



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

HEARINGS COMMITTEE

I hereby give notice that a Meeting of the Hearings Committee will be held on:-

<u>DATE:</u>	Wednesday, 13 June 2007	<u>TIME:</u>	9.30 am
	Thursday, 14 June 2007		9.30 am
	Friday, 22 June 2007		9.30 am
<u>VENUE:</u>	Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere		

to consider the business as set out herein and to take any necessary action connected therewith.

1 June 2007

Sharon Simiona
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8820

MEMBERSHIP:

Councillors	DQ	Battersby, JP (Chairman)
	WW	Flaunty, QSM, JP (Deputy Chairman)
	PA	Hulse
	JP	Lawley
	VS	Neeson, JP
	CA	Stone
Alternate Council Representative	LA	Cooper

Ward Representative			
	Mrs	EG Francke	(New Lynn Community Board)

Alternate Ward Representative			
	Ms	SL Taylor	(New Lynn Community Board)

(Quorum 4 members)

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(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A MEETING OF THE HEARINGS COMMITTEE TO BE HELD AT
WAITAKERE CENTRAL, 6 HENDERSON VALLEY ROAD, HENDERSON,
WAITAKERE, ON WEDNESDAY, 13 JUNE 2007,
COMMENCING AT 9.30 AM.**

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1 APOLOGIES



2 URGENT BUSINESS

Section 46A(7) of the Local Government Official Information and Meetings Act 1987 provides that where an item of business is not on the agenda, it may only be dealt with at the meeting if:

- (i) the Committee by resolution so decides; and
- (ii) the Chairman has explained at the beginning of the meeting (when open to the public) that the item will be raised for discussion and decision, why the item is not on the agenda, and why it cannot be delayed until a subsequent meeting.

The Committee may make a decision on a matter determined to be urgent.

NOTE: Urgent Business need not be dealt with now and may be delayed until later in the meeting.



3 CONFIRMATION OF MINUTES

Meeting Minutes - Thursday, 24 May 2007
- Wednesday, 30 May 2007

RECOMMENDATION

That the minutes of the Meeting of the Hearings Committee held on Thursday, 24 May 2007 and Wednesday, 30 May 2007 as circulated, be taken as read and now be confirmed.



4 **NOTIFIED APPLICATION FOR RESOURCE CONSENT UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 BY THE NATIONAL TRADING COMPANY OF NEW ZEALAND LIMITED TO CONSTRUCT AND OPERATE A SUPERMARKET AT 7 CLARK STREET AND 2, 4, 6 CROWN LYNN PLACE, NEW LYNN**

NEW LYNN WARD

RESOURCE CONSENT NO: LUC 2006-4196

N.B. This report sets out the advice of Consent Services to the Hearings Committee on the environmental issues raised by the application for resource consent. It is not the decision of the Council. The decision will be made after consideration of the application by the Hearings Committee.

APPLICATION DETAILS

Planner: Rachel Dimery

Site Address: 7 Clark Street and 2,4, 6 Crown Lynn Place, New Lynn

Applicant: National Trading Company of New Zealand Limited

Date Received: 1 December 2006

Building Consent No: Not yet applied for

Legal Description: Lot DP

Address for Service: Mr V. Smith
Bentley & Co
PO Box 4492
Shortland Street
Auckland

Site Area: 1.45 hectares

Operative District Plan:

Human Environment: Working Environment

Natural Area: General

Landscape Elements: Nil

Hazards: Foundations of all buildings subject to further soils investigation and specific design by a registered engineer experienced in geomechanics.

Because 7 Clark Street was used as a service station the Council may require soil testing if it is proposed to subdivide the property, to establish new activities, to extend existing activities or to build on the property, depending on the nature and scale of those activities.

Roading Hierarchy: Clark Street is classified as a District Arterial Road
Crown Lynn Place is classified as a Local Road

Proposed Plan Change 17:

Human Environment: Community Environment

Natural Area: General

Other restrictions: Proposed Street (Urban Concept Plan)

Date Received: 1 December 2006

1 INTRODUCTION AND RECOMMENDATION

1.1 Nature of the Application

The applicant seeks consent to construct and operate a supermarket at the site comprising 7 Clark Street and 2, 4, 6 Crown Lynn Place. Overall consent is required as a non-complying activity.

1.2 Resource Management Issues Raised

The Resource Management Act 1991 (the "Act") requires that, when considering an application for a resource consent, a consent authority shall have regard to the environmental effects of the proposed activity, together with any relevant provisions of statutory planning documents. A consent authority may also have regard to any other matter considered relevant and reasonably necessary to determine an application. Additionally, as the overall activity status is non-complying, the "threshold" test contained in Section 104D must also be satisfied in order to establish jurisdiction to grant consent. All decision making must be set within the framework of Part II of the Act.

This report concludes that the activity itself (retail) is appropriate at this location and would support the adjoining town centre. The key resource management issue posed by this application and raised by many of the submitters in opposition is whether the proposal achieves an appropriate urban design outcome for the site and immediate surrounds. The proposal must be assessed against both the operative statutory planning documents and the proposed plan changes promulgated as a result of the Local Government (Auckland) Amendment Act 2004 (the "LG(A)AA") coming into force. In considering these statutory planning documents consideration must be given to the appropriate weight to be accorded to each document. It is considered that given the procedural stage of the proposed plan changes to the District Plan and Auckland Regional Growth Strategy, these documents should be accorded some, but not significant weight.

1.3 Planner's Recommendation

The planner who has prepared this report recommends that, subject to any contrary or additional evidence submitted at the Hearing, **consent be granted** to the application to construct and operate a supermarket at 7 Clark Street and 2, 4, 6 Crown Lynn Place, New Lynn. It is considered that the environmental effects that may be generated by the activity would be minor or could be adequately avoided, remedied or mitigated by the imposition of conditions, and that the relevant objectives and policies of the Operative District Plan will be satisfied. The proposal will however be contrary to the relevant objectives and policies of Proposed Plan Changes 17 and 18.

2 LOCATION PLAN



Figure 1: Aerial Photograph (2005) Showing the Site and Surrounds

3 PROPOSAL

The applicant seeks consent to construct and operate a supermarket and ancillary car parking at the site comprising 7 Clark Street and 2, 4, 6 Crown Lynn Place, New Lynn. Other ancillary elements proposed include landscaping, lighting, signage, seating and a bike rack.

The proposed supermarket would have a footprint of 3,170m² and a gross floor area of 3,500m². The ground floor would comprise the entrance, shop floor, service and storage areas. The upper mezzanine level would contain offices and mechanical plant.

A213-A259

The proposed building would be situated on the rear half of the site. The main entrance would face Clark Street and the main area of customer parking located in the intervening area. The building would be a maximum of 9.6 metres above ground level at its highest point. Proposed building materials include precast concrete panels, timber, coloursteel, glass, bricks, glazing and zincalume. The architectural drawings submitted with the application provide detailed information on the colour and form of the proposed materials and building design, as attached at pages A213 to A259 of the Application Documents.

194 at grade parking spaces would be provided on site. This includes provision for four mobility spaces and 21 staff spaces. The majority of the parking spaces would be situated between the Clark Street frontage and the proposed building. The remaining car parks would be divided between the area to the east and south of the proposed building, with the southern parking area being dedicated solely to staff parking.

Four vehicle crossings are proposed. The main entrance would be via a signalised intersection on Clark Street, which would provide for one ingress and two egress lanes. This access point would also serve the adjoining Repco site. All of the other vehicle access points would be accessed from Crown Lynn Place. The first of which would be a double vehicle crossing immediately in front of the proposed supermarket, which would provide access to the customer parking area. The two remaining access points would be located at the southern end of the site and would be solely for the use of staff and service vehicles.

A freestanding sign is proposed adjacent to the Clark Street entrance. The sign would be an illuminated double sided pylon style sign, measuring 8.5 metres in height by 3.5 metres in width. Illuminated signage is also proposed on the northern and western facades of the building (refer to the plan "Elevations", Sheet 13 - (02), dated 24 - 10 - 2006).

The material forming part of the application includes a video simulation which depicts the proposed building as it would appear within the existing environment.

Site Works

The applicant anticipates that the construction phase would be approximately 10 months. The proposed site works would occur over the whole of the site and comprise 4,000m³ of excavation, 1,000m³ of which would be cut to waste. Approximately 2,200m³ of hardfill basecourse would be imported to the site.

There is an area of residual hydrocarbon contamination on the site that occurred service station. It is proposed to remove this material as part of the site works, for disposal at a licensed landfill.

Infrastructure

New stormwater, wastewater and water connections are proposed to the existing public services. In addition, stormwater treatment devices are proposed within the parking areas.

Landscaping

A213-A259

A landscaping plan was submitted with the application, which provides a comprehensive planting scheme. The proposed landscaping would occur mostly around the perimeter of the parking areas and building. A number specimen trees would also be dispersed around the centre of the parking areas. The species proposed include natives such as pohutukawa and cabbage trees, as well as exotic species such as maple and day lilies. Refer to the Landscaping Planting Scheme prepared by Sue J. Roff, as attached at pages A213 to A259 of the Application Documents.

Consultation with Council

The applicant has attended a number of meetings with Council's City Development team in relation to the proposal. In addition, the applicant also met with Council's Consent Services team one month prior to lodgement of the application. Discussions have also been held with Council's Transport Assets team.

A49-A81

Section 5.10 of the Statutory and District Plan Assessment Report (Part 3 of Volume I of the application) outlines details of the consultation undertaken. In addition, the Urban Design Assessment prepared for Council's Strategy Unit by Ecologically Sustainable Design Pty Limited ("ESD Limited") provides details of meetings that were held in 2005 and 2006 (refer page 5 of the ESD Limited report as attached at pages A49 to A81).

In summary, the meetings with Council's City Development team focussed on the suitability of the proposed activity at the site and possible design options. Several alternatives were explored, but agreement was not reached on matters of design.

The meeting with the Consent Services team related solely to the nature of the information that would be required with the application and the issue of public notification.

4 REASONS FOR THE APPLICATION

Consent is required under the following provisions of the Operative District Plan:

City Wide

Consent is required as a controlled activity under Rule 2.1 Hazardous Substances and Contaminated Sites to undertake remediation of a site known to Council to be contaminated. Part of the subject site (namely 7 Clark Street, being Lot 1 DP 159266) is identified on Council's Hazard Register as being potentially contaminated. Phase I and II investigations undertaken by the applicant identified a hot spot of heavily contaminated fill on the site. Accordingly a Remedial Action Plan ("RAP") and Site Remediation Management Plan have been prepared to guide the site remediation works.

Council's Hazard Register states that the foundations of all proposed buildings on 2, 4 and 6 Crown Lynn Place (being Lots 3 and 4 DP 159266 and Lot 1 DP130538 respectively) shall be subject to further soil investigations. Consent is required as a limited discretionary activity under Rule 1.1(a) to establish a building on land known to Council to be potentially unstable.

Working Environment

Consent is required as a controlled activity under Rule 4.2 Landscape Treatment, to establish a non-residential activity on a site greater than 2000m² that provides landscaping comprising more than 10% of the site area. It is proposed to establish 2,885m² of landscaping (19.96% of the net site area).

Consent is required as a non-complying activity pursuant to Rule 5.3 Retailing, as the establishment of the proposed supermarket would result in more than 6750m² of retail activities occurring within a 500m radius of the site.

Consent is required as a limited discretionary activity to establish a freestanding sign, pursuant to Rule 11.2 Signs.

Transport Environment

It is proposed to establish four vehicle crossings on the site (one on Clark Street and three on Crown Lynn Place). The provision of more than one vehicle crossing per site requires consent as a limited discretionary activity, pursuant to Rule 7.3 Vehicle Crossings.

General Natural Area

The proposal would involve earthworks comprising 3000m³ cut to fill, 1000m³ cut to waste and the importation of 2200m³ of hardfill basecourse over an area of 1.45ha. Such works require consent as a discretionary activity pursuant to Rule 3.4(a).

Consent is required under the following provisions of Proposed Plan Changes 17 and 18 to the Operative District Plan:

Community Environment

The subject site has frontage to Clark Street, which is identified as being Mainstreet Typology on the New Lynn Urban Concept Plan (Appendix XI to Proposed Plan Change 17). The proposal does not meet the performance standards under City Wide Rule 3 Building Design - Street Frontage, which require inter alia, new buildings to be a minimum of two storeys along the full street frontage. Consent is therefore required as a discretionary activity pursuant to Rule 5A.3 Building Design - Street Frontage - New Lynn.

