

Before the Independent Commissioner

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Under the Resource Management Act 1991

In the matter of an application by Foodstuffs (South Island) Properties Limited for the establishment and operation of a PAK'nSAVE supermarket with ancillary offices, self-service petrol facility, emergency coordination facility, car parking, roading realignment (addition of a signalised intersection along Main North Road), signage, earthworks and modifications to the Lydia Street Drain (a network waterway) at 171 and 165 Main North Road, 7, 7A and 7B Northcote Road (the **Site**) (RMA/2018/2029)

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**Legal submissions in reply on behalf of Foodstuffs (South Island) Properties Limited**

19 December 2019

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## May it please the Commissioner

- 1 Will this application promote sustainable management? That is the ultimate test for the proposed PAK'nSAVE, self-service petrol facility, Emergency Coordination Facility and associated activities (the **Proposal**).
- 2 This is a lengthy reply because of the myriad of issues raised. It does not reflect substantive concerns with the Proposal as key matters have been resolved. In our submission, it is important that a full assessment of the case is before the Commissioner and we respond in detail to issues raised during the course of the hearing.
- 3 The Proposal is a discretionary activity which is to be assessed objectively against section 104 of the Resource Management Act 1991 (**RMA**).
- 4 The evidence is compelling. The range of positive benefits are not disputed. The potential adverse effects are clearly manageable, with any remaining disputed transport/traffic and urban design effects being matters of detail.
- 5 The Christchurch District Plan (**CDP**) does not preclude commercial activity of this scale within the Industrial General Zone. There is no strong mandatory directive which requires the Proposal to be located within a centre. Commercial activities outside centres are contemplated. The uncontested evidence is that the Proposal will not undermine the role or functions of other centres. Quite the opposite for the adjacent Local Centre, which the Proposal will foster and support. No persuasive evidence was brought which demonstrates grant of consent would result in economic uncertainty in centres or uncertainty for investment in transport or matters of urban form. The Proposal is also at least partially supportive of transport provisions in the CDP. It will promote public transport and active transport by providing safe, secure and convenient cycle parking, walking integration and a travel plan. But for the Proposal, these positive aspects of public and active transport would not be realised.
- 6 PAK'nSAVE is unlike your typical neighbourhood convenience store and is not suited to a 'main street' town centre or mall environment. You also heard there is a strategic need for the Proposal in this location. The Emergency Coordination Facility will be of significant value to the community in times of an emergency. There are undisputed benefits to the safety and efficiency of the strategic transport network from the upgrades proposed to the intersection (which we accept forms part of the Proposal) and the other infrastructure improvements. The urban design and visual appearance outcomes are superior to what is existing and what could be realised by an anticipated industrial activity. The function of this poorly performing Local Centre will also be maintained and strengthened as a consequence of the Proposal. These aspects are distinguishing. No adverse risk of precedent or plan integrity will arise from the grant of consent.

- 7 Some of the additional conditions sought by the Council, Canterbury Regional Council (**CRC**) and the New Zealand Transport Agency (**NZTA**) are considered to be onerous and are not agreed by the Applicant. We also note that conditions must be properly linked to mitigation of an actual or potential adverse effect that is quantifiable and based in evidence. Given some of the conditions sought by these parties followed the adjournment of the hearing, it has been necessary to ensure that the Commissioner has an optimal set of conditions against which the Proposal can be judged. This is attached as revised version 8 and includes refinements to the suite of transport related conditions on the recommendation of Mr Paul Durdin who has undertaken an independent review.
- 8 It is Foodstuffs' case that the Proposal will clearly achieve sustainable management of natural and physical resources and can properly be granted consent, subject to the fit for purpose conditions put forward by the Applicant in this reply.

### **Determinative matters**

- 9 The Reporting Officer for CCC has expressed the view that consent should be declined for the following reasons:
  - (a) the Proposal is contrary to key policies relating to the centres-based framework;
  - (b) there remain concerns from a public transport perspective (public transport travel time and corridor width, multiple trips) and the Application is inconsistent with transport policies; and
  - (c) for reasons of precedent and plan integrity.
- 10 Outstanding urban design matters are also raised.
- 11 In our submission, the basis of CCC's case is flawed for a number of reasons as will be outlined in this reply with a focus on matters raised during the hearing that have not already been covered during the presentation of Foodstuffs' case.

### **Transport and traffic effects**

#### *Modelling*

- 12 Mr Gregory remains concerned about risk with modelling.<sup>1</sup> As outlined in opening, the choice of modelling, platforms and assumptions were scoped and agreed with the Council, and several additional iterations of modelling have been completed.

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<sup>1</sup> Stated orally in reply.

Mr John Falconer had been provided an agreed scope from the Council and the Applicant in order to undertake a peer review of the model. He confirmed it fit for purpose. Mr Falconer also confirmed orally to the Commissioner that he was totally independent.

- 13 It is accepted that the receiving environment is complex and that there are (inevitability) elements of uncertainty in modelling. That is not a criticism of the assessment of effects that flows from the modelling exercise. An appropriately conservative level of risk is included within the modelling. Mr David Smith and Mr Falconer did not believe that it was necessary to undertake further sensitivity tests to explore all elements of uncertainty.<sup>2</sup> Mr Falconer saw the modelling purpose as a tool to compare two options. In response to questions from the Commissioner he considered that, based on the model, the Proposal is likely to have less than minor effects, and any modelling risk would likely be on the lower side. He acknowledged there are additional safety benefits which can be considered positive.
- 14 We highlight some conservative assumptions associated with the modelling:
- (a) the effects are assessed against the existing use of the industrial site i.e. not operational. It would have been reasonable to have allowed for an operational industrial activity on the Site and to use that as part of the baseline;
  - (b) the modelling does not allow for any reduction in vehicle movements associated with a potential closure of the existing PAK'nSAVE at Northlands Shopping Centre; and
  - (c) the positive safety and efficiency benefits of upgrading the intersection were included as part of the baseline post conferencing. It was submitted in opening that this upgrade does not form part of the existing environment so it should not be considered part of the baseline.
- 15 While not considering them necessary, the Applicant has undertaken sensitivity tests at the request of other parties which has proven the robustness of the Proposal and mitigation offered: a higher and lower trip generation rate was adopted; extending traffic signal cycle times; controlled left turns into and out of the Site at the new signals; a bus jump included at the new signals; and moving the bus stop to the north of the new signals.<sup>3</sup>

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<sup>2</sup> Mr Smith Rebuttal at [34]-[36], Mr Falconer orally.

<sup>3</sup> Mr Smith Rebuttal, at [36].

- 16 The Commissioner can be confident that the comprehensive and conservative modelling can be relied upon to inform the assessment of effects for the Proposal.

### **Traffic Safety**

- 17 Mr Gregory considers there are "at least minor" traffic safety effects on the network. He remains concerned with the safety of the Redwood Family Dentist operation, the safety of cycle access, the need to signalise two free left turns, and the Northcote/Lydia Street intersection. We respond to these matters in turn.

