

## **Application for Resource Consent RMA/2018/2029**

Being an application for land use consent to establish and operate a supermarket with associated self-service petrol station, ancillary offices, emergency coordination facility, car parking, roading realignment, signage, earthworks and modifications to Lydia Street Drain

171 & 165 Main North Road, 7, 7A & 7B Northcote Road, Christchurch

## **Notice of Decision by Independent Commissioner**

31 January 2020

## CONTENTS

---

<b>1.0</b>	<b>Introduction .....</b>	<b>2</b>
<b>2.0</b>	<b>Hearing sequence .....</b>	<b>5</b>
<b>3.0</b>	<b>Statutory &amp; planning policy considerations .....</b>	<b>9</b>
<b>4.0</b>	<b>Principal issues in contention.....</b>	<b>12</b>
	Preamble .....	12
	Transportation effects.....	12
	Urban Design .....	24
	Policy matters .....	31
	Other effects considerations & conditions .....	44
	Other matters (s104(1)(c), RMA) .....	47
<b>5.0</b>	<b>Decision .....</b>	<b>50</b>

## SCHEDULE OF APPENDICES

- **APPENDIX 1:** Schedule of appearances / attendees
- **APPENDIX 2:** Conditions of Consent

---

## INTERPRETATION

---

This report uses the following abbreviations and acronyms.

<b>TERM</b>	<b>MEANS</b>
AEE	The assessment of environmental effects appended to the application
Applicant	Foodstuffs South Island Limited
CPTED	Crime Prevention Through Environmental Design
Council	Christchurch City Council
DSI	Detailed site investigation
ECAN	The Canterbury Regional Council
EIC	Evidence in Chief
HAIL	Hazardous Activities and Industries List
NES-CL	Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011
NPS-UDC	National Policy Statement on Urban Development Capacity 2016
NZTA	New Zealand Transport Agency
Plan	Christchurch District Plan 2017
PSI	Preliminary site investigation
RMA	Resource Management Act 1991
RPS	Canterbury Regional Policy Statement
Site	The property to which the application relates as described in the application

---

**Christchurch City Council  
Decision of Independent Commissioner  
RMA/2018/2029**

---

**Proposal Description:**

Establish and operate a supermarket with associated self-service petrol station, ancillary offices, 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)

**Applicant:**

Foodstuffs South Island Limited

**Site Details:**

171 & 165 Main North Road, 7, 7A & 7B Northcote Road, Christchurch

**Zoning:**

Industrial General, Commercial Local & Residential Suburban

**Overlays & map notations:**

Airport Protection Surface, Liquefaction Management, Waterbody Setback, Flood Management, Major Arterial Road

**Activity Status:**

Discretionary

**Date of Hearing:**

Tuesday 3-4 December 2019 (closed 13 January 2020)

**Independent Commissioner:**

DJ McMahan

**Summary of Decision:**

Consent is **granted** subject to the conditions set out in **Appendix 2**.

Having considered all relevant matters under s104 of the RMA, and based on the evidence and submissions presented at the hearing I find that:

- any actual and potential adverse environmental effects of allowing the activity will be sufficiently managed, including by the proposed conditions of consent, such that the effects are minor;
- moreover, the proposal will result in positive effects on the site and local environment;
- the proposal is generally well-aligned with the relevant District Plan objectives and policies when read as a whole and there are no directive policies relevant that are challenged by the proposal such that consent need be withheld; and
- the risk of the proposal giving rise to precedent effects or undermining the integrity of the plan is negligible.

## 1.0 Introduction

### Report purpose, requirements & outline

- 1.1 The purpose of this report is to outline my decision on the publicly notified resource consent application from Foodstuffs South Island Limited to establish a new supermarket and fuel stop in the Industrial General Zone at Papanui, Christchurch.
- 1.2 Of particular relevance, the RMA requires that decisions on notified applications state:
  - a. the reasons for the decision;
  - b. the relevant statutory provisions considered;
  - c. the relevant national, regional and district planning policy documents considered;
  - d. the principal issues in contention;
  - e. a summary of evidence heard; and
  - f. the main findings on principal issues in contention.<sup>1</sup>
- 1.3 The RMA also enables me to cross-refer to or adopt parts of the AEE and the s42A Report so as to avoid repeating material.<sup>2</sup> I have done so where possible below for the sake of brevity.
- 1.4 The remainder of this report is organised as follows:

#### Section 1: Introduction

Section 1 provides a factual basis for the report, including a brief description of the site and existing environment, the proposal and my role.

#### Section 2: Account of the Hearing

Section 2 provides a brief factual summary of the hearing proceedings, including the actions of various parties in the pre-hearing sequence.

#### Section 3: Outline of statutory considerations and relevant planning policy

This part of the report sets out a short summary of the proposal's compliance against the relevant provisions of the Plan, and includes a factual description of the provisions of the RMA that frame my decision-making and of the relevant national, regional and district planning policy framework I have considered.

#### Section 4: Principal issues in contention

Section 4 summarises the key issues in contention, the evidence presented by the parties, and my findings on the key issues.

#### Section 5: Decision

The final section of the report formally records my decision.

---

<sup>1</sup> s113(1), RMA

<sup>2</sup> s113(3), RMA

### **Site and existing environment**

- 1.5 The site is located on the west side of Main North Road, between Northcote Road and Cranford Street in Papanui, Christchurch.
- 1.6 The site and existing environment are comprehensively described in Section 3 of the AEE, with additional context also provided in Mr Harris' s42A Report. I adopt those descriptions and will not repeat them here.
- 1.7 I do highlight the following aspects of the site and existing environment, however, for context:
- a. the wider site comprises 4.37ha, primarily located within the Industrial General Zone;
  - b. the former Murdoch Manufacturing and Trents Wholesale campus occupies the central third of this area – it is proposed to be demolished to make way for the new supermarket and fuel stop;
  - c. the north-eastern corner of the site comprises 3,300m<sup>2</sup> of Commercial Local-zone land, which is currently under-utilised – the only operating activity in this part of the site is an Oil Changers garage;
  - d. to the rear (west), the site includes a right of way connecting to Lydia Street;
  - e. the balance of the site comprises industrial land used for the Foodstuffs Head Office and associated access, parking and landscaping areas, and residential zoned land which is currently vacant;
  - f. a dominant feature of the local environment is Main North Road, a 6-lane divided arterial road – in the vicinity, there is a mixture of residential and non-residential activities;
  - g. to the west of the site is a large warehouse facility owned by the applicant and currently leased by Toll NZ – this land is to be transferred to the Roman Catholic Bishop of the Diocese of Christchurch in 2021; and
  - h. immediately north of the site are several residential dwellings that have access to Northcote Road – these dwellings are separated from the application site by the Lydia Street Drain, a box drain utility waterway that drains to North Road.

### **The Applicant's proposal**

- 1.8 The proposal is described at Section 4 of the AEE and in Mr Harris' s42A Report. Again, I adopt those descriptions, and simply note the following key aspects:
- a. demolition of existing buildings on the site as summarised above;
  - b. approximately 28,000m<sup>3</sup> of earthworks, including excavations for an underground carpark and underground fuel storage tanks, and additional filling and excavating for site contouring;
  - c. construction of a new supermarket with a gross floor area of nearly 6,900m<sup>2</sup> and a new self-service fuel stop comprising eight pumps;
  - d. operation of the supermarket and fuel stop from 0700-2300, seven days a week, with all heavy vehicle deliveries occurring outside the hours 1500-1800 and all fuel tanker deliveries occurring outside operating hours for the supermarket and fuel stop;
  - e. creation of a new signalised intersection on Main North Road to provide site access;

- f. piping of the Lydia Street Drain for a length of 225m;
  - g. on-site stormwater management facilities, including swales and rain gardens;
  - h. provision of 278 carparking spaces (at grade and in a basement car park), including 80 mobility spaces and internal access, circulation and loading areas;
  - i. signage on the supermarket building and fuel stop canopies, as well as freestanding pylon signs for the supermarket (10m x 2m) and fuel stop (2.9m x 1.5m);
  - j. landscaping; and
  - k. use of the site as an emergency coordination facility.
- 1.9 The proposal will also involve relocation of the existing pylon sign for the adjacent Foodstuffs head office to the south of the proposed supermarket, and changes to the existing access arrangements onto Main North Road and Northcote Road.

### **Role of Commissioner**

- 1.10 I was appointed by the Council by delegation dated 31 October 2019.
- 1.11 Several matters were provided for under the delegation, but of most relevance here my role is:
- a. to invite or require an applicant and/or submitters to attend a pre-hearing meeting under section 99 of the RMA;
  - b. to consider and make a decision on any resource consent application, including hearing the application if required under sections 104A-104D, 105 and 106; and
  - c. if consent is granted, to impose conditions under section 108 as appropriate.
- 1.12 I record that it was not my role to introduce evidence about the proposal, but to hear the submissions and evidence of others and to make a decision on the basis of that information.

## 2.0 Hearing sequence

### Pre-hearing Procedural Matters

- 2.1 Following my formal engagement, I issued a minute to the parties to set out some preliminary matters in preparation for the hearing. More specifically, the minute:
- a. set out directions for parties to indicate whether they would be calling expert evidence, and whether those experts would be available for conferencing;
  - b. outlined a process and timetable for expert conferencing;
  - c. described the sequence for evidence exchange following the subsequent confirmation of hearing date;
  - d. set out my expectations for hearing presentations; and
  - e. invited parties to suggest any particular sites or localities that I should visit to inform my understanding of the proposal and the local environment.
- 2.2 After receiving responses to Minute 1, I issued a second minute to confirm my understanding of the parties who had signalled an intention to call experts, and to encourage further dialogue amongst the parties before evidence circulation.

### Pre-hearing conferencing

- 2.3 Conferencing was conducted by planning, transportation, landscape and urban design experts in late October. These sessions culminated in the production of joint witness statements that were helpful for my understanding of matters in agreement and in contention. I'm grateful for the efforts of the experts in this respect.

### s42A report

- 2.4 The Officers' s42A report was circulated on Monday 11 November 2019. It comprised the planning report authored by CCC Consent Planner, Mr Nathan Harris. Attached to Mr Harris' report were several appendices which contained:
- a. a summary of submissions received;
  - b. an economic peer review by Mr Tim Heath of Property Economics;
  - c. an assessment of transportation effects by Mr Mark Gregory, CCC Transport Network Planner;
  - d. an urban design assessment from CCC Senior Urban Designer, Mr David Hattam;
  - e. an assessment of landscape matters by Ms Jennifer Day, CCC Senior Landscape Architect;
  - f. an environmental health report from Ms Isobel Stout, CC Senior Environmental Health Officer;
  - g. an assessment of flood management effects from CCC Senior Water Planning Engineer, Ms Sheryl Keenan;
  - h. a stormwater assessment by Mr Victor Mthamo, Consultant Engineer for CCC;
  - i. a waterway assessment by Ms Emily Tredinnick, CCC Surface Water & Land Drainage Planner;



- j. comments on the proposed earthworks by Mr Bill Dray, CCC Civil Engineer;
  - k. an arboriculture report from CCC Arborist, Mr John Thornton;
  - l. the joint witness statements from expert conferencing referred to above;
  - m. an initial independent peer review report on transportation modelling by Mr John Falconer of Quality Transport Planning;
  - n. an addendum by Mr Gregory to address Mr Falconer's peer review;
  - o. a report of the Christchurch Urban Design Panel in relation to the proposal; and
  - p. copies of the relevant District Plan objectives & policies; and
  - q. recommended conditions of consent to be applied if consent is granted.
- 2.5 Having drawn on the information and views expressed in the various appendices and carried out his own assessment of the application, Mr Harris concluded that the proposal will result in adverse environmental effects that will be more than minor if not significant. He also found the proposal to be contrary to the objectives and policies in the Plan and for those reasons he recommended that consent be declined.

### **Applicant's evidence**

- 2.6 The week after the s42A Report was circulated, the applicant provided its bundle of evidence. This included statements from the applicant's experts in the fields of planning, urban design, landscape, transportation modelling and policy, economics, civil engineering, acoustics and ecology. Also included in the bundle were statements from two senior representatives of Foodstuffs South Island Limited.
- 2.7 The applicant's evidence outlined initial investigations carried out in support of the application, responded to matters raised in the s42A Report and submissions, and proposed various amendments to the proposal (among other matters).
- 2.8 I discuss the substance of the applicant's evidence in greater detail in section 4 below.

### **Updated transport modelling peer review**

- 2.9 Also during the week following the circulation of the s42A report, Mr Falconer issued his updated peer review report on transportation modelling. This update accounted for responses to issues from the applicant originally raised by Mr Falconer. His overall findings in the updated report were as follows:

*6.2.4 Therefore, the reported effects relate to not just a change in development (and the access intersection), but also include other secondary effects which increase the uncertainty of the quantified effects. The net result is that a general improvement in network performance is indicated to be the outcome of the proposed development.*

*6.2.5 I am not necessarily convinced that this will be the actual outcome. I consider a more practical approach is to acknowledge some uncertainty and limitations in the model.*

*6.2.6 On that basis, there is strong evidence that the model is in the right ball-park and adequately reflecting future year operation with development in place. It is reasonably clear that the anticipated traffic effects are likely to be less than minor, but (allowing for uncertainty and model limitations) not necessarily an improvement as currently reported.<sup>3</sup>*

---

<sup>3</sup> QTP, *Peer review of traffic modelling* (November 2019), para 6.2.4-6.2.6

- 2.10 Upon receipt of this report, I invited<sup>4</sup> Mr Harris and Mr Gregory to update their s42A Reports ahead of evidence circulation by submitters.

### **s42A addendums**

- 2.11 Mr Gregory and Mr Harris helpfully circulated addendums to the s42A report to address Mr Falconer's peer review on Friday 22 November.
- 2.12 Mr Gregory's addendum addressed two main points:
- a. firstly, Mr Gregory indicated that he had carried out some further modelling independently of the modelling approach previously agreed amongst the transportation experts – this was to address what he had identified as shortcomings of the baseline modelling with respect to potential traffic rerouting as a result of the proposal; and
  - b. secondly, he reinforced his lack of confidence in the transportation model and clarified that he was unable to agree with Mr Falconer that the proposed increase in traffic from the development would produce a less than minor effect.
- 2.13 Drawing on Mr Gregory's addendum and the updated peer review, Mr Harris maintained the overall recommendation that the application be declined; however, he changed his overall assessment of the proposal's anticipated effects and its fit with the relevant policy provisions in the Plan.
- 2.14 Namely, Mr Harris altered his effects assessment from potentially significant to an overall finding of "more than minor". He also downgraded his assessment on the proposal's fit with relevant transportation policies from 'contrary to' to 'inconsistent with'.

### **Submitter expert evidence**

- 2.15 Expert evidence was circulated the week prior to the hearing from NZTA and ECAN.
- 2.16 Both parties called transportation and planning evidence, the substance of which is discussed in greater detail in section 4 below.

### **Hearing Proceedings**

- 2.17 The hearing convened at 9:30am on Tuesday 3 December 2019 at the Atrium in South Hagley Park, Christchurch.
- 2.18 A list of attendances is provided at **Appendix 1**.
- 2.19 After I set out some procedural matters, the applicant opened its case with legal submissions from Ms Jen Crawford of Anderson Lloyd. Ms Crawford then handed over the leading of the applicant's witnesses to Ms Alex Booker.
- 2.20 Two senior representatives of the applicant then presented and answered questions from me, followed by the applicant's experts in the fields of architecture, urban design, landscape, transport and planning.
- 2.21 We resumed proceedings the following morning, and heard firstly from CCC's landscape expert, Ms Dray, before then hearing from local submitters and ECAN.
- 2.22 I then invited the various transportation experts for the applicant, CCC, NZTA, ECAN and Mr Falconer to collectively answer a series of questions on key transport matters

---

<sup>4</sup> See Minute #3

in contention. I refer to this shared question-and-answer session as 'hot tubbing' in section 4 below.

- 2.23 We then heard from NZTA's experts before presentations from CCC's urban design, transportation and planning witnesses.
- 2.24 The hearing was then adjourned, pending the circulation of additional material before the ultimate closing of the hearing, as discussed further below.

### **Hearing adjournment**

- 2.25 On Thursday 5 December, I issued Minute 4, which outlined the remaining steps necessary to close the hearing. Specifically, it noted:
- a. an updated set of draft conditions was to be produced by the planners for the applicant and CCC, with input from the planning experts for ECAN and NZTA, and circulated by Friday 13 December; and
  - b. the applicant's closing submissions would be circulated by Friday 20 December.
- 2.26 Both of those deadlines were met by the relevant parties and I duly commenced my deliberations.

### **Hearing Closure**

- 2.27 Having received all of the further information sought through the post-hearing dialogue, I was satisfied that I had sufficient information to complete my deliberations and deliver a decision on the application.
- 2.28 Accordingly, I closed the hearing on 13 January 2020, via Minute 5.

## 3.0 Statutory & planning policy considerations

### District Plan compliance

- 3.1 The application and s42A Report identified the full extent of consequent requirements under the plan. When all requirements are bundled together – as summarised in Table 1 below – the proposal is to be assessed as a **discretionary activity**.

**Table 1** – Summary of consent requirements

Activity Rule	Standard not met	Reason
5.4.1.5 RD1 Flood management	5.4.1.1 P3 New buildings in a flood management area	The proposed basement car parking does not meet the required finished floor level (19.49m required, 16.20m proposed).
5.4.1.5 RD2 Flood management	5.4.1.1 P14 Earthworks within a flood management area	The proposed earthworks will exceed a depth of 0.6m (4m proposed) and a cumulative volume of filling and excavation of 50m <sup>3</sup> (approx. 28,000m <sup>3</sup> proposed). The proposal also includes earthworks for the installation of underground petroleum storage systems.
6.4.5.1.3 RD1 Noise	6.1.5.1.1 Noise	The proposal will breach noise standards by no more than 10dB at the boundary with adjoining residential units. The acoustic report has noted non-compliance at the following addresses (being representations of the locations of non-compliance): <ul style="list-style-type: none"> <li>- 8 Northcote Road (day time – peak hour only (1700-1800hrs)).</li> <li>- 9A Northcote Road, 27A Northcote Road, 186 Main North Road, and 202 Main North Road (day time and night time).</li> </ul>
6.6.4.3 RD1 Earthworks within a waterbody setback	N/A	The proposal will require earthworks within the waterbody setback from the Lydia Stream Drain to enable it to be partially piped.
6.6.4.3 RD2 Impervious surfacing within a waterbody setback	6.6.4.1 P5 Impervious surfaces	The proposal will see more than 10% of the water body setback covered with impervious surfacing. The Lydia Stream Drain will be piped and covered with impervious surfacing for a length of 225m.
6.8.4.1.3 RD1 Signage	6.8.4.2.4 Signs attached to buildings	The proposed on-building signage exceeds maximum height requirements (10.8m proposed where 9m is permitted).
6.8.4.1.3 RD1 Signage	6.8.4.2.6 Freestanding signs	The proposed pylon sign exceeds maximum height requirements (10m proposed where 9m is permitted) and will have a maximum area of 19m <sup>2</sup> , where 18m <sup>2</sup> is permitted.
6.8.4.1.3 RD2 Digital signage	N/A	The proposed petrol station sign includes a digital component that complies with the built form standards for signage.
7.4.2.3 RD1 Transport	7.4.3.1 Minimum number and dimensions of car parking spaces	The proposal will include staff parking that is not marked for exclusive use of staff.
7.4.2.3 RD1 Transport	7.4.3.7 Access design	Three of the vehicle accesses off Main North Road exceed the permitted width of 9m.
7.4.2.3 RD1 Transport	7.4.3.8 Vehicle crossings	The maximum permitted number of vehicle crossings on a site with more than 100m of frontage to a minor arterial road is two. Five vehicle crossings are proposed (NB: this is the same number as existing).
7.4.2.3 RD1 Transport	7.4.3.10 High trip generators	The proposal includes retail activities with a GLFA in excess of 500m <sup>2</sup> (the supermarket) and mixed-use activities that will result in more than 50 vehicle trips during peak hour (the service station).
8.9.2.3 RD1 Earthworks	8.9.2.1 P1 Earthworks	The proposal will exceed the permitted earthwork volumes and depths (more than 1000m <sup>3</sup> of earthworks will occur on site associated with achieving the required external car park grades). The greatest volume of earthworks is required for the

Activity Rule	Standard not met	Reason
		proposed establishment of the supermarket basement. The Applicant has stated that these works will not occur until building consent has been granted, so are exempt by Rule 8.9.3(iv).
9.4.4.1.3 RD4 Felling of a street tree	9.4.4.1.1 P6 Felling of a street tree	The proposal will include removal of three street trees, one of which is greater than 6m in height.
9.4.4.1.3 RD8 Earthworks within the setback from a street tree	9.4.4.1.1P12 Earthworks within 5m of the base of a street tree	The proposal will include earthworks within 5m of a street tree and will not be undertaken by an arborist employed or contracted by Council or a network utility operator.
16.4.1.4 D1 Any activity not otherwise provided for in the Industrial General zone	N/A	Supermarkets are not otherwise provided for within Industrial General zones.

