

IN THE MATTER

of the Resource Management Act 1991 ("**Act**")

AND

IN THE MATTER

of an application by Woolworths New Zealand Ltd ("**Woolworths**") for resource consent in relation to the site at 134 Main Street, Greytown in association with the existing supermarket known as FreshChoice Greytown

**LEGAL SUBMISSIONS ON BEHALF OF
WOOLWORTHS NEW ZEALAND LIMITED**

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1. SUMMARY

- 1.1 These submissions are made on behalf of Woolworths in support of its application to construct and operate a new access for customer and service vehicles for the existing FreshChoice supermarket, alongside signage and landscaping, at 134 Main Street, Greytown ("**Site**").
- 1.2 FreshChoice Greytown is located in the Industrial, Residential and Commercial zones, and provides access off two local roads, Hastwell Street and West Street to the existing supermarket's car parking and loading dock. The supermarket has been operating in Greytown for over 11 years and provides an important function for and service to the community. Presently, trucks and customers both access the supermarket and loading dock via the adjoining residential Hastwell Street and West Street.
- 1.3 The Proposal will result in a range of benefits. It will see significant health and safety improvements on Site, and ensure an attractive frontage design on Main Street, including through the retention of the Beech Tree and stone wall, which will contribute positively to the amenity values and historic heritage values of the surrounding area.
- 1.4 The Proposal aligns with the relevant objectives, policies and rules of the Combined District Plan ("**District Plan**") and overall has less than minor adverse effects in all respects including character and amenity, historic heritage, transport safety and efficiency. The Proposal should be granted on the conditions sought by Woolworths.

2. EVIDENCE

- 2.1 Woolworths will call evidence from:
- (a) **Daniel Shao** (Corporate) – Development Manager at Woolworths.
 - (b) **Richard Peers** (Arboriculture) – Founding Director of Peers Brown Miller.
 - (c) **Richard Knott** (Urban Design) – Historic Heritage Specialist, urban designer and planner at Richard Knott Limited.
 - (d) **Leo Hills** (Transport) – Director at Commute Transportation Consultants.

- (e) **Kay Panther Knight** (Planning) – Director at Forme Planning Limited.

3. THE SITE AND PROPOSAL

- 3.1 The Site is located at 134 Main Street, Greytown, on the north-west side of Main Street.
- 3.2 There is an existing FreshChoice supermarket at the back of the Site, as well as car parking, access, and servicing. The wider site has a total area of 5,689m² (made up of several parcels), and the existing supermarket has site frontages to Hastwell and West Streets.¹ The existing supermarket building is positioned so that its rear elevation faces towards the rear of properties on Main Street, with its front elevation facing north-west, towards West Street.
- 3.3 The existing supermarket site is split-zoned under the District Plan as Industrial, Residential and Commercial, whereas the Site at 134 Main Street is zoned Commercial.
- 3.4 The dwelling on the application Site (which is proposed to be demolished) was constructed in the 1950s. It is not scheduled in either the District Plan or the New Zealand Heritage Pouhere Taonga List.² Given its setback from the street, the dwelling is not a dominant element on Main Street.³
- 3.5 The Site currently includes access onto Main Street, which takes traffic from north and south through Greytown. The posted speed limit along Main Street is 40km/hr. Presently, service vehicles and B-trains navigate the residential streets (including Hastwell Street and West Street) to access the existing supermarket.
- 3.6 As Mr Shao and Ms Panther Knight explain, there are a number of factors that influence the design of supermarket access, as well as ensuring that the store is operationally efficient and addressing any potential health and safety risks.⁴
- 3.7 Supermarkets typically rely on convenient access and parking and have a high level of visibility along arterial routes.⁵ Currently, the existing supermarket does not benefit from direct access to Main Street. The Site

¹ Evidence of Richard Knott at [2.1].

² Evidence of Kay Panther Knight at [5.8].

³ Evidence of Richard Knott at [2.7].