### *Safety of Dentist*

- 18 Mr Gregory remains concerned with the safety of the Dentist operation (186 Main North Road) with the proposed signalised intersection. This was considered a minor point by Mr Ian Clark (NZTA).<sup>4</sup> The Applicant has met with Redwood Family Dentists and they are comfortable with the Proposal, and have subsequently withdrawn their submission. No evidence has been provided that this cannot be adequately resolved. Condition 81(f) provides for installation of signage banning right turns on Main North Road. This is accepted by CCC.
- 19 Mr Smith provided evidence that the Dentist can operate safely within what is proposed by the Applicant:<sup>5</sup>
- (a) surveys taken indicate low vehicle movements in and out of the Dentist practice<sup>6</sup>, and it was assessed that it is impractical to signalise the access for this low level of demand, noting that it is a two-way one lane vehicle crossing;
  - (b) reversing vehicles can safely use the wide bus lane and no parking will be allowed within the intersection. Any vehicle that reverses out would be able to do so without encroaching the through traffic lanes;
  - (c) signage will be provided at the Applicant's expense at the Dentist entrance to alert customers that the access is left out only (as existing). Right turns and U-turns from Main North Road southern approach will be banned; and
  - (d) further matters of detailed design can be implemented if necessary (including flexi-bollards or a narrow kerb to prevent right turn movements in and out of the Dentist site as well as prevent vehicles reversing on to the traffic lanes).

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<sup>4</sup> Mr Clark at [7.2].

<sup>5</sup> Mr Smith EIC, para 148(e).

<sup>6</sup> Page 19 of Appendix D of ITA

### *Cycle access*

- 20 Mr Gregory concerns about cycle access relate to his view there will be a significant increase in cyclists. Mr Gregory orally spoke of a 300% increase in cyclists. He then concludes the potential frequency of effects is high, and degree of severity in terms of safety is high (orally in reply). In our submission, Mr Gregory incorrectly elevates the significance of cyclist's safety. Cyclists have a very low baseline and will remain a relatively small number. In section 7.2 of the Integrated Traffic Assessment (**ITA**) Mr Smith estimates that there may be 31 cyclists in the evening peak hour across all accesses and in both directions. If half of these cyclists were to access/egress via Main North Road (as opposed to Northcote Road) and half of these access/egress in the northbound direction we are estimating in the order of 7-8 cyclists in the evening peak hour to be potentially affected. This is not a 300% increase on the current 10 northbound cyclists per hour. Mr Smith further addresses this concern in his rebuttal evidence.<sup>7</sup>

### *Free left turns to be signalised*

- 21 Mr Gregory considers there is a need to signalise two free left turns at the new signals. Again this is a matter of detailed design and the Proposal does not preclude either of the left turns from being signalised.

### *Northcote/Lydia Street intersection*

- 22 Mr Gregory expressed concerns about the Northcote/Lydia Street intersection, and consequential impacts on servicing arrangements. He considers the current design cannot be supported now or in the future.
- 23 CCC seeks a condition requiring a formal right-turn offset to be formed and marked along Northcote Road to provide for vehicles to turn right into Lydia Street. The Applicant does not accept this condition. It is not necessary to mitigate an adverse effect and it includes inappropriate levels of discretion. That said, the Applicant is prepared to accept conditions which monitors the Northcote Road/ Lydia Street intersection and measures the extent of queuing for eastbound vehicles entering the Site. A design solution may be a formal right-turn offset if an adverse effect arises in future (Conditions 87(f) and 91).
- 24 Possible future design scenarios for Northcote Road Route Improvements (**NRRI**) do not form part of the existing environment from which the Commissioner should make a decision. It is agreed by the relevant experts that the upgrade project of Northcote Road does not have a specific design.<sup>8</sup> We submit the Proposal is not

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<sup>7</sup> Mr Smith Rebuttal, at [23]-[24].

<sup>8</sup> section 10 of JWS.

required to include contingency in its design in the event that an option for Northcote Road is preferred.

- 25 The advice note proposed by CCC which seek restrictions on Lydia Street is not accepted. Mr Smith has identified alternative options to service the Site via the Main North Road ROW access, and via the Lydia Street left in and left out in the future if necessary.<sup>9</sup> This would need to be suitably designed as part of the NRRI to ensure safe manoeuvring was achievable to access Lydia Street. In our submission, limited weight should be given to this possible future environment.

**Effects on roading network (including provision of public transport)**

- 26 Mr Clark (NZTA) considers that there will be some positive and some negative effects, and that overall, the effects may be minor with appropriate conditions.<sup>10</sup> Mr Smith responded to the proposed conditions sought by Mr Clark in his rebuttal evidence in detail and appropriate conditions have been offered.<sup>11</sup> At the close of the hearing, Mr Clark didn't appear to have any outstanding concerns from his evidence (aside from some points raised during the hearing regarding Winters Road which we discuss later in this reply). It appears the relevant conditions are accepted by NZTA subject to the minor comments provided by Ms Hewett.
- 27 In terms of potential effects on the roading network, we make the following comments in reply to matters raised during the hearing.

*Main North Road/ Northcote Road/ QEII Drive Intersection*

- 28 It was accepted during the hot-tubbing session that the proposed upgrade to the roading network at the QEII intersection has merit, and can be considered a benefit of the Proposal. Who does the work and who pays for it is for a separate process. Mr Clark confirmed in response to questioning that regardless of who undertakes the work at the intersection, it will enhance the roading network in the area and "it is a logical response to change in the environment once the CNC is open".
- 29 Mr Clark agreed with the Commissioner that the effect of the Proposal is to bring forward the works and this is a benefit, saying "it increases the certainty of it happening". Mr Gregory agreed that the Proposal will not adversely affect the intersection and that there will be benefits.
- 30 Condition 80 is offered by the Applicant and the substance of it is agreed by all parties. It provides for the intersection to be configured to one exclusive through

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<sup>9</sup> Mr Smith EIC, 148(c).

<sup>10</sup> Mr Clark, at [10.2].

<sup>11</sup> Mr Smith Rebuttal at [15]-[33].

lane, one shared through-right turn lane and one exclusive right turn lane. The east-bound QEII Drive Traffic lanes shall be widened. In response to questions from the Commissioner, legal counsel confirmed that the Applicant accepted the risks associated with this forming a condition precedent to the grant of consent. It is also available to the Commissioner to grant a condition which may require third party consent if there is a statutory power to execute the work and it is carried out on behalf of the public body having the statutory power.<sup>12</sup>

- 31 The Applicant has accepted the cost for this upgrade, unless otherwise agreed with the relevant road controlling authority (refer Advice Notes). If the road controlling authority implements upgrades to the intersection prior to opening of the supermarket that are similar to, or more extensive than, the configuration specified in Condition 80 it will be deemed met. This is an appropriate process. We submit that the safety and efficiency benefits that will be realised by the upgrade works to the intersection should be given significant weight as a positive effect and when having regard to the planning framework. As stated earlier, this upgrade was included in baseline modelling. Mr Gregory did not alter his view on effects to account for this at the hearing (notwithstanding the technical evidence of the Applicant and NZTA as road controlling authority).
- 32 We also note that CRC did not express a material concern with effects on public transport from the changes to the intersection. Mr Fleete confirmed in response to a question from the Commissioner that changes may affect "our services to a minor degree". No evidence was otherwise provided that would lead you to conclude that this represents a material adverse effect.

*New signalised intersection – Access 3/Main North Road*

- 33 CRC's primary issue is with the proposed additional set of traffic signals. Mr Fleete expressed a concern this could disrupt the existing bus infrastructure and add to travel time. The future receiving environment for buses travelling along this corridor will change dramatically from the current situation after the Christchurch Northern Corridor opens, and it is not clear whether Mr Fleete's claims consider this (because it was not mentioned).
- 34 Mr Smith considers the impact on bus travel times to be negligible.<sup>13</sup> He considers that public transport priority can continue to operate as successfully as it currently does, and that there is the opportunity to enhance this through the careful

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<sup>12</sup> *Kiwi Property Management Ltd v Hamilton City Council* (2003) 9 ELRNZ 249, at [66]-[67].

