

## **Council's Response to Minute 3 - 24th April 2024**

1. For the purpose of this response, the minute requesting further information has been broken down into three sections to address the respective requests from the Hearing Panel.

### **Question:**

2. *The Hearing Panel would be assisted if the Council's reporting officer could provide an explanation of the current legal status of the relevant District Plan provisions, following the Council's decisions on the recommendations of the Independent Hearing Panel (IHP) on the Intensification Planning Instrument (IPI) provisions of the Proposed District Plan (PDP) on 14 March 2024.*

### **Response:**

#### **The 2024 District Plan's legal Status:**

3. The Council made its decision in relation to the recommendations of the Independent Hearings Panel (IHP) on Tranche 1 of the 2024 District Plan on 14 March 2024. The IHP recommendations on the provisions of the ISPP that were not rejected became operative under section 86F of the Act on that date, while the provisions that were rejected complete with the Council's alternative recommendations have been given to the Minister to make the final decision.
4. The decision on the ISPP provisions was notified on 20 March 2024 and both the IHP recommendations and the Council's alternative recommendations had legal effect from that time. Once the Minister has determined which provision they will adopt (either the IHP or Council recommendation), those respective provisions will become operative.
5. The decision on the Part One, Schedule One provisions was notified on 5 April 2024 and had legal effect from that time. These provisions will become operative if there are no appeals after the closing date for appeals.
6. It is expected that the Council decision on Tranche 2 of the 2024 District Plan will be made in early 2025 for those remaining provisions which are yet to be heard by the IHP with potential subsequent recommendations. They will not have legal effect until the Council has notified their decision.

#### **2000 District Plan Rules and legal status:**

7. Table 1 below outlines the rules applicable at the time the application for resource consent was submitted. The legal status of each rule at the time of writing this response (24/04/2024) is noted in the righthand column. This is as follows:
  - "Operative" – The rule has remained operative as it has not yet been superseded by an 'equivalent' rule that has become operative in the 2024 District Plan.
  - "Inoperative" – The rule was operative at the time the application was lodged, however it has since become inoperative as the 'equivalent' rule in the 2024 District Plan has now become operative through the 2024 District Plan process.

**Table 1 – Rules applicable at the time of lodgement.**

Rules	Legal Status
<p><b>Rule 5.4.1 – Non-Residential Activity</b></p> <p>Consent is required for the provision of car parking (including the retaining/support structures) associated with a supermarket as a non-residential activity and is therefore a <b>Discretionary Activity</b> pursuant to <b>Rule 5.4.1</b>.</p> <p>There are no relevant conditions.</p> <p>The proposal is assessed as a <b>Discretionary Activity</b>.</p>	<p><b>Operative</b></p> <p>This rule is still operative as Rule HRZ-R8 of the 2024 Plan which will replace Rule 5.4.1 has legal effect but is not yet operative (as noted in Table 2 below).</p>
<p><b>Rule 5.3.1 – Access</b></p> <p>Consent is required as a Restricted Discretionary Activity pursuant to <b>Rule 5.3.1</b>. The proposed accesses for the carpark on Dekka Street will be 7m in width and Nicholson Road will be 6.6m in width respectively, and therefore does not meet Standard 5.6.1.4 which relates to the maximum width of access.</p> <p>There are no relevant conditions.</p> <p>The proposal is assessed as a <b>Restricted Discretionary Activity</b>.</p>	<p><b>Operative</b></p> <p>This rule is still operative as the replacement provisions under the Transport chapter of the 2024 Plan are part of Tranche 2 and the decision on this is not expected until early 2025. As such these rules do not have legal effect.</p>
<p><b>Rule 5.3.11 – Signs</b></p> <p>Consent is required as a Restricted Discretionary Activity Pursuant to <b>Rule 5.3.11</b>. The proposal includes the installation of four illuminated signs relating to the non-residential activity.</p> <p>There are no relevant conditions.</p> <p>The proposal is assessed as a <b>Restricted Discretionary Activity</b>.</p>	<p><b>Operative</b></p> <p>This rule is still operative as the replacement provisions under the Signs chapter of the 2024 Plan are part of Tranche 2 and the decision on this is not expected until early 2025. As such most of these rules do not yet have legal effect, except those that have immediate legal effect which do not relate to the proposal (being SIGN-R6 &amp; SIGN-R7 relating to heritage and archaeological or sites of significance to Māori).</p>
<p><b>Rule 7.3.1 – Carparks</b></p> <p>Consent is required as a Restricted Discretionary Activity pursuant to <b>Rule 7.3.1</b>. The proposed carpark will exceed 70 carparks (being 101 carparks).</p> <p>The Council’s discretion is restricted to the following:</p> <ul style="list-style-type: none"> <li>• The movement of vehicular traffic to and from the site.</li> </ul>	<p><b>Operative</b></p> <p>This rule is still operative as the replacement provisions under the Transport chapter of the 2024 Plan are part of Tranche 2 and the decision on this is not expected</p>

