

BEFORE THE ENVIRONMENT COURT

Decision No W 075 /2008

ENV-2008-AKL-000043

IN THE MATTER of an appeal under s120 of the Resource
Management Act 1991

BETWEEN PROGRESSIVE ENTERPRISES
LIMITED
Appellant

AND THE NORTH SHORE CITY COUNCIL
Respondent

Court: Environment Judge C J Thompson, Environment Commissioner W R Howie,
Environment Commissioner H M Beaumont

Hearing: at Auckland on 6 -10 and 15 - 16 October 2008. Site visit 13 October 2008

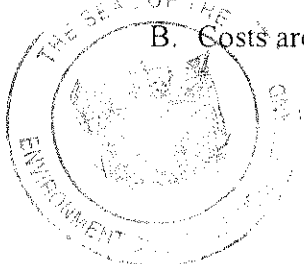
Counsel: D A Allan and A Bull for The National Trading Company of New Zealand Ltd
C N Whata, J D K Gardner-Hopkins, D Minhinnick for Progressive Enterprises Ltd
W S Loutit and D K Hartley for the North Shore City Council

DECISION OF THE COURT

Decision issued: 3.11.08

A. The appeal is declined

B. Costs are reserved



Introduction

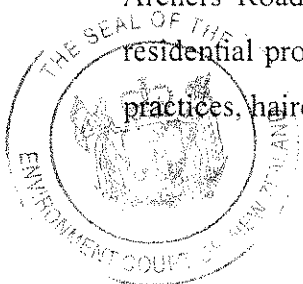
[1] In November 2007 the North Shore City Council granted the resource consents necessary to enable The National Trading Company of New Zealand Ltd (NTC) to fitout an existing building at 30-60 Wairau Road, Glenfield and to operate it as a Pak 'N Save supermarket. After a joint hearing, the Auckland Regional Council also granted consents in respect of discharges to air and to ground for the same proposal. Those are not subject to appeal and need not be discussed. There were appeals against the City Council's decision by other parties also but they have all now been resolved, either by withdrawal or by agreement on modifications to conditions. Those have been incorporated into draft Consent Orders which are presently in abeyance, pending the outcome of this appeal. Only this appeal against the grant of consents by the City Council, lodged by Progressive Enterprises Ltd which competes with NTC in the supermarket trade, remains to be dealt with in this hearing.

The proposal

[2] The proposed supermarket is to be one of 4899m² gross floor area (gfa) (of which about 2929m² will be retail floorspace) and will have some 342 (including 8 mobility spaces) carparking spaces. It is to have *left-turn in, left-turn out*, access onto Wairau Road. Access onto Archers Road will be constructed through a recently acquired property to a four-way, signalised intersection with Archers Road and Poland Road. There will also be access onto and off Porana Road.

Site and area description

[3] The site is one of 2.4169ha with frontage onto the western side of Wairau Road. As mentioned, it also has access onto Archers Road to its north, and to Porana Road to its south. SH 1, in the form of the Northern Motorway, is a block away to the east, running parallel to Wairau Road. The surrounding streets are occupied by light industrial, servicing, and (mostly) bulk or trade retail premises, with a considerable emphasis on matters automotive. The closest residential development to the site is about 150m to the west, on the north side of Archers Road. This appears to be in a state of transition, with a number of the former residential properties now occupied by small enterprises such as an optometrist, accountancy practices, hairdressers and an upholsterer/soft furnisher.



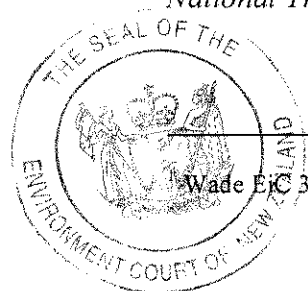
[4] As it passes the site, Wairau Road is a four-lane regional arterial road with a flush median. At that point, it carries about 24,000 vehicles per day (vpd). Archers Road is a secondary arterial linking residential and industrial areas to the west in Glenfield and Birkenhead with Wairau Road and the motorway. It carries about 13,500 vpd past the site. Porana Road is a collector road linking Wairau Road to the western parts of the North Shore via Sunnybrae Road and carries around 9,000vpd. It provides the main access to the North Shore Events Centre, a block to the south of the site¹.

Zoning and planning status

[5] The site is zoned *General 9* (in general terms, a business zoning) in the District Plan and the planning witnesses are agreed that overall the proposal is to be considered as a *Discretionary* activity principally, but not solely, because it is a food retail operation with a gfa greater than 2500m². That activity status of course brings into play s104 (subject to Part 2) and it is agreed that all factors (save that there is no relevant National Policy Statement) mentioned in that section are to be considered.

Litigation history

[6] This proposal, in differing sizes and permutations, has produced a good deal of litigation extending back into the early 1990s. It is not necessary to review all of that, save to highlight that on the last occasion when it was before this Court – in 2001 – the proposal was for a supermarket of 6259m². There was also to be a Fire Service building on the Wairau Road/Porana Road corner of the block. The then proposed access included a rather problematic right-turn into the site off Wairau Road, and onto and off Archers Road through an access point a little to the east of the existing Archers Road/Poland Road intersection. Because of those issues and the amount of traffic it was projected to generate, the Court regarded the proposal as *too large* for the site and the surrounding road network (as it then existed) to cope with. For that reason the Court upheld the Council's decision to decline the necessary consents and expressly did not embark upon an examination of the proposal's possible effects on the amenity values of other North Shore centres. That decision is *The National Trading Company of New Zealand Ltd v North Shore City Council* (A182/2002).



[7] As will already be apparent, the Council has a different stance on the current application, and supports its decision to grant the consents. In brief, it believes that the proposal's (about 22%) smaller size and absence of the Fire Service development, and improvements in the access to the roading network surrounding the site, have avoided or mitigated the adverse effects on traffic and existing centres to the extent that they no longer outweigh the positive effects.

The live issues

[8] There is a large measure of agreement between the parties that there are three central issues to be resolved. First, whether there will be adverse traffic effects, particularly as they might relate to the Wairau Road / Tristram Avenue intersection. Secondly, whether there will be significant social and economic effects on the amenity of the existing North Shore centres as the result of patronage being drawn away from them by the proposed supermarket. Thirdly, whether the proposal so conflicts with, or is contrary to, the provisions of the relevant planning documents that to allow it would seriously harm the integrity of those documents as instruments for managing the effects of activities.

Our approach to drafting this decision

[9] We had evidence from 26 witnesses – their written briefs occupy 5 large folders and the transcript of the 6 & 1/2 days of hearing runs to 570 pages. The bundle of planning documents agreed by the Planner witnesses occupies 2 large folders and a folio of plans. There is a further large folder of annexures to the evidence of Progressive's principal planning witness.

[10] Obviously we cannot hope to mention all of that material in a decision of acceptable length. We make no apology for summarising it, in places quite severely, and for citing only those extracts of the documents that strike us as exemplifying the issues and themes we regard as decisive.

[11] We mention also that we heard *Confidential* evidence from some witnesses. That was evidence about supermarket turnover and performance figures which the parties agreed to share between selected witnesses for each of them but which, for reasons of commercial sensitivity, they did not wish to be made public. We agreed to accept that evidence on that basis and while witnesses were cross-examined about that material the Court was cleared of



persons who were not privy to it. We have not found it necessary to refer to the specifics of that evidence in giving reasons for our conclusions.

