

**Before a Hearings Commissioner Appointed by the  
Kāpiti Coast District Council**

**Under** the Resource Management Act  
1991 (**Act**)

**And**

**In the Matter** of an application under section 88 of  
the Act by Kapiti Retail Holdings  
Limited for the construction and  
operation of a Countdown  
supermarket at 160 Kāpiti Road,  
Paraparaumu RM210151.

**Closing Legal Submissions for  
Kapiti Retail Holdings Limited**

Dated: 14<sup>th</sup> day of July 2022

---

---

**Lane Neave**  
Vero Centre, Level 8/48 Shortland Street,  
Auckland CBD, Auckland 1010  
Solicitor Acting: Joshua Leckie/ Katharine  
Hockly  
Email: joshue.leckie@laneneave.co.nz /  
katharine.hockly@laneneave.co.nz  
Phone: 03 409 0321 / 03 901 0101

**lane neave.**

**Table of Contents**

**INTRODUCTION ..... 2**

**KRHL’S POST HEARING POSITION ..... 3**

**KEY ISSUES ADDRESSED IN CLOSING ..... 4**

**THE SITE ..... 5**

**TRAFFIC EFFECTS ..... 5**

**CONDITIONS ..... 15**

**CONCLUSION ..... 15**

## INTRODUCTION

1. These closing submissions are filed on behalf of Kapiti Retail Holdings Limited (**KRHL**).
2. KRHL's application for resource consent to construct and operate a Countdown supermarket and two retail tenancies (**Proposal**) at 160 Kāpiti Road, Paraparaumu (**Site**) was heard on 22 March 2022 and was adjourned following the completion of hearing evidence.
3. Following the hearing, the Commissioner made directions requesting conferencing of the experts and submissions from legal counsel on the following matters:<sup>1</sup>
  - (a) Planning conferencing as to the potential for additional development that might be expected in the Kāpiti Landing area in the Airport Mixed Use Precinct in terms of permitted activities, controlled activities and recently consented activities.
  - (b) Traffic conferencing and evidence exchange as to potential future changes in traffic volumes on Kāpiti Road, and at the Friendship Road roundabout.
  - (c) Legal submissions as to the assumptions to be made regarding traffic growth volumes and whether the development potential assessed for the Airport Mixed Use Precinct is appropriately limited to permitted activities or should also include controlled activities.
  - (d) Closing legal submissions from the submitters.
4. These directions have been complied with. In particular, Mr Kelly has provided statements of supplementary evidence setting out the details of KRHL's proposed mitigation and the results of traffic modelling of the mitigation.<sup>2</sup> Mr Carr and Mr Trotter have also had the opportunity to provide comment on Mr Kelly's evidence.<sup>3</sup>
5. In order to focus matters, these closing legal submissions do not traverse the detail of the resolved matters covered at the March hearing or matters already addressed in our opening legal submissions. Rather, these submissions focus on the key issues remaining after the hearing including the issues outlined in the directions set by the Commissioner.

---

<sup>1</sup> Kāpiti Coast District Council, Minute 4, 5 April 2022.

<sup>2</sup> Supplementary Statements of Evidence of Tim Kelly, 20 May 2022 and 14 June 2022.

<sup>3</sup> Letters of Evidence of Mr Andrew Carr, 31 May 2022 and 22 June 2022; Comments of Mr Trotter in Council Memorandum in Response to Minute 9; 7 June 2022.

6. We submit that, following receipt of these closing submissions, the hearing can appropriately be closed by the Commissioner.

## **KRHL'S POST HEARING POSITION**

7. Overall, the Proposal represents an opportunity to provide significant employment and economic benefits with minor adverse effects that can be adequately mitigated by proposed conditions.
8. We submit that the traffic related effects of the Proposal are minor. KRHL's original proposal provided adequate mitigation for transportation effects of the Proposal when realistic growth rates are applied, as outlined in KRHL's initial traffic assessment.<sup>4</sup>
9. KRHL acknowledged, however, that there are some limitations in the Council's data in relation to the Saturday peak period that was relied on to derive the modelled growth rates in KRHL's initial traffic assessment. These limitations were originally proposed to be managed by a monitoring condition, which was accepted by Council's experts.<sup>5</sup> However, following the hearing, KRHL amended the Proposal to offer mitigation up-front by way of an additional north west approach lane to the Friendship Place roundabout.
10. The purpose of providing the additional north west approach lane is to provide certainty to the Council that the effects of the Proposal will be mitigated even where there are greater levels of growth on a Saturday peak period than identified in KRHL's modelling. The proposed mitigation substantially more than offsets the effects of the Proposal when the modelled growth rates are applied and continues to offset the effects of the Proposal even when the outer bounds of growth rates are applied over an 8 year period.
11. Overall, the Proposal more than mitigates the effects on the wider transport network. All other effects of the Proposal are no more than minor and are acceptable. The Proposal is not contrary to the objectives and policies of the District Plan. We submit that the Proposal meets both gateway tests set out in section 104D of the RMA and is appropriate to be granted when considering the matters set out in section 104 of the RMA.