### National Environmental Standard

- 3.2 The application site is an identified HAIL site, and accordingly, the NES-CL is applicable.
- 3.3 The NES-CL contains a nationally consistent set of planning controls and soil contaminant values. It ensures that land affected by contaminants in soil is appropriately identified and assessed before it is developed - and if necessary, the land is remediated or the contaminants contained to make the land safe for human use.<sup>5</sup>
- 3.4 The application identifies that Regulation 8(3)(c) and 8(3)(d)(ii) will not be met, owing to the volume of soil to be disturbed on, and removed from, the site. There is a PSI, but not DSI, and accordingly, Regulation (11) is engaged, and the proposal is to be assessed as a **discretionary activity** under the NES-CL.

### Resource Management Act 1991

- 3.5 Section 104 of the RMA sets out the matters I must have regard to in considering the application. Section 104B is also relevant given the classification of the activity as a discretionary activity. For completeness, the components of these statutory provisions which are relevant for this decision are as follows:

#### 104 Consideration of applications

(1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) *any relevant provisions of—*
- (i) *a national environmental standard;*
- (ii) *other regulations;*
- (iii) *a national policy statement;*
- (iv) *a New Zealand coastal policy statement;*

<sup>5</sup> Ministry for the Environment. 2012. *Users' Guide: National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health*. Wellington: Ministry for the Environment. p.6

- (v) a regional policy statement or proposed regional policy statement;
  - (vi) a plan or proposed plan; and
  - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.
- ...
- (5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.

### **104B Determination of applications for discretionary or non-complying activities**

*After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—*

- (a) may grant or refuse the application; and
- (b) if it grants the application, may impose conditions under section 108.

### **Policy Statements and Plans**

- 3.6 In considering the relevance of the various matters under RMA s104(1)(b), I have taken guidance from the planning experts involved in the hearing proceedings. In summary, I record my understanding that the Plan has been recently reviewed, and deemed to give effect to all higher order statutory directions such that:
- a. no National Policy Statement nor the New Zealand Coastal Policy Statement need be considered for this proposal; and
  - b. while I have considered the relevant provisions of the RPS, no specific assessment of the proposal against those provisions is necessary.
- 3.7 The relevant provisions of the NES-CL are applicable and have been applied accordingly.
- 3.8 The balance of the matters under s104 – including in particular the actual and potential effects on the environment and the proposal's fit with the relevant provisions of the Plan – are considered in detail under section 4 below.

## 4.0 Principal issues in contention

### Preamble

- 4.1 For this section of the report, I have intentionally focussed my assessment on the key issues in contention. Where there was wholesale agreement amongst experts about particular effects-based or policy matters, and there is clear and well-founded reasoning behind that agreement, I have generally accepted the consensus view.
- 4.2 That said, I have taken some time below on a few matters where there was expert consensus but residual concern from submitters as expressed at the hearing. These issues broadly relate to noise, construction effects, privacy effects and the like. I also address the matters of plan integrity and precedent effects, which remained 'live' issues at the close of the hearing.
- 4.3 Before I address those residual matters, however, my focus is on three key issues I identified as remaining in contention at the close of proceedings. In summary, those issues relate to:
- a. effects on the safety and efficiency of the transport network;
  - b. urban design matters; and
  - c. consistency (or otherwise) with relevant policy direction in the Plan.

### Transportation effects

- 4.4 In his presentation at the hearing, Mr Durdin described the level of scrutiny and time dedicated to transportation effects on this proposal as being unprecedented in his career.<sup>6</sup> I do not find that difficult to believe based on the material presented before and during the hearing – the level of attention appears to have been nothing short of comprehensive.
- 4.5 The challenge for me has been to condense the extensive list of discrete matters the transportation witnesses presented me with, whilst ensuring I have duly canvassed all salient points. In trying to strike a good balance between brevity and detail, I have organised the discussion here to progressively focus on:
- a. the reliability of the transportation model as a basis for assessing effects;
  - b. effects on public transport and active transport modes;
  - c. wider network safety and efficiency issues, including: Lydia Street access, QE II Drive intersection and the Redwood Family Dentist (among others).

### Reliability of the transportation model

- 4.6 A key matter to resolve for this issue is whether the transportation model can be relied upon as a tool for assessing the effects of the proposal on the safety and efficiency of the transport network. For the reasons I set out below, my view is that the evidence weighs considerably in favour of a finding that the modelling is sufficiently reliable, and fit-for-purpose.
- 4.7 I won't dwell on the history of the modelling, the assumptions and parameters adopted, or the associated evolution of the matter other than to note that the choice of modelling, platforms and assumptions were scoped and agreed between the applicant and

---

<sup>6</sup> Durdin summary statement (2 December 2019), para 2.

Council, and several additional iterations of modelling were completed over more than a year – including after extensive conferencing and Mr Falconer’s peer review.

4.8 Notwithstanding this, Mr Gregory remained of the view that the model was not sufficiently reliable to form the basis for an environmental effects assessment. He believed there were too many inconsistencies in the modelled outputs and found it “*difficult to comprehend how a model, stated (at least twice) as being unlikely to reflect a future environment, could be relied upon for an effects based assessment.*”<sup>7</sup>

4.9 In contrast, Mr Smith gave the view that the modelling is robust and thorough, noting it is the output of 13 months of collaboration between the parties, including modelling of Mr Gregory and the team under Mr Smith’s direction.<sup>8</sup> In his supplementary evidence, Mr Smith concluded the matter as follows:

38 *I believe that the task of a modeller is to provide an unbiased and objective assessment, based on the likely future environment taking into consideration an appropriately conservative level of risk. I believe that there are several conservative elements in the modelling in that regard. Acknowledging the limitations of the software used and elements of uncertainty (which has been documented now by several experts), I can confirm that the assessment within the ITA and updated post-caucusing assessment included as Appendix A to my Evidence-In-Chief can be relied upon to inform the assessment of effects of the application.*<sup>9</sup>

4.10 The above view is consistent with Mr Falconer’s final peer review report. I have already recorded above that Mr Falconer found the model to be fit-for-purpose, whilst acknowledging that this doesn’t mean it (or any model) will be perfectly accurate or free from inconsistencies. This point, in my view, is particularly germane as relates to Mr Gregory’s residual concerns with the model.

4.11 Relatedly, Mr Falconer helpfully advised that determining whether a model is suitably calibrated or not is invariably a subjective decision based on the intended model purpose and implications on the level of risk in using model outputs resulting from any constraints or limitations. He was comfortable that this particular model was fit-for-purpose based on the adopted modelling methodology and confirmation that the model has been calibrated and validated to a high standard<sup>10</sup> and I adopt his view in that respect.

4.12 In response to my questions at the hearing, Mr Falconer took the opportunity to address the residual concerns Mr Gregory expressed about the peer review results. Mr Falconer cautioned against “*reading into the numbers*” too much given his and Mr Smith’s findings that the model assumptions are “*reasonably robust and conservative,*” and “*constantly erring on the side of caution.*” He further reiterated that modelling is not a perfect science, nor is it a reality.

4.13 For the reasons they expressed in their evidence and peer review report (respectively), I share Mr Smith and Mr Falconer’s view that the model is acceptable to base an assessment of effects on for this proposal. I do not find cause to adopt Mr Gregory’s residual concerns about the model, nor do I believe he has sufficiently established grounds for departing from the agreed modelling approach to further examine other variables and model sensitivities.

4.14 There was no dispute from the applicant or any of its experts regarding Mr Gregory’s observations that the receiving environment is complex and that the model is not free

<sup>7</sup> Gregory supplementary statement (4 December 2019), para 19

<sup>8</sup> Smith summary statement (2 December 2019), para 14.

<sup>9</sup> Smith rebuttal (2 December 2019), para 38

<sup>10</sup> QTP, *Peer review of traffic modelling* (November 2019), para 3.1-3.2



of uncertainties, and I acknowledge that outcome. Those factors do not, however, lead me to a finding that the model is unreliable.

- 4.15 Having established that transportation model can be relied upon as a tool for assessing the effects of the proposal on the safety and efficiency of the transport network, it is a discussion of the nature of those effects that I now turn to.

#### Effects on public & active transport modes

- 4.16 There are several aspects of this issue that require some attention here; however, my overall view, based on the evidence before me and as explained below, is that the effects of the proposal on public and active transport modes will be acceptable.
- 4.17 Firstly, there was initially some concern raised by the Council that the proposal's provision of **pedestrian accessibility** was inadequate<sup>11</sup>; however, this issue was generally resolved through the design iterations and conditions volunteered by the applicant in the lead up to, and during, the hearing<sup>12</sup>. By the end of the hearing, the issue was no longer in contention, and I adopt the shared view of the parties that the proposal provides sufficient and safe pedestrian accessibility for the site's intended use.
- 4.18 A second issue that received a great deal of attention at the hearing was the potential **impact of the proposed new signalised intersection on public and active transport modes**. The key points in contention related to the extent which:
- a. the introduction of new traffic signals would affect the efficiency of the northbound bus priority lane adjacent to the site;
  - b. a proposed 40m-length of the priority lane being reduced from 4.2m to 3.2m in width would affect the efficiency of services using the lane; and
  - c. whether that reduction in lane width would have flow-on safety effects for cyclists.
- 4.19 Addressing these in turn, I note first the evidence of Mr Fleete, who gave the view that any additional sets of **traffic lights along the priority route will result in delays**. He equated the additional signalised intersection proposed to an extra set of hurdles being added to a 400m race.<sup>13</sup>
- 4.20 Mr Fleete's sentiments were broadly shared by Mr Gregory and Mr Clark; however, none of those three witnesses presented any evidence to help me understand the likelihood of such effects to arise or their consequence.
- 4.21 Conversely, Mr Smith made an effort to assist me with some objective measures borne out of the transportation modelling described above. That exercise showed that the proposal may result in both improvements to, and reductions in, public transport performance on the local network with the introduction of the signalised intersection. Those changes ranged from delays of half a minute to savings of nearly two minutes.<sup>14</sup>
- 4.22 I tested Mr Smith's analysis with the other transportation experts during the 'hot tubbing' session on Day 2 of the hearing. While Mr Clark thought the more significant time savings could be a model anomaly, he gave the view that the impact of the intersection of bus performance was not an adverse effect. Mr Fleete ultimately found no fault with Mr Smith's modelled results, making no contention that the potential delays or time savings were significant.

---

<sup>11</sup> For example, s42A Report, para 53

<sup>12</sup> For example, addition of a new pedestrian bridge over basement carpark entrance, realignment of east/west pedestrian linkages, and introduction of a new pedestrian plaza adjacent to Main North Road.

<sup>13</sup> Fleete EIC, para 15

<sup>14</sup> Smith EIC, para 81 (Table 4)

- 4.23 During his summary presentation, Mr Smith also observed the high degree of day-to-day variability in the time it would take for a bus to complete a journey from Central Christchurch to Belfast along this priority route. He observed that a typical journey may take 25 minutes, but that a variance of 5-10 minutes would not be uncommon due to a range of factors irrespective of adjoining land uses.
- 4.24 None of the other transport experts contested that observation, and I find it offers useful context about the overall significance of any savings or delays arising from the proposed new signals.
- 4.25 Summarising the above, there is no evidence before me, nor any categorical contention from any expert, that the proposed new signals will adversely affect public transport efficiency to any meaningful degree. Accordingly, I adopt Mr Smith's assessment that the proposal is likely to result in improvements and delays; and the latter will be well within existing and forecast day-to-day variability tolerance levels.
- 4.26 Turning to the **reduced width of the bus priority lane** in the vicinity of the intersection, this was primarily a concern for Ms Hewett and Mr Gregory. While ECAN's submission expressed concern about the matter, neither Ms Stapleton nor Mr Fleete addressed it substantively in their evidence in chief or in their hearing presentations. Mr Fleete did, however, respond to questions from me on the matter, which I touch on below.
- 4.27 Ms Hewett drew my attention to the NZTA guidelines<sup>15</sup> for bus lane design. According to those guidelines, best practice is that bus lanes should either be wide enough to enable buses and cyclists to comfortably travel side-by-side, or sufficiently narrow so as to force these modes to share a single-file movement alignment. All of the transport witnesses and Ms Hewett made clear that the side-by-side arrangement requires a minimum width of 4.2m and the single-file arrangement should be no greater than 3.2m-wide.
- 4.28 Ms Hewett said that the wider option is NZTA's preference<sup>16</sup>, and Mr Gregory shared that position in his oral presentation at the close of the hearing. In particular, Mr Gregory considered that any reduction in the existing 4.2m width would not amount to maintenance or enhancement of network performance here, and he was further troubled by his forecast increase in cyclists anticipated over current levels. His concerns in this respect related both to the potential delays for buses caused by cyclists, and **for the safety of cyclists** in the reduced space. He voiced that the potential effects arising would be more than minor.
- 4.29 All of the experts acknowledged during hot tubbing that the NZTA guidelines envisage both the side-by-side and single-file arrangements as providing for safe movements of active and public transport modes. They also drew to my attention that there are several examples across the city, including on Main North Road to the north of the site, where the 3.2m configuration is utilised.
- 4.30 With the above in mind, and in the absence of any meaningful evidence from Mr Gregory to demonstrate adverse effects are likely to arise at all, let alone 'more than minor' effects, it is difficult for me to conclude that this particular 40m stretch of road where the reduced width is proposed will be in any way dangerous. I doubt that the NZTA guidelines would contemplate a 3.2m configuration at all if that were the case.
- 4.31 Furthermore, I draw additional comfort from Mr Fleete, who had confidence in the City's bus drivers' abilities to safely share the space with cyclists.

---

<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> Hewett EIC, para 9.18

- 4.32 The compelling evidence before me is also that, in combination with the existing and forecasted number of cyclists using the route and the bus frequency there, the distance of the reduced lane width is suitable short so that any delays would be a few seconds only, and therefore insignificant.
- 4.33 As a closing point on the above matters, I note that the factors leading to a potential reduced priority lane width along this corridor are not without good reason. The new lane configuration also provides opportunities for enhanced crossing points and refuges for pedestrians and cyclists across Main North Road, and for the safe access and egress of all transport modes using the application site. Furthermore, the proposal does not preclude the road controlling authority from adopting design changes to the new intersection over the short, medium or long term in response to network demands.
- 4.34 Finally, I am compelled to briefly comment on a matter raised by Mr Gregory towards the close of his presentation at the hearing. Namely, he expressed concern about the safety of southbound cyclists accessing the site, and having to cross 3 lanes of traffic to do so. Mr Gregory described this arrangement as “very unsafe”, but he did not present any evidence to support that contention. In the absence of such justification, and on the understanding that the proposal has been subject to one safety audit already, with future audits to follow where necessary, I am not compelled to take that matter further.
- 4.35 Overall, the evidence suggests to me that the proposal can be designed and constructed with appropriate network upgrades and modifications such that positive effects on active and public transport modes will arise and any adverse effects are acceptable.

#### Wider network safety & efficiency issues

- 4.36 As with the preceding issues, the compelling evidence before me on this matter is that the adverse effects of the proposal on wider network safety and efficiency can be managed by appropriate conditions to the extent that the effects are acceptable.
- 4.37 Moreover, the proposal increases the likelihood that currently unplanned but desirable network improvements will be completed expeditiously to the benefit of road users in the area well beyond those accessing the application site.
- 4.38 I have organised my discussion of these issues to firstly discuss two matters that are principally focussed on the proposed conditions of consent, before moving onto five discrete matters. The former relate to five ‘pre-conditions’ to the development proceeding and to the proposed monitoring condition framework.
- 4.39 The discrete matters I then address in turn are:
- a. Lydia Street access;
  - b. effects on vehicles exiting the Redwood Dentist site opposite the application site;
  - c. potential ‘rat running’ in Winters Road;
  - d. the overall number of site access points; and
  - e. the potential reconfiguration of the Main North Road/Northcote Road/QEII Drive intersection.

### Pre-conditions to operation

- 4.40 An important aspect of the proposed condition framework is the use of 'pre-conditions'. This methodology will ensure certain measures are implemented in advance of any effects arising from the operation of the supermarket and/or fuel facility that could otherwise lead to undesirable safety or efficiency effects. In summary, the measures that must be implemented before operation include:
- a. installation of a 'No Right Turn' sign for at Lydia Street for vehicles exiting the site onto Northcote Road;
  - b. reconfiguration of the Main North Road/Northcote Road/QEII Drive intersection (discussed in detail further below);
  - c. formation of the new signalised intersection adjacent to Access 3;
  - d. extension of the median island on Northcote Road west by a minimum length of 7m to prevent right turns from the Oil Changers site, including 'No Right Turn' signage; and
  - e. recording of baseline traffic information following the opening of the Christchurch Northern Corridor.
- 4.41 There are two aspects of the pre-conditions that I wish to briefly record.
- 4.42 Firstly, all five pre-conditions were volunteered by the applicant in the clear knowledge that the proposal could not operate without all five matters being implemented. I discussed this at length during the hearing with counsel for the applicant and they agreed that there was an 'eyes wide open' understanding of the implications of these pre-conditions both individually and collectively.
- 4.43 Secondly, on all of the above matters, there was a consensus between the applicant and Council that the pre-conditions are generally appropriate as mitigation; however, there was not consensus about the drafting of *all* of the conditions as I discuss in turn here.

### Involvement of third parties

- 4.44 Firstly, there was some disagreement between the applicant and the Council as to the extent to which the pre-conditions should stipulate that certain design aspects are to be amended by the Christchurch Transport Operations Centre and/or that the works are to be carried out to the satisfaction of the relevant road controlling authority.
- 4.45 Having considered the respective positions of the parties on this matter, I accept that the road controlling authorities have the ultimate say in reconfiguration of the network and that the Operations Centre will also be involved in the process where necessary. It is therefore incumbent upon the applicant to liaise with the relevant authorities to ensure the required network changes are implemented; however, that does not need to be expressed by way of consent pre-conditions and to do so would amount to unnecessary double-handling.
- 4.46 As mentioned above, the applicant has made clear that it accepts any risk to the proposal's implementation should the authorities not allow for the relevant works, and the applicant is entitled to do so.