[12] In dealing with the live issues, we have attempted to avoid repetition by grouping the points to be discussed with the relevant District Plan provisions and assessment criteria. Although somewhat inconsistent with the order in which topics appear in s104, we have found it convenient to deal with the argued adverse effects and corresponding District Plan provisions first; then with positive effects; then with the Regional planning documents; and then the issue of plan integrity under the catch-all of *other matters*: - s104(1)(c).

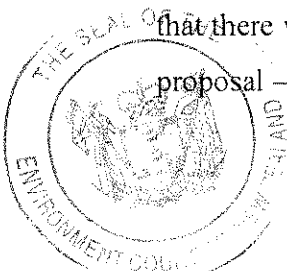
Preliminary point 1 - Alternatives

[13] In two respects, one being almost the mirror image of the other, the issue of *alternatives*, was raised by Progressive. While it might be true that NTC had commented in the course of the application process that it had struggled to find another suitable site for a Pak 'N Save in the southern sector of the North Shore, we do not understand it to be advancing the absence of a viable alternative site as a reason why consent should be granted for this proposal.

[14] Progressive called Mr Nigel Dean, a very experienced commercial real estate valuer, who expressed the view that potential alternative sites could be found in the southern sector which, it might be argued, were *better* in terms of effects or issues with the planning documents. His possibilities were rather discounted by NTC's witnesses on grounds of location, size, difficulty of title amalgamation, or any number of other reasons.

[15] Progressive's *mirror image* of that position was the proposition that the Wairau Road site could better be used for some other activity that would be a less intense generator of private car trips and, potentially at least, amenable to a more intense use of public transport. Such a use, the argument was, would be more sympathetic to the increasing emphasis on public transport in the planning documents.

[16] We deal with the relationship (or lack of one) between supermarkets and public transport elsewhere. What needs to be said here is that in the absence of credible evidence that there will likely be ...*any significant adverse effect on the environment*... arising from the proposal – thus bringing into play the requirements of Clause 1(b) of Schedule 4 to the Act to



demonstrate a consideration of alternative locations or methods in the application process - possible alternative sites for the proposal are irrelevant. Unless Clause 1(b) applies, every proposal must be assessed on its own merits without regard to whether there might, or might not, be a *better* site. That has been the clearly held view of the Court over a long period: - see eg *Dumbar v Gore DC* (W189/1996), *Te Kupenga O Ngati Hako Inc v Hauraki DC* (A10/2001) and *All Seasons Properties Ltd v Waitakere CC* (W021/2007).

Preliminary point 2 - Permitted baseline

[17] Activities permitted as of right by the District Plan bear no practical similarity to the proposal in their likely effects on the environment. Food retailing, for instance, would be confined to premises of less than 200m² gfa associated with service stations, and to a tiny fraction of the estimated daily traffic generation. A realistic office development would require a resource consent. There is no assistance to be derived from considering the permitted baseline and we exercise our discretion under s104(2) to put it aside.

The District Plan and live issues of effects on the environment

[18] As mentioned, it is common ground that the proposal is to be considered as a *Discretionary* activity – because it is identified as such in Rule 15.6.1.3 and is not listed in the Table of exemptions attached to the Rule. The District Plan contains, as one would expect, assessment criteria to assist in the exercise of that discretion. In citing Plan extracts, we have underlined portions of the quoted provisions to highlight the fundamental points we take from an overall reading of the Plan. We should also add that we have considered Proposed Plan Change 30, notified on 1 May 2008 and on which Further Submissions close on 10 November 2008. It relates to urban design issues – in the context of this appeal to 15.3.3 and 15.3.4 of the Plan. What it proposes does not seem of great relevance to the live issues and, given its early stage of development, we have not given it weight.

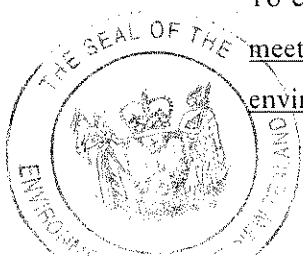
General amenity values

[19] Criteria relevant to amenity values are to be found in, first, 15.3.3 which provides:

15.3.3 Retail Activities

Objective

To enable a wide range of retail activities in business centres, and in locations where they meet the needs and preferences of the community; avoid, remedy or mitigate adverse environmental effects; and enhance community accessibility to a range of facilities.



Policies

1. By encouraging retail activities to locate in the existing and proposed business centres in the city, which include:

- a) Sub-regional centres at Takapuna and Albany;
- b) Suburban centres, ranging from Browns Bay, Glenfield and Highbury, to Devonport, Milford and Northcote, and to Albany Village, Greville Road, Mairangi Bay, Sunnynook and Unsworth Drive;
- c) Local centres distributed throughout the city;
and in the General Business zones where appropriate.

2. (omitted)

3. (omitted)

4. By recognising the potential demand for some retail activity to establish in business zones outside the existing and proposed business centres and requiring this development, (in the Sub-regional 6, Business Park 7, Business Special 8, General 9 and General 10 zones) unless otherwise exempted, to be subject to a thorough evaluation, particularly in terms of the effects of the activity on:

- the roading network in which the activity is located; and
- the amenity values of nearby residential areas; and
- the character, heritage, and amenity values of the centres; and
- the overall accessibility to the range of business and community facilities in the city; and
- the pedestrian amenity in the vicinity of the proposed retail activity.

5. (omitted).

6. (omitted).

7. (omitted).

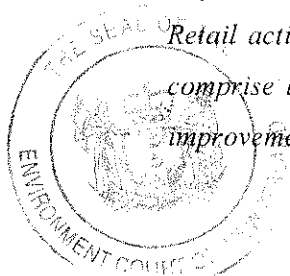
8. (omitted).

Methods

- Policies 1, 2, 3, 4, 6 and 8 will be implemented by rules
- Policy 5 will be implemented by Council initiatives in the form of advice, coordinating initiatives and advocacy
- Policy 7 will be implemented by Council works for service and amenity improvements.

Explanation and Reasons

Retail activity has traditionally congregated in the existing business centres. These centres comprise land and groupings of buildings, services and facilities and street and landscape improvements. In the context of the RMA, they are valuable physical resources which require



sustainable management. In addition to the existing centres, the District Plan identifies new centres in the growth areas of the city, including a second subregional centre at Albany.

The benefits provided by existing centres include:

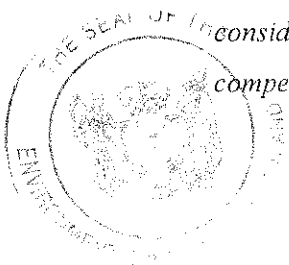
- Their value to the social and economic well-being of the surrounding communities, since they serve a wide range of functions
- The opportunity they provide for access to a wide range of goods and services by means of multi-purpose trips, rather than single purpose trips to dispersed stores
- Their accessibility to local residents with limited mobility
- Their ability to adapt to changing needs either incrementally or by comprehensive redevelopment.

The Council recognises that the retail sector is dynamic and that a District Plan, unless constantly reviewed, will not be able to anticipate the range of new developments which are likely to occur over the life of the plan. So while the existing centres and the proposed new centres are expected to provide for the majority of new development, the Council recognises that some flexibility in retail location may be needed.

Retail activity responds to changes in the mobility of the population, the length of shopping hours, in retailing technology, the availability of discretionary spending power, in markets and demographics, and the needs and preferences of the community.

