

THE MATTER of applications pursuant to the
Resource Management Act 1991

BY Foodstuffs North Island Limited

FOR land use for the establishment of
a Pak N Save supermarket and
associated fuel facilities at 980 Te
Rapa Road within the Industrial
Zone.

SUPPLEMENTARY EVIDENCE

Sam Le Heron

8 October 2019

Purpose

1. This report is supplementary evidence to my earlier S42A Report (issued 30th April 2019), and S42A Report Addendum (issued 16th September 2019) prepared under the Resource Management Act 1991 (RMA) which provides my advice and recommendations as an independent planner. This supplementary evidence report has been prepared based on the information available as at 8th October 2019, including the applicants evidence and submitter evidence, and any matters raised over the course of this hearing process. It does not represent any decision on the application and the conclusions and recommendations reached in the report are not binding on the Hearing Commissioners. The supplementary evidence, addendum report, and the original S42A Report will be considered by the Commissioners in conjunction with all other technical evidence and submissions to the application to form and make their decision under delegated authority on behalf of Hamilton City Council as the consenting authority.
 2. The purpose of the supplementary evidence is as follows:
 - (a) To address key matters raised by the applicant and submitters through the pre-circulated evidence and raised at the hearing, and where appropriate how these have been addressed through conditions; and
 - (b) To introduce the revised set of conditions and identify any conditions where there are differences between the applicant and the reporting team and the reasons for those differences; and
 - (c) To give a recommendation as to whether consent ought to be granted.
 3. I will rely on my earlier S42A Report and S42A Addendum which covers off the introduction, application timeline, site description, application, submissions, notification sections, S104 assessment, conclusions and recommendation.
 4. I have relied on the supplementary evidence of Mr Black to inform my wider considering of key matters of the application. Mr Black's supplementary evidence is reflective of the Applicant's evidence presented at the hearing, which includes the updated set of Conditions outlined in Mr Allan's Legal Openings. I also note that an updated set of Conditions were put forward by the Applicant and circulated to all parties last night. I have read, and considered, the proposed conditions and will provide an overview of this.
- Legal Openings for the Applicant**
5. The approach taken by the Applicant during the presentation of legal submissions and expert evidence is reflective of the fundamental issue and requirement of a 60km/hr speed limit on Wairere Drive between Pukete Road and Te Rapa Road. This was a matter that was in contention prior to the hearing, and I fully support the approach taken by the Applicant to offer conditions which cover off the fundamental aspects of the mitigation required, as a condition precedent.
 6. Having heard and considered all the evidence prepared and presented to the Commissioners, I wish to clarify several points raised, and to provide oversight from a consenting authority perspective on the proposed application and the conditions associated with this application.

7. Mr Allan in his legal submissions on behalf of Foodstuffs North Island Limited, outlines a revised set of conditions, appended as Attachment 1. The set of conditions utilised the structure provided in my S42A Report Addendum, should the Commissioners be of the view to grant consent. The amendments put forward in Attachment 1 were discussed in length over the course of the hearing. Importantly, I consider the approach taken is helpful for Council, where it clearly reinforces the appropriateness of the conditions in their origin, whilst validating that the applicant is accepting of the conditions.
8. I concur with Mr Allan's Paragraph 14, in which he considered the evidence of Mr Briggs, on behalf of TBTA. I also agree with Mr Allan, where in Paragraph 18 of his legal submissions he outlines the consideration of Part 2, and the validity of the business centre approach in the Plan, which I emphasise does reflect the current thinking and approach to Hamilton's Centres Hierarchy.
9. I note that in Paragraphs 22-23, Mr Allan goes into detail regarding the consideration of S108(1) and S108AA(1). Whilst I acknowledge that the conditions have been 'offered' by the Applicant, and therefore are covered by S108AA(1)a), in my view, and concurring with Mr Allan, the actual nature of the conditions as proposed are intended to mitigate adverse transportation safety and efficiency effects on the wider network, which result specifically from the proposed supermarket.
10. In my experience as a planner, both in a technical capacity and my delegation to issue consents on behalf of Council in my current role, the validity of conditions and the appropriateness of the effects that are being addressed is of importance. For these reasons, and the matters covered by Ms Mackintosh within Council's legal submissions¹, I consider the role of precedent conditions is clearly explained, and the validity of the approach taken, in my view, is clear.
11. It is not uncommon, from a Council consenting perspective, for the outcome of a resource consent process to occur prior to any Local Government Act process, be it a speed reduction, car parking removal or inclusion of no stopping lines. All such examples occur in Hamilton, and I have been involved in consents where precedent conditions have been included to effectively require the LGA authorisation process to be concluded prior to operation.
12. In my view, this can create a risk to the Applicant, depending on how far progressed the application is, and at what point the LGA processes are commenced. I acknowledge that Mr Hanson has accepted the risks sit with Foodstuffs North Island Limited, but I am also conscious that an element of risk sits with Council. This can be seen through a situation where a consent is granted and the Applicant is unable to implement the consent, e.g. through not being able to achieve a speed limit change. Such a scenario could see a fully constructed building ready to operate, whilst not having achieved the speed limit change. This is a clear risk for the Applicant, and a potential risk to the Council. The view of the traffic experts, and eloquently

