

**KAPITI COAST DISTRICT COUNCIL**

**APPLICATION FOR RESOURCE CONSENT: RM210151 – KAPITI RETAIL HOLDINGS LTD**

**MINUTE 6 OF COMMISSIONER**

1. Thank you to the parties for responding to Minute 4 and Minute 6. I appreciate the work being done by the parties to assist me in this case.
2. Before I confirm the next steps, I have some questions of clarification as follows:

**For the Applicant (Mr Leckie):**

**(a) Controlled activities as part of the receiving environment**

3. In paragraph 18 and 19 you have made references to the *Wilson* and *Hawthorn* cases, noting that the Court of Appeal in *Hawthorn* observed that borrowing the “fanciful” criterion from the permitted baseline line of cases was not justified when considering the meaning of environment.
4. You have referenced the following finding:

*“Such an approach would be a much less certain guide when consideration is being given to whether or not future resource consent applications might be made, and if so granted, in a particular area. It would be too speculative to consider whether or not such consents might be granted and to then proceed to make decisions about the future environment as if those resource consents had already been implemented.”* (my emphasis)

5. Your submission is that the findings and observations in *Hawthorn* require the Commissioner to restrict consideration of the receiving environment to permitted activities and resource consents which have been granted. However, the quotation above, with the words I have underlined, seems to imply the Court was taking into account a situation there where consents might not be granted.
6. My question therefore is whether the *Hawthorn* case is directly applicable to the current situation where we are considering whether to assess the effects from controlled activities, which must be granted.

**(b) Development out of zone**

7. In paragraph 21 you have stated:

*“The above observation from the Environment Court demonstrates that it was the intention of the rule framework in the Airport Mixed Use Precinct to give the Council the ability to progressively manage traffic impacts. The rules allow the Council to ensure that the traffic generation impacts of the development at the Airport Zone are managed either through wider network upgrades or by the developer at the time of development.”* (my emphasis)

8. Mr Goldsmith has made the point that (in paragraph 3) the application before us is for an activity that is not anticipated (as a Non-Complying Activity) and it is proposed on land outside of the Airport Zone.
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9. My question therefore is, in the circumstances of this proposal (Non-Complying Activity outside of the Airport Zone), is it the legal position that the assessment of effects on the adjacent Airport Zone should be restricted to only (the very limited) permitted activity development in that zone.

**(c) Suggested next steps**

10. Please clarify your suggestions in paragraph 42.
11. Firstly, in (i) are you suggesting that the transportation experts limit their consideration to the mitigation of the north-west approach lane on Kapiti Road (and not also on the Friendship Place roundabout)?
12. Secondly, I am unclear as to the intent of the words I have underlined in (ii), i.e.

*“the results of Mr Kelly’s modelling and whether they demonstrate that the proposed mitigation mitigates the traffic generated by the Proposal regardless of the growth on Kāpiti Road or within the Airport Zone.”*

13. Can you please clarify this, as I understood a growth rate of (only) 2% was agreed to be applied to Kapiti Road, and also that the Applicant is maintaining that there is no need to assess growth rates through the roundabout (other than the doubling of traffic as has been assessed by Mr Kelly).

**For Mr Goldsmith:**

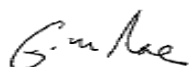
14. Can you please clarify the statement in paragraph 19 (b): *“A grant of consent to the Proposal may effectively preclude any opportunity for TKL to carry out any modifications to the Intersection required to enable implementation of TKL’s zoned 102,900m<sup>2</sup> GFA controlled activity development potential.”*
15. I understand this to be a point you made in legal submissions at the hearing, but don’t believe I have received any evidence on this. I also understand Mr Leckie’s submissions (in paragraph 25) to be that the road reserve land is extensive and can provide for extended future mitigation works on Kapiti Road, and also that TKL owns the land along the full south frontage of the Friendship Place roundabout. It is not clear to me how the grant of consent, with the mitigation works included with the current application (or offered through conditions of consent), may preclude TKL from carrying out any modifications to the intersection for its own future development.

**Conclusion**

16. I look forward to receiving responses to these questions at your earliest convenience and will then issue further directions.

**DATED** this 6<sup>th</sup> day of May 2022

Signed by



**GM Rae, Independent Commissioner**

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