

Before a Panel appointed by Kapiti District Council

In the Matter of the Resource Management Act 1991

And

In the Matter of the Proposed Kapiti Coast District Plan 2012

**Statement of Evidence of Michael John
Foster on behalf of Progressive
Enterprises Limited**

Dated: 29 August 2016

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Introduction, Qualifications and Expertise

1. My name is Michael John Foster. I am an independent Planning Consultant and Director of Zomac Planning Solutions Ltd (“Zomac”). I have a Bachelor of Arts (Massey University), Diploma of Town Planning (Auckland University) and am a Fellow of the New Zealand Planning Institute (“NZPI”) and a member of the Planning Institute of Australia (“PIA”). For sixteen years from 1995 to 2001 I was Director of Planning at Beca Carter Hollings & Ferner Ltd, consulting planners and engineers. I was chairman of the 2010 Infrastructure Technical Advisory Group advising the Minister for the Environment with respect to the Phase 2 changes to the Resource Management Act 1991 (“RMA”). I was also a member of the 2009 Streamlining and Simplifying Technical Advisory Group.
2. In preparing this evidence, I acknowledge that I have read the code of conduct for Expert Witnesses in the Environment Court Consolidated Practice Note (2014). I agree to comply with this Code of Conduct. This evidence is within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
3. This evidence is given in support of Progressive Enterprises Limited’s submissions to the PDP contained in the Chapter 6 Working Environment section. I will generally refer to Progressive as “PEL”.
4. I have over thirty years’ experience in the planning and resource management fields and over the last 20 years I have had specific and extensive experience in retail planning. During this 20-year period, I have been responsible for the planning and resource management inputs for a range of major retailing clients on a number of proposed and operative district plans and a wide variety of developments. My firm, Zomac Planning Solutions Ltd, is currently principal planning consultant to Progressive’s expansion programme which, at last count, included in excess of 30 developments that have either been consented over the last three years, are in their statutory approval phase or under preparation for lodgement.

5. I believe my experience and understanding of both retail and urban planning dynamics around New Zealand gives me a sound appreciation of the impacts that the requirements of the RMA have on appropriate district planning provisions to be included in a district plan review.

Scope of Evidence

6. I consider that the content of the Officer Report and supporting expert statements do not give appropriate weight to the submissions made by PEL. It should be noted that Zomac prepared the PEL submissions and further submissions that are the subject of this hearing. I am familiar with the Kapiti Coast area through my involvement in prospective PEL supermarket projects in the District.
7. I have also read the statements of evidence prepared by Mr Waite (Corporate) and Mr Thompson (Retail Impacts) and agree with their conclusions.
8. In preparing this evidence I have read the Council officer report and supporting evidence.

Overview and Evidence Structure

9. At the outset it seems to me that the author of the Officer Report and the supporting expert statements do not appear to have taken sufficient account of the functional and operational requirements of supermarkets notwithstanding that on behalf of PEL I provided a detailed explanation of such requirements under the heading “Supermarket Operational Characteristics / Requirements” in PEL’s submission. PEL’s current assets in the District include the Paraparaumu Countdown in the Coastlands development, the Waikanae town centre Countdown and Countdown Otaki.
10. I further note that, many of PEL’s submission points included under this hearing topic have been rejected by the Officer – notwithstanding that Progressive has a considerable number of assets in the District, is a major employer and has significant expansion plans some of which I will discuss later in my evidence. I consider that a District Plan for the Kapiti Coast needs to contain an appropriately positive approach to growth and

redevelopment. As I will explain on a topic by topic basis below, that is not currently the case and in some respects the proposed controls are now more restrictive than under the Operative Plan.

