

BEFORE THE HAMILTON CITY COUNCIL

IN THE MATTER of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER of a resource consent application lodged by Foodstuffs North Island Limited ("**Applicant**") to establish a new supermarket and a drive-through fueling facility ("**Application**") at 980 Te Rapa Road, Pukete, Hamilton ("**Site**")

**STATEMENT OF PLANNING EVIDENCE OF MICHAEL JAMES BRIGGS
ON BEHALF OF THE BASE TE AWA LIMITED**

PLANNING

1. EXECUTIVE SUMMARY

- 1.1 The proposed supermarket has the potential to result in significant adverse traffic safety effects. I am also of the opinion that further information is required, including in relation to consents granted for the Porter's Land, to allow the Application to be properly considered against the centres assessment criterion and the objectives and policies of the Operative District Plan ("**ODP**") and Waikato Regional Policy Statement ("**WRPS**").
- 1.2 In response to traffic expert caucusing, the Applicant amended the Application to include additional mitigation measures to address the traffic effects. The traffic experts agree that the partial signalisation of the intersection at Wairere Drive and Karewa Place, and the reduction of the speed limit on Wairere Drive to a maximum of 60 km/h are critical to mitigating the traffic effects of the Application.
- 1.3 The Base Te Awa Limited's ("**TBTA**") traffic expert, Mr Parlane, supports the removal of one departure lane on Maui Street, and Mr Black's suggestions regarding pedestrian facilities and cycling facilities.

- 1.4 In my opinion, while the traffic advice indicates that the adverse traffic effects of the Application can be avoided and mitigated with consent conditions, there are some fundamental measures that would need to occur in order for the traffic safety effects to be adequately addressed. These could be managed through conditions that control the timing of giving effect to the activity, however, in my opinion, there still remains a risk that the consent could not be implemented. I consider that the Applicant needs to propose appropriate conditions to avoid, remedy and mitigate the adverse effects of the Application to appropriate levels. I have addressed the changes that I recommend to the Section 42A Report ("**s 42A Report**") draft traffic conditions.
- 1.5 The Porter's Mixed Use Commercial Development activities which have previously been granted resource consents on the Porter's land (which includes the proposed supermarket Site and the adjoining sites) do not appear to have been taken into account in the Centres Assessment Report¹ ("**CAR**") and ME Report, in the event that both the Application and the Porter's Development are established and operating concurrently. I consider that the potential effects of both developments operating should be understood to determine whether the Application would have adverse effects on and / or undermine the role of the Central City and sub-regional centres, as required by the ODP. This also potentially affects the activity status of the Application.
- 1.6 In my opinion, the Application must either be declined or the hearing deferred if the Applicant does not propose appropriate amended conditions, and until the additional CAR information has been obtained and reviewed to confirm that the appropriate effects assessment has been made and the requirements of the ODP and WRPS have been adequately addressed.

2. INTRODUCTION

Qualifications and Experience

- 2.1 My name is Michael James Briggs and I am a Senior Planner at Harrison Grierson in Hamilton. I have held this position since January 2018.
- 2.2 I hold the qualification of Bachelor of Resource and Environmental Planning from Massey University. I am an Intermediate Member of the New Zealand

¹ CAR, Page 29.

Planning Institute as well as a member of the Resource Management Law Association.

- 2.3 I have 12 years' experience as a planner in council and consultancy roles based in Whanganui, Palmerston North and Hamilton. During my career, I have been involved in numerous resource consent, designation and policy processes in both private and public sector roles. I currently undertake planning work for a wide range of clients throughout the Waikato region.
- 2.4 I confirm that I am familiar with the general environs of the Application Site, having visited the area on numerous occasions.
- 2.5 I prepared the submission for TBTA which is attached to the hearing agenda. I appear today in support of that submission.

