

**Before an Independent Hearings Commissioner appointed by
the Kāpiti Coast District Council**

Under the Resource Management Act 1991 (Act)
In the matter of an application under s 88 of the Act by Kāpiti Retail
Holdings Limited for the construction and operation of a
Countdown supermarket at 160 Kāpiti Road, Paraparaumu
(RM210151)

**Closing legal submissions on behalf of Young Supermarkets Limited and
Modern Merchants Limited**

Date: 28 June 2022



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INTRODUCTION

- 1 These closing legal submissions are on behalf of Young Supermarkets Limited (YSL) and Modern Merchants Limited (MML) in relation to Kāpiti Retail Holdings Limited's (KRHL) application for resource consent in respect of the construction and operation of a Countdown supermarket and two trade retail tenancies (Proposal) at 160 Kāpiti Road, Paraparaumu (Site).
- 2 These legal submissions are limited to addressing outstanding matters following conferencing of the transport experts, and receipt of the supplementary evidence of Tim Kelly on behalf of KRHL, Neil Trotter on behalf of Kāpiti Coast District Council (KCDC), and Andy Carr on behalf of Templeton Kāpiti Limited (TKL).
- 3 The key issue from the perspective of YSL and MML continues to be the potential for the Proposal to generate adverse transport effects, particularly on the operation of Kāpiti Road and the Kāpiti Road / Friendship Place roundabout (Roundabout).

TRANSPORT AND TRAFFIC EFFECTS

Mitigation works on the north-western approach to the Roundabout, on Kāpiti Road

- 4 The position that appears to have been reached through conferencing and the exchange of supplementary evidence is that mitigation measures proposed on the north-western approach to the Roundabout are broadly appropriate, in the context of conditions requiring a future road safety audit and a detailed design process.

Mitigation works required on the Friendship Place approach to the Roundabout

- 5 The position that appears to have been reached based on Mr Carr's supplementary evidence is that:
 - 5.1 The modelling results of both Mr Kelly and Mr Carr show that the Roundabout is operating very close to (or at) its practical maximum capacity.
 - 5.2 If low (2% per annum) traffic growth is allowed for on Friendship Place, then the proposed mitigation measures (in the form of a short left turning lane) will mitigate the effects of the additional traffic generated by the Proposal.
 - 5.3 If higher traffic flows are allowed for on Friendship Place, then the effects are not mitigated.
 - 5.4 The outcome on Friendship Place is very sensitive to the length of the proposed left turning lane.
- 6 In terms of the third point in this list, it is understood that such growth would require consideration of the effects of activities for which resource consents might be granted in the future. YSL's and MML's

position on this legal issue is set out in their memorandum in response to Minute 6 dated 5 May 2022.

7 The consequence is that the modelling results appear to suggest that the potential effects on Friendship Place are mitigated.

8 That is not, however, the end of the matter, given Mr Nixon's concerns around the proposed design of the left turning lane have not been addressed by KRHL through this hearing process:

8.1 Mr Nixon explains in his evidence that this additional left turning lane is 'very short' and its design is not consistent with good design practice.¹

8.2 While the modelling may show that the proposed design is effective, Mr Nixon's view is that the modelling should not be used to justify what he considers to be non-standard geometry.²

8.3 There is potential for a safety audit (required by the proposed consent conditions) to require lengthening of the proposed left turning lane.³

9 It should be noted that while YSL and MML requested that this matter be addressed through conferencing, it was not.

10 Therefore, YSL's and MML's position continues to be that without a more conventional left turning lane there is some doubt about the effectiveness and adequacy of the proposed mitigation.

Mitigation works – efficiency

11 KRHL accepts that accounting for traffic growth forms part of the assessment of effects relevant to the Proposal. The transport experts clearly agree on this matter too.

12 From YSL's and MML's perspective, there remains an unexplained inconsistency with the growth rates that have been applied to the modelling and growth that may be reasonably anticipated on the wider transport network in the context of broader economic development (which KRHL's economic evidence anticipates). TKL has also raised the issue through the hearing that significant further development near the Site is anticipated.

13 While KRHL is not required to resolve all existing and future issues with the public road network, it must address the effects that arise from the Proposal in the context of the receiving environment.⁴ In this regard, at best, KRHL appears to be doing the bare minimum.

14 The modelling shows that the Friendship Place mitigation works are by no means future-proofed. It therefore seems likely that more substantial

¹ Statement of evidence of Michael Nixon dated 15 March 2022 [18].

² Statement of evidence of Michael Nixon dated 15 March 2022 [19].

³ Statement of evidence of Michael Nixon dated 15 March 2022 [20].

⁴ *Laidlaw College v Auckland Council* [2011] NZEnvC 248 at [38].

mitigation (such as the signalisation of the Kāpiti Road and Friendship Place intersection) will be required at some stage in the not-too-distant future.

- 15 It continues to be YSL's and MML's perspective that it is a more efficient outcome (including in terms of s 7(b) of the Resource Management Act 1991) if the mitigation works that will be required on Kāpiti Road and Friendship Place are done once and done right.
- 16 It would be a highly undesirable outcome if KRHL completes mitigation works, which soon become not fit for purpose. Based on the modelling results this seems like a likely result.

CONCLUSION

- 17 Overall, it is submitted that there continues to be some uncertainty about whether the Friendship Place mitigation measures will be effective.
- 18 The outcome if consent is granted may not ultimately prove to be an efficient one in a context where the significant development anticipated by TKL takes place.

Date: 28 June 2022



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Stephen Quinn
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Limited and Modern Merchants Limited