11. The emphasis on greater restriction seems to be driven by a considerable focus on restricting new retail development to the existing commercial centres in the District.
12. I support the centres based approach to retail development but with an allowance for some out-of-centre development in certain circumstances. This is now called the 'centres plus approach' mainly because supermarket location in the 21st century is primarily catchment driven. A 'centres-plus' approach is essentially a cascade approach where as a general principle retail is focused on centres in the first instance, then around (on the edge of) centres and finally in other locations that do not generate adverse effects.
13. The criteria Progressive has put forward to be included in the Plan are based on criteria that were developed and adopted by the Environment Court. Contrary to the officer claim in paragraph 1602 of the report such an approach would not undermine the objectives and policies of the PDP. The fact is that under the criteria proposed by Progressive 'out of centre' development is the exception rather than the rule. To this extent I consider that the PDP should contain an objective, policy and rule framework that supports a centres plus approach. I disagree with the Officer view in paragraph 1603 of her report that non-complying gateway tests can provide for out of centre development. My understanding is that is not what the Environment Court considered was most appropriate in the North Shore. While my preference, having determined appropriate assessment criteria for an out of centre development, is that the activity status for such development only needs to be restricted discretionary I would consider full discretionary is also appropriate to give Council more comfort around their ability to control effects, a status that is quite common in other district plans in New Zealand.
14. Discretionary status allows for all relevant effects to be considered, on a case by case basis. It also allows full consideration to be given to any relevant objectives and policies. It is not a "green light" to uncontrolled retail development, but allows a proposal to be advanced and tested fairly

on its merits. In contrast, non-complying status weighs heavily against a proposal – even if the effects threshold test can be met (ie even if the effects are minor).

Topic by Topic Analysis

3.3.14 Supermarket

15. In terms of the supermarket definition being sought by Progressive, it is an accepted industry standard that has been included in a number of second generation plans across New Zealand. At paragraph 197 I agree with the Officer that reference in the definition to a Local Alcohol Policy “is not a matter that should be determined by the District Plan”.

16. At paragraph 198 the Officer discusses PEL’s view that a minimum size threshold for supermarkets within the definition is unnecessary. While I understand the logic for a 1500m² size threshold with respect to the workability of the Airport Zones rules, that requirement is site specific. Otherwise there is no inherent logic for applying such a size threshold across the rest of the District. PEL’s supermarket brands include Supervalue (500m² to 1000m² GFA), Freshchoice (1000m² to 1500m²) and Countdown (1500m² to 4200m²). The existing and expected future size of the respective catchments determines supermarket size. All three brands have similar functional and operational characteristics. In the District the respective sizes of PEL’s current supermarkets are:
 - (a) Countdown Coastlands – 3000m² GFA
 - (b) Countdown Waikanae – 1190m² GFA
 - (c) Countdown Otaki – 990m² GFA

17. Both Countdown Coastlands and Countdown Waikanae are now considered by PEL to be undersized relative to their catchments. I also note that Mr Waite in paragraph 13 of his evidence advises that PEL has no intention of closing their Countdown Coastlands supermarket. He confirms PEL’s commitment to maintaining a presence in the Centre into the future. Accordingly it is quite clear that a supermarket will continue to anchor the Paraparaumu Town Centre. I also note that the Council issued a resource consent to Sheffield Properties Ltd on 24 June 2016 for retail

units and earthworks on Area A2 in the Paraparaumu Town Centre. Plans of the proposed development are attached as Annexure 1. I note that these plans include a proposed supermarket.

18. At paragraph 199 the Officer notes that Coastlands Shoppingtown Ltd requests a smaller size threshold of 1000m². Such a reduction would be a step in the right direction.
19. At paragraph 200 the Officer discusses her suggested amendments to the supermarket definition. While these amendments are an improvement I consider that the words 'and includes lotto shops, pharmacies and cafes located within such premises' should be added. A number of 21st Century Countdown's have lotto shops, pharmacies and cafes located in them. Of the 185 Countdown stores across New Zealand a total of 14 have pharmacies within the stores. A pharmacy or café in every supermarket is highly unlikely but the opportunity to provide a full customer service in supermarkets should not, in my view, be restricted.
20. Accordingly, I support the Officer recommendation at paragraph 204 provided the size restriction is either removed or reduced and the wording I propose in paragraph 17 above is added.