<sup>13</sup> Mr Smith Rebuttal, at [24].



management of signal offsets and green time, and the inclusion of a bus jump where needed.<sup>14</sup>

- 35 The Applicant has demonstrated through modelling that a bus priority head-start at the new traffic signals could be introduced to maintain bus priority along the Main North Road corridor. The scale of benefit derived from this detailed design measure depends on the choice of bus stop location. Condition 95 provides for this or a bus stop located to the north of the Site adjacent to the Plaza, where buses will have an unimpeded run northbound on Main North Road from the Cranford Street signals through the new signals. The condition retains flexibility (supported by CRC) and the matter can be fully resolved at the detailed design stage of the new traffic signals. As set out in Advice Notes the final intersection design is dependent on engagement with a number of parties: road controlling authorities, CCC as asset owner, CTOC who operate the network and CRC who operate the bus services. The Applicant does not accept CCC's proposed changes to reduce this flexibility in conditions.
- 36 No evidence was provided by any other expert (such as transport modelling) to demonstrate that the introduction of the new signals will result in adverse effects on bus travel times. In response to questions from the Commissioner, the following experts at least accepted no adverse effects:
- (a) Mr Smith considered that overall there are positive benefits being delivered for public transport. With regard to the significance of time delays and savings, he considered thresholds are different for different people. He gave the examples of a bus trip from the CBD to Belfast taking 25min, and that when driving the same route the next day you could experience variability of 5-10 minutes regardless of any changes to surrounding land uses;
  - (b) Mr Clark considered (orally) that effects on bus travel time was "not an adverse effect" as opposed to a benefit due to his view that some of the benefits on buses is because of cars leaving the network; and
  - (c) Mr Fleete accepted in response to questions from the Commissioner that the Applicant's modelling was reliable. The modelling shows an improvement of 25 and 58 seconds at 2021 and 2031 in the northbound direction and an improvement of 33 seconds and one second in the southbound direction (where the bus priority lane is not operating in the evening peak).
- 37 Mr Gregory considers that there are "more than minor" effects on public transport, but acknowledges that these are not significant. He is concerned with the reduction

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<sup>14</sup> Mr Smith Rebuttal, at [5]-[14].

in bus lane width, the proposed integration with public transport, Winters Road rat running, and access points. We address these in turn.

*Bus lane width and cyclist safety*

- 38 The narrowed width of the bus lane appeared to become of heightened importance throughout the hearing. The 3.2m width has been demonstrated as feasible in the existing environment. It is consistent with NZTA guidelines and comparable to other situations (3.2m width north of Northcote Road). This was accepted by Mr Fleete. There are no adverse effects which cannot be managed. The Applicant does not accept the CCC condition requiring a minimum 4.2m wide transport lane in both northbound and southbound directions. That said, a 4.2m bus lane in future is not precluded if the detailed design process in future enables it, for example, when the public transport routes are upgraded (evidence of Mr Gregory).
- 39 According to NZTA guidance, best practice in New Zealand is that bus lanes should be either wide enough for cyclists to ride adjacent to buses (4.2 m or wider) or narrow enough that cyclists and buses must travel in single file. In between widths should be avoided (3.2 – 4.2m), as these can result in buses or cyclists attempting to pass each other when it is not safe to do so.<sup>15</sup> This was accepted by the parties to the hearing.
- 40 Mr Gregory is concerned that reducing the bus lane to 3.2m would not "maintain" public transport. In our opening legal submissions, we referred you to case law which supported that if the adverse effects are minor or less than minor (as is the case here) they can be treated as inconsequential and so, broadly speaking, the environment is "maintained".<sup>16</sup>
- 41 At the hearing it appeared that the main justification put forward for "more than minor" effects from Mr Gregory is on the basis of cycle safety not bus efficiency. As stated in opening, there is an evidential burden on all parties, including Council officers, to produce evidence tending to support an allegation. In terms of cyclist safety, it is important to bear in mind that a change to potential road safety risk does not necessarily manifest in any adverse effect. There is no quantifiable evidence before you that points to an adverse effect on safety of cyclists through reduction in the width of the bus lane. Mere speculation is not sufficient.
- 42 The short length of corridor that will have a 3.2m wide bus lane (40m) must be assessed within the context of the limited cyclists that use the route both now and in the future. In response to the Commissioner's questions, Mr Fleete (CRC)

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<sup>15</sup><https://www.nzta.govt.nz/walking-cycling-and-public-transport/cycling/cycling-standards-and-guidance/cycling-network-guidance/designing-a-cycle-facility/between-intersections/bus-lanes/>

<sup>16</sup> Legal opening at [80] citing *Shell v Auckland City Council* [1995] 2 ELRNZ 175.

accepted that current usages of cyclists is low, and that there is a low risk of an adverse safety effect on cyclists from the reduced width of the Corridor. Mr Fleete (CRC) accepted orally that bus drivers are experienced and can be careful/mindful over this relatively short length: "one would imagine that bus drivers will use their skills if the length of the reduction is kept to a minimum".

- 43 The Proposal has been subject to safety audit (included as part of the application documentation) and bus lane width was not identified as an issue. From that, we can conclude that the auditors were comfortable with the reduction in lane width not representing a safety issue.

*Proposed integration*

- 44 As the Applicant resolved and addressed concerns raised by CCC, new matters were identified by CCC staff. This was most recently demonstrated by Mr Gregory in his rebuttal evidence where he raised new issues relating to the southbound bus stop and bus priority, and cycle safety of cyclists coming from the North. With respect, we submit that the Commissioner should not be concerned by these issues. There is no evidence demonstrating adverse effects on southbound buses or the need for a bus jump. Requests for integration between cycle crossing and cycle treatment and the relocation of the bus stop will be addressed through detailed design and/or post-construction safety audit. Conditions proposed by CCC in relation to these matters are not accepted.
- 45 The inclusion of the new signals provides a safe and fully protected pedestrian crossing to access the existing southbound bus stop which is an enhancement over the current environment (Condition 81(b)). The Proposal and associated site design does not preclude the bus stop from being relocated closer to the new signalised crossing location should this be preferred by other parties.
- 46 Integration between the Application Site and existing (and future) public transportation services is proposed to be achieved through:
- (a) a site design offering flexibility as to the preferred location of the bus stop, through multiple strong pedestrian connections to Main North Road;
  - (b) wayfinding to direct customers to the location of the bus stop which can be further enhanced through paving on walkways and the installation of a covered bus stop with a strong 'sense-of place';
  - (c) addition of a pedestrian crossing, and a cycle crossing at the new signals to enable public transport users to safely connect to southbound services;
  - (d) engagement with Council, Christchurch Transport Operations Centre (**CTOC**) and CRC in the detailed design of the new signalised access to

integrate design elements to maintain or enhance public transport priority on the Main North Road corridor; and

- (e) installation of an electronic messaging board in the supermarket foyer to advise customers of bus services and arrival times, which is included as a condition of consent (Condition 96).

