

**Before the Independent Hearings Panel
At Wellington City Council**

Under the Resource Management Act 1991

In the matter of the proposed Wellington City District Plan

And

In the matter of Hearing Stream 4 - Centres

Legal submissions on behalf of Foodstuffs North Island Limited

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INTRODUCTION

- 1 These legal submissions outline the position of Foodstuffs North Island Limited (**FSNI**) on the matters covered by Hearing Stream 4 – Centres, of the Wellington City Council (**Council**) Proposed District Plan (**Proposed Plan**) review process.
- 2 In summary, FSNI were submitters (submission 476) and further submitters (further submission FS23) on the Proposed Plan, including on the issues of Hearing Stream 4.
- 3 FSNI are generally supportive of the Proposed Plan and the majority of the recommendations made within the section 42A reports. FSNI however oppose, and have sought amendments to, various provisions in order to ensure the efficiency and effectiveness of the provisions in accordance with section 32 of the Resource Management Act 1991 (**RMA**).
- 4 These submissions draw on the statement of evidence of Evita Key, filed on 12 June 2023 on behalf of FSNI, particularly those which address:
 - 4.1 FSNI's operational context;
 - 4.2 CMUZ policies relating to the growth, ground level carparking, functional and operational requirements and COCs;
 - 4.3 Carparking rules in the CMUZ and public notification in the CCZ;
 - 4.4 Standards on building heights, active frontages and building depth;
 - 4.5 Planning maps with respect to zoning in Khandallah; and
 - 4.6 Legal framework.

- 5 FSNI concur with all the recommendations of the officers in the section 42A reports that are not addressed in these submissions and which they submitted and/or further submitted on. These submissions accordingly focus solely on outstanding matters.

FSNI'S OPERATIONAL CONTEXT

- 6 As set out in the original submission on the Proposed Plan,¹ FSNI is New Zealand's largest grocery retailer with 330 stores across the North Island and serving over 2.7 million New Zealanders every week. Foodstuffs is proudly 100% New Zealand owned and operated and employs more than 30,000 people nationwide.
- 7 Foodstuffs supermarket brands consist of New World, Pak'nSave, Four Square and Gilmours which operate throughout the North Island and also at the national level. Within Wellington, FSNI currently operate twelve New World, one Pak'nSave and eight Four Square stores as well as a transport depot and further expansion opportunities in the future are projected to serve growing communities.²
- 8 It is submitted that it is essential for regional and district planning frameworks to properly recognise the need for business growth to occur, especially alongside residential growth. The basis for FSNI's submissions is their significant past and planned further investment and development, meaning the content of these and any future District Plan provisions will be integral to the continuing operation and development of FSNI in Wellington.

¹ Submissions on the Wellington City Proposed District Plan on behalf of Foodstuffs North Island Limited, dated 12 September 2022, at [6]-[8].

² A list of the store locations and zoning is included in the Evidence of Evita Key, dated 12 June 2023, at Table 1.

OUTSTANDING MATTERS

- 9 FSNI generally supports the approach taken in the PDP to reinforce Wellington's network of centres as the commercial, community and recreational focal points of the region. It specifically supported the recognition of medium and high-density development and the enablement of a wide range of activities.³
- 10 As set out in detail in the evidence of Ms Key, there are a group of provisions that FSNI take issue with and/or where FSNI disagree with the approach taken in the section 42A Reports.

CMUZ policies relating to the growth, ground level carparking, functional and operational requirements and COCs

Accommodating Growth' Policies NCZ-P1, LCZ-P1 and MCZ-P1

- 11 Ms Key sets out FSNI's position in relation to Accommodating Growth' Policies NCZ-P1, LCZ-P1 and MCZ-P1 in paragraphs [6.1]-[6.6] of her statement of evidence. In particular, Ms Key notes the section 42A report (Part 2) for the Metropolitan Centre zone (**MCZ**) accepted FSNI's relief sought, however the section 42A reports (Part 3 and 4) rejected the same policy relief sought for Local Centre zone (**LCZ**) Policy 1.1 and Neighbourhood Centre zone (**NCZ**) Policy 1.1.
- 12 It is submitted that, whilst the deletion of 'ongoing viability' is supported, the amendments should go further and also remove the references to vibrancy of the other centres for the reasons set out in paragraph 6.5 of Ms Keys evidence. It is submitted that it is not appropriate to deal with 'vibrancy' through district plan regulation. Its removal from the provisions above is the most appropriate way to achieve the purpose of the RMA and will result

³ Evidence of Evita Key, at [6.1].

in an effective and efficient policy which better aligns with the objectives and policies of the proposed plan.