3.4.2 Chapter 6 approach, including the complexity and efficiency provisions

21. I support the amendments proposed by the Officer to the Chapter 6 Introductory paragraph in her paragraph 302. However, for reasons I give later in my evidence, I do not agree with the thrust of paragraph 277 where, among other things, it states ". . . at present there is an oversupply of existing and consented GFA than that needed to meet sustainable demand by approximately 4900m² (ie. there is more 'on-the-ground' and consented retail floorspace in the District Plan than the annual retail sales in the District can currently sustainably maintain)". From a theoretical perspective that may be correct but it does not mean that such space is conveniently located to a catchment, readily accessible or available for purchase and redevelopment. Mr Thompson notes in paragraph 26 of his evidence that there could be a significant undersupply of commercial land under the PKCDP.

3.5.1 Format and structure of Chapter 6 Policies

22. I support the amendments proposed by the Officer in paragraph 430. These amendments satisfactorily address PEL's concerns regarding readable format and some policies being out of context.

3.5.3 Policy 6.1 – Consolidation of business activities

23. I support the amendments proposed by the Officer in paragraph 563. The Officer is correct where she states in paragraph 549 that:

“The courts have established that a proposed activity’s economic and social effects may be a relevant matter for a consent authority when considering the substantive decision as to whether to grant consent. .”

24. An out of centre supermarket would, in my view, need to establish that there are no such adverse effects.

3.5.4 Policy 6.2 – Business distribution

25. While the PEL submission on Policy 6.2(a) was intended to make the policy more enabling and flexible the amendments proposed by the Officer with respect to this policy in paragraph 607 are reasonable and hence I support them.
26. At paragraph 590 the Officer rejects PEL's wording change suggested for Policy 6.2(b) and claims that the change “seeks to weaken the wording of the policy as it relates to the development of new retail activities in industrial zoned locations.” I strongly disagree because of the criteria contained in Policy 6.6.a to h. These criteria are similar to those adopted by the Environment Court which were originally intended to regulate the spread of out of centre development on the North Shore, Auckland. Such criteria continue to underpin the Auckland centres plus approach.
27. The key criterion (a) places an emphasis on ensuring that an out of centre supermarket would not undermine the strong centres-based approach. The suggested PEL approach is not permissive and any out of centre supermarket development will remain an exception rather than the rule. I therefore support the amendment being sought by PEL.

3.5.5 Policy 6.3 – Centres hierarchy

28. As previously noted, PEL generally supports the principles and reasons behind the “centres hierarchy” in Policy 6.3. It however seeks an amendment to the wording of Policy 6.3(c). The Officer in paragraph 637 rejects the amendment notwithstanding that she recommends that the word “avoid” be replaced with the word ‘limited’, which I support. The concern I have is that under the rules convenience retail shops up to 500m² are permitted but once above this threshold they become non-complying. This I consider to be a draconian change in status. It is an accepted fact that supermarket store size is a function of its current and likely future population catchment. There is no science behind the 500m² threshold and I therefore prefer the wording suggested by PEL. I come back to the activity status issue later in my evidence.

3.5.6 Policy 6.4 – Zone and precinct framework

29. At paragraph 691 the Officer recommends that Policy 6.4 be deleted and the explanatory content of it being moved to the end of the Chapter 6 Introduction section. While PEL supported retention of Policy 6.4, I consider the Officer recommendations are sensible particularly as Policy 6.4 is somewhat repetitious of Policy 6.3.