---

<sup>4</sup> Tim Kelly Transportation Limited Integrated Transportation Assessment July 2021 at 6; Section 92 Response Letter from Mr Tim Kelly, 9 December 2021, at 3.

<sup>5</sup> Statement of Evidence of Mr Neil Trotter, 10 February 2022 at [7.8] - [7.12].

## KEY ISSUES ADDRESSED IN CLOSING

12. We submit that the following issues have been resolved through the evidence exchange and hearing process:
- (a) Urban design – Mr Knott’s evidence is that the Site has merit for a supermarket from an urban design perspective, meeting the functional requirements for supermarket design. Overall, the Site will generate positive urban design outcomes and enhance the pedestrian amenity of the public realm.<sup>6</sup> The Council’s 42A report author agrees with this conclusion.<sup>7</sup>
  - (b) Economics – it is Mr Colegrave’s evidence that the Proposal will generate positive economic benefits by virtue of job creation and there will be minor adverse economic effects including in relation to distribution effects.<sup>8</sup> Council considers the economic effects of the Proposal to be less than minor and agrees that the Proposal provides general economic benefits.<sup>9</sup>
  - (c) Servicing and infrastructure – as confirmed by the Infrastructure Report provided by Maven Associates appended to the AEE and in Mr Bellingham’s evidence presented at the hearing there is sufficient capacity to provide for the Proposal in infrastructure networks.<sup>10</sup> No outstanding issues have been raised by the Council 42A report author or submitters in this regard.
  - (d) Planning - The evidence of Ms Panther Knight is that the Proposal is generally consistent with Policies BA-P1 and BA-P2 of the District Plan when appraised as a whole.<sup>11</sup> The Council’s planning witness expressed general agreement with respect to Ms Panther Knight’s view on this matter at the hearing and no evidence was filed to the contrary.
13. These closing legal submissions focus the key outstanding matters that arose out of the hearing of the application:
- (a) clarifying the extent of the application Site;
  - (b) traffic effects; and
  - (c) conditions.

<sup>6</sup> Statement of evidence of Richard Knott, 7 March 2022 at [19] and [20].

<sup>7</sup> Council Officer’s Section 42A Report of Marnie Rydon, 28 February 2022 at [55].

<sup>8</sup> Statement of Evidence of Fraser Colegrave, 7 March 2022 at [53(d)], [52] and [61].

<sup>9</sup> Council Officer’s Section 42A Report of Marnie Rydon, 28 February 2022 at [71] and [48].

<sup>10</sup> Infrastructure Report Kāpiti Countdown Site, 160 Kāpiti Road, produced by Maven Associates, 2 July 2021 at 9; Statement of Evidence of Me Bellingham, 8 March 2022.

<sup>11</sup> Statement of Evidence of Kay Panther Knight, 8 March 2022 at [81].

## THE SITE

14. At the hearing, the Commissioner asked KRHL to confirm the exact extent of the Site subject to the Application. The Site is located on 160 Kāpiti Road, Paraparaumu and encompasses all land legally described as Lots 1 and 2 DP 63027 and Lot 3 DP 63992. However, only a portion of this Site is subject to the Application. The extent of the Site is detailed in the Architectural Drawings for the Site at Appendix 2 of the Assessment of Environmental Effects, dated July 2021. The remainder of the Site is not subject to the current consent application.

