

BEFORE THE HAMILTON CITY COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a resource consent application lodged by Foodstuffs North Island Limited to establish a new supermarket and a drive-through fuelling facility at 980 Te Rapa Road, Pukete, Hamilton

**STATEMENT OF EVIDENCE OF KAY PANTHER KNIGHT
ON BEHALF OF WOOLWORTHS NEW ZEALAND LIMITED**

PLANNING

1. EXECUTIVE SUMMARY

- 1.1 This evidence considers, on behalf of Woolworths, the application by Foodstuffs North Island Limited ("**Applicant**") to establish and operate a Pak'nSave supermarket and associated refuelling facility from the site at Te Rapa Road, Pukete, Hamilton ("**Site**").
- 1.2 The Council's section 42A hearing report concludes that resource consent should be declined on the basis of unacceptable adverse traffic effects that have not been sufficiently mitigated by the Applicant. Further, the section 42A report concludes that the proposal is inconsistent with the objectives and policies of the Hamilton City Operative District Plan 2017 ("**District Plan**"), owing to the residual transportation safety concerns. I agree with these conclusions.
- 1.3 Notwithstanding the above conclusions, the section 42A report proposes a suite of conditions of consent that require additional mitigation measures to address the adverse transportation safety effects of the proposal, the most critical being:
- (a) signalisation of the intersection of Wairere Drive and Karewa Place;

- (b) associated (and as a precedent) reduction in speed limit on Wairere Drive in the vicinity of the proposed signalised intersection with Karewa Place from 80km/h to 60km/h; and
 - (c) design and construction of a slip lane along Te Rapa Road to facilitate left turn in access manoeuvres into the Site, utilising land owned by third parties (ie not solely within the road reserve).
- 1.4 None of the identified critical and necessary mitigation measures are deliverable solely by the Applicant. It is my view that this does not represent good planning practice and further, provides the Commissioners with no certainty that the identified adverse transportation safety effects arising from the proposal can be appropriately mitigated.
- 1.5 To this end, I support the Council's recommendation to decline consent and do not consider that the proposed conditions of consent will appropriately mitigate the concerns raised so as to alter that view.

2. INTRODUCTION

- 2.1 My name is Kay Panther Knight and I hold the position of Director at Forme Planning Limited. I have held this position since March 2017, and prior to that, I held the position of Principal Planner at Civitas from November 2015 to February 2017. I have over 17 years' experience in New Zealand and the United Kingdom.
- 2.2 I hold the Degree of a Master of Planning Practice (Honours) from the University of Auckland. I am an intermediate member of the New Zealand Planning Institute.
- 2.3 In respect of this application, I provided Woolworths advice prior to it lodging a submission in opposition to the application by the Applicant. I have reviewed the application, the section 92 requests and responses, the section 42A hearing report, section 42A addendum and Council's experts' evidence, and the Applicant's experts' evidence. I have read the traffic engineering evidence prepared on behalf of Woolworths, by Mr Don McKenzie.
- 2.4 Also of relevance in considering this application, I was involved in the evolution of the relevant provisions in the now operative District Plan as it developed,

representing a number of interests throughout the appeals process on the District Plan, including the provisions as they relate to supermarket activities in the Industrial zone. I am therefore very familiar with the issues at hand.

2.5 I have been asked by Woolworths to prepare planning evidence in relation to this application by Foodstuffs, insofar as the extent to which the proposal, if granted resource consent, might adversely affect Woolworths' existing supermarket operation on the site directly opposite, located at 8 – 14 Eagle Way, Pukete.