'Potentially Incompatible Activities' Policy CCZ-P2

13 Ms Key sets out FSNI's position in relation to Policy CCZ-P2 in paragraphs [6.7]-[6.9] of her statement of evidence.

14 Whilst ground level carparking will be dealt with in more detail below, it is submitted that an amendment to Policy CCZ-P2.3 to provide for an exclusion of ground level carparking that is visible at the street edge or public space in the City Centre zone (**CCZ**) is necessary to ensure the consistency of the proposed plan. The alignment and consistency of the proposed plan is integral to its efficiency and effectiveness.

'Quality Design' Policies NCZ-P7, LCZ-P7, MCZ-P7, CCZ-P9, COMZ-P5 and MUZ-P3

15 Ms Key sets out FSNI's position in relation to the 'Quality Design Policies' in paragraphs [6.10]-[6.15] of her statement of evidence. FSNI's submission sought the additional wording:

Recognise the functional and operational requirements of activities and development.

16 The section 42A reports suggested the relief sought be rejected as it was unnecessary that these needs be taken into account. As set out in the evidence of Ms Key, this was not the intention of FSNI.⁴

17 It is submitted that the proposed plan ought to recognise the functional and operational requirements of activities and development. This is essential in ensuring that regional and

⁴ Statement of evidence of Evita Key, at [6.12].

district planning frameworks provide for businesses growth to occur, especially alongside residential growth.

- 18 It is submitted that the inclusion of such a policy is a practical and pragmatic balancing of competing issues and is the most appropriate way to achieve the purpose of the RMA. It will result in effective and efficient policy which better aligns with the objectives and policies of the proposed plan.

'City Outcomes Contribution' Policies NCZ-P10, LCZ-P10, MCZ-P10 and CCZ-P11

- 19 Ms Key sets out FSNI's position in relation the City outcomes contribution policies' in paragraphs [6.16]-[6.18] of her statement of evidence. The section 42A report (Part 1) recommended to amend the wording to provide clarity by reducing the trigger points to 'over and under height' development, and by moving the City Outcomes Contributions (**COCs**) from the design guides to an appendix.

- 20 As currently drafted, the COCs do not fulfil their purpose in relation to the potential adverse effects of building heights. It is therefore submitted that the assessment of any building height non-compliance should be based on the effects that they create, and the positive outcomes of a development should be assessed separately. This will be 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.

Carparking rules in the CMUZ and public notification in the CCZ

Activity Status for Carparking Activities (NCZ-R13, LCZ-R13, MCZ-R15 and CCZ-R14)

- 21 Ms Key sets out FSNI's position in relation the activity status of carparking activities in paragraphs [8.1]-[8.9] of her statement of

evidence. It is to be noted that FSNI's submission is solely related to ancillary customer/staff parking with respect to retail activities, ie. short-term parking. This differs from the focus of the section 42A report (Part 1) on long-term carparking activities.

22 It is submitted that a discretionary activity status for short-term parking is unnecessarily onerous. A restricted discretionary activity status is sufficient to allow for the appropriate consideration of design.⁵

23 As noted by Ms Key in her statement of evidence, the following matters are of concern in this assessment:

23.1 Short-term (ancillary) carparking is a functional need for a supermarket activity. This functional need provides for the viability to the supermarket, which in turn provides for the viability of the centre.

23.2 Supermarkets tend to generate high levels of parking demand and the provision of short-term customer parking that is readily available is fundamental to a supermarket operation and competition.

23.3 On site carparking provides for customers wishing to purchase large quantities of groceries on a pass-by trip which promotes multi-purpose trips. This helps to avoid adding to congestion from single purpose supermarket trips and makes those trips more convenient for a portion of the public.

24 Whilst a discretionary activity status for long-term carparking may signal that this is an undesirable activity, it is submitted that the activity status for short-term carparking activities not meeting the

⁵ Statement of evidence of Evita Key, at [8.8].

permitted activity status under rules NCZ-R13, LCZ-R13, MCZ-R15 and CCZ-R14 to be a restricted discretionary activity.

Public Notification Status and Permitted Rule for Carparking Activities in the City Centre Zone (CCZ-R14)

25 FSNI's position in relation the public notification status under CCZ-R14 for any carparking in the CCZ is set out in paragraphs [8.10]-[8.16] of Ms Key's statement of evidence, and in relation to the inclusion of carparking that is not visible at the street edge or public space to be permitted under CCZ-R14 in paragraphs [8.17]-[8.20] of her statement of evidence.

26 The section 42A report (Part 1):

26.1 considered mandatory public notification is appropriate as it discourages carparking within the CCZ; and

26.2 rejected the inclusion of permitted non-visible carparking as sought be FSNI.

27 As noted by Ms Key, a 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.⁶ As detailed in Ms Key's evidence, mandatory public notification is not required for the following reasons:⁷

27.1 The effects that relate to the infringement of this rule are already well understood.

27.2 The purpose of public notification is not to discourage certain activities from occurring. This should instead be

⁶ Statement of evidence of Evita Key, at [8.12].