Expert Witness Code of Conduct

- 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. SCOPE OF EVIDENCE

- 3.1 I have read the s 42A Report prepared by Mr Le Heron and generally concur with his assessment of the Application. However, I disagree with certain aspects of the assessment and consider some matters have not been properly addressed. In my statement I will cover the following points which I consider require either clarification or emphasis:
- (a) a brief context, including details of TBTA and The Base;
 - (b) the Council's and the Applicant's planning assessments;
 - (c) the conditions recommended in the s 42A Report; and
 - (d) my overall conclusions.

3.2 My evidence primarily relates to traffic effects and the centres assessment, which are the matters addressed in TBTA's submission on the resource consent application.

4. CONTEXT

4.1 As identified in TBTA's submission,² The Base is located on the western side of Te Rapa Road from the Site and makes up the "Te Rapa North Commercial Centre", which is described as the Primary Sub-Regional Centre in the Operative Waikato Regional Policy Statement³ and zoned Business 3 (sub-regional centre) in the ODP.

4.2 TBTA is responsible for the development and management of The Base shopping centre and is a joint venture company which is owned by Kiwi Property Ltd and Tainui Group Holdings Ltd.

4.3 The Base currently provides over 87,000m² of retail space, 3,000 car parking spaces and 160 retail tenancies (including over 30 food outlets). The area of The Base to the south of The Base Parade is largely developed, although there is some additional development capacity for retail activities, including Level 1 of the Te Awa shopping centre and infill development of other areas. There is significant development capacity within the area of The Base to the north of The Base Parade, which is largely undeveloped, with the main exception being Mitre 10 Mega.

4.4 There is a suite of resource consents for The Base, including unimplemented consents which authorise the development of various additional commercial activities on the northern part of The Base site and within Level 1 of Te Awa. The consents do not necessarily reflect the actual development proposed, but represent the current consented development capability at The Base (refer to paragraph 5.8 for details).

4.5 It is important that development of "out of zone" activities on adjoining land surrounding The Base has appropriate consideration to The Base sub-regional centre so that the vitality, function and amenity of the centre is not adversely

² TBTA Submission, Section 1.

³ Waikato Regional Policy Statement, Table 6-4 on page 6-34.

affected. This is a requirement of the planning framework in the ODP, which I address below.

5. DESCRIPTION OF THE SITE AND THE EXISTING ENVIRONMENT

The Site

- 5.1 The Assessment of Environmental Effects⁴ (“AEE”) provided with the Application and Hamilton City Council’s (“Council”) s 42A Report⁵ include adequate descriptions of the Site, so I will not repeat them.
- 5.2 The TBTA submission⁶ identifies that the industrial zone objectives and policies assessment of the AEE incorrectly identifies the Site as being in the Te Rapa Corridor. The Applicant’s planning expert Mr Norwell⁷ has identified that the Site has road frontage to Te Rapa Road which is identified as a Major Arterial Road in the ODP road hierarchy and have assessed the proposal in this context accordingly. The AEE identifies that:⁸

There is clear reference and acknowledgement that the Te Rapa corridor is one of the locations in which non industrial activities are potentially appropriate.

- 5.3 Below is Figure 6-4 from Appendix 6 of the ODP:

⁴ AEE, Sections 2 and 3.1.

⁵ Section 42A Report, Section 2.

⁶ TBTA Submission at [3.2](e).

⁷ Evidence of Matthew Norwell dated 20 September 2019 at [13.3].

⁸ AEE, Section 10.1.1, page 31.

