

**IN THE MATTER OF**

the Resource Management Act  
1991

**AND**

**IN THE MATTER OF**

a land use consent application  
by Woolworths New Zealand  
Limited to construct and  
operate a supermarket at 58  
Great South Road, Pokeno

**DECISION BY INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE WAIKATO DISTRICT COUNCIL**

**1. INTRODUCTION**

The Waikato District Council (“**WDC**” or “**Council**”) appointed Dr P H Mitchell, Cr J Sedgwick and Cr J Gibb to hear and decide a land use consent application by Woolworths New Zealand Limited (“**Woolworths**” or “**applicant**”) to construct and operate a supermarket at 58 Great South Road Pokeno.

The location of the proposal is shown in Figure 1 below.



**Figure 1 Site Location**

A hearing of the application was held in Tuakau on 26 August 2019. In accordance with section 103B of the Resource Management Act 1991 (“**RMA**”), the Council’s section 42A report, all the applicant’s evidence and expert evidence submitted on behalf of Z Energy, was pre-circulated. As such, this material was taken as read at the hearing and the various witnesses requested to provide a relatively brief summary of their evidence.

By agreement of all parties, the hearing was adjourned prior to the applicant filing its written right of reply in order to allow further discussions between the parties about possible consent conditions prior to submitting the reply.

We also record that we undertook a site visit immediately prior to the commencement of the hearing.

## 2. THE PROPOSAL

The Assessment of Environmental Effects (“**AEE**”) that accompanied the application provided the following overview<sup>1</sup> of the applicant’s proposal, which we adopt for the purpose of recording our decision:

The Applicant proposes to construct and operate a Countdown supermarket on the subject site, comprising the following key elements:

- 3,000m<sup>2</sup> supermarket building, including 200m<sup>2</sup> of at-grade office and 100m<sup>2</sup> for plant;
- Approximately 7.6m in height and located on the rear half of the site;
- Signage on the building and a 7.7m-high pylon sign on the site frontage;
- 146 parking spaces on-site, including 5 parent parks and 4 accessible parks. Additionally, 8 parallel parks are proposed on Wellington Street and a number of queueing spaces for customers collecting online orders;
- All vehicular access from Wellington Street via two crossings, the first for customer vehicles only and then second for both customer vehicles and service vehicles;
- Provision of on-site and boundary landscaped planting, including construction and ongoing maintenance of a public amenity area along the Great South Road frontage, comprising approximately 650m<sup>2</sup> in area and incorporating covered seating areas and a street verandah. Landscaped planting along the southern / rear boundary also forms a large component of the landscape strategy for the site;
- Construction and vesting of Wellington Street to provide for two lanes of traffic (one in either direction) to and from the intersection of Wellington Street with Great South Road and the proposed service yard to the rear of the site;
- Retaining walls to the northern and eastern boundaries, and acoustic fencing surrounding the service yard to the rear of the site;
- Earthworks and other preparatory site works to construct and service the development, ....

For clarity and ease of reference the proposal is generally as depicted in Figure 2 on the following page.

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<sup>1</sup> Section 4.1



**Plan view**



**South west elevation**



**South east elevation**



**Exterior Perspective from the Corner of Great South Road and Wellington Street**

**Figure 2 The Proposal (not to common scale – for context only)**

### 3. APPLICATION AND ACTIVITY STATUS

It is uncontested that the subject site:

- Covers an area of some 1.13 hectares, held in several titles;
- Is zoned “Business” in the operative Waikato District Plan (“**District Plan**”);
- Is located within the Pokeno Business Centre and is subject to the Pokeno Structure Plan, both as set out in the District Plan;
- Abuts Great South Road to the southwest and Wellington Street (a paper road) to the south east, with the latter proposed to be formed as part of the proposal so as to enable vehicular access to the proposed supermarket;
- Abuts residentially zoned land to the northeast and business zoned land to the northwest;
- Is subject to an Amenity Planting requirement along its north eastern boundary;
- Is subject to a Main Frontage Control Line along its boundary with Great South Road; and
- Contains a high background noise overlay on a small area of its north eastern boundary;

We also understand that a portion of the site is located within the 1% annual exceedance probability floodplain.

It is also common ground that Woolworths’ land use consent application triggers various rules in the district plan, and that when they are “bundled” the overall proposal is to be assessed as a **discretionary activity**.

### 4. SUBMISSIONS

#### 4.1 Overview

The application was publicly notified and 17 separate submissions were received, a summary of which is presented in Table 1 below.

Submitter	Support / Oppose / Neutral	Wish to be heard?	Note
D J Costello	Support	Yes	
I Morris	Support, subject to conditions addressing several matters	No	
P Morris	Support	No	

<b>Submitter</b>	<b>Support / Oppose / Neutral</b>	<b>Wish to be heard?</b>	<b>Note</b>
K J Norgrove	Support	Yes	Prior to the hearing, Mr Norgrove advised that he was willing to answer any questions from the panel regarding the possible integration of the earthworks proposed by the applicant and those he considers would enable the future development of his adjoining land.
D C Little	Support	Yes	
C J Little	Support	Yes	
K Langrish	Support	No	
Pokeno Village Holdings Limited	Support	Yes	
G J McIntosh	Support	No	
Ministry of Education	Neutral	Yes	Subsequently advised they did not wish to be heard
Z Energy Limited	Opposed	Yes	
T K McIntosh	Support	No	States he is a trade competitor
W J McIntosh <sup>2</sup>	Support	No	
Pokeno Community Committee	Support, conditional on several amendments being made	Yes	
Pokeno Bacon Company and J & H Clotworthy	Oppose	Yes	States they are trade competitors
T Mao	Support	Yes	States he is a trade competitor  Received just under 6 hours late

**Table 1 Summary of submissions**

<sup>2</sup> Ms McIntosh filed 2 separate submissions, one as a private resident and one as a business owner

## **4.2 Late submission**

The submission from T Mao was received a little under 6 hours after the submission period closed. As recommended by the section 42A report writer, Ms Carmine<sup>3</sup>, we have accepted this submission, pursuant to section 37 of the RMA, noting that we understand from the section 42A report that the applicant has indicated to Council staff that it has no objection to the submission being accepted.<sup>4</sup>

## **5. APPEARANCES**

### **Applicant**

The applicant was represented at the hearing by:

- Lauren Eaton and Paige Coulter – legal counsel;
- Peter Buchan – a senior Woolworths executive;
- Graeme Scott –urban design consultant;
- Curt Robinson –acoustic consultant;
- Mike Smith –civil engineering consultant;
- Mark Georgeson – transportation consultant; and
- Kay Panther-Knight – planning consultant.

### **Submitters**

The following submitters were represented at the hearing and spoke to their submissions:

- Z Energy Limited - Gary Black – transportation consultant;
- Pokeno Bacon Company - Helen and John Clotworthy;<sup>5</sup> and
- Pokeno Community Committee – Rick Odom.

### **Waikato District Council**

The Council was represented at the hearing by:

- Michelle Carmine, planning consultant and author of the section 42A report;
- Naomi McMinn, transportation consultant;
- Lauren White – urban design consultant;
- Gareth Bellamy – Council’s road safety engineer;
- Kirsty Ridling – Council’s senior solicitor; and

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<sup>3</sup> Section 42A report - Section 4.2.2

<sup>4</sup> Ibid

<sup>5</sup> The submission was presented by Mrs Clotworthy

- Jason Wright – Council’s consents team leader.

We were also assisted by our Committee Secretary, Jessica Thomas noting also that several other Council staff were also in attendance.

## **6. SUBMISSIONS / EVIDENCE PRESENTED**

### **6.1 Applicant**

#### **6.1.1 Opening submissions - Lauren Eaton**

Ms Eaton presented opening legal submissions on behalf of the applicant. Having first provided a concise summary of the proposal, she explained the various factors that have influenced the proposal’s design and how the applicant had responded to the outcomes sought by the District Plan as far as it was practicable to do so. Ms Eaton also explained that the applicant had worked closely with the Council officers and advisors, the end result being what she referred to as “a modern design, in keeping with the Council’s aspirations for the Pokeno town centre”.

Ms Eaton then explained how the applicant had amended the design of the proposed Great South Road – Wellington Street intersection in response to the submission by Z Energy Limited (“**Z Energy**”).

She then summarised the statutory framework, noting that:

- The proposal was a discretionary activity;
- If we used our discretion to apply a “permitted baseline’ assessment, it should include those aspects of the proposal that are permitted activities in the District Plan and the effects associated with an existing, unimplemented resource consent for a smaller supermarket on the site.
- If we decided not to exercise our discretion of apply the permitted baseline, it would not materially affect our assessment of the proposal and we should grant this consent, as the section 42A report also recommends.
- The proposal does not strictly comply with a District Plan requirement that all buildings should have internal floor space up to the Great South Road boundary and verandahs built to cover the footpath – this being the reason why a discretionary activity resource consent is needed. Further, she stated that while the proposal does not meet all the “design guidelines” applicable to the Pokeno town centre, the District Plan contemplates that they will not all be achieved. However, the design of the landscaped plaza that was open to the public, including seating and a large verandah, would encourage activation and inhabitation of the street frontage, as the District Plan envisages. She further observed that the applicant and Council teams agree that the proposal creates acceptable visual outcomes from an urban design perspective.
- The effects of noise, transport, infrastructure, and of construction activities, were acceptable, as agreed between the applicant and Council teams.
- The proposal does not need recourse to Part 2 and that the proposal should be granted consent on the conditions sought by the applicant.

Ms Eaton stated that Woolworths has actively engaged with landowners, submitters and the wider community, noting that 14 of the submissions were in support of the proposal and only 2 were opposed. As a consequence of the engagement process, there was a limited number of outstanding issues, which she identified as the following:

- The design of the Great South Road intersection.
- The proposed removal of the existing angle carparks on Great South Road.
- The need for Woolworths to undertake pedestrian surveys.
- The location of the swale proposed on Wellington Street.

We address those matters later, and it suffices to say here that Ms Eaton submitted that the applicant's position on the outstanding issues, including the conditions of consent, were to be preferred.

### **6.1.2 Peter Buchan**

Mr Buchan explained that Woolworths currently operated over 180 Countdown stores around New Zealand, and an additional 70 franchised stores under the Fresh Choice and Super Value brands. He cited Woolworths consistent history of working with communities and councils and that this current proposal would create significant employment opportunities.

He emphasised that the current proposal was developed following strong representations from the Pokeno community for Woolworths to establish a "full scale" Countdown supermarket at Pokeno, rather than the "top up" offering that the originally contemplated Fresh Choice supermarket would provide. He explained the factors influencing the design of a successful supermarket and explained that several alternatives had been considered before settling on the proposal for which consent was being sought.

Mr Buchan explained the consultation process followed, including the company's engagement undertaken with the two submitters in opposition – Pokeno Bacon (a retailer on the opposite side of Great South Road) and Z Energy (a truck stop operator) on the opposite side of Great South Road). He stated that there had been positive exchanges with Z Energy and that Woolworths had agreed to amend the Wellington Street/Great South Road intersection details (to Z Energy's satisfaction) and agreed to remove a parking space on Great South Road to assist truck movements at the Z Energy truck stop, subject to Council approval.

Regarding engagement with Mrs Clotworthy, an owner of Pokeno Bacon, along with Mr Clotworthy, he understood her core concern was about the loss of the existing angle parking area on Great South Road in front of Woolworth's site, and the associated impacts on Pokeno Bacon's business. Mr Buchan stated that the carparks in question straddled the Woolworths site boundary, were provided as goodwill by a former owner of the site, were not public carparks and there was no obligation for Woolworths to provide them. He also stated that Woolworths did not own enough land to accommodate those parking arrangements on its own site.

Mr Buchan concluded by stating that he considered the proposal represents a design that will work well for its customers, meet Woolworth's operational requirements and provide a design that is acceptable to the Council in terms of achieving the outcomes sought in the District Plan.

### **6.1.3 Graeme Scott**

Mr Scott stated that while the District Plan anticipates a traditional approach to town centre development with buildings located at the street boundary, and while the proposal cannot meet all the measures contained in the District Plan, it represents a



good balance between the urban design requirements of the District Plan and the community benefits of having a supermarket in the town centre.