Convenient access to retail activity is of particular importance. The last decade has seen the emergence of more vehicle orientated shopping environments. The District Plan provides for some flexibility for retail location outside of the existing and proposed centres within other business zones.

Some retail activity, either in a stand-alone or combined format, can include high traffic generating activities that have the potential for adverse effects on the efficient functioning and management of the street network. For this reason, proposals for large developments, and for activities which cumulatively have the effect of a large development, outside the existing and proposed centres, will need to demonstrate that their effects on the traffic and roading environment are avoided or mitigated. The assessment criteria provided in Section 15.7.4.1 for both Limited Discretionary and Discretionary activities aim to limit these effects. Large developments can also have adverse social and economic effects on existing and proposed centres. In terms of Section 15.7.3.5, proposals will also need to demonstrate that significant adverse effects of this type are avoided or reduced by mitigation measures or by positive effects resulting from the new activity. The social and economic benefits being considered here are not those which are excluded by Section 104(8) of the RMA (trade competition).

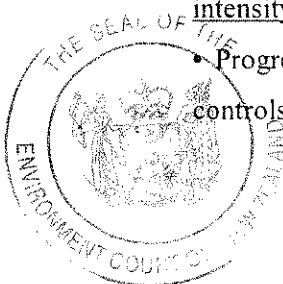


While the Council's role is largely to provide a framework within which private investment decisions can be made, there is scope for the Council to intervene to compensate in a positive manner by upgrading public facilities, or by conserving and enhancing heritage buildings. These interventions can act as a catalyst to private investment.

A fruitful way to encourage a sense of local identity, an increase in business confidence and an improved streetscape, is to engage the private sector, both property owners and retailers, and the local community, in a partnership with the Council in the preparation of Centre Plans. These Centre Plans need to be agreed by all participants, after which they will be adopted by the Council as action documents for particular centres. The Plans can include a range of proposals which will need to be implemented in a number of ways, including District Plan controls, public works proposals, improved centre management techniques and agreed private sector initiatives. Centre Plans will provide an opportunity to include more specific design controls and assessment criteria for individual centres into the District Plan, based on their essential characteristics and qualities.

Expected Environmental Results

- The majority of new retail developments established largely within the existing and proposed business centres, as measured by a biennial business zones land use survey and annual assessment of the NZ Business Directory.
- Maintenance and enhancement of the vitality and viability of sub-regional and suburban centres, as measured by:
 - Annual analysis of Valuation NZ's commercial property yield data
 - Annual pedestrian flow surveys
 - Five-yearly resident surveys
 - Five-yearly centre vitality surveys based on review of public spaces, activity patterns and quality improvements
 - Biennial business zones land use surveys.
- Developments within suburban and local centres at a scale appropriate to their location and catchments, as measured by biennial business zones land use surveys
- Retailing at Link Drive does not develop into a commercial centre with a full range of merchandise, as measured by biennial business zones land use surveys
- Retailing within the Business Park and General Business zones predominantly small scale shops whose primary function is to serve the local area, or larger shops of low intensity retailing, as measured by biennial business zones land use surveys
- Progressive refinement of District Plan provisions through Centre Plans, so that controls affecting retail centres are differentiated to achieve the reinforcement and



enhancement of the particular qualities of individual centres, as measured by ongoing review of Plan provisions

- Resident satisfaction with the amenities of shopping centres, as measured by five-yearly residential zone land use surveys
- Council assistance in the promotion of individual centres and works undertaken in conformity with Centre Plans, as measured by an assessment of Annual Plan commitments.

[20] As mentioned, the accepted evidence was that more than one half of the projected turnover of the proposed supermarket would be business presently going to the Pak 'N Save at Albany, some 6 km to the north. All but a tiny fraction of the balance would be drawn from existing North Shore supermarkets, with most of those in the southern sector being Progressive *brands*. In terms of 15.3.3, that indicates very strongly that the proposal will *...meet the needs and preferences of the community ... and enhance community accessibility to a range of facilities*. Also, it demonstrates a *...potential demand for some retail activity to establish in business zones...* That would suggest that the accessibility criterion in Policy 4 is well met, and there is agreement that the pedestrian amenity in the vicinity of the proposal is not in issue. Nor are the amenity values of the nearby residential areas. In terms of those criteria, that leaves amenity values for the centres, and roading, both of which we deal with elsewhere.

Traffic and roading

[21] Traffic and roading related criteria are to be found in Section 15.7.4.1, which provides:

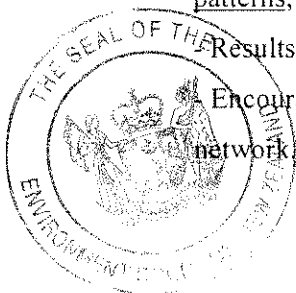
15.7.4.1 High Traffic Generating Activities identified as Limited Discretionary or Discretionary Activities in Rule 15.6.1.3

Activities will be assessed against the following criteria:

- a) The extent to which any adverse effects of the activity on efficiency, safety and operational aspects of the adjacent and local road network, and in particular, the avoidance of adverse traffic effects on residential amenity, are able to be avoided, remedied or mitigated.
- b) The extent to which the activity has adverse effects on private and public transport patterns, and in particular, the extent to which the proposal:

Results in an increase (or reduction) in overall travel distances

Encourages the use or maintains the integrity of the public transportation network



c) Criteria listed under Clause 12.5.1.3 of the Transportation Section of the Plan.

For brevity's sake, we can say that we understand that the traffic engineers and planners agree that with the exception of one portion, the criteria in 12.5.1.3 are all met. The exception is:

In relation to congestion and intersection performance, effects on streets and intersections within the area for a distance of one kilometre should be avoided, remedied or mitigated, given both present day conditions, and future traffic volume projections. Possible mitigation measures include feasible network improvements.

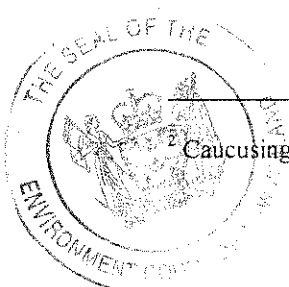
[22] The disputed criterion in 12.5.1.3 was in contention as it related to the Wairau Road / Tristram Avenue intersection.

[23] The parties' expert traffic witnesses – Mr Brett Harries (called by Progressive Enterprises), Mr Andrew Foy (called by the City Council), Mr Warrick Wade (called by the City Council), Mr John Burgess (called by NTC) – had conferred and agreed on a number of matters relating to the traffic assessment²:

- the parking complies, both in quantity and in layout, with the District Plan requirements
- the number and location of truck loading bays and truck operations are not in contention
- the proposed traffic management measures at Wairau / Porana, Archers / Poland, and Wairau / Archers are not in contention
- the Tristram Avenue / Wairau Road intersection is more or less at capacity at periods during the day
- the data from 2007 traffic counts are to be used for existing traffic flow
- the network effects assessment should focus on the weekday pm peak (5 – 6pm) and the Saturday midday peak (12 – 1pm)
- the trip generation rate is 17.7 trips per 100m² gfa during the weekday evening peak hour (867 vehicle movements) and 19.3 trips per 100m² on Saturdays at midday (946 vehicle movements)
- the pass-by trip proportions are 20% on a weekday evening and 15% on a Saturday midday.