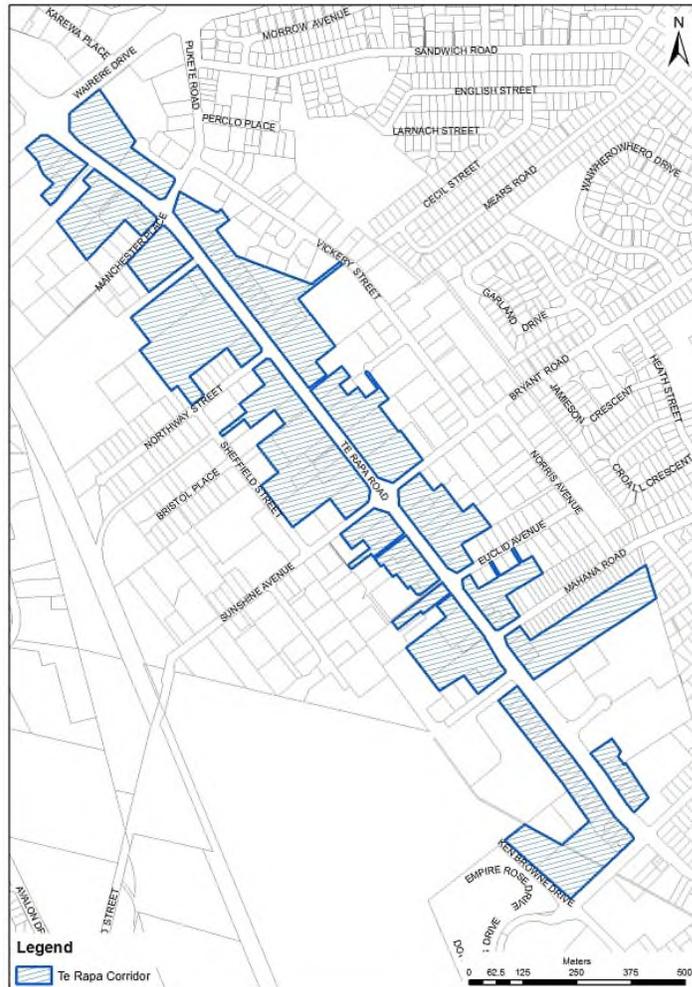


Figure 6-4: Te Rapa Corridor

- 5.4 As the Site is located to the north of the section of Te Rapa Road identified in Figure 6-4, I consider that the AEE reference referred to in paragraph 5.2 above is not relevant to the Site or Application.

Existing Environment

- 5.5 I agree with Council's s 42A reporting officer, Mr Le Heron,⁹ that it is important to identify the consented baseline of the wider Porter's land and surrounding environment, including any resource consents that have not been given effect to. This determines the existing environment against which the Application should be considered.

⁹ Section 42A Report at [33].

- 5.6 The AEE¹⁰ identifies that the Site is Lot 8 of Porter's subdivision consent 011.2018.00006674.001¹¹ ("**Porter's Subdivision**"). As identified in the s 42A Report, Old Porter HQ Limited was granted land use consent 10.2014.7726.001 for a Mixed Use Commercial Development ("**Porter's Mixed Use Commercial Development**") on this Site, comprising activities with the following GFA:
- (a) Offices – 10,917m²;
 - (b) Large format retail – 10,550m²;
 - (c) Education and training – 3,600m²;
 - (d) Community centres – 3,600m²;
 - (e) Places of assembly – 2,930m²;
 - (f) Medical centre – 1,520m²; and
 - (g) Drive through service – 700m².
- 5.7 The s 42A Report Addendum¹² identifies that the status of the Porter's Mixed Use Commercial Development is uncertain as Council's decision to decline a request to extend the lapse date for the consents by 5 years is subject to objections which are yet to be determined.
- 5.8 As identified in the CAR¹³ prepared by Property Economics on behalf of the Applicant, TBTA has land use consent to undertake a multi-purpose development on the northern area (Lot 2) of The Base ("**The Base Multi Purpose Development**"). The land use consent enables the GFA of The Base to increase by 55,392m², rather than the 47,000m² identified in the CAR. The land use consent lapses on 19 December 2022.
- 5.9 I therefore disagree with Mr Le Heron and in my opinion, the following unimplemented consents should be considered when assessing the proposed supermarket:

¹⁰ AEE, Sections 2 and 3.2.

¹¹ Section 42A Report, Attachment 4.

¹² Section 42A Report Addendum at [42].

¹³ CAR, page 29.