Mr Scott's evidence included an assessment of the proposal against the Assessment Criteria set out in Appendix 29.2 of the District Plan, and we reproduce his summary of that below:

Criteria	Assessment against Proposal
<b>Design Element 1: Site Planning</b>	
1. The Great South Road boundary of any site between Market Square and Cambridge Street should be lined by continuous building frontage to provide pedestrian amenity adjoining the road.	Due to the operational requirements of 'Woolworths' stores, the supermarket building cannot be built on the Great South Road frontage. However, the Proposal includes a stylised canopy and an attractive landscaped plaza space with seating, gardens and lighting which will provide pedestrian amenity adjoining the road.
2. Great South Road from Market Square to Cambridge Street should be provided with continuous verandahs built to substantially cover the width of the footpath.	While this criterion is not fully met, the proposed street verandah partly meets this criterion.
3. Verandahs should generally be provided over footpaths on the other road frontages as shown on the plan opposite.	Refer above in relation to criterion 2.
4. On sites located between Market Street and Cambridge Street buildings should generally adopt a "perimeter block" layout, and parking and service areas should be accessed from side roads and not Great South Road.	This criterion is met in part. The supermarket building typology is the opposite of a perimeter block typology, but the servicing is off the side road.
5. If possible, two vehicle access points on different roads (other than Great South Road between Market Square and Cambridge Street) should be provided for car parking areas.	Due to the site abutting only one site street (Wellington Street), the Proposal cannot comply with this criterion.
6. The principal pedestrian entries of all buildings and tenancies should face a road and be conveniently located and clearly identifiable.	The pedestrian entry location to the supermarket building and canopies leading to it make it highly visible.
7. If buildings cannot be built to all road boundaries (other than identified parts of Great South Road, where this is expected), attractively landscaped areas should be provided between the building and the open road frontage. If possible, the use of such areas for parking should be limited to not more than two rows of car parking to avoid adverse effects on the streetscape and pedestrian amenity.	Due to the need to aggregate all customer parking in one legible area as close to the supermarket building entrance as possible, the Proposal cannot comply with this requirement.
8. Outdoor storage should be avoided or concealed from view from public roads by internalisation within or by the configuration of the building, (preferred), or by screen fencing.	The storage / loading area to the rear of the Site is fully fenced and gated.
9. Stormwater treatment device should be incorporated into the design, consistent with the adopted Catchment Management Plan, relevant regional technical publications and NZS4404:2010. Advisory Note: The Regional Infrastructure Technical Specifications is Council's current Engineering Code of Practice.	A combination of low impact and reticulated systems will provide suitable treatment and detention as required in compliance with this criterion.
10. Where the Helenslee Stream channel is identified as "perennial stream with riparian margin" on the Pokeno Structure Plan (Part 54.15A), it should be retained and a vegetated buffer should be provided on both sides of the channel.	N/A
11. Vegetated buffers should: <ul style="list-style-type: none"> <li>• Include native specimen trees on the lower and upper banks of the stream, and</li> <li>• Provide a minimum of 10 metres of native planting.</li> </ul>	N/A
<b>Design Element 2: Building Form, Public Interface and External Appearance</b>	
1. When viewed from the road or any public space, buildings should create visual interest through articulation, openings, and variation, and should be in accordance with any design theme that has been developed for the area.	The wall panels have been varied in height, colour and texture to avoid a monolithic box appearance. Full reasons are set out in sections 6 and 7 of my Urban Design Assessment.
2. Solid blank walls on or facing a road frontage should be avoided.	Refer above in relation to criterion 1. Full reasons are set out in sections 6 and 7 of my Urban Design Assessment.
3. Large expanses of roof should be broken up and varied to provide visual interest when viewed from elevated public open spaces.	Partially met by the variation in parapet height and wall panel variation.
4. Buildings should front directly onto or face onto roads and concentrate main entries and windows along roads or road-facing frontages	While the Proposal does not comply with this requirement for the reasons outlined above, the proposed street verandah and associated vertical structures go some way to meeting the requirements of this criterion.

5. The principal pedestrian entries of all buildings and tenancies should be articulated in the building elevation.	Canopies have been incorporated into the design to signal the entrance and pick-up points. Full reasons are set out in sections 6 and 7 of my Urban Design Assessment.
6. Buildings on corners should utilise design features which emphasise and address the corner.	The corner pylon sign partially addresses the signalling of the corner (although this then conflicts with criterion 8 below).
7. Large industrial doors (e.g. for loading bays) should be concealed from view from the road. If they are visible they should not dominate the elevation and should generally be set back further than the front face of the building.	The larger truck / loading doors have been concealed. Full reasons are set out in section 6 and 7 of my Urban Design Assessment.
8. Signage should be designed to fit with the building, be located on the buildings rather than on freestanding signs, and should not extend above the eaves or parapets. (Refer to Part 15.4 of the plan.)	As noted above, the corner pylon sign conflicts with this criterion.
<b>Design Element 3: Open Spaces, Parking Areas and Landscaping</b>	
1. Open spaces (particularly those associated with streams), car parks, and their landscaping should be well-designed and accessible.	The proposed landscaping is of a high quality and is accessible.
2. Open spaces should have active edges, should be overlooked by windows from buildings on the same site or other sites in the Business Zone, and should be visible from roads.	The carpark has good visibility into it from the streets.
3. Open spaces should be safe, with building edges and soft landscaping designed (and species selected) to avoid creating entrapment spots.	As above, the carpark has good visibility into it from the streets. The layout of the supermarket and carpark on the Site contributes to safety.
4. Streams should be enhanced with riparian planting and may also provide public walking access.	N/A
5. Open space design should include provision of safe routes for pedestrians and cyclists, clear of car parking and manoeuvring.	The carpark has a safe pedestrian route through it.
6. Parking and movement layouts should be designed for safe and effective movement of vehicles through an easily understood layout with appropriate surface markings and signs.	The carpark has been well-designed to provide a legible and easily understood layout.
7. Where car parking is provided on a site which abuts land zoned Residential 2, it should be screened by buildings, fencing and/or landscaping.	The carpark is not visible from residential areas.

Mr Scott's overall conclusion was that "[w]hile the very prescriptive suggestions set out in the District Plan may be one way of achieving good urban design, they are not the only way" and "[g]iven the wider benefits to Pokeno in having the supermarket at its centre, ... the finalised design response is, on balance, an acceptable response to the District Plan.

#### 6.1.4 Curt Robinson

Mr Robinson explained that he considered that the appropriate noise limits for the proposal were:

##### Construction Noise

Generally following Table 2 of New Zealand Standard NZS 6803:1999, but with further limitations imposed at night, and on Sundays and Public Holidays (noting that the District Plan refers, erroneously in Mr Robinson's opinion, to Table 1 of the Standard).

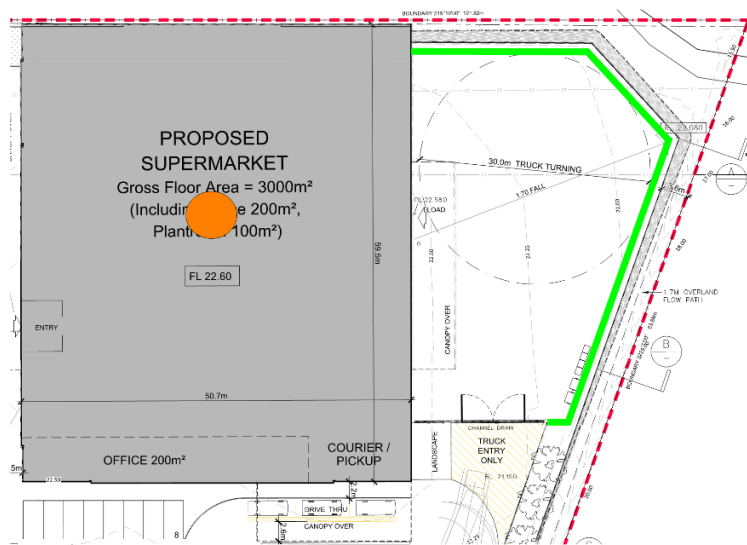
##### Operational Noise

In accordance with Rule 29.6.1.B of the District Plan, noise within the boundary of the adjacent residential site at 15 Shelby Street should not exceed 55 dB  $L_{Aeq}$  between 7 am and 10pm, and 45 dB  $L_{Aeq}$  and 75 dB  $L_{Amax}$  at all other times, noting that we understand that this is the "limiting" location for the management of noise (meaning that if compliance is achieved at this location, it will be achieved elsewhere).

He went on to state that in order to achieve the above noise limits, and to address concerns raised in submissions by Ms Langrish, a submitter, and the owner of the property at 15 Shelby Street, he recommended that the following noise mitigation be undertaken:

- Goods delivery, loading dock use and waste collection should only occur between 7am and 10pm.

- LPG or electric forklifts and lift stackers should be used to limit engine noise.
- Broadband reversing alarms should be used to remove the tonal effects of conventional reversing alarms.
- Mechanical plant should be designed to readily comply with night time noise limits.
- Construction of a 2 metre high acoustic screening fence at the rear of the site, constructed of close-boarded timber, having a minimum mass of 10 kg/m<sup>2</sup> (i.e. 20 – 25 mm thick timber palings of 17 mm plywood), the location of which is as shown in green in Figure 3 below.



**Figure 3 Location of acoustic fence (shown in green)**

In respect of the construction-related noise concerns raised by the Pokeno Bacon Company and the Pokeno Community Committee, he stated that “[o]verall, I consider that the noise impact from the construction activities would be slight to the Pokeno Business community.”

Mr Robinson noted that the Council’s review of his noise assessment, as set out in the section 42A report, agreed as to their overall conclusions, but that he had proposed some amendments to the proposed conditions.

We asked Mr Robinson a number of questions about the conditions he proposed and we address the matter of conditions later.

### 6.1.5 Mike Smith

Mr Smith addressed a variety of engineering and infrastructure matters, and stated as follows:

#### Site Works

- Earthworks will cover the entire site and most of the contiguous paper road (Wellington Street).
- Bulk earthworks will consist of 750 m<sup>3</sup> of cut and 15,500 m<sup>3</sup> of fill.

- Approximately 4,000 m<sup>3</sup> of topsoil will be removed from the site and 23,000 m<sup>3</sup> of clean fill and aggregates will be imported.
- Three retaining walls will be required, the most significant of which (in the north eastern rear corner of the site, where a large proportion of filling will be required) will have a maximum finished height of 6.1 metres. It will be comprised of mechanically stabilised earth wall with a 70 degree rake and planted face.
- A variety of sediment and erosion control measures are proposed, in accordance with Waikato Regional Council's Technical Report 2009/002.
- Subject to conditions the adverse effects of these works will be less than minor.

### **Water Supply, Wastewater and Utility Services**

- As agreed with Council's Senior Land Development Engineer, Mr Gatehouse, the site can be adequately serviced.

### **Stormwater**

- The adverse effects of the proposal, including the formation of Wellington Street, on runoff quality and quantity will be mitigated by various treatment and storage devices, comprising:
  - A grass swale in Wellington Street to control water quality and manage infiltration – noting that this can be shortened to eliminate encroachment on the probable future access point to the property at 44 Great South Road. We are satisfied that this is the case and do not address this matter further.
  - A proprietary stormwater device in Wellington Street to control water quality.
  - A storage basin for extended water detention for runoff from Wellington Street.
  - An on-site detention tank to mitigate peak flows.
  - An on-site proprietary stormwater device to control water quality.
  - An on-site rain garden to control water quality and provide stormwater retention.
  - Recharge pits at down pipe locations to provide water retention.
- These devices have been designed in accordance with Waikato Regional Council's Technical Reports 2018/01 and 2018/02 and the Regional Infrastructure Technical Standard ("RITS"), noting that site conditions mean that it is not practical to meet the Regional Council's Low Impact Design scoring matrix requirements.
- The combination of soft and harder engineering measures are well-reasoned, constitute the best practicable option for private and public infrastructure, and are necessary to mitigate the effects of the proposal on stormwater quality, quantity and on the receiving environment.
- Although proprietary stormwater devices are not the Council's preferred means of treating stormwater, Mr Gatehouse has confirmed that details of a suitable proprietary device can be worked through at the detailed design stage, and managed by the inclusion of appropriate conditions of consent.