The traffic experts were not agreed on the following matters:

_____ ²Caucusing meeting minutes May 2008



- the value or otherwise of a supermarket in terms of support for public transport, particularly when compared to offices
- the distribution and assignment of trips onto the road network
- the quantum of traffic through the Tristram Avenue / Wairau Road interchange and Tristram Avenue / Wairau Road / Hillside Road intersection
- the performance of the Tristram / Wairau interchange and intersection

[24] Further traffic and transport experts – Mr Grant Smith (called by Progressive Enterprises), Mr Peter McCoombs (called by Progressive Enterprises), Mr David Glover (called by Progressive Enterprises), Mr John Parlane (called by the City Council) – also provided evidence.

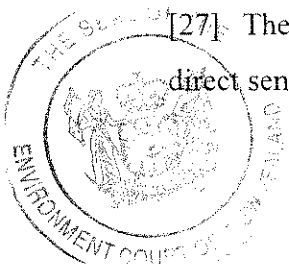
Written approvals - traffic

[25] A considerable number of owners/occupiers of properties in the general area gave written approval to the proposal. Particularly relevant to the issue of traffic effects, NZ Transport Agency (formerly Transit New Zealand) does not consider that there are any significant issues for roads under its control arising from the proposal and it was not represented at the hearing. It gave its written consent to the proposal, in which it expressed itself *...comfortable that any traffic effects of the Application on the State Highway network (including the Wairau/Tristram interchange) can be adequately managed or controlled...* so we cannot have regard to any adverse effect another party considers there might be on the Agency as the operator of the highway network: - see s104(3)(b).

[26] In a similar vein the City Council, as manager of the local roading network, expressed itself satisfied that the effects of traffic generated by the proposal can be adequately managed. While acknowledging that the Wairau / Tristram intersection, particularly the right-turn out of Wairau Road onto Tristram Avenue, is largely at capacity at peak times, it accepts the views of Messrs Foy, Parlane, Wade, and Burgess that the amount of traffic the proposal will add to that intersection will make little or no practical difference.

Traffic – adjacent and local road network

[27] There is no issue about adverse traffic effects on residential amenity, at least in any direct sense. The traffic experts were agreed that the proposed traffic management measures at



intersections immediately adjacent to the site (Wairau / Porana, Archers / Poland, and Wairau / Archers) were not in contention.

[28] Mr Harries reviewed the recent data (1998 – 2007) on crashes on Wairau Road and at the Wairau / Tristram intersection. He noted the steady growth in crashes, especially non-injury crashes, on Wairau Road and related the increase in crashes to the increased traffic volumes and congestion. He noted a small increase in crashes at the Wairau / Tristram intersection³.

[29] Mr Burgess reviewed the same data and observed that the number of crashes had increased significantly between 2002 and 2005 and then decreased in 2006 and 2007. He considered that there was no significant trend of deterioration and there would always be fluctuations from year to year⁴.

[30] Mr Wade also considered the crash records for the road network and the intersections in close proximity to the proposed site. He noted the increase in crashes and that the Wairau / Hillside / Tristram and Wairau / Archers intersections were *blackspots* with more than one injury crash per year. Mr Wade considered the proposed improvements at each of the access points would assist in improving safety for existing users and mitigate the effects of the proposed supermarket.⁵

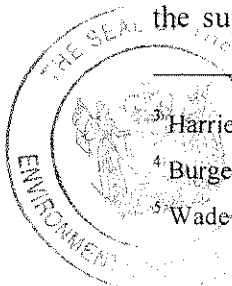
[31] Mr Parlane considered the crash records and undertook a search of all crashes on the North Shore over the same period. He demonstrated a similar pattern of an increase in the number of non-injury crashes and noted that the increase also occurred outside of peak traffic hours. He considered this trend to be at least partly explained by an increase in the reporting rate for non-injury crashes over the last ten years.

[32] We find that traffic safety is an issue in the Wairau Road corridor. However there is no compelling evidence that the proportionately small increase in traffic volumes as a result of the supermarket will significantly increase the crash rate. We agree with Mr Wade that the

³ Harries EIC 60 to 65

⁴ Burgess EIC 3.28

⁵ Wade EIC 6.15



proposal incorporates effective mitigation of the potential traffic safety effects particularly with respect to the re-alignment of the Archers Road entrance and the prevention of the right turn onto the site from Wairau Road.

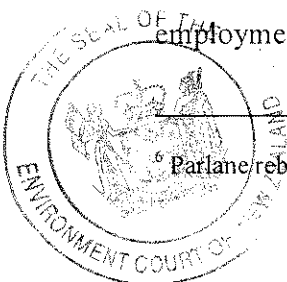
Traffic – private and public transport patterns

[33] There was a measure of agreement that both the Regional and the District planning documents have been, and are being, modified to give increasing emphasis to the issue of public transport. Both for the sake of the planet's atmosphere, and the avoidance of still more congestion on the roading network, the use of public transport (in this case, buses) is being promoted. Opponents of this proposal suggested that alternative uses for the site (for instance, office accommodation) could be found which would be amenable to a more intense use of buses, and thus be more in tune with the thrust of the Plans.

[34] Quite apart from the *alternative sites* issue, which we have dealt with elsewhere, the short point is, as the witnesses all agree, that supermarket shopping and public transport simply do not interface in any meaningful way. A bus and a trolleyfull of groceries is not a viable combination for any but the strongest and most resolute shopper. The surveys indicate that about 96% of all supermarket shopping trips are done in a private car, for just that reason. It also appears to be generally accepted that society needs supermarkets as an efficient means of distribution of food and groceries to an intensely settled urban population. Taking as a given that supermarkets in more or less their present form will continue into the foreseeable future, whether a supermarket is in a centre, or out of a centre, will make no difference to its level of contribution to public transport use, which is effectively nil. Put another way, any supermarket, wherever located, could arguably be out of sympathy with, if not actually contrary to, those sorts of Plan provisions.

[35] It is also to be noted that the site is more than the 800m walking distance (suggested as a catchment radius) from the busway stops on the commuter Rapid Transit Network (RTN)⁶. The RTN provides fast, high frequency services unaffected by congestion and is the backbone of the passenger transport system. The Regional Policy Statement, Appendix H, notes that employment densities should be higher closer to a transit stop and graduate to lower densities

⁶ Parlaine rebuttal par 4.5



[47] Mr Parlane commented on the nature of the morning and evening weekday peak traffic periods¹⁸. He observed that the morning peak causes the most delay for motorists due to queues that spill back from most of the North Shore interchanges as a result of the build up of traffic on the motorway heading south. The evening peak carries more traffic but that traffic spreads out onto a number of roads so the delays experienced are generally less.

[48] In response to questions from the court Mr McCoombs also described both the morning and evening peak traffic. He considered that the delays through the intersection and the interchange would be worse in the evening than the morning. He also noted that the delays in the morning *...would just be the beginnings of quite a long trip into the city, the rest of it spent grinding away down the motorway*¹⁹.

[49] The modelling work for the weekday traffic has been undertaken for the 5.00 to 6.00pm peak period, as agreed by the traffic experts. We agree with Mr Harries that this is likely to be indicative of the performance of the intersection through a broader pm peak period. The March 2008 traffic counts for Wairau Road (taken from the updated evidence of Mr Harries²⁰) indicate approximately 2600 vph between 4.00pm and 5.00pm and approximately 2400 vph between 5.00pm and 6.00pm. These counts are consistent with the assumptions used in the modelling work by Mr Burgess (2,437 vph) and Mr Harries (2,749 vph).