¹ Ms Mackintosh Legal Submission Paragraphs 8 - 22

summarised by Mr Burgess² during his evidence presentation, essentially without the partial signalisation of the Karewa Place / Wairere Drive intersection and accompanying 60km/hr speed limit being achieved between Pukete Road and Te Rapa Road on Wairere Drive, the proposal simply cannot occur. Additionally, if the Applicant is unable to provide the required left turn slip lane on the Te Rapa Road frontage, then again in Mr Burgess's view, which is shared by all experts, the supermarket simply cannot operate.

13. I consider these statements are important to reaffirm the level of acceptance that a supermarket at the proposed location cannot, and will not, operate without the mitigation put forward by the Applicant being achieved, through both an LGA process and third-party process. The scale of the development and the build time is something I expect Mr Allan to expand on which will emphasise the appropriateness of a condition which reflects the speed limit and deceleration lane being available prior to operation. In my view, the Applicant has not satisfied that the commencement of the construction process can occur prior to the LGA processes being concluded, and it is in that regard that I consider a revised condition is appropriate which reflects that the LGA process (and outcome) is to occur prior to construction commencing.
14. To further this point, I wish to outline my understanding of the process to be followed by Hamilton City Council under the Local Government Act 2002 to implement the necessary 60km/hour speed environment to enable the proposed condition precedent to be satisfied. I concur with Mr Black who has outlined in his Supplementary Evidence³ that the setting of speeds limits is not a matter that can be controlled through the Resource Management Act, but is a road controlling function provided for by the Local Government Act. I also note that the Local Government Act process to reduce the speed limit would require public consultation. Whilst the Applicant and traffic experts agree that there are wider network efficiency benefits of the partial signalisation and accompanying speed limit reduction on Karewa Place / Wairere Drive, and that the speed reduction aligns with Council's recently adopted Vision Zero⁴, importantly any subsequent LGA process requires public consultation, of which the outcomes and recommendations to the relevant Council Committee would take into account all of the above factors.
15. At time of preparing this Supplementary Evidence, I am not aware of any detailed speed management proposal to lower the speed limit on Wairere Drive, I do however consider a wider speed management review is likely, particularly given the recently adopted Vision Zero policy. Mr Black has outlined in his Supplementary Evidence⁵, that lowering the speed limit could result in requiring additional engineering works at the adjacent intersections, e.g. Te Rapa / Wairere Drive and Pukete Road / Wairere Drive. The outcome of the LGA process, road safety audits as conditions of consent and the review condition would, in my opinion, provide a mechanism to improve the wider safety and efficiency of the network.

² Mr Burgess Supplementary Evidence Paragraph 10

³ Mr Black Supplementary Evidence Paragraphs 7 and 8

⁴ Mr Black Evidence in Chief Paragraph 18

⁵ Mr Black Supplementary Evidence Paragraph 8

16. I agree with Mr Allan's statements regarding Paragraph 34 of his legal submission, where he accurately describes the Centres Assessment requirements under the Operative District Plan. I do note that Plan Change 6 - Regulatory Efficiency and Effectiveness Programme (REEP) has closed for formal submissions. Amendments were proposed as part of REEP which relate to the now numbered Appendix 1.2.2.15 which relates to Information Requirements for Centres Assessments. My understanding is that the changes will provide increased flexibility and discretion of when a Centres Assessment is required in certain contexts, with Council to have more discretion in the context of Business Zones and Central City Zones, neither of which relate to the subject site. In my view, this does not impact on the proposal, whereby such applications would still require a Centres Assessment Report as part of any application.
17. I acknowledge that the respective economists, both Mr Heath and Mr Tansley for the Applicant and Ms Fairgray for Council, whilst having slightly different approaches and methodology for assessing and considering the proposal as part of a Centres Assessment, all reach the same conclusion, that no established centre in the localised catchment will be significantly affected to the point of a supermarket closure. I rely on the collective expertise of the economists to inform the view that the proposed supermarket is appropriate within the specific context of the subject site, in the Industrial Zone, where the Applicant and Council have demonstrated that the integrity of the Business Hierarchy is maintained.
18. In response to the supplementary evidence and hearing evidence that took place I have attached to my supplementary hearing evidence a set of draft conditions, that if fully implemented by the Applicant, will appropriately mitigate any potential adverse effects of the proposal.