#### *Winters Road rat running*

- 47 NZTA sought confirmation of measures (or a process) to minimise adverse effects on Winters Road. Mr Smith has modelled the potential for rat running on Winters Road and he considers it is unlikely.<sup>17</sup> In response to a question from the Commissioner, Mr Gregory accepted that rat running on Winters Road is not directly attributable to the Proposal per se but would also be an issue with an anticipated industrial activity on the Site.
- 48 Should an adverse effect arise of this nature arise in future Conditions 87(d), 89, 92-94 have been included which provide for the monitoring of this situation and any adverse effects arising. Condition 94 provides for a section 128 review for the purpose of dealing with any adverse traffic effects resulting from monitoring of access arrangements. These conditions are agreed by NZTA.
- 49 During the course of the hearing Mr Clark raised the possibility of traffic being diverted back through the Main North Road/ QEII Intersection. There is no evidence to demonstrate this could occur. That said, should an adverse effect arise of this nature in future Condition 93 enables further monitoring and review.
- 50 CCC sought further amendments to conditions which make monitoring more onerous. These changes are simply not justified and there is no basis for them in evidence. They are not reasonable and are not accepted by the Applicant. Monitoring must be linked to the effects from the Proposal, and be put in place for mitigation of an adverse effect. The evidence demonstrated that monitoring in the evening peak is most relevant and sufficient and the Applicant's monitoring conditions should be preferred.

#### *Accesses*

- 51 Mr Gregory and Mr Clark requested the Proposal close Access 1 (Harvest Market). This is an existing access and will be converted from left-in-left-out to left-in only (Condition 83). Mr Smith's evidence is that there is no evidence of an existing safety

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<sup>17</sup> Mr Smith's Rebuttal at [29]-[33].

issue from NZTA crash reports at this access, or impact on the efficiency of the corridor.<sup>18</sup> Condition 83 has been accepted by NZTA and CCC.

#### *Traffic Demand Management*

- 52 In response to concerns raised by Mr Clark, the Applicant has offered conditions that it will provide CCC with a statutory declaration that it will manage staff movements from the Head Office to ensure trip generation in the evening peak is distributed (Conditions 97 and 98). This has been accepted by the Council and NZTA.
- 53 It is also intended that Foodstuffs will develop a travel plan that provides supermarket and Head Office staff with information about their travel choices, including public transport, walking and cycling, and parking management. This is offered as a "nice to have" rather than being specifically required in order to mitigate a potential adverse effect arising from the Proposal. The Plan will be provided to CCC for comment (not certification or approval), and then finalised (Condition 99) as was agreed in transport conferencing<sup>19</sup>. In our submission, this is an appropriate response and supports Foodstuffs' corporate responsibilities. The Applicant does not accept CCC's more detailed condition for ongoing travel demand management or certification by CCC of the company's management activities in this regard.

#### *Multiple journeys*

- 54 Mr Fleete and Ms Stapleton raised concerns with respect to the Proposal requiring multiple journeys to be undertaken. There was no information presented on the number of people that use public transport for multi-purpose trips including a supermarket visit at Northlands. The evidence of the Applicant is that there will continue to be at least one supermarket at Northlands within the Key Activity Centre (**KAC**) such that shoppers can continue to use the bus and meet all of their shopping needs should they choose to do so with a single public transport trip to the KAC.
- 55 Mr Durdin considered an additional supermarket outside of the KAC will enhance (rather than detract) from travel experience, including choice to travel by active modes and public transport given the route is on a major bus corridor.<sup>20</sup> Mr Fleete spoke of his preference for the buses to service "attractors". There is no acknowledgement of the Proposal's potential for being a service attractor. This is a relevant consideration.

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<sup>18</sup> Mr Smith Rebuttal, at [25]-[27].

<sup>19</sup> Transport JWS Final Statement, page 3.

<sup>20</sup> Mr Durdin Summary Presentation, at [35].

## Urban design and visual amenity effects

### *Position of building, integration and layout*

- 56 In his closing comments, Mr Hattam moved significantly from his original position (prior to expert conferencing) closer to the position of the Applicant's experts. He considered the Proposal to have minor or more than minor effects but that these would not be significant on their own. He acknowledged changes made by the Applicant to design have improved the Proposal and progress is positive. He considered the Proposal was "safe and accessible", site integration was "acceptable" and the connections to the street, existing Local Centre, Head Office and other surrounding sites were "satisfactory". Lydia Street width was also accepted by Mr Hattam (and Ms Dray) orally as "adequate for the current use". Mr Hattam also stated that he had no problems with the supermarket building itself.
- 57 Despite these concessions, Mr Hattam's position at the hearing was that he still could not support the Proposal due to "the accumulation of effects".
- 58 With respect, Mr Hattam's overall conclusion does not appear to be supported by his comments at the hearing on each of the relevant issues. In our submission, the Applicant's evidence should be preferred.
- 59 Mr Hattam assessed the Proposal as a neighbourhood centre against Chapter 15 Commercial urban design assessment matters and he accepted orally that he "didn't weigh the existing zone against the use". When questioned about the Industrial General Zone, and the fact that a Proposal under that Zone does not require urban design assessment, he accepted his evidence therefore "needed to be weighed in that light". He also conceded that there was "no doubt" that the Proposal was superior to the existing environment and what could occur under the Industrial General Zone. This is a key concession.
- 60 Mr Hattam did not appear to have considered the operational constraints of the Proposal and the suitability of the Proposal (being a large food warehouse) to be assessed against a main street environment. This was covered at length by Mr Young in his presentation on building position and site layout, supported by Mr Davidson (orally) that the Proposal requires specific site requirements including safe access for customers and servicing areas.
- 61 Mr Hattam had issues with the setback to the street not promoting active engagement. In response to questions from the Commissioner he considered a setback of 10m would be appropriate, however this ignores the underlying zoning provisions which do not contain a maximum setback. The visual presentation of Mr Young outlined several site configurations and explained why these are inferior and are not being put forward as alternatives. Mr Hattam accepted (orally) that Mr Young was experienced in supermarket operations and the drivers of the site layout

are complicated but he stood firm with his position. In determining the location, Foodstuffs considered context, functional needs of scale and form, and consideration of neighbours. Mr Hattam's position considers the building engaging with the street only. The Reporting Officer appears to accept the operational constraints of the Applicant and does not retain a concern with the setback.<sup>21</sup>

62 Mr Hattam also had residual concerns with adverse visual effects of the petrol station position and the yellow central parapet:

- (a) the position of the fuel station on the Site is anticipated by the permitted baseline of the Industrial General Zone. This was accepted by Mr Hattam in response to a question from the Commissioner; and
- (b) in terms of the yellow central parapet, Mr Hattam clarified his concern was with the extent of the yellow colour as opposed to the parapet per se, and that 20% reduction to be framed within the form would be appropriate. We submit the extent of colour could be significantly more under an anticipated trade supplier activity in this location on a building of the same bulk and form. Notwithstanding this, the Applicant now offers an overall 31% reduction in colour, and a 23% reduction on the front face alone to address Mr Hattam's concerns (as shown on the plans that are attached and form part of this reply). A condition is also offered which requires the external appearance of the building to be in general accordance with the materials and colour palette identified on plans (Condition 4). This is accepted by CCC.

63 In terms of the other matters of concern raised by Mr Hattam, we make the following comments:

- (a) adverse visual effects of carparking - parking is a permitted activity in the Industrial General Zone. Large scale carparking for trade suppliers is anticipated;
- (b) the number of vehicle access ways - this is an existing situation and the baseline from which the Proposal must be assessed; and
- (c) the central pathway to the petrol station - Mr Hattam suggested cutting out the middle path where it connects with the street. No further reasoning or justification was provided for this request. This is not safe and completely disregards wider site circulation, including pedestrians crossing the Main North Road traffic lights to enter the Site.

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<sup>21</sup> Statement of Mr Harris, at [28].

