

## HAMILTON CITY COUNCIL

### HEARING OF RESOURCE CONSENT APPLICATION BY FOODSTUFFS NORTH ISLAND LIMITED

#### DIRECTIONS OF COMMISSIONER HEARING PANEL: No.2

##### **Publicly Notified Application:**

*This application seeks resource consent for the construction and operation of a new PAK'nSAVE supermarket with a drive-through fuel facility, at-grade car parking and all other associated enabling works. The new supermarket building will be developed to abut the western boundary of the site at 980 Te Rapa Road with a gross floor area (GFA) totalling approximately 6358m<sup>2</sup>. This GFA figure includes all the back-of-house delivery, service and storage areas plus the main retail and mezzanine levels.*

I (Murray Kivell), the duly appointed Chair of the Hearing Panel, have received a request via email from the Applicant (Foodstuffs North Island Limited) on Monday 6 May 2019 "to confirm that Foodstuffs seek to put the application on-hold to delay the evidence exchange scheduled for Monday 6<sup>th</sup> May 2019 and consequently, a revised hearing date. The reason for this is so the traffic experts can undertake caucusing prior to the hearing taking place."

##### **Consideration of Request**

###### Statutory Guidance

The Resource Management 1991 (RMA 1991) provides guidance on the matters I am required to consider when making a determination on this request.

In summary,

- *Section 103A Time limit for completion of hearing of notified application:* sub-section (2) provides for publicly notified applications to have a hearing completed no later than 75 working days after the closing date for submissions. In this case, I am advised that the period for submissions closed 7th February 2019 and the hearing was set down for 21-23 May 2019 with evidence exchange set down in Direction 1. This is no longer appropriate from the applicant's point of view, for the reasons discussed below.
- *Section 37 Power of waiver and extension of time limits:* records the authority to extend time limits, and section 37A specifies the circumstances under which this can occur. Sub-section (4) is applicable in the current circumstance where the request is from the Applicant to seek the caucusing between the parties on traffic matters-
- Section 37A(1) can only extend a time limit taking into account:
  - (a) the interests of any person who may be directly affected by the extension or waiver;
  - (b) the interest of the community in achieving an adequate assessment of effects; and
  - (c) the duty to avoid unreasonable delay.

##### **Determination**

The considerations under section 37A(4) include special circumstances. In my opinion, the merits of caucusing of traffic matters is a worthwhile matter that might avoid the extensive and complex presentation of divergent professional statements of evidence on traffic matters and whether any mitigation measures are possible and appropriate for the consideration by the Panel. This constitutes special circumstances in the current situation.

I do not consider that this step will prejudice the interests of any of the parties to the hearing as a result of this delay so long as the hearing is re-scheduled within the statutory timeframes set out in the Act.

Under section 37A(4)(b)(i) and (ii) a consent authority may extend a time period under Section 37 only if special circumstances apply (including the scale or complexity of the matter); or the applicant agrees to the extension. A Section 37A(4)(b)(i) and (ii) extension of time is applicable where the Applicant has requested

an extension of the hearing process, which will take the processing beyond the 75 working days outlined in Section 103A.

Therefore, the time period extension is accepted pursuant to section 37A RMA 1991, as is the consequential delay to the hearing.

The caucusing of traffic experts will be facilitated by an independent person, and all traffic experts are directed to attend, with a date to be confirmed between relevant parties during May 2019. The reporting planner is directed to organise the date and location for this forum along with a facilitator as promptly as is possible, with a tentative date for the 14 or 15 of May 2019 initially being considered.

Upon the conclusion of traffic caucusing and any further advice received, a subsequent Commissioner Direction will be issued to confirm the evidence exchange and the revised hearing date.

Dated this 7<sup>th</sup> day of May 2019

A handwritten signature in black ink, appearing to read 'M Kivell', with a horizontal line underneath the name.

Murray Kivell

Commissioner Chair, on behalf of the Hearing Panel