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| **Before the Kāpiti Coast District Council** |  |
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| **In the matter** | of the Resource Management Act 1991 |
| And  **In the matter** | of an application for construction and operation of a Countdown supermarket at 160 Kāpiti Road,  Paraparaumu (RM210151) |

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| **CLOSING LEGAL SUBMISSIONS**  **ON BEHALF OF TEMPLETON KĀPITI LIMITED**  **IN RESPONSE TO MINUTE 12** |
| **28 JUNE 2022** |
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|  | **Counsel:** |  |
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1. These Closing Legal Submissions are lodged in accordance with paragraph 3 of Minute 12 of the Commissioner.
2. These Submissions relate to the obligation of the consent authority to take into account all matters relevant under ss104(1)(a), (b) and (c), particularly subparagraph (c).
3. TKL’s concerns are traversed in detail in Counsel’s Legal Submissions for TKL dated 5 May 2022 and Counsel’s Memorandum in Response to Minute 7 dated 11 May 2022. The Commissioner’s attention is respectfully drawn to paragraph 2 of Counsel’s Memorandum dated 11 May 2022 which effectively summarises TKL’s concerns.
4. Those concerns have not been addressed in the supplementary evidence supplied to the Commission. Up to 102,900m² commercial/industrial activities could be developed within the Airport Zone, as controlled activities, with the Council having no ability to refuse consent. On the basis of the evidence presented during this hearing, it is not possible to reach a conclusion that the Kāpiti Road/Friendship Place intersection (with or without upgrades) could accommodate traffic generated by that level of development within the Airport Zone, plus the proposed supermarket activity, without the intersection failing.
5. If anything TKL’s concerns have been heightened by the supplementary evidence which has been filed, with particular reference to the section of Mr Carr’s evidence dated 22 June 2022 commencing on page 5 with the paragraph which commences “*However, my modelling also identifies a capacity constraint …*” and reading from there through to the end of the Conclusions on page 6.
6. The Commission is reminded that:
7. the outcomes referenced in the previous paragraph are based upon a doubling of existing traffic flows entering and exiting Friendship Place;
8. the existing traffic flows (being doubled) are generated by an agreed 22,000m² existing development;
9. therefore the doubling of existing traffic flows does not come anywhere near the traffic flows potentially generated by 102,900m² of development.
10. This application seeks to consent a supermarket activity which will generate significant additional traffic flows using an intersection which clearly has existing capacity constraints, taking into account foreseeable future development in respect of which consent cannot be refused. The potential adverse consequences on the operation of the intersection are significant. The existing zoning does not anticipate this activity or those effects. It is difficult to see how a conclusion could be reached that the application passes either of the s104D ‘gateway tests’ applicable to a non-complying activity. Even if one of the gateway tests could be passed, TKL submits that consent should be refused because of traffic related factors relevant to the operation of that intersection within the near term foreseeable future.
11. It is noted that it would not have been difficult to have modelled the operation of the intersection assuming the supermarket is consented and assuming 102,900m² development within the Airport Zone. That modelling could easily have established potential impacts on the intersection and, in particular, whether any of the applicant’s land would be required for an upgraded intersection with capacity to handle that level of traffic. That exercise may have demonstrated that there is no existing concern (although that is perhaps unlikely given Mr Carr’s evidence referred to above) or that a solution could be found which might or might not require the use of land which is currently privately owned. The applicant has elected to not carry out that modelling exercise, resulting in a significant level of uncertainty about the future capacity of that intersection.

**Dated 28 June 2022**



**Warwick Goldsmith**

**Counsel for Templeton Kāpiti Limited**