The subject site also has frontage to Crown Lynn Place, which is identified as being Commercial Typology on the New Lynn Urban Concept Plan (Appendix XI to Proposed Plan Change 17). The proposal does not meet the performance standards under City Wide Rule 3 Building Design – Street Frontage, which require buildings to be set back no less than 3 metres from the street and to be a minimum of two storeys. Pursuant to Rule 5A.3 Building Design - Street Frontage - New Lynn, consent is required as a discretionary activity.

The proposal involves the construction of a new building that would be located within 20m of an indicative street shown on the New Lynn Concept Plan. As such, consent is required as a limited discretionary activity pursuant to Rule 7A.2 New Lynn Concept Plan.

The subject site is greater than 2000m² and involves the development of a site for a non-residential activity. The development would result in more than 20 outdoor car parks being established at ground level and a minimum of 10% of the site would be landscaped. Consent is therefore required as a controlled activity under Rule 9.2 Landscape Treatment (Car Parking).

Consent is required as a limited discretionary activity to establish a freestanding sign, pursuant to Rule 12.2 Signs.

Overall, the application is considered to be a non-complying activity. The proposal complies with all other development controls under the District Plan.

The following resource consents are also required from the Auckland Regional Council:

- Discharge permit to divert and discharge stormwater;
- Discharge permit to discharge contaminants to water from contaminated land; and
- Land use consent to undertake earthworks over an area greater than 1.0 ha outside the Sediment Control Protection Area.

Applications have been lodged by the applicant for the above consents.

5 THE SITE AND NEIGHBOURHOOD DESCRIPTION

The subject site is 1.45 hectares and comprises four parcels held in separate titles that would be amalgamated for the purposes of the proposed development. There is a right of way easement registered against the titles of Lots 3 and 4 DP 159266. The easement provides legal access across the site from Crown Lynn Place to Repco's site (Lot 2 DP 159266). The applicant intends to negotiate the relocation of this easement. In addition, there is also a restrictive covenant registered against the title of Lot 4 DP 159266 and Lot 1 DP 130538. This covenant is for the benefit of St Lukes Square (1993) Limited and Westcity Shopping Centre Limited and prevents the use of the lots as either a cinema or any retail use comprising a single shop of less than 400m² retail floor space.

The site is located on the southern side of Clark Street, some 220 metres east of the Rankin Avenue/Clark Street/Totara Avenue roundabout. It has frontage to both Clark Street and Crown Lynn Place (refer Location Plan, above).

The site is virtually flat, however Council's Hazard Register identifies that the ground conditions on the site require further investigation by an engineer experienced in geomechanics, prior to the construction of any buildings. The rear portion of the site (4 - 6 Crown Lynn Place) is sealed and contains a parking area that was associated with the former cinema located at 3 - 5 Crown Lynn Place. There is vegetation growing on the perimeter of this portion of the site, as well as between the rows of parking. This vegetation comprises a mixture of native and exotic shrubs and trees that range from 2 to 5 metres in height. The remainder of the site is overgrown with weeds and has large areas of broken up paving that were associated with the former service station located on the front portion of the site. The only vegetation of note is four palm trees that are approximately 4 metres in height.

The subject site lies to the south of the existing town centre and the railway line. The land uses on the immediately adjoining sites are predominantly of a commercial and industrial nature. Repco and Placemakers adjoin the site's eastern boundary. The Repco site has direct access to Clark Street. However, as noted above, Repco also have a right of way easement over part of the subject site. The trade entrance to the Placemakers' site is on Crown Lynn Place, directly adjacent to the southeast corner of the site.

To the west lies Bricklane Restaurant and the former cinema complex building, which is presently occupied by Redpaths Furniture. Access to these sites is from Clark Street and Crown Lynn Place respectively.

Old Fashioned Foods Limited (formerly PLC Industries Limited) and CSR Building Supplies (Monier) occupy the properties to the south and southwest. The Old Fashioned Foods Limited site has two access points from Crown Lynn Place which are located directly opposite the site of the proposed development. The former clay pits site to the south owned by Vuksich and Borich also has a narrow frontage to Crown Lynn Place. This frontage is not used for access, which is presently gained from Clinker Place.

Immediately to the southeast lie four apartment buildings, situated at the southern end of Crown Lynn Place. The apartments are three to six storeys in height and have a number of at grade car parks associated with them. There is also street parking on Crown Lynn Place.

The properties directly opposite the site on the northern side of Clark Street are occupied by a variety of businesses, including Park to Sell Motors, a motor vehicle garage, and Maycey's Confectionary. The western railway line, which bisects New Lynn lies to the northwest of these properties.

The other major land uses in the wider area include the LynnMall shopping centre and New Lynn town centre, which are located immediately to the north of the railway line; a mixture of commercial and industrial activities to the northeast, east and southeast of the site; and residential properties located to the south of Margan Avenue.

Clark Street is classified as a District Arterial Road and currently carries an estimated 20,000 vehicles per day. The road has two lanes in each direction separated by a flush median strip between Hetana Street and Portage Road. The carriageway narrows to one lane in each direction between Hetana Street and the roundabout at Rankin Avenue. There are two bus stops (one in each direction) in the immediate vicinity of the site and the New Lynn bus and rail interchange lies within 200 metres of the site.

Crown Lynn Place is classified as a Local Road, as is Hetana Street, which lies immediately to the north of the site. The intersections of these roads with Clark Street are not signalised and both roads comprise a single lane in each direction.

6 ISSUES IDENTIFIED THROUGH THE SUBMISSION PROCESS

A3-A48

The application was publicly notified on 15 December 2006. The period for submissions closed on 5 February 2007. Sixteen submissions were received, two of which were received after closing date for submissions. Eleven submissions (one of which was late) supported the application, and five submissions (one of which was late) opposed the application. Refer to attachments at pages A3 to A46 for copies of the submissions that were received. A map showing the location of the submitters located in the immediate vicinity of the site is attached at pages A47 to A48.

6.1 Submissions

The submissions in support of the application raised the following matters:

- The site is currently in an unsightly state.
- The development would generate business and employment.
- The site would be convenient as it is close to public transport and residential apartments.
- The increased activity on the site would help to reduce crime in the area.
- The development would help create vibrancy which is lacking at present.

In addition, the submitters in support also requested that the following matters be addressed should consent be granted:

- Trolley nuisance.
- Opening hours should be 24 hours.
- Crown Lynn Place must retain access to Clark Street.
- Crown Lynn Place residents must be allowed to continue to park in the street indefinitely.

The submissions in opposition to the application raised the following matters:

- The development would result in the loss of parking spaces which are currently used as a Park and Ride facility. (This matter was raised in a late submission.)
- The proposal would be contrary to Part II of the Act and fails to avoid, remedy or mitigate adverse effects.
- The proposal does not meet urban design criteria with reference to both the Operative District Plan and Proposed Plan Changes.
- The proposal should be deferred until the outcome of the Proposed Plan Changes is known.
- The proposal would affect the future use of properties and the local transport network. Particular concern was raised about the impact on Old Fashioned Foods Limited, which is located at 9 Crown Lynn Place.
- The application if granted would undermine the integrity and consistent administration of the District Plan, including Proposed Plan Changes 17 and 18.
- The proposal would not meet City Wide Rule 3 of Proposed Plan Change 18 and could have been designed to be more in line with the urban design outcomes sought by the plan change.
- The proposal is inconsistent with the urban design outcomes sought by Proposed Plan Changes 17 and 18, as well as the wider strategic documents such as Proposed Plan Change 6 to the Auckland Regional Policy Statement.
- The number of parking spaces proposed is excessive.
- The application if granted would result in adverse future effects through a lack of enhanced urban design.

6.2 Late Submissions

In respect of the late submissions by Ms Caroline Green and Repco Limited, the Hearings Panel will need to resolve whether to accept the submissions, pursuant to Section 37 of the Act.

In making this decision, the panel is required to consider the provisions set out in Section 37A(1), being:

- a) *The interests of any person who, in its opinion, may be directly affected by the extension or waiver, and*
- b) *The interests of the community in achieving adequate assessment of the effects of any proposal, policy statement, or plan, and*
- c) *Its duty under Section 21 of the act to avoid unreasonable delay.*

Section 37A(2)(a) also requires that the extension of time shall not have the effect of exceeding twice the maximum period specified in the Act. It is noted that the submission made by Ms Green was received one day late, while the submission made by Repco Limited was two days late. The Act allows a twenty day period within which submissions are to be made. Accordingly, these submissions were both made within the maximum time period specified in Section 37A(2)(a) of the Act. Furthermore, given the length of time that has elapsed between the close of submissions and the hearing, it is considered that no one would be prejudiced by the acceptance of these late submissions.

7 STATUTORY REQUIREMENTS

7.1 Non-Complying Activities

The proposal requires consideration as a non-complying activity under the provisions of the Act (the "Act"). Section 104D of the Act sets a threshold test which all resource consent applications for non-complying activities must first pass before a consent authority has jurisdiction to grant consent, having regard to the matters specified in Section 104. In short, the proposal must be able to establish and operate without generating more than minor adverse effects on the environment, or must not be contrary to the relevant objectives and policies of the Operative District Plan. Council may disregard an adverse effect of an activity on the environment if the Operative Plan permits an activity with that effect.

The matters to be considered when assessing an application for resource consent are set out in Section 104 of the Act. Amongst other things, these matters require consideration of any actual and potential effects on the environment arising from the proposal, together with an assessment as to whether the application is consistent with relevant objectives, policies and rules of the District Plan. A consent authority may also consider any other matter it considers relevant to the application. These considerations are subject to the purpose and principles of the Act (Part II).

An analysis is presented below of the actual and potential effects on the environment generated by the application. Following this, an evaluation of the relevant statutory planning provisions is presented.

8 EVALUATION IN ACCORDANCE WITH SECTION 104 OF THE RESOURCE MANAGEMENT ACT 1991

Section 104B gives Council the discretion to either grant or refuse a non-complying activity application. In order to make a decision in terms of Section 104B of the Act it is necessary to undertake an analysis and assessment to determine whether the purpose and principles of the Act are being met (Part II) having regard to the matters set out in Sections 104 and 104D as relevant, the Fourth Schedule and other statutory considerations.

Section 104(1) of the Act requires that Council have regard to any actual or potential effects on the environment, any relevant objectives, policies, rules or other provisions of a plan or proposed plan and any relevant regional policy statement and regional plan or proposed plan, and any other matters the consent authority considers relevant and reasonably necessary to determine the application.

When considering an application Council must not have regard to any effect on a person who has given their written approval to the application (Section 104(3)(b)) and may disregard an adverse effect of an activity on the environment if the Operative Plan permits and activity with that effect (Section 104(2)).

8.1 Assessment of Environmental Effects (104(1)(a)): Actual and Potential Effects on the Environment

8.1.1 Water Quality and Quantity

EcoWater has reviewed the impact development could have on the environment in terms of the servicing of the site, including the additional stormwater generation.

The private and stormwater drainage on the site would be designed to cater for the increased stormwater runoff generated by the proposed impermeable surfaces. In addition, treatment devices would be installed to intercept stormwater runoff from the car park area.

Council's Drainage Engineer has recommended conditions of consent, with regard to the Auckland Regional Council discharge permit, that would ensure that the environmental effects are no more than minor.

Consideration is also required of the potential for earthworks to impact on water quality. In this regard, it is noted that the proposed earthworks largely comprise minor recontouring for the formation of parking, landscaping areas and the building platform. Earthworks are also required to remove the residual contamination present on the site.

The applicant proposes to implement erosion and sediment control measures for the duration of the works, which are anticipated to take approximately 10 months. The main measure proposed to control erosion is stabilisation of exposed surfaces, while a combination of clean water diversion drains, silt fences and cut-off drains will be used for silt control. On this basis, it is considered that the potential effects on water quality would be *de minimis*.

Overall, it is considered that subject to conditions relating to stormwater treatment and the implementation of silt control measures, that the proposed development would give rise to *de minimis* adverse effects in terms of water quality and quantity.

