

In the Environment Court
At Wellington

ENV-2023-WLG-000017

I Mua I te Kooti Taiao
I te Whanganui-ā-Tara

In the Matter

The Resource Management Act
1991 (“RMA”)

Between

WOOLWORTHS NEW ZEALAND
LIMITED
Appellant

And

SOUTH WAIRARAPA DISTRICT
COUNCIL
Respondent

Reporting Memorandum of Counsel for the Respondent
Dated 13 March 2024

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updated swdc memorandum

Reporting Memorandum of Counsel for the Respondent

1. This Memorandum of Counsel (Memorandum) is filed on behalf of South Wairarapa District Council (the Respondent) in response to the Court's Direct Referral Track Directions of 21 December 2023 (Directions).
2. The Directions relate to an appeal to the Court by Woolworths New Zealand Limited (the Appellant) against a decision of a Commissioner of the Respondent to decline resource consent for the construction and operation of a one-way vehicle entry at 134 Main Street, Greytown to the existing FreshChoice supermarket in Greytown.
3. The Directions list a number of matters that the Respondent is to address in this Memorandum. Those matters are addressed below in the order they appear in the Directions.
4. In preparing this Memorandum, the Respondent has consulted with the Appellant and section 274 parties. The views of those parties received to date are recorded in this Memorandum where relevant.

Steps taken to negotiate or mediate

5. The parties have not yet taken steps to negotiate or mediate issues in contention, but generally consider that both mediation and expert conferencing will be valuable to ensure issues are narrowed or resolved as much as possible before evidence is exchanged.
6. Two section 274 parties (Michelle Dawson and Ian McDonald) have advised that they do not agree with the concept of expert conferencing. Ms Dawson has advised via email that:

‘...the hearing quite clearly showed the majority of the witnesses, including traffic consultants struggled to understand the impact on traffic safety of the proposed truck trailer combinations (existing and trialed truck delivery services Woolworths NZ Limited are trialing in other locations) and the impact on the local community with them accessing 134 Main Street from State Highway 2.’
7. The Respondent does not agree with this statement and considers that expert conferencing will be useful to both the parties and the Court to assist in enhancing the efficiency of the hearing process.
8. It is noted that Ms Dawson and Mr McDonald have not advised that they will be calling any expert witnesses to give evidence in this proceeding.

A list of the issues unresolved between the parties

9. Noting the parties have not yet engaged in mediation or caucusing, the key issues identified by the parties (by theme) are:
 - (a) traffic and pedestrian safety (including loss of carparks);
 - (b) road function, roading hierarchy, and urban design;
 - (c) planning (including character, amenity, landscaping, and signage);
 - (d) noise;
 - (e) historic heritage; and
 - (f) the Copper Beech tree.

A list by name (and by field if an expert) of all witnesses to be called by the parties

10. At this stage, and subject to the outcome of any mediation and/or caucusing to narrow issues, the Appellant proposes to call the following witnesses:
 - (a) Kay Panther Knight (Planning);
 - (b) Leo Hills (Traffic);
 - (c) Richard Knott (Urban Design and Historic Heritage); and
 - (d) Daniel Shao (Corporate).
11. The Respondent intends to call the following witnesses:
 - (a) Honor Clark (Planning);
 - (b) Harriet Fraser (Traffic); and
 - (c) Ian Bowman (Historic Heritage).
12. The section 274 parties have advised that they intend to call the following witnesses:

Greytown Heritage Trust (witness identities to be confirmed)

 - (a) Greytown Heritage Trust Representative (submitter);
 - (b) Planning;
 - (c) Historic Heritage;

(d) Tree Specialist.

New Zealand Transport Agency - Waka Kotahi (NZTA)

- (a) Kathryn St Amand (Planning);
- (b) Terry Church (Traffic);
- (c) Ben Frost (Urban Design);
- (d) NZTA Corporate witness (TBC).

David Lloyd

- (a) David Lloyd (Retired Transport Operator/submitter);
- (b) Kerry Zuppich (Heavy Vehicle Movements).

13. In addition to the above, the following s 274 parties have confirmed that that intend to present evidence themselves:

- (a) Michelle Dawson
- (b) Ian McDonald
- (c) Lorraine Hall
- (d) Sija Spaak
- (e) Prue Vincent
- (f) Greytown School Board of Trustees
- (g) Latasha Boyce

14. Where relevant, the section 274 parties acknowledge that the Court requires a list of names of witnesses to be called. Names will be provided as they are confirmed and aim to do so as part of the further reporting memorandum.

A timetable for filing and exchange of evidence and all other steps appropriate for preparation for an efficient hearing, including meetings of relevant experts to narrow the issues

15. The parties consider there is clear benefit in mediation and expert conferencing on this matter ahead of the provision of evidence to narrow the issues ahead of any hearing (or exchange of evidence). This will ensure an efficient use of Court and all parties' time.

Mediation

16. In relation to mediation, and subject to the availability of the parties and an Environment Court Commissioner, the parties seek one day of mediation, in person.
17. Due to various availability constraints of the parties in March and April 2024, the parties request that a mediation be scheduled from May 2024.
18. Ms Hall (section 274 party) has requested that mediation can take place on a Tuesday if possible, to accommodate her limited availability as a local small business owner.

Expert conferencing

19. In terms of expert conferencing, the parties generally consider conferencing on the topics of traffic, planning, urban design, and historic heritage issues may be appropriate.
20. Subject to the availability of an Environment Court Commissioner to facilitate expert conferencing, the parties' experts can be available to attend expert conferencing following mediation.

Evidence exchange

21. The parties propose to file a further reporting memorandum with the Court once the outcome of mediation is known, and the parties have a better sense of things of where matters sit.
22. The parties propose a further reporting date of **Friday 31 May 2024**, at which point they anticipate being able to propose a timetable for expert conferencing and evidence exchange for the Court's consideration and direction.
23. The parties consider that the scheduling of a hearing date will assist with establishing suitable evidence exchange timeframes.
24. The Respondent will liaise with the Environment Court Registry in relation to available hearing dates with a view to working backwards from a potential hearing date to schedule evidence exchange.

Hearing time

25. The parties estimate that no more than one week of hearing time will be required for this matter.

Any issues as to the hearing venue and any other hearing related matters, such as the need for an interpreter.

26. The parties consider that a site visit may be useful to the Court as part of the proceedings.
27. All parties request a hearing venue either in Wairarapa or in Wellington. The parties note that the site (which is subject of this appeal) is based in Greytown, South Wairarapa and that many submitters live in the local area.
28. Mr Ian McDonald requests that any venue for proceedings is wheelchair accessible to enable him to fully participate.
29. No party, to date, has identified the need for an interpreter.

Dated this 13th day of March 2024



Counsel for the Respondent
R P Conner