Cultural Effects

19. I reiterate my earlier comments in my S42A Report which relate to Cultural Effects of the proposal. I acknowledge that Council, and the Planning Guidance Unit, has an important existing relationship with the relevant Iwi and Hapu, and make available all resource consents for awareness. Given the underlying District Plan does not identify any specific cultural significance to this site, and the public notification process that has occurred, in my view, no further consultation is required under the Resource Management Act.

Condition Precedent

20. I have largely addressed the matter of condition precedent in my earlier Paragraphs 9 -11, and I rely on the legal submissions of Ms Mackintosh.
21. The Submitters have reiterated in the circulated evidence and the supplementary evidence at the hearing the importance of appropriately constructed and considered conditions. I have considered at length the validity of the proposed conditions, which were originally proposed as part of the S42A Report, then subsequent Addendum, to reflect best practice, even when recommending decline. The Applicant has now offered, under S108AA(1), the fundamental traffic safety and efficiency conditions that were required to fully mitigate the significant adverse effects of the proposal. As outlined by the wider traffic experts for the Applicant,

Submitters and on behalf of Council, there is collective acknowledgement that the proposed mitigation will provide net benefits for the City.

Planning Matters

22. In response to Paragraph 10.23 of Mr Norwell's Evidence in Chief, whilst I agree that the site specific zoning for the wider 'Porter's Site', as it has been historically referred to, does provide for a wider mix of activities than the traditional industrial zone, the additional activities included in the activity status table that are site specific relate to managed care facilities, retirement villages, rest homes and visitor accommodation. In my opinion, this does not open the wider Porter's Site to large format retail, office or retail activities that have been previously associated with the Industrial Zone, under the former District Plan. The inclusion of 'supermarkets' as an activity that has been specifically referred to in the Industrial Zone, does introduce a commercial mix, but importantly this does not extend to other large format retail, office, retail and wider commercial activities.
23. Mr Norwell, in paragraph 10.26, provides an observation 'the immediate environment indicate that surrounding activities are predominately of a retail and commercial nature, as opposed to industrial activities'. Whilst I agree with this observation of existing activities, I would add that this is due to the underlying zoning on the wider sites, which include Business 4 Zone for the Countdown and Kmart sites, Sub-Regional Centre for The Base. The current Plan anticipates the inclusion of a mix of residential type activities within the broader 'Porter's Site', which enables a greater mix of activities to occur, it does not in itself represent a commercial or business zone under the current Plan.
24. A matter that was raised by Submitters was the role of Council in determining any S127 Change of Conditions Application that could be lodged for the application, should it be granted, to amend a condition, for example the required speed limited on Wairere Drive. If the scenario of a S127 Application occurred, whereby consent was approved by Independent Commissioners, and the Applicant subsequently sought to amend the conditions to remove the speed limit requirement, given the clear and shared views amongst all experts, such an application would prove challenging for the Applicant. I could not comment further until such a situation arose, but importantly a S127 is a Discretionary Activity, and Council has full assessment over such an application and the ability to decline such an application should this be appropriate.
25. In response to questions from the Commissioners, I also acknowledge that Karewa Place is a Collector Road under the Operative District Plan, with the Maui Street Extension continuing as a Proposed Collector Road, recognising at the time of notification of the then Proposed District Plan (December 2011), that the road had yet to be created. At this time the City sent a clear message that the future intent of Karewa Place was that as a Collector Road, whereby, as I understand it, the volumes and trips associated with such a roading hierarchy are within the proposed volumes proposed in the 2031 VISIM model.

Economic Effects

26. My original assessment of economic effects relied on the expert advice of Ms Fairgray, in conjunction with the evidence of Mr Heath, in addition to my clear understanding of Hamilton's business hierarchy, and the centres-based approach in the Plan. I considered the adverse effects to be acceptable, based on the proposed layout of the supermarket, and the extent of the impact on established centres and supermarkets within the localised catchment.
27. I acknowledge that the methodology and analysis undertaken by the Applicants economic experts and Council's economic expert differ, and this has been emphasised in the evidence exchange and the content presented during the hearing. I have given due consideration to the experts, and whilst I rely on Council's economic expert to conclude that an established centre, and supermarket, are not going to be undermined as part of the proposal, I do note that the Applicants experts have reached the same conclusion.
28. No submitters have raised any substantive evidence regarding the economic effects of the proposal, or the conclusions reached. I do note Mr Briggs does stipulate that the Porter's Land Use Consent was not included as part of the Market Economics Report. I rely on Ms Fairgray to address this point, but my understanding is either way, the implications of the Porter's Land Use Consent is immaterial to the wider effects and activity status, which is a matter Mr Heath covered off at the hearing.