⁴ Evidence of Daniel Shao at [1.5] and Kay Panther Knight at 8.20.

⁵ Evidence of Daniel Shao at [5.1] and [5.2].

was not available at the time of the development of the existing supermarket, resulting in no visibility or access from the Main Street and requiring a complex manoeuvre for service vehicles.⁶

3.8 Presently, delivery trucks travel through the customer carpark, and reverse within the customer carpark to the loading dock. As Mr Hills notes, reverse manoeuvres should be avoided where possible, due to safety issues with pedestrians and customer vehicles.

3.9 The Proposal seeks to address these issues. It involves the construction of a new crossing for customer and service vehicles with entry-only access from Main Street, in a way which respects the Site's context. The Proposal also includes:

- (a) a separate pedestrian path along the southern boundary of the Site;
- (b) reconfiguration of the loading area to suit the new access arrangement, with a new canopy above the loading area;
- (c) a new sign on the Main Street frontage;
- (d) one new customer car park in the existing Supermarket carpark;
- (e) retention of the existing Beech Tree and stone wall; and
- (f) associated landscaping.

4. RELEVANT PLANNING MATTERS

Discretionary activity

4.1 Overall, the activity is to be assessed as a Discretionary activity under the District Plan.

4.2 Ms Panther Knight has assessed the range of matters requiring consent.⁷ The evidence of Ms Panther Knight, Mr Hills, Mr Knott and Mr Peers supports a conclusion that the Proposal results in less than minor adverse effects in all respects, including character and amenity, historic heritage and transport, safety and efficiency.

⁶ Evidence of Daniel Shao at [5.7].

⁷ AEE at [6.1]

- 4.3 The Hearing Report suggests additional matters require consent, which Ms Panther Knight addresses in her evidence.⁸ Ms Panther Knight explains in her evidence that in undertaking her assessment, she interpreted the Site as that over which the activity is proposed, rather than the wider supermarket site as a whole (the approach suggested by Ms Clark). In our submission, this is the correct approach: 134 Main Street (over which consent is sought) is a separate site.
- 4.4 The detailed assessment of the relevant objectives, policies, rules and assessment criteria of the planning documents undertaken by Ms Panther Knight also concludes that the Proposal is consistent with the relevant provisions in the District Plan.⁹
- 4.5 While the Proposal is consistent with the provisions, consideration of the planning framework is only one of the relevant considerations. A decision-maker must have regard to all the matters under section 104 of the Act in exercising their judgement as to whether to grant consent and, if so, on what conditions.
- 4.6 Section 104 is not intended to direct a strict implementation of plan provisions, but rather requires a decision-maker to **have regard to** the relevant planning framework, rather than "give effect to" that framework.¹⁰ There must be discretion and flexibility exercised when considering how policy should be achieved and whether a proposal merits consent when considered against the statutory criteria set out in section 104.¹¹

Part 2

- 4.7 The Proposal clearly satisfies Part 2 of the Act. All adverse effects on the environment are avoided, remedied or mitigated. The development proposed is appropriate including in its context, and will maintain and enhance amenity values.
- 4.8 The Proposal will assist in ensuring the ongoing and improved functioning of the supermarket as critical social infrastructure, and will enable people and communities to provide for their health and safety.
- 4.9 The Proposal protects surrounding historic heritage values from inappropriate use and development, while maintaining and enhancing amenity values.

⁸ Evidence of Kay Panther Knight at [6.10].

⁹ Evidence of Ms Panther Knight at [1.3].

¹⁰ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

¹¹ *Brial v Queenstown Lakes District Council* [2022] NZCA 206 at [15] and [32] – [34].