[50] We are satisfied that the results of the modelling are sufficiently robust to indicate the effects of the increased traffic through an extended 4.00pm to 6.00pm weekday evening peak period. While no specific modelling has been done for the 4.00pm to 5.00pm period it is clear that the base traffic flows are similar, or slightly higher, and that the supermarket generated traffic is likely to be similar or slightly lower. For completeness, we might perhaps add that, given what we understood of the premises underpinning Mr Smiths' modelling, we do not regard it as convincing and give it little weight.

[51] There is no doubt that the Wairau / Tristram intersection and interchange poses a problem, and will continue to do so until some long term solution is found. The traffic

generated by this proposal will have *an* effect on this intersection. We agree with Mr Harries that the significance of the effect should be considered in the context of an already busy intersection and the plan provisions.

[52] We also note that the scale and duration of the traffic effects on intersections are somewhat limited. Only one of the surrounding intersections is considered to be affected. The impacts of the supermarket are most marked in the weekday pm peak and the Saturday midday peak – that is when the supermarket generates the most traffic. At all other times the Wairau / Tristram intersection will operate more or less as it does now even though the traffic volumes will increase slightly.

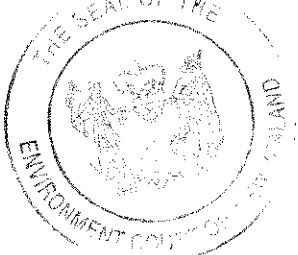
[53] We find that there is an effect on the operation of the Wairau / Tristram intersection. However this effect is small in magnitude, limited in duration and minor when considered in the context of the traffic situation on the surrounding road network.

Traffic – findings

[54] We turn back to the District Plan provisions with respect to traffic and the assessment criteria listed in 15.7.4.1. We have found that there are no adverse effects on residential amenity and the potential traffic safety effects have been remedied by the proposed changes to the Archers Road and Wairau Road entrances. We have found that the effects on private and public transport patterns are neutral.

[55] The traffic engineers and planners were satisfied that the criteria listed in clause 12.5.1.3 are all satisfied with the exception of the performance of the Wairau / Tristram intersection and interchange. Given the written approval from the NZ Transport Agency we cannot have regard to any potential adverse traffic effect on it as the manager of the Wairau / Tristram interchange. We have found that there is a minor effect on the performance of the Wairau / Tristram / Hillside intersection.

[56] Overall we find that the traffic effects of the proposal are not significant to the extent that they should count against the proposal.



Social and economic effects on Centre amenity

[57] Social and economic effects find a particular place in 15.7.3.5, which provides:

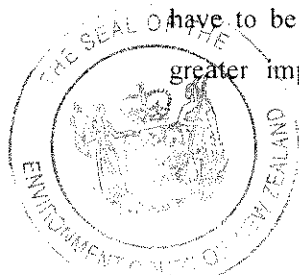
15.7.3.5 Discretionary Activities identified in Rule 15.6.1.3

Without limiting the exercise of the Council's discretion, activities will be assessed to determine the extent of any adverse social and economic effects, including the following effects:

- a) The extent to which the new activities would result in a significant adverse effect on the commercial and community services and facilities of any existing or proposed business centre as a whole.
- b) The extent to which the overall availability and accessibility of commercial and community services and facilities will be maintained in any existing business centre.
- c) The extent to which the new activities would result in a significant adverse effect on the character, heritage and amenity values of any existing or proposed centre.
- d) The extent to which the benefits of a new development are able to directly or indirectly mitigate any adverse effects in a), b) or c) above.
- e) For activities which require consent under rule 15.6.1.3.1(b), the effects, including traffic and social and economic effects, of all existing activities within Wairau Park, and any cumulative effect associated with the additional activity, on other areas of the city.

[58] The Plan provisions in respect of centre amenity and viability are entirely in accord with the views expressed in the Supreme Court judgments in *Westfield (New Zealand) Ltd v North Shore City Council* [2005] NZRMA 337. In discussing the meaning to be given to the then s104(8) (now renumbered as s104(3)(a)) – the statutory prohibition against taking account of trade competition in making resource consent decisions - Blanchard J said this:

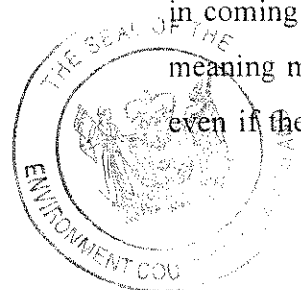
[119] An important matter which the Council's Regulatory and Hearings committee needed to inform itself upon was the effect which the activity proposed by Discount Brands might have on the amenity values of the existing centres – on the natural or physical qualities and characteristics of those areas that contributed to people's appreciation of their pleasantness, aesthetic coherence, and cultural and recreational attributes (s2). The committee was required to disregard the effects of trade competition from the Discount Brands centre, since competition effects would have to be disregarded upon the substantive hearing of the resource consent application (s104(8)). But, as Randerson J said, significant economic and social effects did have to be taken into account. Such effects on amenity values would be those which had a greater impact on people and their communities than would be caused simply by trade



competition. To take a hypothetical example, suppose as a result of trade competition some retailers in an existing centre closed their shops and those premises were then devoted to retailing of a different character. That might lead to a different mix of customers coming to the centre. Those who had been attracted by the shops which closed might choose not to continue to go to the centre. Patronage of the centre might drop, including patronage of facilities such as a library, which in turn might close. People who used to shop locally and use those facilities might find it necessary to travel to other centres, thereby increasing the pressure on the roading system. The character of the centre overall might change for the worse. At an extreme, if the centre became unattractive it might in whole or part cease to be viable.

[120] The Court of Appeal considered that only “major” effects needed to be considered, since only then would the effect on the environment be more than minor, in terms of s 94(2)(a). But in equating major effects with those which were “ruinous” the Court went too far. A better balance would seem to be achieved in the statement of the Environment Court, which Randerson J adopted, that social or economic effects must be “significant” before they can properly be regarded as beyond the effects ordinarily associated with trade competition on trade competitors. It is of course necessary for a consent authority first to consider how trading patterns may be affected by a proposed activity in order that it can make an informed prediction about whether amenity values may consequentially be affected.

[59] Despite inquiry during the hearing it remains unclear to us whether, by some quirk of the transitional provisions in the 1997 and/or 2003 RM Amendment Acts, the Supreme Court was actually dealing with the original (ie pre-1997) version of s104(8). The use of the phrase *...on trade competitors...* in the third sentence of para [120] rather suggests that it was. If so, the removal of that qualification in the 1997 amendment would suggest that the prohibition on taking account of trade competition should now be interpreted more widely. Given our uncertainty on the point however it is appropriate to, if anything, favour the Progressive position and simply take the *Discount Brands* interpretation as it stands. The end result is that decision-makers are not to take account of effects such as the erosion of patronage or profit margins, or even the enforced closure of competing businesses. Those are caused *...simply by trade competition*. But if the effects of allowing a new business into the arena would be to cause *significant* economic and social effects to an existing centre as a whole – to the point where its *amenity values* are affected in a *significantly* adverse way, then that is to be weighed in coming to an overall decision under s5. The term *significantly adverse* must be taken as meaning more than *minor*, but not necessarily so bad as to be *ruinous*. It is to be noted that even if there are shown to be likely *significantly adverse* effects on the amenity values of a



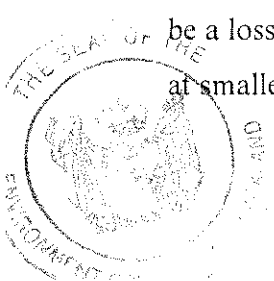
centre, that will not necessarily be decisive. That would be but one factor to be weighed in the s5 decision-making process.