Transportation Effects

29. In my view, the transportation effects of the proposal have been robustly considered by all traffic experts, and I rely on the expertise of Mr Black and Mr Meister to inform my view that the transportation effects can be adequately addressed by way of conditions of consent on the Application. Additional specificity has been provided to address the matters raised by Submitters, which make improvements to the original draft wording put forward as part of my S42A Report and S42A Addendum Report. I have attached to this Supplementary Evidence as Attachment 1 a revised set of conditions, to reflect the outcome of the evidence exchange and hearing process.
30. In my earlier S42A Report and S42A Addendum, I outlined some of the key mitigation and significant adverse effects that needed to be addressed. I now consider, given the additional clarity provided by the Applicant during evidence exchange and at the hearing, that the proposal has mitigated the effects of the proposal to an acceptable level, and I now support granting of consent.

Conditions

31. Ms Mackintosh outlines in her legal submissions the role of precedent conditions and I will not repeat this. I agree with Ms Mackintosh, and to that point Mr Allan, that the conditions offered by the Applicant, and those put forward as part of this Supplementary Evidence are clear, robust and represent good planning practice.
32. In general, I accept the proposed amendments to Conditions outlined by the Applicant, and distributed by Ms Wong prior to the hearing today. As part of this Supplementary Evidence I

offer an updated set of conditions which best reflect Council's recommendation and the matters considered as part of evidence exchange and at the hearing.

33. I wish to respond to a matter raised by Mr Black in paragraph 32⁶ of his Second Supplementary Statement of Evidence. Mr Black proposes an amendment to the Applicant's Condition 46, which as per my attached clean set of conditions is Condition 45. I have discussed further with Mr Black, and I consider the addition of the following text '*including on accesses onto Te Rapa Road*' after the words 'safety concerns' will cover his previous point raised. It is my view that the detailed engineering design process and certification role that Council undertakes, will ensure that any residual concerns of Mr Black, which reflect the limited clarity provided by the Applicant on this aspect to date, can be addressed then.
34. I also wish to address Mr Black's Second Supplementary Evidence⁷ which relates to the speed limit matter. Whilst I acknowledge that Mr Black has identified some reservations with any potential speed limit change, I do not share this concern. It is my understanding that Council has discretion to apply for a shorter length than the 500m if it felt it was appropriate for the specific site. Importantly, the New Zealand Transport Agency do have review rights, and can reverse the local authority decision. I understand this has occurred recently in Queenstown. For this proposal, I consider it is likely that the length will be calculated from Avalon Drive to Pukete Road, which will exceed the 500m minimum length, where the speed limit reduction would occur prior to reaching the Te Rapa Road / Wairere Drive intersection and extend past the Pukete Road / Wairere Drive intersection to the east. On this basis, and for the reasons outlined earlier in my Supplementary Evidence, I consider that the reduction in the speed limit is achievable.
35. One residual condition that requires further explanation is the timing of the LGA processes in relation to commencing the construction or operation of the supermarket. As originally drafted the condition allowed for the commencement of construction prior to requiring any LGA approval, on the prerequisite that the supermarket could not operate until the LGA processes, including speed limit and intersection were established, and the Te Rapa Road deceleration lane.
36. Mr Briggs raised the potential risk to Council of a fully constructed supermarket that is unable to achieve the LGA outcomes desired, and the risk this may pose to Council. I have covered this off earlier in my evidence. It is my view, given the likely elapsed time for construction / commencement of the supermarket onsite, the likely 3 - 6 month timing associated with an LGA process, would emphasise the appropriateness of this being confirmed prior to commencing works on site. I have suggested a revised condition 48A to reflect this.

CONCLUSION

37. This conclusion combines the assessments of my Original S42A Report, the S42A Report Addendum, and this Supplementary Evidence.