2.6 I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2014. I have complied with the Code of Conduct in preparing this evidence and will continue to comply with it while giving oral evidence at the hearing. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

3. DESCRIPTION OF SITE AND THE EXISTING ENVIRONMENT

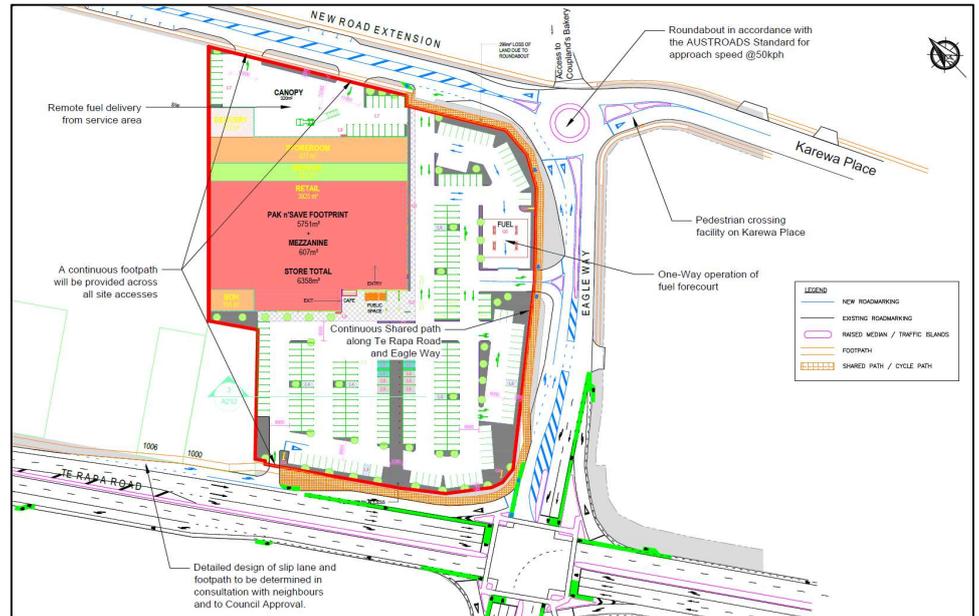
3.1 The Applicant's planner, Mr Norwell, has described the Site in section 3 of the Assessment of Environmental Effects ("**AEE**"). The following is the locality plan found at figure 1 of the AEE.



- 3.2 To the south-east of the Site (at 980 Te Rapa Road, Pukete, Hamilton) is located an existing Countdown supermarket and K-Mart department store. Directly opposite the Site is located the sub-regional centre known as The Base. These activities relative to the subject Site are better illustrated in the following image.



- 3.3 Of relevance to Woolworths, the proposal on the Site seeks to gain access from Eagle Way, almost directly opposite the entry and exit into the Countdown site, and to undertake significant alterations to the intersection of Eagle Way and Karewa Place, immediately north of the Countdown site. Further afield, the proposal seeks to make amendments to other nearby intersections on strategic transport corridors, including Wairere Drive. These access points and road works are illustrated in relation to the Site and Countdown's site in the following image.



(Source: Evidence of John Burgess on behalf of Foodstuffs North Island Limited – Transport – Dated 20 September 2019)

- 3.4 It is understood that various consents¹ held by Old Porter HQ Ltd for the construction of a mixed use commercial development on the Site (and the land to the west) lapsed on 31 July 2019. An application pursuant to section 125 of the RMA to extend the lapse period for a further 5 years was declined on 30 July 2019² however an appeal has been filed to that decision (pursuant to section 357(1) of the RMA).

4. REVIEW OF PLANNING ASSESSMENTS

- 4.1 The Application was originally lodged seeking consent for an overall Restricted Discretionary activity. However, this activity status was challenged by the Council prior to notification as it relies on whether or not the proposed supermarket is considered to meet the relevant Standard 9.5.4 in the District Plan. This Standard relates to economic effects on centres and relies on the preparation of a Centres Assessment and that assessment affirming that the proposal does not result in adverse effects on the primacy, function, vitality and amenity of centres within Hamilton's business hierarchy.

¹ HCC Decision Numbers: 010.2014.7723.007, 010.2014.7724.002, 010.2014.7725.003, 010.2014.7726.003, 010.2014.7727.004.

² HCC Decision Number: 010.2014.00007727.004.