Permitted baseline

- 4.10 Ms St Amand for Waka Kotahi correctly notes that the Commissioner has discretion as to whether to apply the permitted baseline. Ms St Amand is of the opinion that the permitted baseline should not be applied here, with the exception of the Beech Tree.
- 4.11 Ms Panther Knight's evidence (and the AEE) considers the permitted baseline and identifies that there are components of the Proposal that hold permitted activity status in the District Plan. Were the Commissioner minded to apply the permitted baseline, the effects permitted by the District Plan in relation to the following activities can be disregarded:¹²
- (a) A vehicle crossing in the proposed location, noting that the crossing complies with all relevant transport District Plan standards.
 - (b) A new sign of 2m² within the Commercial zone and 0.5m² in the Special Character and Historic Heritage Precinct.
- 4.12 However, Ms Panther Knight (and the other Woolworths experts) have clearly considered all the effects of the Proposal, specifically acknowledging the Historic Heritage Precinct ("HHP") and the discretionary activity status of the Proposal. In short, the Applicant's assessment does not apply (nor rely on the application of) the permitted baseline.¹³

Alternatives

- 4.13 The Hearing Report comments on the lack of consideration of alternatives and suggests there may be scope to undertake such an assessment.¹⁴ There is, properly, no suggestion in the Hearing Report that such an assessment is a requirement.
- 4.14 Waka Kotahi is concerned over the "absence of a robust assessment of alternative options"¹⁵ and grounds their recommendation of decline partially upon a lack of formal alternative assessment.¹⁶ Ms St Amand suggests the Proposal falls short of the requirements in the Act to assess alternative ways of carrying out an activity.¹⁷ We do not agree.

¹² Evidence of Kay Panther Knight at [7.2] and AEE at [8].

¹³ Evidence of Kay Panther Knight at [7.3(b)].

¹⁴ Hearing Report at [110].

¹⁵ Evidence of Roxanne Hilliard at [5.15].

¹⁶ Evidence of Kathryn St Amand at [1.10].

¹⁷ Evidence of Kathryn St Amand at [6.4].

- 4.15 Witnesses for Waka Kotahi have gone as far as offering alternative designs for Woolworths, including that Woolworths build a "shopfront store as an extension to the FreshChoice supermarket" in place of the proposed vehicle access.¹⁸ Waka Kotahi witnesses have also suggested there should be no access from Main Street, or delivery only access. Mr Church is of the view Woolworths should be assessing his designs, and appears critical that the applicant "favoured" the option set out in its application.¹⁹
- 4.16 The Commissioner will be aware that the process in which we are presently engaged is to assess the Proposal as applied for. The Commissioner will also be aware that an assessment or consideration of alternatives in this instance is not mandatory under s 104 RMA.²⁰

5. EFFECTS

- 5.1 A very wide range of concerns and effects have been alleged in submissions and repeated in the section 42A Report. Below, these submissions focus on the key issues that appear to be of greatest concern to submitters (and therefore Ms Clark).
- 5.2 It is important to note that while Woolworths considers the effects of the proposal less than minor in all respects,²¹ as a matter of law, consent can still be granted even where there are significant adverse effects. Adverse effects do not need to be avoided, remedied or mitigated in their entirety.²² The Act is not a "no effects" statute.²³

Copper Beech Tree

- 5.3 Numerous submissions raise the loss of the Beech Tree. With respect, these submissions do not assist, given the Application proposes to **retain** the Tree.
- 5.4 Mr Peers has provided detailed evidence and proposed conditions in relation to the Tree's retention,²⁴ all of which have been accepted by the Applicant. Woolworths has reduced the width of the crossing, replaced previously proposed car parking with landscaping, and retained the low stone wall, all of

¹⁸ Evidence of Kathryn St Amand at [1.11].

¹⁹ Evidence of Terry Church at [9.63].

²⁰ *Man O' War Station Ltd v Auckland Regional Council* (2011) 16 ELRNZ 475 at [81].

²¹ Evidence of Kay Panther Knight at [1.2].

²² *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159 at [244] – [245].

²³ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council* [2013] NZHC 1346 at [52].