## **Flooding**

- Flood modelling shows that the proposal will not impact adjacent or downstream properties, and he and the Mr Gatehouse agree that the effects on flooding will be less than minor.

Mr Smith also addressed various matters of detail regarding the proposed conditions of consent. We address the matter of conditions later.

Mr Smith's conclusion was that "[o]verall, from a civil engineering perspective, the proposal is quite straightforward and uses proven techniques, technologies and practises in its construction."

### **6.1.6 Mark Georgeson**

Mr Georgeson stated that from a transportation perspective:

- Great South Road is identified as a Collector Road in the District Plan, with an average daily traffic flow of around 5,000 vehicles per day and with a busiest hourly flow of about 450 vehicles per hour.
- Traffic volumes in Pokeno are forecast to grow by about 95% between 2018 and 2028.
- Wellington Street will be formed as a public road, with an 8.4 metre carriageway and widening at the intersection with Great South Road in order to facilitate access by large supermarket trucks.
- There will be two driveways to the site from Wellington Street, with these being the only vehicle access points provided.
- There will be 146 car parks proved on site, this being 71 more than the minimum required by the District Plan.
- Eight parallel parking spaces will be provided on Wellington Street on its northern side, to partially offset the removal of the existing angled parking spaces on Great South Road – as discussed by Mr Buchan – see Section 6.1.2 above.
- Design of the Wellington Street – Great South Road intersection has been discussed with Z Energy and the Council – such that by the time the applicant filed its right of reply, matters relating to the intersection designed had been agreed between them. We address this issue further later.
- The proposal is expected to generate about 300 vehicle movements (in and out) per hour during the busiest hour (this being 75 more movements than the consented supermarket) and 2,200 movements per day.

Mr Georgeson concluded that the new Great South Road / Wellington Street intersection will function well over the 10 year future scenario assessed, and that the need for other parts of the roading network to have capacity improvements undertaken in the future, arises irrespective of whether or not this proposal proceeds, and are not foreclosed by it.

Responding to the Ministry of Education's neutral submission, Mr Georgeson agreed that it was important to ensure that the new intersection provided for the safety of

students walking past the supermarket and across Wellington Street. He considered that this was able to be addressed by consent conditions.

Regarding the submissions of Pokeno Bacon and the Pokeno Community Committee, both of which raised traffic-related concerns (noting that the Committee's submission was in support of the proposal), Mr Georgeson was satisfied that the intersection design approach agreed with Z Energy and the Council was sufficient to address their concerns, while the provision of 8 new parallel car parks on Wellington Street would partially offset the loss of the existing angle parks on Great South Road. Mr Georgeson understood that the Council recognised the lack of Council control over the existing angle parks (for the reasons explained by Mr Buchan) and was taking responsibility for identifying further parking opportunities in the area. He was satisfied that the supermarket would not impact on on-street carparking availability, given that the car parks to be provided on-site were well in excess of District Plan requirements.

Mr Georgeson was of the opinion, as were Council staff/advisors, that there was no effects-based need for Woolworths to provide a pedestrian crossing on Great South Road, and that the consideration of any such crossing in the future was a matter for the Council to address.

Mr Georgeson discussed a number of the proposed conditions, and our questions in respect of them, matters which we address later.

#### **6.1.7 Kay Panther-Knight**

Ms Panther-Knight assessed the proposal against section 104 of the RMA, addressed matters raised in submissions and the section 42A report and the proposed conditions of consent. She also answered a number of questions that we raised, mainly in regard to proposed conditions.

We do not need to summarise Ms Panther-Knight's section 104 assessment in detail, as it is not in dispute as between her and Ms Carmine. It suffices for us to say that she concluded that the proposal is acceptable and worthy of granting consent, having considered the effects of the proposal, the statutory planning documents and the relevant "other matters" provided for in section 104.

One matter we do address here is the implications of the Proposed Waikato District Plan ("**Proposed District Plan**") to our decision, noting, as we declared at the hearing, that all three Commissioners have been appointed to hear submissions on the Proposed District Plan.

Ms Panther-Knight stated that no consents are required under the Proposed District Plan (because the rules have no interim effect) but that regard is to be had to its objectives and policies. Regarding the objectives and policies, she was of the opinion that the proposal was generally consistent with them.

It is not just the "objectives and policies" of the Proposed District Plan that are relevant when undertaking an assessment under section 104, but rather the "relevant provisions" of it. That includes the zonings in the Proposed District Plan, which we asked Ms Panther-Knight to explain to us – but in broad terms only, given that we acknowledge that the Proposed District Plan is statutorily immature and should therefore be afforded limited weight.

Ms Panther-Knight advised that under the Proposed District Plan the proposal would be a non-complying activity, given the way the proposed zonings are framed, but that because the objectives and policies were very similar to those in the operative plan, this would not prevent the granting of consent under the Proposed District Plan.

We also asked her a number of questions about the scope and wording of a number of the conditions. Ms Panther-Knight undertook to further consider the proposed conditions, a matter that we return to later.

## **6.2 Submitters**

### **6.2.1 Z Energy – Evidence of Gary Black**

Z Energy operates a truck stop facility on the opposite side of Great South Road from the proposed supermarket, as shown on Figure 1.

Mr Black's evidence explained that at the time of lodging its submission, Z Energy required certainty that trucks would be able to continue to make left and right turn movements from the northern access to the truck stop. He stated that Z Energy was also concerned that Woolworths sought to disregard the effects of vehicle movements to and from the consented, but not constructed, Fresh Choice supermarket on the subject site, given that the consent was processed non-notified, without apparent regard for the effects on the Z Energy truck stop.

Since that time, Mr Black advised that he had met with the applicant and Mr Georgeson and that those discussions had been constructive, with their outcome being reflected in the applicant's revised intersection plan, as contained in Mr Georgeson's evidence.

That said, he also agreed with Ms McMinn, the Council's traffic consultant, that the design would be further improved by also including a short (10 metre) right turn bay into Wellington Street.

Provided that amendment was made, Mr Black confirmed that the intersection design would address the operational concerns raised by Z Energy. We return to the intersection design later.

### **6.2.2 Helen Clotworthy – Pokeno Bacon Company and Mr & Mrs Clotworthy**

Ms Clotworthy addressed the submission of Pokeno Bacon Company and that of herself and Mr Clotworthy, verbally. She began by explaining that Pokeno Bacon Company, which is located on Great South Road in the block of shops immediately opposite the subject site, was owned by her family and that it was a long-established local business that would be significantly affected by the construction activities needed to establish the proposal.

Although a number of matters were generally of concern (including non-compliance with the District Plan's design guidelines for Pokeno – which had been developed with strong community input, the lack of controls over the timing construction activities, and the need for a pedestrian crossing on Great South Road), her key concern was over the loss of the angle car parks in front of the Woolworths site.

We understood Ms Clotworthy to say that she accepted that these carparks were not strictly "public car parks" – for the reasons explained by Mr Buchan - but that their removal would mean that south bound drivers would be discouraged from stopping to visit the Pokeno Bacon shop, given the lack of parking opportunities. This would have a huge impact on her family's business, and its staff, who were already concerned that if the shop's income declined, their jobs could be at risk.

Ms Clotworthy considered that, at the very least, the Council and/or Woolworths should actively address the lack of public carparks in Pokeno and if land needed to be purchased for parking, the Council should just get on and do it. She stated that the Pokeno community had been frustrated for some time by the Council's lack of

progress on providing adequate car parking or implementing wider, long-contemplated initiatives in the town, for example the Pokeno Market Square.

She considered that a possible solution might be to implement the proposal in stages, with the earthworks being completed first, then the buildings, with the existing angle parks being kept in place for as long as possible during the buildings phase – as opposed to them being removed as soon as any works started. If this was not done, then she believed Woolworths should be required to underwrite any financial losses to local businesses, including hers.

Following the adjournment of the hearing, there was further dialogue between Woolworths, the Council and submitters on the proposed conditions.

Included in the applicant's right of reply was specific feedback to them from Ms Clotworthy. Although it repeats some of what we summarised above, we reproduce it in full below, as it represents her overall submission, as at the conclusion of the hearing:

Thank you for the opportunity to respond to the revised conditions for the proposed Pokeno Countdown supermarket.

We are not opposed to the Supermarket development in Pokeno. Our concern has been on two key issues:

1. The interruption to our business during construction and after completion.
2. Integration with the Pokeno Town Planning Strategy and Design Principles.

I have been given the opportunity to review the Revised Conditions provided to me on Wednesday 28 August. I also received a phone call from Peter Buchan representing Woolworths, at 4pm on 29th August seeking any verbal feedback or clarification. This is a very short timeframe to respond given my business and family commitments.

Unfortunately, the revised conditions do not satisfy our concerns, for the following reasons:

1. The 10 proposed parallel parking spaces are inadequate. A minimum of 15 convenient, permanent places is required to support Pokeno Bacon and other existing Pokeno retailers.
2. I have been advised that the majority, if not all, of the 10 proposed parallel car parking places will not be available during the construction period;
  1. The document 3878064 CivilPlan 2015-01-C2-v1 is inconsistent with the proposed 10 places on document 3878064 CivilPlan 2050-01-300-RevC2. The former indicates that the piazza encroaches on the road reserve and takes the space where the 10 car parking places are proposed.
3. There is concern construction workers will park during the construction phase and use whatever remaining on-street parking may be available. I note the requirement for a construction parking and loading management plan to ensure all parking and loading/unloading is completed within the construction site. However, people do not always comply with these plans.
4. The proposed pedestrian crossing has a note "Pedestrian Xing: Public Asset under separate assessment", We require confirmation this crossing will be available prior to any earthworks or construction commencing.
5. There is no indication a separate entrance to the existing truck stop is proposed. The current entrance and exit of trucks to the existing truck stop impedes the proposed turning lane in the supermarket access road.

I am seeking the following assurances:

1. The piazza area will be set back and at a minimum not encroach upon the existing road reserve.
2. The recommendations by the Independent Road Safety Audit will have regard for the requirement that the developers provide a 10-15 safe, on-road parking spaces;
3. There will be a minimum of 15 permanent on-road parking spaces available throughout the construction period and ongoing. The reduction of the existing 20



places to the suggested 15 places will have a significant impact on Pokeno Bacon and the existing retail community. It is unknown what impact the new supermarket will have on the retail community. However, the negative impact of customers being unable to find convenient parking is known through our previous experience and is entirely unacceptable.

4. Parking arrangements for the construction workers and their equipment will not utilise any of the requested 15 on-street parking places.
5. The pedestrian crossing will be in place before any earthworks or construction commences.
6. The pedestrian crossing will have the addition safety feature of being raised to ensure trucks etc can more easily see pedestrians and will have the additional benefit of slowing traffic on the Great South Rd.
7. Safer arrangements will be implemented for the movement of trucks accessing the Truck Stop.

As previously stated, Pokeno Bacon is a family-owned business that contributes significantly to the local community's economic development, social cohesiveness, employment opportunities and reputation. We are supportive of the proposed Pokeno Town Planning Strategy and Design Principles. Our focus is ensuring Woolworths development proposal is fair, reasonable and consistent with our Town Planning Strategy vision for a safe, inclusive, prosperous and thriving Pokeno Community.

### **6.2.3 Rick Odom – Pokeno Community Committee**

Mr Odom stated that the Pokeno Community Committee was in support of the proposal. He also made clear that there was not what he referred to as collusion between the Committee and Ms Clotworthy, given the different position each had taken and that Ms Clotworthy was the Committee Chair.

He observed that it had taken a reasonable length of time to get traffic back through Great South Road following the completion of the State Highway 1 bypass of the town. He made the point that irrespective of who owned the land on which the angle parks on Great South Road were located, the reality was that they had been used and appreciated by the public for many years.

He stressed the need for improved public car park availability in Pokeno and felt that the Council could make the Wellington Street paper road on the opposite side of Great South Road available for public parking until a permanent solution could be found.

### **6.3 Waikato District Council Section 42A Report**

**Ms Carmine**, the principal author of the section 42A report spoke briefly to her report and tabled a written statement of evidence. The focus of the written evidence was, in the main, a rebuttal of Ms Panther-Knight's evidence, including in respect of conditions. We address the matter of conditions later, so there is no need to summarise that evidence in detail here, noting that Ms Carmine seemed to us to be more disposed to reinforce her analysis from the section 42A report, than to assisting by providing her views on the large number of questions we raised about the conditions she, and then Ms Panther-Knight, had proposed.

