

**Before the Environment Court
At Wellington
I Mua I te Kōti Taiao
Te Whanganui-a-Tara Rohe
ENV-2024-**

Under the Resource Management Act 1991 (RMA)

In the matter of an appeal under clause 14(1) of the First Schedule
of the RMA

Between **Foodstuffs North Island Limited**

Appellant

And **Wellington City Council**

Respondent

Notice of Appeal

Date: 20 May 2024



Solicitor on the Record
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To: The Registrar
Environment Court
Wellington

- 1 Foodstuffs North Island Limited (**FSNI**) appeals against parts of the decision of the Wellington City Council (**Council**) in respect of the Proposed Wellington City District Plan (**Proposed Plan**).
- 2 FSNI made a submission and further submission on the Proposed Plan.¹
- 3 FSNI is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).
- 4 The recommendations were made by an Independent Hearings Panel on behalf of the Wellington City Council (**the Decision**), who made the Decision on 15 March 2024. Public notice was given in relation to the Decision on 5 April 2024.

Parts of the Decision that are appealed

- 5 FSNI made submissions on various provisions relating to the different centre zone chapters of the Proposed Plan. The centre zone chapters were heard as part of Hearing Stream 4, which FSNI participated in.
- 6 FSNI made various further submissions, including the following which are relevant to this appeal:
 - 6.1 Woolworths New Zealand (**Woolworths**) (Submission 359); and

¹ Submission 426, dated 12 September 2022; and Further Submission 23, dated 2 December 2022.

- 6.2 Restaurant Brands Limited (**RBL**) (Submission 349);
and
 - 6.3 Oyster Management Limited (**Oyster**) (Submission 404); and
 - 6.4 Argosy Property No.1 Limited (**Argosy**) (Submission 383); and
 - 6.5 Willis Bond and Company Limited (**Willis Bond**) (Submission 416).
- 7 Of the matters that FSNI submitted on, it now appeals the following decisions made in relation to the following matters:
- 7.1 Public notification status and permitted rule for Carparking Activities in the City Centre Zone (**CCZ**), specifically Rule CCZ-R18 (formerly Rule CCZ-R14).
 - 7.2 Medium Density Residential Zoning of 3 Dekka Street, Khandallah and 31-33 Nicholson Road, Khandallah.
 - 7.3 Methods introducing an urban design panel in each of the Centre Zones.
- 8 As no rights of appeal are available to participants regarding Intensification Planning Instrument (**IPI**) provisions under the Intensification Streamlined Planning Process (**ISPP**),² this notice of appeal relates solely to those matters which were heard as part of the standard plan change process under Part 1, Schedule 1 of the RMA.

² Clause 107 of Part 6, Schedule 1, RMA.

Reasons for appeal

- 9 The reasons for this appeal include that the Decision:
 - 9.1 Will not promote the sustainable management of the District and will not achieve the purpose of the RMA.
 - 9.2 Is contrary to Part 2 of the RMA.
 - 9.3 Does not represent the most appropriate way of exercising the Council's functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and are therefore not appropriate in terms of section 32 and other provisions of the RMA.

- 10 Without limiting the generality of paragraph 8, FSNI appeal the Decision for the specific reasons below:
 - 10.1 That the provisions of the proposed plan, including the planning maps, should be consistent in their approach in recognising the need for businesses growth to occur, especially alongside residential growth, and recognising ownership, development reflected in consent applications and commercial realities.
 - 10.2 Balance needs to be achieved between enabling development, in order to provide for development growth and competition, while also achieving design and amenity objectives and managing adverse effects.
 - 10.3 The purpose of public notification is not to discourage certain activities from occurring. This should instead be done via the objectives, policies, and activity status of the proposed plan. It is more appropriate for the normal notification tests to apply in order to reduce risk (time, cost and uncertainty) to applicants.

- 10.4 The proposed plan should be consistent with other commercial and mixed use zones in having permitted provision of carparks not visible at street edge along active frontages or non-residential activity frontages.
- 10.5 The rezoning request is the most appropriate way to achieve the purpose of the RMA and will result in an effective and efficient policy which better aligns with the objectives and policies of the proposed plan. It ensures that the Council gives effect to its functions under section 31 of the RMA including ensuring that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district.