### Design of signalised intersection adjacent to 'Access 3'

- 4.47 There were two main areas of disagreement between the applicant and Council about the condition framework for the new signalised intersection adjacent to Access 3, being:

- a. the need or otherwise for a condition requiring a safety audit of the detailed intersection design in accordance with NZTA's procedures for such projects; and
  - b. the minimum design parameters for the intersection itself.
- 4.48 Regarding the former, I share the applicant's view that an amendment of this nature to a major arterial road will require ongoing liaison between the applicant and road controlling authority – including any necessary safety audits – irrespective of whether there is a condition or not.
- 4.49 That the proposal is complex and *may* result in effects does not necessitate, in of itself, a pre-condition of consent of this nature. To the contrary, inclusion of such a condition would amount to an unnecessary double-handling of the matter in the same way that the other third-party involvement discussed above would.
- 4.50 Moreover, the drafting of Mr Harris' proposed safety audit pre-condition is not sufficiently certain in my view, particularly as it provides no timeframe by which the audit is to be undertaken. It also defers a discretion (to the safety auditor) by requiring the audit to be complied with, despite the results of that process being unknown at this time. It is invalid to predicate the granting of consent on such an uncertain process. Accordingly, I have not adopted the additional wording in that particular condition.
- 4.51 Turning to the specific design parameters for the intersection, there are 3 requirements that the Council has sought for inclusion in the pre-condition which the applicant does not accept.
- 4.52 The first of those additional requirements relates to integration between cycle crossings and the cycle network. While the Council has included an example of what is expected by that requirement, the requirement itself is broadly drafted and lacking in specificity as to the information that must be provided to satisfy it. There is also a lack of evidence presented by the Council to justify the requirement, and accordingly, I share the applicant's view that the requirement not be included in the relevant pre-condition.
- 4.53 The second requirement relates to the 'bus jump' priority signal being provided for both northbound and southbound buses. The applicant does not accept the southbound bus jump as appropriate on the evidence presented at the hearing, and only accepts the northbound requirement should the existing bus stop adjacent to the site be relocated to the north of the proposed signalised intersection.
- 4.54 As there was no evidence presented at the hearing by the Council to justify mandating that a bus jump be provided for southbound buses, I have not mandated that in the proposed pre-conditions. As for the northbound buses, Mr Smith and Mr Fleete made clear in response to questions I posed at the hearing that there is merit in the priority being provided for; however they added that its utility is diminished in a situation whereby the existing bus stop is relocated to the north of the intersection. It follows that the bus jump should not be required if the bus stop is relocated, and again I am aligned with the applicant in that respect.
- 4.55 I add that it is ultimately for the Council to determine whether it is best for the bus stop to be relocated in tandem with ECAN as provider of bus services. These are ultimately network operational matters, which the applicant can participate in to the extent relevant; however, there simply is no evidential basis before me to support the Council requiring unconditional provision of bus jumps in both directions as mitigation of this proposal.
- 4.56 The third and final requirement proposed by the Council relates to the width of the bus priority lane formed at the intersection. This draws on the Council's preference for a minimum 4.2m width to be maintained, which I have already found to be unnecessary

provided that the lane is reduced to 3.2m to allow for single-file travel for buses and cyclists, consistent with relevant national guidance.

- 4.57 For the same reasons, I agree with the applicant that the condition should be drafted such that the lane achieves a minimum width of 3.2m. This would not preclude a 4.2m width being formed should the road controlling authority prefer such in the future.

#### Right turn restrictions onto Northcote Road

- 4.58 There were no substantive points of difference regarding the right turn restriction pre-conditions at Lydia Street and the Oil Changers site other than the latter including a statement that the works be carried out to the satisfaction of the road controlling authority, which I have discussed and ruled on above.

#### Monitoring condition framework

- 4.59 The proposed monitoring framework was largely agreed by the Council and applicant, though there are two substantive details which remained in contention at the close of proceedings and a further point on timing that arose subsequently.
- 4.60 Firstly, there was a difference in opinion as to the information that should be obtained during the three post-operation monitoring phases. Whereas the applicant considered that the monitoring required by this pre-condition should essentially be an information gathering or record-keeping exercise about certain performance aspects, the Council considered the monitoring should be more of an assessment-based exercise.
- 4.61 I ultimately favour the applicant's drafting preference in this respect as it is more legible and certain. The role of this first monitoring condition is to *establish an information basis* for determining whether action is required, and other proposed conditions take the lead from that starting point to dictate whether action will be required and what that action might be. The Council's preferred drafting of this first condition somewhat conflates these roles.
- 4.62 For completeness, I note that the trigger points for taking action and the potential responses required are not in contention in the follow on conditions.
- 4.63 The second main area of disagreement on the post-operation monitoring related to the time(s) of day that should be monitored. The applicant gave the view that the monitoring should be limited to the PM peak period (between 4:30 and 5:30pm), while the Council's preferred drafting solution would be responsive to network changes experienced 'at any time.'
- 4.64 The evidence before me is that the PM peak is the key issue to be managed by this suite of conditions. This point was made clear in the joint witness statements from the transport experts and it was further noted therein that the AM peak and interpeak periods were tested and found to be satisfactorily managed. That theme was further reinforced in the evidence of Mr Smith<sup>17</sup>, and the technical memo produced by Abley following Mr Falconer's peer review<sup>18</sup>.
- 4.65 On the above basis, I find that there is no evidential justification for extending the monitoring requirements 'round-the-clock' as proposed by the Council. I do note, however, that the proposed condition framework enables a review of the monitoring conditions and any associated remediation arising.

---

<sup>17</sup> Smith EIC, para 59

<sup>18</sup> Smith EIC, Appendix A para 1d)

- 4.66 On that point, I note that the review condition was lacking a specific timeframe by which any review must be carried out. Section 128 of the RMA anticipates that a time or times will be specified in such conditions. To this end, and taking a lead from the timeframes set out in the monitoring condition framework, I have added a timeframe of 6 months from the date of any remedial action implemented as a result of the direction set out in the monitoring conditions.
- 4.67 For completeness, I note that the monitoring is required at 3-month, 2-year, and 4-year intervals, any of which could give rise to remedial action, and subsequent review.

#### Lydia Street access

- 4.68 Turning to the list of discrete matters I set out above, I discuss the Lydia Street access firstly here. Mr Gregory expressed several concerns on this matter – both in his evidence and orally at the hearing, including concerns about heavy vehicles crossing the centre-line from left turns into Lydia Street off Northcote Road; the difficulty presented by the current right turn arrangement into Lydia Street for eastbound traffic on Northcote Road; and the uncertainty of future access arrangements associated with potential future Northcote Road route improvements.
- 4.69 The revised conditions agreed between the applicant and Council after the hearing include a requirement for semi-trailer and fuel tankers to enter Lydia Street via a right turn movement only, and I consider this suitably addresses the first of Mr Gregory's concerns.
- 4.70 Notwithstanding the above, the Council proposed an additional condition to require formation of a right turn offset on Northcote Road for vehicles accessing Lydia Street to address Mr Gregory's second concern noted above; however, the applicant considered such a condition is not justified and preferred any right turn offset to be incorporated into the future Northcote Road upgrade arrangements if appropriate.
- 4.71 Given the uncertainty around the design detail of the Northcote Road improvements, and the lack of detailed evidence presented to justify the right turn offset at this stage, the applicant's preference is the more appropriate in my view.
- 4.72 I add, however, that there are some belts and braces in place to manage any effects arising in association with right turning traffic. As advised by Mr Smith, for example, the activity can also be serviced via the ROW access from Main North Road if necessary<sup>19</sup>, and this is enabled by the proposed conditions of consent. The condition framework also requires a design solution response if post-operation monitoring (discussed earlier) identifies a need for action due to lengthy queues accessing Lydia Street from Northcote Road (eastbound); and it is expressly noted that the solution may include a right turn offset.
- 4.73 Again, the Council may also review the relevant conditions of the consent to deal with related adverse effects under s128 of the RMA, as enabled by the condition framework.
- 4.74 A final point of dispute on the Lydia Street access related to the condition distinguishing heavy vehicle access arrangements from those for fuel tankers. The applicant preferred that the condition be drafted to include the words "delivery and servicing" as follows to make the distinction:

*All heavy **delivery and servicing** vehicles shall only access the site via the right-of way connecting Lydia Street and Main North Road. The fuel tanker shall only enter the site via the*

---

<sup>19</sup> Smith EIC, para 148 c)

*right-of-way from Lydia Street and shall exit only via the signalised intersection onto Main North Road.*

- 4.75 Mr Harris gave the view that the additional words would lead to confusion and preferred they be deleted.
- 4.76 In considering the respective preferences, I find both to be problematic. I gather that the applicant's addition would clearly distinguish fuel tankers from other heavy vehicles, but it also creates confusion with the use of the term 'heavy vehicles' in other conditions, which is defined for the purposes of the consent under a preceding advice note.
- 4.77 I also find that Mr Harris' suggestion would create an internal conflict given that fuel tankers are a subset of heavy vehicles and there are two different requirements in the condition.
- 4.78 To resolve this, I have simply re-ordered the two sentences under the proposed condition, deleted the applicant's suggested addition and added the word "other" before heavy vehicles. This solution, I believe, should address each of the parties' concerns and ultimately be clear and enforceable.

#### Redwood Dentist site access

- 4.79 Following notification of the application, the Redwood Dentist facility lodged a submission which was subsequently withdrawn following dialogue between the submitter and applicant.
- 4.80 Notwithstanding that resolution, Mr Gregory maintained concern about the safety effects for vehicles exiting the Dentist carpark, which is directly opposite the application site at the proposed new signalised intersection on Main North Road.
- 4.81 In summary, Mr Gregory observed that the access to the carpark is not an appropriate fourth 'arm' to add to the intersection, and he also gave the view that the intended left-out only arrangement for patients leaving the Dentist would not be suitable given the patients' unfamiliarity with the detailed workings of the intersection.<sup>20</sup>
- 4.82 Mr Smith did not share Mr Gregory's view that the proposed left-turn only arrangement would be unsafe. Mr Smith based his view on the following:
- a. surveys undertaken have indicated low vehicle movements in and out of the Dentist practice, and it was assessed as 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 parking will not be allowed within the intersection. Any vehicle that reverses out would be able to do so without encroaching the through traffic lanes;
  - c. a condition of consent requires signage to be provided at the applicant's expense at the Dentist entrance to alert customers that the access is left out only - 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).<sup>21</sup>

---

<sup>20</sup> s42A Appendix C, para 257

<sup>21</sup> Smith EIC, para 148 e)



- 4.83 I adopt Mr Smith's evidence in this respect and expect that the safety effects associated with the egress from the Dentist carpark can be managed through signage and other physical methods if deemed necessary.

#### 'Rat-running' in Winters Road

- 4.84 Mr Gregory also had residual concerns about the potential for the diversion of traffic onto Winters Road as a result of the proposal. Regularly referred to by the transportation experts as 'rat running' in evidence and at the hearing, this diversion was shown as an output of the CAST model that informed the transportation assessments.
- 4.85 Mr Smith described the scale of the diversion to be 'small', noting that the observed model outputs indicated around 60 vehicles per hour diverting onto Winters Road in a 2021 scenario, and 84 vehicles doing so in 2041. Mr Smith said that while the 1-1.5 additional two-way movements per minute this entails is a relatively small increase in traffic, he shared the view of Mr Gregory and Mr Clark that diversions should be minimised as far as practicable.<sup>22</sup>
- 4.86 Mr Gregory's view was that mitigation measures must be adopted by the proposal – including adequate local area traffic management – to account for that modelled outcome and deter rat running in Winters Road.<sup>23</sup>
- 4.87 Mr Smith, however, considered that traffic monitoring would be a more appropriate method to address potential rat running than mandatory mitigation given several factors, including:
- a. the modelled output, being the concern of Mr Gregory, is owing to the particular sensitivity of the CAST model to re-distribution and re-routing of traffic, a limitation of the model also acknowledged by Mr Gregory<sup>24</sup>;
  - b. in Mr Smith's view, that modelled rat running of vehicles exiting the application site is unlikely to result in practice given that:
    - i. such vehicles would travel 1.5km at 50km/hr via Winters Road which would take an estimated 108 seconds in free flow conditions; whereas
    - ii. those vehicles would travel at 0.15km at 50km/hr and a further 1.0km at 80km/hr via QEII Drive which will take an estimated 56 seconds in free flow conditions; and
    - iii. by inference, unless delays along QEII Drive are 52 seconds greater than along Winters Road, it will be quicker and more direct for traffic to use QEII rather than rat running through Winters Road.<sup>25</sup>
- 4.88 I note that Mr Smith's recommended monitoring conditions form the basis of the framework agreed by the Council and applicant. A corresponding condition has also been included that requires the applicant to carry out traffic calming and/or speed reduction measures in Winters Road to deter rat running if the monitoring shows a further 30 vehicles use Winters Road in the peak pm hour relative to the baseline levels recorded prior to the supermarket operating.
- 4.89 Given the evidence of Mr Smith, I find this condition package is an appropriate response to manage any rat running effects that arise as a result of the proposal. No immediate mitigation in Winters Road is justified at this stage based on the evidence before me.

---

<sup>22</sup> Smith rebuttal (2 December 2019), para 262

<sup>23</sup> s42A Appendix C, para 257

<sup>24</sup> s42A Appendix C, para 228-229

<sup>25</sup> Smith EIC, para 148 e)

#### Number of site access points

- 4.90 The overall number of vehicle access points was a matter discussed in the transport conferencing, with consideration given to possible removal of one or more. No party presented any evidence to demonstrate that the number of proposed access points will result in an adverse effect on network safety or efficiency.
- 4.91 Notwithstanding that, the applicant and Council have agreed to a condition framework requiring monitoring of all site access points at 3-month, 2-year and 4-year intervals after the supermarket commences operation. Where that monitoring shows that certain effects are triggered, further related conditions require mitigation actions in response. I understand this approach is generally supported by the relevant parties, including Mr Clark, who initially had some concern about the access point defined as Access 1 in the application in particular.
- 4.92 I find the revised condition framework provides an appropriate mechanism to address any site access-related effects of potential concern arising in the future. There is, however, no evidence before me to suggest that any specific mitigation is necessary in the meantime.

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

- 4.93 Finally, I note that unanimous view of the transportation experts that the proposal entails a currently-unplanned and desirable transport network alteration. This upgrade was described by Mr Smith as follows:

*A further feature of the application is optimisation proposed thorough changes to the layout and phasing of the Main North Road / Northcote / QEII Drive Intersection. This includes the reallocation of lanes on the Main North Road southern approach to enable a dual right turn (specifically the current two through lanes and exclusive right turn lane are proposed to be reconfigured to a through, shared through-right and exclusive right) and the introduction of split phasing from the two Main North Road approaches and removal of filter right turns. This treatment was considered by all traffic experts in caucusing to deliver safety and efficiency benefits irrespective of the development and is included as part of the application.<sup>26</sup>*

- 4.94 The applicant's closing submissions added further useful context to this matter, which I have repeated here for completeness:

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 [Christchurch Northern Corridor] 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 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*

---

<sup>26</sup> Smith summary (2 December 2019), para 12

*execute the work and it is carried out on behalf of the public body having the statutory power.*<sup>27</sup>

- 4.95 Importantly, the above illustrates that the development cannot proceed without this intersection upgrade. At worst, the development will therefore not exacerbate any effects derived from the current function of the intersection as a result; and there is every likelihood that the upgrade will be delivered more expeditiously than would otherwise occur as a direct result of the proposal. This outcome is indisputable.

#### **Synopsis of transportation effects**

- 4.96 For all the reasons set out above and given the proposed condition framework, I adopt Mr Falconer and Mr Smith's collective evidence that the proposal will have positive safety and efficiency effects on the transport network, and any adverse effects will be less than minor.

#### **Urban Design**

- 4.97 The key parameters for this issue are discussed in turn below and include:
- a. the visual appearance and positioning of the proposed supermarket and fuel stop;
  - b. the overall accessibility of the site for pedestrians; and
  - c. safety considerations.
- 4.98 As a general observation here, I note that the issues in contention narrowed over the course of the hearing to the extent that very few, discrete, points remained unresolved at the end of the hearing. There was also further refinement of the urban design issues by way of the joint work on conditions by the parties.
- 4.99 There was general acceptance by Mr Hattam for the Council that the majority of the discrete issues did not amount to significant adverse outcomes in of themselves; though he found some matters to be more determinative than others and was ultimately not able to support the proposal due to what he referred to as the 'accumulation' of the remaining matters.
- 4.100 Mr Burns for the applicant also recommended some additional design revisions to improve the overall outcome of the proposal in his evidence; however, he clarified that those were 'nice to haves' and that he supported the development irrespective of whether they were adopted.
- 4.101 For the reasons I outline below based on the evidence presented at the hearing, I consider that any adverse urban design effects associated with the proposal will be acceptable.

#### **Appearance & position of proposed supermarket**

- 4.102 An important starting point for this issue is to record that the evidence was uncontested that the proposed building design is to a high standard and superior to what is currently existing on the site *and* to what would be anticipated by the permitted Industrial Zone standards.
- 4.103 I acknowledge here Mr Hattam's preference, however, for the building to be relocated closer to the Main North Road frontage to enhance engagement with the street. For the reasons I express below, I do not find the effects associated with the building's site

---

<sup>27</sup> Legal submissions in reply for the applicant (19 December 2019), paras 28-30

position are inappropriate given the site context. I find the evidence presented by the applicant to be more compelling on this point, and overall I find that any adverse effects associated with the proposed supermarket's location and appearance will be acceptable.

- 4.104 Before addressing the building setback issue, I briefly discuss here the other substantive point raised by Mr Hattam at the hearing about the supermarket's proposed appearance. Namely, Mr Hattam preferred for **the main yellow parapet** above the building's entrance to be modified to tone down the amount of yellow utilised. While Mr Hattam acknowledged the building features a good level of glazing and variation in materials, he gave the view that modifications to the parapet would enhance the overall visual interest of the development.<sup>28</sup>
- 4.105 In response, the applicant has now proposed a modification to the parapet design including an overall 31% reduction in colour and a 23% reduction in the front face alone. These modifications are shown on the revised plans attached to the applicant's written reply and there is also a volunteered condition of consent to be imposed which will require the development to be in general accordance with those plans. Overall, I find the proposed design modifications are appropriate and consistent with the recommendations of Mr Hattam. I also acknowledge the point made in the applicant's closing submissions that the Industrial Zone built form and activity standards are enabling of a greater use of colour than proposed by the supermarket.
- 4.106 Returning to the **building setback**, Mr Hattam's preference was that the building be setback 10m from the Main North Road frontage to provide for optimum engagement with the street. His view was that that degree of setback would maintain a sense of enclosure along the streetscape which is of a comfortable, human scale, without making people feel visually crowded.<sup>29</sup>
- 4.107 In response to questioning, Mr Hattam made clear that his assessment was based in part on the urban design assessment matters set out in the Commercial Zone provisions but took *no* cognisance of the Industrial Zone rules and standards. Notwithstanding that direct regard Mr Hattam had to the Commercial Zone provisions, he could not point me to any reference therein to a 10m setback being anticipated for buildings in commercial zones. Mr Hattam also acknowledged that even if the building was closer to the street boundary, there is no requirement in the industrial zone for the level of articulation that is proposed by the applicant.
- 4.108 Mr Harris cautioned against complete disregard for the Industrial Zone standards, reminding me that the proposal aligns with the built form anticipated there. Notwithstanding that, Mr Harris retained some uneasiness about affording too much weight to that aspect of the proposal given that the supermarket activity itself is not anticipated.<sup>30</sup>
- 4.109 As an interim observation before summarising the applicant's evidence on this point, I find Mr Harris and Mr Hattam's evidence in the above respects to be difficult to adopt.
- 4.110 For Mr Hattam to completely ignore built form outcomes anticipated on the site is counterintuitive to me. At the very least, that information must surely form a part of the site context to which an urban design assessment should be based – if not a *key* part. To omit that context entirely makes for an unbalanced consideration of the proposal against the provisions of the Plan – particularly a Plan that is intended to be interpreted and implemented in a way that minimises the extent and prescriptiveness of

---

<sup>28</sup> s42A Appendix D, para 41

<sup>29</sup> s42A Appendix D, para 25

<sup>30</sup> Harris supplementary statement (4 December 2019), para 25

development controls through design standards in order to encourage innovation and choice.<sup>31</sup>

- 4.111 Among other things, the Industrial Zone permitted standards anticipate large, utilitarian buildings with little control on material, articulation or other physical elements of design and appearance. Those buildings may be located as close as 3m to the Main North Road frontage as a permitted activity, an outcome which Mr Hattam, Mr Milne, Mr Burns and Mr Young all agreed was sub-optimal, citing examples of that built form at Northlands shopping centre. I also note that there is *no* maximum setback distance anticipated in the Industrial Zone or the Commercial Zones for that matter.
- 4.112 Moreover, not only does the proposal surpass the minimum site landscaping requirements under the Industrial Zone provisions, it is more generous in that respect than the requirements of the Commercial Core Zone<sup>32</sup>, which Mr Hattam had regard to in completing his assessment. In this respect, even if the Industrial Zone standards were to be disregarded entirely in favour of the commercial provisions, the proposed landscaping – and building setback for that matter – would be in keeping with the permitted expectations of the Plan.
- 4.113 It seems somewhat unrealistic to find a proposal that is accepted as having a superior built form to both the existing environment and to the expectations of the Plan to be unsupportable from an urban design perspective.
- 4.114 That the proposal is for a supermarket not anticipated by the activity standards in the Industrial General Zone should factor little into this part of the application's assessment in my view.
- 4.115 The applicant's evidence affords further justification for a finding that the proposed building appearance and location are generally appropriate. On the point of the surrounding context, Mr Burns' evidence was very helpful. He stressed the importance of the local environment being dominated by a 6-lane arterial road, the design of which discourages pedestrians in the area. He gave the view that large building forms with deep setbacks are consistent with this type of setting, being viewed mainly at speed from vehicles. Mr Burns contrasted this site context to nearby local commercial centres where finer-grained activities located close to the road are well-suited to the adjoining road environment defined by two lanes of traffic and a more pedestrian-friendly character.<sup>33</sup>
- 4.116 Mr Milne's evidence demonstrated that the site landscaping has been carefully considered and will enhance the visual amenity of the street and local context. Ms Dray generally agreed in that respect<sup>34</sup> and I adopt their shared view.
- 4.117 Mr Young also assisted me in understanding the potential ramifications of alternative building orientations and positions on the site. His presentation at the hearing usefully illustrated how the applicant's choice of layout has optimised design and appearance opportunities while ensuring the proposed supermarket can operate in a safe and efficient manner. In contrast, Mr Hattam acknowledged in questioning that his assessment did not factor in operational limitations or associated safety issues that might arise from relocating and/or re-orientating the supermarket building closer to Main North Road.
- 4.118 Factoring in the applicant's evidence to my preliminary comments about the Council's evidence above, I find the design, position and appearance of the building to be

---

<sup>31</sup> Objective 3.3.2

<sup>32</sup> See built form standards in Chapter 15

<sup>33</sup> Burns summary, para 12-13

<sup>34</sup> s42A Appendix E, para 33

generally appropriate to the site context. I also adopt Mr Burns' considered and uncontested view that the design of the proposal will result in a demonstrable environmental improvement to the existing conditions. The compelling evidence suggests to me that any adverse effects associated with these design factors will be generally in keeping with the permitted expectations of the Plan and no more than minor.