<ul style="list-style-type: none"> <li>• The impact on the roading network and the hierarchy of roads (see Map 33) from trip patterns, travel demand or vehicle use.</li> <li>• The provision and location of facilities for multiple modes of transport</li> </ul> <p>There are no relevant conditions.</p> <p>The proposal is assessed as a <b>Restricted Discretionary Activity</b>.</p>	<p>until early 2025. As such these rules do not have legal effect.</p>
<p><b>Rule 30.2.1 – Earthworks</b></p> <p>Consent is required as a Restricted Discretionary Activity pursuant to <b>Rule 30.2.1</b>. The proposed earthworks breach the Permitted Activity condition for earthworks under Rule 30.1.1.1(a) and (b) with cuts greater than 2.5m (being 3.5m in height) and the area of works will be greater than 250m<sup>2</sup> (being approximately 2,800m<sup>2</sup>).</p> <p>The Council’s discretion is restricted to the following:</p> <ul style="list-style-type: none"> <li>• Earthworks stability</li> <li>• Erosion, dust and sediment control</li> <li>• Visual amenity, where the cut or fill depth exceeds 2.5m or the area exceeds 250m<sup>2</sup></li> </ul> <p>There are no relevant conditions.</p> <p>The proposal is assessed as a <b>Restricted Discretionary Activity</b>.</p>	<p><b>Inoperative</b></p> <p>This rule is now inoperative as it has been replaced by rule EW-R4 of the 2024 District Plan which is now operative.</p>

8. As Rules 5.4.1, 5.3.1, 5.3.11 and 7.3.1 remain operative under the 2000 District Plan, the application continues to be processed under these rules. In accordance with section 88A of the Act, the activity status of the application remains unchanged under these rules. Overall, the proposal is a **Discretionary Activity** under the 2000 District Plan.

2024 District Plan Rules and legal status:

9. Table 2 below outlines the rules applicable at the time this response was provided. The legal status of each rule at the time of writing this response (24/04/2024) is noted in the righthand column. This is as follows:

- “Operative” – The rule has now become operative under the ISPP process pursuant to section 86F of the Act, and consequently replaces the ‘equivalent’ rule in the 2000 District Plan as noted in Table 1 above.
- “Legal Effect” – The rule has gained legal effect through the Part One, Schedule One process as it has been subject to Council decisions but is still subject to an appeal period. It has not yet become operative.

**Table 2 – Rules applicable at the time of this response.**

Rules	Legal Status
<b>Rule MRZ-R8 – Activities not provided for under Rules MRZ-R1 to MRZ-R5</b>	<b>Legal Effect</b>

<p>Consent is required as a Discretionary Activity pursuant to <b>Rule MRZ-R8.1</b>. The provision of car parking (including the retaining/support structures) associated with a supermarket does not comply with MRZ-R8.1.a as the plan does not provide for the proposed activity.</p> <p>The proposal would be assessed as a <b>Discretionary Activity</b>.</p>	<p>This rule has legal effect through the Part One, Schedule One process but is yet to become operative.</p>
<p><b>Rule HRZ-R8 – Activities not provided for under Rules HRZ-R1 to HRZ-R7</b></p> <p>Consent is required as a Discretionary Activity pursuant to <b>Rule HRZ-R8.1</b>. The provision of car parking (including the retaining/support structures) associated with a supermarket does not comply with HRZ-R8.1.a as the plan does not provide for the proposed activity.</p> <p>The proposal would be assessed as a <b>Discretionary Activity</b>.</p>	<p><b>Legal Effect</b></p> <p>This rule has legal effect through the Part One, Schedule One process but is yet to become operative.</p>
<p><b>Rule EW-R4</b></p> <p>Consent is required as a Restricted Discretionary Activity pursuant to <b>Rule EW-R4</b>. The proposed earthworks breach the Permitted Activity condition for earthworks under Rule EW-S1 and S2 with cuts greater than 2.5m (being 3.5m in height) and the area of works will be greater than 250m<sup>2</sup> (being approximately 2,800m<sup>2</sup>). In summary the proposal does not comply with EW-R4.2.a.</p> <p>The proposal is assessed as a <b>Restricted Discretionary Activity</b>.</p> <p>Matters of discretion are:</p> <ol style="list-style-type: none"> <li>1. The matters in EW-P1;</li> <li>2. The matters in EW-P20, where relevant;</li> <li>3. The extent and effect of non-compliance with any relevant standard as specified in the associated assessment criteria for the infringed standards; and</li> <li>4. The matters in EW-P3, EW-P4 and EW-P5.</li> </ol>	<p><b>Operative</b></p> <p>This rule has become operative and has replaced the equivalent 2000 Plan rule.</p>

10. As Rules MRZ-R8 and HRZ-R8 have legal effect they need to be considered under section 104(1)(b) of the Act but do not affect the activity status of the proposal. However, because Rule EW-R4 is now operative and replaces Rule 30.2.1 of the 2000 District Plan which accordingly is now inoperative, it is now this rule under which consent is required as a **Restricted Discretionary Activity** under the 2024 District Plan.

Overall activity status:

11. As a result of the status of the 2024 District Plan, the earthworks aspect of the application will now be determined under the earthworks rule of the 2024 Plan and other matters require consideration under section 104(1)(b) of the Act as they now have legal effect. However, the overall activity status of the proposal does not change and remains a **Discretionary Activity**.