- 4.2 The Council requested additional information pursuant to section 92 in order to determine the economic effects arising from the proposal and to therefore establish the activity status. The Applicant failed to provide sufficient information for the Council to reach a conclusion in this regard, which ultimately led to the Applicant requesting public notification and an acceptance that the application ought to be processed as a Non-Complying Activity.
- 4.3 However, having reviewed the section 42A report, I understand the Council's reporting planner is now satisfied that the Application is a Restricted Discretionary activity under Rule 9.5.4, and further, that the proposed supermarket "will not undermine the role and function of other centres within the localised catchment in the business hierarchy".³
- 4.4 Following on from the confirmation of Restricted Discretionary activity status, the Council's discretion in considering the proposed activity is therefore limited to assessment criteria listed in clause 9.7 of the District Plan for new supermarkets in the Industrial zone (and associated effects), specifically:
- A1 – General criteria
 - M – Supermarkets
 - G – Transport
 - H2 – Function, Vitality and Amenity of Centres.⁴
- 4.5 Further, the proposal requires consent for a suite of other consent matters, each which reference the relevant assessment criteria contained in Volume 2, Appendix 1.3.3 of the District Plan. Relevantly given the critical transportation effects, consent is required pursuant to Rule 25.14.4.3 of the District Plan in this case, and as such it is subject to the matters of discretion (and assessment criteria) in Volume 2, Section 1.3.3 G Transport (already listed above).
- 4.6 These matters have been variously assessed in the previous section 42A hearing report and addendum, and by the Applicant's experts to varying degrees. That assessment is addressed below.

³ Section 42A hearing report dated 21 May 2019 at [65].

⁴ District Plan at Volume 2, Appendix 1.3.

Section 42A Hearing Report

- 4.7 The Council's reporting planner, Mr Le Heron, recommends the Application be declined on two key grounds:
- (a) The proposal will generate significant adverse transportation effects which have not been appropriately mitigated; and
 - (b) The proposal is inconsistent with the objectives and policies of the District Plan in respect of transportation matters due to the outstanding transportation safety concerns.

4.8 These matters are further addressed below.

Assessment of Effects

4.9 At section 7.1 of the addendum to the section 42A report, the Council's reporting planner outlines the potential adverse effects in respect of transportation that may arise from the proposed supermarket. The conclusion reached is that:⁵

...the potential adverse transportation safety effects are significant, and more than minor, and the applicant has not at this stage demonstrated how the effects can be mitigated to an acceptable level.

4.10 The assessment to support this conclusion is extensive and relies on the expert analysis by Mr Black and the outcome of the Independent Safety Audit, which identified significant transportation concerns. Mr Black has provided a range of conditions of consent which, if adopted, are considered to appropriately mitigate the potential transportation effects arising from the proposal.

4.11 Despite the Council's reporting planner's recommendation to decline consent, the section 42A report concludes that:⁶

...if additional mitigation measures, for example as outlined in this S42A Addendum Report and Appendix D, were to be incorporated into the proposal and addressed during the

⁵ Addendum to the Section 42A Hearing Report dated 7 October 2019 at [77].

⁶ Ibid at [123].

hearing, I will consider these and whether they address the safety concerns that are currently identified.

- 4.12 The full range of such transport safety (and network efficiency) concerns are set out in the evidence of Mr McKenzie on behalf of Woolworths and I do not repeat that analysis here, except to summarise the following key concerns in relation to the continued safe and efficient operation of the surrounding road network from a transportation perspective.

Speed environment on Wairere Drive

- 4.13 One proposed mitigation measure to respond to adverse traffic effects arising from the proposal is to partially signalise the intersection of Wairere Drive and Karewa Place. The Council's traffic experts have concluded that this is required as a precedent prior to the proposed supermarket operating to facilitate right hand turns into Karewa Place, on the grounds that in the absence of a partially signalised intersection at this location in the network, the subsequent effects on the safety and efficiency of the network would be unacceptable, particularly in relation to the safety and efficiency of movements at the intersection of Wairere Drive and Te Rapa Road.
- 4.14 However, I understand that all traffic experts in attendance at the caucusing on 23 May 2019 agreed that in order to ensure the partial signalisation does not itself generate adverse safety effects on Wairere Drive, the speed limit on Wairere Drive (in the vicinity of Karewa Place) is required to be reduced from 80km/h to a speed limit of 60km/h relative to the manoeuvres that will take place in this location. Such a change to the traffic environment is acknowledged by all to require a change to the Council's bylaw and a separate notification process under the Local Government Act ("**LGA**").⁷ Crucially, neither this process nor outcome are within the Applicant's control to deliver.
- 4.15 Notwithstanding, Mr Le Heron proposes a condition of consent requiring such an outcome:⁸

50. Prior to the operation of the supermarket, a reduction in posted speed limit on Wairere Drive between the Pukete Road

⁷ Ibid at Appendix C, Expert Caucusing Notes at 6a; Section 42A hearing report dated 21 May 2019 at [140].