## TRAFFIC EFFECTS

15. The key outstanding issue that arose during the hearing related to traffic effects. As set out in the memorandum of counsel filed for KRHL on 24 March 2022, KRHL volunteers additional mitigation by way of an additional north west approach lane to the Friendship Place roundabout.
16. The transport mitigation proposed by KRHL now includes:
- (a) general upgrades to the traffic network including the provision of crossing points and an eastbound cycle path to enable cyclists to avoid the roundabout;
  - (b) an additional approach lane from Friendship Place; and
  - (c) the provision of an additional left turn lane on the Kāpiti Road North West approach to the Friendship Place roundabout. The details of the proposed mitigation are outlined in Mr Kelly's supplementary evidence of 20 May 2022. And 14 June 2022.
17. As set out in the evidence of Mr Kelly, the proposed mitigation addresses the adverse effects of the Proposal on the transport network. In summary:
- (a) the proposed mitigation more than compensates for the adverse effects of the proposal where a negative growth rate is applied for the Saturday Peak (which KRHL submits is the most realistic scenario);<sup>12</sup>
  - (b) where Nil growth is applied for the Saturday Peak the proposed mitigation continues to adequately manage the traffic effects of the Proposal (being the scenario that addressed uncertainty in the Council data);<sup>13</sup>

---

<sup>12</sup> Section 92 Response Letter from Mr Tim Kelly, 9 December 2021, at 3.

<sup>13</sup> Evidence in Chief of Tim Kelly, 24 February 2022 at [48]; Statement of Supplementary Evidence of Tim Kelly, 20 May 2022 at [26].

- (c) where 2% growth or a doubling of traffic to Friendship Place (being the outer bounds of potential growth) are applied, the proposed mitigation continues to mitigate the effects of the Proposal on the Friendship Place roundabout. Any future congestion problems at this roundabout will occur irrespective of, and not because of, the Proposal.<sup>14</sup>
18. As a result, we submit that the transportation related effects of the Proposal are no more than minor.

## Traffic Modelling and Effects

### *Traffic Growth*

19. As part of the Application KRHL provided modelling of the potential traffic effects of the Proposal. In order to quantify the potential effects of the Proposal, Mr Kelly established a computer model of the Kāpiti Road corridor (between the Langdale Drive and Arawhata Road intersections). Mr Kelly's model assessed conditions for the periods of highest background traffic demand during the weekday evening and Saturday late morning peak periods. The model was intentionally developed to assess a worst case scenario in terms of the effects of the Proposal.<sup>15</sup> The outcome of the modelling work was to predict a 1.4% week day peak hour growth rate and a -1.5% growth rate for the Saturday peak hour. Under this scenario the proposed North West approach lane is not required to manage the effects of the Proposal.<sup>16</sup>
20. Through a section 92 request on 30 November 2021, the Council requested that KRHL assume a NIL Saturday growth rate instead of a negative Saturday growth rate. This was due to a possible cause of the decline in growth being 'peak-spreading', as drivers respond to congestion by adjusting their travel time.<sup>17</sup> When NIL growth is applied to the Saturday peak period the North West approach lane is required to offset the effects of the Proposal and does so adequately.<sup>18</sup>
21. The actual traffic counts collected June 2018 and November 2020 support Mr Kelly's conclusion that growth for the Saturday peak period would be negative because traffic numbers between these times were declining.<sup>19</sup> As a result, we continue to submit that the evidence that Saturday peak traffic is declining is reliable. However, the Council officers retained concerns as to uncertainty as to the cause of the decline in growth and raised concerns that it may have been due to COVID-19 reasons. Because of this, KRHL offered a monitoring condition as part of the consent

<sup>14</sup> Supplementary Statement of Evidence of Tim Kelly, 20 May 2022 at [14].

<sup>15</sup> Statement of Evidence Tim Kelly, 8 March 2022 at [26] – [35].

<sup>16</sup> Tim Kelly Transportation Limited Integrated Transportation Assessment July 2021 at 6.

<sup>17</sup> Statement of Evidence Tim Kelly, 8 March 2022 at [41].

<sup>18</sup> Section 92 Response Letter from Mr Tim Kelly, 9 December 2021, at 3.

