalling from actual stevedoring firms. ISO and P&O ports both provide a combined service for marshalling and stevedoring of non-wood products at the port of Tauranga. In addition, the Southern Cross group of stevedoring companies provide marshalling services in all the ports in which they operate.

12.24 The ability of port companies to enter these markets is demonstrated by POAL, which provides all container marshalling and stevedoring at the Port of Auckland "in-house". The port companies at New Plymouth, Napier, Timaru, Port Chalmers and Bluff also provide marshalling services in general cargo.

12.25 We also attach as Appendix H a letter from Roger Taylor, consulting economist, supporting this application. Mr Taylor has vast experience in the economic issues associated with ports in New Zealand. Importantly, in his view:

*In respect of those markets subject to possible vertical integration, the constraints imposed by major customers, forest owners, exporters or international shipping companies provide significant countervailing power either directly or through the use of competing service providers.*

### 13 **Previous notifications to the Commission or acquisitions**

13.1 In respect of the markets identified above in the last three years:

- (a) POTL has sought and obtained clearance from the Commission in respect of its acquisition of OSBOP in December 2001. The application for clearance of this acquisition was approved by the Commission in Decision 453; and
- (b) Toll has recently engaged in discussions with the Commission in respect of its acquisition of Leonard & Dingley, in January 2004.

13.2 Neither participant has undertaken any other acquisition of assets or shares relevant to this application.

13.3 We highlight various relevant Commission decisions, namely:

- (a) *Marshalling and Stevedoring* - The Commission's Decision 453, Port of Tauranga Limited and Owens Services BOP Limited, delineated the separate markets of marshalling and stevedoring.
- (b) *Logging for export* - There are various decisions of the Commission dealing with aspects of the log supply market. These include – Decisions 213, 224, 342, 426 and 424. In general terms the established market is determined on a geographical basis – e.g. North Island Forests, 4 geographical markets for the North Island.

13.4 In addition, *Port Nelson Limited v Commerce Commission*, cases of the High Court ((1995) 5 NZBLC) and the Court of Appeal ([1996] 3 NZLR 554), established a local or regional geographical market around the Port of Nelson.

### **PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION**

#### **14 Existing competitors**

##### **14.1 *Marshalling services in general cargo***

<i>Whangarei</i>	Owens Cargo (woodchips only) Northport Services Limited (sawn timber only)
<i>Auckland</i>	Toll (Leonard & Dingley) Ports of Auckland P&O Ports
<i>Tauranga</i>	Toll Owens Cargo P&O Ports ISO Tauranga Stevedoring Services (Southern Cross)
<i>New Plymouth</i>	New Plymouth Stevedoring Services (Southern Cross) Westgate Transport (Port company)
<i>Gisborne</i>	Gisborne Stevedoring Services (Southern Cross)
<i>Napier</i>	Toll Omniport Napier Hawkes Bay Stevedoring Services (Southern Cross) Port of Napier

<i>Wellington</i>	P&O Ports Independent Stevedores Capital City Stevedores (Southern Cross)
<i>Nelson</i>	Tasman Bay Stevedoring Stevedoring Services Nelson (Southern Cross)
<i>Picton</i>	Port Marlborough (Port company)
<i>Lyttelton</i>	Toll Lyttelton Stevedoring Services (Southern Cross) Lyttelton Port Company
<i>Timaru</i>	PrimePort Timaru (Port company)
<i>Port Chalmers</i>	Owens Cargo Port Otago
<i>Bluff</i>	SouthPort (Port company) Southland Stevedoring Services (Southern Cross)

#### 14.2 **Log marshalling**

<i>Whangarei</i>	Owens Cargo
<i>Tauranga</i>	Quality Marshalling Owens Cargo
<i>New Plymouth</i>	John Ray
<i>Gisborne</i>	Owens Cargo
<i>Napier</i>	Owens Cargo
<i>Wellington</i>	John Ray
<i>Nelson</i>	Owens Cargo
<i>Picton</i>	Owens Cargo
<i>Lyttelton</i>	Owens Cargo
<i>Timaru</i>	Owens Cargo

<i>Port Chalmers</i>	Owens Cargo
<i>Bluff</i>	Owens Cargo

### 14.3 **Stevedoring in general cargo**

<i>Whangarei</i>	ISO Toll Northern Stevedoring Services (Southern Cross)
<i>Auckland</i>	Ports of Auckland Leonard & Dingley (Toll) Auckland Stevedoring (Toll 50%) P&O Ports Wallace Investments (Southern Cross)
<i>Tauranga</i>	Toll P&O Ports Independent Stevedores ISO Tauranga Stevedoring Services (Southern Cross)
<i>New Plymouth</i>	New Plymouth Stevedoring Services (Southern Cross)
<i>Gisborne</i>	Gisborne Stevedoring Services (Southern Cross)
<i>Napier</i>	Toll ISO Omniport Napier Hawkes Bay Stevedoring Services (Southern Cross)
<i>Wellington</i>	Capital City Stevedores (Southern Cross) Centreport (Port company) The Loading Company ISO
<i>Nelson</i>	Tasman Bay Stevedoring Port Nelson (Port company) Stevedoring Services Nelson (Southern Cross) ISO



<i>Picton</i>	ISO Stevedoring Services Nelson (Southern Cross) Tasman Bay Stevedores Port Marlborough (Port company)
<i>Lyttelton</i>	Toll Lyttelton Stevedoring Services (Southern Cross) Lyttelton Port Company Pacifica Shipping
<i>Timaru</i>	ISO Timaru Cargo Services (Southern Cross) Caroline Bay Stevedores Timaru Port Company
<i>Port Chalmers</i>	Port Chalmers Cargo Services (Southern Cross) Port Otago
<i>Bluff</i>	Southland Stevedoring Services (Southern Cross) ISO

#### 14.4 **Stevedoring in logs**

<i>Whangarei</i>	Toll ISO
<i>Tauranga</i>	Toll ISO
<i>New Plymouth</i>	Toll
<i>Gisborne</i>	Toll ISO
<i>Napier</i>	Toll Hawkes Bay Stevedoring Services (Southern Cross) ISO
<i>Wellington</i>	Toll ISO
<i>Nelson</i>	ISO Tasman Bay Stevedoring

<i>Picton</i>	ISO Tasman Bay Stevedoring
<i>Lyttelton</i>	Toll
<i>Timaru</i>	ISO
<i>Port Chalmers</i>	Port Chalmers Cargo Services (Southern Cross)
<i>Bluff</i>	ISO Southland Stevedoring Services (Southern Cross)

15 **Conditions of expansion by existing competitors**

15.1 In relation to all of the above and the various types of market conditions that may affect the ability of existing firms to expand, the only constraints appear to be:

- (a) the cost of any capital equipment such as heavy machinery and appropriate technology systems to appropriately track and monitor movements. This is particularly relevant with respect to log marshalling;
- (b) the ability to secure a sustainable contract from suppliers/exporters;
- (c) a reduction in the demand for product such as export logs and goods generally passing through a port. However, in relation to inland log marshalling, the service can be redirected to the domestic market, provided the demand increases;
- (d) a switch from the relevant port by shippers and exporters to other forms of transport or to another port; and
- (e) the availability of adequate space for new participants.

**PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION**

16 **Conditions of Entry**

16.1 The same factors mentioned under conditions of expansion in paragraph 15 above will apply to the ability of new firms to enter all markets referred to in this application. In addition, as concluded by Roger Taylor in his letter attached as Appendix H, there are no operational or regulatory barriers to entry.

- 16.2 The Commission noted in Decision 453 (at paragraph 96) that entry barriers were not raised in the case of a port company acquiring log marshalling services, as port ownership was not necessary to enter the log marshalling market. Similarly the proposed acquisition by NewCo imposes no barriers to entry in the markets of stevedoring and marshalling. This is evidenced by the several stevedoring companies and one other log marshalling company currently operating at the Port of Tauranga.
- 16.3 Potential entrants to the markets would include the following, either independently or in any joint venture combination:
- (a) *Marshalling companies and stevedoring companies* – All marshalling companies and stevedoring companies could enter into the “other” field. As already stated, the start-up costs in marshalling are greater and, as a result, a move into stevedoring by a marshaller is arguably more likely.
  - (b) *Log exporters* – As explained above, log exporters could be an entrant into either or both of log marshalling and log stevedoring. They virtually control the supply of the majority of logs and may wish to participate in marshalling and/or stevedoring. CHH has already done this in respect of the Northport joint venture and, as discussed above, to some extent was responsible for the entry of Quality Marshalling at the Port of Tauranga. Other major log exporters could also group together to provide competing services.
  - (c) *Other ports* – Currently Tauranga is the only port to have attempted this through Northport at Marsden Point, but there is no reason why port companies would not diversify further into marshalling and stevedoring if their levels of relevant expertise deem it to be commercially viable.
- 16.4 It is submitted that the existing competitors present no constraint to entry. Ultimately, the contracts for log and cargo container marshalling and stevedoring are controlled by major exporters such as CHH. The volumes they control are such that if they believe they are being adversely affected by lack of competition they can establish the service themselves or provide an existing operator or a new entrant with a sustainable supply contract.
- 16.5 The conditions of entry that we believe mostly influence the business decisions to enter into each of the markets would be, in the case of non-log exporters, securing a sustainable long term contract sufficient to justify the expense of equipment and technology required to provide a cost effective and efficient service.

16.6 In the Applicants' view there are currently at least five current and potential new competitors in general cargo marshalling at Tauranga, namely:

- (a) P&O Ports;
- (b) ISO;
- (c) NewCo;
- (d) Tauranga Stevedores Limited; and
- (e) Independent Stevedores.

**Likelihood sufficiency and timeliness of entry**

16.7 A casual entry into the log marshalling market is unlikely unless a contract had been secured with a major log exporter. If such a contract were secured, entry into each market could occur in a reasonably short timeframe depending on the ability to obtain a service agreement and the availability of equipment. In Decision 453, the Commission noted (at paragraphs 112 and 113) that:

*The Commission understands that a new log marshalling operation could be quickly established. QM commenced marshalling operations at Mount Maunganui in 1991, and was set up within a couple of months. As QM was able to initially use some existing machinery from its inland marshalling, this reduced the lead-in time. New log loaders were ordered from the USA, with a delivery time of four to five months.*

*It therefore appears that new entry into this market is likely to be sufficiently timely to constrain the combined entity.*

16.8 It is submitted that the major constraint on the merged entity (NewCo) would be the ability of the major log exporters, if they did not believe they were getting a cost effective or efficient service in relation to either logs or other bulk supplies, to change service providers or undertake the service themselves. Owens Cargo and Toll are vulnerable to a change in the business decisions of the suppliers. The same would also apply for container services.

16.9 The additional risk for NewCo is that a supplier is able to alter the product supply in relation to bulk commodities as well as logs, which acts as a significant restraint.

16.10 It is submitted that the countervailing power of the suppliers of logs and bulk products as well as the shipping companies will act as a considerable restraint on NewCo.

## **PART V: OTHER POTENTIAL CONSTRAINTS**

### **17 Constraints on Market Power by the Conduct of Suppliers**

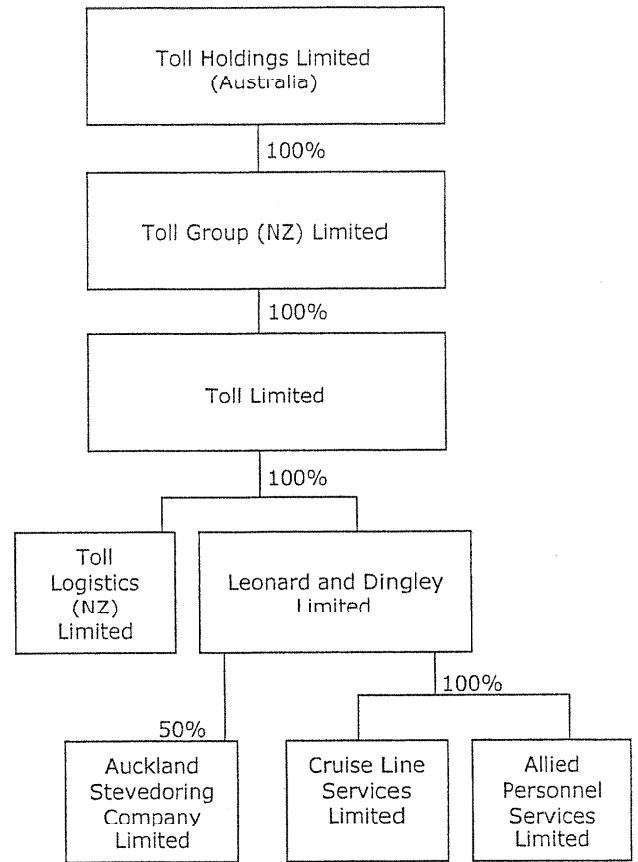
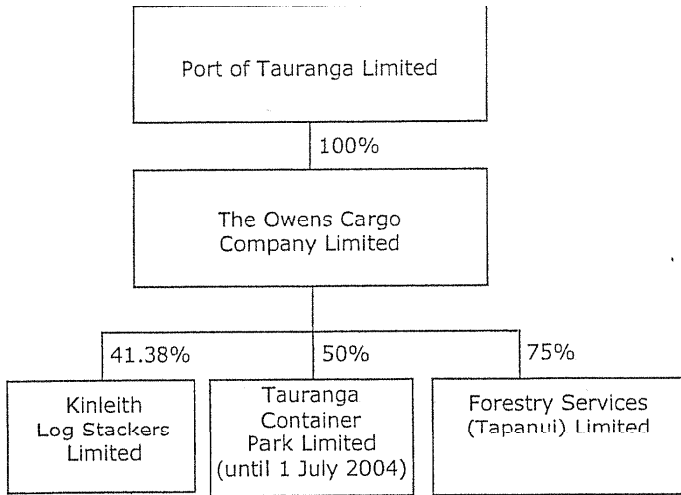
- 17.1 The major requirement for log marshalling is equipment sufficient to handle the logs. The suppliers of equipment are generally offshore but with New Zealand agencies. Owens Cargo has an agency for the provision of large Wagner log handling machines in Australasia and South Africa. Equipment is generally owned by the marshaller or hired. Wagner equipment is not the only type available on the New Zealand market. Owens Cargo already operates other makes such as Komatsu, Caterpillar, Hyundai and Hitachi. As far as machinery is concerned, suppliers of log handling equipment are worldwide and considerable.
- 17.2 The only other key suppliers to the markets specified are software providers for inventory management systems and bar-code ticket suppliers. Both these areas have a number of suppliers.