**Question:**

12. *In particular, the Panel is interested to understand the legal status of the objectives and policies of both the Operative District Plan and PDP relevant to this proposal.*

*In addition, the Panel is seeking a full analysis of the proposal against the relevant objectives and policies of the PDP identified in paragraph 175 of the s42A report, as well as the relevant objectives and policies of the High Density Residential Zone (HRZ) should the Minister for RMA Reform, the Hon Chris Bishop, accept the recommendations of the Council in respect of the Johnsonville Railway Line and the consequential changes to the residential zoning of the vicinity.*

**Response:**

2024 District Plan Objectives and Policies Legal Status:

13. Upon notification of the 2024 District Plan, regard must be had to all relevant objectives and policies under section 104(1)(b) of the Act, and where there was any inconsistency between the objectives and policies of the 2000 and 2024 District Plans a weighting exercise is necessary. Since the decisions being made on Tranche 1 of the 2024 District Plan provisions, some objectives and policies have since become operative through the ISPP process and as such they now have full weighting.
14. Table 3 below provides an assessment against the relevant objectives and policies of the 2024 District Plan. The legal status of each rule at the time of writing this response (24/04/2024) is noted in the lefthand column under each policy.

2024 District Plan Objectives and Policies Assessment:

15. Additional objectives and policies have been included in the table below as compared to the s42A report when they were either missed in the original assessment, or the numbers have changed as part of the transitional phase of the District Plan.

**Table 3 – Objectives and policies assessment of the 2024 District Plan.**

<b>THW – Three Waters Objectives</b>		<b>Assessment</b>
<b>THW-O1</b> Legal Status: ISPP Operative	<b>Protecting water bodies and freshwater ecosystems</b> Subdivision and development contributes to an improvement in the health and wellbeing of water bodies and freshwater ecosystems.	In terms of THW-P1, although the proposal does not incorporate Water Sensitive Urban Design, Ms. Brydon has advised that the design does allow for the collection and treatment of contaminants from the new car parking area using below ground proprietary stormwater filters. As such, THW-P1 is not met but the quality of stormwater can still be managed before being discharged to the stormwater network.
<b>THW-O2</b> Legal Status: ISPP Operative	<b>Infrastructure-enabled urban development</b> Enable subdivision, use or development in urban areas where:  1. Sufficient existing or planned three waters infrastructure capacity and/or level of service is, or will be, available to service the use or development; or 2. It can be satisfactorily serviced through an alternative means where existing three waters infrastructure capacity and/or level of service is insufficient.	
<b>THW-O3</b> Legal Status: ISPP Operative	<b>Hydraulic neutrality</b> There is no increase in offsite stormwater peak flows and volumes from current levels as a result of subdivision, use and development in urban areas.	

<b>Policies</b>		
<b>THW-P1</b> Legal Status: ISPP Operative	<b>Water sensitive design</b> Water sensitive design methods are incorporated into new subdivision and development and they are designed, constructed and maintained to: <ol style="list-style-type: none"> <li>1. Improve the health and well-being of water bodies and freshwater ecosystems;</li> <li>2. Avoid or mitigate off-site effects from surface water runoff;</li> <li>3. Demonstrate best practice approach to the management of stormwater quality and quantity;</li> <li>4. Reduce demand on water supplies; and</li> <li>5. Avoid wastewater overflows wherever practicable.</li> </ol>	In terms of THW-P4, the only relevant service relating to the car park is stormwater. Although the proposed car park will result in a notable increase in impermeable area and therefore not meeting the intentions of policy THW-P6, Ms. Brydon considers this can be managed through appropriate conditions which would ensure THW-P4 will be met as well as achieving stormwater neutrality under policy THW-P5.
<b>THW-P4</b> Legal Status: ISPP Operative	<b>Three waters infrastructure servicing</b> Subdivision or development in urban areas is serviced by three waters infrastructure that: <ol style="list-style-type: none"> <li>1. Meets the Wellington Water Regional Standard for Water Services v3.0 December 2021;</li> <li>2. Has sufficient capacity to accommodate the development; and</li> <li>3. Is in position prior to the commencement of construction.</li> </ol> Provide for subdivision and development in urban areas where existing three waters capacity and/or level of service is insufficient to service further development if: <ol style="list-style-type: none"> <li>1. It can be demonstrated there is an alternative solution to avoid or mitigate any adverse effects on the three waters infrastructure network and the health and wellbeing of water bodies and freshwater ecosystems; and</li> <li>2. The additional demand generated will not necessitate additional unplanned public investment in, or expansion of, the three waters infrastructure network or compromise its ability to service other activities permitted within the zone.</li> </ol>	
<b>THW-P5</b> Legal Status: ISPP Operative	<b>Hydraulic neutrality</b> Require new subdivision and development to be designed, constructed and maintained to sustainably manage the volume and rate of discharge of stormwater to the receiving environment so that hydraulic neutrality is achieved.	
<b>THW-P6</b> Legal Status: ISPP Operative	<b>Permeable surface</b> Require development to provide permeable surfaces to assist with reducing the rate and volume of stormwater runoff and improve water quality.	
<b>NH – Natural Hazards Objectives</b>		<b>Assessment</b>
<b>NH-O1</b> Legal Status: Part One, Sch 1 Process	<b>Risk from natural hazards in High Hazard Areas of the Natural Hazard Overlays</b> Subdivision, use and development within the High Hazard Areas of the Natural Hazard Overlays reduce or do not increase the existing risk from natural hazards to people, property and infrastructure.	The proposal does not increase the risk to natural hazards within the site or the wider environment.

