

**IN THE MATTER**

of the Resource Management Act 1991 ("**RMA**")

**AND**

**IN THE MATTER**

of Plan Change 5 to the Hamilton City Operative  
District Plan ("**District Plan**")

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**LEGAL SUBMISSIONS ON BEHALF OF  
WOOLWORTHS NEW ZEALAND LIMITED**

**23 SEPTEMBER 2022**

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## 1. SUMMARY

- 1.1 Plan Change 5 ("**PC5**") proposes Woolworths' site at 410 Peacockes Road ("**Site**") be zoned Medium Density Residential. Woolworths seeks the Site be included in the Local Centre Zone ("**LCZ**").
- 1.2 Woolworths' evidence is that rezoning the Site as LCZ will provide for the social and economic well-being of the community in a way that manages effects and uses land efficiently. The zoning of the Site as LCZ will enable an efficient and accessible anchor tenant with a safe separation of service vehicles and pedestrians. It will enable (and encourage) a range of local centre activities, "main street" and finer-grain retail development to occur on the eastern side of Peacockes Road, given the role well-designed and easily accessible supermarkets play in developments such as this.
- 1.3 The inclusion of the Site in the LCZ will provide appreciable benefits to the Peacocke community. The Site's location and will create effective connections to and from proposed residential activities. Local residents, parents doing the school run, commuters and Local Centre customers will all benefit from the convenience and accessible parking offered on the Site.
- 1.4 Peacockes Road will not form a "barrier" or hard boundary to the Local Centre. The pedestrianised focus of the Local Centre and the key Peacockes Road / Whatukooruru Drive intersection, as well as the location of the Site near the school, surrounding residential developments, will provide excellent opportunities to encourage movement back and forth across Peacockes Road and better integrate the residential and commercial elements of the area.
- 1.5 The Panel should also be wary of the opposition from the owner of the LC zoned land to the east of Peacockes Road, Adare Company Ltd ("**Adare**"), to zoning the Site as LCZ. Adare's concerns raise what are, in our submission, trade competition matters and offend the recent recommendations of the Commerce Commission around land availability in the retail grocery sector. There are no adverse resource management effects arising from the rezoning of the Site to LCZ – the only real outcome would be that all the Centre's supermarkets would not be "required" to be located on Adare's land.
- 1.6 In our submission, the Site should be zoned LCZ. This outcome will result in an effective, efficient and high quality outcome for Peacocke.

## 2. EVIDENCE

2.1 Woolworths has provided the following evidence:

- (a) **Daniel Shao** (Corporate) – Development Manager at Woolworths.
- (b) **Tim Heath** (Economics) – Senior Analyst at Market Economics Limited.
- (c) **Don McKenzie** (Transport) – Private Sector Leader for Stantec New Zealand.
- (d) **John Sofo** (Architecture) – Director of ASC Architects.
- (e) **Richard Knott** (Urban Design) – Director of Richard Knott Limited.
- (f) **Philip Brown** (Planning) – Director of Campbell Brown Planning Limited.

## 3. LOCAL CENTRE ZONING ON THE SITE

3.1 The Site covers approximately 1.7 hectares of land located on the south-western corner of the intersection of Peacockes Road and Whatukooruru Drive. Woolworths purchased the Site in 2021 having identified it as a potential location for a future supermarket and in reliance on the Peacocke Structure Plan being incorporated into the District Plan, which clearly contemplated the expansion of LCZ across both sides of Peacockes Road (covering the Site).<sup>1</sup> PC5 now seeks to impose the LCZ solely on the eastern side of Peacockes Road, and only on land owned by Adare.

3.2 The LCZ is the only zone in Peacocke which can accommodate supermarket development.<sup>2</sup>

3.3 In Woolworths' experts' opinions, the Site's characteristics are well suited to a LCZ:

- (a) The location of the Site will provide convenience for pedestrians and car-users,<sup>3</sup> and service the needs of the local Peacocke residential community by providing accessible parking.<sup>4</sup>

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<sup>1</sup> Evidence of Daniel Shao (16 September 2022), at 3.4.

<sup>2</sup> Evidence of Philip Brown (16 September 2022), at 4.7.

<sup>3</sup> Evidence of Tim Heath (16 September 2022).

<sup>4</sup> Evidence of Tim Heath (16 September 2022), at 42.