<sup>19</sup> Statement of Evidence Tim Kelly, 8 March 2022 at [41]

application that would require the North West approach lane to be built if peak Saturday traffic was in fact NIL rather than in decline. The Council's traffic engineer Mr Trotter supported the application with the monitoring condition proposed. Mr Trotter did not consider any other mitigation was required beyond that proposed.<sup>20</sup>

22. At the hearing questions were raised about the transport assessments made and the potential uncertainty in the data. Conferencing by the traffic experts was recorded in Joint Witness Statement on Transportation dated 29 April 2022. Mr Kelly and Mr Carr had different views in the traffic conferencing. Mr Kelly retained his view that traffic growth would most likely be negative and could be assessed as NIL if uncertainty was to be accounted for.<sup>21</sup>
23. Mr Carr provided a view that 0.6 percent growth should be applied for the Saturday peak. Mr Carr calculated this growth rate by excluding the November 2020 testing and applying only the 2017 to 2019 testing.<sup>22</sup> My Kelly's view was that this approach was not accurate as it excluded reliable data from the calculation.<sup>23</sup>
24. Overall, we submit that Mr Kelly's evidence is reliable in terms of realistic traffic growth being in decline on the Saturday peak period. However, to provide certainty in terms of the traffic effects of the proposal, KRHL volunteers to build the additional North West Approach Lane prior to the operation of the Proposal. This is despite the KRHL's position that Mr Kelly's predictions of negative growth are accurate.
25. The modelling carried out by Mr Kelly demonstrates that the North West approach lane more than offsets its own effects when a negative or a NIL growth rate is applied for the Saturday Peak period.<sup>24</sup> The stress testing addressed in Mr Kelly's supplementary evidence below also demonstrates that the same would be true if a 0.6 % per annum growth rate is applied as supported by Mr Carr.<sup>25</sup> However, this has not been specifically modelled.

### ***Stress Testing***

26. As requested by the Commissioner, Mr Kelly provided a further assessment of the proposed mitigation and the Proposal against higher growth scenarios for the purposes of stress testing.<sup>26</sup> Mr Kelly has assessed a growth rate of 2% per annum for both peak weekday and Saturday periods<sup>27</sup> and assessed a doubling of traffic

---

<sup>20</sup> Evidence of Mr Neil Trotter, 10 February 2022 at [7.8] - [7.12].

<sup>21</sup> Joint Witness Statement on Transportation, 29 April 2022 at [16] – [23].

<sup>22</sup> At [16] – [23].

<sup>23</sup> Joint Witness Statement on Transportation, 29 April 2022 at [16] – [23].

<sup>24</sup> Supplementary Statement of Evidence of Tim Kelly, 20 May 2022.

<sup>25</sup> Supplementary Statement of Evidence of Tim Kelly, 20 May 2022.

<sup>26</sup> Supplementary Statement of Evidence of Tim Kelly, 20 May 2022.

<sup>27</sup> At [38].



activity to/from Friendship Place.<sup>28</sup> We submit that a 2% increase is substantial as it results in 16% growth over the 8 year modelling period.<sup>29</sup> It was agreed by the transport experts in conferencing that 2% per annum can be considered to be at the outer bounds of projected annual growth that might occur in the future.<sup>30</sup>

27. Mr Kelly's evidence reaches the following conclusions on this modelling:
- (a) The roundabout at Kāpiti Road / Friendship Place would fail during both peak periods at a 2% growth rate irrespective of the Proposal. The combined effect of the Proposal and mitigation measures would result in neutral effects at the weekday PM peak and would be beneficial in reducing overall levels of delay (Saturday peak) at the roundabout compared to a scenario where the Proposal and mitigation is not developed.<sup>31</sup>
  - (b) The effects of doubling traffic activity to/from Friendship Place would lead to extensive delays at the roundabout irrespective of the Proposal. The combined effect of the Proposal with mitigation measures would be beneficial in terms of reducing overall levels of delay at Friendship Place entry to the roundabout compared to a scenario where the Proposal and mitigation is not developed.<sup>32</sup> It is noted, as discussed at paragraph 44 below, that controlled activity consent requirements mean that future activities at Kāpiti Landing will be required to offset their own effects and, therefore, do not fall to be part of the receiving environment to be assessed by the Commissioners.
28. The above conclusions demonstrate that the mitigation proposed will manage the transport effects of the Proposal. Even for scenarios which assume higher rates of background traffic growth or much higher levels of development within the Kāpiti Landing area, the modelling by Mr Kelly demonstrates that the combined effect of the supermarket and mitigation measures will be to improve conditions relative to those which would otherwise have existed.

### ***Mr Carr's stress testing***

29. Mr Carr's letter dated 26 June 2022 responds to Mr Kelly's modelling. Mr Carr takes a different approach to the stress testing of some aspects of the traffic generation associated with Proposal, as explained at page 4 of Mr Carr's letter.<sup>33</sup>

---

<sup>28</sup> At [49] – [52]

<sup>29</sup> At [39].