**APPENDIX A**

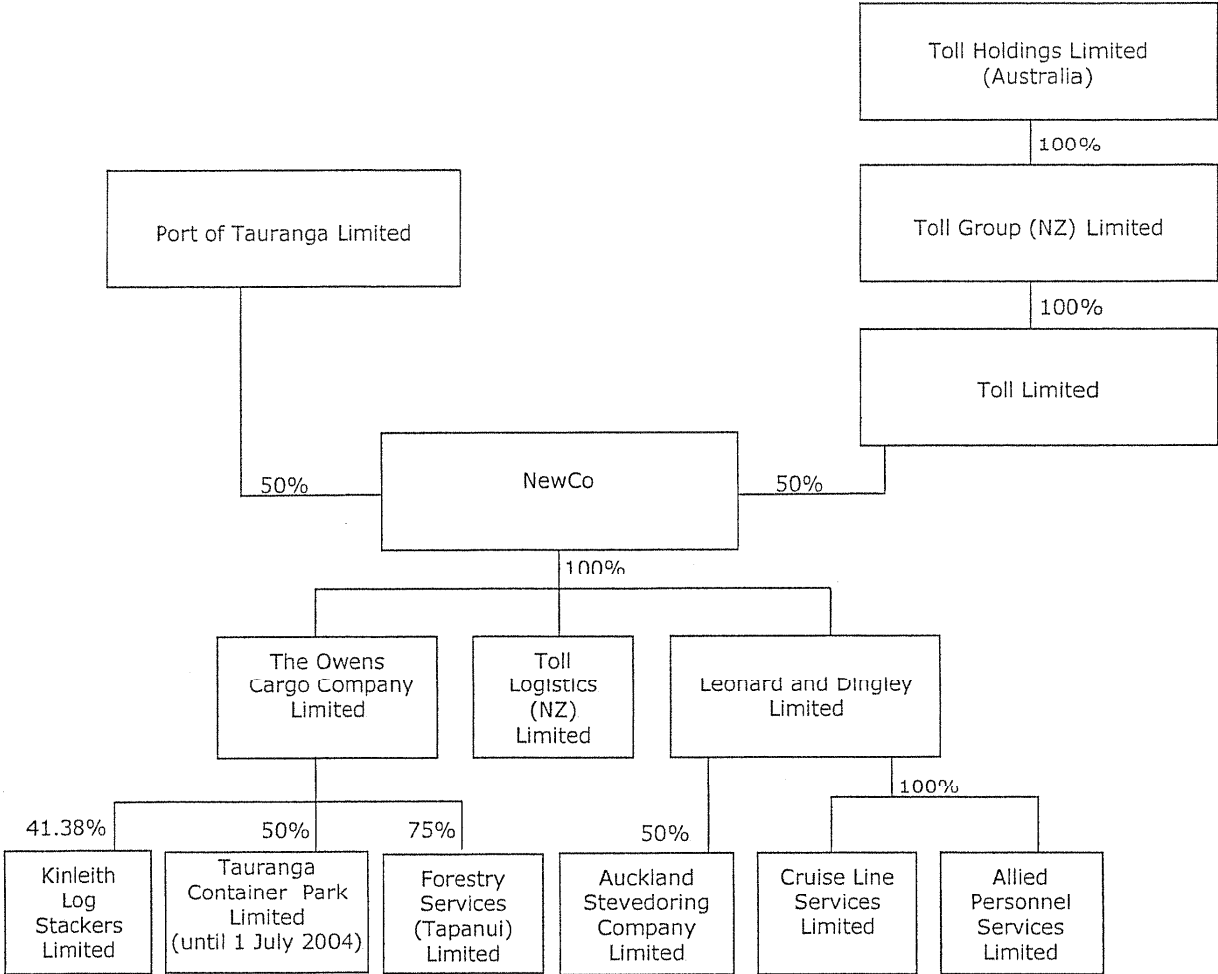
**DIAGRAMS OF COMPANIES AFFECTED BY PROPOSED ACQUISITION**

**BEFORE PROPOSED TRANSACTION**





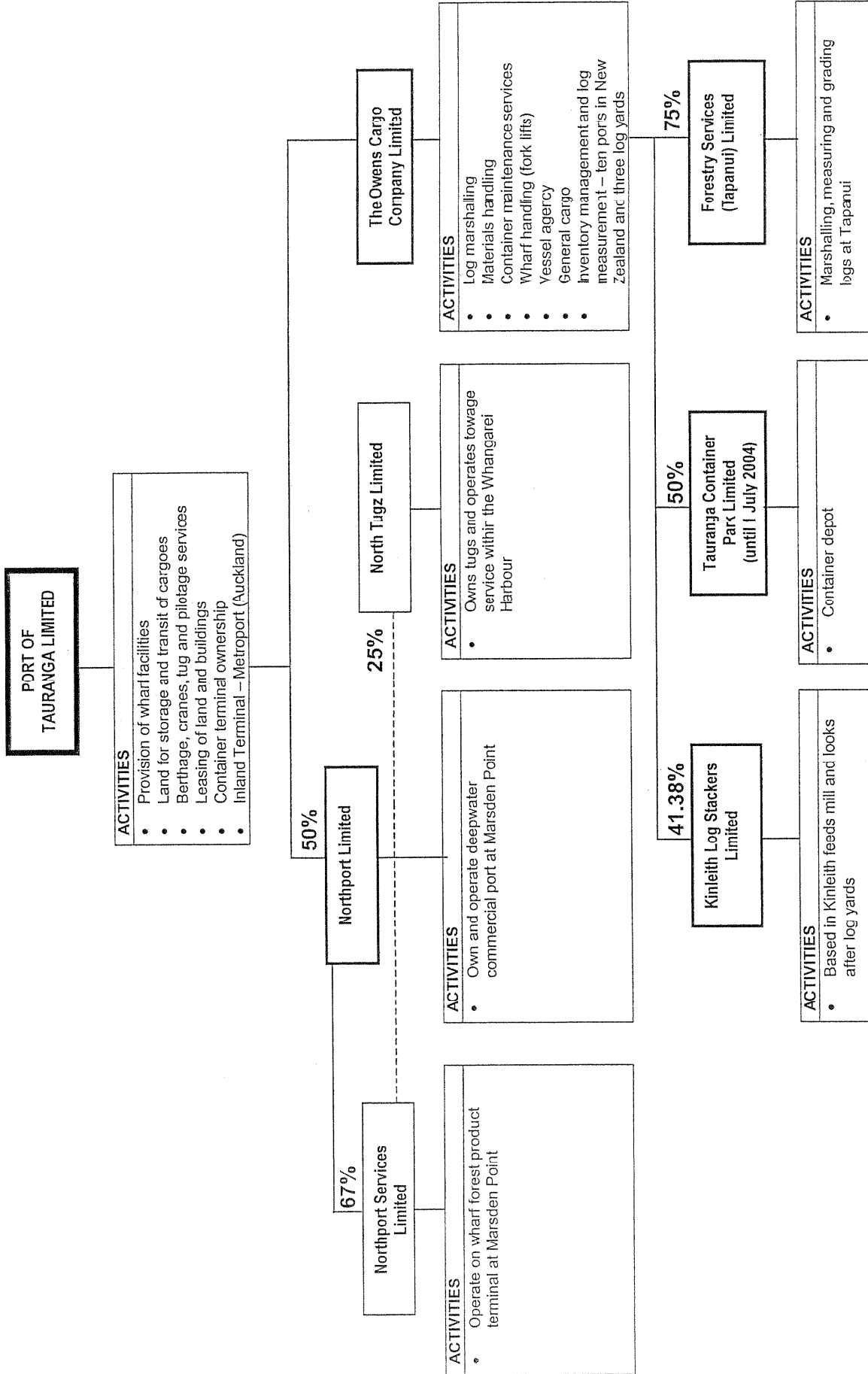