⁸ Ibid at Appendix D.

and Te Rapa Road intersection to a maximum of 60km/hr shall be established.

- 4.16 In my view, such a condition is outside the control of the Applicant and therefore leaves no certainty that the mitigation it proposes can be delivered. I discuss this matter further below.

Te Rapa Road access

- 4.17 The proposal involves the construction of a left-in vehicle crossing and deceleration slip lane from Te Rapa Road, a limited access road.
- 4.18 The transportation caucusing statement confirms that all traffic engineers were in agreement that a left turn entry to the Site from Te Rapa Road is required to mitigate traffic effects at the intersection of Te Rapa Road and Eagle Way and to maintain the pedestrian footpath. This is subject to the provision of an appropriately designed deceleration lane (in accordance with appropriate design standards).
- 4.19 Mr Le Heron relies on the outcome of this caucus and the evidence provided by Mr Meister on behalf of Council to confirm that a deceleration lane would appropriately mitigate the potential effects of the activity on the intersection of Te Rapa Road and Eagle Way. However, at the time of preparing the section 42A report, the Applicant had not produced a site layout that appropriately illustrated the design of the deceleration lane, and Mr Le Heron relied on a condition of consent to achieve such an outcome:⁹

47. A left turn deceleration lane on Te Rapa Road is constructed in accordance with standard Austroads Design Practices, or to the satisfaction of HCC, to avoid operational and safety concerns and provide access off Te Rapa Road to the site.

- 4.20 Again, to implement this condition, I understand the Applicant is required to rely on the purchase of land from third parties as the deceleration lane cannot be accommodated within the existing width of the road reserve and / or the Site. In my view, in the absence of securing access to that landholding, the mitigation that is intended to be provided by the condition is uncertain, outside the control

⁹ Ibid at Appendix D.

of the Applicant and therefore inappropriate. This mitigation cannot therefore be relied upon – a matter I will also discuss further below.

4.21 Overall, having regard to the assessment of effects in the Hearing Report and as informed by the Council's traffic experts, it is my view that the level of uncertainty around the ability of the Applicant to satisfactorily mitigate what have been identified as significant adverse effects, renders it inappropriate to grant the proposal consent at this time. I am concerned therefore that the section 42A report goes on to present "conditions precedent" that it acknowledges may not even be feasible, nor deliverable by the Applicant.¹⁰

4.22 Good planning practice seeks that conditions of consent must be (among other things):

- certain;
- practicable and enforceable;
- within a Council's powers under the Resource Management Act; and
- physically and technically achievable.

4.23 Conversely, in my opinion, it is not good planning practice for conditions to:

- require the approval of another person or entity, ie a secondary approval;
- require actions of third parties; and
- be outside the legal powers of the consent authority.

4.24 In my view, conditions 47 and 50 do not achieve best planning practice, and these concerns are not overcome or alleviated by the proposed review condition 71.

4.25 In the absence of valid and enforceable conditions of consent which are able to be implemented by the consent holder, I consider the application should be declined on the grounds of significant adverse effects on the traffic environment

¹⁰ Ibid at [158].

and on the safety of motorists, pedestrians and cyclists since the Applicant has not demonstrated that:

- (a) the proposed mitigation measures are achievable and feasible;
- (b) the conditions of consent can be wholly implemented by the Applicant without reliance on any other third party or approval process; and
- (c) sufficient information has been provided to confirm those mitigation measures achieve an acceptable outcome in terms of level of effect on the traffic network and surrounding activities.

4.26 For these reasons, it is my opinion that consent should not be granted in advance of the identified critical mitigation measures forming an integral, certain and deliverable part of the proposal.