		Ms Brydon has advised that the implementation of stormwater neutrality and the final levels of the car park will not give rise to the existing flood risk to the existing supermarket building.
<b>Policies</b>		
<b>NH-P1</b> Legal Status: Part One, Sch 1 Process	<b>Identification of natural hazards</b> Identify natural hazards within the District Plan and take a risk-based approach to the management of subdivision, use and development based on:  1. The sensitivity of the activities to the impacts of natural hazards; 2. The hazard posed to people's lives and wellbeing, property and infrastructure, by considering the likelihood and consequences of natural hazard events; and 3. The operational need or functional need for some activities to locate in Natural Hazard Overlays.	
<b>NH-P6</b> Legal Status: Part One, Sch 1 Process	<b>Potentially hazard sensitive activities and hazard sensitive activities within the identified inundation areas of the Flood Hazard Overlays</b> Manage subdivision, development and use associated with potentially hazard sensitive activities and hazard sensitive activities within inundation areas by:  1. Ensuring subdivision, development and use incorporates mitigation to ensure the risk to people and property from the 1% Annual Exceedance Probability flood event is minimised; and  2. Avoiding the construction of new buildings, or the conversion of existing buildings that contain a hazard sensitive activity within identified inundation areas of the Flood Hazard Overlays where the finished floor level is below the 1% Annual Exceedance Probability flood levels.	
<b>MRZ - Medium Density Residential Zone Objectives</b>		<b>Assessment</b>
<b>MRZ-O1</b> Legal Status: ISPP Operative	<b>Purpose</b> The Medium Density Residential Zone provides for predominantly residential activities and a variety of housing types and sizes that respond to:  1. Housing needs and demand; and 2. The neighbourhood's planned urban built character, including 3 storey buildings, and additional height and density where appropriate.	The proposal is not consistent as the proposal does not provide for residential activities nor anticipated non-residential activities including home business, visitor accommodation, childcare services and community gardens.
<b>MRZ-O2</b> Legal Status: ISPP Operative	<b>Efficient use of land</b> Land within the Medium Density Residential Zone is used efficiently for residential development that:  1. Increases housing supply and choice; and 2. Contributes to a changing and well-functioning urban environment.	The proposal does not increase housing supply and choice.  The proposal does not contribute to a changing and well-functioning urban environment which could enable a variety

		<p>of homes that meet the needs, in terms of type, price, and location, of different households, nor supports reduction in greenhouse gas emissions.</p> <p>By providing for more vehicle parking spaces encourages the reliance of the motor vehicle and therefore minimising resilience to the likely current and future effects of climate change.</p>
<p><b>MRZ-O3</b> Legal Status: Part One, Sch 1 Process</p>	<p><b>Healthy, safe, accessible and attractive environments</b> The Medium Density Residential Zone provides healthy, safe and accessible living environments with attractive and safe streets.</p>	<p>The proposal does not provide healthy and accessible living environments with attractive and safe streets. The extension to the car park reinforces reliance on automobile and potential risk to safety with increased vehicular movement. The view of a car park along the streetscape is not considered to be attractive.</p>
<b>Policies</b>		
<p><b>MRZ-P1</b> Legal Status: Part One, Sch 1 Process</p>	<p><b>Enabled activities</b> Enable residential activities and other activities that are compatible with the purpose of the Medium Density Residential Zone, while ensuring their scale and intensity is consistent with the amenity values anticipated for the Zone, including:</p> <ol style="list-style-type: none"> <li>1. Home Business;</li> <li>2. Visitor Accommodation;</li> <li>3. Childcare Services; and</li> <li>4. Community Gardens.</li> </ol>	<p>Other than residential activities, the Medium Residential Density Zone enables non-residential activities including homes businesses, visitor accommodation, childcare services and community gardens. Car parks are not enabled because they are not compatible with the purpose of the Medium Density Residential Zone. The proposal is not ensuring the scale and intensity is consistent with the amenity values anticipated for the Zone.</p>



<p><b>MRZ-P5</b> Legal Status: ISPP Operative</p>	<p><b>Developments not meeting permitted activity status</b> Provide for developments not meeting permitted activity status, while encouraging high-quality developments.</p>	<p>The proposal does not have permitted activity status and is not considered to be achieving a high quality outcome.</p> <p>This has been addressed in detail within the s42A report.</p> <p>Ms Devereaux has also noted in her urban design assessment that the proposal is not of a high-quality and is not encouraged.</p>
<p><b>MRZ-P9</b> Legal Status: ISPP Operative</p>	<p><b>Vegetation and landscaping</b> Encourage the retention of existing vegetation, particularly native vegetation and visually prominent trees that may not otherwise be protected, and where vegetation is proposed to be removed, seek new landscaping of equal or better quality to help integrate new development into the surrounding environment and minimise hard surfacing.</p>	<p>A mixture of hard and soft vegetation is proposed following the removal of a large portion of the existing vegetation to make way for the proposed car park.</p> <p>A concerted effort has been made to replenish the vegetation by the applicant.</p>
<p><b>MRZ-P13</b> Legal Status: Part One, Sch 1 Process</p>	<p><b>Non-residential activities and buildings</b> Provide for non-residential activities and buildings that:</p> <ol style="list-style-type: none"> <li>1. Support the needs of local communities;</li> <li>2. Are of an intensity, scale and design that is consistent with the amenity values anticipated for the Zone;</li> <li>3. Contribute positively to the urban environment and achieve attractive and safe streets;</li> <li>4. Reduce reliance on travel by private motor vehicle;</li> <li>5. Maintain the safety and efficiency of the transport network;</li> <li>6. Will be adequately serviced by three waters infrastructure or can address any constraints on the site; and</li> <li>7. Are integrated into residential developments where possible.</li> </ol>	<p>The proposal is considered to support the local community with the provision of carparks and provides for a safe street environment through the alleviation of congestion. However, this would comprise of the quality the urban environment and the residential amenity. The proposal is of an intensity, scale and design that is not consistent with the amenity values anticipated for the Zone where it is located.</p> <p>The proposal is solely reliant on the motor vehicle and is designed for the convenience of motorists. However, I</p>