- 64 Turning now to the urban design related evidence presented by the Applicant at the hearing.
- 65 Mr Burns confirmed during his presentation that, architecturally, the supermarket is very good for this genre. The two remaining issues in his mind were the sign scale and the modulation of the building. In response to a question of clarification from legal counsel for the Applicant, he said these aspects were "nice to have" and not critical. Mr Young's opinion is that the scale of the building parapet with the sign is appropriate at a macro scale (street edge), he showed the building articulation and modulation at the intermediate scale and then, at the human scale, the amenity experienced by pedestrians. Mr Burns accepted orally that urban design is not a single issue conversation. In response to questions, Mr Burns accepted that the size and scale of the sign was not an issue in the Officer's Report.
- 66 Mr Burns confirmed in response to questions from the Commissioner on the usefulness of Chapter 15 Commercial urban design provisions that he did refer to these for guidance in terms of best practice, but that he also (appropriately) evaluated the Proposal against the sorts of activities anticipated by that zone. Mr Burns expressed the opinion that the Proposal fundamentally changes the character of the Site in a positive way. He considered:<sup>22</sup>
- (a) having an attractive glazed frontage facing the street and two entrances oriented to the street was very positive (he noted the south entry is less successful but compensated by other links). Mr Burns agreed with the Commissioner's observation that having a building up to a frontage does not necessarily guarantee active engagement;
  - (b) the setback is appropriate for the function of the road located next to the Proposal (being a six lane arterial) and considered it is the "right place" for a Proposal of this nature which is heavily reliant on car access;
  - (c) the pedestrian plaza is a street animator and invitation;
  - (d) that the struggling Local Centre to the north will benefit from improved footfall in the area; and
  - (e) overall the Proposal is visually attractive and achieves a number of the outcomes sought in Chapter 15; it delivers higher amenity outcomes than those anticipated by the Site's zoning.
- 67 Mr Burns acknowledged the fuel facility is "a slight conundrum" but agreed with the Commissioner that function follows form and also noted that the introduction of the

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<sup>22</sup> Mr Burns, Urban Design Summary Statement, at [14].



Plaza assists in compensating for the fuel facility. Colour and material palette is now specified on the fuel facility elevations and is subject to Condition 4.

68 In our submission, a superior outcome for this part of the Site has been achieved through dialogue between the various experts and design enhancements agreed by Mr Milne (Applicant) and Ms Dray (CCC) over the course of the hearing. We comment on this below.

#### *Plaza*

69 The Council and Applicant experts are in agreement that the Plaza is a positive addition to the Proposal:

- (a) Mr Milne considers the Plaza is intended to be a gathering place, a place to "pause and reflect" and a very good activation to the street;
- (b) Ms Dray agrees with Mr Burns that the Plaza is a "street animator" and an "invitation". She also considered it would assist in way-finding and legibility, and provides compensation in terms of street amenity for the fuel facility on the street frontage (orally);
- (c) Mr Burns and Ms Dray thought some shelter at the Plaza would be helpful, and considered this as "nice to have"; and
- (d) Mr Hattam accepted that the Plaza was a positive addition to the Proposal which provided way finding benefits, and will increase visual interest (although he did not support weather protection).

70 In response to the comments by the various experts, a larger canopy tree (or shade tree) has been provided in the updated Plaza Landscape Plan prepared by Mr Milne. Ms Dray has had input into this, preferring the tree to a shelter which has the potential to encourage illegitimate behaviour. The Plaza Landscape Plan also now removes the proposed cultural pou, reduces the number of lancewoods scattered throughout the courtyard, refines the proposed hardstand finish and provides a variation pattern between concrete finishing and the segmental paving, modifies the hardwood timber seating, and includes inground up-light amenity lighting. Amenity lighting will be provided during the hours of darkness while the supermarket is operating (Condition 50).

71 The Plaza forms part of the Proposal and has sufficient fine grain detail, therefore it does not require certification. This is now been included in the Approved Plans in Condition 1. This is accepted by CCC.

## *CPTED*

- 72 The Proposal substantially improves CPTED<sup>23</sup> when compared with the existing "down trodden environment" (to use the words of Mr Smart of Oil Changers). The Applicant has already provided design changes to improve CPTED and accepted a number of conditions.
- 73 Ms Dray and Mr Burns support lighting conditions during the hours of darkness within the hours of operation. Condition 50 specifies lighting requirements for the vehicle and pedestrian access from Lydia Street to the front (eastern) end of the supermarket building, and for the pedestrian access from the Head Office car park to the supermarket building. These will not affect any functional requirements and are accepted by the Applicant. A barrier arm is proposed to ensure no access to the Head Office car parks after hours (Condition 85).
- 74 The remaining issue with CPTED relates to the position at the rear of the supermarket. In our submission, there are sufficient measures in place. There will be proposed signage in place restricting access to the public and informal surveillance provided from Head Office staff on a staffroom balcony and when regular deliveries of meat and produce are received at the rear. The CCC have not provided any evidence or identified what pedestrians may be at risk but seek this area to be gated for the majority of the time during the day with secure access only.
- 75 The Applicant's requires these gates open during operating hours. It is impractical to require these gates to be closed at these times. Any reduction of access to the rear of the supermarket becomes an operational challenge due to the coming and going of service delivery vehicles, which will not all have access to the gates and could cause a backup of vehicles. This needs to be weighed alongside the likelihood of the safety concerns suggested being realised. If the Commissioner considers it reasonable and necessary, Foodstuffs is prepared to compromise with the gates being closed at night-time hours, between 6pm-6am (Condition 66).
- 76 The Applicant does not accept that any further lighting conditions proposed by CCC are necessary or appropriate at the rear of the supermarket if they have the potential to affect neighbours. Current lighting conditions at the rear if the supermarket comply with CDP requirements at residents' boundaries.

## *Car Park - North-South movement corridor*

- 77 Mr Milne provided a visual presentation where he discussed the proposed surfaces which break up the carpark and provide visual interest.

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<sup>23</sup> Crime Prevention Through Environmental Design

78 In her rebuttal evidence Ms Dray considered Mr Burns' preference for greater distinction of surface treatment in the North-South movement corridor. Ms Dray did not support this and considered that it risks giving priority to vehicles over pedestrians through the main car park area. Foodstuffs agrees with Ms Dray's position, and also holds concerns for pedestrian confusion and safety. Mr Burns noted that such treatment was a "nice to have" and was not essential to his support of the Proposal.

*Pedestrian connections*

79 The Reporting Officer accepts that the Proposal improves pedestrian connections within the Site, which he says are positive changes.<sup>24</sup> This was one of two "prime" concerns of the Reporting Officer for urban design (the other being the requirement to gate the rear of the supermarket for CPTED reasons) which gives the Commissioner a strong indication of how close CCC have moved towards the Applicant's position. Yet the Reporting Officer maintained his position that the Proposal remains inconsistent with policy 15.2.4.1 (scale and form of development). It is not clear how this is so.

80 As an aside, there also appeared to be a suggestion by the Reporting Officer (and Ms Stapleton and Ms Hewett) that the Proposal should have, and hasn't, provided for integration at a wider scale (for example, to improve the ability for people to walk to the Site in an efficient manner). In our submission, this is not a relevant consideration for a resource consent application of a site-specific application under the RMA. Broader neighbourhood walking networks are more typically addressed during district plan review or as part of comprehensive plan changes at a neighbourhood scale.

*Anticipated outcomes for the Industrial General Zone*

81 In response to questions from the Commissioner about relevance of the permitted baseline, Mr Mark Allan confirmed that the focus of his planning analysis was appropriately directed towards anticipated development outcomes for the Site due to its underlying zoning. Strictly speaking, the permitted baseline has some limitations in this case due to a number of technical rules in the CDP which can be triggered (such as vehicle crossings, signage, and high trip generator). Mr Allan pointed to a range of anticipated development outcomes including a service station and trade retailer suppliers (Mitre 10, Bunnings) which are largely car dominated and have functional requirements that dictate site location and layout. The Commissioner correctly observed during the hearing that such activities also sell convenience items and not just building supply products.

