

BEFORE THE KĀPITI COAST DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

And

IN THE MATTER of an application for construction and operation of a Countdown supermarket at 160 Kāpiti Road, Paraparaumu (RM210151)

LEGAL SUBMISSIONS

ON BEHALF OF TEMPLETON KĀPITI LIMITED

22 MARCH 2022

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Introduction

- 1 These Legal Submissions are presented on behalf of the Submitter Templeton Kāpiti Limited (**TKL**). TKL owns most of the land within the Airport Zone coloured grey on Figure 1 in Attachment 1, excluding the land in the eastern corner containing the retail development known as 'Kāpiti Landing' (a related company owns the land containing Kāpiti Landing).
- 2 The Kāpiti Road/Friendship Place roundabout is located approximately underneath the annotation 'PREC38', on top of Kāpiti Road, in Figure 1. The Kāpiti Road/Friendship Place intersection is a primary access point off Kāpiti Road into the Airport Zone.
- 3 Minute 1 issued by the Commission signalled, at paragraph 9, the likelihood of the Commission requesting a Joint Witness Statement to be prepared by the four traffic experts post the hearing. TKL strongly supports that approach, on the following basis:
 - a. There are four traffic experts involved in this hearing. None of them appear to agree with each other on various points. It would be difficult, if not impossible, for the Commission to form a considered determination of this application given the conflicting expert traffic evidence.
 - b. The Commission simply does not have before it the detailed evidence necessary to address the issue of potential adverse traffic related effects and the related issue of potential failure to achieve outcomes anticipated by relevant transportation objectives and policies.
- 4 In anticipation of this hearing being adjourned, to enable relevant traffic related issues to be further explored, these Submissions will be limited to drawing relevant factual matters to the Commission's attention and will not address relevant objectives and policies (which cannot be properly addressed until traffic conflicts are resolved).

Airport Zone

- 5 Relevant to this hearing, the Airport Zone provides for (broadly) some retail and mostly industrial development within the Mixed Use Precinct (the areas annotated as 'PREC37' on attached Figure 1, which comprise most of the Airport Zone excluding the Central Airport Core Precinct identified as 'PREC39' on Figure 1) as follows:
 - a. controlled activity status up to 102,900m² GFA (with transport related 'trigger' assessments when development exceeds 43,050m² GFA and again when development exceeds 62,500m² GFA – but no change in activity status);

- b. restricted discretionary activity status between 102,900m² GFA and 282,450m² GFA;
 - c. [no activity status between 282,450m² GFA and 339,400m² GFA – probably a drafting error];
 - d. non-complying activity status for development which exceeds 339,400m² GFA.
- 6 These Submissions focus on development up to 102,900m² GFA because:
- a. Council cannot refuse consent to a controlled activity consent application;
 - b. Council cannot impose conditions on a controlled activity consent which would potentially frustrate the ability to implement the consent.
- 7 The legal situation relating to development exceeding 102,900m² GFA, vis a vis this application, is potentially complex, and will not be addressed at this stage.
- 8 In addition, referring to Figure 2 in Attachment 2:
- a. Prior to the current Operative District Plan (**ODP**), which became operative in mid-2021, residential development was only permitted within Area (4).
 - b. As a consequence of the ODP becoming operative, residential development is now permitted within the Areas (2), (3) and (4). Residential development within Area (1) is prohibited.
- 9 The change detailed in the previous paragraph significantly increases the likelihood of future development within the current Airport Zone.
- 10 The practical and legal consequence of the above is that:
- a. residential development can be carried out within the Mixed Use Zone, as a controlled activity, up to a total of 102,900m² GFA;
 - b. in addition, residential development can be carried out outside the Mixed Use Zone shown on Figure 1, provided it is within Areas (2), (3) and (4) shown on Figure 2, up to a maximum total (within the Airport Zone) 339,400m² GFA.
- 11 The situation described above raises two questions which, I submit, are fundamental to this hearing:
- a. What assumptions relating to future development within the Airport Zone have been built into the traffic modelling (two different models – SIDRA and SATURN) carried out for the purpose of this hearing?

- b. If this application is consented, what are the potential effects (noting the definition of 'effects' in s3 RMA) which could arise in respect of future development within the Airport Zone enabled by controlled activity status?
- 12 I submit that, at least, the potential development enabled as a controlled activity in the Airport Zone is a relevant and important consideration in this hearing (as stated above, I do not intend to address development in excess of 102,900m² at this time). At least that extent of development is zoned, coming down the pipeline, and must be consented by Council subject to conditions which do not frustrate implementation of the relevant consent(s).
- 13 In other words, at least that extent of development should be included in the traffic modelling and should be assessed when the Commission is considering the issues of potential adverse effects and achievement of relevant transport related objectives and policies. I further submit that that consideration is not possible on the basis of the traffic related information which has been prepared and presented for this hearing.