<sup>30</sup> Joint Witness Statement on Transportation, 29 April 2022 at [23].

<sup>31</sup> Supplementary Statement of Evidence of Tim Kelly, 20 May 2022 at [45].

<sup>32</sup> At [52].

<sup>33</sup> Letter of Mr Carr, 22 June 2022 at 4.

30. The approach taken by Mr Carr has been to use a process of back-calculation to estimate traffic demands, rather than request this information from Mr Kelly. While Mr Kelly has liaised closely with Council regarding the validity of his assumptions and conclusions, Mr Carr does not appear to have done so.
31. Despite the differences in approach both experts agree that when a 2% per annum growth rate is applied to background traffic movements using the roundabout, the proposed mitigation offsets the adverse effects of the supermarket.<sup>34</sup>
32. Mr Carr goes on to model a doubling in traffic from Friendship Place in addition to a 2% increase on the other approaches. He states that when this modelling is applied the adverse effects are slightly worse if the supermarket and mitigation is in place than if it is not. Mr Carr notes that the increase in traffic effects caused by the supermarket in his modelling is not large at only 15 seconds per vehicle.<sup>35</sup>
33. Mr Carr's modelling approach to doubling the traffic on Friendship Place differs from that carried out by Mr Kelly because it models the cumulative effects of a 2% increase in the wider network plus the doubling of the traffic to the Friendship Place approach, while Mr Kelly considers the two scenarios separately.
34. We submit that each of these scenarios can be considered to represent a 'worst-case', which is highly unlikely to eventuate. To combine both together results in a scenario substantially beyond what is realistic and therefore has little relevance to decision-making.
35. We note the following with respect to Mr Carr's modelling of the cumulative effects of 2% growth plus a doubling of traffic on Friendship Place:
- (a) The purpose of Mr Kelly's modelling of a doubling of traffic to Friendship Place was to provide the Commissioner with some context for the outcome if theoretical significant development occurred at the Airport Zone with unmitigated traffic effects. However, as set out in paragraph 44 below, as a result of the matters of control in the District Plan, it is not realistic to consider that there will be development occurring at the Airport Zone with unmitigated transport effects. It is also not legally correct to consider such effects as part of the receiving environment. Therefore, this scenario is not directly relevant to the assessment that the Commissioner is required to apply to the effects of the Proposal.

---

<sup>34</sup> Letter of Mr Carr, 22 June 2022 at 4 and Supplementary Statement of Evidence of Tim Kelly, 20 May 2022 at [37] – [45].

<sup>35</sup> Letter of Mr Carr, 22 June 2022 at 4.

- (b) Even if Mr Carr's modelling is accepted as being relevant to the consideration of the Proposal, the adverse effects that Mr Carr claims could only be categorised as minor, being only a 15 second delay. This small delay cannot be considered more than a minor effect in the context modelled by Mr Carr, which includes significant growth beyond the outer limit of expected growth agreed by all traffic experts (as being 2%pa growth).

### ***Outcome of transport modelling***

36. Overall, the modelling carried out by Mr Kelly shows that the Proposal will more than mitigate its own effects, even in a scenario where the outer bounds of growth rates are applied over an 8 year period. When more realistic growth rates are considered, the Proposal (with the proposed mitigation) provides an overall benefit to the network in addition to mitigating the effects of the Proposal.
37. For the above reasons, we submit that the proposed traffic mitigation is more than sufficient to mitigate the effects of the Proposal. The traffic effects of the Proposal will fall between less than minor and positive in terms of the traffic effects on the Friendship Place intersection.
38. We further submit that Templeton Kāpiti Limited (**TKL**), Young Supermarkets Limited (**YSL**) and Modern Merchants Limited (**MML**) exaggerate the level of effects likely to be produced by the proposal by focusing on the impacts of the outcome of growth at around 2% per annum. This is particularly the case when Mr Carr has predicted a 0.6 % per annum growth rate.<sup>36</sup> Mr Kelly's assessment and evidence demonstrates, with clear detail, that the most likely scenario is that there will be negative growth on a Saturday peak period and that the likely worst case would be NIL growth, when uncertainty in the Council's data is accounted for. Mr Kelly's assessment on these matters has been accepted by the Council's traffic expert in terms of the assessment of the Proposal.<sup>37</sup> In this respect we submit that TKL's closing submissions contain a substantial overstatement where TKL submits that Mr Carr's evidence shows that '*[t]he potential adverse consequences on the operation of the intersection are **significant***'.<sup>38</sup> This conclusion simply cannot be drawn from Mr Carr's evidence.
39. In their closing submissions, YSL and MML submit that KRHL is doing the minimum in terms of mitigation of traffic effects in the context of potential future growth in the wider network. For the above reasons, we disagree with this submission.<sup>39</sup> The

<sup>36</sup> Joint Witness Statement on Transportation, 29 April 2022 at [16] – [23].