Statutory Assessment

4.27 The Council's reporting planner concludes that the proposal is consistent with the National Policy Statement on Urban Development Capacity and the National Environmental Standard for Assessing and Managing Contamination in Soil to Protect Human Health. I have not undertaken my own assessment of these higher order provisions and accept these conclusions therefore.

4.28 It is my opinion that the section 42A report does not thoroughly assess the proposal against the relevant provisions of the Waikato Regional Policy Statement ("**WRPS**"), particularly in respect of transportation matters. Objective 3.12 of Part A of the WRPS seeks to achieve:

Development of the built form (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:

...

c) integrating land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors;

...

(emphasis added)

- 4.29 Having concluded above that the proposal and proposed conditions of consent do not adequately mitigate the potentially significant adverse effects on the transport network (specifically the safe operation of the proposed partial signalled intersection at Wairere Drive and Karewa Road, and the left turn access at Te Rapa Road) and that the proposal will therefore compromise the safe, efficient and effective operation of the transport infrastructure corridor, I consider that the proposal is inconsistent with Objective 3.12(c) of the WRPS.
- 4.30 Overall, I do not consider that the proposed conditions of consent provide sufficient certainty to reach this outcome, and therefore conclude that the proposal remains inconsistent with the objectives and policies of the District Plan accordingly.

Chapter 2 Strategic Framework

- 4.31 I agree with Mr Le Heron that the proposal is inconsistent with the overarching objectives and policies of the District Plan:

Objective 2.2.14

Land use and development is integrated with the provision of infrastructure (including transport, Three Waters and open space).

Policy 2.2.14a

Development shall not compromise the safe, efficient and effective operation and use of existing or planned infrastructure.

(emphasis added)

- 4.32 In the absence of the Applicant demonstrating that the proposal will not compromise the safe, efficient and effective operation of the Wairere Drive / Karewa Road intersection and the left turn access into the Site from Te Rapa Drive, or providing sufficient certainty as to this outcome via implementable conditions of consent, it cannot be concluded that the proposal achieves, or is consistent with, the strategic framework of the District Plan in respect of adverse effects upon the transport infrastructure network.

Chapter 25 City Wide - Transportation

- 4.33 I agree with Mr Le Heron that in the absence of appropriately mitigating the adverse effects of the proposal on the transportation network, specifically due to the inability of the Applicant to implement all of the proposed conditions of consent, the proposal remains inconsistent with the objectives and policies of Chapter 25 of the District Plan.
- 4.34 Specifically, Objective 25.14.2.1 seeks to ensure that integrated multi-nodal transport networks that meet national, regional and local transport needs are efficient, safe and integrated with land use (amongst other things).
- 4.35 In the absence of appropriate mitigation and / or a suite of reliable and certain conditions of consent, the proposal does not achieve the outcomes required by the following policies in particular:
- Policy 25.14.2.1b
- The transportation network and related infrastructure is planned, designed, constructed and managed in a manner that:
- ...
- vi. Provides access to and has regard for the safety and needs of the mobility impaired, transport disadvantaged, cyclists, pedestrians, passenger transport users, and others using the transport corridor to move from place to place.
- Policy 25.14.2.1e
- Adverse effects of subdivision, use and development activities on the transport network are avoided or minimised with particular regard to:
- ...
- iv. Ensuring performance, condition, safety, efficiency and long-term sustainability and affordability of the transport network.
- (emphasis added)
- 4.36 Overall, I do not consider that the proposal achieves the objectives and policies of Chapter 25 City Wide – Transportation.