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<sup>24</sup> Statement of Mr Harris, at [26].

82 Mr Allan agreed with Mr Burns' assessment that there are good urban design outcomes, and he noted that Mr Burns had also assessed the supermarket activity in terms of its compatibility with the surrounding activities. Mr Young provided evidence that the building has been designed with proximity to neighbours in mind.

83 Mr Allan considered that considerable weight should be given to the fact that the Proposal complies with bulk and location standards. The Reporting Officer in his reply considered the zoning should be given only "some weight".<sup>25</sup> In our submission, it is undisputed that the Proposal would be a better outcome (particularly for residents) than what is likely to be anticipated under the Industrial General provisions.

### **Objectives and policies**

84 As stated in opening submissions, an assessment of relevant objectives and policies requires a fair appraisal of the provisions when read as a whole. Under Section 104 you are to have regard to the relevant provisions of planning documents. Your findings on effects will inform this assessment. You do not need to make an assessment as to whether the Application is contrary to objectives and policies.

85 At the hearing, disagreement between the parties primarily related to matters of transport policies and centres-based framework. These are addressed below.

#### *Transport policies*

86 The Reporting Officer, CRC and NZTA continued to hold the view that the Proposal is inconsistent with the transport policies of the CDP, despite only matters of detail remaining disputed in the effects assessments.<sup>26</sup> Mr Durdin considers the Proposal is supportive or partially supportive of both the intent and specifics of the transport objectives and policies of key strategic planning instruments. He observes in his evidence the nature of a discretionary activity which is often not fully supportive of every policy matter. Mr Gregory accepted (orally in reply) that not all issues can be responded to fully in such circumstances.

87 In our submission, Mr Durdin formed a balanced view with the full suite of objectives and policies. His evidence was informed by an effects assessment, where relevant, and should be afforded more weight than the evidence provided

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<sup>25</sup> Statement of Mr Harris, at [25].

<sup>26</sup> Statement of Mr Harris, at [23].

for CCC, CRC and NZTA. With respect, these parties appear to have reached a conclusion of inconsistency on the basis of one or two policy details.

- 88 Mr Durdin considers the assessment by Mr Gregory is incomplete as it only highlights policies that the Application does not support.<sup>27</sup> Mr Durdin includes in his evidence a number of benefits of the Application that have been overlooked as a result of Mr Gregory's approach.<sup>28</sup>
- 89 The evidence of Ms Stapleton is that the Proposal does not promote public transport, which appears to be informed from an effects-based perspective (citing concerns about delays the proposed set of traffic lights will create for bus users - which we have commented on earlier). When assessing the policy framework, the primary focus on public transport in this evidence was not balanced against the function to encourage active transport and advocate for road safety.<sup>29</sup> Mr Durdin does not agree with Ms Stapleton's conclusion and notes that no evidence has been presented to support the claim that there is an adverse effect or that the proposed traffic signals will disincentive public transport.<sup>30</sup> Ms Stapleton did not acknowledge either in evidence or orally at the hearing that the Proposal is well connected by public transport, being on a core public transport route with no change to bus routes.
- 90 Mr Durdin confirmed in response to a question from the Commissioner that a number of transport policies (7.2.1.2, 7.2.1.3, 7.2.1.4 and 7.2.1.5) are effects based and directly covered by the transport rules in the CDP. These were assessed in the ITA and agreed by the experts that participated in transport conferencing to be accurate.<sup>31</sup>
- 91 Mr Durdin also confirmed that policy 7.2.1.6 seeks to promote public transport and active transport. The Application supports this policy by providing safe, secure and convenient cycle parking, excellent walking integration with the surrounding community and a commitment to implement a Travel Plan that will help encourage the use of public transport and active modes (Condition 99).
- 92 Mr Durdin agreed with the Commissioner's observation that the Proposal triggers these interventions. In our submission, these improvements to the network could not be achieved by an anticipated industrial activity. An assessment against the strategic framework, i.e. objectives and policies, is only required for activities that

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<sup>27</sup> Statement of Evidence of Joseph Paul Durdin at [49].

<sup>28</sup> Statement of Evidence of Joseph Paul Durdin at [52].

<sup>29</sup> Refer ECan website.

<sup>30</sup> Mr Durdin, Summary Presentation, at [22].

<sup>31</sup> Mr Durdin, Summary Presentation, at [11].

exceed the threshold scale **and** are not otherwise permitted in the zone (CDP 7.4.4.19). This means a yard-based retailer, such as Mitre10, could seek to establish on the Site and would not be subject to an assessment of the strategic framework on transport grounds.

- 93 Mr Fleete and Mr Gregory accepted this in response to questioning from the Commissioner there would be less demand and need for public transport under another anticipated outcome for the Site such as a Mitre 10 and Bunnings.
- 94 We submit that these matters are directly relevant to policy 7.2.1.6 and should be afforded significant weight.
- 95 In terms of policy 16.2.1.4 (b) (the "hinder or constrain" policy), Mr Durdin noted the Proposal has the potential to be well integrated with planned and future transport infrastructure both in terms of general traffic and public transport. The Proposal creates no impediments to achieving these outcomes.

#### *Centres-based framework*

- 96 It is submitted that the Reporting Officer does not have the benefit of the necessary technical evidence upon which to rely and support his position of the Application being "contrary to" the centres-based framework. The "thrust" of the centres based framework is articulated in both the Industrial and Commercial Chapters. The CRC, CCC and NZTA choose throughout the hearing to continually refer to the Commercial Chapter provisions (prioritising them over the Industrial Chapter under which resource consent is sought).
- 97 Commercial activities outside of a centre are not precluded in the CDP - in either the Industrial or Commercial chapters. In response to questions from the Commissioner, no planning expert appeared to dispute this. The Proposal activity status is discretionary.
- 98 Interpretation of planning policies requires an interpretation of the words in their immediate context, and is an exercise that should not be undertaken in a vacuum.<sup>32</sup> With this in mind, the terms "focussed" and "must ensure" should be read in light of each other and the surrounding context of policy 15.2.2.4. It is our submission that the context of policy 15.2.2.4 is enabling. The growth of commercial activity outside of commercial centres is contemplated by this policy, and guidance is provided on how best to accommodate this growth.
- 99 We submit, these words (alone or collectively) are not a mandatory directive, nor is it intended to have more weight placed on it. If it was the intention that

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<sup>32</sup> *Powell v Dunedin City Council* (2005) 11 ELRNZ 144 at [35].

these policies be read in the way that CCC and CRC<sup>33</sup> are suggesting, there are other ways the provisions could be drafted to ensure this was clear. For example, legal counsel for CRC identified other parts of the CDP where the words "avoid" and "unless" are used. That is not the case here.