<sup>37</sup> Statement of Evidence of Mr Neil Trotter, 10 February 2022 at [7.8] - [7.12].

<sup>38</sup> Closing Legal Submissions of Templeton Kāpiti Limited, 28 June 2022 at [7]

<sup>39</sup> Closing Legal Submissions of Young Supermarkets Limited and Modern Merchants Limited, 28 June 2022 at [13].

Proposal goes well beyond the minimum required to manage its adverse effects. YSL and MML request that KRHL provide wider long-term network infrastructure as part of the Proposal. As held in *Laidlaw College Inc v Auckland Council (Laidlaw)* an applicant is not required to resolve existing broad infrastructure problems within an area as part of the consenting of a specific proposal.<sup>40</sup> Rather, the focus is to be on the effects of the proposal itself. It is for the Council to develop and apply a strategic approach to managing the effects of the longer term transport growth on Kāpiti Road that YSL and MML are concerned about. It would be inappropriate for this burden to be placed on KRHL in respect of the Proposal, which has been demonstrated to mitigate its own effects.

### Receiving Environment

40. KRHL maintains the position it has adopted throughout these proceedings in relation to the legal receiving environment for the purposes of assessing transport effects of the Proposal. That is, consideration should be constrained to permitted activities and consented activities as per the Court of Appeal's findings in *Queenstown Lakes District Council v Hawthorn Estate Limited*.<sup>41</sup>
41. The rule framework for the Airport Zone further supports restricting the assessment of the receiving environment to permitted and consented activities. As set out at paragraphs 19 – 23 of KRHL's supplementary submissions,<sup>42</sup> any new building in the Airport Mixed Use Precinct requires a controlled activity consent under Rule AIRPZ-R13. One of the matters of control is '*expected traffic generation from the Airport Zone*'. Therefore, the Council can impose conditions on all consents for *all* new buildings to ensure that traffic generation is appropriately managed, including in relation to road upgrades.<sup>43</sup> In light of this rule framework it is inappropriate to require KRHL to mitigate the effects of future controlled development at the Airport Mixed Use Precinct as part of the current Proposal.
42. In their closing submissions YSL and MML accept that the effects on Friendship Place of future controlled and restricted discretionary activities in the Airport Mixed Use Precinct would be considered as part of the consent process for those activities. They further accept that when the correct legal receiving environment is considered with respect to these activities the modelling shows that that the potential effects on Friendship Place will be mitigated.<sup>44</sup>

---

<sup>40</sup> [2011] NZEnvC 248

<sup>41</sup> (2006) 12 ELRNZ 299 (CA) at [84].

<sup>42</sup> Supplementary legal submissions for Kapiti Retail Holdings Limited, 5 May 2022.

<sup>43</sup> Except for *minor buildings*.

<sup>44</sup> Closing Legal Submissions of Young Supermarkets Limited and Modern Merchants Limited, 28 June 2022 at [6] – [7].