#### Appearance & position of proposed fuel stop

- 4.119 While experts for the applicant and Council both recommended changes to the proposed fuel stop, there was no evidence presented that would lead me to a finding that the effects of the fuel stop would be unacceptable.
- 4.120 Both Mr Burns and Mr Hattam recommended alterations to the fuel stop as proposed in the application document. Mr Burns summarised his view in his oral presentation at the hearing that the design of the canopy and related structures could be improved through adoption of a more refined form, selection of materials and colour palette. The applicant, in turn, adopted refinements to the fuel stop design and these are encompassed in the amended plans attached to the applicant's reply.
- 4.121 Mr Hattam signalled at the hearing that he found the applicant's proposed design changes to be positive, but he was more concerned about the location of the fuel stop than the refinement of its design. In his view, the fuel stop will detract from the proposed supermarket and the surroundings due to its prominence and functional design. Mr Hattam added that the fuel stop would not contribute to an attractive street environment.<sup>35</sup>
- 4.122 As a result, Mr Hattam preferred the fuel stop to be relocated further away from Main North Road.<sup>36</sup>
- 4.123 During the applicant's presentation, it was made clear that the position of the fuel stop was also important for enabling fuel delivery vehicles to navigate the site safely and to minimise site conflict between fuel patrons and supermarket shoppers. In that respect, I understand that the fuel stop location was not an after-thought or an easy outcome to modify.
- 4.124 It is also relevant to consider the Plan's expectations with respect to fuel stops and their design. In response to questions at the hearing, Mr Allan, Mr Burns, Mr Hattam and Mr Harris all acknowledged that both the Industrial General Zone and Commercial Zones expressly anticipate service stations as a permitted activity, and the associated built form standards are generally enabling of typical development form adopted by such activities.
- 4.125 Notwithstanding Mr Hattam's express preference for relocation, there was no evidence presented at the hearing to suggest that the proposed fuel stop would result in adverse effects that are more than minor. I find it to be in keeping with the expectations of the Plan and generally appropriate.

#### Site accessibility

- 4.126 In summary, this issue relates to the extent which the proposed activity (overall) offers good connections through the site and enables enhanced connectivity between the site and wider neighbourhood. For the reasons I express below, and given the design

---

<sup>35</sup> s42A Appendix D, para 49

<sup>36</sup> s42A Appendix D, para 72

revisions adopted by the applicant since the application was lodged, I find the site accessibility is an improvement on the existing environment and to an acceptable standard.

4.127 In his original assessment, Mr Hattam expressed the view that the proposed site accessibility was unsatisfactory. This conclusion was owing to Mr Hattam's assessment that:

- a. the proposed pedestrian access in the southern portion of the site, adjacent to the Foodstuffs' head office, would be unattractive to pedestrians due to its indirect route and potential for conflict with vehicles;
- b. the proposed Lydia Street footpath, while acceptable, is not the ideal width for pedestrian comfort; and
- c. the large number of vehicle access points in contrast with the limited pedestrian access points gives undue priority to vehicles, though this could be addressed by dispensing with some of the vehicle accessways.<sup>37</sup>

4.128 In response to Mr Hattam's assessment, the applicant adopted several changes to enhance pedestrian accessibility – most notably though:

- a. refinements to the southern pedestrian access arrangements to make them more direct and separated from traffic, including a bespoke pedestrian bridge over the underground carpark entrance;
- b. widening of pathways and associated paving and landscaped areas for enhanced comfort and safety; and
- c. a new plaza adjacent to Main North Road, which connects the central pedestrian access to the main landscaped supermarket entry via a pathway affording pedestrian priority through the carpark with surface treatment for added emphasis.

4.129 At the hearing, Mr Hattam accepted that the above alterations amounted to improvements to the proposal, and he expressed in his oral presentation that the accessibility would be sufficiently safe, and the level of connectivity to adjoining land uses would be acceptable. He and Ms Dray also ultimately shared the view in their respective presentations that the Lydia Street footpath width was adequate for its intended use, albeit not ideal.

4.130 In the main, the issues in contention regarding site accessibility were thus considerably narrowed as at the close of the hearing, though further refinement was subsequently forthcoming from the applicant following the hearing in relation to the proposed plaza design.

4.131 Those changes were largely owing to comments made about the plaza by Ms Dray and Mr Hattam at the hearing and to questions from me about whether the plaza design was sufficiently clear and understandable in the proposed plan set and condition framework.

4.132 This aspect of the proposal has been well summarised in the applicant's written reply, which I reproduce here:

*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;*

---

<sup>37</sup> s42A Appendix D, para 59-65

- (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.<sup>38</sup>*

4.133 I find the applicant's final revisions to the plaza design and site plans are appropriate and adopt the uncontested view that the plaza will enhance site accessibility and amenity.

4.134 Finally, I note again that there was some discussion at the hearing about the potential relocation of the existing bus stop position from the southern end of the site to be in closer proximity to the proposed plaza and north of the new signalised intersection. I understand there are pros and cons for either option, and that the decision may ultimately have a bearing on the efficacy of any 'bus jump' provided at the new signalised intersection and/or the plaza as a means of inviting pedestrians into the site; however, it is not for me to make a determination about that matter through this process. Any such decision to relocate the bus stop (or not) is for the Council and ECAN to make in the future.

### Safety considerations

4.135 The final urban design consideration I discuss here relates to the proposal's anticipated CPTED outcomes. Over the course of the hearing, the points in contention between the applicant's experts and the Council's narrowed substantially to where there remained only one substantive point to resolve.

4.136 Namely, Mr Hattam and Ms Dray retained concern for the safety and accessibility of pedestrians through the rear of the site. The potential effects in this respect were summarised by Ms Dray as:

- a. lack of oversight and natural surveillance in the area;
- b. potential for entrapment in the loading area and surrounds;

<sup>38</sup> Legal submissions in reply for the applicant (19 December 2019), paras 69-71



- c. lack of alternative points of egress or escape routes on Lydia Street given its length; and
  - d. lighting.
- 4.137 While there was agreement between the Council and applicant's experts that security fencing of the carpark area to the west of the rear service yard would assist with the management of these potential effects, there remained a difference of opinion about the extent to which the fencing should be required to be closed during parts of the day for pedestrian safety reasons.
- 4.138 The Council preferred the area to be secured to exclude public access at all times, except between the hours of 7-9am and 4-6pm Monday to Friday. While the applicant signalled its acceptance of secure access to approved vehicles only during the hours 6pm-6am seven days a week, it was not prepared to adopt the Council's preferred restrictions.
- 4.139 The applicant explained that it would be impractical to require the gates to be closed during primary operating hours, adding that gate access will not be available to all delivery vehicles. It further noted the condition requiring signage to be installed to inform that public vehicle and pedestrian access is not permitted through the area, and the informal surveillance that will be achieved via Foodstuffs Head Office staff as mitigation inherent in the proposal.<sup>39</sup>
- 4.140 Mr Burns and Mr Milne both gave the view in evidence that the design modifications adopted by the applicant, including lighting, gating and security surveillance, would appropriately address any safety concerns in the rear service area.
- 4.141 I adopt the evidence of Mr Burns and Mr Milne and further acknowledge the applicant's concerns about operational constraints that would be introduced by requiring the security gates to be closed for all but 4 hours each day. While I accept Mr Dray's evidence that greater use of the gates may ultimately reduce potential safety effects arising in the area, I do not find that sufficient evidence has been presented by the Council to warrant that level of intervention, particularly during daytime hours and when the other mitigation measures codified in the design of the supermarket and the conditions of consent are taken into account.
- 4.142 For completeness, I note also Mr Harris' alternative suggestion that, if the Council's preference for the duration of the security gate operation is not included in the conditions, that the lighting conditions ensure the rear of the supermarket is lit for safety reasons. I have not adopted this alternative recommendation given the newly proposed 6pm to 6am access restriction period codified in the conditions, in combination with the other mitigation measures already ensured by the conditions. Effectively, the CPTED matters in this respect are addressed by the area being secured during night time hours, thereby negating the need for additional lighting.
- 4.143 In all other respects, I accept the uncontested view of Mr Hattam, Ms Dray, Mr Milne and Mr Harris that the proposal has been designed to achieve an appropriate level of safety for the public moving through the site.

---

<sup>39</sup> Legal submissions in reply for the applicant (19 December 2019), paras 74-76

## Policy matters

- 4.144 For the reasons set out below, and having applied a fair appraisal of the objectives and policies read as a whole, I find that the proposal is consistent with or neutral to most relevant policy provisions in the Plan. There was no compelling evidence presented to support a finding that the proposal will be contrary to, or inconsistent with, the objectives and policies of the Plan overall.
- 4.145 The *key* policy directives remaining in contention as at the close of the hearing are addressed in turn below, and include:
- a. Industrial Zone Policies 16.2.1.4 and 16.2.3.2;
  - b. Commercial Zone Policies 15.2.2.1, 15.2.2.4, 15.2.4.1 and 15.2.4.2; and
  - c. Transport Policies 7.2.1.2, 7.2.1.3, 7.2.1.6 and 7.2.2.3.
- 4.146 I have otherwise accepted the uncontested view of the planning experts that the proposal is consistent with the remaining relevant objectives and policies in the Plan of relevance.<sup>40</sup>
- 4.147 That there was evidence expressing the view that the proposal does not find support with the Plan's policy framework is not, in my view, surprising. Out-of-zone activities often find themselves in such a situation as they are not expressly anticipated in Plans – as is the case with this proposal.
- 4.148 This underscores the importance of carefully considering the policy framework as a whole, the directiveness of the language used and, where interpretation is unsettled, the extent to which the overarching objectives may ultimately be achieved by additional means over and above those expressed in the policies.

## Industrial Zone policies

- 4.149 Policies 16.2.1.4 and 16.2.3.2 were the main industrial zone provisions in contention at the hearing. For the reasons set out below, I find the proposal is not inconsistent with these provisions.
- 4.150 **Policy 16.2.1.4** is one of six policies to implement Objective 16.2.1. The policy reads:

### 16.2.1.4 Policy - Activities in industrial zones

- a. Maintain and support the function of industrial zones while, subject to Clauses (b) and (c), providing for limited non-industrial activities that:
  - i. are ancillary in scale (subject to Clause (d)) and on the same site as a permitted or consented activity;
  - ii. are not appropriate in more sensitive environments due to their potential noise, odour or other environmental effects;
  - iii. comprise yard based supplier or trade suppliers in the Industrial General Zone;
  - iv. provide an emergency service and/or provide for community activities;
  - v. support the needs of workers and businesses in the zone including food and beverage outlets, commercial services, and the care of children;
  - vi. meet the convenience needs of residents, workers and businesses in the Industrial General Zone (Waterloo Park) in a Local Centre;
  - vii. are rural activities associated with the irrigation of food processing wastewater in the identified area of the Industrial Heavy Zone (South West Hornby) (Appendix 16.8.8) that is integral to the ongoing operation of an established industrial activity.
- b. Avoid any activity in industrial zones with the potential to hinder or constrain the establishment or ongoing operation or development of industrial activities and strategic infrastructure, or with the potential to be exposed to unacceptable risk. This includes but is not limited to avoiding:
  - i. sensitive activities located within the 50 dB Ldn Air Noise Contour, the Lyttelton Port Influences Overlay Area, the Woolston Risk Management Area and in proximity to the National Grid;

<sup>40</sup> See for example, Allan EIC, para 72 and Harris s42A, pp. 30-54

- ii. non-sensitive discretionary or non-complying activities specified by Rule 16.4.1.4 D1, Rule 16.5.1.4, and Rule 16.5.1.5 NC1 in the Woolston Risk Management Area close proximity to bulk fuel storage facilities unless a quantitative risk assessment establishes that the proposed activity in its location meets risk acceptability criteria appropriate to the applicable land use. (Plan Change 1 Decision)
  - c. Avoid the use of industrial zones for non-industrial activities that could adversely affect the strategic role of the Central City, District Centres and Neighbourhood Centres as focal points for commercial activities, community activities, residential activities, and other activities.
  - d. Provide for ancillary activities, recognising their role in supporting industry, while being incidental in scale and function to a principal activity on the same site, and not inconsistent with Clauses b. and c.
- 4.151 Mr Harris considered the proposal to be contrary to this policy, owing to Mr Gregory's view that the strategic transport network may be hindered or constrained. Mr Harris also found the proposal lacked support from multiple clauses under (a); however, he noted that the proposal would not conflict with matter (c) based on the evidence of the Council and applicant's economic experts.<sup>41</sup>
- 4.152 Mr Allan explained that, from his reading of the policy, it is clearly evident that non-industrial activities are an anticipated outcome for the industrial zones – and that it is the nature and location of those activities that is ultimately controlled by the rules implementing the policy. In that respect, he drew my attention to the manner in which the Industrial General Zone classifies supermarkets as discretionary activities, whereas the Industrial Heavy Zone elevates their status to non-complying.<sup>42</sup>
- 4.153 As a brief departure here, I observe that service stations are permitted in the Industrial General and Commercial Local Zone – and I understand that is not in dispute as it relates to the fuel stop proposed with this application. While a supermarket is an anticipated activity in the Commercial Local Zone, it is not in the Industrial Zones, which is the focus of contention here.
- 4.154 Returning to the evidence presented, Ms Stapleton's view was in contrast with Mr Harris and Mr Allan, in that she found the proposal to be in conflict with clause (c) under the policy. While she observed that the uncontested evidence of the economic experts was that the proposal would not undermine the vitality of existing centres, Ms Stapleton considered the policy requires a broader protection of the centres hierarchy. She cautioned that a shift away from centres' roles could lead to a lack of consolidation of development around Key Activity Centres and reduce their focal role.<sup>43</sup>
- 4.155 Ms Hewett also drew my attention to the directive wording of clause (c), though she stopped short of providing a view on the proposal's consistency or otherwise with that direction.<sup>44</sup>
- 4.156 Ms Mehlhopt's submissions also highlighted the directive language of clause (c) without adding any further advice about how I might interpret that direction as it relates to the proposal. She did, however, advise that the overriding direction of clause (a) is to maintain and support the function of industrial zones, and that provision for non-industrial activities must be read in that context.<sup>45</sup>
- 4.157 Ms Crawford's opening submissions provided some assistance as to how I might apply a direction to "maintain", noting that where environmental effects are deemed to be minor, they may be considered inconsequential. In turn, the environment could be said

---

<sup>41</sup> Harris s42A, para 182-186

<sup>42</sup> Allan EIC, para 79

<sup>43</sup> Stapleton EIC, para 46-48

<sup>44</sup> Hewett EIC, para 10.6-10.10

<sup>45</sup> Mehlhopt submissions, para 23-24

to be maintained under such an interpretation – or in this case, the function of other centres could be said to be maintained.<sup>46</sup>

- 4.158 Ms Crawford submitted that, by extension, to “hinder” or “constrain” the operation of the strategic network as suggested by Mr Gregory and Mr Harris would require a much more than minor effect.<sup>47</sup>
- 4.159 In assessing the proposal against this policy with the benefit of the submissions and evidence before me, I firstly note the following in respect of **clause a)**:
- a. the evidence of the economic experts is uncontested that the function of the City’s industrial zones will not be undermined as a result of this proposal, so the policy’s primary direction is not at risk;
  - b. the secondary direction, being to ‘provide for’ limited non-industrial activities, importantly does not say ‘only provide for’, and the subsequent criteria correspond well with the permitted activity standards enabling the anticipated nature and scale of non-industrial activities to be provided for;
  - c. it is therefore not contrary to, or even inconsistent with, the policy to ‘allow’ other non-industrial activities provided that the primary direction of the policy is upheld and subject to the latter clauses b) - d).
- 4.160 I have found above that any potential adverse effects on the strategic transport network will be no more than minor, and accordingly accept Ms Crawford’s submissions that the proposal can be found to not hinder or constrain the network such that **clause b)** is achieved.
- 4.161 Ms Stapleton presented no evidence to support her interpretation that **clause c)** gives rise to a broader consideration of the strategic role of the City’s centres. The unanimous evidence of the economic experts is that the proposal will not undermine the role of any centre, and no party presented any evidence to suggest otherwise. I take that to mean the centres will be able to perform their strategic role – and the direction of clause c) will be achieved – irrespective of whether the proposal proceeds or not. In that respect, I adopt the shared interpretation of Mr Harris and Mr Allan.
- 4.162 For the above reasons, I do not share the view expressed by Mr Harris and Ms Stapleton that the proposal is inconsistent with or contrary to Policy 16.2.1.4.
- 4.163 **Policy 16.2.3.2** sets out direction for the management of environmental effects of activities in the industrial zones to achieve Objective 16.2.3. The policy states:

**16.2.3.2 Policy - Managing effects on the environment**

- a. The effects of development and activities in industrial zones, including reverse sensitivity effects on existing industrial activities as well as, visual, traffic, noise, glare and other effects, are managed through the location of uses, controls on bulk and form, landscaping and screening, particularly at the interface with arterial roads fulfilling a gateway function, and rural and residential areas, while recognising the functional needs of the activity.
- b. Effects of industrial activities are managed in a way that the level of residential amenity (including health, safety, and privacy of residents) adjoining an industrial zone is not adversely affected while recognising that it may be of a lower level than other residential areas.
- c. Development and activities are managed to avoid adverse effects on strategic infrastructure within or in proximity to industrial zones.
- d. The quantity of wastewater discharged in areas over unconfined or semi-confined aquifers is restricted to minimise any risk of contamination.
- e. The cultural values of Ngāi Tahu/mana whenua are recognised and supported through the protection of wāhi tapu and wāhi taonga, including waipuna, from the adverse effects of development, through the use of low impact urban design, use of indigenous species appropriate to the local environment, and stormwater management.

<sup>46</sup> Crawford opening submissions, para 80

<sup>47</sup> Crawford opening submissions, para 80

- f. Development in the Industrial Park Zone is designed and laid out to promote a safe environment and reflects principles of Crime Prevention through Environmental Design (CPTED).