3.5.10 Policy 6.8 – Urban form and design of centres

30. The amendments proposed by the Officer in paragraph 789 go some way towards recognising the functional and operational requirements of supermarkets which PEL sought to have recognised in the wording of Policy 6.8. Further, because subclause (h) is now proposed to be deleted I am satisfied that the changes proposed by the Officer now provide a reasonable degree of flexibility. It should also be noted that as a general rule supermarkets always seek to locate at the edge of centres and not, for example, in the middle of the main street. In this respect there always needs to be an appropriate balance between the need to enhance a pedestrian environment and the need to enable commercially sustainable outcomes in the District’s commercial zones and thus support the centres based approach.

3.5.11 Policy 6.9 – Paraparaumu Sub-regional centre

31. I support the Officer recommendations in paragraph 810.

3.5.12 Policy 6.10 – District Centre Zone

32. Again I support the Officer recommendations in paragraph 841.

3.5.13 Policy 6.11 – District Centre Zone Precincts

33. I consider that the Structure Plan approach is entirely appropriate and support the Officer recommendations in paragraph 874.

3.5.14 Policy 6.12 – Civic and community zone and Precinct B of the District Centre Zone

34. PEL has decided not to pursue its submission on this policy.

3.5.15 Policy 6.13 – Outer Business Centre Zone

35. I support PEL's submission with respect to this policy on the basis that it would enable some locational flexibility.

3.5.16 Policy 6.14 – Paraparaumu North Gateway Precinct

36. Again I support PEL's submission with respect to this policy as the amendment would allow some locational flexibility.

3.5.17 Policy 6.16 – Connectivity to and in centres

37. I support the Office recommendations in paragraph 960.

3.5.21 Policies 6.20 – Land use and built form in the Industrial Zone and Policy 6.21 – Other developments in the Industrial zone

38. I note that the Officer recommends rejection of PEL's suggested amendments to Policies 6.20 and 6.21. At paragraphs 14, 25, 26 & 27 above I explain how any "out of centre" development, in particular in the Industrial zone, is the exception not the rule. I strongly disagree with the Officer statement in paragraph 1006 that ". . . supermarkets would be an example of a retail activity that is considered inconsistent with the Industrial Zone policy provisions – supermarket retail activities are more appropriately located in centres." As explained by Mr Thompson in

paragraph 45 of his evidence a supermarket is a convenience retail activity that always seeks to locate as close as possible to its existing and future catchment.

39. The Aotea Countdown in the growing Aotea / Papakowhai suburb of Porirua City is a particular example. This supermarket, currently under construction, is located in the middle of a growing residential area. I note that the Kapiti Road Industrial area and the Kapiti Airport commercial area are between 1.8kms and 2kms from the core of the Coastlands Shopping Centre. PEL's expansion plans include an upgrade of the existing Coastlands Countdown and a new stand-alone Countdown on a suitable site in the District's Industrial areas.
40. Given the existing and potential future residential catchment growth in the Paraparaumu urban area there is, I am advised, no need for more than two Countdowns to serve the area in the medium to long term (in excess of 20 years). A new Countdown would therefore be a true exception and I consider that the Hearings Panel should give careful consideration to the amendments that PEL seeks to Policies 6.20 and 6.21.

3.6.1 General submission points relating to Chapter 6 rules

41. I note that the Officer in paragraph 1050 is recommending amendment to the activity status of retail activities in the Town Centre Zone that do not comply with rule standards from non-complying to discretionary. That is a step in the right direction in my opinion. However I do not agree with the view that supermarkets in other zones which do not comply with rule standards should still be classified as non-complying because of the PDP's policy framework. If the Hearings Panel accepts PEL's 'centres plus' approach in the Industrial Zone for example, then the rule non-compliance activity status should be carefully revisited. I therefore support PEL's suggested amendments.

3.6.3.9 Rule 6A.3 – Restricted discretionary activities

42. The observations I made in paragraph 38 are equally applicable to this section of the Officer report, and again the default to non-complying status is, in my opinion, too strict.