- 100 Even where the word avoid is used, it is qualified. For example, in policy 16.2.1.4(c) "avoid the use of industrial activities for non-industrial activities that could adversely affect centres". The uncontested economic evidence of Mr Heath and Mr Colegrave is there are no adverse effects on the role, function, vitality and growth of centres. When having regard to this policy it is notable that Local Centres are not referenced, reflecting their position in the centres hierarchy.
- 101 While not supporting intensification within centres (as it is of course not located in a centre), Mr Allan considers that the Proposal does not preclude or frustrate this outcome. Mr Allan also confirmed that the Proposal involving the establishment of a supermarket on Industrial General land next to a Local Centre does not, in itself, translate to the role of that Local Centre changing.<sup>34</sup>
- 102 The Proposal is for a development in an Industrial General Zone, with connections to enable access through to the Head Office and Commercial Local. It has a limited retail offering, and will not limit in any way the type of retail that will locate within the Commercial Local Centre. Ms Stapleton accepted in response to questioning from the Commissioner that the Proposal is not a threat to the Local Centre's role, and that the Local Centre itself does not form part of the Application.
- 103 Opposing parties appeared to be fixated on the anticipated size of a centre and could not otherwise articulate what the effect was of the Proposal on the existing centres framework. It was also generally accepted in response to questions by the Commissioner that a Neighbourhood Centre would have more offerings:
- (a) Mr Hattam said he would expect more uses to come into a Neighbourhood Centre but based on floor space, considers it is closer to a Neighbourhood Centre;
  - (b) Ms Stapleton considered that a Neighbourhood Centre would allow a bigger supermarket, but accepted that a Neighbourhood Centre would have a number of other retailing offices; and

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<sup>33</sup> Counsel for CRC submits that the wording of the policy creates a "mandatory directive" through the words 'must ensure' (at [19] of legal submissions).

<sup>34</sup> Mr Allan, responding to Objective 15.2.2 a.i, Summary Statement, at [19].

- (c) Mr Allan considered a Neighbourhood Centre would provide a much larger offering than that of the Proposal, but that the key point is that the Local Centre retains its function.
- 104 In response to a question by the Commissioner, Mr Allan noted other Local Centres which were either of comparable size or had limited offerings. He referred to Wainoni Local Centre which contains a PAK'nSAVE and an independent service station, and Ilam Local Centre, which contains New World on Peer Street.
- 105 In response to questions from the Commissioner, Mr Harris said the centres-based framework provides for economic investment certainty, and that transport and urban design are other components of the framework. Applying this reasoning, we submit there has been no evidence to suggest that the Proposal will create any adverse effect on economic investment certainty. The owner of the closest KAC (Papanui/Northlands) did not make a submission on the Proposal. By comparison, the owner of a business at the adjoining Local Centre submitted strongly in support. You have heard there are good urban design outcomes for the Site; and there is no evidence the Proposal will have an adverse effect on investment in the public transport network which can't be managed.
- 106 At the hearing, Mr Allan provided a well-reasoned and pragmatic response to considering the policy framework in the round, and in the context of the overarching direction of the CDP, his opinion that the Proposal does not create any challenges that could be considered contrary to that policy framework must be given appropriate weight. Importantly, Mr Allan appropriately relied on the effects assessment to inform his assessment of the centres-based framework.

### **Emergency coordination facility**

- 107 In response to the Commissioner's question about co-location with the Head Office, Ms Rebecca Parish confirmed the uniqueness of the situation with the support office servicing most grocery needs for the South Island with IT, logistics, management and back-up generators. This allows for a strong synergy between the two operations. She also highlighted the strategic location of the facility adjacent to the roading network. Ms Parish confirmed Civil Defence were engaged from the beginning of the project and the Applicant has been in communication with throughout this process. In response to a question from the Commissioner, the Applicant also advised the volume of storage of fuel onsite is 2x 70,000L which will provide a further supporting function.
- 108 It is disappointing that the Reporting Officer continues to place little weight on the Emergency Coordination Facility which forms part of this Proposal, and accordingly little weight to the submission in support by Civil Defence. This is despite the significant value which will be provided to the community during an emergency event (including food supply and emergency response coordination activities). As



stated in opening, Foodstuffs are listed as a lifeline utility operator in Canterbury and the strategic location of the Papanui PAK'nSAVE will enable it to function as a lifeline hub in an emergency. The Civil Defence and Emergency Management Group Plan 2014 seeks to maintain lifeline utility services in an emergency.

- 109 We submit that this disregard for this (and other) positive benefits has ultimately resulted in the Reporting Officer providing an imbalanced assessment under section 104, which does not give effect to the sustainable management purpose of the RMA.

### **Other submitters**

#### *Ms Hewett (NZTA)*

- 110 It is submitted that limited weight, if any, should be placed on the evidence of Ms Hewett. Ms Hewett stated she was presenting as an independent expert but did not take the step of formally amending her evidence where statements appeared to advocate for NZTA. Ms Hewett sought the Proposal be declined, despite accepting that potential effects could be minor (which was consistent with the evidence of Mr Clark). Concerns about "the bigger picture"<sup>35</sup> appear to be directed towards matters that are typically addressed during a district plan review.

#### *Mr Watts, Mr Beck, Mrs Steel*

- 111 The residents' genuine concerns are acknowledged and have been given due consideration by Foodstuffs. All concerns raised relating to a resource management purpose are addressed in the comprehensive suite of conditions, which include:
- (a) A procedure has been put in place for demolition and construction works and will include measures for identification and remediation of contamination and dust control measures (Condition 9). The Consent Holder will notify properties adjoining the Application Site prior to the commencement of works (Condition 6). The footpaths and roads to and from the Site are to remain tidy at all times (Condition 14);
  - (b) Lighting has been designed with the residents in mind. Compliance with the District Plan permitted standards is achieved. Where it is practical all exterior lighting shall be directed away from adjacent properties (or flat glass luminaries used) (Condition 51). There shall be no light spill at any residential boundary exceeding four lux (Condition 52);

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<sup>35</sup> Ms Hewett, at [9.6].

- (c) A 2m high acoustic fence will be erected along the Site boundary with residential zoned properties to the north (Condition 44). A Noise Management Plan is proposed which will address noise mitigation practices related to the operation of the premises – in particular practices around deliveries, service vehicles, material handling, staff and driver behaviour, noise control and fence maintenance. It will include the means by which noise complaints are received, recorded and investigated (Condition 47). Any forklift operating onsite shall be fitted with a broad-band reversing alarm (Condition 45). This condition is in direct response to Mrs Steel's concern;
- (d) Vibration from construction works is required to comply with an appropriate standard (Condition 17); and
- (e) Improvements are proposed to improve access (and road safety) to and from Northcote Road: the right turn out of Lydia Street is to be banned as part of the proposal (Condition 77); right turns in and out of the Oil Changers site will be restricted (Condition 79). Both changes will include appropriate signage.

112 In addition to the conditions previously offered, a condition for pre-condition survey of the structural and ground conditions of the six immediately adjoining northern residential properties is now offered as a result of the concerns raised by Mr Beck and Ms Steel (Condition 18). CCC seeks an additional clause relating to the liability for repair of any damage. The Applicant accepts it is liable for any damage caused from vibration from the Proposal. However, the additional clause is not accepted. It relates to a civil matter and is not appropriate or necessary to include in a condition of consent which will be required to be monitored by CCC in future.

113 Other concerns such as fuel spillage from vehicles and littering are onsite management issues and are not appropriate or reasonable for conditions of consent.

114 For completeness, we note that Mr Watts stated he represented the Canterbury Community Neighbourhood support group, but did not clarify which individuals he represented and whether he was mandated to represent them.

#### *Oil Changers*

115 Condition 82 provides that prior to the supermarket opening, the median island located on Northcote Road in front of 7 Northcote Road shall be extended to the west by a minimum length of 7m to remove the ability to right turn in and right turn out. Mr Smart supports the Proposal and accepts this outcome but requested that this restriction be delayed as long as possible. The Applicant confirms that Condition 82 will not be given effect until internal roundabout and hardstand areas are constructed.