- 4.164 Mr Harris considered these matters in his s42A Report, noting only matter (c) as being substantively in conflict with the proposal. Again, Mr Harris relied upon Mr Gregory's expert view about the extent of effects on the strategic transport network, and Mr Harris further drew my attention to the directive nature of the clause. Mr Harris also noted, however, that there is some uncertainty as to whether the policy is intended to apply only to industrial activities (as distinct from activities in the Industrial Zone) given the focus of Objective 16.2.3 to which the policy relates.<sup>48</sup>
- 4.165 As I have expressed previously, the proposal will avoid adverse effects on adjacent strategic infrastructure. The proposal will also clearly be consistent with the other aspects of this policy, including through the building design, generous and considered landscaping, operational management measures, lighting, paving and site layout. For those reasons, I do not share Mr Harris' view that the proposal is in conflict with the policy.
- 4.166 Overall, I find the proposal is generally consistent with the relevant direction in Chapter 16 of the Plan dealing with Industrial Zone policies.

#### Commercial Zone policies

- 4.167 This was a key matter in dispute at the hearing and so I have taken some time here to step through the evidence in detail and to evaluate it with a commensurate level of attention. For the reasons set out below, I find that the proposal will allow for the maintenance or strengthening of the role of all existing centres in the City in a manner that will not undermine the City's centres framework. Furthermore, I find the proposal does not challenge any commercial policies in such a manner that would weigh against consent being granted.
- 4.168 **Policies 15.2.2.1 and 15.2.2.4** are part of a suite of provisions that implement the Plan's Centres-based framework objective for commercial activity<sup>49</sup>. They are closely related for the purposes of this assessment, and so I have considered them together.
- 4.169 The former sets the direction for the role that the City's centres as follows:

##### 15.2.2.1 Policy - Role of centres

- a. Maintain and strengthen the Central City and commercial centres as the focal points for the community and business through intensification within centres that reflects their functions and catchment sizes, and in accordance with a framework that:
  - i. gives primacy to, and supports, the recovery of the Central City;
  - ii. supports and enhances the role of District Centres; and
  - iii. maintains the role of Neighbourhood Centres, Local Centres and Large Format Centres

as set out in Policy 15.2.2.1, Table 15.1 - Centre's role.

<sup>48</sup> Harris s42A, para 190-194

<sup>49</sup> Objective 15.2.2

4.170 Table 15.1 describes the role of the different types of centres in the City, including of relevance to the discussion below the following descriptions for Neighbourhood and Local Centres:

Role	Centre & size (where relevant)
<p><b>Neighbourhood Centre</b> A destination for weekly and daily shopping needs as well as for community facilities. In some cases, Neighbourhood Centres offer a broader range of activities including comparison shopping, entertainment (cafes, restaurants and bars), residential activities, small scale offices and other commercial activities. Anchored principally by a supermarket(s) and in some cases, has a second or different anchor store. Serves the immediately surrounding suburbs and in some cases, residents and visitors from a wider area. Medium density housing is contemplated in and around the centre. Accessible by a range of modes of transport, including one or more bus services. The extent of the centre:</p> <ol style="list-style-type: none"> <li>a. is the Commercial Core Zone in the identified centres, Commercial Local Zone at Wigram and Beckenham and Commercial Banks Peninsula Zone at Lyttelton and Akaroa; and</li> <li>b. Community facilities within walking distance (400 metres) of the centre.</li> </ol>	<p><b>Centres:</b> Spreydon/ Barrington (Key Activity Centre), New Brighton (Key Activity Centre), Bush Inn/Church Corner, Merivale, Bishopdale, Prestons (emerging), Ferrymead, Sydenham (Colombo Street between Brougham Street and Moorhouse Avenue); Addington, Avonhead, Sumner, Akaroa, Colombo/Beaumont (Colombo Street between Devon Street and Angus Street), Cranford, Edgeware, Fendalton, Beckenham, Halswell, Lyttelton, Ilam/Clyde, Parklands, Redcliffs, Richmond, St Martins, Stanmore/Worcester, Sydenham South (Colombo Street between Brougham Street and Southampton Street), Wairakei/Greers Road, Wigram (emerging), Woolston, Yaldhurst (emerging), West Spreydon (Lincoln Road), Aranui, North West Belfast.</p> <p>Size: 3,000 to 30,000m<sup>2</sup>.</p>
<p><b>Local centre</b> A small group of primarily convenience shops and, in some instances, community facilities. Accessible by walking, cycling from the area served and on a bus route in some instances. Also includes standalone supermarkets serving the surrounding residential community. The extent of the centre is the Commercial Local Zone, except Wainoni and Peer Street where the Commercial Core Zone applies.</p>	<p><b>Centres:</b> Wainoni (174 Wainoni Road), Upper Riccarton (57 Peer Street), both zoned Commercial Core, All other commercial centres zoned Commercial Local. Size: Up to 3,000m<sup>2</sup> (Excluding Wainoni)</p>

4.171 Policy 15.2.2.4 outlines two pathways for accommodating commercial growth across the City, as follows:

#### 15.2.2.4 Policy - Accommodating growth

- a. Growth in commercial activity is focussed within existing commercial centres.
- b. Any outward expansion of a commercial centre must:
  - i. ensure the expanded centre remains commensurate with the centre's role within a strategic network of centres, while not undermining the function of other centres;
  - ii. be integrated with the provision of infrastructure, including the transport network;
  - iii. be undertaken in such a manner that manages adverse effects at the interface with the adjoining zone; and
  - iv. be consistent with:
    - A. the scale of increasing residential development opportunities to meet intensification targets in and around centres, and
    - B. revitalising the Central City as the primary community focal point.

4.172 It was broadly agreed by the parties that the proposal is not aligned with pathway (a) under Policy 15.2.2.4. Matter (b), on the other hand, is a live matter that was subject to multiple interpretations.

4.173 Key to the consideration of this matter, in combination with Policy 15.2.2.1, are two points in contention, being:

- a. whether or not the proposal amounts to the expansion of the Local Centre and/or transformation of the Local Centre to a Neighbourhood Centre in the terms defined under the Plan; and
  - b. relatedly, whether the direction under Policy 15.2.2.4 is disenabling of such a change.
- 4.174 Mr Harris' view was that the proposal amounts to an expansion of the existing centre that is not commensurate with the role of a Local Centre, falling somewhere between a Local Centre and a Neighbourhood Centre and fulfilling the role of neither. He added that granting the proposal would result in activities taking place on site that are significantly different in character and scale than what is anticipated for a Local Centre.<sup>50</sup> In his closing presentation, Mr Harris said the proposed centre could be described as a "Local Centre on steroids."
- 4.175 Mr Harris focussed on two main indicators that led him to an overall view that the proposal is contrary to these policies, being the overall size of the supermarket and – by extension – its anticipated role of serving the surrounding residential area being far surpassed. On the latter point, Mr Harris drew upon Mr Davidson's evidence that PAK'nSAVE stores tend to draw upon wider catchments than other supermarkets, concluding on that basis that the proposed supermarket will be of a regional, rather than a local scale.<sup>51</sup>
- 4.176 Ms Stapleton's interpretation was aligned with Mr Harris that the proposal does not maintain the role of the Local Centre. In particular, she concluded that a large anchor supermarket will move the centre beyond a convenience function and that the resulting outward expansion of the centre would not be commensurate with the centre's role in the strategic network of centres.<sup>52</sup>
- 4.177 Both Mr Harris and Ms Stapleton drew on Mr Heath's report attached to the s42A Report in informing their interpretation. In particular, they pointed to the report describing the proposal as resulting in an elevation of the centre's status, role and hierarchy from Local to Neighbourhood.<sup>53</sup>
- 4.178 Mr Heath's report, I observe, went on to consider the commercial policy framework, including the centres hierarchy, stating:

*Table 15.1(c) Neighbourhood Centre – describes what this centre would function and operate as (currently a local centre moving to a neighbourhood centre which Property Economics have no problem with from an economic perspective given the proposed commercial activity is in effect expanding an existing convenience (local centre and has the same convenience function, and therefore supports 15.2.2(iii) identified above). Property Economics' understanding is a centre can change its position in the centre hierarchy if no other existing centre is adversely affected or has their role and function compromised or undermined from a retail economic perspective. There may be other planning related matters that are triggered by a centre's change in status, but from an economic perspective there are no material RMA issues of concern in this instance.*

*In summary the application is for a convenience activity in a convenience centre that does not adversely affect the role and function of any centre in the city's centre network. In retail economic terms, both a local centre and a neighbourhood centre play a convenience role and function, the difference in 'status' is primarily based on whether the centre has a supermarket or not.<sup>54</sup>*

<sup>50</sup> Harris s42A, para 162-164

<sup>51</sup> Harris supplementary statement (4 December 2019), para 8-12

<sup>52</sup> Stapleton summary statement (4 December 2019), para 9

<sup>53</sup> s42A Appendix B, section 3, last para

<sup>54</sup> s42A Appendix B, section 5, last 2 paras

- 4.179 Mr Heath's report concluded that 'no centres are likely to have their role, function, vitality and growth potential undermined or jeopardised' as a result of the proposal.<sup>55</sup>
- 4.180 Mr Colgrave's evidence for the applicant was that the proposed new supermarket will generate about 30,000 visits per week and that, even if only a small proportion of those visitors also frequent the adjacent centre, it will significantly assist to restore its strategic role in the centres network. However, at the same time, Mr Colgrave was of the view that the proposal will not fundamentally alter the convenience role and function of the adjacent Local Centre.<sup>56</sup>
- 4.181 Mr Colgrave also considered the 'maintain and strengthen existing centres' direction under Policy 15.2.2.1. In his assessment, the existing centre is currently not fulfilling its role. He added:

90 *While the proposed development is next to, rather than part of, that local centre, I consider that it will play an important part in helping to restore it to its intended function and hence helping achieve the District Plan's intentions for the centre network. This is because the proposed supermarket will generate a significant number of trips to the general location of the local centre, which will provide an opportunity for future stores there to capture some spend via cross-shopping opportunities.*

...

92 *I acknowledge that most supermarket visitors will not visit the adjacent local centre before or after their supermarket shop, but some will. For the sake of illustration, if we assume that just 5% of supermarket shoppers frequent the local centre, they will generate nearly 1,500 transactions at the local centre each week. Hence, even with only a modest share of future supermarket visitors choosing to frequent the nearby local centre, they will create a strong pool of demand to help reinstate it to its intended role and function. In doing so, the Proposal will help to foster and support the strategic role and function of the city's centres network and help give effect to the District Plan's objectives and policies for commercial areas.*<sup>57</sup>

- 4.182 Mr Colgrave's evidence also responded to Mr Harris' policy assessment and concern about plan precedent issues as follows:

101 *I also note Mr Harris' apparent concern about the size of the resulting built form (coupled with Foodstuff's existing head offices and the adjacent local centre), which places it within the range of a neighbourhood centre. In my opinion, the Proposal simply enables an out-of-centre convenience facility (i.e. the supermarket) to operate near to an existing commercial area. It does not result in the creation of a neighbourhood centre, because it will have very limited roles and functions compared to those expected of a neighbourhood centre.*

102 *Indeed, while the size of the built form enabled by the Proposal may meet one criterion for a neighbourhood centre, I do not believe that the Proposal meets many – if any – of the other criteria. This is reinforced by the expert assessments by Mr Heath and myself, that this Proposal will not result in adverse effects such that the role, function, vitality or growth potential of any centres will be undermined.*<sup>58</sup>

- 4.183 Mr Allan expressed the view that Mr Harris' interpretation was too narrowly focussed on one attribute of what defines a centre's place in the hierarchy – being the size of the supermarket. Mr Allan took a broader view to analysing whether the proposal amounts to a change in the centre's function. He drew on Mr Heath and Mr Colgrave's assessments, noting:

<sup>55</sup> s42A Appendix B, section 6, last paras

<sup>56</sup> Colegrave EIC, para 17

<sup>57</sup> Colegrave EIC, para 90 & 92

<sup>58</sup> Colegrave EIC, para 17



92 *This is best summed up by Mr Heath, who concludes that “the application is for a convenience activity in a convenience centre that does not adversely affect the role and function of any centre in the city’s centre network”. Mr Colegrave’s evidence reinforces this, concluding that the establishment of a supermarket (i.e. a convenience facility) near to an existing commercial area does not create anything beyond a Local Centre simply by virtue of its size. I agree that centre size is but one criterion, and am guided by the economic experts’ position that the other criteria, namely role and function, are more relevant determinants of the Proposal’s consistency with the centres framework. I also place importance on the evidence that says the Proposal will help foster and support the Local Centre, which is not currently fulfilling its role and function.*<sup>59</sup>

4.184 I received submissions from Ms Mehlhopt which acknowledged the need for me to conduct a fair appraisal of the objectives and policies as a whole, while also stressing the importance of considering the specific wording of each provision. She added that objectives and policies that are expressed in more directive terms will carry greater weight than those expressed in less directive terms.<sup>60</sup>

4.185 Ms Mehlhopt referred me to a recent Environment Court decision relating to a proposal in Christchurch City where the Court was unable to approve the application as it was directly challenged by directive policies weighing against consent being granted – despite the proposal resulting in negligible effects. She clarified that while this proposal is not faced with directive policies framed in that same manner, there are “*parts of policies couched in the negative and policies expressed in directive terms such as ‘must ensure’ and ‘avoid’.*” In Ms Mehlhopt’s submission, the proposal does challenge policies in the Plan which are directive and weigh against consent being granted.<sup>61</sup>

4.186 In particular Ms Mehlhopt focussed on the direction in Policy 15.2.2.4(b) that any outward expansion of a commercial centre must ensure the expanded centre remains commensurate with the centre’s role within the network of centres while not undermining the function of other centres.

4.187 The applicant’s closing submissions added further context to the manner in which these policies should be considered. In that respect, Ms Crawford and Ms Brooker submitted that:

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. 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 these policies be read in the way that CCC and CRC 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.*<sup>62</sup>

4.188 In evaluating this matter, I firstly note that I am not compelled to make a finding on whether the proposal amounts to an expansion of an existing centre or an out-of-centre commercial activity locating close to an existing commercial zone. I touch on my reasons for doing so at the close of this discussion, but I have ultimately found it a more

<sup>59</sup> Allan EIC, para 92

<sup>60</sup> Mehlhopt submissions, para 7

<sup>61</sup> Mehlhopt submissions, para 9-12

<sup>62</sup> Legal submissions in reply for the applicant (19 December 2019), paras 98-99

useful exercise to focus here on the extent to which a policy barrier exists for the proposal on the interpretation that it *does* amount to an expansion.

- 4.189 In so doing, a critical point to consider is whether the proposal amounts to an elevation in the type of centre from 'Local' to 'Neighbourhood'. For the reasons expressed in his evidence, I adopt Mr Colgrave's view that the proposal does not result in that outcome. In summary, the 'expanded' centre:
- a. will remain a small group of mainly convenience shops – 'small' in this context referring to the group size, rather than the physical size of activities in the group;
  - b. will be accessible by walking and cycling from the area and on a major bus route;
  - c. includes a standalone supermarket, though this will be larger than 3000m<sup>2</sup> and serve a catchment beyond the surrounding community.
- 4.190 Expanding upon the above, Mr Hattam, Mr Harris, Ms Stapleton, and Mr Allan all agreed in response to questions from me that Neighbourhood Centres throughout the City anticipate a broader range and number of activities/tenancies than would result from this proposal (in combination with the existing commercial centre). There is no evidence before me that the proposal would be more akin to a Neighbourhood Centre than a Local Centre in that respect.
- 4.191 There is likewise no evidence to suggest the area is unable to perform the key Local Centre role of being accessible by active and public transport modes.
- 4.192 The proposed supermarket undoubtedly exceeds the size anticipated in the Local Centre category, but that does not take away from the fact that it will meet the needs of the surrounding residential community, being one of the roles of a Local Centre. That the supermarket will serve wider needs is not determinative in of itself to support a finding that the so-called expanded centre would not be commensurate with a Local Centre's role.
- 4.193 Furthermore, I note that Mr Heath's report seemingly oversimplifies the case for a possible interpretation to the contrary. Namely, his report states that the key factor in distinguishing whether a centre is classified as local or neighbourhood turns on whether it includes a supermarket.
- 4.194 That is simply not accurate – neither on paper, nor in practice. Table 15.1 of the Plan makes clear the Local Centres include supermarkets, and as Mr Allan reminded me in his oral presentation at the hearing, Local Centres at Wainoni and Ilam are two examples that include supermarkets and a small number of shops, the former containing a PAK'nSAVE.
- 4.195 This, I find, presents challenges to Mr Harris and Mr Stapleton's view, having both relied on Mr Heath's report to reach their own conclusions that the proposal elevates the status of the existing Local Centre.
- 4.196 I also found Mr Harris' closing presentation to be important where he found that the proposal would not perform the role of a Neighborhood Centre, finding it to fall somewhere between a local and neighbourhood. While I agree with Mr Harris that the evidence suggests the proposal falls short of being able to perform the role of a Neighbourhood Centre, I do not share his view that the large supermarket alone could tip the centre out of the Local category, particularly in light of Mr Colgrave's evidence.
- 4.197 It is also worth amplifying again the shared view of Mr Colgrave and Mr Heath that the proposal will strengthen the role of the existing Local Centre, which is ultimately the main direction of Policy 15.2.2.1 in implementing the recovery and centres hierarchy aims of Objectives 15.2.1 and 15.2.2.

- 4.198 For the above reasons, if the proposal does amount to an expansion of the Local Centre, it is an expansion that *remains commensurate* with the role of a Local Centre – albeit a local centre with a large supermarket.
- 4.199 On that basis, the proposal would not challenge the direction of Policy 15.2.2.5b) as argued by Ms Mehlhopt.
- 4.200 As a closing observation on this point, I am compelled to comment briefly on the drafting of Policy 15.2.2.4 and the notion of a centre expansion. I am grateful to Mr Harris for his efforts to assist me on this point, and the rationale behind his conclusions is well founded.
- 4.201 That said, I find it is also worth considering that Policy 15.2.2.4 only addresses commercial growth in two scenarios – focussing growth in existing centres or expanding those centres. The policy is not the Plan’s ‘one-stop-shop’ for contemplating commercial activities, which are clearly anticipated in other zones to varying scales and degrees, including in the Industrial Zones as assessed above. The Policy doesn’t enable or disenable out-of-centre commercial activity either – rather, it enables two types of commercial growth: one unconditionally, the other conditionally.
- 4.202 To that end, I agree with Ms Crawford and Ms Booker that the drafting would, by necessity, need to be clearer, more emphatic and perhaps use such directive language as “only allow commercial activities if” or “avoid commercial activities unless” or similar if the Plan intended to only contemplate commercial activity consistent with one of these two types.
- 4.203 In terms of other commercial policies, the scale, form and design of new development are the collective focus of **Policies 15.2.4.1 and 15.2.4.2**; being two of five policies that implement Objective 15.2.4.
- 4.204 **Policy 15.2.4.1** reads:

**15.2.4.1 Policy - Scale and form of development**

- a. Provide for development of a significant scale and form in the core of District Centres and Neighbourhood Centres, and of a lesser scale and form on the fringe of these centres.
  - b. The scale and form of development in centres shall:
    - i. reflect the context, character and the anticipated scale of the zone and centre’s function;
    - ii. increase the prominence of buildings on street corners;
    - iii. for Local Centres, maintain a low rise built form to respect and integrate with their suburban residential context;
    - iv. for Key Activity Centres and Large Format Centres, enable larger floor plates while maintaining a high level of amenity in the centre; and
    - v. manage adverse effects on the surrounding environment, particularly at the interface with residential areas, sites of Ngāi Tahu cultural significance identified in Appendix 9.5.6 and natural waterways.
- 4.205 Mr Harris concluded that the proposal is inconsistent with Policy 15.2.4.1. Specifically, he gave the view that the proposal does not locate development of a significant scale within the core of an existing District or Neighbourhood Centre. Having adopted the view that the proposal amounts to a Local Centre expansion, Mr Harris also assessed the matters under clause (b), finding a lack of support for the proposal in those matters. This included his view that the proposal is not consistent with the context, character or scale of a Local Centre or the Industrial General Zone.<sup>63</sup>
- 4.206 Mr Allan expressed a different view to Mr Harris. Drawing on the design evidence for the applicant, Mr Allan considered the proposal delivers a form that responds positively to its local context and character and manages adverse effects on sensitive residential neighbours and the road frontage. He added that, in his view the proposal would be