Information supplied

- 14 I note the following extracts from the Applicant's Integrated Transportation Assessment dated July 2021:

“2.5 Traffic Growth

The observed 2018 turning count information needs to be factored to 2026, the year used as the basis of the assessments.

The detailed KCDC link counts on Kāpiti Road between the expressway and Arawhata Road intersections have been used to calculate trend growth for each of the modelled peak periods, shown by Table 2.2.”

“2.8 Planned Developments/Changes to Road Network

There are no significant planned developments or works to the road network in this area relevant to this assessment. “

“4.2 Assessment Methodology

...

Conditions have then been assessed for the year 2026, as this represents an appropriate 'design year' (a few years after the

likely opening date of the supermarket) and aligns with forecasting years used by KCDC.

The scenarios assessed are:

- *Do-Minimum – 2026 weekday PM peak and Saturday mid-day peak, with any already consented development in the vicinity, and*
- *Development – as above, but with the addition of the proposed development.”*

15 I then note paragraph 55 of Mr Kelly’s Statement of Evidence dated 24 February 2022, which reads:

“55. Doubt is raised [11.2] about the extent to which the traffic modelling reflects the existing environment, in relation to development which is consented but not yet constructed. As noted in the 29 September 2021 response to Council (Question 4), the only relevant development identified by Council in this category was the proposed extension to the Mitre 10 Mega store at Kāpiti Landing. It was agreed with Council that the scale of this extension was small and that consequentially no further action was required.”

16 I further note, from the s42A Report, at paragraph 13.2(b) on page 10 of Mr Trotter’s Transportation Appendix C, a record of the following question put to Mr Kelly and Mr Kelly’s response:

“(b) It is unclear that the traffic modelling reflects the existing environment. In particular, it is unclear that the traffic modelling has considered consented, but not yet constructed, development in the vicinity (including within Kāpiti Landing).

My reply: *The modelling includes the consented developments (only Mitre 10 Mega extension consent) at Kāpiti Landing and the effects on the roundabout at Friendship Place/Kāpiti Road have been assessed.”*

17 I can find nothing which suggests that Mr Kelly’s SIDRA traffic model has taken into account any of the potential controlled activity development within the Airport Zone. If some of that potential development has been taken into account, it is unclear how much has been taken into account.

- 18 I then draw the Commission's attention to the following excerpts from the Statement of Evidence of Neil Scott Trotter (for KCDC) dated 10 February 2022 (which I will refer to and read):
- a. paragraph 3.4 on page 3;
 - b. paragraph 4.1 on page 3;
 - c. paragraph 4.3 on page 4;
 - d. paragraphs 6.4 and 6.5 on page 5;
 - e. paragraphs 7.9 and 7.12 on page 8;
 - f. paragraph 12.3(c) on page 12, specifically including reference to Figure 3-2 on page 13 (**Ihakara Street Link**).
- 19 I draw the Commission's attention to the concerns expressed by Mr Andy Carr in his Statement of Evidence for this hearing. I will not repeat them as they are self-explanatory.

Conclusion

- 20 This application seeks non-complying activity consent. Taking all of the above into account I submit that the Commission:
- a. does not have the factual information, particularly traffic modelling data, necessary to enable the Commission to reach an appropriate determination in relation to adverse effects being no more than minor; and
 - b. is therefore unable to form an appropriate opinion as to whether or not the outcome of a grant of consent would or would not be contrary to relevant transportation related objectives and policies.
- 21 TKL is not seeking to place all responsibility for an upgraded intersection on the Applicant. Nor is it seeking to escape what might be its future contribution to an intersection upgrade. What TKL is seeking is to ensure is that:
- a. there is a clear understanding of the nature and extent of intersection upgrade that would (at least) be required in future if this application is granted, taking into account existing, zoned, controlled activity status development in the Airport Zone;
 - b. steps are taken now to ensure availability of land (on the Applicant's side of Kāpiti Road) to accommodate and enable such future intersection upgrade;

- c. the Applicant makes an appropriate contribution, by way of works at this time, towards such future intersection upgrade (ie: not just pay for short term works for its own purpose, without taking into account the ability for long term works which will be required in the future);
 - d. a consent granted to this application will not effectively preclude the ability for Council to grant consent to controlled activity status development within the Airport Zone, subject to conditions which can be implemented.
- 22 TKL is simply in a position of not knowing what the potential effects are and therefore what the potential consequences are. There is a lack of information, and there is conflicting information. I submit that the Commission could consider (at the appropriate time) an adjournment of this hearing and issuing Directions which might address some or all of the following:
- a. clarification as to which traffic model is, or should be, used;
 - b. clarification about the Council's intentions concerning the Ihakara Street Link;
 - c. a Direction that traffic modelling include an assumption of implemented development within the Airport Zone of 102,900m² GFA, based on the split 30% (existing) retail development/70% medium density residential development;
 - d. the modelling to predict outcomes both with and without the Ihakara Street Link;
 - e. those modelling results to be provided prior to the Joint Witness Conference of traffic experts;
 - f. there be an opportunity for all parties to give closing submissions following circulation of the Joint Witness Statement, reserving the opportunity to then address relevant objectives and policies.