8.1.2 Air Quality

The site is within the urban area and the proposed activity does not include air emissions that are controlled under either the district or regional plans. Nonetheless, the applicant has submitted an Air Quality Assessment to identify the implications for air quality as a result of the proposed supermarket being established. This report concludes that:

Air quality modelling of traffic flows has been carried out to establish a worst case effect on the surrounding area of the three main local pollutants of concern – CO, PM₁₀ and NO₂.

...

The extent of the modelling grid has included areas of sensitive or important receptors such as residential areas, shopping centres and schools. Results for the three modelled contaminants as a result of this assessment show that any increases due to the project are very small.

...

In summary, the air quality effect of traffic flow due to the proposed new 'New World' store at Clark Street, New Lynn, Auckland are less than minor and will not result in any significant effects to human health or regional and local air quality.

...

Mitigation of emissions is not required.

On the basis of this analysis, it is concluded that there would be less than minor adverse effects on air quality.

8.1.3 Traffic

A Traffic Planning Report was submitted with the application. This report considers a number of matters, including the effects of traffic generation associated with the development, parking, site access and internal circulation. The report also provides an analysis of the proposal in terms of the district plan rules and assessment criteria, including future roading patterns. Mitigation measures necessary to minimise any identified impacts on the traffic environment are included. The report notes that not only has the proposed development been designed to take into account all of the road network improvements that are currently being considered by Council; it also provides some of the network improvements. It is concluded the proposed development would be entirely appropriate from a traffic planning perspective.

Council's Principal Engineer, Mr Sam Shumane of Transport Assets has reviewed the Traffic Planning Report and the submissions made on the application. Mr Shumane concludes that the proposed development is appropriate in terms of traffic impact and recommends a number of conditions should consent be granted.

Overall, it is considered that the traffic effects associated with the proposed supermarket would be no more than minor, as complying parking and on-site circulation areas are to be provided. Furthermore, traffic generation associated with the proposal can be adequately accommodated by the existing and future road network, subject to the mitigation measures proposed by the applicant being implemented.

The analysis and conclusions drawn by the applicant's Traffic Engineers and Council's Principal Engineer are discussed in more detail below.

8.1.3.1 Parking, Access and on-Site Circulation

Parking

It is proposed to provide 194 parking spaces on site. With 3,570m² gross floor area, the proposed development is required to provide 179 parking spaces under the Operative District Plan. In terms of Proposed Plan Change 17, the development is required to provide a minimum of 102 parking spaces (on the basis that the site abuts a road classified as "Mainstreet" typology). With regard to Council's Parking and Driveway Guidelines, retail premises are required to provide one parking space per 20m² gross floor area, which equates to 179 parking spaces.

Council's Principal Engineer, Transport Assets, has reviewed the application and considers the proposed parking provision to be adequate for the development. It is therefore not anticipated that the proposed development would impact on the availability or use of on-street parking. Overall, the design and provision of parking is considered appropriate to accommodate expected peak demands for the activity within the site.

It is also recognised that several of the submitters raised concerns relating to parking. One of the key concerns is the potential for overflow parking to occur on Crown Lynn Place. In this regard, it is considered that it has been demonstrated that a satisfactory level of parking would be provided on site and that it is unlikely that overflow parking would occur.

The submission by the General Manager: Regulatory Services of Auckland Regional Council states that a reduction in the number of parking spaces to be provided would be appropriate. The reason given for this view is that the site in close proximity to passenger transport facilities with a high frequency of service. The submitter also considers that "excessive provision of car parking will reduce pedestrian amenity, thereby discouraging walking and the use of public transport".

As already discussed, it has been clearly demonstrated both within the applicant's Traffic Planning Report and in Council's review of this report, that the level of parking proposed is appropriate. The proposed level of parking provision is necessary to meet predicted levels of parking demand and to avoid impacting on the availability of street parking. It is considered that it would be inappropriate to impose a lesser standard on the development based largely on future changes in land use and transport patterns. If, and when, parking supply exceeds demand then this matter can be reassessed by the applicant. If it can be demonstrated that the parking is no longer required to avoid potential adverse effects, then consent could be sought under Section 127 of the Act to vary the consent (if approved).

Ms Green raised an issue regarding the loss of the site as a park and ride facility. The site is not a formal park and ride facility. Whilst it may be a convenient parking place for residents in the surrounding area, it is a privately owned site and Council cannot require that this use continue.

Access

The proposed service area to the rear of the building would be separated from the main customer parking and pedestrian areas within the site. The area would be used by delivery vehicles and for staff parking. An entry only crossing would be located on the bend of Crown Lynn Place and an exit only crossing would be located at the south eastern corner of the site. Council's Principal Engineer considers that the proposed entry only crossing does not have adequate sight lines and that the proposed access arrangement should be reversed. This would result in vehicles entering the site at the south eastern corner and exit via the crossing at the south western corner. A condition of consent is recommended in relation to this matter.

The customer parking area would be served by two double vehicle crossings, with one located on Clark Street and the other located on Crown Lynn Place. Traffic signals would be installed at the Clark Street access and would align with Hetana Street. The applicant proposed to undertake the design and construction work associated with the signalised intersection and would pay all associated costs. Council's Principal Engineer has indicated that this arrangement is acceptable.

Council's Principal Engineer has assessed the proposed access arrangements and advises that the potential adverse effects on the roading network would be no more than minor.

On-Site Circulation

On-site circulation would comprise two distinct areas; the customer parking area and the service area to the rear of the building, as shown on Plan TPC-02132-14B prepared by Traffic Planning Consultants Limited. The physical separation of these two areas is considered desirable from a safety and traffic management perspective, as it would minimise the potential for conflict on-site between pedestrians and heavy vehicles. Council's Principal Engineer advises that the dimensions of internal circulation and parking areas are of satisfactory.

8.1.3.2 Road Network

Council's Principal Engineer has advised that the subject site is located within an area of the road network which is currently under investigation for major redevelopment. The future works which Council intends to undertake in the vicinity of the site include: replacing the roundabout at Rankin Avenue with traffic signals; trenching a section of the railway line; extending Memorial Drive across the railway line to intersect with Clark Street; and the installation of traffic signals at the Hetana Street/Clark Street intersection.

The State Highway 20 extension is also likely to impact on the traffic environment in the vicinity of the site. The Traffic Planning Report identifies that the initial stage between Hillsborough Road and Richardson Road is expected to result in increased traffic travelling along Clark Street. However, once the motorway is extended through to Waterview traffic flows would decrease.

Traffic Generation

The Traffic Planning Report includes a detailed analysis of the likely changes in traffic flows that would occur as a result of the supermarket being established. Council's Principal Engineer has reviewed the analysis and also undertaken an independent assessment of the Clark Street/Hetana Street intersection. Council's Principal Engineer has also had regard to the analysis previously undertaken by Council in respect of the New Lynn Transit Oriented Development (TOD) Study. It is concluded that the level of service that would occur following the establishment of the supermarket would be acceptable. In particular, the Principal Engineer states that the design of the Clark Street/Hetana Street intersection would still achieve a category C level of service up to 10 years after construction. This would meet Council's design standards.

Future Roading Proposals

The Urban Concept Plan for New Lynn that forms part of Proposed Plan Change 17 identifies a number of proposed and indicative roads, as well as roads which are to be investigated for potential closure. There are two such elements affecting the application site. Firstly, a proposed road is shown along the eastern boundary of the site (the "Hetana Street" extension); and secondly, the northern leg of Crown Lynn Place is earmarked for potential road closure.

The Traffic Planning Report states that the supermarket proposal has been designed to be compatible with the possible future road network and that the roading options would not be compromised. The report goes on to note the following:

- The building has been located close to the Crown Lynn Place boundary so as to enable a new road to eventually be constructed along the eastern boundary of the NTC site to link Crown Lynn Place with the Clark Street/Hetana Street intersection.
- It is proposed to create the signalised intersection on Clark Street as part of the supermarket development and as access to the NTC site, leaving only the southern portion of the new link to be constructed in the future. This new traffic signal controlled intersection would also accommodate increased traffic using the possible Hetana Street extension across the railway.
- When the new link is created along the eastern side of the supermarket and vested as public road, the northern portion of Crown Lynn Place could be closed, in which case it would become part of the NTC site to accommodate the supermarket parking that was displaced by the new link.

Council's Principal Engineer agrees that the design of the road elements would maintain compatibility with the possible future road network. Furthermore, the Principal Engineer recommends that an agreement should be negotiated between NTC and Council to define the potential future land swap and cost sharing arrangements. It is recommended that this occur independently of the current resource consent process at such time as it becomes necessary to establish the proposed Hetana Street extension.

Overall it is considered that the actual and potential adverse effects of the proposal on the safe and efficient operation of the roading and traffic network will be no more than minor.

8.1.4 Amenity

Urban Design

Case law makes clear that design or aesthetic effects on the environment need to be considered by consent authorities. The 'environment' is defined in s2 of the Act to include amenity values. In turn, the term 'amenity values' is defined to mean *'those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes'*. In this case, the subject site lies within the Working Environment under the Operative District Plan. The plan provisions relating to this zone allow a range of non-residential activities to establish, with relatively few restrictions placed on the nature and form of activities and built structures. It is reasonable to state that the rules of the Working Environment envisage a built form where the amenity values are relatively low, reflecting the utilitarian and functional nature of much of the development that has occurred within this zone throughout the City. In contrast, Proposed Plan Change 17 rezones the site as Community Environment and together with Proposed Plan Change 18 introduces a comprehensive suite of plan provisions that deal specifically with the desired urban form envisioned for New Lynn.

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A49-A92

The proposal has been reviewed by Ms Yvonne Rust, Chief Advisor Town Centre Development for Council's Strategy Unit, as attached at pages A82 to A92. In addition, the Strategy Unit also commissioned a review of the proposal by an Urban Design consultant, Ms Wendy Morris of Ecologically Sustainable Design Pty Limited ("ESD Limited"), which is attached at pages A49 to A81.

The ESD Limited report provides a thorough analysis of the proposal in terms of the provisions of Proposed Plan Changes 16, 17 and 18. The Strategy Unit endorses the report prepared by ESD Limited and provides a report, which is to be read in conjunction with the ESD Limited report.

Both ESD Limited and the Strategy Unit recommend that the consent be refused. Key concerns in relation to urban design include:

- Adverse effects on the desired future level of pedestrian amenity of the town centre.
- Failure to deliver the street networks shown on the Urban Concept Plan.
- The lack of an active frontage on Clark Street.

The potential for adverse effects to occur in the future on the amenity and potential future use of surrounding properties is a related matter raised in the submission by AMP Capital Investors Limited and Progressive Enterprises Limited. In essence, these submissions posit that the proposal, if approved, may constrain the ability for the high level of amenity sought by Proposed Plan Changes 17 and 18 to be achieved. Furthermore, it is suggested that adverse effects on amenity have the potential to impact on the future use of surrounding properties and on the operations of the road network.

The Proposed Plan Changes promulgated in response to the LG(A)AAA 2004 contains provisions that are a significant departure from the provisions of the Operative District Plan. However, it is considered that the reports prepared by ESD Limited and the Strategy Unit have been prepared without full consideration of the appropriate weighting to be given to Proposed Plan Changes 16, 17 and 18 at this stage in the LG(A)AAA process. Matters relating to effects stemming from the proposed plan changes are discussed below, while matters relating to the legal context and the weighting of the relevant statutory documents are discussed in Section 8.2 of this report (below).

The Act specifically provides consent authorities with the discretion to disregard an adverse effect of an activity on the environment if the plan permits an activity with that effect. The term "plan" is defined in section 2 of the Act as meaning "*an operative plan approved by a territorial authority under Schedule 1; and includes all operative changes to such a plan (whether or not arising from a review or otherwise)*". It is therefore considered appropriate to disregard any effects relating to the height, bulk and design of the building as provided under section 104(2) of the Act. Furthermore, the height, bulk and design of the proposed building are considered to be in keeping with the type of development that could be reasonably anticipated at this site under the relevant rules of the Operative District Plan. In terms of the permitted baseline, there is no maximum height imposed in the Working Environment and as the site does not abut residentially zoned land, the height in relation to boundary control does not apply. Furthermore, the Operative District Plan does not control any aspects relating to the built form or design elements of buildings within the Working Environment. Indeed, it would be possible under the Operative District Plan rules to establish a building of utilitarian appearance, such as a factory.