---

<sup>63</sup> Harris s42A, para 162-164

transformational for the underutilised industrial premises on site – from a development which currently offers minimal contribution to the amenity of the built environment to one that is visually compatible with the wider context.<sup>64</sup>

- 4.207 Mr Allan also added that the bulk, location and orientation of the proposal are compatible with the setting, that the large building is well articulated, and that the street frontage affords enhanced pedestrian amenity through quality surface treatment, landscaping and pedestrian connectivity. In Mr Allan's view, the proposal would reinforce the existing adjacent commercial centre, supported by consolidation and integration of existing and proposed activities.<sup>65</sup>
- 4.208 Considering each of the two clauses under the policy in turn, I focus firstly here on **clause a)**. My reading of this clause is that it is limited to District and Neighbourhood Centres. I gather that Mr Harris has interpreted that this policy only anticipates large-scale developments to be established in those centres, and – by extension – is disenabling of large-scale developments elsewhere.
- 4.209 Like Mr Allan, I interpret the intent of Policy 15.2.4.1a) differently to Mr Harris. In my reading, the clause is enabling of large-scale developments within the core area of large centres. This, I find, is squarely aimed at locating such large development away from adjoining areas which may be more sensitive to larger built forms – such as residential areas. In no way do I find the clause to be limiting of large-scale development outside of District and Neighbourhood Centres. Accordingly, I do not share Mr Harris' view that there is conflict between clause a) and the proposal.
- 4.210 **Clause b)** is focused on the scale of development *in centres*. On plain reading, it is arguable that the policy is not relevant to a site in the Industrial Zone adjacent to a Local Centre. Nevertheless, the shared view of Mr Harris and Mr Allan is that the policy direction is relevant to consider given the specific nature of the proposal and its context, and I have accordingly considered the clause.
- 4.211 To that end, I firstly note my adoption of Mr Burns' evidence above that the proposal is well suited to the site context and surrounding character and to the uncontested evidence of the economic experts that the proposal will reinforce the Local Centre's convenience function.
- 4.212 The proposal does not include any buildings on corner sites such that subclause i. needs to be considered. Drawing again on the evidence of Mr Burns, the size and position of the building do, however, provide for an overall built form that respects and integrates with the suburban residential context and manages effects on the surrounding residential area. The generous site landscaping adds to that integration and mitigation as explained by Mr Milne.
- 4.213 Accordingly, I share Mr Allan's view that the proposal is consistent with Policy 15.2.4.1.
- 4.214 The design-based direction under **Policy 15.2.4.2** is as follows:

#### 15.2.4.2 Policy - Design of new development

- a. Require new development to be well-designed and laid out by:
  - i. encouraging pedestrian activity and amenity along streets and in adjoining public spaces, to a degree that is appropriate to the location and function of the road;
  - ii. providing a principal street facing façade of visual interest that contributes to the character and coherence of a centre;
  - iii. facilitating movement within a site and with the surrounding area for people of all mobilities and ages, by a range of modes of transport through well-defined, convenient and safe routes;
  - iv. enabling visitors to a centre to orientate themselves and find their way with strong visual and physical connections with the surrounding area;

---

<sup>64</sup> Allan EIC, para 94

<sup>65</sup> Allan EIC, para 95

- v. promoting a safe environment for people and reflecting principles of Crime Prevention through Environmental Design (CPTED);
  - vi. enabling the re-use of buildings and sites while recognising the use for which the building is designed;
  - vii. incorporating principles of low impact design including energy efficiency, water conservation, the reuse of stormwater, on-site treatment of stormwater and/or integration with the wider catchment based approach to stormwater management, where practicable;
  - viii. achieving a visually attractive setting when viewed from the street and other public spaces, while managing effects on adjoining environments; and
  - ix. providing adequate and convenient space for storage while ensuring it is screened to not detract from the site's visual amenity values.
- b. Recognise the scale, form and design of the existing built form within a site and the immediately surrounding area and the functional and operational requirements of activities.
- c. Require residential development to be well-designed and laid out by ensuring a high quality healthy living environment through:
- i. the provision of sufficient and conveniently located internal and outdoor living spaces;
  - ii. good accessibility within a development and with adjoining areas; and
  - iii. minimising disturbance from noise and activity in a centre (and the potential for reverse sensitivity issues to arise).
- 4.215 Mr Harris found the proposal to be inconsistent with Policy 15.2.4.2 “in the round” in his s42A Report, citing particular concerns with respect to pedestrian accessibility and safety.<sup>66</sup> However, having considered the changes adopted by the applicant at the hearing, Mr Harris subsequently revised his position, expressing towards the end of the hearing the view that the proposal would be consistent with the Policy.<sup>67</sup>
- 4.216 This latter position of Mr Harris was consistent with Mr Allan’s view, who himself drew upon the evidence of Mr Burns, Mr Milne and Mr Young.<sup>68</sup>
- 4.217 Based on the evidence presented at the hearing as discussed above, I have found that the proposal is generally well-designed. It will provide visual interest and amenity to the streetscape through generous landscaping, the proposed plaza and the selection of materials and articulation adopted in the building design elements. The proposal will provide for safe, legible connections into and through the site. I accordingly adopt Mr Harris and Mr Allan’s shared view that the proposal is consistent with Policy 15.2.4.2.
- 4.218 For the reasons expressed above, and taking into account the other relevant policies in Chapter 15 of the Plan, I find the proposal to be generally consistent with the Commercial Policies.

### Transport policies

- 4.219 The main transport policies in contention were Policies 7.2.1.2, 7.2.1.3, 7.2.1.6 and 7.2.2.3. To summarise the respective position of the relevant parties, Mr Harris’ view was that the proposal was inconsistent with these provisions, whilst Mr Durdin found the proposal to be generally supportive or partially supportive of the policies (a view shared by Mr Allan). Ms Stapleton shared Mr Harris’ interpretation in respect of 7.2.1.2 and 7.2.1.6 and Ms Hewett similarly expressed concerns about the proposal in the context of those two policies.
- 4.220 The above assessments drew on the respective expert evidence of Mr Gregory, Mr Smith, Mr Fleete and Mr Clark and are aligned with the findings of those experts regarding the actual and potential adverse effects of the proposal. I have already found above, based on the evidence presented, that the proposal will manage any adverse effects such that they are acceptable – and my view in that respect is aligned with the

<sup>66</sup> Harris s42A, para 169

<sup>67</sup> Harris supplementary statement (4 December 2019), para 29

<sup>68</sup> Allan summary statement (2 December 2019), para 19.i.

applicant's experts. For the same reasons and as I expand upon below, the same can be said for my view on these transportation policies. This should not be surprising, given that the transportation policies are largely effects-based assessment provisions (as opposed to policies that promote a particular outcome) and given my earlier findings that the transportation effects will be no more than minor.

- 4.221 Taking these policies in turn, **Policy 7.2.1.2** directs the management of adverse effects from high traffic generation facilities, and lists several matters to have regard to in forming a view in that respect. I find the proposal to be consistent with the policy, noting that my assessment has expressly:
- a. taken into account the overall vehicle generation levels anticipated over and above that permitted in the underlying zone and what is already established / consented on site;
  - b. found the site to be accessible for all modes of transport, including active and public transport;
  - c. found the proposal will not compromise the safe, efficient or effective use of the transport system or amount to significant adverse transport effects; and
  - d. highlighted the proposal's provision for opportunities to optimise use of the existing transport system and to maximise positive transport effects, including for example through the proposed upgrade to the Main North Road/Northcote Road/QEII Drive intersection.
- 4.222 **Policy 7.2.1.3** seeks the provision of vehicle access and manoeuvring that is compatible with the adjoining road classification and ensures the safe, efficient operation of the transport system. I have found above that there is no evidence to suggest that the proposal will compromise the safe, efficient function of the transport system and accordingly find the proposal to be consistent with Policy 7.2.1.3.
- 4.223 As mentioned above, transport policies are largely effects based, but **Policy 7.2.1.6** is one of the few non-effects based policies relevant, and its aim is to promote active and public transport by multiple means. Of particular relevance, I note:
- a. the proposal provides a design solution for the new signalised intersection that is consistent with NZTA guidelines for shared bus and cycle facilities, and there is no evidence to support a finding that the facilities at the intersection or elsewhere in the application site will not promote safe walking, cycling and public transport;
  - b. no party has contended that cycle parking is inadequate; and
  - c. the conditions note that travel demand management planning will be carried out with future employees of the supermarket and with Foodstuffs Head Office staff.
- 4.224 Accordingly, I find the proposal is consistent with Policy 7.2.1.6.
- 4.225 Finally, **Policy 7.2.2.3** addresses potential effects of activities within the Transport Zone on surrounding land uses. Of most relevance here, the Council experts expressed concern that the new signalised intersection could have adverse effects on the Redwood Dentist site that would conflict with the expectations of the policy.
- 4.226 Above, I have signalled my adoption of Mr Smith's evidence in relation to the dentist site. I accept his view that the potential for the access to be unsafe is low and readily managed by the conditions of consent. Monitoring will also be in place such that, if effects arise, they will be addressed appropriately.
- 4.227 By extension, I find the proposal is deemed to be consistent with Policy 7.2.2.3. Moreover, I find the proposal to be generally consistent with all relevant Transport Policies in Chapter 7 of the Plan.

### Overall view on policy matters

- 4.228 For the reasons outlined above, I find the proposal to be acceptably aligned with the relevant objectives and policies in the Plan as a whole.
- 4.229 Furthermore, there are no directive policies of relevance that are challenged by the proposal such that consent need be withheld.

### Other effects considerations & conditions

- 4.230 Here I consider some of the issues addressed in detail by submitters at the hearing, and additional effects considerations and associated conditions that were unresolved as at the close of proceedings. In summary, these matters include:
- a. potential for additional amenity planting adjacent to Access 3;
  - b. potential morning restrictions on heavy vehicle access;
  - c. matters raised by Ms Jones with respect to her property;
  - d. matters raised in the presentation by Ms Steel, Mr Beck and Mr Watts; and
  - e. use of the word 'inaugural' in the conditions where referring to the initial opening of the supermarket and fuel stop activities.

### Additional amenity planting

- 4.231 Ms Dray expressed a preference for additional amenity planting to be established to the south of the fuel stop and adjacent to the pedestrian pathway adjacent to Access 3. This addition was not favoured by the applicant due to operational limitations that would arise – primarily in relation to the safe manoeuvring of fuel delivery trucks through the site.
- 4.232 While I accept Mr Dray's point that the additional area would further enhance the on-site amenity for pedestrians, I consider the potential upside of that planting would not be meaningful compared to the operational downside it entails. Overall, the proposal is expected to be very well landscaped already, and this additional area is not warranted.

### Morning restrictions on heavy vehicles

- 4.233 The Council and applicant have agreed to a condition that heavy vehicles will not access the site between 3PM and 6PM Monday to Friday. Mr Harris recommended that the condition be amended to also restrict the heavy vehicle access during the period 8am-10am in response to the submission from the Roman Catholic Bishop of the Diocese of Christchurch and to reduce potential queues forming on Northcote Road from vehicles accessing Lydia Street.
- 4.234 I observe that the evening restriction was recommended by Mr Smith as a means to minimise conflict between delivery vehicles and customer vehicles and to ensure the safe, efficient servicing of the site.<sup>69</sup> There was no evidence presented, however, to warrant the need for the same measures during the morning peak period, and in that respect, the proposed amendment by Mr Harris is not justified.

---

<sup>69</sup> Smith EIC, para 50

- 4.235 Should a school be established on the Diocese' site to the rear of the supermarket in the future, an authorisation will be required under the RMA. That process will be the most appropriate for managing interface issues between the two activities.
- 4.236 I have already discussed Mr Gregory's concern about the Lydia street access arrangements and will not revisit that here in any detail. Suffice it to say, the evidence before me does not warrant morning restrictions at this stage; however, should effects arise as a result of Lydia Street amendments associated with the Northcote Road reconfiguration, the matter can also be dealt with via the proposed monitoring and review condition framework referred to above.

#### **Matters raised by Ms Jones**

- 4.237 Ms Jones expressed concern about the impact of the proposal on her outlook, privacy and amenity. She was particularly concerned about increased vehicle movements down Access 5 adjacent to her home, about the relocated Foodstuffs Head Office pylon sign being closer to her home and to increased overlooking from vehicles using Access 5 and from the Head Office itself.
- 4.238 I note that the applicant has volunteered conditions to restrict access along Access 5 to the period 11pm to 7am and to introduce a barrier arm between the application site and the Head Office site in order to address Ms Jones' concerns about increased traffic and associated overlooking.
- 4.239 I also note that the proposal does not include any substantive changes to the use of the Head Office Site apart from access arrangements and the location of the sign. The former will, in my view, be sufficiently managed by the conditions such that there will be minimal impact on Ms Jones from altered vehicle patterns relative to the current situation. I am also aware that the sign relocation could occur as a permitted activity irrespective of this proposal and is therefore anticipated by the Plan. While it will be closer to Ms Jones' home, I find it will not be out of character for the area or materially detrimental to Ms Jones' visual amenity.
- 4.240 Ms Jones also raised concerns about the demolition of two dwellings immediately north of Access 5 and about the potential future use of the land on which the dwellings were located. While I understand Ms Jones' concern, and as I explained at the hearing, neither the demolition, nor the future use of the land are matters within my jurisdiction to consider.
- 4.241 Overall, I find that the potential effects of concern to Ms Jones that are within scope for me to consider will be sufficiently managed by the design of the internal access arrangements and the proposed conditions of consent such that they are overall no more than minor.

#### **Matters raised by Ms Steel, Mr Beck and Mr Watts**

- 4.242 Ms Steel, Mr Beck and Mr Watts made a well-considered presentation and outlined a range of matters they were concerned about, including:
- a. noise effects from construction activities and from vehicles accessing the site once operational;
  - b. potential privacy effects;
  - c. vibration effects during construction;
  - d. traffic safety effects at the site access points; and



- e. management of supermarket trolleys.
- 4.243 In summary, the proposed condition framework has addressed those matters such that the effects are anticipated to be sufficiently managed, including:
- a. procedures for demolition and construction works including measures for controlling noise, identification and remediation of contamination and dust control measures, notification procedures and maintaining a tidy work area;
  - b. lighting that has been designed to achieve compliance with the District Plan permitted standards, and, where practical to be directed away from adjacent properties, with no light spill at any residential boundary exceeding 4 lux;
  - c. erection of a 2m high acoustic fence along the site boundary with residential zoned properties to the north;
  - d. requirement for a Noise Management Plan to be prepared by a qualified expert and certified by Council to 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, and means by which noise complaints are received, recorded and investigated;
  - e. requirements for forklifts operating onsite to be fitted with a broad-band reversing alarm;
  - f. requirements for vibration from construction works to comply with an appropriate standard; and
  - g. improvements to site access to and from Northcote Road including signage.
- 4.244 The applicant has also volunteered a condition requiring a pre-construction building survey to be carried out on the six residential properties immediately adjoining the application site to the north in response to the presentation from these submitters.
- 4.245 Mr Harris recommended an amendment to that condition to require the applicant to remedy any demonstrable damage caused from construction works. While the applicant acknowledged it would be liable for any damage caused to those properties by vibration, it did not accept Mr Harris' amendment. That position was owing to the applicant's observation that this would ultimately be a civil matter and it is neither necessary nor appropriate for the Council to be administering that process through its environmental compliance functions.
- 4.246 I note my agreement with the applicant in this respect. It is not for the Council to enforce any remedy should the applicant's proposed works result in damage to neighbouring buildings. I emphasise also that the condition framework requires compliance with the accepted German standard for managing these very effects. The applicant will be required to comply with that standard at all times.

#### Use of the word 'inaugural' in conditions

- 4.247 Finally, there was some disagreement between the Council and applicant about the use (or otherwise) of the term "inaugural" where referring to the opening of the supermarket and fuel stop.
- 4.248 The applicant prefers that the term be used to distinguish date from which the facilities first open for business from their daily opening time. Mr Harris, considers that the term will lead to confusion.

- 4.249 While I agree with Mr Harris in essence that use of the term is unusual for conditions of this nature, I do not find it will create confusion. I appreciate the distinction the applicant wishes to make, and so have included the term in the conditions attached.

### **Other matters (s104(1)(c), RMA)**

- 4.250 In this final section of my evaluation, I address two other matters in contention at the hearing. These relate to the extent which the proposal brings about any precedent effect and/or undermines the integrity of the District Plan.
- 4.251 For the reasons expressed below, I consider there to be no precedent effect nor any threat to the Plan's integrity as a result of the granting of this consent.

### **Precedent**

- 4.252 The uncontested material before me is that precedent effects *may* be relevant to a discretionary activity, though that situation is unusual as precedent effects are normally associated with non-complying activities.
- 4.253 In his s42A Report, Mr Harris explained that his conclusion that the proposal creates 'real risks' relating to precedent is based on the proposal's consistency with the Plan's objectives and policies and the extent to which the proposal can be said to have some unusual qualities.<sup>70</sup>
- 4.254 In that context, Mr Harris firstly reinforced his position that the proposal is contrary to the Plan's objectives and policies. He then considered the uniqueness of the proposal, noting that he had identified a small number of other scenarios on the District Plan maps that bear resemblance to the zoning relationships relevant to this proposal and the presence of an adjoining arterial road. Notwithstanding that small number, Mr Harris added:

*However, the key issue at play relates to the expansion of commercial activity into adjacent non-commercially zoned land. This will result in the upscaling of a centre beyond its intended function, an issue that is not particular to the zoning applicable here. The District Plan sets a directive that such should not occur, and I see no reason why the granting of this consent would not set an expectation for other Applicants that the expansion of a commercial centre beyond its intended role is acceptable.*<sup>71</sup>

- 4.255 Mr Harris also noted that irrespective of whether the proposal changes the role of the Local Centre or not, granting consent here would set an expectation for other similar out-of-zone activities in the future, particularly commercial activities in the Industrial Zones. He said that it is not unusual for one out-of-zone activity in isolation not to adversely affect the function of nearby centres, but multiple instances will give rise to such effects and this proposal does not present a demonstrable exception in this regard.<sup>72</sup>
- 4.256 Ms Mehlhopt similarly submitted that the proposal is in tension with the centres-based policy framework and therefore introduces a risk that others will seek to rely on the proposal to justify future activities of a similar nature. She added that this risk is not obviated by reference to the general attributes of this proposal.<sup>73</sup>

---

<sup>70</sup> Harris s42A, para 234

<sup>71</sup> Harris s42A, para 238

<sup>72</sup> Harris s42A, para 239

<sup>73</sup> Mehlhopt submissions, para 38

4.257 The applicant's closing submissions outlined the ways in which the proposal is distinctive:

- 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.*<sup>74</sup>

4.258 Ms Crawford also made the following relevant points in her opening:

- a. each application must stand on its own merits;
- b. a consent authority is not bound by a previous decision of the same or another authority, though the granting of one consent can be said to influence how another application can be dealt with – the extent of influence being dependent on the extent of similarities;
- c. any other application would still need to demonstrate that adverse effects are avoided, remedied or mitigated – they would not be allowed simply because one development has been allowed elsewhere in the City;
- d. relatedly, there are limited examples in Christchurch with a similar zoning relationship to this proposal – including those identified by Mr Harris – but they are not comparable for various reasons.<sup>75</sup>

4.259 Having found above that the proposal is neither contrary to, nor inconsistent with, the Plan's objectives and policies, I feel little need to expand upon that point here in the context of precedent – other than to note that I do not share Mr Harris' view for the same reasons expressed previously.

4.260 I also find the distinguishability of the site, local environment and proposal to be such that the probability of another proposal being able to 'coat tail' on this application to be very low. This is reinforced by the very low number of other sites in the City bearing some resemblance to the application site as identified by Mr Harris, and even those being distinguishable in their own way. For completeness, I record that whilst I accept that the proposed Emergency Coordination Facility may be of significant value to the community in times of an emergency, this component has not weighed significantly on my conclusions about differentiating this proposal from others and the implications for precedent.

4.261 Finally, in response to Mr Harris' point that while a single out-of-centre activity may not undermine the centres framework, multiple such activities will – there is no evidence to support that contention. This proposal has been scrutinised by two highly experienced economic experts, who have had regard to the centres framework as a whole, and found the proposal will not undermine the role or function of *any* centre. It does not follow that any other out-of-centre activities, whether on their own or in combination with others that precede them, will result in the same outcome.