⁶ Second Supplementary Evidence Mr Black Paragraph 32

⁷ Second Supplementary Evidence Mr Black Paragraphs 7 - 9

38. This application seeks resource consent for the construction and operation of a new Pak N Save supermarket with an associated fuel facility, at-grade car parking and all other associated enabling works.
39. The critical issues arising from the application relate to transportation effects and economic effects.
40. The Foodstuffs North Island Limited (the 'Applicant'), has presented expert technical reports in support of its application. This includes a Broad Integrated Transport Assessment and a Centres Assessment Report, in addition to other technical information. While the original application was considered to be a complete application and additional information was provided as part of responses to Council's S92 Request for Further Information, at the time of public notification being requested by the Applicant there were several important elements which remained outstanding (see Attachments 1 and 2 S92 Outstanding Matters – Transportation 9/11/2018 and Centres Assessment 27/09/2018).
41. At the time of public notification, given the degree of the gap in information available to Council (regarding transportation and economic matters), I made the decision, in consultation with internal and external experts, that additional modelling would be required for both transportation and economic matters. That additional work was subsequently commissioned by Council.
42. Six submissions have been received, the majority of which are in opposition to the application and focus on transportation and economic effects. Many of the submissions are stated in general terms, with limited specific relief or issues identified. I have considered the submissions for the purpose of my assessment of the application.
43. The additional transportation modelling resulted in the creation of a 2031 VISSIM Model. This VISSIM Model was subsequently provided to all parties on the 18th April 2019, in advance of my S42A Hearing Report being made available, given the benefit this modelling could have for all parties. The 2031 VISSIM Model will assess any future land uses trips within the Te Rapa Corridor to inform overall network efficiency. The same approach was taken with the Independent Safety Audit, which focused on key intersections associated with the proposal and was also distributed on the 18th April 2019.
44. Council commissioned Market Economics to review the economic reports provided with the application and assess the scale of the effect of the proposed supermarket. The purpose of this work was to assist in determining whether the proposal would undermine an existing centre in the localised catchment. The modelling work concluded that while the economic impacts of the proposal were sizeable, and the economic impacts were felt across a number of established centres, the effects would not undermine the business hierarchy, as it is unlikely that any established supermarket within the localised catchment would close as a result of the proposed supermarket. The closure of a supermarket was considered by Market Economics as being a measure that would likely contribute to the undermining of a business centre.

45. I agree with the Market Economics interpretation of the supermarket provisions in the Industrial Zone, particularly Rule 9.5.4. The rule does not define or provide criteria to determine what it means to ‘undermine’ the role or function of other centres. In this context Market Economics have determined this to mean the closure of a supermarket, thereby changing the role or function of an established centre. The Market Economics reports records that the most significant effects in terms of % change to floorspace productivity and vulnerability to adverse effects is the Nawton Suburban Centre Countdown which would experience measurable impacts, that would contribute to lower floorspace productivity and less overall sales, but not to the extent that closure of the supermarket is likely. I therefore rely on the Market Economics conclusion that the scale of the proposed Pak N Save supermarket will not undermine the Nawton Suburban Centre and established Countdown supermarket.
46. Accordingly, based on the assessment criteria for supermarkets seeking to establish in the industrial zone, I have concluded that the proposal will not undermine the centres hierarchy and that the effects of the application in that regard are acceptable.
47. Based on the evidence presented and the outcomes of the traffic caucusing, in my view the critical issue is any potential adverse transportation safety and efficiency effects arising from the proposal. In that regard, I have reviewed and considered the traffic/transportation evidence and information on this issue, including the information provided in the original application, the revised layout and additional mitigation measures, the relevant technical assessments, the submissions, the applicants evidence and submitters evidence and the hearing evidence. In my view, the transportation effects of the proposal have been robustly considered by all traffic experts, and I rely on the expertise of Mr Black and Mr Meister primarily, but also acknowledge that all experts are in alignment on the critical matters, to inform my view that the transportation effects can be adequately addressed by way of conditions of consent on the Application. Additional specificity has been provided to address the matters raised by Submitters, which make improvements to the original draft wording put forward as part of my S42A Report and S42A Addendum Report. I have attached to this Supplementary Evidence as Attachment 1 a revised set of conditions, to reflect the outcome of the evidence exchange and hearing process.
48. I consider any potential adverse traffic effects are able to be appropriately mitigated with the proposed conditions in Attachment 1. I have relied on the technical expertise of Mr Black and Mr Meister, in addition to the other traffic experts who have presented, in addition to the Independent Safety Audit, when coming to this conclusion.

RECOMMENDATION

49. For the reasons explained above, I am satisfied that the adverse effects of the development can be appropriately managed, and that resource consent may be granted, subject to the suite of conditions attached to this report.

8 October 2019