- (a) Porter's Subdivision Consent 10.2014.7726.001;
- (b) Porter's Mixed Use Commercial Development; and
- (c) The Base Multi Purpose Development (this has been partially implemented).

6. REVIEW OF PLANNING ASSESSMENTS

Traffic Assessments

- 6.1 In response to traffic expert caucusing, the Applicant has amended the Application to include additional mitigation measures to address the significant adverse traffic safety effects of the proposed supermarket.
- 6.2 The minutes from the caucusing of the traffic experts¹⁴ confirm that all traffic experts agree that the partial signalisation of the intersection at Wairere Drive and Karewa Place is critical to mitigating the traffic effects of the Application, and that the reduction of the speed limit on Wairere Drive to a maximum of 60km/h is essential to ensure that the partial signalisation arrangement is safe.
- 6.3 As identified in the s 42A Report Addendum,¹⁵ while Council's traffic expert Mr Meister considers that the proposed mitigation measures will result in acceptable 2031 network performance when compared with the predicted 2031 baseline, Council's transportation expert Mr Black considers that:
 - (a) a new intersection onto Wairere Drive will result in adverse safety effects due to the speed environment, the close intersection proximity to Te Rapa Road and increased complexity of the road environment;
 - (b) the proposed roundabout and the revised layout of the site accesses introduces new safety concerns that have not been addressed;
 - (c) more information is required to assess effects on neighbouring properties of the proposed Te Rapa Road deceleration lane; and

¹⁴ Section 42A Report Addendum, Appendix C.

¹⁵ Section 42A Report Addendum at [73] – [76].

- (d) the roundabout and proposed access arrangements are likely to have unacceptable adverse safety effects unless further mitigation is provided.
- 6.4 To alleviate his concerns above, Mr Black suggested consent conditions that he considers would appropriately mitigate the transportation effects,¹⁶ which Mr Le Heron then incorporated into the s 42A Report Addendum draft conditions.¹⁷
- 6.5 The Applicant's transport expert Mr Burgess generally supports the additional mitigation measures of the s 42A Report Addendum draft conditions but considers that some amendments should be made.¹⁸ Mr Burgess considers that the traffic effects of the proposed supermarket would be acceptable with the amended mitigation measures in place.¹⁹
- 6.6 TBTA's transportation expert Mr Parlane considers that the Application will generate significant demand for traffic approaching Wairere Drive and without appropriate mitigation would have significant adverse traffic effects with potential safety concerns.
- 6.7 In addition to the partial signalisation of the intersection at Wairere Drive and Karewa Place and the reduction of the speed limit on Wairere Drive to a maximum of 60 km/h, Mr Parlane identifies that there are further risks to the Applicant in relation to the Te Rapa Road deceleration lane appearing to require the acquisition of third-party land and gaining detailed design approval from Council in relation to the Eagle Way roundabout.
- 6.8 Subject to appropriate and detailed conditions of consent, Mr Parlane supports the following mitigation measures:
- (a) the signalising of the Wairere Drive and Karewa Place intersection and reducing the speed limit of Wairere Drive to a maximum of 60km/h;
- (b) the amended Te Rapa Road access and the removal of the left turn out onto Te Rapa Road;

¹⁶ Evidence of Alistair Black dated 10 September 2019, Appendix 1.

¹⁷ Section 42A Report Addendum, Appendix D.

¹⁸ Evidence of John Burgess dated 10 September 2019 at [104] – [110].

¹⁹ Evidence of John Burgess dated 10 September 2019 at [113].

- (c) a roundabout at the intersection of Eagle Way with Karewa Place;
- (d) the removal of one departure lane on Maui Street;
- (e) the provision of pedestrian and cycling facilities; and
- (f) the changes to the internal car parking arrangement.