**AFTER PROPOSED TRANSACTION**



**APPENDIX B**

**POTL – CORPORATE STRUCTURE**

# CORPORATE STRUCTURE



**APPENDIX C**

**POTL - ANNUAL REPORT 2003**

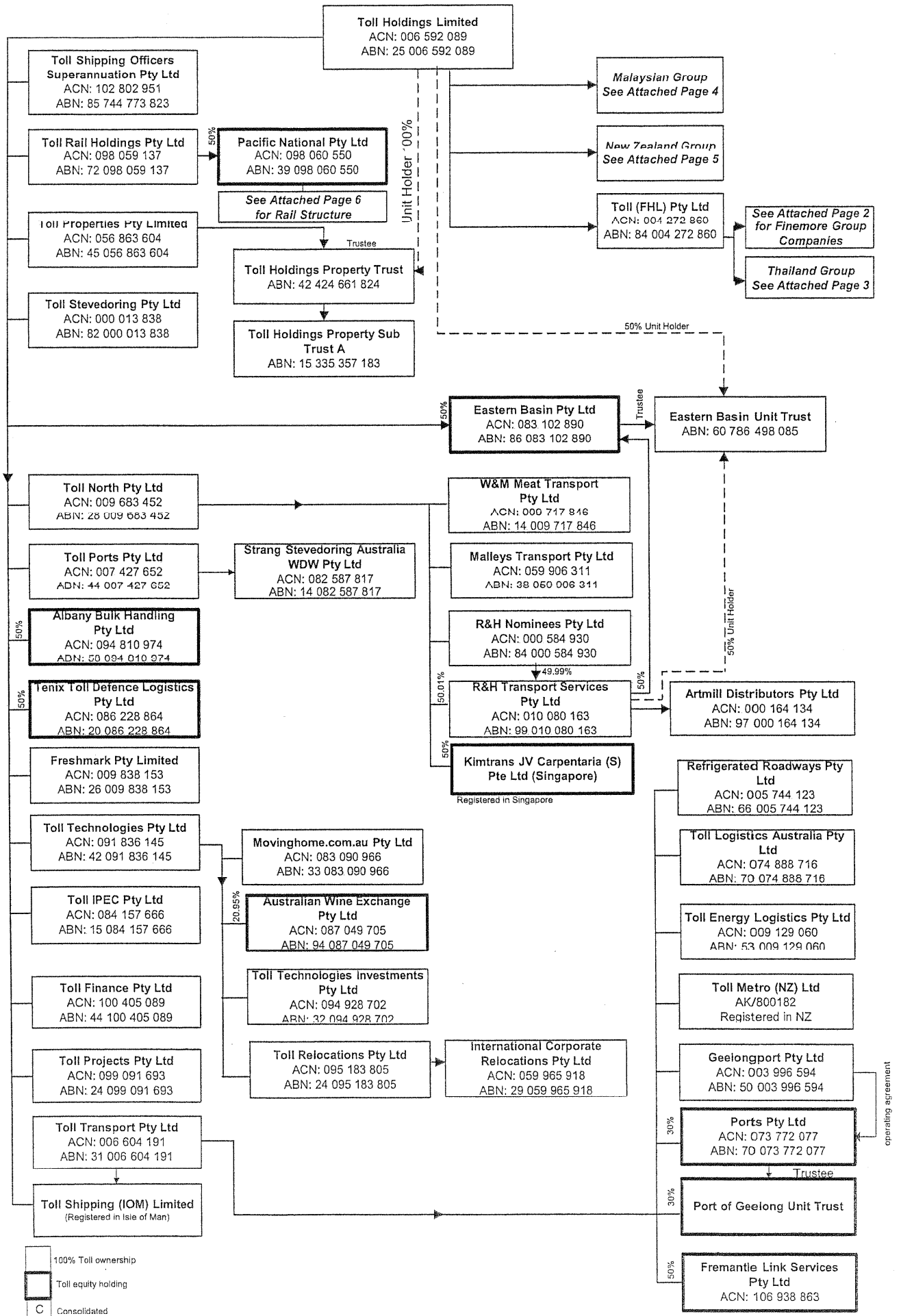
[Available at <http://www.portoftauranga.co.nz/>]