3.6.3.10 Rule 6A.7 – Discretionary activities

43. PEL has decided not to pursue its submission on this rule.

3.6.3.11 Rule 6A.5 - Non-complying activities

44. I support the Officer recommendations in paragraph 1334.

3.6.5 Rules 6C.0 – 6C.5 town Centre Zone

45. The existing Otaki Countdown has a GFA of 990m². Rule 6C.3(2) imposes a size limit of 1000m² to qualify as a restricted discretionary activity. Any expansion of this store means it then falls to be considered as a non-complying activity pursuant to Rule 6C.5(4), an unreasonable situation in my view. I note in paragraph 1472 the Officer acknowledges that the Waikanae Town Centre Zone and Otaki Rail Town Centre Zone have existing supermarkets and within these two locations supermarket renewal, additions and/or alterations should be a restricted discretionary activity. I agree with that view and support the Officer recommendations contained in paragraph 1490 and on page 6-107 of section 4 Recommended Amendments.

3.6.6 Rules 6D.0 – 6D.5 – Local Centre Zone

46. I consider that the size limit for retail shops of 500m² where any exceedence is to be a non-complying activity is a draconian restriction that has no scientific or commercial basis. Supermarket operators without exception size their stores following a careful assessment of the existing and potential growth in a catchment. There is no technical basis for the Officer at paragraph 1508 to claim that:

“This policy framework recognises that development activities that are of a type, scale or form that are inconsistent with the role of centres, may have a range of adverse effects, including cumulative effects, on both the local centre and other centres in the District’s centres hierarchy.”

47. For example a Supervalu type of store in the size range of 500m² to 1000m² could be viable in Raumati South, Paekakariki and Te Moana Road in the foreseeable future particularly with the opening of the Kapiti Expressway and Transmission Gully. The significantly reduced commuter times would make the Kapiti Coast area a much more attractive place to live and commute from.

48. In my opinion the activity status for stores over 500m² should be restricted discretionary but I would accept full discretionary with a link to the policy assessment criteria contained in Policy 6.6 a – h.

3.6.8 Rules 6F.0 – 6F.5 – Industrial Zone

49. Further to the observations I made in paragraphs 13, 22, 23 & 24 above about supermarkets being treated as an exception in the Industrial Zone, I note that the Officer continues to reject, in paragraphs 1602 and 1603, the possibility of a supermarket being assessed as a discretionary activity and evaluated against the policy criteria contained in Policy 6.6. I consider such a view to be misguided. Notwithstanding that these criteria are meant to apply to retail, commercial and industrial activity not within the Working Zones, a simple wording amendment to Rule 6F.1.11 would link an evaluation of potential supermarkets in the Industrial Zone to these criteria.
50. A number of new supermarkets throughout New Zealand have been consented in industrial zones because Councils' have accepted the proposition that supermarket location is catchment driven. The Countdown Claudelands development in East Hamilton is one example.
51. Under the non complying activity gateway tests I accept that only one gateway test needs to be passed. However such an activity status is usually regarded as a strong signal against a proposal and even if the effects threshold is met consent could still be declined.
52. I note that Mr Thompson in paragraph 59 of his evidence is of the view that a supermarket in the Industrial Zone "would not result in any significant impact on the industrial market."
53. In the circumstances I strongly support the amendments being sought by PEL to the 6F rules.

3.6.8.5 Rule 6F.5 – Non-complying activities

54. The Officer views with respect to this rule are virtually identical to her views expressed with regards the rules in section 3.6.8 of her report. My views remain unchanged.

Summary

55. For the reasons I have outlined in the foregoing parts of my evidence I consider that the changes being sought by Progressive to a number of the PDP provisions represent a sustainable resource management outcome and will not create a permissive District Plan with respect to 'out of centre' supermarket development by ensuring that Council retains appropriate control to manage effects during the resource consenting process.
56. Accordingly I disagree with some of the opinions of the council officer and her supporting witnesses with respect to these issues.

Mike Foster
August 2016