The proposed building, whilst large, is attractively designed with a good use of materials and articulation of the facades. The ESD Limited report notes that "the building design is extensively decorated and articulated, which is an improvement relative to the bland exposed walls of many supermarkets". Overall, it is considered that the building would be an attractive addition to the immediate area and would enhance the existing amenity values. It is considered that the activity will encourage increased pedestrian movements, reflecting its location on the edge of the town centre core and adjoining an arterial route.

One of the key issues of this application relates to the urban design outcomes of the subject proposal. It is clear from all of the submissions (including the opposing submissions) that the activity itself is considered acceptable. In terms of the Operative District Plan, the urban design outcomes are superior to what is envisaged by the Working Environment rules. In terms of the proposed plan changes, the main issue is that the proposed building does not meet the requirement for the building to abut Clark Street. It is considered that such a design would lead to a better urban design outcome; however, it is considered that the proposed plan changes have some, but not significant weight.

The current District Plan framework is at a certain point in time which may or may not change as a result of decisions on submission and subsequent appeals. Once that process has been completed the future rules (as amended by the decisions of Council and the Environment Court) will be afforded greater weight. This issue is discussed further below. If City Wide Rule 3: Street Frontage remains, future development will need to be constructed more in line with those rules. It should be recognised that the development is proposed to occur within a transitional period. If the application is approved and the supermarket is established, there is no reason why further development could not occur on the site in the future.

On balance, it is considered that while the proposed building does not meet some of the proposed plan change rules in relation to the requirement for buildings to abut the road frontage, it would be acceptable having regard to the current receiving environment and the nature of the adjoining roading network being more traffic oriented. It is also considered that the proposal would not foreclose future urban intensification. While it is acknowledged that a better urban design outcome would be achieved if the building were to be located along the road frontage of Clark Street, as discussed below the proposed plan changes have some, but not significant weight at this time. The matter of weighting is further discussed below in Section 8.2.

In terms of the existing receiving environment, it is considered that the subject proposal will result in a positive design outcome for the surrounding area. The proposed design is an enhancement on the built form currently existing in this locality and any adverse effects on the environment would be no more than minor.

Visual Amenity

The application material includes Landscape Planting Scheme prepared by Sue J Roff and detailed information on the nature and form of the proposed building materials. Council's Landscape Architect, Mr Gordon Griffin has reviewed the proposal and comments as follows:

The proposal includes a comprehensive landscape development which would comprise a strong framework of trees both around the building and the periphery of the car park areas, with under-planting of shrubs and ground covers and with grassed areas and low mounds. The proposal would have good amenity and would complement the proposed building.

...

The proposal including its layout and landscape treatment would suit the site and have good amenity however, it is acknowledged that it is not consistent with City Wide Rule 3 or with the Proposed Plan Changes 17 and 18, and would potentially compromise the vision for the New Lynn Urban Concept Plan. In this regard it is perhaps a good design inappropriately located.

In spite of the cited deficiencies, I consider the application would have good amenity in regard to its building design, site layout and landscape development.

When compared to the existing environment, it is considered that the proposal would be a considerable improvement on the current level of amenity.

Noise

The application was supported by a Noise Assessment prepared by URS Consultants Limited with respect to proposed construction activities and subsequent supermarket operations on the site. Potential noise sources associated with the operation of the proposed supermarket include delivery vehicles; mechanical plant such as air conditioning units; and customer and employee vehicles.

A144-A208 The report was peer reviewed by Nevil Hegley of Hegley Acoustic Consultants. Clarification was obtained in respect of a number of matters including the intended delivery hours; construction noise; the operation of the standby generator; and the location of the proposed acoustic fence on the southern boundary, as attached at pages A144 to A208. Further information received after notification). Mr Hegley has advised that he is satisfied that the construction and subsequent operation of the proposed supermarket will comply with the noise requirements of the Operative District Plan and Proposed Plan Change 17. Conditions are recommended to ensure that the recommendations of the report by URS are implemented.

Overall it is considered that the effects of the proposal would be no more than minor.

Lighting (Glare)

The proposed application was supported by information within the Engineering Report prepared by Maunsell Limited relating to the effects of lighting associated with the proposed development. The proposed lighting comprises exterior lighting within the service area and car park, under canopy lighting and interior lighting. Maunsell Limited advises that spill light emission from these sources would be less than the maximum permitted under the relevant rules (for both the Working and Community Environments). In addition, the report also considers the effects of the illuminated signage and states that the relevant permitted activity standards for illuminated signage.

It is therefore concluded that any adverse effects such as glare from outdoor lighting and illuminated signage would be insignificant.

8.1.5 Social and Economic

Retail Distributional Effects

A113-A122 The application included a report by Foresight Partners Pty Limited on the "Forecast Retail Distributional Effects". Council's consultant Mr Mark Tansley of Market Place New Zealand Limited has undertaken a peer review of that report, as attached at pages A113 to A122.

Mr Tansley notes that the term "distributional effects" is a trade term that refers to social and economic effects associated with a change in retail supply and shopping preferences. Outcomes associated with such effects can include the under-utilisation of physical resources, declining amenity standards in centres and community disenablement.

The Foresight Report analyses the development characteristics of the catchment and its expenditure potential. This information is used in turn to project turnover and community impact. The report states that:

The forecast levels of impact anticipated are not sufficient to precipitate a change in retail, community or commercial functions of the centres identified in this assessment. Nor are they sufficient to cause the failure of any centre's major supermarket or other anchor tenant that might lead to a loss of centre function and vitality through indirect distributional effects upon the range and depth of retail goods and community services presently available to the catchment population.

The report concludes that the assessment demonstrates that the proposed supermarket would result in beneficial impacts. Mr Tansley considers the first of the two benefits identified may be legitimately taken into account in making a decision on the application. These matters are as follows:

- It will provide most catchment residents, workers and visitors using the town centre with a modern, full-service New World supermarket not represented in the network of centres and supermarkets serving the New Lynn and eastern Waitakere City area;
- It will enhance the choice and variety of major food shopping opportunities available to catchment households in a location and store format (free-standing) offering town centre shoppers a higher level of supermarket shopping performance convenience in terms of accessibility and transaction times

Mr Tansley advises that the spending and trading assessments in the Foresight Report take a conservative approach and on this basis, the conclusions drawn can be considered reliable.

Mr Tansley further comments that the findings reinforce the conclusions inferred in the Assessment of Effects ("AEE") prepared by Planning Network Services Limited. Section 5.9.5 of the AEE concludes that any adverse social or economic effects generated by the proposal on centres outside New Lynn will be negligible and further, that there will be no impact on the community focus of any centre.

Overall it is considered that any retail distributional effects of the proposal will be no more than minor.

8.1.6 Health and Safety

Contamination

The Applicant has submitted a Contamination Assessment which has been reviewed by Council's consultant for contaminated site issues. In summary, there is evidence of residual levels of hydrocarbon contamination on the site, associated with the Underground Storage Tanks (UST) previously located at 7 Clark Street. Conditions are therefore recommended to deal with the remediation of the site. Some soil on the site would have residual levels of contamination that meet the relevant guidelines and can therefore remain in situ. However, any soil removed would require disposal to a licensed landfill. Conditions are also recommended in this regard.

Infrastructure

Council's Drainage Engineer, Mr Brett Disley, has reviewed the application and advises that the application is supported, subject to the imposition of conditions. Mr Disley advises that the application satisfactorily demonstrates that infrastructural requirements relating to the three waters (Stormwater, Wastewater and Water Supply) will be provided for. He further advises that these requirements will need to be comprehensively detailed through the engineering approval process.

Geotechnical

A131-A137

Council's Geotechnical Engineering Consultant, Mr Richard Simonds, has reviewed the Geotechnical Report that was submitted with the application. Mr Simonds concludes that the Geotechnical Report supplied is adequate and considers that the proposal is suitable for the site from a geotechnical perspective, the Geotechnical Review is attached at pages A131 to A137. Conditions are recommended to ensure that the development proceeds in accordance with the recommendations contained in the Geotechnical Report.

Overall it is concluded that there would be no more than minor adverse effects on health and safety.

8.1.7 Positive Effects

It is considered that the establishment of proposed supermarket would result in positive effects, in addition to those discussed at Section 8.1.5 (Retail Distributional Effects) and Section 8.1.4 (Amenity).

At present, there are no pedestrian crossings in the immediate vicinity of the site. The installation of a signalised intersection at the intersection of Clark Street and Hetana Street would enhance pedestrian safety, as it would incorporate pedestrian crossing signals. This would benefit not only customers travelling to the supermarket by foot, but also the residents in Crown Lynn Place.

The proposed supermarket would result in the development of an existing vacant site, which is currently overgrown and only partially utilised at present as an informal park and ride facility. This would be a significant improvement to the existing environment.

Other positive effects include a reduction in trip lengths associated with grocery shopping for existing residents who reside in the apartments at the southern end of Crown Lynn Place and the creation of employment opportunities. The supermarket would also provide enhanced choice and access to food shopping opportunities for residents in the surrounding area.

8.1.8 Summary

It is considered that the actual and potential adverse effects of the proposed activity are no more than minor and can be adequately mitigated through appropriate conditions of consent. The proposal would also result in positive effects.

8.2 Any Relevant Provisions of a Statutory Planning Document - Section 104(1)(b)

Subject to Part II of the Act, consent authorities must have regard to the relevant provisions of statutory planning documents. The following statutory planning documents are considered relevant to the proposal: Auckland Regional Policy Statement; Proposed Plan Change 6 to the Auckland Regional Policy Statement; Waitakere Operative District Plan; and Proposed Plan Changes 16, 17 and 18 to the Waitakere District Plan.

The Act directs consent authorities to have regard to both an operative plan or policy statement and any proposed plan or policy statement (subsections (iii) and (iv) of Section 104(1)(b)). In this instance, the Waitakere City District Plan became operative on the 27 March 2003 and Proposed Plan Changes 16, 17 and 18 were notified on 31 March 2005. The Auckland Regional Policy Statement became operative in 1999 and is also subject to a proposed plan change (Proposed Plan Change 6), which was notified on 31 March 2005.

Case law¹ has established that consent authorities retain the discretion to consider the weight that is to be accorded to the relevant statutory planning documents. There is no general rule about where a proposed plan is to prevail over the inconsistent provisions in an operative plan under the Resource Management Act. Each case is to be decided on its individual circumstances.

¹ Relevant authorities include: Hanton v Auckland City Council [1994] NZRMA 289; Entwisle v Dunedin City Council and Roman Catholic Bishop of Dunedin [1994] 3 NZPTD 838; Lee v Auckland City Council [1995] NZRMA 241; TV3 Network Services v Waikato District Council [1997] NZRMA 539

There are three key factors identified in the cases:

1. The extent to which the proposed measure has been exposed to testing and independent decision making.
2. Any circumstances of injustice that may result.
3. The extent to which a new measure may implement a coherent pattern of objectives and policies.

Firstly, consideration needs to be given to the extent to which a proposed plan has been subject to independent decision making. This will depend on the procedural stage that any given document has reached, with the weight generally being greater as a document moves through the statutory process. In this case, the proposed plan changes to the District Plan and Auckland Regional Policy Statement are still in their infancy. Hearings concluded on 1 May 2007 and at the time of writing, decisions had not yet been released. Once the decisions are released, it is highly likely that there will be appeals to the Environment Court given the breadth of the matters raised in submissions. Therefore, having regard to the procedural stage attained, it is considered appropriate to accord greater weight to the operative statutory planning documents.

Secondly, regard should be had to any circumstances that would give rise to an injustice if legitimately held expectations might be disappointed. This relates not only to the applicant, but also other parties including submitters on the present application and the proposed plan changes. The applicant has owned the site since 2002. The relevant provisions of the Operative District Plan that applied to the site up until 31 March 2005 were extremely permissive and required minimal consideration of matters such as urban design. As discussed in Section 8.1.4 (above), it would have been possible to establish a large building of utilitarian appearance, such as a factory, subject only to obtaining a controlled activity resource consent for landscape treatment and site remediation and a limited discretionary activity resource consent to develop a site known to Council to be potentially unstable. On the other hand, Council's intentions for the New Lynn Town Centre have been signalled over a number of years (as far back as the New Lynn Charrette in 1996) and well before the applicant purchased the site. The proposed plan changes have also effectively created an expectation within the community that a higher level of amenity will be achieved within the New Lynn Town Centre and surrounds in the future. Overall it is considered that the current proposal is an enhancement on what could be anticipated under the current rules of the Operative District Plan. It is therefore considered that it would unduly prejudice the applicant to give greater weight to the proposed plan changes.