We need not summarise the section 42A report in detail, given that the differences of opinion between the respective analyses of Ms Carmine and Ms Panther-Knight, were quite confined, other than in respect of the conditions each of them had initially proposed. It suffices to say that Ms Carmine's analysis reached the same overall conclusions as Ms Panther-Knight – that being that consent should be granted subject to conditions.

Regarding the (operative) District Plan, Ms Carmine considered that although the proposal did not comply with a number of what she considered to be "fundamental Design Element Criteria", she was satisfied that the proposal was generally consistent

with the District Plan's objectives and policies and that the proposal achieves the outcomes sought by the Pokeno Structure Plan.

Matters raised by Ms Carmine in the section 42A report that address the effects of the proposal, particularly insofar as they relate to matters raised in submissions, were:

- It was reasonable to assume that Woolworths could remove the existing angle car parks from its property whenever they chose to do so, meaning that they cannot be relied on by the public.
- Approximately three of the existing angle parking spaces were located on the Council-owned unformed Wellington Street land, and these would be lost during the construction period.
- Ms McMinn had concluded that on-street parking is available further along Great South Road and the additional 2 – 3 minutes of walking time from there to the main shopping area was not unreasonable.
- Requiring Woolworths to construct a pedestrian crossing was out of proportion to the effects created by the proposed supermarket, and that Council engineering staff had advised her that they would prefer construction of a pedestrian facility to be undertaken as part of the wider town centre strategy, in order to ensure that an integrated approach was taken.
- Although Mr Gatehouse commented in his peer review that a crossing was required to mitigate the effects of the proposal, he had provided no supporting evidence, and, as a result, she preferred the specialist assessments made by Mr Georgeson and Ms McMinn.

In respect of the Proposed District Plan, Ms Carmine considered that the proposal was consistent with its objectives, but inconsistent with its policies. Given its statutory immaturity, Ms Carmine was satisfied that the Proposed District Plan provisions did not justify consent being declined.

Ms Carmine's written evidence highlighted to us that other than conditions, she remained of the opinion that we should:

- Disregard the existing Fresh Choice supermarket consent when considering the permitted baseline / existing environment; and
- Consider precedent effect matters in our decision in order to assist Council staff in their dealings with other property owners and developers.

**Ms McMinn**, the Council's traffic consultant, also tabled a concise statement of written evidence to complement her peer review of the transportation aspects of the proposal that was appended to the section 42A report.

Her written evidence confirmed the conclusions of her peer review assessment, that being that the proposal is unlikely to lead to unacceptable adverse safety and efficiency transportation-effects, taking into account the Council's intention to address pedestrian safety once the supermarket was operational. Her key conclusions overall were:

- The increased safety risk to pedestrians from the introduction of the supermarket was not at a level that triggers the need for specific mitigation measures, such as the construction of a pedestrian crossing.

- However, to provide certainty of the demand for a pedestrian crossing and to enable the Council to determine its design and location, it was reasonable for the Woolworths to undertake monitoring of pedestrian activity, as recommended by Ms Carmine and opposed by Woolworths
- She was satisfied that the design of the Wellington Street – Great South Road was adequate, noting that she supported the inclusion of a right turn bay for vehicles entering Wellington Street from Great South Road that was marked in accordance with Figure 3.28a of the Ministry of Transport’s Manual of Traffic Signs and Markings, and that the final design of the intersection should be confirmed following the proposed “safety audit” provided for in the proposed conditions.

We wish to acknowledge all the other peer review reports prepared by Council staff and advisers that were appended to the section 42A report. We have read those reports carefully but, given the level of agreement on technical matters, we need only make reference to several matters, as follows. We also acknowledge the verbal comments made to us by the Council’s Traffic Safety Engineer, Mr Gareth Bellamy, the effect of which was to confirm the overall conclusions of Mr Georgeson and Ms McMinn and to confirm that it was the Council’s intention to install a pedestrian crossing facility in the general vicinity of the Woolworths site, as soon as safety requirements deemed it necessary.

#### **6.4 Adjournment and Closing of the Hearing**

With the agreement of all the parties present at the hearing, we directed that before the applicant submitted its written right of reply:

- The applicant would further consider the content and form of the conditions and circulate a revised version to all parties present at the hearing by 5 pm on Wednesday 28 August 2019;
- The Council would provide any comments on the revised conditions to the other parties by 5 pm on Friday 30 August 2019;
- The submitters would provide any comments on the revised conditions to the other parties by 5 pm on Tuesday 3 September 2019;
- The applicant would include a final set of proposed conditions as part of its right of reply, and in so-doing would highlight areas of disagreement; and
- The written right of reply would be submitted by 5 pm on Wednesday 4 September 2019.

We adjourned the hearing on that basis, pending receipt of the applicant’s right of reply.

#### **6.5 Right of Reply**

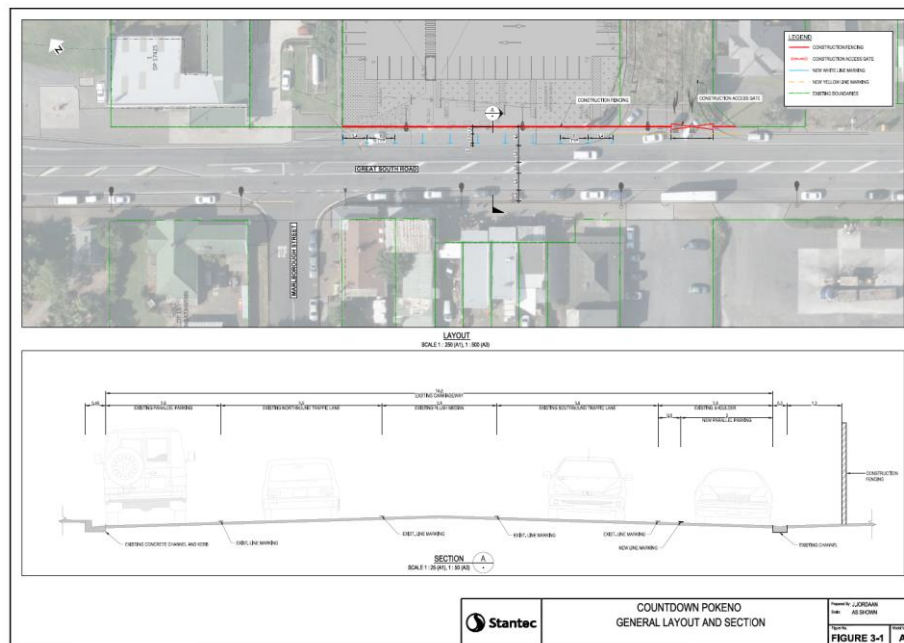
The applicant’s right of reply was received on 4 September 2019, in accordance with our Directions. It addressed:

- Carparking on Great South Road;
- The Wellington Street – Great South Road intersection design;
- Construction of a pedestrian crossing on Great South Road; and

- Conditions.

Regarding parking on Great South Road, Ms Eaton stated that there was no legal obligation on Woolworths to provide or replace the angle parks on Great South Road and that their removal did not result in an adverse effect in respect of public parking. She went on to explain that Woolworths had carefully designed the proposal to provide a landscaped plaza open to the public, including, at the Council’s request, a footpath on the road reserve, so as to accommodate the plaza, and if permanent parking was provided along this frontage it would compromise the ability to develop the footpath and the plaza in accordance with the Council’s vision for the Pokeno town centre.

Ms Eaton also stated that Woolworths had undertaken further work during the adjournment to determine if it would be possible for the Council to provide temporary carparks during the construction period, and has determined that if it staged construction works and delayed construction of the public plaza, there would be sufficient space for the Council to provide temporary parking in the (Council-owned) road reserve, as shown on Figure 4 below.



**Figure 4 How Temporary Parking Could be Provided During Construction**

She stressed though that it was not Woolworth’s responsibility to undertake these works, nor was within their power to do so.

Woolworths had also identified, to desktop level, other potential locations where (the Council) could provide additional carparks, as depicted on Figure 5 below.

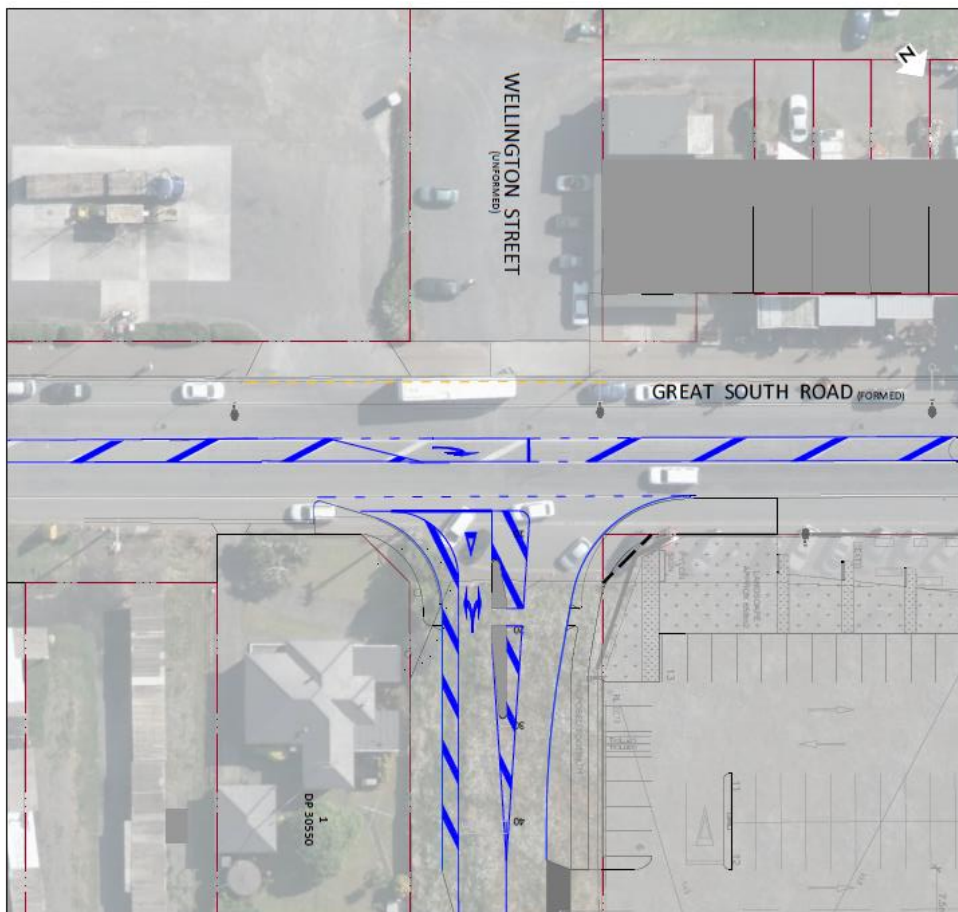


**Figure 5 Possible Alternative Locations for Council to Provide Carparking**

Ms Eaton stated that she agreed with advice provided by the Council that a condition of consent requiring the provision of temporary carparking was not necessary, and that this was a matter to be included in the Temporary Traffic Management Plan. However she advised us that in its feedback on the proposed conditions provided during the adjournment, the Council now proposed a condition requiring Woolworths to provide temporary carparking in general accordance with Figure 4 above, and that if such a condition was imposed, provision of these spaces would still need to be approved through the Traffic Management Plan process that was separate from the consent.

Ms Eaton reiterated that such a condition was opposed.

Regarding the Wellington Street – Great South Road Intersection, Ms Eaton included a revised intersection plan, reproduced below as Figure 6.



**Figure 6 Revised Intersection Design**

Ms Eaton advised that the Council generally supported this revised design, which also provides a pedestrian refuge on Wellington Street, but Ms McMinn raised a concern that the refuge was inconsistent with RITS (the Regional Infrastructure Technical Specifications). Woolworths disagreed, because proposed conditions 7 and 8 require the engineering design plans to be prepared in general accordance with the RITS , and that this can be addressed at the detailed design stage.