**APPENDIX D**

**TOLL GROUP – CORPORATE STRUCTURE**

# Toll Group Organisational Structure

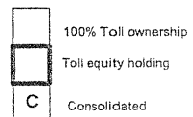
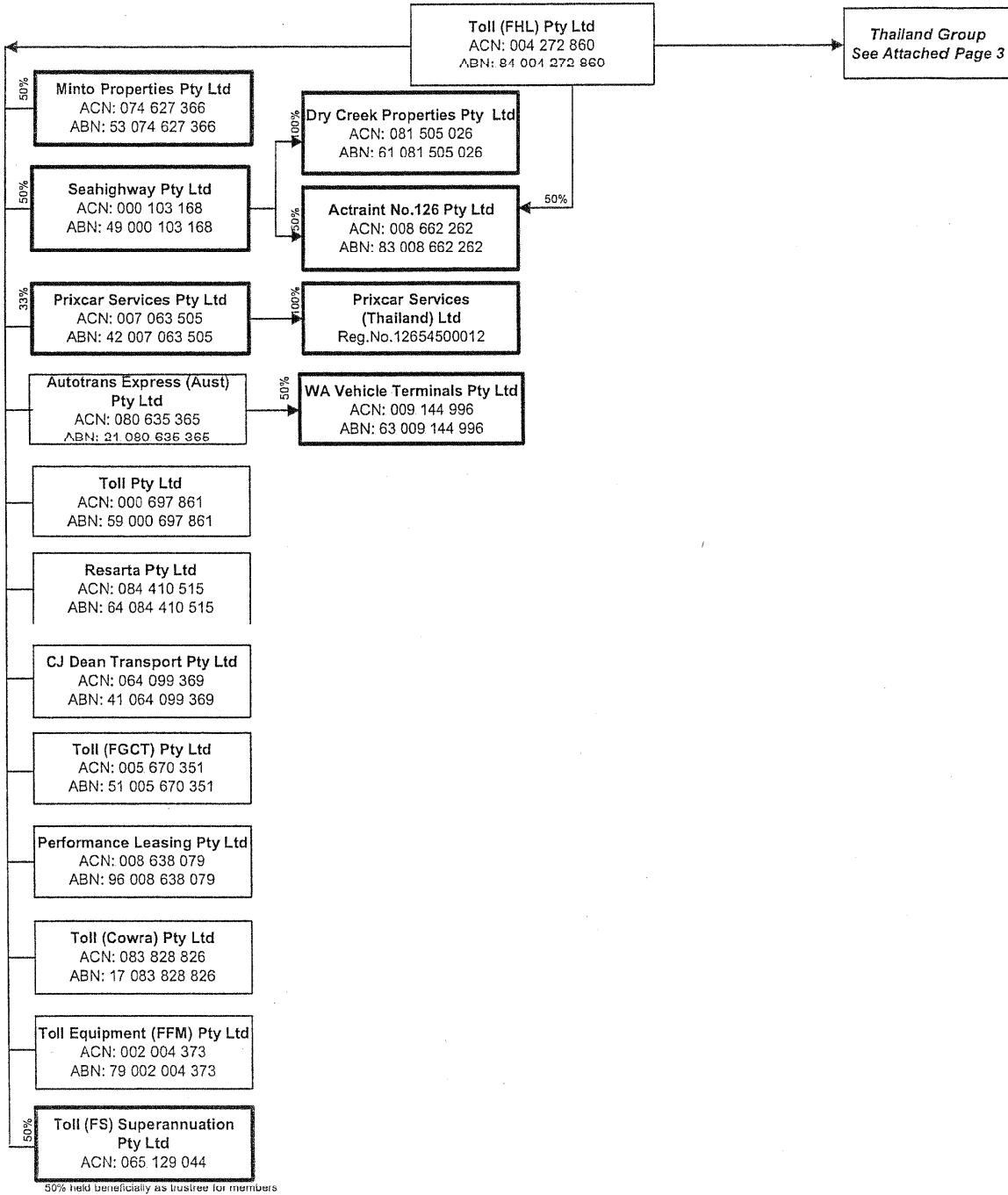
June 2004