6.9 Relying on the evidence of the above traffic and transportation experts, I consider that the Application has the potential to result in significant adverse traffic safety effects. It is therefore only with the implementation of a number traffic mitigation measures through clear and detailed conditions that these significant adverse traffic effects can be avoided or mitigated to acceptable levels. In my opinion, there are further amendments required for these conditions / traffic measures to effectively address the effects. As such, it is only if the Applicant is willing to accept the risks of the s 42A Report Addendum draft conditions and propose appropriate amended conditions, that I consider the effects can be considered acceptable and consent be granted.

6.10 I comment on the appropriateness of the s 42A Report Addendum draft conditions in section 7 below.

Centres Assessments

6.11 I have read the CAR and the Market Economics Report (“**ME Report**”) prepared for Council and I consider that they provide thorough assessments in relation to Hamilton’s existing supermarket network. They also identify The Base Multi Purpose Development consents (albeit the GFA figures referred to in the CAR are incorrect as I have previously explained). However, they do not identify or to take into account the Porter’s Mixed Use Commercial Development consents.

6.12 Rule 9.5.4 of the ODP states that (my emphasis):

Resource consent applications for new supermarkets in the Industrial Zone must provide a Centre Assessment Report, in accordance with section 1.2.2.17 (Information Requirements), which:

- i. addresses assessment criteria H2; and

ii. demonstrates that the proposal will not undermine the role and function of other centres within the localised catchment in the business hierarchy.

6.13 Non-compliance with Rule 9.5.4 would make the application a Non-Complying Activity. The subjective nature of the rule creates some difficulty in determining the activity status as it relies on a degree of expert opinion. Examination of the information requirements and assessment criterion H2 (both of which are referred to in the rule) is important.²⁰

6.14 Although Section 1.2.2.17.b) of the ODP allows CARs to correspond with the scale, nature and potential adverse effects of a proposal, Section 1.2.2.17.c(iii) of the ODP states a CAR shall include (my emphasis):

The existing and consented development located outside of the Central City and/or sub-regional centres which has been taken into account when assessing the potential adverse effects of the development.

6.15 The related assessment criteria provide further context. Criterion H2 states:

H Functionality, Vitality and Amenity of Centres

H2 Whether and to what extent the proposed Supermarket activity in the Industrial, Business 1 or 4 zones:

a) Avoids adverse effects on the vitality, function and amenity of the Central City and sub-regional centres that go beyond those effects ordinarily associated with competition on trade competitors.

b) Avoids the inefficient use of existing physical resources and promotes a compact urban form.

c) Promotes the efficient use of existing and planned public and private investment in infrastructure.

d) Is located within a catchment where suitable land is not available within the business centres.

²⁰ TBTA's submission identifies that assessment criterion H1 is relevant to the proposal. This should have referred to H2.

e) Reinforces the primacy of the Central City and does not undermine the role and function of other centres within the business hierarchy where they are within the same catchment as the proposed supermarket.

To demonstrate the above criteria can be satisfied an applicant must supply a Centre Assessment report. The content of the Centre Assessment report shall be prepared in accordance with clause 1.2.2.17.

- 6.16 I consider that it is clear from the information requirements that a CAR is required to consider both existing and consented development when assessing the potential adverse effects of a proposed development. Without such an assessment, the Application would be a Non-Complying Activity because the requirements for a CAR in Rule 9.5.4 would not be met.
- 6.17 The ODP,²¹ CAR²² and ME Report²³ all identify that supermarkets commonly anchor other retail activities. If the Porter's Mixed Use Commercial Development consent lapse objections referred to in paragraph 5.5 above are upheld, it follows that the proposed supermarket could anchor the mixed use activities on the Porter's land and that the proposal could potentially have adverse effects on and / or undermine the role and function of the Central City and sub-regional centres. However, this prospect has not been considered by the economic experts.
- 6.18 I consider that the framework of provisions under the ODP in Rule 9.5.4, Section 1.2.2.17 (information requirements) and assessment criterion H2 require a broader assessment than that which has been undertaken by the Applicant and Council's peer reviewer in the CAR and ME Report respectively, which are both silent on the Porter's Mixed Use Commercial Development consents.
- 6.19 Given that the effects of the proposed supermarket have not been assessed in terms of all consented development, I consider that the information that has been provided is inadequate to enable the Application to be considered as a Restricted Discretionary Activity. It is also inadequate to enable an assessment

²¹ ODP, Section 6.2.2.