Lastly, the resource management approach taken under the Operative District Plan and the Proposed Plan Changes differ significantly. In particular, Proposed Plan Change 17 changes the zoning of the subject site from Working Environment to Community Environment. Proposed Plan Change 6 to the Auckland Regional Policy Statement represents a similarly significant change in approach. Furthermore, the proposed plan changes to both documents have come about as a result of an Act of Parliament (the Local Government Auckland Amendment Act 2004 ("LG(A)AA 2004")). The plan changes are required to integrate the provisions relating to land transport and land use and make those provisions consistent with the Auckland Regional Growth Strategy. Proposed Plan Changes 17 and 18 also seek specific urban design outcomes for New Lynn, in accordance with Schedule 5 of the LG(A)AA 2004. The proposed plan changes are a response to a statutory mandate set by the LG(A)AA 2004 and were required to be publicly notified by 31 March 2005. However, this does not obviate the need to follow the statutory process under the First Schedule of the Resource Management Act ("RMA 1991"), which is designed to ensure that there is full and widespread knowledge of any proposed plan or proposed plan change. To accord greater weight to a set of proposed plan changes at this present stage of the statutory process would give the plan changes an anticipatory effect, not intended under either the LG(A)AA 2004 or the RMA 1991.

On balance, it is considered that the Operative District Plan and Operative Auckland Regional Policy Statement should be considered to be the dominant statutory planning documents. It would not be appropriate to accord significant weight to the proposed plan changes, as this would not accord with due process and would pre-empt the outcomes of the decision making process currently being undertaken in respect of the proposed plan changes. Whilst the proposed plan changes signal an important change in direction for the City and region and must be given consideration, they cannot yet be accorded greater weight than the Operative District Plan or Auckland Regional Policy Statement, as the proposed provisions have not yet been exposed to testing and independent decision making. It is noted that were the proposed plan changes afforded more weight, the conclusion with respect to urban design outcomes and the recommendation of this report to approve the application may have been different.

It has been established in case law² that in situations where there are different outcomes achieved under two plans, consideration is best left to the general principles of the Act (Part II) when assessing effects on amenity, as opposed to considering plan approaches. Consideration of the application in terms of the purpose and principles of the Act is discussed in Section 9 below.

8.3 National Policy Statement - Section 104(1)(b)(i)

The Proposed National Policy Statement on Electricity Transmission was publicly notified on 16 May 2007. The proposal does not give rise to any matters that require consideration in the context of the Proposed National Policy Statement.

8.4 Auckland Regional Policy Statement - Section 104(1)(b)(iii)

8.4.1 Operative Auckland Regional Policy Statement and Proposed Plan Change 6

The Operative Auckland Regional Policy Statement (“Operative ARPS”) sets out the framework for the integrated management of the use, development and protection of the natural and physical resources of the region. It provides a broad overview of key strategic resource management issues within the Auckland region and sets out objectives, policies and methods to achieve sustainable and integrated management. The focus is on major natural and physical resources and regionally significant activities.

The Operative Auckland Regional Policy Statement has been amended by Proposed Plan Change 6, which seeks to give effect to the growth concept set out in the Auckland Regional Growth Strategy (“ARGS”), as required by s40 of the LG(A)AA 2004.

The Act requires that district plans and regional plans shall not be inconsistent with the Auckland Regional Policy Statement.

The provisions relevant to the application are discussed below.

8.4.1.1 Strategic Objectives and Policies

Objectives: 1, 2, 6 and 1, 2, 3, 4, 5, 6, 10, 16 under Proposed Plan Change 6

Strategic Policies: 1

Strategic Policies - Urban Structure (all inserted by Proposed Plan Change 6): 1, 2, 3, 4, 5, 6

Strategic Policies - Urban Design (inserted by Proposed Plan Change 6): 1

² *Manger v Banks Peninsula District Council* C114/04, noted [2004] BRM Gazette 133, post RMAA 2003

Comment:

The Operative Auckland Regional Policy Statement seeks to ensure that growth is accommodated in a sustainable and integrated manner consistent with the purpose of the Resource Management Act. One of the key themes is recognition of the potential for growth to adversely impact on natural and physical resources, as well as amenity values. Another key theme is the containment of growth within the metropolitan urban limits. In this regard, the proposal is considered to sit comfortably with the strategic objectives and policies of the Operative Auckland Regional Policy Statement, as it does not give rise to any significant adverse effects on natural and physical resources or amenity values. Furthermore, the site is located within an existing urban area.

As noted, Proposed Plan Change 6 to the Operative Auckland Regional Policy Statement was notified to give effect to the growth concept of Auckland Regional Growth Strategy 2050. New Lynn is identified as a High Density Centre and Corridor with Rapid Transit and as such, the Strategic Policies relating to Urban Structure of High Density Centres and Corridors are relevant. The Strategic Policies relating to urban design are also relevant.

It is considered that the proposal is generally consistent with some of the relevant policies, such as Strategic Policies 2.6.5.6 and 2.6.5.11, as it involves the location of a retail trade activity in a high density centre and corridor. Furthermore, establishment of the proposed supermarket would maintain and enhance the existing amenity values at the locality. However, the development is not considered to be of a form that supports a compact mixed use environment. The application in its current form involves a large scale, single use activity that would not achieve the intensive urban form envisaged under the Strategic Objective 2.6.1.3 and Strategic Policies 2.6.5.3, 2.6.5.4 and 2.6.8.1. The Urban Design Review undertaken by ESD Limited makes the following comments:

In a good town centre, a large and relatively unconstrained site in close proximity to the centre of a rail-based town, and with extensive street frontages, would normally be expected to be developed in a relatively intensive built-up manner, with extensive street frontage, multi-storeys, a mix of uses and basement car parking.

Unfortunately the proposal occupies such a site, but the supermarket and ground level car parking appears to be both a significant under-development of the site, and to be designed so that future intensification would be very difficult and highly unlikely. As such the proposal not only represents a lost opportunity to provide transit-supportive activities close to the station now, but appears to do so for the reasonably long term.

Overall, it is considered that the proposal is in principle contrary to the more specific objectives and policies of Proposed Plan Change 6 to the Auckland Regional Growth Strategy.

8.5 Regional Plan or Proposed Regional Plan - Section 104(1)(b)(iv)

As noted in Section 4 above, consents are required from Auckland Regional Council under the provisions of the Proposed Auckland Regional Plan: Air, Land and Water. The provisions of the Proposed Auckland Regional Plan: Air, Land and Water have been considered by the Auckland Regional Council in relation to decision making process in respect of the consents sought. Accordingly, it is considered that the provisions of the Proposed Regional Plan have been satisfied.

8.6 District Plan Provisions - Section 104(1)(b)(iv)

Part 5 of the District Plan contains the objectives, policies and methods by which the effects of activities on natural and physical resources are to be managed. The majority of the objectives and policies are concerned with managing the effects of activities on the natural environment, including water, native vegetation and air. The objectives and policies that relate to the built environment focus on the effects of activities on amenity values.

The relevant objectives and policies that were inserted as a result of Proposed Plan Changes 16, 17 and 18 being notified are also discussed. These provisions introduce a greater emphasis on the built environment compared to that of the Operative District Plan's provisions. In addition, Proposed Plan Change 16 inserts a new policy section relating to the management of growth in the City. At the time of writing, decisions had not yet been released on these plan changes.

Part 6 of the District Plan contains an explanation of the strategic direction of the District Plan.

The District Plan Assessment Criteria have been developed to address the issues covered in the objectives and policies and are a useful guide in assessing the effect of an activity. The relevant assessment criteria relating to aspects of the development for which consent is required are identified and commented on below.

A213-A259

Comments are provided below in relation to the relevant provisions under the headings which they appear in Part 5 of the District Plan. Full copies of the relevant plan provisions (objectives, policies, rules and assessment criteria) are attached at pages A213 to A259.

8.6.1 Managing City Growth

Objective 0 and Policies 0.1, 0.2, 0.4, 0.7, 0.8

(Note: This entire policy section was inserted by Proposed Plan Change 16.)

Comment:

The relevant objectives and policies seek to align the District Plan with the outcomes sought in the Auckland Regional Growth Strategy and Auckland Regional Policy Statement. These documents identify that significant population growth is likely to occur, which must be managed in an integrated manner. Particular emphasis is placed on attaining a compact urban form with integrated land use and transport. The approach taken is to seek to concentrate growth around town centres and transport corridors. Development and redevelopment is expected to attain a high level of amenity.

It is considered that the proposed supermarket is an appropriate activity at this location and would support the town centre. Furthermore, the activity makes use of a vacant site that is underutilised at present. The comments at page 5 of the report by Council's Strategy Unit provide a succinct summary of the proposal in relation to Council's strategic direction.

It is recognised that establishing a supermarket activity in the location proposed is consistent with Council's strategic direction for consolidation outlined above. In particular, the proposed activity sits well with the planned expansion of the core of the New Lynn Town Centre to the south. The proposal would result in the development of an important anchor in the area that would act as a catalyst for the expansion of the other development in the town centre. This type of activity therefore could be considered to support the plan change on commercial and economic grounds by providing retail in support of intensification. It is the location of the building footprint and urban form within the site and the urban design response that clearly do not support the Council's strategic vision for the town centre core area.

As noted above, the Council's current strategic vision is subject to plan changes for this locality.

8.6.2 Effects on Water: Quality and Quantity

Objective 1 and Policies 1.5, 1.6, 1.7, 1.8, 1.9, 1.10

Comment:

Potential adverse effects on water could result during the construction phase and following completion of the development. In respect of the construction phase it is noted that the applicant proposes to install erosion and silt control measures, which would prevent sediment laden runoff from entering the public stormwater system. In terms of the completed development, all stormwater from the car park areas would be discharged via treatment devices, thus avoiding the potential for scouring and subsequent contamination of stormwater runoff.

8.6.3 Effects on Air Quality / Atmospheric Quality

Objective 4 and Policies 4.1, 4.2 (Proposed Plan Change 17 only), 4.7

Comment:

These provisions endeavour to maintain air quality and identify that retail activities should be located to minimise trip lengths, promote passenger transport, support major town centres and thereby minimise adverse impacts on air quality.

The subject site is located alongside the existing town centre and furthermore is likely to form part of the town centre in the future, if the intent of Proposed Plan Change 17 is carried forward.

8.6.4 Effects on Amenity Values: Health and Safety

Objective 10 and Policies 10.1, 10.2, 10.3, 10.6, 10.8, 10.9, 10.11, 10.13, 10.14, 10.16, 10.17, 10.19

Assessment Criteria

Contaminated Sites: 2(a) – (c)

Natural Hazards: 1(b) – (c)

Comment:

These provisions seek to maintain the health and wellbeing of residents by managing activities that can cause a nuisance such as noise and dust. In addition, the policies seek to maintain capacity of the roading network and infrastructure.

The development would be serviced by appropriate infrastructure, ensuring that potential adverse effects on public health are avoided. Furthermore, the contamination that has been identified on the subject site would be appropriately remediated as part of the development of the site. =

Council's Principal Engineer, Mr Shumane has concluded that the proposal would have no more than minor adverse effects on the safety and efficiency of the road network. Mr Shumane is further of the view that the proposed development would provide an adequate number of parking spaces to meet parking demand. On this basis it is considered that the proposal would not be contrary to the relevant objectives and policies.