43. On the other hand, TKL reiterates its concerns about the impact of the traffic impacts of future controlled activities from its land on the future road network and restates its position that these effects should be considered by the Commissioner under sections 104(1)(a), (b) and (c) of the RMA.<sup>45</sup>
44. We submit that TKL's closing submissions fail to acknowledge the matters of control contained in the District Plan that that are specifically for the purposes of managing the traffic effects of future controlled activities in the Airport Mixed Use Precinct. It is the intention of the District Plan framework that the Council can impose conditions on TKL's future consents to ensure that effects on Kāpiti Road and the wider transport network arising from traffic generation associated with activities in the Airport Mixed Use Precinct are appropriately managed, including in relation to future road upgrades.<sup>46</sup>
45. TKL raised concerns at hearing that if the traffic impacts of the development in the Airport Mixed Use Precinct are not managed as part of the current proposal this could result in frustrating TKL's future controlled activity consents. TKL have subsequently conceded that the Proposal and associated mitigation does not prevent future mitigation works from being feasible.<sup>47</sup>
46. TKL has changed its focus to raise concerns that future mitigation works to manage the traffic effects from TKL's activities would involve cost to TKL.<sup>48</sup> The High Court in *Westfield (New Zealand) Limited v Hamilton City Council (Westfield)* held, in the context of controlled activities, that a consent is not "negated", or rendered "impracticable" of "frustrated", merely because it requires the carrying out of works which might be expensive.<sup>49</sup>
47. TKL submits that the additional costs on TKL would be *considerable*.<sup>50</sup> However, TKL has provided no evidence to demonstrate that additional costs would be imposed on TKL, let alone *considerable* costs. We submit that the claims of TKL in this regard are unsubstantiated.
48. As TKL has acknowledged, the Proposal will not prevent TKL from mitigating the effects of its own yet to be consented future activities,<sup>51</sup> it is evident that TKL's main motivation is to reduce the costs of its own future mitigation and push these costs onto KRHL as part of the current consent process. We submit that it would be

---

<sup>45</sup> Closing Legal Submissions of Templeton Kāpiti Limited, 28 June 2022.

<sup>46</sup> Except for *minor buildings*.

<sup>47</sup> Memorandum of Counsel on behalf of Templeton Kāpiti Limited in response to Minute 7, 11 May 2022.

<sup>48</sup> At [5]

<sup>49</sup> (2004) 10 ELRNZ 271 at [51] – [56].

<sup>50</sup> Memorandum of Counsel on behalf of Templeton Kāpiti Limited in response to Minute 7, 11 May 2022 at [5]

<sup>51</sup> Memorandum of Counsel on behalf of Templeton Kāpiti Limited in response to Minute 7, 11 May 2022.

inappropriate for the Commissioner to impose requirement on KRHL for the purpose of achieving this result.

49. TKL submits that it would not have been difficult for KRHL to have modelled the operation of the intersection assuming the supermarket is consented and assuming 102,900m<sup>2</sup> development within the Airport Zone,<sup>52</sup> being the development of future controlled and restricted discretionary activities. However, such modelling would not have assisted the Commissioner to assess the effects of the proposal against the correctly defined legal receiving environment. Accordingly, we submit that such modelling would not have been a helpful exercise for the purposes of the Commissioner's consideration of the Proposal.
50. Overall, we submit that TKL's concerns about the costs of its own consenting exercise should not be given weight when considering the effects of the current Proposal.

### **Extent of Traffic Generation Effects KRHL to Mitigate Against**

51. A relevant issue for the Commissioner's consideration is the extent to which KRHL's mitigation of adverse traffic generation effects should account for growth in the surrounding receiving environment generally. The Environment Court's decision in *Laidlaw*<sup>53</sup> provides useful commentary on the issue stating:<sup>54</sup>

*The extent of the area that needs to be considered as being potentially affected by adverse traffic effects is a matter which needs to be decided in the context of each particular case. Whilst we agree with the general principle that an applicant is not required to resolve existing infrastructure problems, neither should it add significantly to them. The question is always one of degree depending on the facts of each case. The focus must be on the effects which arise from a particular proposal in the context of the particular environment into which it is sought to be transposed.*

52. KRHL submits that, in light of the above case law, in considering the adequacy of the mitigation proposed, the key focus should be the extent to which it manages the adverse effects of the Proposal. We accept that an assessment of the environmental effects has a future element. However, KRHL should not be required to provide mitigation against growth on Kāpiti Road for an indefinite period into the future.
53. Mr Kelly's growth predictions have been carried out to a design year of 2026. The purpose of doing so was to account for growth for a few years after the Proposal can be expected to be operational.<sup>55</sup> We submit that the above growth modelling to

<sup>52</sup> Closing Legal Submissions of Templeton Kāpiti Limited, 28 June 2022 at [8].

<sup>53</sup> [2011] NZEnvC 248.

<sup>54</sup> At [38]

<sup>55</sup> Statement of Supplementary Evidence of Tim Kelly, 20 May 2022 at [23].

2026 takes a responsible approach to expected traffic conditions in light of potential future growth on the network and sets an appropriate basis against which to consider the traffic effects of the Proposal and improvements of the proposed mitigation.<sup>56</sup> As outlined in Mr Kelly's evidence the mitigation proposed is not required where realistic traffic growth rates are applied to 2026.<sup>57</sup> Therefore, we submit that when these realistic growth rates are applied the proposed mitigation will result in net positive effects on the network.