⁷ Statement of evidence of Evita Key, at [8.13]-[8.16].

done via the objectives, policies, and activity status of the proposed plan.

27.3 There will be many instances where there are minor infringements to the permitted activity provision which may be appropriately assessed without notification. This is a significant and unnecessary disincentive.

27.4 It is more appropriate for the normal notification tests to apply in order to reduce risk (time, cost and uncertainty) to applicants.

28 Furthermore, there are likely to be many situations where other ground level parking would also be appropriate, all of which, under current wording would require a discretionary activity resource consent that is public notified. This cannot be effective or efficient and will have unintended consequences of limiting acceptable development within the CCZ.

29 The proposed plan should at least be consistent with other CMUZ zones in having permitted provision of carparks not visible at street edge along an active frontages or non-residential activity frontages.

30 These amendments will be 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.

Standards on building heights, active frontages and building depth

31 FSNI's submission sought the deletion of the standards that relate to minimum building height (NCZ-S2, LCZ-S2, MCZ-S2 and CCZ-S4),⁸ and minimum ground floor height (NCZ-S3, LCZ-S3, COMZ-

⁸ Submission points 476.18, 476.29, 476.46 and 476.57.

S3, MUZ-S4, MCZ-S3 and CCZ-S5).⁹ It is submitted that such provisions place unnecessary restrictions on development.

32 FSNI's submission sought amendments to streamline the frontage standards NCZ-S6, LCZ-S6, MCZ-S6 and CCZ-S8 and included portions instead within the Design Guidance and/or as matters of discretion.¹⁰ This was rejected in the section 42A reports. Despite amendments providing for appropriate exceptions to frontage controls, it is submitted further amendments for additional flexibility are recommended as per the evidence of Ms Key.¹¹

33 FSNI's submission sought that maximum building depth standards NCZ-S11, LCZ-S11, MCZ-S11 and CCZ-S12 be deleted.¹² Whilst the building depth standards NCZ-S11, LCZ-S11 and MCZ-S11 have all been amended to only apply to residential activities, the same has not been done for CCZ-S12. As per the evidence of Ms Key, it is submitted that:

33.1 the wording of the title should also be amended to include reference to residential activities;¹³ and

33.2 that standard CCZ-S12 is also amended to only apply to residential activities as per the Council officers reasoning for the other three amendments.¹⁴

Planning maps with respect to zoning in Khandallah

34 As set out by Ms Key in Part 12 of her statement of evidence, FSNI sought the rezoning of 3 Dekka Street and 31-33 Nicholson

⁹ Submission points 476.19, 476.30, 476.35, 476.38, 476.47 and 476.58.

¹⁰ Submission points 476.20-21, 476.31-32, 476.48 and 476.63-64.

¹¹ Statement of evidence of Evita Key, at [10.2].

¹² Submission points 476.83, 476.93, 476.95A and 476.101.

¹³ Statement of evidence of Evita Key, at [11.2].

¹⁴ Statement of evidence of Evita Key, at [11.3].

Road to be amended to LCZ,¹⁵ as these properties are all owned by FSNI. A resource consent application is currently being considered by Council (Ref. SR 517439) to extend the supermarket activity over these properties.

35 Whilst this rezoning request was heard as part of Hearing Stream 2, the Council officers disagreed with the request as it related to 3 Dekka Street, noting that there was a '*possibility that the resource consent is not acted upon*'.¹⁶

36 With respect, rejecting relief sought on the basis of it being possible for a resource consent not being acted upon is erroneous. It is accepted that a resource consent is permissive, however it would be unfair for district plans to be created on the presumption that resource consents are unlikely to be acted upon. Rather, it is submitted 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 the ownership, development reflected in consent applications and commercial realities.

37 It is submitted that this 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.

¹⁵ Submission points 476.80-81.

¹⁶ Section 42A Report (Stream 2 – Part 3), at [206].

LEGAL FRAMEWORK

- 38 Due to the summary nature of these submissions and the relatively well settled legal principles, the legal framework is not addressed in detail in these submissions.
- 39 At a high level, the Panel is limited to making recommendations on amendments that are within scope (ie having been fairly and reasonably raised) of submissions on the Proposed Plan. The Proposed Plan must give effect to the relevant higher order documentation, including the RPS,¹⁷ and not be inconsistent with a water conservation order or relevant regional plan matter,¹⁸ and be prepared in accordance the Council's functions as set out in section 31 of the Resource Management Act 1991, Part 2 and the requirements of section 32 of the RMA.¹⁹
- 40 Relevant caselaw (including *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17]) sets out the statutory requirements in detail.
- 41 If the Panel requires submissions on the relevant legal tests, that can be provided ahead of subsequent hearing topics.

Date 20 June 2023



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¹⁷ Section 75(3)(c) of the RMA.

¹⁸ Section 75(4) of the RMA.

¹⁹ Section 74(1) of the RMA.