8.6.5 Effects on Amenity Values - Landscapes, Local Areas and Neighbourhood Character

Objectives and Policies

Objective 11

Policies 11.1, 11.2, 11.3, 11.8, 11.10, 11.11, 11.12, 11.13, 11.17, 11.21 (Proposed Plan Change 17 only)

Strategic Direction

Section 6.1 General Themes: 6.1.1 Theme One: Urban Consolidation & Managing Growth Pressure, 6.1.2 Theme Two: City Form

Section 6.2 Policies and Methods: 6.2.4 Retail Activities and 6.2.6 Non-Residential Activities

Assessment Criteria

Working Environment Landscape Treatment: 4(a) - (c)

Working Environment Retailing: 5(a) - (k)

Working Environment Parking, Loading & Driveway Access: 9(a) - (l)

Working Environment Signs Assessment Criteria: 11(a) - (d)

Community Environment Landscape Treatment: 9(a) - (c)

Community Environment Signs: 12(a) - (e)

Community Environment Building Design-Street Frontage New Lynn: 3(a) - (m) City Wide Rule 3

Community Environment New Lynn Concept Plan: 7A(a), (b) and (f)

Community Environment Parking Loading & Driveway Access - New Lynn: 14A(a) - (k)

General Natural Area Earthworks Assessment Criteria: 3(a), (e), (h), (i), (k), (m), (o), (p), (q)

Comment:

It is well established that the Operative District Plan promotes a “centres-plus” approach in respect of retail activities. Part 6 of the Operative District Plan (Explanation of the Strategic Direction: Policies and Methods) provides further explanation of this policy response. Sections 6.1.2 and 6.2.4 are particularly relevant. These sections identify that the District Plan seeks to counter the dispersal of retail activities and to promote a sequential approach when assessing new retail development. This approach favours town centres followed by locations alongside town centres or on major roads. It is noted that Proposed Plan Change 16 only introduces minor changes to Section 6.2.4 to include reference to the importance of land for employment growth.

The most relevant policy is 11.17 which states:

Retail activities should be managed to enable people and communities to provide for their social and economic wellbeing in a way that sustains and enhances the quality of commercial and community facilities and services, amenity values and general vibrancy of the City’s town centres, having particular regard to the following:

- *supporting urban consolidation and mixed use development in locations which are accessible by private and public transport modes, and discouraging development which could be better located in respect of accessibility;*
- *promoting the pedestrian orientated amenity values of town centres including pedestrian precincts, pathways and parks, landscaping, street furniture and shop display frontages;*

- *encouraging, where appropriate, the integration of new retail activity with existing retail and other community resources and activities in the same area, and in particular in town centres including site and building design integration and pedestrian and road linkages;*
- *establishing and enhancing the quality and design of buildings;*
- *recognising the importance that arises from the role of town centres as community nodes in the City;*
- *recognising that the development of inappropriate retail activity can create adverse effects on the function served by, and the amenity values of, town centres;*
- *ensuring that the development of new retail activity does not result in adverse social and economic effects by causing a significant decline in amenity in town centres of the positive contribution made by town centres to the social and economic wellbeing of people and communities in the city;*
- *enabling potentially incompatible retail activities, including those which will compromise pedestrian-orientated amenity values or residential amenities, to establish in locations where adverse effects can be remedied or mitigated;*
- *enabling competition between retailers and types of retailing.*

A sequential approach to the location of retail activity is adopted which favours locations in town centres (particularly major town centres) where retailing is generally a permitted activity. There is only limited provision for permitted retail activity outside town centres. However proposals for retail activity in working environments at the edge of town centres and on major roads, are subject to resource consent or plan change procedures which require it to be shown that a town centre location would not better serve the Plan's objectives and policies.

In this instance, the subject site is situated alongside the existing town centre and is also located on a major road. It is noted that the term major road is defined in the District Plan as being any road classified as a Strategic Arterial Road, Regional Arterial Road or District Arterial Road. As previously noted, Clark Street is a District Arterial Road. In addition, the site is situated alongside the existing town centre. The proposed supermarket is therefore considered to be appropriate at this location. As discussed in Section 8.1.5, any adverse social or economic effects generated by the proposal on centres outside New Lynn would be negligible and further, that there would be no impact on the community focus of any centre.

It is also considered that Policies 11.1 and 11.21, as amended by Proposed Plan Change 17 are relevant. These policies states:

Policy 11.1

Settlement should be of a type and a density that protects amenity values, including neighbourhood character of different parts of the City, by:

...

- providing for higher intensity development in or adjacent to town centres;

...

Policy 11.3

Off-street car parking within the core of the Henderson and ~~New Lynn~~ Community Environment and the entire Community Environment (New Lynn) should be provided in a way that:

- protects and enhances the visual amenity and pedestrian based character of the area;
- ensures a flexibility of use ~~on ground floor sites~~ as a way of maintaining and enhancing the vibrancy and interest that is characteristic of the core by taking advantage of the potential for sharing of car parking and available access to passenger transport;
- enables the redevelopment of smaller properties in the central area of the New Lynn Town Centre.

A49-A81

As already discussed in Section 8.4.1.1 (above), the proposed development fails to provide for the higher intensity of development envisaged under the proposed plan changes which were notified to give effect to the growth concept of the Auckland Regional Growth Strategy 2050. Furthermore, as identified in the report by EDS Limited, as attached at pages A49 to A81, the proposal also fails to satisfy the relevant assessment criteria pertaining to street frontages (Community Environment Rule 5A and City Wide Rule 3). In particular, the supermarket is set back approximately 80 metres from the Clark Street frontage and the intervening area would be occupied by an extensive area of parking.

There is no reason to suggest that customers would not use the supermarket if they are unable to see at grade parking from Clark Street. There are an increasing number of supermarkets in the Auckland Region that provide car parking underground or within the building envelope itself. Examples include: Kelston Foodtown; Victoria Park New World; Quay Street Foodtown; Botany Countdown; Howick Foodtown; 277 (Newmarket) Woolworths; Papatoetoe Foodtown; St Lukes Foodtown; Takapuna Foodtown; Glenfield Foodtown; Birkenhead Countdown; Sylvia Park Foodtown; Mt Wellington Countdown; Henderson Countdown; Milford Woolworths. The majority of the car parking spaces of these supermarkets are not at grade. This would not appear to have any discernible impact on trading considering length of time many of these supermarkets have been established.

Overall, it is considered that the proposal would be consistent the relevant objectives and policies of the Operative District Plan, but would be contrary to some of the objectives and policies of Proposed Plan Changes 17 and 18.

8.7 Any Other Matters the Consent Authority Considers Relevant and Reasonably Necessary to Determine the Application (104(1))(c))

Council also has the discretion to consider any precedent issues that may arise for a non-complying activity. According to the Court of Appeal decision in *Dye v Rodney District Council* [2001] NZRMA 513, an adverse precedent effect can arise where the grant of a non-complying consent would influence the approach taken by Council to similar consent applications. As a result of the view taken about weight to be attributed to the planning instruments, it is not considered that a precedent effect will arise. Decisions on the proposed plan changes are expected to be released by the end of June. At the time of writing, no other applications for a major new development within New Lynn had been received by Council. In any event, each application is required to be assessed on its merits within the framework of the Act.

8.8 Other Issues Raised by Submitters Not Covered Elsewhere in Report

The submission of AMP Capital Investors Limited asserts that granting consent to the application would undermine public confidence in the consistent administration of the plan. It is well established in a significant body of case law that confidence will be affected if a council ignores its policies and objectives and allows under Section 104D of the Act, an activity with major effect which is clearly contrary to those policies and objectives³. As has been established in the analysis at Sections 8.1 and 8.6 of this report, the proposal would not have major adverse effects and nor would it be contrary to the objectives and policies of the Operative District Plan.

8.8.1 Bonds/Reserve Contributions/Development Levy/Financial Contributions

The proposed development would attract a development contribution under Council's Long Term Council Community Plan, as it would increase the impermeable surfaces and gross floor area of development on the site.

There are no rules within the District Plan that provide for a financial contribution in respect of the proposed development.

The proposal does not relate to a subdivision or development and therefore a reserve contribution cannot be taken.

Council's EcoWater Engineer has recommended that a bond be imposed in respect of the drainage infrastructure that would be taken over by Council.

8.8.2 Monitoring

The performance of the activities under this consent will be subject to Council's standard monitoring procedures. These procedures include scheduled inspections to ascertain compliance with conditions of consent, together with periodic inspections as and when required to establish whether conditions are being complied with on an ongoing basis. In particular, attention is likely to be directed toward the implementation of conditions relating to erosion and sediment control, site contamination and traffic management measures.

8.8.3 Any Other Relevant Non-Statutory Documents

8.8.3.1 Auckland Regional Growth Strategy

The purpose of the Auckland Regional Growth Strategy is "to ensure growth is accommodated in a way that meets the best interests of the inhabitants of the Auckland Region".

The Auckland Regional Growth Strategy establishes a vision for how growth can be accommodated so that Auckland can sustain:

- strong supportive communities;
- a high quality living environment;
- a region that is easy to get around; and
- protection of the coast and its surrounding natural environment.

New Lynn is identified as one of the three western sector sub-regional centres. The report by Council's Strategy Unit advises that the Auckland Regional Growth Strategy 2050 identifies that New Lynn will have an important role in accommodating a significant portion of the City's future population, as well as business and employment growth over the next 50 years.

³ *Monad Leisuretime Ltd v Queenstown Lakes DC* W116/95 (PT), noted [1995] BRM Gazette 143

As already noted the proposed supermarket would provide employment and would also support the New Lynn and surrounding communities through the provision of enhanced access to food shopping opportunities.

8.8.4 Lapsing of Consent

Under Section 125 of the Act, unless given effect to earlier, a consent lapses either on the date that is specified in the consent or if no date is specified, five years after the date of commencement of the consent. The Applicant has requested that should consent be granted, a five year lapse period be allowed. A standard five year period in which to give effect to this consent (if granted) is considered appropriate because of the scale of the development that is to occur on the site. This would accommodate any potential time delays that might occur.

9 PART II OF THE RESOURCE MANAGEMENT ACT 1991

It is considered that the proposal would be consistent with Sections 5, 6, 7 and 8 of the Act.

The purpose and principles of the Act have primacy over all other considerations that are set out in Section 104 of the legislation. In summary, the Act has a single purpose, which is the promotion of the sustainable management of natural and physical resources. In exercising its functions under the Act, such as the consideration of this resource consent application, Council is required to provide for matters of national importance, have particular regard to the matters set out in s7 and to also take into account the principles of the Treaty of Waitangi. The matters contained in s7 are of particular relevance to this proposal.

It is considered that the granting of this application would not be contrary to the purpose of the Act. The proposal will enable people and communities to provide for their economic, social and cultural well-being and their health and safety without significantly compromising the needs of future generations or the life supporting capacity of natural resources such as air, water and soils. Through the imposition of appropriate conditions of consent, it is considered that the proposed activity can sufficiently avoid, remedy or mitigate any adverse effects on the environment. The proposal would also have positive or beneficial effects in terms of assisting the community to provide for its wellbeing, through the enhancing the food shopping opportunities present in the New Lynn area.

It is considered that the proposal is consistent with the Act's purpose of sustainable management. In particular this proposal is concerned with the sustainable management of natural and physical resources (land within an existing town centre) in such a way that the communities' social and cultural aspirations are realised whilst the quality of the environment and amenity values of the neighbourhood are maintained and enhanced. The proposal would allow for the establishment of a supermarket on a site that is presently under-utilised that would be appropriate within the environment and would be able to establish and operate in such a way that the amenities of the neighbourhood would not be adversely affected.

The proposal is not considered to adversely affect any matters of national importance. It is considered that the adverse effects arising from the proposal and the proposed mitigation are limited in significance to the surrounding urban neighbourhood.

Section 7 identifies a number of "other matters" to be given particular regard by Council in the consideration of any assessment for resource consent, and includes the efficient use of natural and physical resources, and the maintenance and enhancement of amenity values.

The potential effects of the proposal on the amenity and character of the area have been discussed in detail in the effects assessment contained in Section 8.1.4 of this report. Subject to conditions such as the implementation of the Landscape Treatment Plan and construction of the signalised intersection at the Clark Street access to the site, it is concluded that the proposed development would be compatible with the surrounding built and natural environment and the existing amenity of the area would not be reduced.

It is concluded that the granting of this consent would promote the sustainable management of natural and physical resources and would achieve the purpose of the Act.