²⁴ Conditions as set out in Appendix A of Kay Panther Knight's evidence.

which only further support the Tree's health and vitality. Woolworths has also proposed a draft condition of consent requiring the replacement of the Tree for a period of three years, should its health be impacted due to unforeseen circumstances.

Signage

- 5.5 The Application proposes a new sign adjacent to the proposed Main Street access. Mr Knott's evidence addresses the sign and its effects on historic heritage values and streetscape amenity, noting it will be of equivalent height to the eaves height of the adjacent building to the north (132 Main Street).²⁵ He considers the sign is appropriate.
- 5.6 Ms Panther Knight has proposed, per the Hearing Report's recommendation, a condition to restrict the illumination of the sign to align with store opening hours, between 7am and 9pm.²⁶

Heritage and urban design

- 5.7 As detailed in Mr Knott's evidence and Assessment,²⁷ the Proposal has been designed sympathetically to ensure that Greytown's historic heritage values are recognised and protected²⁸ and has sought to maintain the existing values of the HHP while balancing the inherent health and safety concerns with the existing layout.²⁹
- 5.8 Mr Knott considers the removal of the dwelling on the Site will not reduce the heritage values of the HHP. The current views of the dwelling are limited due to the existing planting along the site frontage and the Beech Tree (which is of course to be retained). The Beech Tree will remain a dominant feature and the sign will not appear out of scale with the area nor look out of place next to similar signage in the local area.³⁰
- 5.9 The Hearing Report suggests that the Proposal's "industrial" style access within the HHP site is contrary to the aims and outcomes of the HHP.³¹ It is difficult to see how the elements of the proposed access can fairly be described as "industrial". As Mr Knott notes, the position of the service yard,

²⁵ Evidence of Richard Knott at [5.2 (h)].

²⁶ Evidence of Kay Panther Knight at Appendix A.

²⁷ R Knott, *Proposed Alterations FreshChoice, Greytown, Urban Design and Heritage Assessment*, Richard Knott Limited, 13 April 2023.

²⁸ Evidence of Richard Knott at [5.1].

²⁹ Evidence of Richard Knott at [7.3].

³⁰ Evidence of Richard Knott at [5.2(i)].

³¹ Hearing Report at [72].

the gates at each end, the alignment of the new access, retention of the existing Beech Tree and low wall, as well as new landscape planting, have all been designed to be in keeping with the existing character and amenity values of Main Street. Mr Knott further notes that the additional landscaping and retention of the Beech Tree will ensure that there will not be a clear view down the lane towards the new canopy and the car park.

- 5.10 The desired outcomes of the HHP are set by Objective HH1 – Historic Heritage Values. Mr Knott concludes that the Proposal is consistent with Objective HH1 and its supporting policies. There is no suggestion in the Objective that an access as proposed is contrary to the aims of the HHP.
- 5.11 The Proposal has been appropriately designed with regard to the historic heritage values of the Greytown town centre and ensures that the overall historic heritage values of Greytown are protected.³²

Access and safety

- 5.12 The Proposal has been carefully designed in respect of pedestrian and vehicular safety and in respect of the efficiency of the surrounding transport network. Mr Hills concludes the Proposal results in minimal adverse effects on the operation and safety of the road network.³³
- 5.13 The vehicle crossing proposed is 8.3m wide at the boundary of the Site, the width required to accommodate the largest anticipated design vehicle.³⁴ The crossing will require the removal of two on-street parking spaces, one to facilitate the crossing and one to be removed to enable clear sightlines between left turning trucks and pedestrians.³⁵
- 5.14 The crossing will satisfy relevant District Plan design requirements. The footpath either side of the crossings will maintain a consistent surface finish, signalling to drivers that pedestrians have right of way. This is also consistent with other crossings along Main Street.³⁶
- 5.15 The current traffic route for deliveries requires trucks to travel through the customer carpark, then reverse within the customer carpark, up into the loading dock.³⁷ Such manoeuvres within customer carparks are generally

³² Evidence of Richard Knott at [8.2].