Ms Eaton also stated that in order to avoid any conflict between Figure 6 above and other plans referred to in conditions (a concern raised by the Council) Woolworths considered that this plan not be included in proposed condition 1 (which refers to plans that the proposal must be in general accordance with) and specifically referred to it in a more focussed proposed condition 8.

In respect of pedestrians crossing Great South Road, Ms Eaton stated that Woolworths opposed a condition that would require them to undertake a pedestrian survey once the supermarket was operational, on the grounds that there was no expert evidence that pointed to it being necessary. She specifically referred to Ms McMinn's evidence that no specific measures were needed to mitigate the incremental increase in pedestrian safety risk, and stated that it would be unreasonable and inappropriate to require monitoring when there was no effect to be mitigated.

Ms Eaton then made several comments about conditions that referred to management plans, particularly that Woolworths no longer opposed a requirement that the Construction and Construction Noise Management Plans be provided to the Council at least 15 working days in advance of construction commencing, subject to the conditions being amended to allow for these plans to be provided in a staged way to reflect the staging of construction activities.

Ms Eaton concluded by stating that the proposal should be approved, subject to the conditions sought by Woolworths.

## **6.6 Closing of the Hearing**

Having reviewed all the information provided to us, we closed the hearing at 5 pm on Monday 9 September 2019.

## **7. EVALUATION OF THE PROPOSAL**

### **7.1 Key Issues to be Decided**

Given the engagement undertaken in respect of conditions during the adjournment, and the increased precision of those conditions, the number of matters we need to specifically address has reduced to the following:

- Carparking requirements on Great South Road during construction;
- The Wellington Street – Great South Road intersection design;
- The need for a pedestrian crossing to be provided on Great South Road;
- Whether or not there should be monitoring of pedestrian movements once the supermarket was operational.
- Whether or not we should consider the existing Fresh Choice supermarket as part of the “existing environment”, when assessing the effects of this proposal;
- Whether we should address precedent effects of the proposal in order to assist Council staff in their dealings with other property owners and developers; and

- The drafting of conditions.

We deal with each of these matters below.

### **7.1.1 Carparking During Construction**

We are satisfied that there is no legal obligation for Woolworths to provide the existing angle carparks on Great South Road adjacent to the Woolworths site. However, they have been utilised by the public for some considerable time, and we are satisfied that their removal will disadvantage those travelling south through Pokeno, and that this will be exacerbated by the effects of construction traffic.

We are satisfied that it is not necessary, nor appropriate, for Woolworths to be required to provide temporary carparks on private land, or the road reserve, neither of which it has control over. Furthermore, while we appreciate the efforts made by Woolworths to make space available for the Council to arrange temporary parking on, we do not consider it appropriate for the conditions of consent to include obligations on the Council, a third party over which Woolworths has no control. Further, simply making the space available in the expectation that the Council might provide the temporary parking spaces, provides no certainty that they will actually be provided,

We consider that the appropriate course of action is to include a consent condition that requires Woolworths to retain the current angle carparks for as long as is practicable during the construction phase, to the satisfaction of the Council, and for these details to be specified in the Construction Management Plan. Whilst that provides no certainty to the community as to if, and for how long, the existing carparks will remain, it does place a positive obligation on Woolworths to not simply erect construction fencing around the outer site perimeter at the commencement of the construction phase – something that it has already undertaken not to do.

### **7.1.2 Wellington Street – Great South Road Intersection Design**

We are satisfied that the design of the Wellington Street – Great South Road intersection, as depicted on Figure 6 above, is the appropriate design solution, subject to final detailed design. We are also satisfied that the intent of substantially modified consent conditions proffered by Woolworths address the concerns we expressed at the hearing regarding certainty and enforceability, subject to the drafting modifications we have made.

### **7.1.3 The Need for a Pedestrian Crossing**

We are satisfied that this proposal on its own, does not trigger the need for a pedestrian crossing of Great South Road to be provided. However, we are in no doubt that such a facility will be needed in the reasonably near future as Pokeno township evolves and develops. We accept that the timing, final location and design details of a pedestrian facility will be better informed once the scale and nature of further development is better understood.

### **7.1.4 The Need for Pedestrian Monitoring**

Woolworths opposes having to undertake monitoring of pedestrian movements, for the reasons summarised above. Whilst we accept that the supermarket does not, of itself, warrant construction of a pedestrian crossing, it will, contribute to pedestrian traffic, and perhaps even attract pedestrians via its attractive roadside plaza. In order to understand the magnitude of those effects, particularly cumulative effects, monitoring information is needed, and we consider it is appropriate to impose a condition requiring that it be undertaken by Woolworths, once the supermarket becomes operational.

### **7.1.5 The Permitted Baseline**

As Ms Panther-Knight and Ms Carmine both observe, nothing hinges on whether or not the effects of the granted, but not implemented, resource consent for a Fresh Choice supermarket on the subject site are excluded from our assessment of the current proposal.

We have determined that we should not disregard those effects, because doing so would be an entirely artificial construct, noting also that the scale of the current proposal is several times larger than the Fresh Choice scenario. As such the current situation is quite different from one in which consent was being sought for a small, incremental amendment to an activity that was already authorised. Also relevant is that while we have been encouraged by Woolworths to apply a permitted baseline to the existing environment, Woolworths' own expert evidence has not taken this approach, and its expert witnesses have assessed the effects of the proposal on the environment as it is now. That, in our assessment, is appropriate, noting again, that the point is moot.

### **7.1.6 Precedent Effects**

Ms Carmine's written evidence suggested that matters of precedent be clearly documented in our decision, in order to assist Council in its dealings with other developers and property owners.

We are satisfied that this decision creates no precedent, and, even if it did, we are not persuaded that it is appropriate to do as Ms Carmine has suggested in this case.

## **7.2 Section 104 Assessment**

Section 104 of the RMA outlines the provisions that decision makers must have regard to when considering an application for a resource consent and any submissions received on that application.

Section 104 states:

#### **104 Consideration of Applications**

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part II, have regard to—
    - (a) any actual and potential effects on the environment of allowing the activity; and
    - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and
    - (b) any relevant provisions of—
      - (i) a national environmental standard;
      - (ii) other regulations;
      - (iii) a national policy statement;
      - (iv) a New Zealand coastal policy statement;
      - (iv) a regional policy statement or proposed regional policy statement;
      - (vi) a plan or proposed plan; and
    - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- .....



Overall, and for the reasons set out above, we conclude that the effects of the proposed activities will be avoided, remedied, or mitigated by the proposal.

We have considered all the statutory documents referred to in section 104(1)(b), details of which have been provided in the evidence and section 42A report. Having done so, we are satisfied that:

- The proposal is generally consistent with the objectives and policies of the District Plan;
- Whilst not satisfying all the detailed design requirements set out in the Pokeno Structure Plan, the proposal is generally consistent with its objectives and policies and, importantly, the environmental outcomes it is seeking to achieve as Pokeno develops over time;
- Although the proposal is not fully consistent with all the relevant provisions of the Proposed District Plan, as detailed in the evidence, the proposal is not at odds with the overall thrust of what the Proposed District Plan is seeking to achieve in Pokeno. We also accept that the Proposed District Plan is still statutorily immature and should therefore be afforded limited weight; and
- There is nothing in either the District Plan or the Proposed District Plan that would warrant consent for this proposal being declined, provided that the adverse effects were acceptable and avoided, remedied, or mitigated.

Accordingly, we consider that the purpose of the RMA would be better achieved by granting the applications subject to conditions, than by refusing consent.

### **7.3 Consent Conditions**

The final set of conditions attached to the applicant's right of reply are a considerable improvement on those proffered in evidence and discussed at the hearing. Other than where they need to be amended to address the matters included in Sections 7.1 above, the conditions address all the relevant matters that we consider need to be addressed, and we are grateful to the applicant, Ms Clotworthy and Council staff for the time they have spent in attempting to resolve areas of disagreement regarding conditions.

That said, the drafting of many of the conditions lacks the precision and clarity necessary for them to be certain and enforceable, such that they cannot be imposed as currently drafted.

Accordingly, and in addition to including the matters raised in Section 7.1 above, we have made numerous drafting amendments to ensure clarity and enforceability. Those changes are too numerous to list individually here, but we have taken the very unusual step, at least for us, of providing the conditions of consent in redline/strikeout format, so that the parties can ascertain the full extent of the changes we have made. The parties should note that the base version of conditions appended to this decision are those submitted by Woolworths in the right of reply.

It should be noted that we have removed reference in the conditions to specific Council staff position titles, and in all cases referred instead to the "Waikato District Council". We have done this because:

- The Council is the regulatory authority that exercises powers and functions under the RMA and individual Council officers are only authorised to exercise any powers and functions by virtue of, and in accordance with, the Council delegations; and

- Council's delegations may change in the future, as may the titles of the various officer roles, thus making reference to specific officer titles problematic.

## **8. DECISION**

For the reasons set out above, subject to the imposition of conditions set out in Appendix 1, resource consent is hereby granted to Woolworths New Zealand Limited for the construction and operation of a supermarket and associated activities at 58 Great South Road Pokeno.

**DATED:** 25 September 2019



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**Dr PH Mitchell**  
**Chair**

For Hearing panel of PH Mitchell, Cr J Sedgwick and Cr J Gibb

**APPENDIX 1**

**RESOURCE CONSENT CONDITIONS**

# Resource Consent

(Resource Management Act 1991)

## DECISION ON APPLICATION: LUC00408/19

Pursuant to Sections 34A, Section 104, 104B and 108 of the Resource Management Act 1991, the Hearings Panel on behalf of Waikato District Council, under delegated authority, grants land use consent for a Discretionary activity to:

**Activity:** To construct and operate a 3000m<sup>2</sup> Supermarket and form a public road at 58 Great South Road Pokeno.

**Applicant:** Woolworths NZ Limited

**Location Address:** 58 Great South Road, Pokeno

**Legal Description:** LOT 1 DP 14599, Allotments 366 and 367 Parish of Mangatawhiri comprised in Records of Title NA385/122, NA47A/1295, NA47A/1296

This consent is subject to the conditions that follow.

The reasons for this decision are detailed in the report that precedes this appendix

**Dated:** 25 September 2019

~~Except where modified by these conditions, in which case the conditions shall prevail. The supermarket development activities authorised by this consent shall be undertaken in general accordance with the information and Waikato District Council approved plans submitted by the consent holder in support of land use consent application number WDC Ref: LUC0408/19, including the following plans: and officially received by Waikato District Council on 6<sup>th</sup> May 2019 and all further information received during the processing of this application, except as amended by the conditions below.~~

~~In the case of inconsistency between the application and the conditions of this consent, the conditions of consent shall prevail.~~

~~Copies of the Waikato District Council approved plans referenced below are attached.~~

The following plans produced by ASC Architects

	<b>Plan / Drawing Title</b>	<b>Dated</b>	<b>Drawing number</b>
(a)	Site Plan	23 April 2019	18828 - 03
(b)	Building Sections	23 April 2019	18828 - 04
(c)	Cross Sections	23 April 2019	18828 - 05
(d)	Supermarket External Elevations	23 April 2019	18828 – 06-08

The following plans produced by LA4 Landscape Architects

	<b>Plan / Drawing Title</b>	<b>Dated</b>	<b>Drawing number</b>
(a)	Landscape Plan 01	9 April 2019	19754-LP01 Rev D

The following plans produced by Civil Plan

	<b>Plan / Drawing Title</b>	<b>Dated</b>	<b>Drawing number</b>
(a)	Proposed Finished Contour Plan	17 <sup>th</sup> April 2019	2050-01-200 Rev C1
(b)	Proposed Isopach Plan	17 <sup>th</sup> April 2019	2050-01-220 Rev C1
(c)	Sediment and Erosion Control Plan	17 <sup>th</sup> April 2019	2050-01-230 Rev C1
(d)	Proposed Earthworks – Site Cross Section Plan	17 <sup>th</sup> April 2019	2050-01-240 Rev C1
(e)	Proposed Earthworks Cross Sections Sheets 1-4	17 <sup>th</sup> April 2019	2050-01-241-244 Rev C1
(f)	Proposed Retaining Walls – Overall Layout, Plan and Elevation Sheets 1-2	17 <sup>th</sup> April 2019	2050-01-270-272 Rev C1
(g)	Proposed Roding – Overall Layout	17 <sup>th</sup> April 2019	2050-01-300 Rev C2
(h)	Proposed Roding – Wellington Street Detail Sheet	17 <sup>th</sup> April 2019	2050-01-301 Rev C1

(i)	Proposed Rooding Great South Road Detail Sheet	17 <sup>th</sup> April 2019	2050-01-302 Rev C1
(j)	Proposed Rooding – Typical Cross section Sheet I	17 <sup>th</sup> April 2019	2050-01-330
(k)	Proposed Drainage Overall Layout	17 <sup>th</sup> April 2019	2050-01-400
(l)	Stormwater Longitudinal Sections	17 <sup>th</sup> April 2019	2050-01-430
(m)	Wastewater Longitudinal Section	17 <sup>th</sup> April 2019	2050-01-450
(n)	Proposed Services Layout – Overall Layout	17 <sup>th</sup> April 2019	2050-01-500

### Monitoring Costs

- 2 Pursuant to Section 36 of the Resource Management Act 1991, the consent holder shall pay the actual and reasonable costs incurred by the Waikato District Council when monitoring the conditions of this consent.