10 EVALUATION IN ACCORDANCE WITH SECTION 104D OF THE RESOURCE MANAGEMENT ACT 1991

The threshold test in Section 104D of the Act states that a consent authority must not grant consent to a non-complying activity unless it is satisfied that the adverse effects on the environment will be minor (104D(a)) or the activity will not be contrary to the objectives and policies of a plan or proposed plan (104D(b)).

It is considered that the threshold test for a non-complying activity has been met as the proposal satisfies Section 104D, in that subject to appropriate conditions of consent requiring mitigation the adverse effects on the environment of the proposal will be no more than minor. The proposal is not contrary to the relevant objectives and policies of the Operative District Plan, but is contrary to some of the objectives and policies in Proposed Plan Changes 17 and 18. The proposal does not therefore pass the second limb of s104D. To pass the Section 104D(b) gateway the application must not be contrary to the objectives and policies of *both* the relevant plan and proposed plan (which includes notified plan changes).

On the basis of the environmental effects assessment (Section 104D(a)) however, jurisdiction to grant consent has been established.

11 CONCLUSION

The application seeks consent to construct and operate a supermarket at the site comprising 7 Clark Street and 2, 4, 6 Crown Lynn Place. Overall consent is required as a non-complying activity. The aspect of the proposal which triggers the requirement for non-complying activity consent relates to the establishment of a retail activity within the Working Environment.

The site is zoned Working Environment under the Operative District Plan and Community Environment under Proposed Plan Change 17.

The key resource management issue posed by this application and raised by many of the submitters in opposition is whether the proposal achieves an appropriate urban design outcome for the site and immediate surrounds.

On balance, it is considered that the proposal **meets** the criteria for granting consent as the potential adverse environmental effects are **no more than minor** and can adequately be mitigated through the imposition of appropriate conditions of consent. It is considered that the construction and operation of the proposed supermarket **will not** lead to a decline in the amenity values of the area in which it seeks to locate. Rather, the amenity values at the locality would be enhanced as a result of the proposed supermarket establishing.

The proposal is not contrary to the relevant objectives and policies of the Operative District Plan, but is contrary to the objectives and policies in Proposed Plan Changes 17 and 18. The proposal does not therefore pass the second limb of Section 104D. However, the proposal does pass the first limb of the gateway test in Section 104D(a) in terms of environmental effects and therefore jurisdiction to grant the consent has been established.

It is considered that the majority of issues raised by the submitters **can** be adequately addressed through the imposition of appropriate conditions.

Subject to any additional and/or contrary evidence being presented at the hearing, it is concluded that the application **merits consent** in accordance with Section 104 of the Act.

RECOMMENDATIONS

That pursuant to Sections 104,104B, 104D, 108 and 113 of the Resource Management Act 1991, and subject to additional or contrary information being presented at the hearing, **consent be granted** to the application by The National Trading Company of New Zealand Limited to construct and operate a supermarket at 7 Clark Street and 2, 4, 6 Crown Lynn Place, New Lynn (being Lots 1, 3 and 4 DP 159266 and Lot 1 DP 130538) for the following reasons:

- 1) Any actual or potential effects on the environment by the proposal, including noise, amenity and health and safety, are considered to be no more than minor and will be sufficiently avoided, remedied or mitigated by the conditions of consent.
- 2) Adequate on-site parking and manoeuvring would be provided. Subject to the proposed road improvements, the additional traffic movements associated with the proposed development could be accommodated without impacting adversely on function or safety of the road network.
- 3) The proposed development would not adversely affect or compromise the provision of future roading proposals in the area.
- 4) The earthworks result in the re-contouring of the land and would not significantly alter the existing landform. Furthermore, the earthworks are considered to be of a scale consistent with the development being undertaken.
- 5) The establishment of the activity would be appropriate to the environment in which it is to locate and would support town centre activities. Any retail distributional effects of this retail activity would be no more than minor.
- 6) The scale, form and design of the proposed building would maintain and enhance the current urban form of the environment in which it would be located. The proposal is an enhancement over what could be established under the Working Environment rules of the Operative District Plan.
- 7) The proposal would not be contrary to the provisions of the Operative District Plan or the Auckland Regional Policy Statement. While the proposal is contrary to some of the policies of Proposed Plan Changes 17 and 18 to the District Plan and Proposed Plan Change 6 to the Auckland Regional Policy Statement, it would achieve some of the outcomes sought by the proposed plan changes, which at this point in time are of a lesser weight than the operative planning documents.

Consent shall be subject to the following conditions:

1. The development shall proceed in accordance with the titled and dated as follows:
 - Proposed Site Plan 10-(02)/A, prepared by JCY dated 07/2006.
 - Elevations 13-(01) Revision A and 13-(02) Revision A, prepared by JCY dated 24/10/2006.
 - Perspective 20-(01) Revision A, prepared by JCY dated 24/10/2006.
 - Typical Section 12-(01) Revision A, prepared by JCY dated 24/10/2006.
 - Materials 24-(01) Revision A, prepared by JCY dated 24/10/2006.
 - Design Vernacular 24-(02) Revision A, prepared by JCY dated 24/10/2006.
 - Landscape Planting Scheme L01, prepared by Sue J Roff dated January 2007.

and all referenced by Council as LUC 2006-4196 and the information, including further information, submitted with the application.

2. Pursuant to section 125 of the Resource Management Act 1991, this consent shall lapse after a period of 5 years after the commencement of the consent.
3. A consent compliance monitoring fee of \$1308.00 (inclusive of GST) has been paid to the Council. This fee is to recover the actual and reasonable costs incurred ensuring compliance with the conditions of this consent. If, on inspection all conditions have not been satisfactorily met, a re-inspection shall be required at the relevant hourly rate applicable at the time the re-inspection is carried out.

PRIOR TO THE COMMENCEMENT OF WORKS

4. Prior to commencement of any works on site, the consent holder shall organise a pre-start meeting with Council's Monitoring Officer to discuss the conditions of consent onsite. The consent holder shall ensure that their representative and all contractors' representatives are present at this meeting.

Inspections must be booked by calling Council's Call Centre (09 839 0400) and requesting a monitoring inspection at least 48 hours before the inspection is needed.

Advice note: If a pre-construction meeting is required by any Auckland Regional Council consent, this should be timed to coincide with that meeting as well for convenience.

5. **Prior to works beginning on site**, the consent holder shall submit a sediment and erosion control plan to Council for approval. No work shall commence on site until approval has been gained for the plan from the Manager, Resource Consents.
6. **Prior to commencement of any works and until completion of exposed site works**, adequate sediment and erosion control measures in accordance with the approved sediment control plan referred to in condition 5 shall be constructed and maintained by the consent holder. The consent holder shall organise an inspection of the controls by Council's Monitoring Officer when controls are in place. Work shall not commence until approval has been gained in writing from the Manager, Resource Consents. The control measures must be maintained until the site has been adequately stabilised against erosion and sediment-laden run off.

Note: Inspections must be booked by calling Council's Call Centre (09 839 0400) and requesting a monitoring inspection at least 48 hours before the inspection is needed.

7. A stabilised entranceway to the site shall be provided **prior to the commencement of works** and maintained for the duration of works.
 - Additional measures such as wheel wash facilities shall be implemented (as) if deemed necessary by Council's Environmental Monitoring Officer to prevent the deposition of earth or other debris on the surrounding street network by vehicles entering and exiting the site.
 - **The consent holder shall notify Council's Monitoring Officer when entranceway controls are in place.** Work shall not commence until approval has been gained in writing from the Manager Resource Consents.

DURING CONSTRUCTION WORKS

8. All dirt tracked onto the surrounding roads as a result of the development covered by this consent shall be cleaned by sweeping on a daily basis at the expense of the applicant. In case of repeated non-compliance with this condition, Council may engage the road cleaning contractor nominated by the applicant to carry out the road cleaning. Council's Environmental Monitoring Officer (EMO) may engage the road sweeping contractor to carry out road cleaning if it is the EMO's opinion that the dirt on roads and/or footpath is creating an adverse effect on the environment. The road cleaning contractor shall be engaged at the cost of the applicant.
9. All sediment laden runoff from the site shall be treated by sediment control measures in accordance with the latest version of Auckland Regional Council Technical Publication No 90 "Erosion and Sediment Control Guideline for Earthworks".
10. A full copy of the Resource Consent Conditions, Approved Plans and Erosion and Sediment Control Plans shall be kept on the site at all times. All personnel working on the site shall be made aware of and have access to the contents of this consent document and the associated Erosion and Sediment Control Plan.
11. All necessary action shall be taken to prevent a dust nuisance to neighbouring properties to the satisfaction of the Manager Resource Consents. Should these measures not prove satisfactory on any particular occasion due to the prevailing wind or soil conditions, the contractor shall cease the work until conditions are suitable for the recommencement of the works.
12. All construction, maintenance, demolition and development works on the site shall be undertaken between the following hours only:

Monday to Friday:	6.30 am to 8.00 pm
Saturday	7.30 am to 6.00 pm
Sunday and Public Holidays:	No work

All noise from such work shall not exceed the levels set out in Table 1 of clause 5.1.1 of NZS 6803P:1984

Measurements to be in accordance with the provisions of NZS 6801:1991 and NZS 6802 :1991

		L ₁₀	L ₉₅	L _{max}
Mon to Fri	6.30 am to 7.30 am	60	45	70
Mon to Fri	7.30 am to 6.00 pm	75	60	90
Mon to Fri	6.00 pm to 8.00 pm	70	55	85
Saturday	7.30 am to 6.00 pm	75	60	90

CONTAMINATION

13. The recommendations of the Remedial Action Plan shall be implemented before any work may commence on the site.
14. Soil to be exported from the site must be sampled and tested prior to being exported from the site. If testing identifies that the soil does not meet Ministry for the Environment criteria for cleanfill, then the soil must be disposed of to a landfill registered to dispose of contaminated soil of the levels found. Copies of the laboratory analysis results shall be provided to Council. If the results indicate the cleanfill criteria are not met, receipts/manifests shall be provided to Council detailing the volume of soil exported and its disposal address/location.

GEOTECHNICAL

15. A Chartered Professional Structural or Geotechnical Engineer familiar with the following document prepared by URS New Zealand Limited "Geotechnical Report for 2, 4, and 6 Crown Lynn Place and 7 Clark Street, New Lynn" Ref No 42046934/R002 dated 10 October 2006; must specifically design any foundations, piles or retaining walls, and check the local and final overall slope stability at the proposed redevelopment.
16. All site works shall be under the control of a Chartered Professional Engineer (with experience of geotechnics). This will include supervision of excavations for the foundations, retention measures and floor slabs. Provision must be made for over deepening of any foundations where soft or weak soils are encountered.
17. All earthworks activities should be carried out in accordance with Auckland Regional Councils' "Erosion and Sediment Control Guidelines for Land Disturbing Activities" (Technical Publication No. 90) in particular and any OSH requirements.
18. Prior to commencement of any works on the site, the consent holder shall provide to the Council, a site management plan that shall include specific details relating to the construction and management of all works associated with this development.
19. A Chartered Professional Engineer (with experience of geotechnics) shall inspect all foundation excavations and prove adequacy of the bearing capacity to the depth of influence. This shall be documented and the Engineer shall provide Council with a Producer Statement Construction Review for this part of the work.
20. All foundations shall be installed at a minimum of 1.3 m below existing ground level.
21. Effective foundation loading under dead load conditions shall be limited to 100 kPa [Allowable bearing pressure 100 kPa (working stress methods)].
22. A Chartered Professional Engineer shall complete specific pavement design for the loading bay area.
23. Test pitting shall be undertaken at the time of site development to confirm the suitability of any non-engineered fill in car park areas to support the traffic loading.
24. Any building over or adjacent to public drains needs to be constructed to council standards and may include piling to at least the invert level of the drain. Unless specific preventive measures are undertaken the foundations must not lie within the zone of influence (taken to be 45 degrees out from the invert level of the sewer to the ground level) of this utility.

