

HAMILTON CITY COUNCIL

HEARING OF RESOURCE CONSENT APPLICATION BY FOODSTUFFS NORTH ISLAND LIMITED

DIRECTIONS OF COMMISSIONER HEARING PANEL: No.3

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 6358m². 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 Council dated 9 May 2019 that includes an email dated 9 May 2019 from Mr Douglas Allan, legal counsel for the Applicant Foodstuffs North Island Limited responding to an attached memorandum from Ms Arthur-Young legal counsel for two submitter parties The Base Te Rapa Limited and Woolworths New Zealand.

In response to Directions 2 dated 7 May 2019 further directions are sought by Ms Arthur-Young in relation to traffic caucusing, as follows:

1. The limiting of the time set for caucusing to be "no more than half a day"; and
2. "...the Applicant to prepare a detailed agenda and set of expert questions be circulated and agreed by the parties sufficiently in advance of the caucusing date"; and
3. "The Panel directs the Applicant to confirm when the further modelling referred to in section 146 of the Council's s42A report will be provided to submitters."
4. Ms Arthur-Young has subsequently emailed Council officers today advising the following:
Given, as counsel says below, the Applicant's traffic expert is currently reviewing ways in which the concerns of the Council's advisors can be addressed, my clients' preference would be for the Applicant to circulate its evidence as was originally directed, and then for time to be set aside for caucusing after that material is received and considered, if parties wish to participate in that.

Consideration of Request

Matter 1: Time limiting the caucusing

Experience suggests that it is inappropriate and unwise to place specific time limits on caucusing between experts and in this case limiting the time to half a day. The Panel is therefore not minded to place a time restriction on the caucusing process. On that basis, we would expect that in the first instance a full day be set aside and that all of the participating traffic experts take this into account when advising of their availability.

Matter 2: Preparing a detailed agenda

In Directions 1 it was suggested that an independent person facilitate the forum so as to provide for a more effective process.

On the review of Mr Allan's email, it is evident that the Applicant's traffic expert, Mr Burgess, is in a position to identify and summarise the outstanding issues and that through this process a series of specific questions to be addressed may be posed. The Panel anticipates that discussion between the experts can usefully set out a draft agenda and that this be agreed by the relevant experts prior to caucusing commencing.

This in turn should provide for an effective and targeted caucusing process as sought by the submitters.

On the basis that a draft agenda is prepared and pre-circulated, the Panel will no longer require the facilitation of the caucusing by an independent person.

Matter 3: Further modelling information.

The Panel notes that this new information has now been made available to the parties. For completeness Mr Le Heron, Council's section 42A report author, advises that the further modelling uploaded on Council's website which was undertaken by BBO is the same modelling referred to in both his S42A report (paragraph referenced by Mr Douglas), Ms Arthur-Young's memorandum and the reply from Mr Douglas this morning.

Matter 4: Evidence exchange

In relation to Ms Arthur-Young's further request today, we note that Directions 2 directed that the traffic caucusing proceed and the evidence exchange dates no longer applied and hearing dates were vacated, to be 'reset' following the caucusing.

Expected outcomes of caucusing

As a minimum, the Panel expects the traffic expert caucusing will result in the following outcomes:

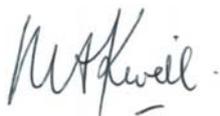
1. Identification of matters currently in dispute and on which agreement has subsequently been reached, including any consequential changes to the current proposal.
2. Identification of disputed matters on which agreement has not been reached, together with a concise explanation as to the nature and extent of the differences between the experts.

Directions

The Panel directs as follows:

1. The caucusing is to occur ahead of any further exchange of expert evidence.
2. Alternative dates for evidence exchange and for the hearing itself will be determined after the caucusing process has been completed.
3. The caucusing is not to be time limited. The timing of the caucusing remains a matter for Mr Le Heron to determine through liaison with the respective traffic experts.
4. A draft caucus agenda is to be prepared by Mr Burgess and its final form is to be agreed between the parties prior to the caucusing commencing.
5. An independent person is no longer required to be appointed to facilitate the caucusing.
6. No persons other than the traffic experts themselves shall be involved in the caucusing.

Dated this 9th day of May 2019



Murray Kivell
Commissioner Panel Chair



Russell De Luca
Commissioner