[60] On this topic, we can quickly cut to the chase. The short point is that no witness asserts that the operation of the proposed Pak 'N Save will bring about the demise of an existing North Shore supermarket. All expert witnesses in the field of retail analysis agree that the biggest loser of custom to the Wairau Pak 'N Save will be the existing Albany Pak 'N Save, which will *contribute* of the order of 52% of the projected Wairau turnover. Other supermarkets in central/southern North Shore are predicted to lose up to 12 – 15% of turnover, with those more distant at places such as Devonport and Birkenhead to the south, and Browns Bay and Albany to the north, losing rather less than that.

[61] In any event, the demise of a competing supermarket would of itself, by definition, simply be the outcome of trade competition. The real point is that still less does any witness suggest that the absorption of some patronage of existing supermarkets by the proposed Pak 'N Save will have such an adverse effect on the amenity values of existing centres on the North Shore that the effects should be regarded as *significant* in the sense discussed by Blanchard J in *Discount Brands*.

[62] The closest any Progressive witness gets to predicting such an outcome is Dr Fairgray, who suggests that there will be some adverse effects on smaller centres. He expects *...sales by other retail outlets and service outlets close to existing supermarkets, which trade off these customers, would on average reduce directly by around half that amount – in the order of 6% to 8% - depending on the current levels of cross shopping in these centres.*

[63] He goes on to express the view that in smaller centres, small businesses are more dependent on the customer flows generated by a supermarket, and that a drawing-away of custom by the Wairau Pak 'N Save will be felt more in them. However he agrees that overall the market size for such goods and services will not change, and there will be a corresponding increase, and therefore a positive effect, in such trading in the larger centres. For the community, city-wide, the availability of the shopping resource will not reduce but there may be a loss of convenience for those who might not be able to satisfy all of their shopping needs at smaller centres. This, he says, would be an outcome not consistent with the objectives and



policies of the District Plan about the intensification of centres and their promotion as community focal points.

[64] Similarly, Dr Nick Taylor, a social researcher, Dr Stephen Gale, an economic consultant and Mr Anthony Dimasi, an economist and market analyst, all called by Progressive, all express the view that the ...*siphoning off*... (as Mr Dimasi puts it) of shopper visits from some centres will be ...*at odds with*... what he describes as the centres-based strategy of the District Plan and will be ...*sowing the seeds for the potential gradual emasculation of this critical strategy*. Dr Taylor and Dr Gale have somewhat less melodramatically expressed views, but still regard the proposal as likely to have an adverse social and economic impact. It is to be noted clearly though that this feared impact arises not from any significant effect on the relevant amenity values of North Shore centres but from what they argue, from an economist's point of view, is the inconsistency of the location of the proposed supermarket with the terms of the District Plan.

[65] Addressing the real issue of effects on amenity values of centres, at the request of NTC Ms Julie Meade Rose, a social anthropologist, made a study of the two centres with existing supermarkets closest to the Wairau site – Sunnynook and Northcote. Her assessment is that their community facilities such as Plunket centres, kindergartens and schools, clubs, community centres, libraries and the like, are all robust, well-utilised and not dependent on the presence of a nearby supermarket. She considers that the proposal would have minimal, if any, effects on them. Notably, nobody disputed this conclusion.

[66] There is simply no evidence upon which any Court could credibly find that there *might*, let alone *will*, be significant adverse effects, in the *Discount Brands* sense, on the amenity values of any existing North Shore centre. The highest that Progressive can put it is that there may be some loss of shopper convenience, and that is not, we consider, a *significant* adverse effect on *amenity*. It is, we recognise, an issue mentioned in the Plan's criteria in 15.7.3.5 (see para [57]) but the evidence on the point is so faint and speculative that we cannot give it weight. This ground of opposition must be put aside as insubstantial, and Plan integrity issues dealt with under their appropriate head.



Adverse effects generally

[67] The general provision about adverse effects is 15.3.4, which we include simply for completeness:

15.3.4 Control of Adverse Effects

Objective

To ensure that the adverse environmental effects of business activities are avoided, remedied or mitigated.

Policies

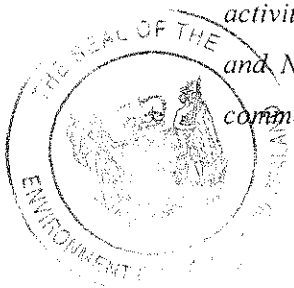
1. By requiring that business activities avoid, remedy or mitigate adverse environmental effects.
2. By requiring that activities in business areas provide for an adequate level of vehicular and pedestrian safety and convenience appropriate to the area in which the site is located.
3. By ensuring that developments in business areas do not detract from the visual amenity of the area in which they are located.
4. By ensuring that potential adverse effects from noise, vibration, illumination, pollution and odour associated with business activities are avoided, remedied or mitigated.
5. By ensuring that development does not overshadow public spaces or neighbouring residential areas to such an extent that adverse environmental effects are created.
6. (omitted)
7. (omitted)
8. (omitted)
9. By ensuring that development does not create adverse effects on the capacity of existing stormwater infrastructure, or on the ability of those systems to operate effectively.

Methods

- Policies 1 and 4 will be implemented by Rules and by education initiatives, in the form of information provided to Businesses
- Policies 2, 3, 5, 6, 7 and 8 will be implemented by rules.

Explanation and Reasons

The Business Section of the Plan relies directly on the use of performance standards to control adverse effects. The zoning is used as a means of setting levels of effects in different areas. It is therefore a means of expressing the outcomes that are anticipated for particular areas, whether that relates to air quality or visual qualities, for example. There are no detailed lists of activities for the business zones. However, to assist in denoting types of activities to which particular controls apply, the business zones make use of the Australian and New Zealand Industrial Classification 1993 (ANZSIC) as a comprehensive listing of commercial/industrial activities. This classification system has the added advantage of being



a multi-level, four tier system which allows reference to general first tier categories or to subsets within those. The ANZSIC 1993 volume will remain a reference volume for the business zones during the life of the District Plan.

The reasons why effects are managed by performance standards, rather than by listing specific activities which require assessment, are:

- The avoidance of current definitional problems arising under activity lists, e.g. what constitutes Home Improvement Centres*
- A more transparent basis of control, which clearly identifies potential adverse effects being controlled.*

The technique of Controlled and Discretionary activity listing is used, but the listing is generally of particular characteristics of activities, rather than specific activities themselves.

The Controlled activity listing is used for activities in a sensitive location, for subdivision, and for the design and appearance of structures in certain circumstances. The Discretionary listing is used for particular processes or characteristics of particular business operations, which require assessment by the Council.

The major determinants of business location within the zones are as follows:

- the control on high traffic generating activities, the primary purpose of which is explained under Objective 15.3.2 – Transportation Network.*
- The two controls which apply maximum and minimum floor space controls, which are explained under Objective 15.3.4 – Control of Adverse Effects and under the Objectives for the Albany Centre.*

These three controls differentiate between activities on the basis of intensity of activity to control adverse effects.