		<p>also recognise that this could have potential reduce travel distances to other nearby supermarkets through greater provision of parking.</p> <p>The proposal does not integrate into the residential context.</p> <p>Ms Deveraux has also provided an addendum to her evidence and included an assessment against the MRZ and HRZ objectives and policies. She summarises her assessment as follows ‘A car park could potentially be acceptable where located immediately adjacent the New World site on Dekka Street as it visually sits within the character of this area due to the commercial zoning. However, the proposal does not sufficiently integrate the development into the planned urban built character for both the Medium and Density zoning when viewed from Nicholson Road.’</p>
<b>HRZ – High Density Residential Zone Objectives</b>		<b>Assessment</b>
<b>HRZ-O1</b> Legal Status: ISPP Operative	<b>Purpose</b> The High Density Residential Zone provides for predominantly residential activities and a variety of housing types and sizes that respond to: <ol style="list-style-type: none"> <li>1. Housing needs and demand; and</li> <li>2. The neighbourhood’s planned urban built character, of at least 6-storey buildings.</li> </ol>	Given the Objectives and policies of the High Density Residential Zone are consistent with those of the Medium Density Residential Zone, I refer to my above assessment to the respective objectives and policies here.
<b>HRZ-O2</b> Legal Status: ISPP Operative	<b>Efficient use of land</b> Land within the High Density Residential Zone is used efficiently for residential development that: <ol style="list-style-type: none"> <li>1. Increases housing supply and choice;</li> <li>2. May be of a greater density and scale than the Medium Density Residential Zone; and</li> </ol>	

	3. Contributes to a more intensive high-density urban living environment.	
<b>HRZ-O3</b> Legal Status: Part One, Sch 1 Process	<b>Healthy, safe and accessible living environments</b> The High Density Residential Zone provides healthy, safe and accessible living environments with attractive and safe streets.	
<b>Policies</b>		
<b>HRZ-P1</b> Legal Status: Part One, Sch 1 Process	<b>Enabled activities</b> Enable residential activities and other activities that are compatible with the purpose of the High Density Residential Zone, while ensuring their scale and intensity is consistent with the amenity values anticipated for the Zone, including:  1. Home business; 2. Visitor accommodation; 3. Childcare services; and 4. Community gardens.	
<b>HRZ-P5</b> Legal Status: ISPP Operative	<b>Developments not meeting permitted activity status</b> Provide for developments not meeting permitted activity status, while encouraging high-quality developments.	
<b>HRZ-P12</b> Legal Status: Part One, Sch 1 Process	<b>Non-residential activities and buildings</b> Provide for non-residential activities and buildings that:  1. Support the needs of local communities; 2. Are of an intensity, scale and design that is consistent with the amenity values anticipated for the Zone; 3. Contribute positively to the urban environment and achieve attractive and safe streets; 4. Reduce reliance on travel by private motor vehicle; 5. Maintain the safety and efficiency of the transport network; 6. Will be adequately serviced by three waters infrastructure or can address any constraints on the site; and  Are integrated into residential developments where possible.	
<b>EW – Earthworks Objectives</b>		<b>Assessment</b>
<b>EW-O1</b> Legal Status: ISPP Operative	<b>Management of earthworks</b> Earthworks are undertaken in a manner that:  1. Is consistent with the anticipated scale and form of development in the relevant zone; 2. Minimises adverse effects on visual amenity values, including changes to natural landforms; 3. Minimises erosion and sediment effects beyond the site; 4. Minimises risks associated with slope instability; and 5. Protects the safety of people and property.	As noted in the assessment within the s42A report, the proposed works have been assessed by the Council’s Earthworks Engineer, Mr John Davies. Mr Davies is of the view that the proposed effects of the proposed earthworks in terms of site stability, erosion and
<b>Policies</b>		