4.262 Furthermore, I have confidence in the drafting of the policy and regulatory framework of the Plan such that should an accumulation of out-of-centre activities occur over the

<sup>74</sup> Legal submissions in reply for the applicant (19 December 2019), para 6

<sup>75</sup> Crawford opening submissions, para 86-89

life of the Plan, there will be sufficient scrutiny applied to any cumulative effects arising in respect of the centres framework. That assessment should be carried out on a case-by-case basis, squarely focussed on the merits of each proposal.

- 4.263 That the applicant in this case did not seek to rely upon any preceding proposals in the City or elsewhere to justify the granting of consent is also noteworthy.

### Plan integrity

- 4.264 The matter of Plan integrity has a relationship with the precedent effect discussed above; though I understand the key distinction is that the concept of integrity speaks to the public confidence in the administration of the Plan in question.
- 4.265 That said, Mr Harris' concerns about the Plan's integrity were essentially the same as his concerns about precedent, being that the proposal is contrary to the objectives and policies and that the proposal could open the door for similar proposals to be established elsewhere with Council helpless to decline them.<sup>76</sup>
- 4.266 Ms Crawford submitted that a finding that the Plan's integrity is at stake would be an 'extreme' one that would need to be based strongly in evidence.<sup>77</sup> She added:

*94 Granting consent in this case will not compromise the CDP's integrity which, broadly, seeks to ensure adverse effects are avoided where the role, function, vitality or growth potential of higher order centre will be undermined. Granting consent will not hinder or constrain the operation of the strategic transport network. The economic and transport evidence is clear that there will not be adverse effects of this nature.<sup>78</sup>*

- 4.267 Ultimately I share Ms Crawford's summary of this issue for the reasons I have expressed above in relation to the actual and potential effects of the proposal, its fit with the Plan's policy framework and the risk of precedent effect arising. The risk of the public losing confidence in the Plan as a result of granting consent for this proposal is extremely low in my view.

## Part 2

- 4.268 Decisions on resource consent applications are "subject to Part 2" of the RMA, which sets out the Act's sustainable management purpose.
- 4.269 I have not felt any need to revert to Part 2 in order to determine this application, owing to the substance of the relevant objectives and policies in the Plan. The Plan was competently prepared via a recent independent hearing and decision-making process, with express assessment and implementation of the matters in Part 2.
- 4.270 The evidence before me – which I adopt – is that there are no areas of invalidity, incomplete coverage or uncertainty in the Plan or intervening statutory documents such that any detailed evaluation of Part 2 is required.

---

<sup>76</sup> Harris s42A, para 241

<sup>77</sup> Crawford opening submissions, para 91

<sup>78</sup> Crawford opening submissions, para 94

## 5.0 Decision

- 5.1 For the reasons set out above, and acting under delegated authority on behalf of the Christchurch City Council, consent is hereby granted to Foodstuffs South Island Limited to:
- a. establish, operate and maintain a supermarket and associated fuel facility, offices, car parking, access, signage and landscaping at 171 Main North Road;
  - b. provide an emergency coordination facility at 171 Main North Road;
  - c. alter the existing site access and relocate existing carparking for the Foodstuffs South Island Head Office at 165 Main North Road; and
  - d. alter access and relocate existing carparking arrangements for the retail and commercial tenancies located at 3-7 Northcote Road.
- 5.2 Consent is granted subject to the conditions set out in **Appendix 2**.

**DATED AT WELLINGTON THIS 31st DAY OF JANUARY 2020**



---

DJ McMahon  
Independent Commissioner

**ATTACHMENT 1**  
Schedule of Appearances

## **HEARING RECORD OF APPEARANCES RMA/2018/2029**

### **Applicant**

- Ms J Crawford – legal counsel
- Ms A Booker – legal counsel
- Mr R Davidson – General Manager of Property and Retail Development for Foodstuffs (South Island) Limited
- Ms R Parish – a Property Development Manager for Foodstuffs (South Island) Limited
- Mr T Milne – landscape architecture consultant
- Mr N Young – architect
- Mr A Burns – urban design consultant
- Mr D Smith – transportation consultant
- Mr P Durdin – transportation consultant
- Mr M Allan – planning consultant

### **Christchurch City Council**

- Mr N Harris – planner
- Mr M Gregory – transport network planner
- Mr D Hattam – senior urban designer
- Ms J Dray – senior landscape architect

### **Submitters**

- Mr G Smart – manager of Oil Changers at 7 Northcote Road
- Ms J Jones – resident of Main North Road
- Ms S Steel – resident of Northcote Road
- Mr J Beck – resident of Northcote Road

#### *For Canterbury Neighbourhood Support*

- Mr G Watts – Coordinator for Northcote area

#### *For the Roman Catholic Bishop of the Diocese of Christchurch*

- Mr S Mitchell – project director

#### *For the Canterbury Regional Council*

- Ms M Mehlhopt – legal counsel
- Mr L Fleet – senior strategy advisor, public transport
- Ms J Stapleton – senior planner

#### *For the New Zealand Transport Agency*

- Mr I Clark – transportation consultant
- Ms D Hewett – senior planner

### **Other Presenters**

- Mr J Falconer – independent transportation model peer reviewer

**ATTACHMENT 2**  
Conditions of Consent



# Consent Conditions

## General Conditions

1. Except as required by subsequent conditions [if the conditions go beyond what is proposed in the RC application], the development shall proceed in accordance with the information and plans submitted with the application, including the further information/amended plans submitted. The Approved Plans have been entered into Council records as RMA/2018/2029 (13 pages) and include the following:
  - Location Plan (McCoy Wixon Architects, RCe01, 19/12/2019);
  - Site Plan (McCoy Wixon Architects, RCe02, 19/12/2019);
  - Basement and Ground Floor Plan (McCoy Wixon Architects, RCe03, 19/12/2019);
  - East, West, North and South Elevations (McCoy Wixon Architects, RCe04, RCe05, RCe06 and RCe07, 19/12/2019);
  - Fuel Site Elevations (McCoy Wixon Architects, RCe14, 19/12/2019);
  - Section Through Basement Entry (McCoy Wixon Architects, RCe15, 19/12/2019);
  - Exterior Materials (McCoy Wixon Architects, RCe16, 19/12/2019);
  - Application Site Landscape Masterplan (Rough & Milne Landscape Architects, Drawing No. RC1.0, Revision H, 18/12/2019);
  - Application Site Landscape Plan (Rough & Milne Landscape Architects, Drawing No. RC1.1 Revision I, 18/12/2019); and
  - Plaza Landscape Plan (Rough & Milne Landscape Architects, Drawing No. L1.1A, 18/12/2019).
2. The consent holder, and all persons exercising this consent, shall ensure that all personnel undertaking activities authorised by this consent are made aware of, and have access to, the contents of this consent decision and accompanying plans, prior to the commencement of the works. A copy of these documents shall also remain on-site.

## Hours of Operation

3. The hours of operation of the supermarket and fuel station shall be restricted to between the hours of 7am and 11pm, seven days per week.

## Colour Palette

4. The external appearance of the supermarket and fuel station shall be in general accordance with the materials and colour palette identified on East, West, North and South Elevations and Fuel Site Elevations, and on the Exterior Materials Plan, respectively.

## Earthworks

5. Excavation/filling shall proceed in general accordance with the information submitted and plans lodged, and entered into Council records under land use consent number RMA/2018/2029.
6. The Consent Holder shall notify Council and all properties that adjoin the application site at least 3 working days prior to the commencement of any works associated with this resource consent (including stockpiling of any material to be used in the work). The notification shall be provided to the Council, Attention: Monitoring Officer by way of email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz) and shall include detail of the length of time earthworks and associated works are anticipated to take.
7. No construction work, with the exception of dust and sediment control, shall be undertaken on Sundays, Public Holidays, or outside the hours of 7.00 am to 6.00 pm Monday to Friday and 8.00 am to 6.00 pm Saturday without the Council's prior approval

8. All proposed works shall be carried out in accordance with an approved Construction Management Plan (CMP). The purpose of the CMP is to ensure that any potential effects arising from construction activities on the site are effectively managed. The CMP shall be prepared by a suitably qualified and experienced practitioner.
9. The CMP shall include, but not be limited to, the following:
  - a) Site description, topography, vegetation, soils and other reference information;
  - b) Details of proposed works;
  - c) Roles and responsibilities, including contact details for the site manager appointed by the Consent Holder who will be responsible for ensuring that compliance with conditions of this consent is observed at all times, and contact details of a suitably qualified engineer who the earthworks and construction work will be under the control of;
  - d) Site establishment;
  - e) Timing of works including a proposed timeframe and completion date;
  - f) An Erosion and Soil Control Plan (ESCP), including (but not limited to): a map showing the location of all works; detailed plans showing the location of sediment and dust control measures, on-site catchment boundaries and sources of runoff; drawing and specifications of designated sediment and dust control measures (including dust control equipment such as water hose and sprinkler systems); installation of devices until the site is stabilised; and inspection and maintenance schedules for the sediment and dust control measures;
  - g) Construction noise management measures;
  - h) Site access and Traffic Management measures;
  - i) Storage of fuel and/or lubricants and any handling procedures;
  - j) Contingency plans (including use of spill kits);
  - k) Protocols for the discovery of archaeological material;
  - l) Construction traffic management measures, including measures to be adopted in accordance with the NZTA Code of Practice for Temporary Traffic Management;
  - m) On-site parking areas for construction staff;
  - n) Measures for identification and remediation of contaminated soil; and Environmental compliance monitoring and reporting.
10. The Consent Holder shall submit the CMP to Council, Attention: Team Leader Compliance and Investigations for certification via email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz) at least 20 working days prior to the commencement of construction work associated with this consent. The CMP is to be certified by the Team Leader or their nominee as meeting the requirements of Condition 9 prior to the commencement of any construction work and, once certified, the CMP will thereafter form part of the Approved Consent Document.

*Advice Note: The Team Leader (or their nominee) will either certify, or refuse to certify, the CMP within 10 working days of receipt. Should the Team Leader (or their nominee) refuse to certify the CMP, then they will provide a letter outlining why certification is refused based on the parameters contained in this condition.*
11. Should the Team Leader (or their nominee) refuse to certify the CMP, the Consent Holder shall submit a revised CMP to the Resource Consents Manager for certification. The certification process shall follow the same procedure and requirements as outlined in Conditions 9 and 10.
12. No construction work shall commence on site until such time as:
  - a) The approved Erosion and Sediment Control measures are in place and;
  - b) The Consent Holder has submitted an "Engineering Completion Certificate" (as per IDS – Part 3, Appendix VII) to the Council. This Certificate shall be signed by an appropriately qualified and experienced engineer and attest that the erosion and sediment control measures have been properly installed and in accordance with ECAN Erosion and Sediment Control Toolbox for Canterbury (<http://escscanterbury.co.nz/>). This certificate shall also name the person(s) responsible for the maintenance of these measures. The

Consent Holder shall submit this certificate to the Council, Attention: Subdivision Engineer, by way of email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz) at least five working days prior to the commencement of any construction work.

13. The CMP may be amended at any time by the Consent Holder. Any amendments to the CMP shall be submitted by the Consent Holder to the Council for certification. Any amendments to the CMP shall be:
  - a) for the purposes of improving the measures outlined in the CMP for achieving the CMP purpose (see Condition 8), and;
  - b) consistent with the conditions of this resource consent.

If the amended CMP is certified, then it becomes the certified CMP for the purposes of Conditions 8 and 10 and will thereafter form part of the Approved Consent Document

14. The footpaths and roads to and from the site are to remain tidy at all times. These will need to be regularly monitored and swept or vacuumed if necessary at the end of each day.
15. All loading and unloading of trucks with excavation or fill material is to be carried out within the subject site. Any stockpiles shall be placed as far as practicable from internal boundaries adjoining residential properties.
16. All construction work (including any demolition and/or site preparation works) shall be designed, managed and conducted to ensure that construction noise complies with the requirements of NZS 6803:1999 Acoustics – Construction Noise for residential / rural / industrial / commercial areas (see applicable Table on Page 11 of this standard).
17. Vibration from construction work shall not exceed the limits of, and shall be measured and assessed in accordance with, German Standard DIN 4150 1999-02 Structural Vibration – Effects of Vibration on Structures.
18. Pre-Condition Surveys and Remediation
  - a) The Consent Holder shall undertake a pre-condition survey of the structural and ground conditions of the following immediately adjoining northern residential properties:
    - 9 Northcote Road
    - 11 Northcote Road
    - 15 Northcote Road
    - 17 Northcote Road
    - 19A Northcote Road
    - 2/21 Northcote Roadprovided that written approval to undertake this work has first been given by the owner/s of the respective property. Where such written approval is not provided, there is no obligation on the Consent Holder to undertake a pre-condition survey of the respective property.
  - b) The results of the pre-condition survey shall be made available to the owner/s of the respective property who have provided their written approval upon request.
  - c) If during the period of construction of the basement and building foundations the residential properties that have had pre-condition surveys undertaken experience a magnitude 5 earthquake (measured on the Modified Mercalli Intensity Scale), then those properties shall be reassessed under the terms of this condition to identify and isolate the seismic damage from any pre-existing damage.
19. Any change in ground levels is not to cause a ponding or drainage nuisance to neighbouring properties, or the stability of the ground or fences of neighbouring properties.

20. The fill sites shall be stripped of vegetation and any topsoil prior to filling. The content of fill shall be clean fill, in accordance with the District Plan definition of “clean fill”.
21. All fill material shall be well compacted in layers not exceeding 200mm in depth. The fill material is to be placed, compacted and tested in accordance with the Code of Practice for Earthfill NZS 4431: 1989. At the completion of the work, an engineering report including a duly completed certificate in the form of Appendix A of NZS 4431 shall be submitted to Council, Attention: Subdivision Engineer by way of email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz) so that the information can be placed on the property record. This report shall detail fill depths, fill material(s), compaction test results and include as-built plans showing the location of the fill.
22. Any public road, footpath, landscaped areas or service structures that have been affected / damaged by contractor(s), the Consent Holder, developer, persons involved with earthwork development or vehicles and machineries used in relation to the earthworks / construction works associated with this resource consent shall be reinstated to the current version of the Christchurch City Council Construction Standard Specifications (CSS) at the expense of those identified above and to the satisfaction of Council’s Subdivision Engineer.

### **Street Trees**

23. Earthworks within 5m of any street tree shall be undertaken in accordance with Christchurch City Council Construction Standard Specifications, Part One, Section 19.4 Protection of Existing Trees.
24. The Consent Holder shall appoint a suitably experienced and qualified Arborist (Appointed Arborist) that is approved by the Christchurch City Council Arborist, to monitor and supervise all earthworks within the 5m setback area of any street tree during the proposed work.

*Advice Note: The Appointed Arborist may consider is necessary to undertake the excavation works within 5m of a street tree themselves, in order to ensure root damage is minimised. This shall be at the discretion of the Appointed Arborist.*

25. Prior to any earthworks commencing within 5m of a street tree, a meeting shall be held so the tree protection measures can be discussed by the appointed Arborist with the Consent Holder/Site Manager, contractor and any sub-contractors who will be working on the site in proximity to the tree.

At the meeting, the following shall be agreed:

- a) Areas for storing and/or stockpiling materials, spoil and equipment;
  - b) Protection of roots within the setback area and protective fencing; and
  - c) Correct procedures when working around the tree.
26. The Site Manager shall have a copy of this resource consent, including the consent recommendations. The Site Manager shall keep a copy of the consent on site at all times and shall be responsible for informing the labour force with regard to the conditions of the consent.
  27. Temporary protective fencing shall be employed to isolate a street tree within 5m of which earthworks are to occur from activities for the duration of the proposed earthworks.
  28. The protective fencing required by Condition 27 shall be positioned to maximise the tree protection area, whilst allowing a safe work area for the works to occur. The Appointed Arborist shall determine the exact position of the protective fencing in consultation with the Site Manager.
  29. Protective fencing shall be erected before any works commence within 5m of a street tree, and shall not be removed or moved until that section of work is complete, without the prior approval of the Council’s Arborist.

30. All accidental damage to a street tree or protection barriers shall be reported to the Site Manager immediately. Works occurring within the 5m setback will cease until adequate tree protection measures are put in place. The Appointed Arborist shall make a record of the damage and, in consultation with the Site Manager, action remediation measures.
31. Excavation and reinstatement of soil within 5m of a street tree shall be done by hand or air spade. No ripping or tearing of roots (including the root plate itself) shall occur.
32. If any roots encountered at the levels to be excavated have to be severed, they shall be severed cleanly with pruning secateurs or a hand saw. All root pruning shall be carried out by the Appointed Arborist, and shall occur where, in the opinion of the Appointed Arborist, the root pruning will have no more than minor effects on the health of the tree.
33. When soil is cleared around the roots of any street tree to be retained, the roots shall be protected from desiccation and damage by the use of damp Hessian or good quality topsoil, as specified by the Appointed Arborist.
34. Following any excavations within 5m of a street tree, backfilling shall take place at the earliest opportunity and, prior to backfilling, any protective material over the roots shall be removed. The backfill material shall be of sufficient quality to allow for the continued growth/health of the root system.
35. The excavation within 5m of a street tree shall be lined with a heavy grade pvc or similar impervious membrane, so that any raw concrete does not contact any exposed root mass.
36. Any heavy machinery shall avoid coming within the 5m setback of a street tree, except where the surface is already sealed, or specialised mats have been installed to spread the loading sufficiently to protect the ground from being compacted around the tree root systems.
37. No materials or machinery/vehicles shall be stored/parked within the 5m setback of a street tree during the work, including excavated soil, chemicals or building materials.
38. No water used to wash down machinery (e.g. concrete mixers) likely to contain concrete or fuel shall be disposed of on the root plate of any street tree.
39. To mitigate the loss of the three street trees (2x Scarlet Oaks, ID 44401 and ID 44404, and 1x Silver Birch, ID 44403), three replacement trees shall be planted in the median strip of Main North Road. The Consent Holder shall bear the cost of the planting operation. The exact species of the trees and location in the median strip area shall be determined in conjunction with the City Council Street Tree Arborist.

### **Waterway**

40. Planting and existing trees that currently screen or shade the waterway shall be maintained provided they are not within the direct area in which works will occur; plants shall be replaced should they become diseased or die.
41. The piping and works within the setback of Lydia Street Drain shall not commence until an Environmental and Risk Management Plan, which mitigates the potential effects of erosion and sediment release within the waterway is submitted and approved by the Christchurch City Council Subdivision Engineer, or nominee by way of email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz).
42. Any water used to wash down machinery (e.g. concrete mixers) likely to contain concrete or fuel shall not be discharged to a stormwater pipe, drain or network that will connect to the Lydia Street Drain or any associated downstream waterway in the vicinity.
43. Any stormwater treatment system installed on site shall be regularly maintained as per the specifications outlined by the manufacturer to ensure continued optimum performance.

## Noise

44. At least 20 working days prior to opening of the premises to the public, the consent holder shall erect a 2m high acoustic fence along the site boundary with all residentially zoned properties to the north. The acoustic fencing shall have a minimum surface mass of at least 8.0kg/m<sup>2</sup>. This fencing shall be continuous and maintained without gaps, crack or holes.

*Advice Notes: Materials meeting the surface mass specification include 20mm thick timber overlapped or in a board and batten configuration, or a range of proprietary building materials such as Hardiflex, Titan Board, concrete block, or Hebel panel.*

*Where a timber fence is to be constructed, this shall require timber palings to be well-overlapped (25mm minimum) or a "board and batten" system, and a sleeper rail connecting the base of the palings to the ground.*

45. Any forklift operating on site shall be fitted with a broad-band reversing alarm.
46. The operation of the proposed activity shall be undertaken in accordance with a Noise Management Plan (NMP). The purpose of the NMP is to ensure that the noise associated with the operation of the premises does not exceed a reasonable level. The NMP shall be prepared by a suitably qualified and experienced acoustic engineer. A copy of the approved NMP shall be kept on the premises at all times.
47. At least 20 working days prior to opening the premises to the public, the consent holder shall submit a draft NMP to Council for certification (Attention: Team Leader Environmental Compliance; [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)). The NMP is to 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, fence maintenance and any other opportunities identified to mitigate noise effects. The NMP shall also detail the means by which noise complaints shall be received, recorded and investigated; and how the NMP shall be reviewed either as the outcome of a complaint or otherwise at regular intervals. Once certified, the NMP will thereafter form part of the Approved Consent Document.