- (b) The proximity of the Site to surrounding residential development will help to seamlessly connect pedestrians from the residential area to the eastern side of Peacockes Road.<sup>5</sup> Connectivity and integration would only be improved through the inclusion of the Site in the LCZ.<sup>6</sup>
- (c) Delivery and service vehicles are able to access the loading dock from the rear of the Site, meaning that heavy vehicles will not interrupt the throughfare of customer access.<sup>7</sup>
- (d) The Site is flat and does not have any landscape, ecological or cultural / archaeological overlays which may prevent development.<sup>8</sup>

3.4 Inclusion of the Site within LCZ is not a new proposition nor one which originated from Woolworths. LC zoning for the Site was identified in the Peacocke Structure Plan, which was created in 2007 and reviewed in 2012, in full public consultation processes.<sup>9</sup> The Site was also shown as LCZ in the original masterplan prepared for the "Amberfield"<sup>10</sup> land and lodged by Weston Lea (now Adare) with Council in May 2018.<sup>11</sup> Woolworths was therefore surprised to see PC5 notified with LCZ only on Adare's land.

#### 4. EFFECTS, OUTCOMES

##### Design

- 4.1 Mr Sofo considers the Site will effectively and positively connect the surrounding residential areas to the Local Centre.<sup>12</sup>
- 4.2 Council's urban design expert, Mr Munro, considers the extension of the LCZ would "adversely fragment the proposed centre".<sup>13</sup> In Mr Sofo's opinion, Mr Munro has taken a narrow approach to the Local Centre and has turned his focus away from how the Local Centre can be effectively connected to the community. Despite Mr Munro's concern about fragmentation, he agrees the

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<sup>5</sup> Evidence of John Sofo (16 September 2022), at 6.2.

<sup>6</sup> Council's identification of a residential land use as being appropriate for the Site provides a clear indication that a connection is anticipated between the Site and the Local Centre.

<sup>7</sup> Evidence of Don McKenzie (16 September 2022), at 4.5.

<sup>8</sup> Evidence of Daniel Shao (16 September 2022), at 3.3(c).

<sup>9</sup> Evidence of Philip Brown (16 September 2022), at 3.5.

<sup>10</sup> The ultimate holding company for Amberfield Limited is Adare Company Limited.

<sup>11</sup> Urbanismplus Ltd - Appendix D – Amberfield Urban Design Report 16 May 2018, Figure 3-3 and 3-5.

<sup>12</sup> Evidence of John Sofo (16 September 2022), at 6.7.

<sup>13</sup> Primary Evidence of Ian Munro (2 September 2022), at 25.

Site is "desirable" for a supermarket but that finer grain retail would not be appropriate on the western side of Peacockes Road.<sup>14</sup>

- 4.3 Mr Sofo considers supermarkets to be "just as much a part of Local Centre life as small-scale retail",<sup>15</sup> and by locating a supermarket on the Site, fine grained, small scale commercial and retail developments can be reserved for the eastern side of the Local Centre.<sup>16</sup>
- 4.4 Mr Knott also supports the rezoning of the Site and considers it has the potential to deliver quality urban design outcomes.<sup>17</sup> Mr Knott recognises the importance of ensuring a supermarket is in a location easily accessible by cars and heavy vehicles but also where shoppers can easily connect to the wider Local Centre.<sup>18</sup>
- 4.5 Mr Knott considers the proposed amendment to PC5 will successfully achieve the aim of the Peacockes Local Centre Design Guide to provide a high level of walking and cycling connectivity to and from the Local Centre.<sup>19</sup>

### **Economic**

- 4.6 Mr Heath's evidence is the inclusion of the Site in the LCZ will provide a more economically efficient and functional outcome.<sup>20</sup> Inclusion of the Site within the LCZ will allow finer grain retail to occupy the eastern side of Peacockes Road, with accessible carparking on the western side. This will ensure a more efficient operation of the Centre as there will be a reduced need for internal roads within the LCZ.<sup>21</sup>
- 4.7 Mr Akehurst for the Council considers there is sufficient land on the eastern side of Peacockes Road to accommodate two supermarkets.<sup>22</sup> Mr Heath doesn't disagree, but considers Mr Akehurst has failed to assess what is the most appropriate outcome for ensuring an economically efficient, accessible and practical centre for the community.<sup>23</sup>

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<sup>14</sup> Technical Report of Ian Munro (26 August 2022), at 30.  
<sup>15</sup> Evidence of John Sofo (16 September 2022), at 2.6(a).  
<sup>16</sup> Evidence of John Sofo (16 September 2022), at 2.5(e).  
<sup>17</sup> Evidence of Richard Knott (16 September 2022), at 7.1.  
<sup>18</sup> Evidence of Richard Knott (16 September 2022), at 3.6.  
<sup>19</sup> Evidence of Richard Knott (16 September 2022), at 4.6.  
<sup>20</sup> Evidence of Tim Heath (16 September 2022), at 14.  
<sup>21</sup> Evidence of Tim Heath (16 September 2022), at 39.  
<sup>22</sup> Primary Evidence of Gregory Akehurst (2 September 2022), at 64.  
<sup>23</sup> Evidence of Tim Heath (16 September 2022), at 22.