Relief sought

- 11 FSNI seeks the following relief:
- 11.1 Amend CCZ-R18.1.a(v) to remove reference to forming part of a building as per the below:
- 1. Activity status: **Permitted***
- Where:*
- a. The activity involves:*
- i. Provision of carparks above ground floor level; or*
 - ii. Provision of carparks below ground floor level; or*
 - iii. Provision of parking spaces for people with disabilities; or*
 - iv. Provision of ground floor level carparks that form part of a building specifically constructed and used for carparking purposes and that complies with CCZ-S8; or*
 - v. Provision of ground floor level carparks that ~~form part of a building~~, are located to the rear of the site, that comply with CCZ-S8 and are not visible from the street; or*
 - vi. Provision of carparks on a road.*

- 11.2 Amend CCZ-R18 to remove mandatory public notification of resource consent applications made in respect of rule CCZ-R18.2.a.
- 11.3 Re-zone 3 Dekka Street, Khandallah and 31-33 Nicholson Road, Khandallah as Local Centre Zone.
- 11.4 Removal of the method introducing an Urban Design Panel which has been included in each of the centre zones.
- 11.5 Such further, or other, relief or consequential, or other, amendments to these or other provisions considered appropriate and necessary to address the FSNI's concerns.
- 11.6 Costs in respect of this appeal.

Documents

- 12 FSNI attaches the following documents to this notice:
 - 12.1 A copy of its submission on the Proposed Plan.
 - 12.2 A copy of its further submission on the Proposed Plan.
 - 12.3 A copy of the relevant Decision (a copy of this document is not included in copies being served on the parties listed in Appendix 4, but a copy may be obtained on request from the Appellant).
 - 12.4 A list of the names and addresses of persons to be served with a copy of this notice.

Date: 20 May 2024



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S F Quinn / E L Manohar
Counsel for Foodstuffs North Island
Limited

This document is filed by Stephen Quinn of DLA Piper New Zealand, solicitor for the Appellant.

The address for service on the Appellant is at:

DLA Piper New Zealand
Level 4, 20 Customhouse Quay
Wellington 6011

Documents for service on the Appellant may be:

- left at the above address for service, or
- posted to the solicitor at PO Box 2791, Wellington 6140, or
- emailed to the solicitor at both stephen.quinn@dlapiper.com and emma.manohar@dlapiper.com.

Please direct enquiries to:

Emma Manohar
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How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Act.

You may apply to the Environment Court under section 281 of the Act for a

waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not have attached a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

List of parties to be served:

Submitter / further submitter	Contact name (if different)	Email address
Argosy Property Limited	Amy Dresser/Bianca Tree (MinterEllisonRuddWatts)	amy.dresser@minterellison.co.nz / bianca.tree@minterellison.co.nz
Century Group Limited	Anthony Blomfield (Bentley & Co Ltd)	ablomfield@bentley.co.nz
Greater Wellington Regional Council	Mika Zollner	Mika.zollner@gw.govt.nz
Johnsonville Community Association	Darren Bottin	jcainc2@gmail.com
Judith Ridley-Smith		paulrs111@icloud.com
McDonalds Restaurants NZ Limited	Hannah Hoogeveen and Matt Norwell (Barker & Associates Ltd)	hannahh@barker.co.nz / mattn@barker.co.nz
Waka Kotahi NZ Transport Agency	Mike Scott	Environmentalplanning@nzta.govt.nz / mike.scott@nzta.govt.nz
Onslow Residents Community Association	Lawrence Collingbourne	onslowcommunityassn@gmail.com
Oyster Management Limited	Amy Dresser/Bianca Tree (MinterEllisonRuddWatts)	amy.dresser@minterellison.co.nz / bianca.tree@minterellison.co.nz
Precinct Properties New Zealand Limited	Joe Jeffries (Barker & Associates)	joej@barker.co.nz
Reading Wellington Properties Limited	Steve Lucas	Steve.Lucas@readingrdi.com
Rebecca Morder		becmorder@gmail.com
Restaurant Brands Limited	Mark Arbuthnot (Bentley & Co Ltd)	marbuthnot@bentley.co.nz
Victoria University of Wellington Students Association	Katherine Blow	engagement@vuwsa.org.nz
Wellington's Character Charitable Trust	Felicity Wong	felicity_wong@icloud.com
Willis Bond and Company Limited	Jimmy Tait Jamieson	jimmy@willisbond.co.nz
Woolworths New Zealand	Susie Clemens (Forme Planning Limited)	susie@formeplanning.co.nz