³³ Evidence of Leo Hill at [2.3.]

³⁴ Evidence of Leo Hills at [5.23].

³⁵ Evidence of Leo Hills at [5.23].

³⁶ Evidence of Leo Hills at [5.25].

³⁷ Evidence of Leo Hills at [5.26].

avoided, if possible, as they can pose safety issues for pedestrians and moving customer vehicles. The Proposal's intention is to remove such a manoeuvre which, in the opinion of Mr Hills, results in an on-site improvement to safety.³⁸

- 5.16 The new access will allow loading vehicles to access the loading area from Main Street and then exit onto West Street. Customers will have access to the existing supermarket from the proposed access, bypassing the loading area. Mr Hills and Ms Panther Knight consider the Proposal to improve the existing operation and effectively mitigate any adverse effects.³⁹
- 5.17 The Proposal will have positive effects on the safety of pedestrians and customer vehicles and minimal adverse effects on the operation of the road network. Mr Hills recommends the following conditions (which are included in Ms Panther Knight's evidence at Appendix 1):
- (a) A speed bump should be provided within the customer vehicle lane internal to the site to slow vehicles.
 - (b) The development should provide a Construction Traffic Management Plan before construction begins.
 - (c) A loading management plan should be developed for the site. This should ensure deliveries are staged to avoid any potential queuing onto Main Street.
- 5.18 Mitigation methods are explained at length by Mr Hills in his evidence and supported by Ms Panther Knight's evidence.⁴⁰ The mitigation methods involve various features that ensure pedestrian safety (both onsite and on Main Street).
- 5.19 The concerns alleged in the evidence on behalf of Waka Kotahi are, with respect, exaggerated. For example, Ms St Amand refers to the driveway as "sweeping"⁴¹ across the Site, and that "dominant vehicle use"⁴² contributes the overall exposure of the "utilitarian buildings".⁴³
- 5.20 Woolworths' evidence demonstrates the proposed vehicle crossing satisfies the relevant design requirements under the District Plan. Furthermore, it is

³⁸ Evidence of Leo Hills at [5.26].

³⁹ Evidence of Leo Hills at [5.28].

⁴⁰ Evidence of Leo Hills at 5 and Evidence of Kay Panther Knight at Appendix 1.

⁴¹ Evidence of Kathryn St Amand at [1.3].

⁴² Evidence of Kathryn St Amand at [8.22].

⁴³ Evidence of Kathryn St Amand at [8.22].

clear in the evidence of Mr Hills, Mr Knott and Ms Panther Knight that the intention is for the detailed design of the crossing to be carefully undertaken to ensure priority is given to pedestrians.

- 5.21 It is understood this can be achieved through application of standard specifications enabling a ramp from the carriageway for the vehicles over a continuous footpath, at the same level and constructed of the same material as the adjacent footpath. The Applicant has accepted a condition of consent requiring that this design is certified by the Council before construction.

6. CONCLUSION

- 6.1 Woolworths has sought, with support from its experts, approval for a crossing for customer and service vehicles, and associated activities. As set out by Mr Shao, Woolworths engaged in extensive consultation with the Council and Waka Kotahi, pre and post lodgement around its objectives and potential outcomes.⁴⁴
- 6.2 While it is laboured in both the Hearing Report and Waka Kotahi evidence that the previous lodged application is irrelevant, that process demonstrates considerable effort has been made by Woolworths to put forward a Proposal which achieves Woolworths' objectives, while ensuring effects are avoided, remedied, or mitigated.
- 6.3 Woolworths has worked hard to advance a comprehensively designed Proposal that complies with planning requirements as far as possible while balancing the operational needs of Woolworths and responding to the community's concerns. It is our submission the Proposal should be granted, subject to the conditions set out in Appendix 1 of Ms Panther Knight's evidence.

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⁴⁴ Evidence of Daniel Shao at [8.7].