### Prior to construction

- 3 Prior to commencing any construction works, the Consent Holder shall appoint an appropriately qualified and competent Developer’s Representative(s), to provide all designs, supervision, certification and final signoff, in accordance with the requirements of the Regional Infrastructure Technical Specifications (RITS).

### Monitoring Notification and Pre Start Meeting

- 4 The Consent Holder shall arrange and attend a pre-start meeting with the Waikato District Council Monitoring Department at least 10 working days prior to the commencement of any activities ~~associated with~~ authorised by this consent.

The pre-start meeting shall, as a minimum, address/discuss:

- (a) Construction Management Matters addressed in the Construction Management Plan, including Traffic Management.
- (b) Methods for controlling dust, erosion and sediment runoff.
- (c) Matters addressed in the Construction Noise Management Plan.

#### Advice note

~~To notify Waikato District Council Monitoring Department, email [monitoring@waide.govt.nz](mailto:monitoring@waide.govt.nz) with the consent number, address of property and date for when the works will commence.~~

### Construction Parking

- 5A The consent holder shall, to the satisfaction of the Waikato District Council, take the measures necessary in order that:

- (a) The existing angle carparks on the road frontage of the site and Great South Road are retained for as long as reasonably practicable during construction works authorised by this consent; and

(b) Parking by construction vehicles occurs on the construction site.

### Construction Management Plan (CMP)

5 Not less than 15 working days prior to the commencement of the relevant work phases authorised by this consent (i.e. earthworks, civil engineering works and building works), ~~The~~ consent holder shall prepare, and submit, a site-specific Construction Management Plan(s) (CMP) to the Waikato District Council's ~~Team Leader Monitoring~~ for certification, ~~a minimum of 15 working days prior to the commencement of the relevant work phases associated with this consent (earthworks, civil engineering works and building works).~~ To the extent that the consent holder proposes to undertake the works in separate phases (i.e. earthworks, civil engineering and building works), ~~The~~ consent holder may prepare a separate CMP for each relevant such phase of work.

~~The~~ All CMPs required by this condition shall include the following information, ~~where~~ to the extent applicable to the relevant phase of work:

- (a) The staging of works planned, and the description of earthworks including a site plan;
- (b) An erosion and sediment control plan in general accordance with the Civil Engineering Infrastructure Report by Civil Plan Consultants dated 29 April 2019 and Sediment and Erosion Control Plan dated 17th April 2019, 2050-01-230 Rev C1, and which shall identify~~including providing the~~ measures necessary to ensure that no debris, dust or mud is left on the road and a methodology for cleaning/clearing should any arise;
- (c) Management procedures for material, fill placement and treatment, stockpiling and disposal of unsuitable materials;
- (d) A Dust Management Plan which shall identify the measures necessary that ~~gives effect to the performance measures set out into ensure compliance with~~ conditions 26 - 30 ~~below of this consent~~;
- (e) Machinery to be used on site during construction;
- (f) A Communications Plan that ~~identifies immediately adjoining neighbours, and those properties immediately opposite the site on Great South Road affected by construction activities and~~ outlines the methods of communication with ~~those parties~~ adjoining property owners and local businesses regarding the likely commencement date and programme of construction activities;
- (g) A Health and Safety Plan which shall identify the ~~describing~~ measures ~~to be taken~~ necessary to ensure the health and safety of persons on and immediately adjacent to the site on the site and along the frontage of the site within Great South Road for the duration of construction activities;
- (h) A Temporary Traffic Management plan prepared in accordance with the Code of Practice for Temporary Traffic Management;
- (i) The ~~M~~ measures necessary to ensure safe pedestrian access along the Great South Road frontage of the Site-site during for the duration of construction activities;

- (j) ~~Construction parking and loading management plan to ensure all parking and loading/unloading is completed within the construction site. The measures to be implemented to satisfy the requirements of condition 5A of this consent.~~

~~The CMP may be updated by the consent holder at any time, subject to any update being certified by the Waikato District Council prior to it being implemented.~~

### Construction Noise Management Plan (CNMP)

- 6 ~~Not less than~~ 15 working days prior to the commencement of earthworks activities on the site, the consent holder shall prepare and submit a Construction Noise Management Plan (CNMP) for certification by the Waikato District Council's ~~Team Leader Monitoring~~.

The ~~objective purpose~~ of the CNMP is to ~~identify the measures necessary to ensure compliance with condition 19 of this consent and to ensure that the consent holder implements the best practicable option to minimise the adverse effects of construction noise.~~

The CNMP shall, ~~as a minimum~~, set out, ~~at a minimum~~:

- (a) ~~a~~ description of ~~the all~~ likely noise sources, including machinery, equipment and construction techniques to be used;
- (b) ~~€~~The identification of activities and locations that will require noise mitigation and the proposed measures to mitigate the ~~effects of~~ noise from these activities;
- (c) ~~An assessment that demonstrates that the measures identified in condition 6 (b) above constitute the Best Practicable Option for minimising the adverse effects of construction noise;~~
- ~~(c)(d)~~ ~~a~~ Communications Plan that identifies ~~immediately adjoining neighbours and those all~~ properties ~~immediately opposite the site on Great South Road likely to be adversely~~ affected by construction noise and describes how the consent holder will communicate construction noise management measures to those parties;
- ~~(d) — the Best Practicable Option for compliance with condition 19, in accordance with the measures outlined in the Acoustic Report prepared by Marshall Day Acoustics, entitled Countdown Pokeno Assessment of Environmental Noise Effects (RP 001 r03 20190205) and dated 30 April 2019;~~
- (e) ~~m~~Methods for monitoring and reporting on construction noise;
- (f) ~~m~~Methods for receiving and responding to complaints about construction noise;
- (g) ~~€~~Contact details of the persons responsible for the implementation of the CNMP and for the handling of complaints;
- (h) ~~€~~Construction operator training procedures;
- (i) ~~€~~The activities that can be undertaken outside of the hours specified in condition 24 ~~of this consent~~ whilst maintaining compliance with condition 19.

The CNMP shall be implemented and maintained throughout the entire construction period.



The CNMP and shall may be updated when necessary by the consent holder at any time, subject to any update being certified by the Waikato District Council prior to it being implemented with the certification of the Council.

### Engineering Detailed Design Plans

7 Not less than 15 Wworking days prior to construction starting, engineering detailed designs/plans for Rooding, Stormwater, Water Supply and Wastewater shall be submitted to the Waikato District Council's ~~Senior Land Development Engineer~~ for approval certification. Engineering designs for the overall project shall address the specific design matters set out in conditions 8 to 12 of this consent and be undertaken in general accordance with the following documents ~~and shall address the specific design matters set out in conditions 8 to 12 below:~~

- (a) The Waikato District Plan (Franklin Section);
- (b) Regional Infrastructure Technical Specifications (RITS), including accompanying design statements;
- (c) The Approved Plans (referenced at plans listed in condition 1 of this consent).

These designs/plans shall be accompanied by a completed Producer Statement Design (PSI). A copy of the form is attached with this consent.

### Rooding

8 The engineering detailed design plans for rooding and accesses/vehicle crossings (including geometric standards for the new public road, signage, road markings, pavement design and street lighting). ~~The works~~ shall be designed in general accordance with approved plan Stantec Conceptual Layout Plan dated 28 August 2019 Figure 3 and RITS except where changed by the conditions of this consent. The engineering detailed design plans shall include:

- (a) The full detailed design for the Wellington Street upgrade (including eight parallel parking spaces along Wellington Street), to be constructed by the consent holder;
- (b) Design for kerbing and resurfacing at the frontage of Great South Road;
- (c) The full detailed design of the Wellington Street and Great South Road intersection, which shall include a right turn facility on Great South Road and no stopping at all times ("NSAAT") markings on Great South Road in general accordance with Stantec Conceptual Layout Plan dated 28 August 2019 Figure 3;
- (d) Vehicle swept paths within the loading area of the supermarket and from the supermarket building onto Wellington Street to confirm that the servicing and loading area layout is adequate to allow expected vehicles and avoid the need to reverse onto Wellington Street;
- (e) Vehicle swept paths at the Wellington Street and Great South Road intersection, including trucks accessing the truck stop at 41 Great South Road to minimise conflict and confirm extent of NSAAT markings in general accordance with the Stantec Conceptual Layout Plan dated 28 August 2019;
- (f) The two proposed vehicle crossings onto Wellington Street;

- (g) A lighting design and certificates for public street lighting in Wellington Street to be constructed up to and including public street lighting for the intersection with Great South Road.

### Independent Road Safety Audit

- 9 At the time of submitting the detailed design plans required by Condition ~~7-8 above of this consent~~, the consent holder shall provide an Independent Road Safety Audit of the detailed design for roading and accesses/vehicle crossings in accordance with NZTA guidelines for Independent Road Safety Audit Procedures for Projects.

The Audit shall address:

- (a) Pedestrian access and safety within the road reserve of Great South Road and Wellington Street.
- (b) Large vehicles turning at the Wellington Street intersection with Great South Road.
- (c) Interaction of traffic at the truck stop entrance and egress at 41 Great South Road.

~~The Road Safety Audit shall separate out the decision tracking between designer, client developer, WDC Safety Engineer and WDC as Road Controlling Authority client role (final decision).~~

In the event that there are any:

- (a) serious safety concerns identified in the Audit, the Consent Holder shall amend the design to the satisfaction of the Waikato District Council, in its capacity as the Road Controlling Authority; and
- (b) significant safety concerns identified in the Audit, the Consent Holder shall amend the design as required, and where any significant concerns have not been addressed, provide a statement to the Waikato District Council explaining why those safety concerns have not been addressed.

**Advisory Advice Note:** For the purposes of this condition, “serious safety concerns” and “significant safety concerns” ~~shall~~ have the meaning set out in Table 8.2 of the NZTA Guidelines on Road Safety Audit Procedures for Projects (interim issue, May 2013).

### Wastewater

- 10 The engineering design plans for a reticulated sewer system, shall be ~~designed~~ in general accordance with the ~~approved~~ plans listed in condition 1 of this consent and in accordance with the RITS, except where changed by the conditions of this consent.

The engineering design plans shall be accompanied by a design phase PSI certificate, signed by a chartered professional engineer with experience in design and construction of similar works.