# Toll Group Organisational Structure

Page 2 - Finemore Group of Companies

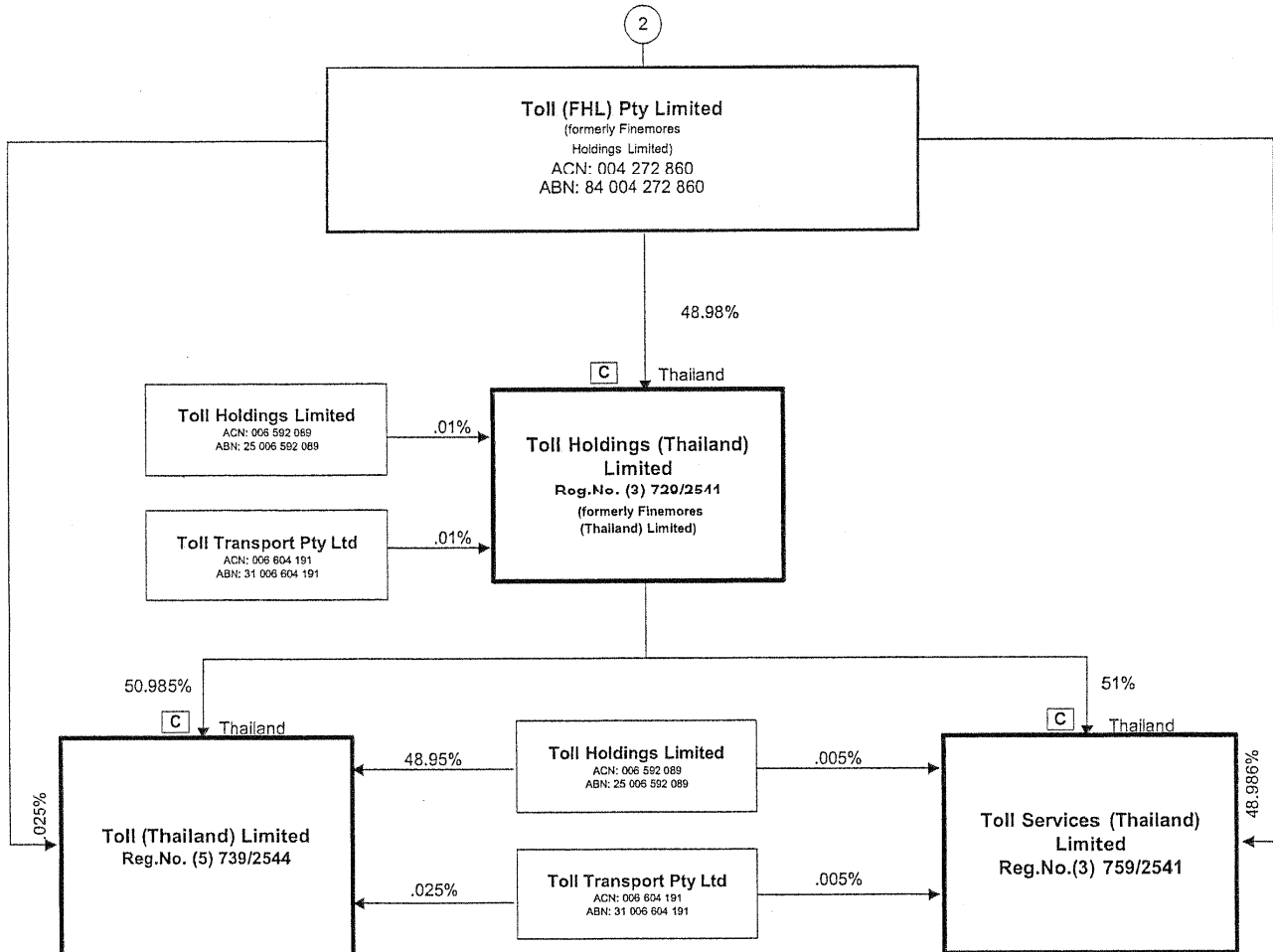
June 2004





# Toll Group Organisational Structure

Page 3 - Thailand Structure

June 2004



 100% Toll ownership

 Toll equity holding

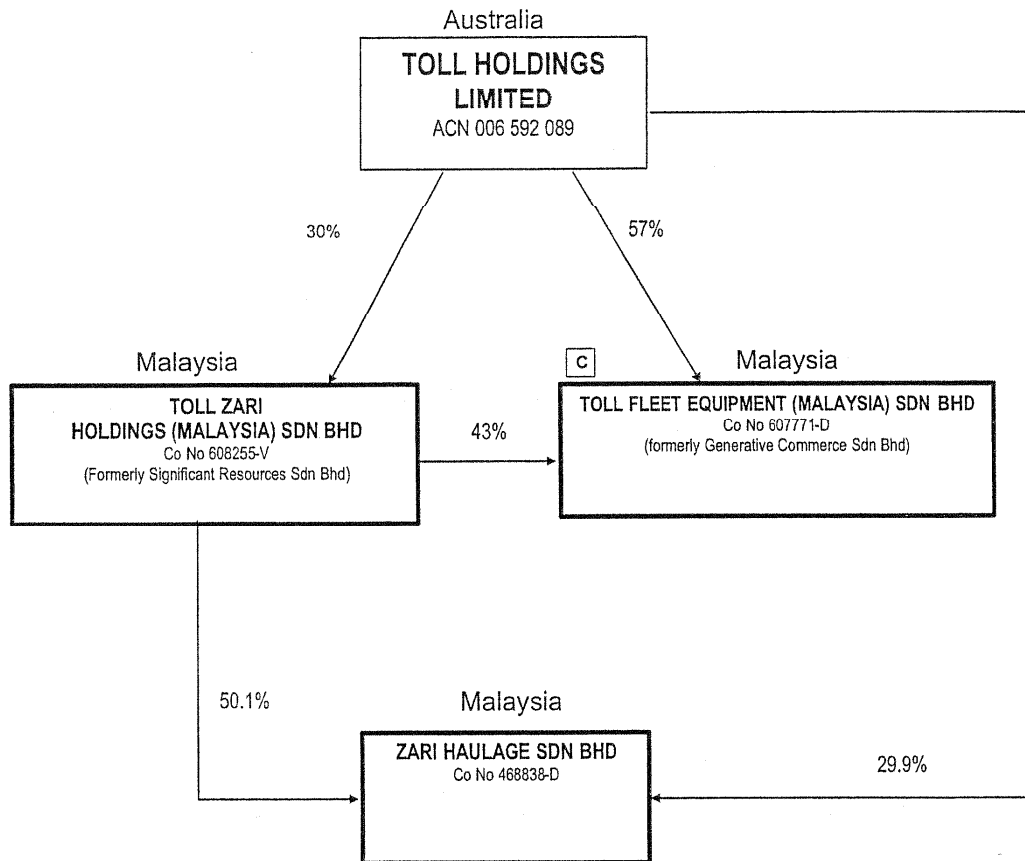
 Consolidated



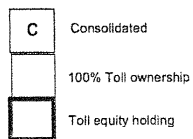
# Toll Group Organisational Structure

Page 4 - Malaysian Corporate Structure

June 2004



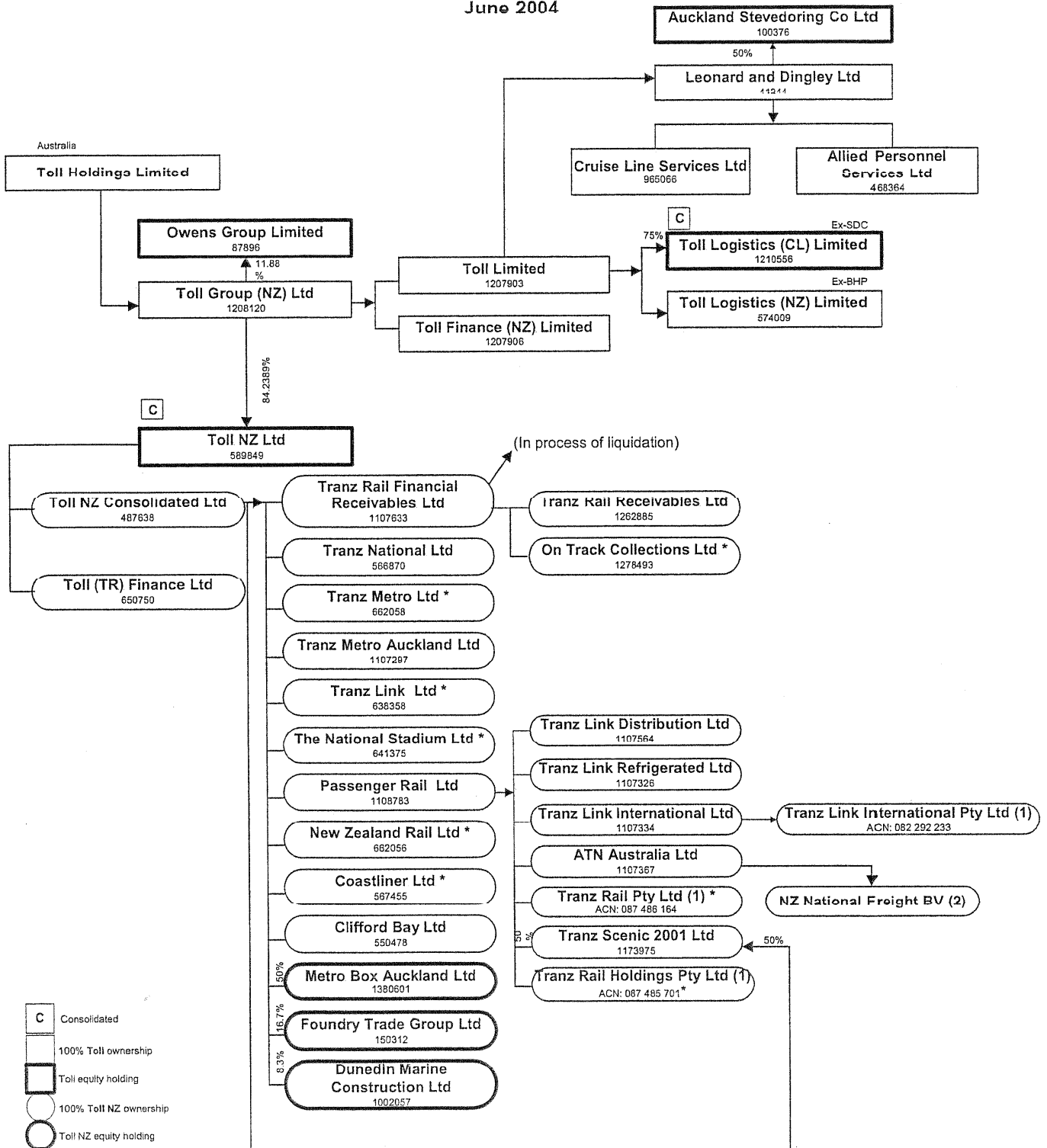
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# Toll Group Organisational Structure