²² CAR, Section 8.

²³ ME Report, Section 3.4.

of the matters in criterion H2 and for decisions on the application to be made. Further information is required in relation to these matters to allow the proposal to be properly assessed against the assessment criterion of the ODP.

Other Assessments

- 6.20 I agree with Mr Le Heron's assessment of the positive and other adverse effects assessments outlined in the s 42A Report,²⁴ including his assessment of those matters against the ODP.

Relevant Objectives and Policies

WRPS

- 6.21 The AEE does not assess the proposed supermarket against the objectives and policies of the WRPS. The Applicant's planning expert Mr Norwell in his evidence has provided an assessment of the amended Application against the WRPS and considers that the proposed supermarket does not compromise the safe, efficient and effective operation of infrastructure corridors, and represents a sustainable use and management of a physical land resource in an urban environment.²⁵
- 6.22 The s 42A Report assesses the amended Application against Objective 3.12j) of the WRPS and considers that the proposed supermarket will promote a viable and vibrant central business district in Hamilton City.

ODP

- 6.23 The Application, s 42A Report and Addendum, and Mr Norwell's evidence assess the proposed supermarket against the objectives and policies of the ODP.
- 6.24 In relation to the transportation and central business district objectives and policies of the WRPS and ODP, I do not consider it is possible to make appropriate assessments with the current information.
- 6.25 As discussed below in section 7, the Applicant has not proposed appropriate amended conditions in accordance with the advice of the traffic and

²⁴ Section 42A Report, Section 7.

²⁵ Evidence of Matthew Norwell dated 20 September 2019 at [10.7].

transportation experts above. In addition, as identified in paragraph 6.19 above, I consider that further information is required in relation to the Central City and sub-regional centre effects of the proposed supermarket and the Porter's Mixed Use Commercial Development operating concurrently to allow the Application to be properly assessed against the assessment criterion of the ODP and ultimately the WRPS.

Part 2

- 6.26 While conditions of consent are able to avoid and mitigate the significant adverse traffic effects and potential safety concerns of the proposed supermarket, as identified in paragraphs 6.9 and 6.19 above, the Applicant needs to propose appropriate amended conditions and provide a robust conclusion on the Application's effects on the role of the Central City and sub-regional centres.
- 6.27 Accordingly, I consider that inadequate information has been provided to confirm whether the proposed development will avoid, remedy or mitigate potential adverse effects on the environment and ultimately whether the Application is a sustainable use of natural and physical resources.

7. RECOMMENDED CONDITIONS

- 7.1 As stated in TBTA's submission,²⁶ any mitigation proposed by the Applicant needs to be certain and enforceable.
- 7.2 Council's s 42A Report Addendum by Mr Le Heron correctly identifies that the reduction of the speed limit on Wairere Drive is subject to a process outside of the RMA (Local Government Act 2002, Land Transport Act 1998, and the Land Transport Rule: Setting of Speed Limits 2017) and beyond the control of the Applicant. To assist the Commissioners should they be of a view to grant consent, Mr Le Heron recommends a list of draft conditions, some of which are outside Council's power under the RMA, require third-party approvals and do not provide enough clarity (conditions 48 to 50).

²⁶

Evidence of Matthew Norwell dated 20 September 2019 at [9.26].