<p><b>EW-P1</b> Legal Status: ISPP Operative</p>	<p><b>Co-ordination and integration with development and subdivision</b> Provide for the efficient integration of earthworks and associated subdivision and development by:</p> <ol style="list-style-type: none"> <li>1. Encouraging joint applications for land use and subdivision; and</li> <li>2. Ensuring earthworks proposals provide finished landforms that can be feasibly developed or are fit for the future intended purpose.</li> </ol>	<p>sediment control, and dust emissions can be appropriately managed during the construction process and has recommended conditions accordingly. Therefore, I am satisfied that subject to these conditions being imposed should the Commissioners determine to grant approval to this application, the proposed development is consistent with these policies.</p> <p>The earthworks are to create a flat platform and retaining walls which are consistent with the character and amenity of the local area. Landscaping plans have been provided to ensure adequate screening will be provided, a number of mature trees and mature vegetation will be retained to integrate the new proposed works with the existing. It is important to note that no earthworks will be exposed however there will be a visible change.</p> <p>In terms of policy EW-P6 the transportation of material has been assessed by Mr Arampamoorthy who raised no concerns or issues around the surrounding amenity and safety of the transport network around the site.</p> <p>In terms of earthworks within the flood</p>
<p><b>EW-P3</b> Legal Status: ISPP Operative</p>	<p><b>Maintaining stability</b> Require earthworks to be designed and carried out in a manner that maintains slope stability and minimises the risk of slope failure associated with natural hazards and adverse effects arising from climate change.</p>	
<p><b>EW-P4</b> Legal Status: ISPP Operative</p>	<p><b>Erosion, dust and sediment control</b> Require earthworks to adopt effective measures to manage the potential for:</p> <ol style="list-style-type: none"> <li>1. Erosion, and the movement of sediment beyond the site, and in particular into surface water, where proposals for earthworks no greater than 3,000m<sup>2</sup> in area are concerned; and</li> <li>2. The movement of dust beyond the site, where all proposals for earthworks are concerned.</li> </ol>	
<p><b>EW-P6</b> Legal Status: ISPP Operative</p>	<p><b>Earthworks and the transport network</b> Require any transport of earth and cleanfill material to and from any site to be undertaken in a way that minimises adverse effects on surrounding amenity and the safety of the transport network.</p>	
<p><b>EW-P17</b> Legal Status: Part One, Sch 1 Process</p>	<p><b>Earthworks within Flood Hazard Overlays</b> Provide for earthworks in Flood Hazard Overlays only where:</p> <ol style="list-style-type: none"> <li>1. They would not significantly increase the flooding risk, when compared to the existing situation, to the site or neighbouring properties through the displacement of flood waters; and</li> <li>2. The ability to convey flood waters along overland flowpaths or stream corridors is not impeded as a result of the earthworks.</li> </ol>	

		hazard as per policy EW-P17. The earthworks would not significantly increase the flooding risk, when compared to the existing situation, to the site or neighbouring properties through the displacement of flood water.
<b>TR – Transport Objectives</b>		<b>Assessment</b>
<b>TR-O1</b> Legal Status: Part One, Sch 1 Process	<b>Purpose</b> Land use and development is managed to ensure that: <ol style="list-style-type: none"> <li>1. High trip generating activities do not compromise the safety and effectiveness of the transport network;</li> <li>2. A range of transport modes are provided for;</li> <li>3. Reliance on private vehicles is reduced;</li> <li>4. New development provides appropriate on-site facilities for cycling and micromobility users; and</li> <li>5. Safe and effective on-site parking, loading, access and manoeuvring is provided.</li> </ol>	The proposal provides for additional carparking to aid in reducing the number of parked vehicles on the road and would therefore help alleviate congestion on surrounding roads.  The application states an intention to provide four electric vehicle parking spaces with charging facilities, and the site is located adjacent to a bus stop, within walking distance to a train station, and is located within an established centre. The use of the site and connection to the access and transport is consistent and will ensure access to the site via Nicholson Road. Council’s Team Leader, Transport Consents Officer, Haran Arampamoorthy has assessed the different modes of transport and the access the proposal provides and he is of the mind that the proposal meets elements listed under the associated policies.
<b>Policies</b>		
<b>TR-P1</b> Legal Status: Part One, Sch 1 Process	<b>High trip generating use and development</b> Provide for high vehicle trip generating activities where they: <ol style="list-style-type: none"> <li>1. Safely and effectively integrate with the transport network, including planned network upgrades and service improvements; and</li> <li>2. Provide for pedestrian, cycling, micromobility and public transport modes.</li> </ol>	
<b>TR-P2</b> Legal Status: Part One, Sch 1 Process	<b>Enabled activities</b> Enable on-site transport facilities and driveways that: <ol style="list-style-type: none"> <li>1. Provide for the safe and effective use of the site and functioning of the transport network;</li> <li>2. Meet the reasonable demands of site users; and</li> <li>3. Promote the uptake and use of pedestrian, cycling, micromobility and public transport modes.</li> </ol>	
<b>TR-P3</b> Legal Status: Part One, Sch 1 Process	<b>Managed activities</b> Only allow on-site transport facilities and driveways that do not meet standards where: <ol style="list-style-type: none"> <li>1. The transport facilities and driveways are effective in meeting the operational needs and functional needs of the activity on the site;</li> </ol>	