## Stormwater

- 11 The engineering design plans for the public and private reticulated stormwater system shall be ~~designed in collaboration~~prepared following consultation with the Waikato District Council. The plans shall be in general accordance with the concepts of low impact design - implementing measures such as swales, raingardens and stormwater tree pits.~~The engineering design plans~~ shall be in accordance with the RITS and ~~shall include~~:
- (a) The primary system shall be designed to cater for all runoff from each proposed catchment, for a 50% AEP, 10 minute storm event (with a 16.8% allowance for climate change) and shall demonstrate that the receiving reticulated network can accept the discharge without surcharge.
  - (b) All flows in excess of the 50% AEP storm event and up to and including the 1% AEP storm event (with a 16.8% allowance for climate change) are to be contained within defined overland flowpaths.
  - (c) The location of stormwater lines and manholes shall be generally within 1.5m of any boundary, unless otherwise approved by Waikato District Council's Land Development Engineer.
  - (d) All road catch pits shall be of the back entry type, typically as shown in the Hamilton City Development Manual Drawings TS348, 349,351, or as otherwise approved by Waikato District Council's Land Development Engineer.
  - (e) Grate bars shall be perpendicular to the kerb face, to allow for cyclists. Galvanised, heavy duty "Web Grates" will be considered as an alternative to cast iron grates.
  - (f) All catch pits shall be fitted with a "floatable baffle", typically as shown in the Hamilton City Development Manual Drawing T351 or an alternative design approved by Waikato District Council's Land Development Engineer, to prevent floatable debris from entering the stormwater wetland.
  - (g) Catch pits shall not be located in property entrances or vehicle crossings. Vertical curve channel sag points shall be adjusted to suit, so that this condition is met.
  - (h) Methods to reuse stormwater from the canopy shall be shown to have been adequately investigated and the options of possible landscape irrigation explored.
  - (i) Shall ensure that the swale proposed down Wellington Street does not impede practical formation of an access to 44 Great South Road from Wellington Street.

~~Advisory Advice~~ **Note:** Waikato District Council's Easement Policy requires an easement in gross be registered against the title in favour of Waikato District Council across the proposed Public Stormwater Network. The easement is required to fully cover the extent of the 1% AEP storm (with a 16.8% allowance for climate change) overland flow path that runs parallel to the rear property boundary (the North Eastern boundary) to ensure that Waikato District Council can gain access to the public stormwater assets vesting in Council.

## Water

- 12 The engineering design plans for a reticulated water supply system shall be ~~designed~~ in general accordance with the plans ~~provided with the application listed in condition I of this consent~~, except where changed by conditions of consent, ~~and~~

~~The engineering design plans shall be in accordance with RITS and~~ shall include:

- (a) A reticulated water supply system which provides for a water connection, and is capable of providing complying firefighting water supply in accordance with SNZ PAS 4509:2008.
- (b) Installation of water meters outside the property boundary of the site in accordance with Waikato District Council drawing WDC-11.

## Landscaping - Road Reserve and Stormwater

- 13 Prior to commencing any works within the road reserve, the consent holder shall submit a detailed Landscaping Plan ~~of the landscaping within for~~ the proposed Wellington Street road reserve and the unformed road reserve (drybasin) ~~for certification by to the~~ Waikato District Council's ~~Senior Land Development Engineer for certification.~~

The landscaping plan for Wellington Street shall be ~~developed~~ in general accordance with the following Plans: "Landscape Plan 01" being Drawing 19754-LP01 Rev D, prepared by LA4 Landscape Architects, Site Plan project 18828 03 dated 23 April 2019 by ASC Architects and the "Proposed Roding Overall Layout Plan" by Civil Plan Consultants Drawing 2050-01-300 Rev C2, ~~and~~.

~~The plan~~ shall:

- (a) ~~c~~Consider the roading and underground service network in respect to potential:
  - (i) maintenance issues created by roots under the carriageways, vehicle entrances and footpaths;
  - (ii) obscured visibility for road users in respect to sightlines for intersections and vehicle entrances;
  - (iii) interference with underground services;
- (b) ~~b~~Be in accordance with the Regional Infrastructure Technical Specifications, or as otherwise certified by Waikato District Council's ~~Senior Land Development Engineer or nominee~~;
- (c) Include a maintenance schedule and regime which ensures that all public landscaped areas are maintained by the consent holder for a period of two years from the issue of the certificate of practical completion.

## Landscaping – Onsite

- 14 Prior to the commencement of landscaping works, the consent holder shall submit a detailed Landscaping Plan, Planting methodology, plant schedule, and maintenance schedule in accordance with Proposed Landscaping Plan 01 LP01 Rev D dated 9<sup>th</sup> April 2019, to the Waikato District Council's ~~Team Leader Monitoring~~ for certification, ~~in accordance with the approved Proposed Landscaping Plan 01 LP01 Rev D dated 9<sup>th</sup> April 2019.~~

## Lighting – Onsite

- 15 Prior to the commencement of building construction works, the consent holder shall submit a lighting design plan for the canopies, signage, outdoor seating amenity area and security lighting within the service and parking areas within the site, to the ~~for certification by~~ Waikato District Council's ~~Team Leader Monitoring,~~ a lighting design plan for the canopies, signage, outdoor seating amenity area and security lighting within the service and parking areas within the Site for certification. The lighting design plan shall demonstrate how the public interface of the amenity seating area will meet CPTED principles and how the lighting across the site will comply with the light spill/glare requirements in of condition 59 of this consent.

## Acoustic Design of the Mechanical Plant

- 16 Prior to lodging an application for building consent for the supermarket authorised by this consent, the consent holder shall submit a report from a suitably qualified acoustic expert, to the Waikato District Council for certification, demonstrating that the mechanical services design for the supermarket facility (all external mechanical plant and ventilation equipment) will comply with the permitted noise levels of Rule 29.6.1B of the Franklin Section of the District Plan, ~~for certification by~~ ~~Waikato District Council's Team Leader Monitoring,~~ a report from a suitably qualified acoustic expert demonstrating that the mechanical services design for the supermarket facility (all external mechanical plant and ventilation equipment) will comply with the permitted noise levels of Rule 29.6.1B of the Franklin Section of the District Plan. The mechanical plant shall be generally located in the position indicated by the orange circle within Appendix B of the Acoustic Assessment undertaken by Marshall Day Acoustics and provided with the application, dated 30 April 2019.
- 17 Prior to the commencement of works within the site (excluding site establishment works such as fencing, investigation and establishment) the first 60m of Wellington Street from Great South Road shall be formed in an all weather surface (which includes basecourse).

## During Earthworks and Construction

- 18 All construction access shall be from Wellington Street, unless it is impracticable ~~for some stages of construction, and where it is impracticable to do so, in which case~~ alternative construction access shall be applied for through the TMP process and shall be subject to the written approval of the Waikato District Council ~~Team Leader~~ Roading.

Construction Noise Standards Compliance

- 19 Construction noise shall be assessed in accordance with NZS 6803:1999 'Acoustics – Construction Noise' ~~and. All construction and earthworks activities on the subject site shall comply with the following construction noise limits at all times. Construction noise shall be~~ measured 1m from the façade of any building in both Business and Residential Zones.

Construction noise received at residential zones, or dwellings within the Business Zone, shall comply with the following noise limits:

Time of Week	Time period	Noise limit	
		dB LAeq	dB LAmax
Weekdays	0630 - 0730	55	75
	0730 - 1800	70	85
	1800 - 2000	65	80
	2000 - 0630	45	75
Saturdays	0630 - 0730	45	75
	0730 - 1800	70	85
	1800 - 2000	45	75
	2000 - 0630	45	75
Sundays and Public Holidays	0630 - 0730	45	75
	0730 - 1800	55	85
	1800 - 2000	45	75
	2000 - 0630	45	75

Construction noise received in industrial or business zones where sleep protection is not required shall comply with the following noise limits:

Time period	dB LAeq
0730 - 1800	70
1800 - 0730	75

Implementation of the Management Plans

- 20 All earthworks and construction activities carried out on site shall be undertaken in accordance with the certified Construction Management Plan and certified Construction Noise Management Plan ~~throughout the duration of construction works.~~
- 21 All construction shall be carried out in accordance with the ~~approved~~ engineering design plans ~~is required by~~ Conditions 7 - 12 of this consent.

- 22 Prior to operation of the supermarket authorised by this consent, all onsite lighting shall be installed in accordance with ~~the approved lighting plan and in accordance with the ongoing~~ condition 59 of this consent ~~for glare and lighting below~~.

### Complaints

- 23 Any complaints received by the consent holder as a result of the construction activities authorised by this ~~resource~~ consent shall be recorded by the consent holder in ~~the form of~~ a complaints register. The information recorded shall include:
- (a) The date, time and nature of the complaint;
  - (b) Name, phone number and address of the complainant unless the complainant wishes to remain anonymous;
  - (c) Action taken by the Consent Holder to remedy the problem;
  - (d) Any equipment failure and remedial action taken;
  - (e) The weather conditions at the time, including wind direction, wind strength and temperature; and
  - (f) Date and Name of the person making the entry.

This complaints register shall be made available to the Waikato District Council Monitoring Department within 24 hours of a request from a Waikato District Council Monitoring Officer.

### Hours of Operation – Construction and Earthworks

- 24 All construction works (including earthworks) on the site ~~must~~ shall only be undertaken between 7:30am – 6.00pm Monday to Saturday. This does not prevent works from being undertaken outside these hours where those works have been specified in the certified CNMP.

### Accidental Discovery Protocols

- 25 In the event of any archaeological artefacts being discovered the works ~~shall~~, in the vicinity of the discovery, shall cease immediately and the Waikato District Council, Heritage New Zealand Pouhere Taonga and representatives of local iwi (where artefacts are of Māori origin) ~~shall be~~ notified within 24 hours. Works may recommence on the written approval of the Waikato District Council after considering:
- (a) Tangata Whenua interests and values;
  - (b) Protocols agreed upon by Tangata Whenua and the consent holder, where required;
  - (c) The consent holders interests;
  - (d) Any approvals from Heritage New Zealand Pouhere Taonga; and
  - (e) Any archaeological or scientific evidence.

## Dust Control

- 26 All earthwork activities carried out on site shall be conducted and managed in such a manner as to ensure that all dust and particulate emissions are kept to a ~~reasonable~~-practicable minimum.
- 27 The consent holder shall ensure that an adequate supply of water for dust control (sufficient to apply a minimum of 5 mm/day to all exposed areas of the site during the winter period, and a minimum of 10 mm/day to all exposed areas of the site during the summer period), and an effective means for applying that quantity of water, is available at all times during construction, and until such time as the site is fully stabilised.
- 28 The consent holder shall ensure that, at all times, the soil moisture of exposed areas is maintained at levels, under prevailing wind conditions, that prevent dust generated by normal earthmoving operations from remaining airborne beyond the boundary of the work site.
- 29 The consent holder shall ensure that, outside of normal working hours, staff are available on-call at all times to operate the water application system for dust suppression.
- 30 If ~~so~~-required by the Waikato District Council, the consent holder shall carry out immediate sealing of any dust generating surfaces within the site, that give rise to any objectionable effects on adjacent properties, using hydro-seed/hydro-mulch (or similar paper maché based product), polymer soil stabilisers or a similar dust control product to provide remediation of any such dust effects to the satisfaction of the Waikato District Council.

## Debris on the Road

- 31 The consent holder shall take all practical measures to ensure that any debris tracking/ spillage onto any public roads as a result of the exercise of this consent ~~shall be~~ removed as soon as practicable, and within a maximum of 24 hours after the occurrence, or as otherwise directed by ~~the~~ Waikato District Council's ~~Roading Area Engineer~~, to the satisfaction of the Waikato District Council's ~~Team Leader Monitoring~~.

The consent holder, upon becoming aware of the need to clean up the roadway, shall advise ~~the~~ Waikato District Council's ~~Roading Area Engineer~~ of the need for the road to be cleaned up, and what actions are being taken to do so.

The cost of the clean-up of the roadway and associated drainage facilities, together with all temporary traffic control, shall be the responsibility of the consent holder.

## Earthworks and Cleanfill Activities

- 32 Any fill areas shall be undertaken in accordance with NZS4431:1989 (Code of Practice for Earthfill for Residential Development) unless otherwise approved by ~~the~~ Waikato District Council's ~~Senior Land Development Engineer~~. Any fill areas shall be certified by a suitably qualified Geo-professional as meeting the approved standard prior to any further development in those areas.



- 33 Any underfill drainage systems shall be designed by, and their installation supervised by, a suitably qualified and experienced Chartered Professional Engineer (CPEng) and their position recorded by a Registered Surveyor.
- 34 The site shall be stabilised against erosion as soon as practicable and in a progressive manner as earthworks are finished over various areas of the site. Appropriate methods of site stabilisation may include re-spreading of topsoil and grassing, hay mulching or placement of aggregate surfaces (roads/building platforms). The consent holder shall monitor and maintain the site until stabilisation is achieved to such an extent that it prevents erosion and prevents sediment from entering any watercourse.