25. Existing non-engineered fill shall be removed from building platform and earthwork areas. This material is to be replaced with suitable material prior to the construction of any foundations. Either imported granular fill or cohesive material may be utilised for this purpose and should be compacted in accordance with NZS4404:2004 to provide the required bearing capacity. This is to be completed under the supervision a Chartered Professional Engineer (with experience of geotechnics).
26. All contaminated fill shall be removed from the proposed site and disposed of off site prior to any construction work.
27. All vegetation, topsoil and any other unsuitable materials shall be removed from beneath any earthwork area.
28. A Chartered Professional Engineer (with experience of geotechnics) shall approve any imported fill material prior to placement.
29. Excavations in exposed ground shall be protected from the detrimental effects of weathering e.g. by the use of polythene, base course or other similar methods. Alternatively provision should be made for a Chartered Professional Engineer (with experience of geotechnics), to determine the depth of material that has become damaged due to the weather, that needs to be removed;
30. All stormwater from any new hard surfaces (roofs, patios, driveways etc), and any groundwater collected from behind retaining walls, will be collected and disposed of to an appropriate reticulated or otherwise council approved system.

TRAFFIC

31. The vehicle crossing located at the southern end of Crown Lynn Place shall be designated as entry only and the northern most vehicle crossing to the service area shall be designated as exit only.
32. All parking spaces, aisles, driveways and vehicle crossings shall be designed and constructed to the standards set out in Waitakere City Council's Code of Practice.
33. The signalisation of the Hetana Street / Clark Street intersection and all associated works shall be fully undertaken and paid for by the applicant. The design of works shall be submitted to the Manager: Transport Assets - Design for review and approval, prior to commencement of construction. All works shall be to the satisfaction of the Manager, Transport Assets - Design.

PUBLIC DRAINAGE INFRASTRUCTURE - ECOWATER CONDITIONS

34. Provide a public, and/or private to public standard, stormwater drainage system with connection to the public network as generally specified in: Section 1.3 Services - Storm Water, of the submitted Maunsell Aecom engineering assessment, Ref CLP44, Dated November 2006: Provide engineering plans and calculations to Council for approval prior to commencing works. Specific requirements:
 - (i) *If required*, locate and relay the existing private drainage serving the existing dwelling to a position clear of the proposed building platform.
 - (ii) Either, grout fill, or remove, all abandoned private drainage under Council's supervision.
 - (iii) Connections to the public system can only be carried out by Council's contractor. Pay all costs associated with providing the new connections if applicable.
 - (iv) Provide a surveyed As-Built plan prepared by a Licensed Cadastral Surveyor, showing lid and invert levels in terms of LINZ datum, of all new public (where extended) and private to public standard drainage chambers, manholes and devices.

35. Design, provide and install private wastewater drainage with connection to the public system as specified below: Provide engineering plans and calculations to Council for approval prior to commencing works. Specific requirements:
- (i) Reroute public drains outside building platforms if required.
 - (ii) Either, grout fill, or remove, all abandoned private drainage under Council's supervision.
 - (iii) Connections to the public system can only be carried out by Council's contractor. Pay all costs associated with providing the new connections if applicable.
 - (iv) Any specific wastewater device(s) as specified in: Section 1.4 Services - Waste Water, of the submitted Maunsell Aecom engineering assessment, Ref CLP44, Dated November 2006. Will require approval from Council and comply with, or obtain, any necessary discharge consents for Trade Waste.
 - (v) Provide a surveyed As-Built plan prepared by a Licensed Cadastral Surveyor, showing lid and invert levels in terms of LINZ datum, of all new public (if extended) and private to public standard drainage chambers, manholes and devices.
36. Provide specific engineering design(s) as part of the Engineering Approval, addressing the building proximity infringement to public stormwater infrastructure, i.e. the 750 mm, 600 mm pipes and associated manholes, located parallel to Crown Lynn Place on the western property boundary and proposed building footprint. This will require a drainage inspection condition report and CCTV to determine the works required and/or acceptable. This will require consultation and approval from Council to provide an acceptable design to both parties. The design will be subject to approval from Council and must satisfy the EcoWater Asset Operations Engineer. Any buildings on this property which span the public drainage line are required to be built with a minimum finished floor level as defined in engineering designs and drawings to be submitted (in terms of LINZ datum). The applicant is required to pay Council the cost of raising or lowering manhole lids to the new finished ground level.
37. Design, provide and install a complete stormwater quality treatment system for the site in accordance with the Auckland Regional Council's technical publications and Waitakere City Council Code of Practice for City Infrastructure and Land Development. As generally specified in: Section 1.3 Services - Storm Water, of the submitted Maunsell Aecom engineering assessment, Ref CLP44, Dated November 2006. Provide a copy of the Auckland Regional Council consent conditions, engineering plans and calculations to Council for approval prior to commencing works. Specific requirements:
- (i) Provide a maintenance manual for the treatment device.
38. Provide a private water supply reticulation system in compliance with Council's Code of Practice for City Infrastructure and Land Development (Refer Section 6). Specific requirements:
- (i) The Unit(s) is/are to be individually metered at the road reserve boundary.

FEES, BONDS & CONTRIBUTIONS

39. Pursuant to Section 108(2)(b) and Section 108A, and in accordance with Council's Code of Practice for City Infrastructure and Land Development, the applicant is required to provide a maintenance bond to Council, equivalent to 2½% (minimum \$500.00) of the value of works being taken over by Council. Pursuant to Section 109(1) this bond is required to be registered on the relevant property title(s) until such time as Council releases the developer from the bond. The bond may be varied or cancelled or renewed at any time by agreement between the holder and Council. This maintenance bond will be held for six months from the date of 224c issue, or until 31 October, whichever is longer. Maintenance of these assets is the responsibility of the developer during the maintenance period. At the end of the maintenance period the QA Supervisor will undertake a maintenance inspection to ascertain whether the assets are still in satisfactory condition and if so, will instruct the bond to be released, and Council will take over maintenance responsibilities from that time forward. Where defects occur during the developer's maintenance liability period, the costs of repairing such defects are the full responsibility of the developer. Where the developer does not repair the defects, Council will retain the bond monies for use in repairing the defects, and refund any residual monies held to the developer. The developer's liability is not limited to the amount of the maintenance bond, and any additional costs will be invoiced to the developer and will become a debt due to the Council.

LANDSCAPE TREATMENT

40. Landscape Treatment including mounding, location of garden areas, grassed areas, planting, outside lighting standards and fencing, shall be as per the 'Landscape Planting Scheme Proposed New World Supermarket New Lynn', Drawing L01 dated January 2007 by Sue J Roff Landscape Architect, and shall be to the satisfaction of Council's Environmental Monitoring Officer, Resource Consents.
41. Landscape development including preparation of grass areas, garden areas and the proposed mounds shall be carried out within six weeks from the time of instatement of hard surfacing and prior to use of the building. Garden areas shall be good quality, friable topsoil or garden mix (50:50 compost and topsoil), free of weeds and debris, and to 250mm to 300mm minimum depth, with a wood chip or bark chip mulch to 60mm depth and shall be to the satisfaction of Council's Environmental Monitoring Officer, Resource Consents. Grass areas shall be good quality topsoil to 150mm minimum depth and shall be manually graded at the final stage of preparation to meld with adjacent hard surfaces and with grass seed planted or 'Readilawn' laid down at this time, to the satisfaction of Council's Environmental Monitoring Officer, Resource Consents.
42. Planting shall be carried out as per the Landscape Planting Scheme dated January 2007 by Sue J Roff Landscape Architect, in the first planting season (May until 7 September) following preparation of the grass areas and garden areas. The planting shall be undertaken to the satisfaction of Council's Environmental Monitoring Officer, Resource Consents.
43. The landscape areas including grass areas and planting shall be maintained for two years following the initial planting, with gardens kept weed free and grass areas and garden areas watered as necessary to facilitate establishment of the plants to the satisfaction of Council's Environmental Monitoring Officer, Resource Consents. Any plant that dies, is removed or otherwise fails to establish shall be replaced the following year and maintained for a further two years to the satisfaction of Council's Environmental Monitoring Officer, Resource Consents.

NOISE

44. The operation of the supermarket shall be in accordance with the recommendations of the Noise Assessment undertaken by URS New Zealand Limited and the further information submitted on 30 January 2007.
45. The consent holder shall provide to Council a report from an Acoustic Engineer confirming that the recommendations in the Noise Assessment and further information submitted on 30 January 2007 and the conditions on the resource consent which relate to noise have been complied with. This report shall be provided to Council within six months of the commencement of the operation of the supermarket on site.

Advice Notes:

1. Where indicated in the conditions it is the consent holder's responsibility to inform the Environmental Monitoring Officer when inspection is required. Inspections can be requested through the Call Centre on 839 0400.
2. Shallow perched ground water was encountered in hand augers undertaken by Engineering Geology Limited in 1994 and in boreholes undertaken by Foundation Engineering Limited in 1999 on the northern part of the site. Consequently, the possibility of ground water inflows into foundation excavations cannot be precluded and it would be pertinent to establish on site the appropriate contingency measures.
3. Transport Assets suggests that the design of traffic signals be reviewed and audited by the Traffic Management Unit (TMU) prior to submission to Council to ensure compliance with the national standards and to confirm adequacy of all SCATS communications.
4. Prior to the commencement of works the resource consent holder shall obtain all consents, permits and authorisations for the work as may be required by the Auckland Regional Council.
5. It is the applicant's responsibility to obtain stormwater discharge consent and all other necessary consents, or evidence of dispensation, from the Auckland Regional Council. A copy of the Auckland Regional Council consent should be provided to EcoWater. It may be necessary to apply for a variation to this Waitakere City Council consent if the documentation or consent conditions approved by Waitakere City Council and Auckland Regional Council are conflicting in any way. The applicant is required to obtain full signoff from Auckland Regional Council stating that the pipe network, outfall, treatment device and any other items covered by the consent have been established in accordance with the consent conditions, and pay all fees and charges from Auckland Regional Council. Once this has been achieved, the applicant shall apply to transfer ownership of the Auckland Regional Council discharge consent to Waitakere City Council. Copies of relevant documentation from Auckland Regional Council shall be provided to EcoWater to demonstrate that this has been completed.
6. **Engineering Approval and Quality Assurance Process:** Public infrastructure works, as conditioned by this consent, require Council's approval of engineering plans and specifications prepared by the applicant's engineer in accordance with Council's Code of Practice for City Infrastructure and Land Development.
 - (i) Submit full engineering plans, long sections and calculations, prepared in accordance with Council's Code of Practice, to Council for approval.
 - (ii) Advise the name of the appointed developer's representative fulfilling engineering responsibilities as detailed in Section 1.4.1 of the Code of Practice.

- (iii) After engineering approval has been given and prior to commencing construction, contact Council's Call Centre on 839 0400 to arrange a QA Pre-Start Meeting. Allow 3 working days for the QA Pre-Start Meeting to be booked.
 - (iv) The applicant is required to ensure that the contracted drainlayer and developer's representative attend the QA Pre-Start Meeting, and that construction materials are on-site for inspection.
 - (v) EcoWater's QA Supervisor will then undertake random site inspections throughout the construction process.
 - (vi) Upon completion of construction the applicant's surveyor is required to prepare As-Built plans in accordance with the Code of Practice, and CCTV inspection of the drains are to be carried out.
 - (vii) The developer's representative is required to fully inspect the drainage including overseeing the drainage tests, view the CCTVs and check against the as-builts, and ensure that any remedial works are completed.
 - (viii) When the developer's representative is satisfied that all works meet Council standards, they are required to complete the 'QA Final Inspection Request Form' and lodge this at Council together with As-Builts, CCTV (all footage on one DVD), log sheets, chlorination certificate for watermains, and inspection reports.
 - (ix) EcoWater's QA Supervisor will check all information against the approved design and Code of Practice, then undertake a field check and testing of the new drainage systems in conjunction with Council's approved maintenance contractor.
 - (x) When all public works and documentation are completed to Council's satisfaction the QA Completion Certificate will be issued to the applicant.
 - (xi) Submit a copy of the QA Completion Certificate with the application for s224c Certificate as evidence of compliance with the conditions of consent requiring construction of infrastructure to public standards.
 - (xii) Pay all of Council's engineering fees and costs associated with engineering approvals, quality assurance site inspections, as-built & CCTV approvals, final inspections, testing and bond management.
7. Pursuant to Section 120 and 121 of the Resource Management Act 1991 the consent holder and submitters have 15 working days from the date of receiving notification of this decision to lodge an appeal with the Environment Court.

Report prepared by: Rachel Dimery; Senior Resource Planner.

Report approved for release by: Michael Campbell; Manager: Resource Consents.