Assessment Criteria

- 4.37 Having regard to the overall activity status as a Restricted Discretionary activity, it is relevant to consider the matters of discretion and assessment criteria in respect of the establishment of a new supermarket in the Industrial zone and those criteria triggered by all consent matters, namely Transport (Volume 2, Section 1.3.3 G of the District Plan).
- 4.38 I agree with Mr Le Heron that the proposal does not satisfy the criteria set out in clauses G1 and G2, specifically:
- G1. The extent to which the proposal:
- Integrates with, and minimises adverse effects on the safe and efficient functioning of the transport network and infrastructure.
- Minimises conflicts between users both within the site and any adjoining transport corridor.
- ...
- G2. The extent to which the proposal and the traffic (including nature and type of the traffic, volume and peak flows, travel routes) generated by the proposal:
- Requires improvements, modifications or alterations to the transport network and infrastructure to mitigate its effects.
- ...
- (emphasis added)
- 4.39 The proposal and conditions of consent fail to demonstrate that the Applicant has sufficiently minimised adverse effects on the safe and efficient functioning of the transport network, and conflicts between users within the adjoining transport corridor.
- 4.40 Criteria G2(a) is directly applicable to the proposal and in my view, there are improvements and modifications to the transport network that are required to mitigate the effects of the proposal that are not within the remit, power or ability of the Applicant to implement or obtain. These alterations require Council to promote, carry out and successfully complete a process that is governed under

the LGA which involves a public consultation process. Secondly, these alterations require the purchase of land from third parties in order to implement the condition of consent.

- 4.41 On this basis, the proposal cannot currently be considered to satisfy the relevant assessment criteria within the District Plan.

Applicant's evidence

- 4.42 The evidence of Mr Norwell¹¹ omits two reasons for consent identified in the section 42A report:

- Rule 25.14.4.1(h) – The maximum permitted width of a vehicle crossing in the Industrial zone is 7.5m.

The vehicle crossings proposed along the Te Rapa Road, Eagle Way and Maui Street extension frontages of the site are in excess of the permitted standard.¹²

- Rule 25.14.4.2 – Parking, Loading Spaces and Manoeuvring Areas – Where on-site parking is provided, sufficient space shall be provided for vehicle queuing.

The Te Rapa Road and Eagle Way accesses do not comply with the queuing spaces outlined in Rule 25.14.4.2(n).¹³

- 4.43 These omissions suggest recent amendments to the proposal have resulted in compliance with these standards. However, the site plan provided by Mr Burgess includes several vehicle crossings that exceed 7.5m in width, and confirmation of compliance with the queuing requirements in Rule 25.14.4.2(n) of the District Plan has not been provided. In my view, these matters continue to be relevant to the proposal as reasons for consent.

- 4.44 With reference to the Restricted Discretionary activity status, Attachment 1 of Mr Norwell's evidence identifies the matters of discretion afforded to each reason for consent. Only economic effects are attributed to the scope of matters that can be assessed in respect of the construction of a new supermarket in the Industrial zone, which in my opinion is not correct. As noted

¹¹ Evidence of Matthew Norwell dated 20 September 2019 at [7.1].

¹² Ibid.

¹³ Ibid.

previously in this evidence, clause 9.7 of Chapter 9 Industrial zone in the District Plan specifically provides Council discretion to consider all of the following matters when assessing such an activity (Volume 2, Section 1.3.3 of the District Plan):

- (a) A1 General criteria;
- (b) M Supermarkets – including built form and site layout;
- (c) G Transport; and
- (d) H2 Function, vitality and amenity of centres.

4.45 In my view, the Council has discretion to consider transport related effects arising from the construction of a new supermarket in the Industrial zone. Further, transport related consent matters also require consideration of the matters listed at G – Transport in Volume 2, Section 1.3.3 of the District Plan.

4.46 In respect of the proposed partial signalised intersection, Mr Norwell explains he has relied on the evidence of the Applicant's traffic engineer, Mr Burgess, to ensure that right hand turns into Karewa Road have been appropriately mitigated. In respect of condition 50, Mr Norwell acknowledges in his Attachment 2 that:

A reduction in speed limit is supported but this is beyond Foodstuffs' control as this would be implemented by the Council.

4.47 The assessment of effects undertaken by Mr Norwell in his evidence does not address the need to reduce the speed environment along Wairere Drive (to 60km/h) to provide for the safety of that proposed intersection, nor the implications of a condition that cannot be implemented by the consent holder, requires a public consultation process under the LGA, and cannot be implemented under the RMA. In other words, no assessment has been undertaken by either the Applicant or the Council of the proposal in the circumstance that the speed limit reduction, and subsequently the signalisation of that intersection, cannot be delivered. This is fundamental.