	<ol style="list-style-type: none"> <li>2. The safety and effectiveness of the transport network is not compromised;</li> <li>3. Public health and safety, including the safety of pedestrians, cyclists and micromobility users travelling through any parking areas, is not compromised;</li> <li>4. The projected demand for loading spaces or cycling and micromobility parking will be lower than that required in the standards or can be accommodated by public, shared or reciprocal arrangements;</li> <li>5. Safe and effective access for firefighting purposes is provided; and</li> <li>6. There are site and topographical constraints that make compliance unreasonable.</li> </ol>	
<b>LIGHT – Light Objectives</b>		<b>Assessment</b>
<b>LIGHT-O1</b> Legal Status: Part One, Sch 1 Process	<b>Purpose</b> Artificial lighting provides for outdoor activities, safety, and security after dark.	As mentioned in the s42A report the level of artificial lighting is of a permitted level. However, the nature of the artificial lighting and the sources are not compatible with the residential area and the nature of lighting that would be expected with a residential use of the property. Artificial lighting, while it may be compliant with lighting levels, I am of the view when assessing proposal through the lens of the RMA, is unacceptable given the surrounding residential activities within the receiving environment.
<b>LIGHT-O2</b> Legal Status: Part One, Sch 1 Process	<b>Adverse effects of outdoor artificial lighting</b> The adverse effects of outdoor artificial lighting on sensitive activities, traffic safety, aviation safety, coastal wildlife and the night sky are limited.	
<b>Policies</b>		
<b>LIGHT-P1</b> Legal Status: Part One, Sch 1 Process	<b>Allow outdoor artificial lighting</b> Allow outdoor artificial lighting that maintains health and safety, and enables appropriate night-time activities.	
<b>LIGHT-P2</b> Legal Status: Part One, Sch 1 Process	<b>Design and location of outdoor artificial lighting</b> Require outdoor artificial lighting to be designed, located and oriented to maintain amenity values, traffic safety, aviation safety and to minimise effects on wildlife in coastal margins.	
<b>LIGHT-P3</b> Legal Status: Part One, Sch 1 Process	<b>Ensure safety and security of public and private shared space</b> Ensure the safety and security of shared or publicly accessible spaces by providing appropriate outdoor artificial lighting.	
<b>NOISE – Noise Objectives</b>		<b>Assessment</b>
<b>NOISE-O1</b> Legal Status: Part One, Sch 1 Process	<b>Managing noise generation and effects</b> Adverse noise effects on amenity values, and the health of people and communities are managed to levels consistent with the anticipated outcomes for the receiving environment.	As mentioned in the s42A report, the noise levels would comply with the noise standards. However, the nature of the noise and the sources are not compatible with the nature of noise
<b>Policies</b>		
<b>NOISE-</b>	<b>General management of noise</b>	

<p><b>P1</b> Legal Status: Part One, Sch 1 Process</p>	<p>Enable the generation of noise from activities that:</p> <ol style="list-style-type: none"> <li>1. Is consistent with the amenity values of the receiving environment; and</li> <li>2. Does not compromise the health, safety and wellbeing of people and communities.</li> </ol>	<p>that could be expected within a residential area. It will therefore detract from the residential amenity of neighbouring properties.</p> <p>Construction noise and vibration has been noted as meeting the permitted levels throughout the duration of the works. As noted in policy NOISE – P2 ensures that noise and vibration effects are managed effectively.</p>
<p><b>NOISE-P2</b> Legal Status: Part One, Sch 1 Process</p>	<p><b>Construction noise</b></p> <p>Enable construction activities while ensuring that unreasonable noise and vibration effects are managed effectively.</p>	
<b>SIGNS – Signs Objectives</b>		<b>Assessment</b>
<p><b>SIGN-O1</b> Legal Status: Part One, Sch 1 Process</p>	<p><b>Role of signage</b></p> <p>Signs support the needs of the community to advertise and inform while the effects on local amenity are effectively managed.</p>	<p>The signs are not of an appropriate location when looking at the cumulative area proposed as the area of signage is double of what is permitted. The signs are however designed to provide direction to the carpark and are consistent with the proposed activity. The signs that are proposed contain a low level of lighting that is considered to be compatible with the proposal but is considered to be out of character with the residential area.</p>
<b>Policies</b>		
<p><b>SIGN-P1</b> Legal Status: Part One, Sch 1 Process</p>	<p><b>Appropriate signs</b></p> <p>Allow signs where:</p> <ol style="list-style-type: none"> <li>1. They are of an appropriate size, design and location; and</li> <li>2. They do not result in visual clutter; and</li> <li>3. Any potential cumulative effects are managed; and</li> <li>4. They are required to meet regulatory or statutory requirements; and</li> <li>5. They do not compromise the efficiency of the transport network or the safety of its users, including cyclists and pedestrians; and</li> <li>6. In the Residential, Rural and Open Space Zones, they relate to an activity on the site on which they are located; and</li> <li>7. They maintain the character and amenity values of the site and the surrounding area.</li> </ol>	
<p><b>SIGN-P2</b> Legal Status: Part One, Sch 1 Process</p>	<p><b>Digital and illuminated signs</b></p> <p>Provide for digital and illuminated signs where:</p> <ol style="list-style-type: none"> <li>1. The sign is compatible with the zone and any overlay; and</li> <li>2. The sign does not compromise aircraft safety or the safe and efficient functioning of the Airport; and</li> <li>3. The sign does not compromise traffic, pedestrian, or cycling safety; and</li> <li>4. Any light spill or glare effects are managed so they do not compromise amenity values; and</li> </ol>	

	5. The sign is not visible from a state highway.	
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15. When comparing the objective and policies of the 2024 Plan and the 2000 Plan the policies generally are similar and have the same intended outcome. Given the rules and status of the plan there is no weighing considered necessary nor required for this proposal.
16. In assessing the application in relation to these objectives and policies and assessment criteria I have consulted with the following experts within the Council:
  - Jaime Deveraux, Senior Consultant Urban Design Advisor
  - John Davies, Team Leader Subdivision and Compliance
  - Haran Arampamoorthy, Team Leader, Transport Consents Officer
  - Zeean Brydon, Wellington Waters Consultant Engineer
17. The proposal is not well aligned with the relevant 2024 District Plan objectives and policies when read as a whole. Having considered the objectives and policies under the 2000 and 2024 in the round, the proposal is inconsistent with these and therefore resource consent should not be approved.
18. Overall, for the reasons discussed in this S42A Report, I consider that the proposal is unacceptable in terms of the assessment criteria and is not consistent with the objectives and policies as set out above.