*Advice Note: The Team Leader will either certify, or refuse to certify, the NMP within 10 working days of receipt. Should the Team Leader refuse to certify the NMP, then they shall provide a letter outlining why certification is refused based on the parameters contained in this condition.*

48. Should the Team Leader refuse to certify the NMP, the Consent Holder shall submit a revised NMP to the Team Leader for certification. The certification process shall follow the same procedure and requirements as outlined in Condition 47.
49. The NMP may be amended at any time by the Consent Holder. Any amendments to the NMP shall be submitted by the consent holder to the Team Leader for certification. Any amendments to the NMP shall be:
- a) for the purposes of improving the measures outlined in the NMP for achieving the NMP purpose (see Condition 46);
  - b) consistent with the conditions of this resource consent; and
  - c) prepared by an appropriately qualified and experienced acoustic engineer.

If the amended NMP is certified, then it becomes the certified NMP for the purposes of Conditions 46 and 47 and will thereafter form part of the Approved Consent Document.

## Lighting

50. Lighting of the vehicle and pedestrian access from Lydia Street to the front (eastern) end of the supermarket building, and the pedestrian access from the Foodstuffs Head Office car park to the supermarket building shall meet the requirements of AS/NZS1158.3.1 for outdoor car parks. In all other open-air car parking, vehicle access, service yard and pedestrian areas (including

the pedestrian plaza) illumination provided by lighting shall achieve a minimum of at least two lux with high uniformity during the hours of darkness within the hours of operation.

51. Where it is practicable to do so, all exterior lighting shall be directed away from adjacent properties and roads. Where this is not practicable then flat glass luminaires shall be used to mitigate the potential for glare.
52. There shall be no light spill at any residential boundary exceeding four lux. The point of measurement for the lux spill is either at a point 2 metres inside the boundary, or at the closest window, whichever is the nearer, of the property affected by glare from the proposed activity.
53. There shall be no light spill onto Main North Road exceeding 2.5 lux (horizontal or vertical).
54. Illumination provided by outdoor lighting shall be measured by a suitably qualified person and the results provided to the Council's Monitoring team (email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) at least ten working days prior to the opening of the premises to the public. This requirement does not include measurement of illumination within the road reserve of Main North Road.

### Landscaping

55. Prior to the inaugural opening of the supermarket and fuel facility, the proposed landscaping shall be established in accordance with the Application Site Landscape Plan and Plaza Landscape Plan except as required by Condition 56.
56. The following exotic plant species from the Amenity / Ornamental Planting list on the Application Site Landscape Plan shall only be established along the Main North Road site frontage as part of the mixed amenity planting identified, and shall not be established elsewhere on the site:
  - *Penstemon* spp.,
  - *Rudbeckia* spp.,
  - *Thymus* spp.,
  - *Ligularia reniformis*, and
  - *Lomandra* 'Tanika'.
57. With the exception of *Cordyline* and *Pseudopanax* spp., the proposed trees shown on the Application Site Landscape Plan shall be at least 2.5m in height at the time of planting, with a minimum calliper of 35mm.
58. All trees to be planted within the car park area shall be planted in Stratavault tree pits (or an equivalent style of structural cell tree planting system). All other trees shall be planted in tree pits that are three times the width of the root ball of the tree, with a minimum depth of 1.5 times the depth of the root ball. These tree pits shall be back filled with an 80% unscreened topsoil and 20% soil conditioner mix.
59. All exotic carpark trees shown on the Application Site Landscape Plan, once established, shall be pruned to lift the tree canopy (lower-most limbs) to a minimum of 2.5m from the ground. Trees with a columnar growth form will not require this type of pruning.
60. The existing mature *Tilia* tree as shown on the Application Site Landscape Plan shall be retained.
61. All landscaping required for this consent shall be maintained. Any dead, diseased, or damaged landscaping shall be replaced by the Consent Holder within the following planting season (extending from 1 April to 30 September) with trees/shrubs of similar species.
62. All trees shall not be topped and shall be allowed to mature to their full natural height unless they are located within a visibility splay (Condition 64).



63. All landscaping along the pedestrian access from Lydia Street to the front (eastern) end of the supermarket building shall be maintained to ensure it does not obstruct the 1.2m-wide pedestrian path.
64. No fence, wall, other structure, or vegetation that exceeds 1m in height shall be established / erected within visibility splays at vehicle entrances.

### **Crime Prevention Through Environmental Design**

65. The ramp to the basement carpark shall be locked outside of the hours of operation of the supermarket (i.e. between 11pm to 7am, seven days per week).
66. Gates shall be installed at the rear of the supermarket at the southern and northern ends of the building as notated on the Site Plan and Application Site Landscape Plan.
  - a) The gates for the service yard shall be closed at all times except during periods of vehicle delivery access.
  - b) The gates for the proposed carpark and vehicle access area (located to the immediate west of the service yard) shall provide restricted access to approved vehicles only outside of the hours of operation (i.e. between 6pm to 6am, seven days a week).
  - c) In respect of sub-clause b., the Consent Holder shall install signage at the gates to inform that public vehicle or pedestrian access is not permitted to/through the carpark and vehicle access area.

### **Contaminated Land**

#### 67. Detailed Site Investigation (DSI)

Identified areas with past/present HAIL activities as reported in Pattle Delamore Partners Preliminary Site Investigation (July 2018) shall be investigated by a suitably qualified and experienced practitioner in accordance with the National Environment Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) and Ministry for the Environment Guidelines prior to the redevelopment works. All soil sampling and investigation reports are to be provided to Council (Attention: Team Leader Environmental Compliance; [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) and to Environment Canterbury (at Contaminated.Land@ecan.govt.nz).

#### 68. Site Management Plan (SMP) / Remedial Action Plan (RAP)

Based on the findings of the soil sampling investigations identified above, and if deemed required by a suitably qualified and experienced practitioner, a SMP and/or RAP shall be prepared to provide controls and protocols for the soil disturbance works during development of the site to ensure all excavation and soil removal works are carried out to protect human health. A copy of the SMP and/or RAP is to be provided to Council (Attention: Team Leader Environmental Compliance; [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) prior to the commencement of any site excavation works.

69. The SMP and/or RAP shall include an Accidental Discovery Protocol in the event of discovery of contaminated material beyond that identified in the Detailed Site Investigation.
70. Any changes to the SMP and/or RAP shall be submitted to Council (Attention: Team Leader Environmental Compliance; [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) for certification prior to the changes taking effect. The Council's Senior Environmental Health Officer shall certify or require changes to the proposed amendments within 2 working days of the SMP/RAP being submitted.

#### 71. Soil Disposal

All soil removed from the site must be transported and disposed to a consented landfill/cleanfill suitable to receive such material. Evidence of any soil disposal shall be by way of a soil waste transfer manifest. The soil manifests are to be provided to Council no later than 3 months upon



completion of the excavation and soil removal works. These soil manifests shall be emailed to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz).

## **Flooding**

72. The basement car parking area shall be constructed such that only elements (including but not limited to construction materials and linings) designed to withstand the impact of flood inundation through durability/water-resistance are located below 19.49m RL (Christchurch City Datum).
73. All electrical outlets and wiring will be located above 17.20m RL (Christchurch City Datum).

## **Transport**

### Heavy Vehicles

74. There shall be no heavy vehicle movements to the site between the hours of 3pm to 6pm, Monday to Friday.  
  
*Advice Note: For the purposes of this consent, the term 'heavy vehicles' consists of those service and delivery vehicles larger than the Austroads 8.8m design rigid vehicle.*
75. All fuel tanker deliveries (including underground tank refuelling and associated tanker movements) shall occur outside of the hours of operation of the supermarket.
76. The fuel tanker shall only enter the site via the right-of-way from Lydia Street and shall exit only via the signalised intersection onto Main North Road. All other heavy vehicles shall only access the site via the right-of way connecting Lydia Street and Main North Road.
77. Semi-trailer and fuel tanker deliveries from Northcote Road shall only right turn into Lydia Street (there shall be no left turn ins).

### Vehicle Movements and Site Access

78. Prior to the inaugural opening of the supermarket and fuel facility signage shall be installed at the intersection of Lydia Street and Northcote Road to notify drivers that right turn movements out of Lydia Street onto Northcote Road are banned. Signage shall comprise installation of an RG7 'No Right Turn' sign in accordance with the Manual of Traffic Signs and Marking (MOTSAM).
79. Prior to the inaugural opening of the supermarket and fuel facility, the Main North Road south approach to the Main North Road / Northcote Road / QEII Drive intersection shall be reconfigured from the current arrangement to one exclusive through lane, one shared through-right turn lane and one exclusive right turn lane. In order to accommodate this design change, the east-bound QEII Drive traffic lanes shall also be widened as required to ensure sufficient available turning geometry for two heavy vehicles turning together.  
  
*Advice Note: Should the road controlling authority implement upgrades to the intersection prior to opening of the supermarket that is similar to, or more extensive than, the configuration specified above this condition will be considered to be met.*
80. Prior to the inaugural opening of the supermarket and fuel facility, the new intersection between proposed Access 3 (identified on the Location Plan) and Main North Road shall be formed and signalised to provide for the following:
  - a) All turning movements to and from the proposed site.
  - b) Signalised pedestrian crossings of the north and west legs.
  - c) The provision of northbound bus jump priority if required by Condition 93a)ii;

- d) A minimum 3.2m-wide public transport lane in both northbound and southbound directions.
  - e) Installation of no U-turn signage.
  - f) Installation of signage either on 186 Main North Road ('Redwood Family Dentists') or within the median facing 186 Main North Road to notify drivers that right turn movements onto Main North Road are banned. Signage shall include installation of a RG7 'No Right Turn' sign in accordance with the Manual of Traffic Signs and Marking (MOTSAM).
81. Prior to the inaugural opening of the supermarket and fuel facility, 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 physically remove the ability to right turn in and right turn out at Access 7 (identified on the Location Plan), including 'no right turn' signage.
82. Access 1 (identified on the Location Plan) shall be restricted to left-in movements only for all vehicles.
83. Access 5 (identified on the Location Plan) shall be restricted to after-hours vehicle entry/exit to the Foodstuffs Head Office only (i.e. between 11pm and 7am). A barrier arm, or other similar control device, shall be installed for this purpose. For clarity, Access 5 shall not be used for vehicle entry/exit during the hours of operation.
84. A barrier arm shall be installed on the southern approach of the roundabout internal to the site (that west of Access 3 identified on the Location Plan) as a physical means of restricting vehicle movements between the Foodstuffs Head Office car parking area and the supermarket car parking areas to only approved vehicles.
85. Once the Christchurch Northern Corridor (CNC) is operational, and prior to the inaugural opening of the supermarket and fuel facility, baseline vehicle traffic volumes along Winters Road east of Autumn Place shall be recorded. The recording of these traffic volumes shall be undertaken by the Consent Holder for a period of one week in the month of March after the CNC opens, and annually thereafter until the inaugural opening of the supermarket and fuel facility. If the opening of the CNC is delayed such that the month of March does not fall between its opening and the opening of the supermarket, this recording shall be undertaken during any other month outside of school or tertiary holidays. The baseline vehicle traffic volumes shall be provided to the Christchurch City Council via email to rcmon@ccc.govt.nz within 1 week of the recording.
86. Monitoring of the access arrangements to and from the site shall be undertaken by the Consent Holder at 3 months, 2 years and 4 years after the date of the inaugural opening of the supermarket and fuel facility. Monitoring shall not take place during school or tertiary holidays. Monitoring shall:
- a) Be undertaken by a suitably qualified transportation engineer(s), agreed by both the Consent Holder and the Christchurch City Council.
  - b) Be undertaken on two consecutive days that the Consent Holder and the Christchurch City Council agree are representative of typical operating conditions.
  - c) Record the operation of the internal roundabout adjacent to the Main North Road signalised access and measure the extent of queuing for vehicles entering the site via the signalised access on Main North Road in the evening peak hour (4.30pm to 5.30pm).
  - d) Record vehicle traffic volumes at the Winters Road survey location specified in Condition 85 in the evening peak hour (4.30pm to 5.30pm).
  - e) Record the volume of traffic accessing the supermarket site via the Northcote Road Oil Changers car park access (Access 7 identified on the Location Plan) and record the number of conflicts between westbound vehicles on Northcote Road entering the supermarket via this access and westbound vehicles merging from two lanes into one adjacent to this access in the evening peak hour (4.30pm to 5.30pm).
  - f) Record the operation of the Northcote Road / Lydia Street intersection and measure the extent of queuing for eastbound vehicles entering the site via Lydia Street in the evening peak hour (4.30pm to 5.30pm).

- g) Be submitted to Christchurch City Council via email to rcmon@ccc.govt.nz within one month of the assessment being completed. Council shall confirm acceptance within 1 week of receipt as to whether the assessment satisfies this condition.

For the purpose of this condition the Consent Holder shall notify Christchurch City Council via email to rcmon@ccc.govt.nz of the date of the opening of the supermarket.

87. Should post-opening monitoring (detailed in Condition 86c) identify evidence of vehicles queuing on Main North Road related to the roundabout west of the new signalised intersection (Access 3 identified on the Location Plan), then the barrier arm installed on the southern approach of the roundabout internal to the site (as required by Condition 84) shall be used as a physical means of restricting vehicle movements between the Foodstuffs Head Office carpark and the supermarket carpark for any time of day where a safety risk has been identified.
88. Should post-opening monitoring (detailed in Condition 86d) record an additional 30 vehicles or more above the baseline traffic volumes recorded under Condition 85 in the peak hour (4.30pm to 5.30pm) along Winters Road over and above the baseline vehicle traffic volumes recorded as part of Condition 85 and any background traffic growth from other land use activities or changes to the transport network, then the Consent Holder shall implement traffic calming measures and/or speed reductions to reduce the desirability of the route.
89. Should post-opening monitoring (detailed in Condition 86e) record 30 vehicles or more in the peak hour (4.30pm to 5.30pm) accessing the supermarket carpark via the Oil Changers access on Northcote Road (Access 7 identified on the Location Plan) and observe a reduction in the efficiency of the Northcote Road westbound merge related to left turning traffic accessing the car park within that part of the site zoned Commercial Local, then the Consent Holder shall provide design solutions to Council to address this issue. Such design solutions may include (but not be limited to) the implementation of traffic calming measures to reduce the desirability of a route; and/or the restriction of vehicle movements on site (for example the closing of the southbound vehicle access from that car park to the supermarket car park).
90. Should post-opening monitoring (Condition 86f) record more than 5 eastbound vehicles queuing to turn right from Northcote Road into Lydia Street, then the Consent Holder shall provide design solutions to Council to address this issue. Such design solutions may include (but not be limited to) a formal right-turn offset formed and marked along Northcote Road to provide for vehicles to turn right into Lydia Street.
91. The remedial actions required in Conditions 87 to 90 shall be installed within 3 months of receiving all necessary approvals for the same, at the expense of the Consent Holder.
92. Pursuant to s128 of the RMA Council may serve notice on the Consent Holder of its intentions to review the conditions of this consent within six months of any remedial actions having been installed in accordance with Condition 91 for the purpose of dealing with any adverse traffic effects identified by the monitoring of the access arrangements in Condition 86 or as a result of the remedial actions referred to in Condition 91.

#### Public Transport

93. Prior to the inaugural opening of the supermarket and fuel facility, public transport priority shall be maintained on Main North Road through the provision of the following measures:
- a) either
- i. the existing bus stop located in front of the Foodstuffs Head Office shall be relocated adjacent to the proposed pedestrian plaza and northern east-west pedestrian access through the site; or
  - ii. the new signalised access (Access 3 identified on the Location Plan) shall provide for northbound bus jump priority.

- b) the design of the new traffic signals on Main North Road shall support coordination with existing signals.

*Advice Note: Should the road controlling authority implement upgrades to public transport prior to the inaugural opening of the supermarket and fuel facility that are similar to, or more extensive than, the public transport priority measures specified above this condition will be considered to be met.*

- 94. An electronic messaging board shall be installed in the supermarket foyer to advise customers of bus services and arrival times to assist with the development's integration with the public transport network.

#### Staff Movements

- 95. Staff working at the Foodstuffs Head Office shall have staggered end of day times (i.e. between 4.00pm and 5.15pm) to ensure trip generation from the Foodstuffs Head Office in the evening peak (4.30pm to 5.30pm, weekdays) is more distributed. For clarity all staff shall not leave the site at 4.30pm as has occurred historically on site.
- 96. The Consent Holder shall provide Council with a statutory declaration that it will manage staff movements from the Foodstuffs Head Office to ensure such movements are more distributed during the evening peak of 4.30pm to 5.30pm, Monday to Friday).
- 97. Prior to the inaugural opening of the supermarket and fuel facility, the Consent Holder shall develop a travel plan that provides supermarket and Foodstuffs Head Office staff with information about their travel choices, including public transport, walking and cycling; and parking management, including containing staff vehicle parking within the site. The travel plan shall be supplied to Council Transportation Team for comment prior to finalisation ([rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)). For clarity, this travel plan does not require approval or certification.

#### Construction

- 98. The Consent Holder shall prepare a Demolition Traffic Management Plan (DTMP) for the demolition of the buildings on site and a Construction Traffic Management Plan (CTMP) for the proposed construction. The DTMP and CTMP shall:
  - a) Identify the nature and extent of temporary traffic management and how all road users will be managed by the use of temporary traffic management measures and comply with the NZTA Code of Practice for Temporary Traffic Management (CoPTTM);
  - b) Detail the measures proposed for the control of vehicle and pedestrian movements, including full or partial road closures, to ensure the safety of the public, and the continued safe and effective operation of the road network;
  - c) How activities on any public road will be planned to cause as little disruption, peak traffic delay or inconvenience to road users as possible without compromising safety; and
  - d) Identify the location and numbers of any on-site parking provision for demolition or construction staff.
  - e) Identify measures to avoid contractor parking spill over into the surrounding transport network.
- 99. The DTMP and CTMP shall be submitted to the Christchurch City Council via email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz), at least ten working days prior to demolition and/or construction commencing, for approval that it complies with the NZTA Code of Practice for Temporary Traffic Management (CoPTTM) and the conditions of this consent. Works shall not commence until the Consent Holder has received the approval from the Christchurch Transport Operation Centre or nominee that it is consistent with the CoPTTM and the conditions of this consent.
- 100. All demolition and construction shall be undertaken in accordance with the approved DTMP and CTMP prepared by the Consent Holder in accordance with Conditions 98 and 99 of this consent.

101. The DTMP and CTMP may be amended at any time. Any amendments shall be:
- a) Only for the purpose of improving the efficacy and safety of the temporary traffic management measures;
  - b) Consistent with the conditions of this resource consent; and
  - c) Submitted in writing to the Christchurch City Council, Attention: 'Christchurch Transport Operation Centre' ([rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)) prior to any amendment being implemented

**Advice Notes:**

- The Consent Holder is advised that the approval of Council's Asset & Network Planning Team, or the Community Board / Council where that authority has been delegated is required prior to any works within the road reserve. These include the new signalised intersection on Main North Road, the removal of street trees and changes to on-street carparking, change in lane configuration of the Main North Road / QEII Drive / Northcote Road intersection, the extension proposed to the Northcote Road median, the banning of the right turn out of Lydia Street, and the movement of bus stops.
- The detailed design of the new intersection between proposed Access 3 (identified on the Location Plan) and Main North Road will be subject to, and required to comply with, a Safety Audit carried out in accordance with the NZTA Road Safety Audit Procedures for Projects.
- Drawings and plans for works located within the road reserve shall be submitted to Council's Asset Planning Transport team.
- Any works within the road reserve will be at the Consent Holder's expense unless agreed prior with the relevant road controlling authority.
- Engagement with Christchurch City Council, CTOC and Environment Canterbury shall occur prior to submitting detailed design plans of the new signalised access on Main North Road. In addition, the provision of the bus jump priority lights and any relocation of bus stops (northbound and southbound) will be subject to agreement with the Council (as the asset owner), CTOC (who operate the network) and the Environment Canterbury (who operate the bus services).