4.48 In my view, the assessment is lacking and the proposed approach to the conditions does not reflect good planning practice. Further, the proposed

conditions (and the mitigation that they intend to provide) cannot be relied upon in this current assessment.

- 4.49 In regard to the left hand turn into the Site from Te Rapa Road, Mr Norwell states:¹⁴

The Te Rapa Road access has been amended to allow for left turns in only and the additional traffic modelling has revealed that this left turn in is critical for traffic distribution purposes and for avoiding unacceptable queuing effects on the surrounding network.

- 4.50 I agree with Mr Norwell that the left turn is critical to appropriately mitigate such effects on the surrounding network. Mr Norwell goes on to state:¹⁵

The applicant accepts that these slip lanes will need to be incorporated into the development and constructed to the appropriate engineering standards. That can be achieved by imposing conditions of consent that require such slip lanes to be approved by Council and implemented before the supermarket commences trading operation.

- 4.51 Typically, I would agree that changes to the layout of the road reserve to demarcate a slip lane can be appropriately managed in this way. However, in this case, the deceleration (slip) lane that is required to mitigate the adverse safety effects of the left turn into the Site from Te Rapa Road cannot be accommodated within the current width of the road reserve, necessitating the acquisition of land from third parties. It is unclear whether this land will be acquired in order to facilitate compliance with condition 47. Therefore the mitigation that this condition intends to provide cannot be relied upon.

- 4.52 Having regard to the matters above, I disagree with the conclusions reached in Mr Norwell's evidence that the potential adverse transport effects have been appropriately mitigated, and that the proposal is consistent with the objectives and policies of the WRPS and District Plan accordingly.

¹⁴ Evidence of Matthew Norwell dated 20 September 2019 at [9.19].

¹⁵ Ibid at [9.26].

5. PART 2 CONCERNS

5.1 I agree with Mr Le Heron's view as summarised in the hearing report that:¹⁶

...the significant outstanding adverse transportation effects outlined in section 7.4 of this report contribute to this proposal, in my view, not achieving sustainable management under the Resource Management Act (1991), where the safety and efficiency effects have not been appropriately mitigated.

5.2 Neither the amendments proposed by the Applicant since the preparation of the section 42S report, nor the conditions of consent proposed by Council in the section 42A report overcome the overarching concerns I hold in respect of the adverse effects upon the safety and efficiency of the transport network, to the extent that the proposal could be considered to achieve Part 2 of the RMA.

6. PROPOSED CONDITIONS OF CONSENT

6.1 I have addressed the concerns I hold in respect of the appropriateness of the conditions proposed within Appendix D of the section 42A report throughout my evidence and I do not repeat these concerns here, except to summarise that the adverse effects on the safety, operation and efficiency of the transport network have not been appropriately mitigated by the conditions of consent proposed by Council and as accepted by the Applicant because the conditions proposed are not implementable by the Applicant alone.

6.2 I also note that no condition is proposed requiring the construction, vesting and operation of Maui Street (granted by way of a separate resource consent) prior to operation of the proposed activity. The Applicant is unable to implement the consent without that road having first been constructed.

6.3 In my view, conditions 47 and 50 rely on the approval of third parties to implement these conditions and involve approval processes that sit outside of the RMA. The principles on which these conditions are drafted do not reflect sound planning practice for the reasons set out in my evidence above.

6.4 The conditions do not provide sufficient certainty that the scale of adverse safety and operational effects on the transport network can be appropriately

¹⁶ Section 42A Hearing Report dated 21 May 2019 at [307].

mitigated. The review condition (71) does not sufficiently alleviate these concerns in my view.

6.5 I acknowledge that the Applicant may be prepared to take the risk in obtaining a consent that cannot be implemented, however I remain of the view that this approach essentially “leap-frogs” the assessment of effects whereby the level of effects arising from the proposal is not able to be accurately determined, given the uncertainty around whether the mitigation measures to be provided via condition are actually deliverable or not.

6.6 Therefore in my opinion, it is inappropriate to rely on the proposed conditions to mitigate the significant adverse effects on the safety and efficiency of the transport network.

7. CONCLUSION

7.1 On this basis, I consider the application should be declined pursuant to section 104C of the RMA.

Kay Panther Knight
27 September 2019