### **Safety effects**

54. KRHL submits that the safety effects of the proposed mitigation are appropriate.

### ***North West Approach***

55. At the hearing a possible safety concern was raised with respect to the additional northwest approach lane at the Kāpiti Road/ Friendship Place roundabout. The roundabout at Kāpiti Road / Friendship Place was originally constructed to provide two lanes of traffic with through movements on the left lane which created safety issues.<sup>58</sup> Mr Kelly's evidence notes this same issue will not occur as part of the proposed mitigation design due to the additional lane being dedicated to left-turning movements only.<sup>59</sup> There is a further consent condition requirement for a post design safety audit,<sup>60</sup> which will ensure that any potential residual safety issues with the proposed mitigation are identified and managed.

56. We submit that the proposed intersection design along with the proposed conditions of consent appropriately address any possible safety effects of the proposed North West Approach.

### ***Friendship Place approach***

57. In terms of the additional left turn lane at Friendship Place, both Mr Nixon for YSL and MML and Mr Trotter for Council noted that any safety issues would be minor and would pass a safety audit.<sup>61</sup>

58. In their closing submissions, YSL and MML again raise concerns about the safety, effectiveness and adequacy of the proposed Friendship Place additional left turn lane. YSL and MML note that they requested that this matter be addressed in

---

<sup>56</sup> At [23].

<sup>57</sup> Evidence in Chief of Tim Kelly, 24 February 2022 at [48]; Statement of Supplementary Evidence of Tim Kelly, 20 May 2022 at [26].

<sup>58</sup> Supplementary Statement of Evidence of Tim Kelly, 20 May 2022 at [21].

<sup>59</sup> At [2.1]- [22].

<sup>60</sup> Proposed consent condition 24.

<sup>61</sup> Council recording of hearing Part 2 at 3:15 and 38:20.

conferencing.<sup>62</sup> We submit that further conferencing on this matter is not required because, as noted above, the evidence at the hearing for YSL and MML was that any safety issues would be minor and the proposed left hand lane would pass a safety audit. We submit that the evidence from the hearing was sufficient for the Commissioner to make a finding that the proposed mitigation is appropriate. Further conferencing on this matter would have provided little utility.

## CONDITIONS

59. Following the hearing KRHL filed amended conditions of consent to reflect comments from the Council Section 42A report provided on 15 March 2022 and other matters raised during the hearing.
60. Further amendments have now been made to the conditions of consent to update the reference to the transportation plans and in relation to the bus stops illustrated on the transportation plans.
61. With respect to the bus stops illustrated on the transportation plans, a question was raised by the Commissioner at the hearing as to whether the Council had control of the location of bus stops. It is acknowledged that Greater Wellington Regional Council is required to be involved in decisions about bus stop locations. For this reason, KRHL has included an advice note at proposed Conditions 1 and 15 that the proposed bus stop locations on the consent plans are indicative only. KRHL does not rely on any mitigation with respect to these bus stops in terms of the traffic effects of the consent application. Accordingly, we submit that the proposed advice note is appropriate.
62. KRHL have provided the draft conditions of consent to the section 42A report author who, along with review by Mr Trotter on behalf of Council, has confirmed agreement with the proposed conditions of consent.
63. A tracked change version of the final updated conditions of consent are appended to these closing legal submissions at **Appendix 1** and a clean version of the final conditions along with the proposed plan bundle is attached at **Appendix 2**.

## CONCLUSION

64. KRHL submits that the remaining issues post hearing have now been resolved. Overall, Mr Kelly's evidence demonstrates that the Proposal more than mitigates the effects on the wider transport network. All other effects of the Proposal are no more than minor and are acceptable. The proposal is not contrary to the objectives and

---

<sup>62</sup> Closing Legal Submissions of Young Supermarkets Limited and Modern Merchants Limited, 28 June 2022 at [19].



policies of the District Plan. We submit that the proposal meets both gateway tests set out in section 104D of the RMA and is appropriate to be granted when considering the matters set out in section 104 of the RMA.

Dated 14<sup>th</sup> day of July 2022



---

Joshua Leckie / Katharine Hockly  
Counsel for Kapiti Retail  
Holdings Limited