### Transport

- 4.8 Mr McKenzie considers an extension of the LCZ to accommodate the Site will reduce traffic movements of customer and servicing vehicles that would need to pass through the intersection and "Main Street".<sup>24</sup> Mr McKenzie's evidence shows the extension of the LCZ will not detract pedestrians from walking between nearby residential zones to the LCZ. Rather, with Local Centre activity closer to higher density of residential zoning, vehicle travel will be minimised as shorter trips can be achieved efficiently on foot.<sup>25</sup>
- 4.9 Mr Black for the Council appears to agree, and considers the design of Peacockes Road provides a slow speed environment that provides multiple opportunities for pedestrians and cyclists to safely cross Peacockes Road (even with a supermarket to the west of Peacockes Road).<sup>26</sup>
- 4.10 Mr McKenzie concludes there are no major concerns around the traffic effects from the expansion of the LCZ to both sides of a minor arterial.<sup>27</sup>

### Planning

- 4.11 Mr Brown for Woolworths considers a better planning outcome results from zoning the Site as LCZ. It would make use of the visibility and frontage provided by the Peacocke Road intersection, and the walkable catchment of the Centre would capture other urban uses and housing which contributes to the successes of local centres.<sup>28</sup> It is Mr Brown's evidence that the inclusion of the Site within LCZ would also achieve the Local Centre Zone objectives.<sup>29</sup>

## 5. RESPONSE TO SUBMITTER EVIDENCE - ADARE

- 5.1 Adare has raised a range of issues with Woolworths' submission, all which boil down to this: it should only be Adare's land which can get the benefit of the LCZ.
- 5.2 While Adare says expansion of LCZ would not support speciality retail on the eastern side,<sup>30</sup> it has provided little evidence to support this. There is no evidence that the extension of LC zoning to the Site will affect Adare's ability

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<sup>24</sup> Evidence of Don McKenzie (16 September 2022), at 5.7.

<sup>25</sup> Evidence of Don McKenzie (16 September 2022), at 4.1 and 4.2.

<sup>26</sup> Rebuttal Evidence of Alastair Black (22 September 2022), at 32.

<sup>27</sup> Evidence of Don McKenzie (16 September 2022), at 5.4.

<sup>28</sup> Evidence of Philip Brown (16 September 2022), at 5.7.

<sup>29</sup> Evidence of Philip Brown (16 September 2022), at 5.18.

<sup>30</sup> Primary Evidence of Wayne Bredemeijer (16 September 2022), at 34.

to develop the eastern side of Peacockes Road. Adare's own plans show an awkward and unworkable layout for the Centre's supermarket(s) on its land, and illustrate Adare's plans to use the LCZ for residential development.

- 5.3 Adare says Peacockes Road is a "barrier" to commercial development to the west.<sup>31</sup> This also lacks credibility, given the way the intersection of Peacockes and Whatukooruru Drive has been designed – a slow speed environment, enabling high quality pedestrian connectivity.
- 5.4 In our submission, Adare's opposition raises real concerns around trade competition. As the Panel will know, where a person could gain an advantage in trade competition through the submission, the person's right to make a submission is limited to only making a submission if directly affected by an effect of the proposed plan that adversely effects the environment; and does not relate to trade competition or the effects of trade competition.<sup>32</sup> Adare's opposition to Woolworths' proposal will have the sole effect of restricting the commercial activities which Woolworths may undertake on its own land. This is trade competition directly related to the competing uses on respective areas of land.
- 5.5 Adare's opposition also contradicts, in our submission, the Commerce Commission's recent recommendations to ensure retail grocery store development is not inhibited, and to materially improve the conditions of entry and expansion for existing and potential grocery retailers.<sup>33</sup> The Commission's Report recognises the potential for planning regulations to impede or slow the ability of retailers to develop new stores if they create additional costs or significant delays in the store development process for example, going through a resource consent process.<sup>34</sup> The Commission noted that overseas market studies have found planning regulation can impede entry, including by acting as a barrier to the establishment of new supermarkets.<sup>35</sup>

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<sup>31</sup> Rebuttal Evidence of Wayne Bredemeijer (22 September 2022), at 36.

<sup>32</sup> RMA, Schedule 1, clauses 6(3) and (4).

<sup>33</sup> *Market study into the retail grocery sector – Final Report* (Commerce Commission, PRJ0044573, March 2022) at 9.20 and Recommendation 2.

<sup>34</sup> *Market study into the retail grocery sector – Final Report* (Commerce Commission, PRJ0044573, March 2022) at 6.63.

<sup>35</sup> *Market study into the retail grocery sector – Final Report* (Commerce Commission, PRJ0044573, March 2022) at 6.63.

5.6 In our submission, little weight should be given to Adare's protestations.

**Dated** 23 September 2022

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