**Question:**

19. *An analysis of any relevant objectives and policies of Proposed Change 1 to the Wellington Regional Policy Statement, in particular provisions relating to transport, is also sought.*

**Response:**

20. Table 4 below outlines the objectives and policies applicable at the time the application for resource consent was submitted in terms of Proposed Change 1 to the Wellington Regional Policy Statement. These are as follows:

**Table 4 – Objectives and policies assessment Proposed Change 1 to the Wellington Regional Policy Statement.**

Energy, Infrastructure and Waste Objectives	Assessment
Objective 9	<p>The traffic generated by the proposed development can be accommodated within the existing transport network and the impacts on the efficiency, reliability or safety of the network.</p> <p>The proposal does not promote greenhouse gas emission reduction and uptake of low emission fuels.</p> <p>The proposal has negligible impact to any existing links and access to public transport.</p>
Policy 9: Promoting greenhouse gas emission reduction and uptake of low emission fuels	
Policy 57: Integrating land use and transportation	



	<p>The proposal does provides for safe access to and from and around the site.</p> <p>The proposal is in direct conflict with the associated policies which <i>'minimises private vehicle travel and trip length while supporting mode shift to public transport or active mode shift to public transport or active modes and supports the more towards low and zero-carbon modes'</i> as the proposal does not reduce car dependency on the private motor vehicle and encourages the use for convenience rather than providing active alternatives.</p>
<b>Fresh Water Objectives</b>	<b>Assessment</b>
Objective 12	<p>Potential erosion will be mitigated appropriately by ensuring silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained.</p> <p>Stormwater design has been provided and it is accepted that the quantity and quality is of an appropriate level that is aiming to achieve hydraulic neutrality.</p> <p>WWL has assessed the proposal (Appendix Seven) and is overall supported as noted in detail within their assessment (Appendiz Seven).</p>
Policy 41: Controlling the effects of earthworks and vegetation disturbance	
Policy 42: Effects of freshwater and the coastal marine area from urban development.	
<b>Natural Hazards Objective</b>	<b>Assessment</b>
Objective 19	<p>While the proposal is partially within a flood hazard area the proposal will not impede nor affect the hazard.</p> <p>The policy seeks to minimise the risk and consequences of natural hazards events through sound preparation, investigation and planning prior to development. Given the type of works proposed the risk is low and the proposal is not considered to be vulnerable.</p>
Policy 51: Minimising the risks and consequences of natural hazards	
Policy 52: Minimising adverse effects of hazard mitigation measures	
<b>Regional form, design and function Objective</b>	<b>Assessment</b>
Objective 22 and 22A	<p>The proposal is not consistent with the region's urban design principles and does not promote a compact form. The amenity and urban form has been assessed previously in the s42A report and within the urban design assessment provided as part of evidence.</p> <p>The traffic generated by the proposed development can be accommodated within the existing transport network and the impacts on the efficiency, reliability or safety of the network are of an acceptable level.</p> <p>The proposal continues to link and provide access to public transport given the location of the bus stop of the site however, it does not encourage the use of public transport. The proposal does include</p>
Policy 54: Achieving the region's urban design principles	
Policy 55: Providing for appropriate urban expansion	
Policy 57: Integrating land use and transportation	

	<p>some cycle parking on the existing supermarket location that will remain.</p> <p>The proposal provides for safe access to and from the site, into the road network surrounding the site.</p>
<b>Tangata Whenua Objectives</b>	<b>Assessment</b>
Objective 24	The proposal recognises the principles of Te Tiriti o Waitangi. Works are not in an area noted as having cultural significance and the accidental discovery protocol will be included as part of the advice notes.
Policy 48: Principles of Te Tiriti o Waitangi	
<b>Soils and Minerals Objectives</b>	<b>Assessment</b>
Objective 29	Conditions have been recommended to be put in place to ensure the effects of sediment control and run off are managed. These conditions have been agreed to by the applicant at the time decision would have been issued.
Policy 41: Controlling the effects of earthworks and vegetation disturbance – consideration	
<b>Climate Change Objectives</b>	<b>Assessment</b>
Objective CC.1	<p>The proposal is incompatible with the listed objective and policies as the proposal provides emphasis on the use of the private motor vehicle which in turn does not provide for climate resilient urban areas.</p> <p>Policy 57 directly relates to reducing the reliance on the private motor vehicle and support the shift to public transport. The proposal is reliant on the private motor vehicle and has convenience at the forefront. The proposal is designed in a way that encourages the shopper/user of the supermarket to rely on the private motor vehicle and does not encourage an increase in the amount of travel made by public transport or other active modes.</p> <p>The policies encourage the change to maximising mode shift from private vehicles to public transport or active modes, again the proposal places emphasis on the private motor vehicle and its continued reliance.</p>
Objective CC.3	
Policy CC.4 and 14: Climate resilient urban areas	
Policy 57: Integrating land use and transportation	
Policy CC.1: Reducing greenhouse gas emissions associated with transport infrastructure	

21. In summary, following an analysis of the objectives and policies of the PRS change 1 I have concluded that the proposal is inconsistent as discussed in Table 4 above .
22. As a point of clarification, there was some confusion about my assessment of the RPS within my s42A report paragraphs 136 and 137. I would like to note that the RPS is relevant and requires appropriate consideration, and that it is my opinion that the proposal is not consistent with above mentioned objectives and policies.