*Jennifer Jones*

- 116 Ms Jones raised concerns about the Proposal increasing traffic on the accessway adjacent to her family property (Access 5) and the relocation of the existing freestanding sign.
- 117 The existing use of the accessway relates to the established office activities which will not change and do not form part of the Application. This Application does not propose any consenting matters for the two residential sites referred to in Ms Jones' presentation and it is outside the ability of the Commissioner to address this as part of this decision.
- 118 It is submitted that concerns raised by Ms Jones will not eventuate. The Head Office site will not be accessed by supermarket customers. Once the Proposal is operational, Access 5 will not be used for vehicle entry or exit during the hours of operation (7am – 11pm). To address Ms Jones' concerns, the Applicant has offered a condition of consent where Access 5 shall be restricted to after-hours vehicle entry/exit to the Head Office only (i.e. between 11pm and 7am). A barrier arm, or other similar control device shall be installed for this purpose (Condition 84). This will provide reduced movements on the accessway and is an improvement on the current situation.
- 119 A proposed barrier arm will also be installed on the southern approach of the of the internal roundabout (west of Access 3) as a physical means of restricting vehicle movements between the Head Office car parking and supermarket carparking (other than to approved vehicles) (Condition 85).
- 120 The visual effects of the free-standing sign are anticipated. The proposed sign is located by the new Head Office entrance (having been relocated from the existing Head Office entrance). It is set back from the adjacent residential property (which is owned by the Applicant) ensuring there are no building setback or recession plane breaches. The Head Office is within its own separate title but regardless the CDP permits a freestanding sign for each formed vehicle access entrance to the Site (i.e. even if this is considered as one site, the new PAK'nSAVE sign, fuel sign and Head Office sign are all anticipated). The height and dimensions of the existing freestanding sign are 8m x 2.2m. A sign no more than 9m in height and 18m<sup>2</sup> in area is permitted.

#### **Conditions of consent**

- 121 Following the adjournment of the hearing, the Applicant and Council have worked together on producing a set of conditions (with input from NZTA and CRC), should resource consent be granted. Not all conditions have been agreed. Agreement has not been reached on conditions with matters relating to building condition surveys,

landscaping within the south east corner of the main car park, hours of gating the back of house areas, transport, public transport and staff movement matters.

- 122 In our submission, the finding of effects on these matters is directly relevant to the imposition of conditions of consent, should resource consent be granted.
- 123 As stated in opening submissions, Section 108AA RMA requires that a condition must not be imposed unless it is directly connected to an adverse effect of the activity on the environment (unless the Applicant agrees to the condition). The conditions not agreed to by the Applicant, and which are sought to be imposed on the Proposal by the Council (with input from CRC and NZTA), are not linked to mitigation of an actual or potential adverse effect that is quantifiable and based in evidence. They are overly onerous and specific and are in response to "effects" that CCC anticipate but which are not demonstrated in evidence.
- 124 Conditions have been discussed throughout this reply in response to concerns raised during the hearing. It is further noted that:

*Additional landscaping*

- 125 In her reply Ms Dray considers there is an outstanding landscape matter in the South west corner of the site. She holds concerns with the footpath width, interrupted pedestrian route, legibility for pedestrian circulation, and visual amenity from the Main North Road Main Entrance. She proposes a condition which requires an additional 1-1.5m wide landscape strip along the northern side of the pedestrian path.
- 126 This is simply not possible. The Applicant's evidence has demonstrated it is not operationally possible for fuel tanker movements and separation of customer parking. Design evidence from the Applicant did not consider it necessary. Such a condition should also be viewed in the context of what could be achieved overall on the site in the General Industrial Zone provisions.

*Additional matters for design*

- 127 The Council proposes matters of addition design for a number of conditions. In some instances specific reference is accepted by the Applicant to address concerns, in others they are not. Unless there is an adverse effect which requires mitigation, it is submitted that conditions of consent should not pre-empt the detailed design phase. Any resource consent granted is on the basis of a set of concept design plans, and sufficient flexibility should be retained to ensure an adequate detailed design response. As the Commissioner is well aware, the detailed design phase involves working with the road controlling authority (as asset owner) and subsequent safety audits. Engagement will occur with relevant parties

when detailed design plans produced, regardless of whether this is recorded as an advice note on a resource consent. For example, engagement will occur with:

- (a) CCC, CTOC and CRC for the new signalised access on Main North Road;
- (b) NZTA for the intersection upgrade; and
- (c) CCC (as asset owner), CTOC (who operate the network) and CRC (who operate the bus services) in relation to the provision of the bus jump priority lights and any relocation of bus stops (northbound and southbound).

128 All of these parties were involved in extensive modelling and traffic expert conferencing (initiated by the Applicant) which sought to ensure that all views are appropriately considered in this concept design phase. There is no requirement for the Applicant to go through any of these processes prior to obtaining resource consent, a suggestion made by Mr Gregory in his reply.

#### *Management Plan conditions*

129 Conditions which require expert certification or expert oversight of an activity (or parts of an activity) can be considered valid, but they should not afford discretion to a third party where possible (which the Commissioner highlighted during the hearing). Case law prescribes that a Plan should typically describe the methods and procedures to achieve the conditions of a consent.<sup>36</sup>

- (a) consent conditions will usually provide they be developed by a suitably qualified expert;
- (b) that the consent authority is to certify that the methods in the plan will achieve the outcomes stated in the conditions;
- (c) require the consent holder to conduct their activities in accordance with the management plan; and
- (d) provide that the management plan will be periodically reviewed (if required).

130 It is submitted that the following management plans are fit for purpose: Construction Management Plan (Conditions 8-12); Noise Management Plan (Conditions 46-49); Site Management Plan and Remedial Action plan (Conditions 69-71); and Demolition Traffic Management Plan and Construction Traffic Management Plan (Conditions 99-102). These conditions are agreed with CCC.

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<sup>36</sup> *Selwyn Quarries Limited v Canterbury Regional Council* [2019] NZEnvC 153, at [44].

### *Heavy Vehicles*

131 The Applicant does not accept the following onerous additions proposed by CCC in conditions:

- (a) no heavy vehicle movements to the Site between 8am-10am. This is not justified on effects and is unreasonable and unnecessary. There was no evidence presented in support of this restriction at the hearing. A restriction between 8am-9am was raised in the submission of Catholic Diocese, but the school is not part of the future environment; and
- (b) unnecessary restrictions on the size of service and delivery vehicles through definition do not have evidential basis. The Advice Note proposed by Council would have unintended consequences of restricting a standard Meadow Fresh truck.

### *Transport related refinements*

132 As we have noted, the set of conditions provided with this reply includes refinements to the suite of transport related conditions on the recommendation of Mr Durdin who has undertaken an independent review. This is included in version 8 which is attached and forms part of this reply (with the comments shown on the tracked version of conditions).

### **Attachments**

133 The following documents are attached:

- (a) a clean copy of the Applicant's preferred conditions. In our submission, these conditions are fit for purpose;
- (b) a tracked copy of conditions of consent (revised version 8);
- (c) a revised set of landscape plans (Landscape Masterplan, Landscape Plan, Plaza Landscape Plan); and
- (d) a revised set of architectural plans which incorporate changes to the eastern elevation of the supermarket building (reduction in extent of the yellow parapet) (RcE04), annotated fuel canopy elevations that detail the material and colour palette of the canopy (RcE14), revised views and perspectives to reflect the signage and plaza revisions (RcE05, RcE07, RcE08, RcE09,

RcE10, RcE11, RcE12, RcE13) and provision of an exterior materials palette (RcE19).

Dated this 19<sup>th</sup> day of December 2019

A handwritten signature in black ink, appearing to read "Jen, A Booker". The signature is written in a cursive, flowing style.

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Jen Crawford/Alex Booker  
Counsel for the Applicant