...

Expected Environmental Results

- That all development and activities within the local and suburban zones is of a scale which is appropriate to the locality, as measured by five yearly resident surveys and biennial business zone land use surveys.
- ...
- That higher levels of awareness as to means of protecting environmental quality are evident among business operators, as measured by an annual assessment of compliance with the resource consent conditions and an annual assessment of Council's complaints register.

There are no live issues about any of these provisions, and they do not call for any particular comment.



Overall consideration of District Plan provisions

[68] Whether the Plan is described as having a *centres-based* retail strategy, or some other terms is used, really does not much matter. We accept for present purposes that the general position is summed up in 15.3.3, Policy 1: - ie the Plan *encourages* retail activities to locate in existing and proposed business centres *and* in the General Business zones, ...*where appropriate*. Whether location in a General Business zone might be *appropriate* can be judged by whether:

- it is a location that meets the needs and preferences of the community;
- adverse effects are avoided, remedied or mitigated;
- it enhances community accessibility to facilities;

all in terms of the Objective of 15.3.3

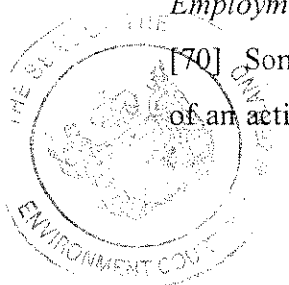
- Whether in terms of 15.3.3 Policy 4, it recognises the potential demand for retail activity in such a zone, and the development can meet a thorough evaluation, particularly on the criteria in that Policy.

Some flesh is put on the bones of those Policies by the *Explanation and Reasons*, and again we have highlighted the particularly relevant portions, as we have for the *Expected Outcomes*.

[69] It is arguable, if not certain, that attempting to engraft a proposal of this size onto an existing centre might overwhelm its infrastructure and its character. Unless and until a firm proposal is addressed, that cannot be known. What we think can be presently ascertained is that *this* proposal is *appropriate* in its location, in terms of 15.3.3. It is in a location that meets the community's needs and preferences; it will not impose adverse effects such as noise, illumination, odour etc on its surrounding environment, particularly residential development; the immediately surrounding roading network can cope with it, and the functioning of the Wairau/Tristram intersection will not be made markedly worse, even on the *worst-case* model. Depending on decisions about planning and funding priorities (which are for the Council to make, perhaps in conjunction with the NZTA) improvements could be made to the intersection. In any event, there are a number of possible routes between the site and the surrounding catchments, enhancing its accessibility.

Employment

[70] Some issue was made of the possibility that a *better* use of the site would be in the form of an activity which generated more employment – ie, a greater number of jobs. This was a



subset of the argument that a use of the site could be found which made more use of public transport and, possibly as well, fitted with the strategy of providing local employment and thus keeping down peak hour use of arterial corridors, in particular the Harbour Bridge. The proposed supermarket will generate between 200 and 250 full-time equivalent (FTE) jobs. That is, about 100 jobs per hectare. Certainly, a high-rise office park would be more intensive than that, but we are told that the 100 jobs/ha ratio is typical for general business (ie non-CBD) areas around Auckland. We have discussed the relevance of *better* or *alternative* possible uses elsewhere. There is nothing in this point which has not already been dealt with.

Positive effects

[71] There was a clear consensus among all the economist witnesses that the introduction of a strong competitor into the North Shore supermarket market would be a *good thing* for consumers, even if its competitors would not welcome it. Dr Nick Taylor, a social researcher engaged by Progressive did not share the views of his economist colleagues. His view was that the proposal would not contribute to the social and economic wellbeing of significant groups and communities in the City, largely because of the social and economic impacts on amenity, discussed elsewhere. In our view, the introduction of that competitive element, and the related ability of shoppers from the southern/central section of the City to have convenient and less distant access to a supermarket of choice, are clear benefits in resource management terms, and are far from outweighed by the suggested negatives.

Regional planning documents

[72] As is the statutory scheme, the District Planning documents should, and do, reflect at a detailed level the necessarily broader view of the Regional Policy Statement (RPS) and similar documents. In reflecting on the evidence about the regional documents, we came to think that the approach of Mr Serjeant, the Council's consultant planner, captured the essence of them admirably. That is of course not to say that we in any way disparage the evidence of the other planners on these issues.

[73] The first thing to note is that the Auckland Regional Council did not appear at the hearing. That may be taken as an indication that it does not have concerns that the proposal has adverse implications for the matters dealt with in the RPS or associated documents.



[74] Section 2 of the RPS mentions resources of national and regional importance as including ...*roading and utilities infrastructure and commercial facilities* as resources to be considered in deciding issues of sustainable management. Issue 2.3.4 recognises the importance of the existing centres for both commercial and community purposes, and their place in furthering the principles and purposes of Part 2 of the Act.

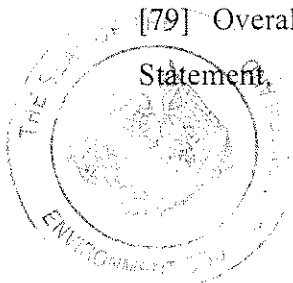
[75] Issue 2.3.5 emphasises the importance of public transport, and the adverse effects that can arise from the congestion of arterial roads. Sections 2.5.1 and 2.5.2 contain objectives and policies which reinforce the importance of the integrated management and efficient use of infrastructure and resources generally. We note, and agree with, Mr Serjeant's view that these provisions do not purport to direct the location of activities, in contrast with the very strong emphasis on containing urban activities within existing metropolitan urban limits.

[76] Similarly, policy 2.6.2.1 deals with urban intensification around nodes and transport corridors, with the explanatory text seeming to make clear that the intention is to encourage facilities to establish in places and combinations which facilitate employment, social and commercial activities in convenient proximity.

[77] The planners agree that of the provisions of Plan Change 6, designed to give effect to the Regional Growth Strategy, sections 2.6.1, 2.6.5 and 2.6.11 are the most relevant, although given its stage in the evolutionary process the Plan Change cannot be given great weight. It does introduce issue 2.4.3, cautioning against ...*ad hoc urban development*... as having the potential to undermine the vitality of town centres. To the extent that it is intended to apply to commercial, rather than residential developments, this is the issue dealt with in considering social and economic effects on centres, and the discussion need not be repeated.

[78] In terms of compliance with Policy 2.6.5, we see no reason to disagree with Mr Serjeant's view that the urban intensification provisions support the corresponding District Plan provisions already in place, but do not add anything substantive to them.

[79] Overall, as with the District Plan, we see no conflict with the Regional Policy
Statement.



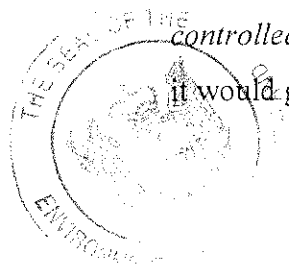
Section 104(1)(c) - Precedent – Plan Integrity

[80] The first thing to be said about so-called *precedent* is that Blanchard J pointed out as long ago as his decision in *Manos v Waitakere CC* [1994] NZRMA 353, that the term *effect* is not directed to impacts on a Plan. Rather, it is concerned with impacts upon natural and physical resources and the environment within which they exist. In a number of decisions, the Courts have found it more helpful to consider the issue as one of Plan integrity, and to deal with it as a relevant *other matter* under s104(1)(c).