### Geotechnical Completion Report

- 35 After completion of the earthworks, and prior to undertaking any building works, the consent holder shall provide a “Statement of Professional Opinion as to Suitability of Completed Earthworks” completed and signed by a Geo-professional (who carries appropriate professional indemnity insurance for the works being supervised/certified) to certify that the site is suitable for:
- (a) Erection of commercial buildings, and;
  - (b) Provide details of any specific foundation design considerations/limitations necessary for the construction of commercial buildings.

The format for the “Statement of Professional Opinion as to Suitability of Completed Earthworks” shall be as per Volume 4, Part 2 checklist 2.2 of the Hamilton City Council Development Manual.

The Statement is to be accompanied by the following:

- (a) A schedule with dates/results etc of all supervision and testing undertaken to certify the areas of cut/fill; and
- (b) An as-built plan of the earthworks, clearly showing the areas/depths of cut and fill, and defining areas of fill which have been engineered, and those areas of fill which have not been engineered.

The above statement is to be submitted to, and ~~gain the approval of~~approved by, ~~the~~ Waikato District Council's ~~Senior Land Development Engineer~~ prior to undertaking any building works on site.

### Landscaping

- 36 Within the next planting season following completion of construction of the MSE wall, the Landscaping of the MSE Wall shall be carried out in accordance with the Planting and Maintenance Specification Report by LA4 Landscape Architects Ltd, dated April 2019.
- 37 In the next planting season following completion of site works, all landscaping included in Drawing 19754-LP01 Rev D, prepared by LA4 Landscape Architects shall be implemented in accordance with the ~~approved methodologies schedules and Landscaping Plans~~requirements of conditions 13 and 14 of this consent.

### Acoustic Fence

- 38 Prior to the operation of the supermarket authorised by this consent, acoustic screening shall be installed in the location shown as a green line on the proposed site plan within Appendix B of the Marshall Day Acoustic report dated 30 April ~~2019 and as shown on the approved cross section plans 18828-05~~. The acoustic screens shall be 2m high and constructed of close-boarded timber with a minimum surface mass of 10 kg/m<sup>2</sup>; ~~such as 20-25mm thick timber palings or 17mm plywood~~.

### Boundary Fence

- 39 Prior to the operation of the supermarket authorised by this consent, the consent holder shall install a 2m high boundary fence with pedestrian gate along the site boundary adjoining 15 Selby Street in the location shown on the approved site plan referenced in condition 1 of this consent.

## **Post Construction**

### As Built Information

- 40 As Built information for all works covered in the approved engineering design plans shall be provided to the Waikato District Council for certification. As Built information shall be in accordance with Section 1.7.3 of the requirements of the RITS and shall also include all details of street lighting installed, in a format suitable for entering into the Waikato District Council's RAMM database.
- 41 The Consent Holder shall:
- (a) Appoint a suitably qualified and competent person, to the satisfaction of Waikato District Council's Roding Asset Information Officer who shall be responsible for gathering all information necessary for RAMM data collection for the construction of Wellington Street.
  - (b) This representative shall gather and submit RAMM data, which shall conform to Waikato District Council's ROAD ASSET DATA STANDARD SPECIFICATION, to Waikato District Council's Roding Asset Information Officer for assessment and technical certification. All RAMM data shall be provided on the prescribed forms.

### Construction Certification

- 42 Prior to operation of the supermarket authorised by this consent, a "Producer Statement – Construction" shall be provided for each separate works (water, wastewater, stormwater connections and reticulation and roading infrastructure) undertaken by each individual Contractor.
- (An acceptable format for "Producer Statement – Construction" can be found in the Hamilton Infrastructure Technical Specifications. A copy of the form is attached with this consent.)
- 43 Prior to operation of the supermarket authorised by this consent, a "Certificate of Completion of Development Works" prepared and signed by a Chartered Professional Engineer, shall be provided to confirm that all works in terms of the design plans

submitted and certified by the Waikato District Council have been carried out in accordance with the approved plans, appropriate standards and all relevant reports.

- 44 The reticulation within Wellington Street shall be vested in Waikato District Council prior to any private use of the system.

### **During Operation of the Supermarket**

#### Pedestrian Monitoring

45A At least two months, and no later than four months, following the date when the supermarket authorised by this consent is first opened to the public, the consent holder shall undertake a survey of the number and locations of pedestrians crossing Great South Road in the immediate vicinity of the site frontage and at the Wellington Street intersection and provide the results of the survey to the Waikato District Council, in writing. The monitoring required by this condition shall be undertaken on seven continuous days and at representative times during supermarket operating hours.

**Advice Note:** The purpose of the survey is to assist Waikato District Council in determining the appropriate type and location of a pedestrian crossing facility. It is expected that Waikato District Council will facilitate implementation of the pedestrian crossing within three years of the supermarket opening.

#### Onsite Parking

- 45 Prior to operation of the supermarket authorised by this consent and ~~throughout the duration of the activity~~ at all times subsequently, the consent holder shall provide 146 carparking spaces and associated on-site manoeuvring areas, which shall be maintained on-site in a weed-free, dust-free and permanently surfaced and permanently marked out condition.

#### Hours of Operation

- 46 The hours of trading of the supermarket authorised by this consent shall be limited to between the hours of 7 am and 12 midnight, seven days a week.
- 47 Delivery of goods, loading dock use, heavy vehicle movements and waste collection shall be limited to between 7am and 10pm, seven days a week. Loading and unloading shall be restricted to within the loading service area shown on the approved plans listed in condition 1 of this consent.

#### Review condition – Heavy Vehicle Movements

- 48 Pursuant to section 128 to 131 of the Resource Management Act 1991, the Waikato District Council may, at any time within the period 12 and 24 months following the date the supermarket authorised by this consent has commenced trading, serve notice on the consent holder of its intention to review condition 47 of this resource consent at any time within 12-24 months after the supermarket has commenced trading. The purpose of ~~the any~~ review under this condition is to review the effectiveness of condition 47 in ~~relation avoiding, remedying or mitigating~~

the adverse effects of heavy vehicle movements on the amenity of neighbouring properties and to amend condition 47 and/or impose additional conditions necessary to ensure that such effects are avoided, remedied or mitigated.

~~The Waikato District Council shall serve notice on the Consent Holder of its intention to review condition 47.~~

~~If the review identifies any adverse effects of heavy vehicle congestion on Wellington Street and/or Great South Road arising from service vehicle operations of the supermarket, the Waikato District Council may require the consent holder to prepare, and submit to Council for certification, of a Delivery Management Plan that appropriately mitigates the identified effects.~~

~~The Waikato District Council will undertake the review in consultation with the Consent Holder and the Consent Holder shall implement the specified measure as required.~~ The Consent Holder shall be required to pay the actual and reasonable costs of ~~the any~~ review under this condition.

### Acoustic Mitigation

- 49 ~~For the duration of the activities authorised by this consent,~~ All forklifts and lift stackers used within the site must be LPG or electric powered.
- 50 ~~For the duration of the activities authorised by this consent,~~ Tonal reverse alarms are prohibited on all vehicles that are permanently located on the site, including the hoists, stackers and other moving equipment. Broadband reverse alarms may be used if reverse alarms are required.
- 51 The acoustic fence required ~~to be installed in accordance with~~ by condition 38 ~~of this consent~~ shall be maintained ~~for the duration of the activities authorised by this consent~~ at by the consent holder at all times and any damages repaired in accordance with the design specifications ~~listed~~ specified in condition 38.

### Urban Design

- 52 The amenity seating area illustrated on the ~~approved~~ plans listed in condition 1 of this consent shall remain available for use by the general public and shall be maintained by the consent holder, unless it is vested through separate agreement to the Waikato District Council as public space.

### Landscaping / Planting to be maintained

- 53 All ~~L~~andscaping and planting ~~located within the site as approved and undertaken in accordance with the MSE Landscaping Report and the approved Landscaping Plan that is required by the conditions of this consent,~~ shall be implemented and maintained by the Consent Holder on an ongoing basis.

### Signage

- 54 ~~For the duration of the activities authorised by this consent all~~ All signage approved ~~under this resource consent where~~ shall have static illumination ~~(if illumination of~~

~~the particular signage~~ is proposed), ~~and the illumination~~ must not be flashing or blinking or otherwise moving.

For the purposes of this condition, illuminated signage includes:

- (a) The Countdown sign on the North Eastern Elevation.
- (b) The signs on the South Eastern and South Western Elevations.
- (c) The Countdown and Opening Hours signs on the North West Elevation.
- (d) The free standing sign.

55 There shall be a maximum of one free-standing sign associated with the supermarket located on the subject site, this shall be in the design and location shown on the approved site plan and south east elevation. The free-standing signs shall have a maximum height of 7.7 metres and width of 2.4 metres with a maximum number of sign faces of two. The sign shall be installed prior to operation of the Supermarket.

Advisory Advice Note: ~~For clarity,~~ This condition excludes small scale directional signage and other small scale supermarket signs such as trundler park identification.

56 The hours of illumination of the supermarket signage facing the residential zoned property along the North Eastern Elevation shall be limited to between the hours of 7am and 10pm, seven days a week.

57 The hours of illumination of other illuminated signage shall be limited to between the hours of 7am - 12 midnight, seven days a week.

58 During the operation of the supermarket, the consent holder shall ensure that all signs associated with the activity are maintained to ensure that ~~signage it~~ does not fall into a state of disrepair.

### Glare and Lighting

59 All outdoor lighting shall be positioned, mounted and directed in such a way that light coming directly or indirectly from it:

- (a) Is not a serious distraction or danger to motorists, and
- (b) Is not a serious distraction or annoyance to occupants of other sites at any time, which shall be deemed to be the case where once an effect is brought to the Council's attention the condition continues for more than 30 minutes in any 24 hour period and the affected person/s have no ready means of relief from it.

- All artificial lighting shall be installed and operated such that the luminous intensity of any light source is less than 1000 candelas in the direction of any affected property or road.

## Advisory Advice Notes

### 1 Lapse Date

This Resource Consent for land use lapses five years after the commencement of the consent, unless:

- (a) the Consent is given effect to prior to that date.
- (b) an application is made to the consent authority to extend the period after which the consent lapses, and the consent authority decides to grant an extension after taking into account
  - (i) whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent; and
  - (ii) whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and
  - (iii) the effect of the extension on the policies and objectives of any plan or proposed plan.

### 2 Other consents/permits may be required

To avoid doubt, except as otherwise allowed by this resource consent, all land uses must comply with all remaining standards and terms of the relevant Waikato District Plan. The proposal must also comply with the Building Act 2004, Hamilton City Infrastructure Technical Specifications and Waikato Regional Plans. All necessary consents and permits shall be obtained prior to development.

### 3 Corridor Access request

Prior to any works within road reserve, the consent holder shall attain an approved Corridor Access Request (CAR), including traffic management plan. The application is to be completed by a qualified Site Management Traffic Supervisor (STMS), and provided to the Waikato District Council's Traffic Management Co-ordinator for approval not less than 15 working days prior to any works within the road corridor being undertaken. No works may be undertaken until approval for the CAR is obtained in writing.

### 4 Archaeological sites may be **affected** by the proposal

It is possible that archaeological sites may be affected by the proposed work. Evidence of archaeological sites may include burnt and fire cracked stones, charcoal, rubbish heaps including shell, bone and/or glass and crockery, ditches, banks, pits, old building foundations, artefacts of Māori and European origin or human burials.

The applicant is advised to immediately stop work and contact Heritage New Zealand Pouhere Taonga if the presence of an archaeological site is suspected. Work affecting archaeological sites is subject to a consenting process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity associated with this proposal, such as earthworks, fencing or landscaping, may modify or destroy any archaeological site(s), an authority (consent) from Heritage New Zealand Pouhere Taonga must be obtained for the work to proceed lawfully. The Heritage New Zealand Pouhere Taonga Act 2014 contains penalties for unauthorised site damage.

In addition to contacting Heritage New Zealand Pouhere Taonga, it is requested

that you also contact Council's Monitoring Department at [monitoring@waidc.govt.nz](mailto:monitoring@waidc.govt.nz) with the consent number, address of property and date of when works ceased.

## 5 Enforcement Action

Failure to comply with the conditions of consent may result in Council taking legal action under the provisions of Part XII of the Resource Management Act (1991).