- 7.3 I consider that the current s 42A Report Addendum draft conditions do not meet the principals of good conditions for the reasons provided in paragraph 7.2 above.
- 7.4 If the Commissioners are of the view to grant consent, the current s 42A Report Addendum draft conditions pose a significant risk of the Applicant not being able to implement the consent. While I agree that the risk is the Applicant's to bear, I consider that such conditions are not good planning practice.
- 7.5 Mr Norwell considers that the s 42A Report Addendum draft conditions are broadly appropriate, except those over which Council has not reserved control.²⁷
- 7.6 If the Commissioners consider it appropriate to attach conditions as included in the s 42A Report Addendum, the only way I consider that conditions outside Council's power under the RMA and that require third-party approvals could be attached to a consent is if the Applicant proposes appropriate amended conditions in accordance with section 108AA(1)(a) of the RMA.
- 7.7 If the above were to occur, I agree with Mr Parlane that draft conditions 48 and 49 should be amended to reflect the modelling undertaken and the road formation anticipated. Accordingly, I support the proposed wording of conditions 48 and 49 in Mr Parlane's evidence.²⁸
- 7.8 If the Applicant agrees to the intent of s 42A Report Addendum draft condition 50, I consider that the condition should restrict the consent holder from starting construction of the proposed supermarket prior to approval being obtained for reduction of the Wairere Drive speed limit. This would provide more certainty that the speed limit can be reduced prior to the consent being implemented to avoid the potential for the supermarket to be constructed but unable to operate if approval for the speed limit reduction cannot be obtained. The reduction of the posted speed limit itself can be required prior to the operation of the supermarket, which would be appropriate.
- 7.9 I have attached changes to the s 42A Report Addendum draft conditions 48 to 50 in Appendix A.

²⁷ Evidence of Matthew Norwell dated 20 September 2019 at [15.2].

²⁸ Evidence of John Parlane dated 27 September 2019 at [6.4] and [6.7].

8. CONCLUSIONS

- 8.1 I consider that the Applicant should propose appropriate conditions which include the suggested changes I have included in Appendix A to avoid, remedy or mitigate the potential significant adverse traffic effects. I also consider that the additional CAR information raised above should be obtained and reviewed to confirm that the appropriate effects assessment has been made and the requirements of the ODP and WRPS have been adequately addressed.
- 8.2 If this is not achieved, in my opinion, the Application must either be declined or the hearing deferred until additional information has been obtained and assessed.

Michael Briggs
27 September 2019

STATEMENT OF PLANNING EVIDENCE OF MICHAEL JAMES BRIGGS
ON BEHALF OF THE BASE TE AWA LIMITED

APPENDIX A

CHANGES TO S 42A REPORT CONDITIONS DATED 16 SEPTEMBER 2019

Roading

48. Prior to the operation of the supermarket ~~a partial signalised right turn movement from the intersection of Wairere Drive into with~~ Karewa Place shall be ~~established~~ signalised to provide the following:

a. Two continuous unsignalised through lanes south west bound on Wairere Drive with a separate signalised right turn into Karewa Place that has a storage length of 100 metres.

b. Two signalised through lanes on Wairere Drive north east bound with a separate left turn slip lane with a storage length of 50 metres; and

c. An unsignalised left turn only lane on Karewa Place.

This signalised intersection is essential to mitigate severe adverse traffic effects that would otherwise be created at the intersection of Wairere Drive with Te Rapa Road and at the intersection of Te Rapa Road with Eagle Way.

49. Prior to the operation of the supermarket a single-circulating lane roundabout shall be established at the Karewa Place / Eagle Way / Maui Street ~~intersection~~. ~~shall be established~~ The roundabout shall include two approach lanes on Eagle Way and be designed in accordance with the Austroads Guide to design Part 4B Roundabouts.

50A. Prior to the start of construction of the supermarket approval to reduce the speed limit on Wairere Drive between the Pukete Road and Te Rapa Road intersections to a maximum of 60km/hr shall be obtained from Hamilton City Council in accordance with the Hamilton City Speed Limit Bylaw.

50B. Prior to the operation of the supermarket a reduction in the posted speed limit on Wairere Drive between the Pukete Road and Te Rapa Road intersections ~~to shall be~~ a maximum of 60km/hr ~~shall be established~~.