[81] In any event, an authoritative line of decisions, not the least of them being the Court of Appeal's judgment in *Dye v Auckland RC* [2002] 1 NZLR 337, makes it clear that there is no *precedent*, properly so-called, to be found in decision-making about resource consents. Nevertheless, rather unhelpfully, the term continues to be used. Certainly, unwise or unprincipled resource consent decisions may impair the usefulness of Plan provisions as a means of managing the effects of activities, in the sense that they may raise a legitimate expectation that truly similar applications will have similar outcomes.

[82] But where a Plan gives an activity *Discretionary* status, and provides criteria against which applications for a consent for such an activity are to be measured, such a problem should not arise. If the application, measured against the criteria, can be shown to have its adverse effects avoided, remedied or mitigated, and its positive effects demonstrated, to the point of meeting the Act's purpose of promoting the sustainable management of resources, then, by definition, granting the consent cannot harm the integrity of the Plan. Mr Dimasi, although expressing reservations about the proposal in his evidence-in-chief, had to accept, in the course of cross-examination, that that is so.

[83] Nor can a proposal which has been through such a Plan-based assessment process be deserving of the epithets directed at it by Progressive's planner witnesses. Mr Michael Foster has a clear view that the primary strategy of the Plan is for centres-based retailing, and described the proposal as *out of zone*. But it cannot be that if it merits consent as a *discretionary* activity. In any event, as the Council's consultant planners Mr Steven Dietsch and Mr David Serjeant point out, a supermarket of this size cannot be a *permitted* or *controlled* activity, and thus *in zone*, anywhere in North Shore because of the amount of traffic it would generate. As with Mr Dimasi, Mr Foster readily acknowledged in cross-examination



that the Plan does provide for retailing out of centres, and that if a proposal can meet the criteria it will not compromise the Plan's strategy.

[84] Similarly Mr Serjeant says, and we agree, that the proposal can hardly be described as an *ad hoc* development (at least in any pejorative sense) if it has been through the Plan assessment process and found not to undermine the vitality of existing town centres. We have touched on this point in dealing with the Regional Policy Statement.

[85] So, the end point is that the proposal is to be measured against the criteria set out in the Plan. If it measures up well, it may be granted a consent. If another supermarket proposal for a similar zone should come over the horizon, then it too will have to be measured against those criteria and, if it gains a pass mark, it too may be given a consent. If it does not, it should be refused a consent.

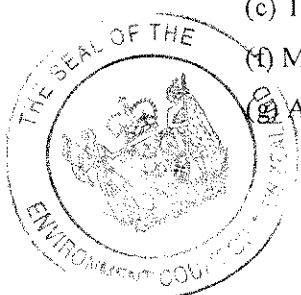
[86] If there is a concern that a supermarket will encourage a proliferation of satellite retail enterprises seeking to co-locate to take advantage of its pulling power, again the Plan has a control mechanism. A retail activity, of whatever size, seeking to locate within a 500m radius of an existing supermarket is classified as a *discretionary* activity and would have to withstand the same assessment scrutiny. We observe too that the issue of cumulative effects would then be very much in focus.

[87] The process is straightforward and, if the Plan's provisions are followed thoroughly and transparently the question of so-called *precedent* does not arise. Whatever the outcome, it will be the Plan's content and process that provides the decision-making tools, and its integrity will have been upheld.

Part 2 issues

[88] There are no Treaty issues arising under s8, nor are there matters of national importance under s6. In terms of s7 – *matters to which we are to have particular regard* – paras ...

- (b) The efficient use and development of natural and physical resources:
- (c) The maintenance and enhancement of amenity values:
- (f) Maintenance and enhancement of the quality of the environment: and
- (g) Any finite characteristics of natural and physical resources...



are to be considered.

[89] In the context of this proposal it seems to us that paras (b) and (g) are facets of the same general issue. The roading network is a resource that the proposal will take advantage of, enabling a number of route choices and efficient access to and from the site without imposing significant adverse effects. The site itself represents a finite resource – flat, accessible land of sufficient size for such an activity in the southern sector of the City. Those who oppose it say that there could be a higher and better (in economics terms) use of the land. In those terms, possibly that might be so, but we do not have a command economy and individuals and organisations are free to decide for themselves what use they make of their assets so long as they do not impose unreasonable burdens on others. It cannot be said that the proposal is such an *inefficient* use of the resource that it would fall foul of those paragraphs.

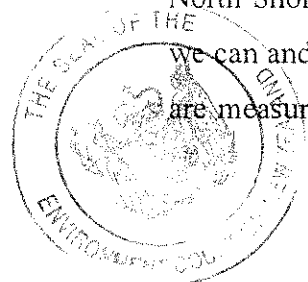
[90] Paras (c) and (f) have their place in the consideration of the amenity values of the North Shore centres which has been discussed elsewhere. In other respects of amenity and the general quality of the environment, as affected by the proposal, there are no other issues requiring discussion.

Section 290A – the Council's decision

[91] The Council's decision of 24 January 2008 was made by an independent Commissioner acting under delegated authority, as provided for in the Act. Relevantly, the Commissioner held that the proposal would not have significant adverse effects on the surrounding roading network; that it would decrease trip lengths for shoppers in the southern sector of the City; that it would not undermine the economic health or vitality of existing centres; that it would create positive effects; that it would broadly achieve the strategy of the District Plan, and that overall it would achieve the purpose of the Act. We have had regard to that decision and, as will be apparent, we have independently come to the same conclusions.

Overall evaluation – section 5

[92] We do not need to be able to say that this is the *best* site for another Pak 'N Save on the North Shore. That is largely a commercial judgement which is none of our business. What we can and do hold is that this is a site which, when its positive and (alleged) adverse effects are measured against the provisions and criteria in the planning documents and the relevant



provisions of Part 2 of the Act, would clearly accommodate the proposed supermarket in a way that would promote the purpose of the Act. That is, the sustainable management of natural and physical resources, in a way that allows people and the community to provide for their (at least) economic wellbeing while avoiding, remedying or mitigating adverse effects on the environment.

Result

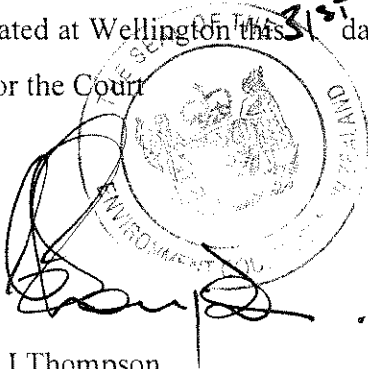
[93] For the reasons we have set out, the appeal is declined and the decision of the Council to grant the necessary resource consents is upheld. A proposed set of Conditions upon which the consents might be granted was presented by Mr Allan with his opening submissions. On the face of it, they appear to us to be satisfactory and we heard no evidence to the contrary. They are approved.

Costs

[94] Costs are reserved. Any applications should be lodged by 21 November 2008, and any responses lodged by 5 December 2008.

Dated at Wellington this 31st day of October 2008

For the Court

The seal of the Environment Court of New Zealand is circular, featuring a central emblem with a tree and a bird. The text "THE COURT OF THE ENVIRONMENT OF NEW ZEALAND" is inscribed around the perimeter. A handwritten signature in black ink is written over the seal.

C J Thompson

Environment Judge