Page 5 - New Zealand Structure

June 2004



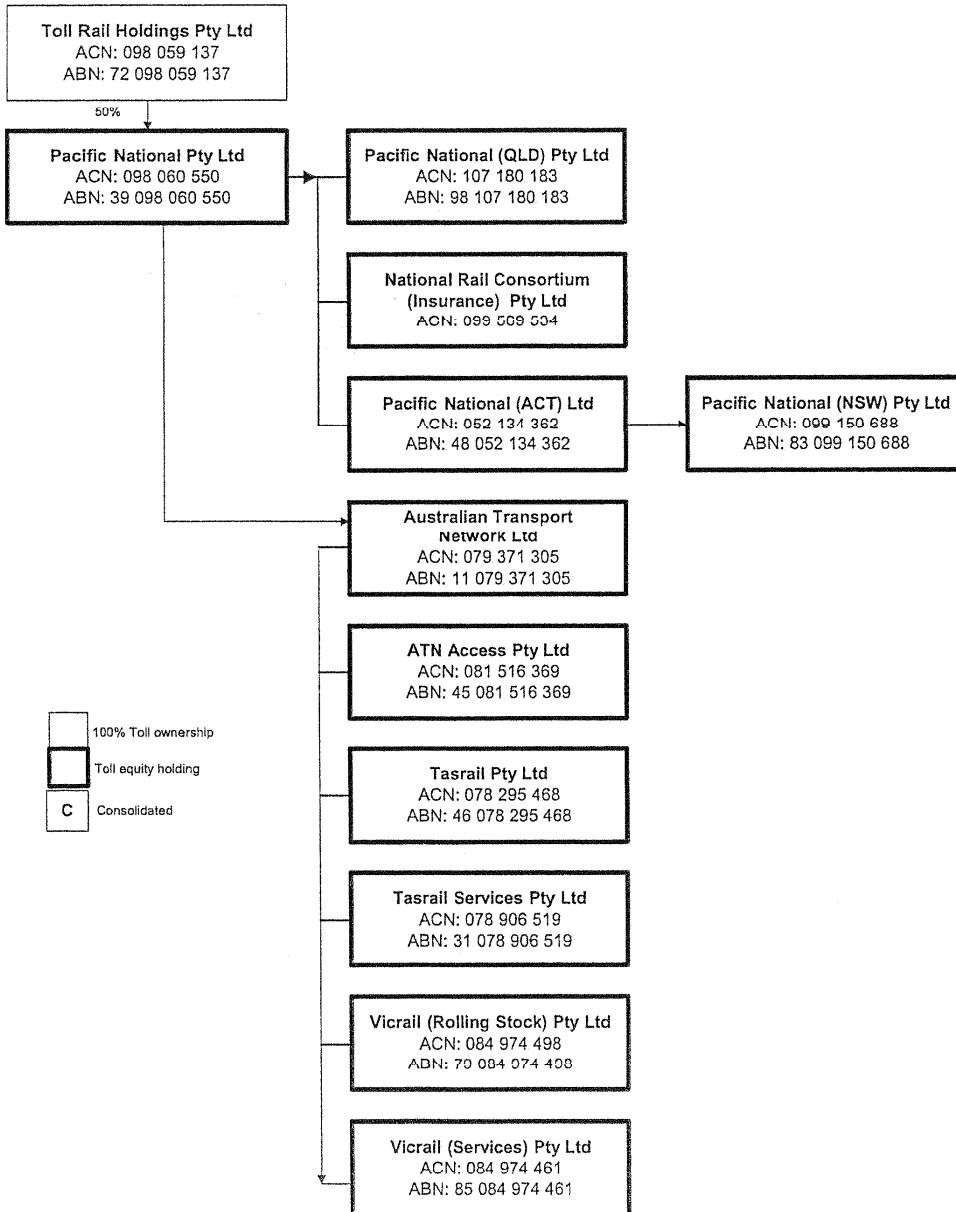
- C** Consolidated
- 100% Toll ownership
- Toll equity holding
- 100% Toll NZ ownership
- Toll NZ equity holding

(1) Registered in Australia  
 (2) Registered in Netherlands  
 (\*) Dormant Company

# Toll Group Organisational Structure

Page 6 - Rail Structure - Australia

June 2004



**APPENDIX E**

**TOLL HOLDINGS LIMITED – ANNUAL REPORT 2003**

[Available at <http://www.toll.com.au/annualreport.html#2003>]

**APPENDIX F**

**IMPORT/EXPORT FIGURES**

**[Confidential]**

**APPENDIX G**

**POTL CARGO TONNAGE FORECAST 2004**

**[Confidential]**

**APPENDIX H**

**ROGER TAYLOR – LETTER OF SUPPORT**

## ROGER N TAYLOR

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*Midland Park Chambers  
3/31 Waring Taylor Street  
PO Box 3052  
WELLINGTON  
Tel 471-0573  
FAX 471-0570*

*Email: roger.taylor@xtra.co.nz*

**June 21, 2004**

The Registrar  
Business Acquisitions and Authorisations  
Commerce Commission  
PO Box 2351  
Wellington