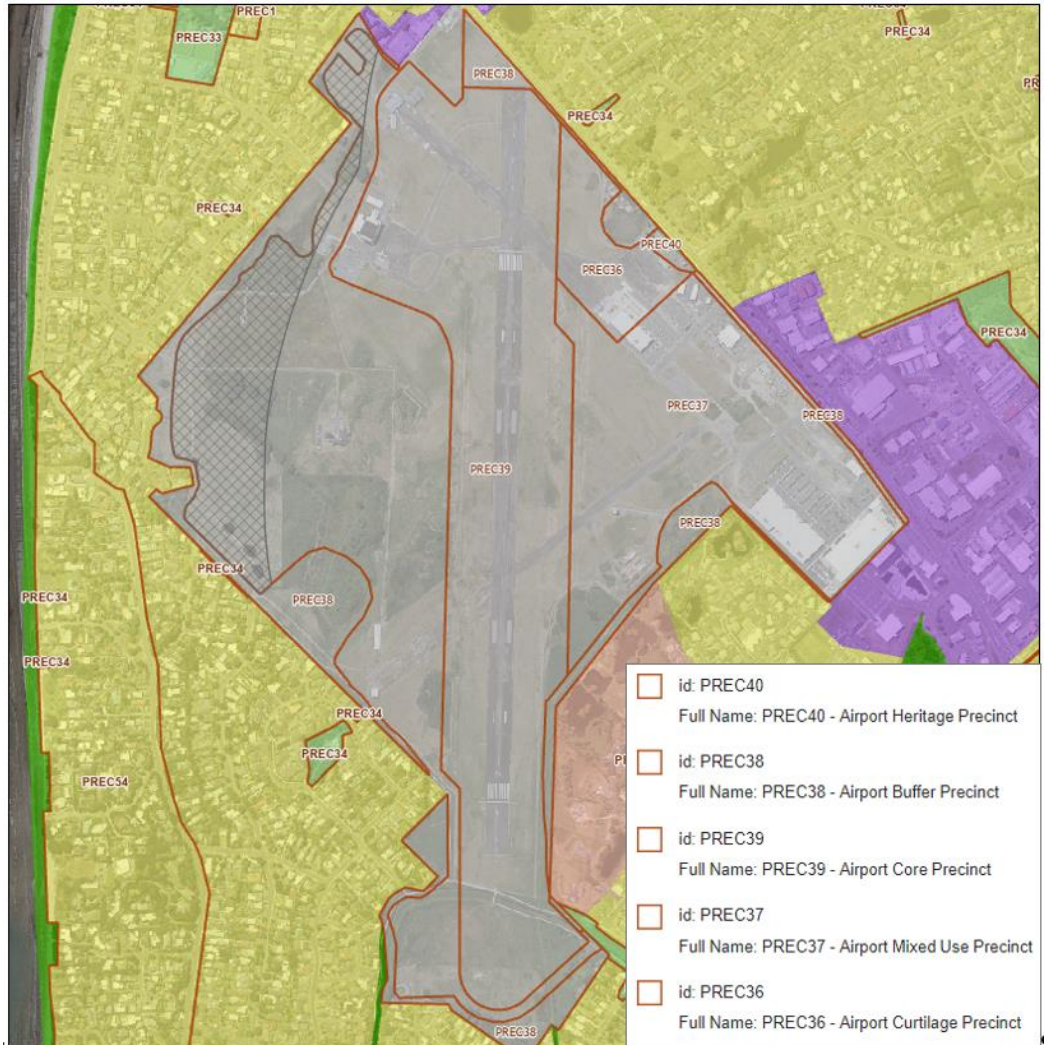
Dated 22 March 2022



**Warwick Goldsmith
Counsel for Templeton Kāpiti Limited**

ATTACHMENT 1

Figure 1: The Airport Zone (grey) and the various Airport Zone Precincts



ATTACHMENT 2

Figure 2: Extract from District Plan Maps showing air noise boundary areas (orange hatch)