### **PORT OF TAURANGA LIMITED AND TOLL LOGISTICS (NZ) LIMITED**

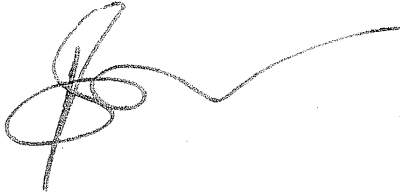
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- 1 I am an economist based in Wellington with extensive experience advising port companies and customers of port companies. My CV is **attached** for your reference.
- 2 I assisted in the preparation of the application for clearance made by Port of Tauranga Limited ("**POTL**") on 6 December 2001 in respect of its acquisition of Owens Services BOP Limited. Clearance was granted by the Commission in respect of that acquisition on 8 February 2002 for the reasons set out in the Commission's Decision 453. In particular, I prepared an independent report on the competitive effects of the proposed acquisition. A copy of that report is also **attached**.
- 3 I am familiar with the proposal of POTL and Toll Limited to form a joint venture involving The Owens Cargo Company Limited and Toll Logistics (NZ) Limited ("**Toll**") focussed on providing marshalling and stevedoring services throughout New Zealand. In that regard, I have assisted in the preparation of the application made to the Commission on the same date as this letter for clearance in respect of that transaction. Accordingly, I support the economic arguments made in the application.
- 4 My conclusions, having considered the issues at hand are:
  - In my view the merger of Owens Cargo and Toll Logistics would not have the effect of substantially lessening competition in the markets referred to in the application.



- In respect to those markets subject to possible vertical integration the constraints imposed by major customers, forest owners, exporters or international shipping companies provide significant countervailing power either directly or through the use of competing service providers.
- There are no operational or regulatory barriers to entry in either marshalling or stevedoring services

5 I am available to discuss these conclusions should that be of assistance to the Commission.

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a long, sweeping horizontal line that ends in a small hook.

Roger N Taylor CA, M.Com, BA

# **Roger N Taylor**

## **Financial Consultant**

Roger Taylor is an independent financial consultant. He specialises in financial, economic and general management advice and has had 30 years of consulting and auditing experience. Roger was formerly a partner with Ernst & Young and was National Director of Management Consulting. Roger was a member of the national Board of Ernst & Young and a member of the Ernst & Young International Management Consulting Committee. Roger holds a number of private and public company directorships.

### **Experience**

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#### **Corporatisation /Privatisation Advice**

- Adviser to the Ministry of Transport regarding formation of port companies, including review of financial and valuation forecasts prepared by transition boards. Reviewed financial forecasts prepared by 13 ports and prepared independent forecasts. Negotiation in respect to financial structure and valuation and compliance with Government reporting requirements.
- Consulting advice to The Ministry of Transport and the Treasury with regard to the proposals to set up airport companies, including financial, management and planning requirements. Prepared 15 year financial forecasts of total airport operations. Review of operating projections of airports, for their sale to the newly established corporations. Advice on Statement of Corporate Intent required under the State Owned Enterprise legislation. Negotiated formation of airport companies with Territorial Authority part owners.
- Assistance to the Port of Wellington/CentrePort in valuation and other procedures including preparation of long-term financial forecasts prior to corporatisation.
- Adviser to Crown on sale by tender of two government-owned airports.
- Adviser to government transit agency on valuation and organisational criteria, including compliance with performance criteria, to be adopted for local government works and bus companies.

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#### **International Consulting**

- Review of financial forecasts prepared for possible privatisation of State of Victoria, Australia, owned electricity generators and distributors.
- Adviser to Sydney International Airport Corporation on valuation and pricing issues.
- Adviser to IATA on Japan airports valuation and pricing.

- Adviser to ESCOSA (State of Victoria Australia) on Pricing Aid for utilities.
- 

### **Strategic Financial and Economic Advice**

- Strategic adviser to Wellington International Airport on valuation, pricing and regulatory matters. Adviser on terminal area development planning.
- Strategic adviser to a number of airports and ports on pricing and valuation issues including Dunedin Airport, Sydney International Airport, Ports of Taranaki, Tauranga, Wellington, Marlborough and Otago.
- Adviser to the International Air Transport Association (IATA) on airport pricing in Japan.
- Adviser to New Zealand Airlines on airport pricing and valuation issues.
- Adviser to the Ministry of Commerce in the preparation of Electricity Disclosure reporting requirements
- Consulting adviser to Electric Power companies and Generators on valuation, capital structure, and rate of return and pricing issues
- Review of operational and regulatory environment of the New Zealand port industry following corporatisation.

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### **Specific Port Consulting**

- Adviser to the Ministry of Transport regarding formation of port companies, including review of financial and valuation forecasts prepared by transition boards. Reviewed financial forecasts prepared by 13 ports and prepared independent forecasts. Negotiation in respect to financial structure and valuation and compliance with Government reporting requirements
- Strategic adviser to a number of ports on pricing and valuation issues including, Ports of Northland, Taranaki, Tauranga, Wellington, Marlborough and Otago
- Expert witness and adviser role in High Court and in arbitration cases on valuation and pricing issues affecting forestry, ports, airports and the energy sectors. Clients include, Port Marlborough, New Zealand Stevedores Limited, the Commerce Commission in respect to Port Nelson Centreport, Westgate Port Taranaki, and Port of Tauranga.
- Co-author of government report on Ports of New Zealand Regulatory Review following corporatisation of the ports.
- Ports Study -Review of Ports performance 1990 – 1998 and 2002.

- Paper to June 1997 APEC Ministerial Industry Forum on corporatisation/privatisation of infrastructural projects, with specific reference to seaports.
  - Paper to September 1999 Privatisation Workshop ESAMI Arusha Tanzania, with specific reference to New Zealand Port experience.
- 

### **Publications**

- Co-author of government report on Ports of New Zealand Regulatory Review following corporatisation of the ports.
- Ports Study -Review of Ports performance 1990 – 1998 and 2002.
- Co-author of paper Airport Companies - Problems and Prospects presented to 13<sup>th</sup> Australasian Transport Research Forum.
- Paper to June 1997 APEC Ministerial Industry Forum on corporatisation/privatisation of infrastructural projects, with specific reference to seaports.
- Paper to September 1997 World Bank Symposium on Aviation Infrastructure – Managing for Growth and Efficiency.
- Paper to September 1999 Privatisation Workshop ESAMI Arusha Tanzania, with specific reference to New Zealand Port experience.
- Co-presenter NZ Law Society on the role of the Expert Witness.
- Co-presenter NZ Law Society seminar Regulating Utilities – Current Issues.

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### **Qualifications**

Roger received his BA (Economics) and M.Com (Hons) from Canterbury University and is a member of the Institute of Management Consultants. He is a chartered accountant CA.

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