

26 June 2009

BY EMAIL AND BY POST

The Manager
City Planning
Private Bag 92 516
Wellesley Street
AUCKLAND 1141

**SUBMISSION ON PLAN MODIFICATION 8 TO THE AUCKLAND CITY DISTRICT PLAN
OPERATIVE ISTHMUS SECTION 1999**

1. We act for Progressive Enterprises Limited (*Progressive*).
2. Please find **enclosed** for filing a submission on behalf of Progressive in respect of Plan Modification 8.
3. We note that the submission period has closed, but respectfully request that Council exercise its power under section 37 of the Resource Management Act 1991 (*RMA*) to waive the relevant time limit in this instance.
4. As you will be aware, sections 37 and 37A of the RMA operate to delegate to local authorities the discretion to waive a failure to comply with time requirements relating to service of documents. In exercising this power, the relevant authority must take into account the interest of any person who may be directly affected by the waiver, the interests of the community in achieving adequate assessment of the effects of the proposal, and the duty under section 21 of the RMA to avoid unreasonable delay.
5. The courts have determined that a formal application for waiver is not required to be made; and that it is sufficient that a local authority make an implicit decision to grant a waiver. Further, the courts have noted that a waiver can be granted at any time up to, or even during, the delivery of the substantive decision. (See in particular *Butel Park Homeowners Association v Queenstown Lakes District Council* (2007) 13 ELRNZ 104).
6. Our client considers that Council can and should exercise its discretion, and accept the late filing of Progressive's submission, for the following reasons:
 - (a) The submission does not raise any issues not already covered by the 1000 (approximately) submissions already lodged;
 - (b) The summary of submissions has not yet been finalised, and the further submission period is not yet open;
 - (c) There will be no (or at most, minimal) additional delay in accepting this submission for filing; and
 - (d) There will be no prejudice to any party as a result of the late filing of this submission.
7. As its submission records, Progressive is – through its Foodtown supermarket – a significant and long standing tenant at the Westfield St Lukes shopping centre. However, it was not forewarned or consulted by the plan change requester in this

**SUBMISSION ON PLAN MODIFICATION 8 TO THE AUCKLAND CITY DISTRICT
PLAN – OPERATIVE ISTHMUS SECTION 1999**

PROPOSED PRIVATE PLAN CHANGE – WESTFIELD ST LUKES

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1. This is a submission in opposition to the private plan change request by Westfield New Zealand Limited (*the Applicant*) for a change to the Operative Auckland City District Plan (Isthmus Section) 1999 (*Isthmus Plan*).
2. The plan change request is to provide for a northwards expansion to the existing shopping centre, to enable a larger total development area, and a larger gross leasable area.
3. This submission relates to the plan change request (*Plan Modification 8*) in its entirety. The reasons for Progressive's opposition to the Plan Modification 8 include, but are not limited to, the matters set out below.

BACKGROUND TO PROGRESSIVE

4. Progressive operates the Foodtown, Woolworths and Countdown supermarket banner groups. The company employs some 18,000 people throughout New Zealand within its supermarkets, convenience stores, meat processing plants, warehouse operations, and support offices.
5. Foodtown Supermarkets Limited is a wholly owned subsidiary of Progressive.
6. Progressive holds (through Foodtown Supermarkets Limited) a long term lease over approximately 3,895 square metres of land within the existing Westfield St

Lukes shopping centre, which is tenanted as a Foodtown supermarket. Progressive entered into the lease in 1992. Foodtown is currently the only supermarket located within the shopping centre, and is an 'anchor tenant' at the shopping centre.

7. The Foodtown supermarket is located on the eastern side of the shopping centre (which borders Cornwallis Street) on the ground level. As such, it does not form part of the areas for which re-zoning is sought pursuant to Plan Modification 8.

PRINCIPAL SUBMISSION

8. Progressive opposes Plan Modification 8 in its entirety, unless its concerns as detailed below are addressed. In particular, but without limiting the generality of this submission, Progressive notes:
 - (a) the lack of prior consultation with Progressive and other owners/operators of existing retail stores in the Westfield St Lukes shopping centre;
 - (b) the significant inadequacy of car parking facilities following expansion works;
 - (c) any reduction of vehicular or pedestrian access to the shopping centre generally and the Foodtown supermarket in particular would seriously and adversely affect that existing resource;
 - (d) any reduction or restriction in the ability to load and/or unload goods and materials in relation to the operation of the Foodtown supermarket would seriously and adversely affect that existing resource; and
 - (e) increased traffic effects resulting from the proposed shopping centre expansion would seriously and adversely affect the accessibility and convenience for shoppers and potentially the safe and efficient functioning of the surrounding local road network.

Lack of prior consultation

9. Clause 1(h) of the Fourth Schedule to the Resource Management Act 1991 (*RMA*) sets out the matters which should be included in a request for a private plan change. Those matters include: identification of persons affected by the proposal; consultation undertaken (if any); and responses to that consultation.
10. As a long-standing anchor tenant of the Westfield St Lukes shopping centre, Progressive considers that it is directly affected by Plan Modification 8, the purpose of which is specifically to enable the future expansion of Westfield St Lukes.
11. Section 15 of the Applicant's AEE describes consultation undertaken in relation to the proposed plan modification. The Applicant refers to consultation undertaken with Auckland City Council, Auckland Regional Transport Authority,

Auckland Regional Council, and the Historic Places Trust. In addition, three surveys were attached to the application documents, as well as a social assessment report. These included a Westfield St Lukes Mall Visitor Survey, a Westfield St Lukes Staff Survey, a St Lukes Community Survey, and a St Lukes Shopping Centre Redevelopment Social Assessment of Plan Change.

12. The objective of the Visitor Survey was to provide data on visitor use patterns, define the customer base, and measure the interaction between the mall and the nearby mega centre. The Staff Survey was restricted to assessing the travel behaviour of centre staff, as well as staff views towards public transport and parking at the shopping centre. The Community Survey was commissioned to undertake a survey of the immediate community surrounding the centre to provide quantitative data on how the centre is used by the local community, the role it plays, and its importance. The Social Assessment report was undertaken to identify the social nature of the existing centre, its contribution to the social, economic, and cultural well being of the surrounding communities; to examine the potential effects of the proposed plan change on the social and economic conditions of people and the communities; and to identify ways to enhance the plan change proposal.
13. In short, while a number of businesses and organisations outside the shopping centre were consulted, Progressive was not approached as part of any survey or consultation exercise.
14. Progressive considers that as a major, long-term tenant of the shopping centre, it should have been meaningfully consulted in order to canvass any concerns that it may have in respect of the proposed plan change. While Progressive acknowledges that the Applicant has stated that consultation with affected persons and parties will be ongoing throughout the planning process, Progressive is disappointed that it was not given adequate opportunity to substantively comment on the plan change prior to it being lodged, let alone notified.
15. Progressive has extensive nationwide experience with shopping centre planning, design and layout. In order to minimise adverse effects, and to maximise operational efficiency, it considers that it is good practice to undertake early and meaningful consultation with existing tenants (in particular significant anchor tenants) over operational requirements and flexibility. This input can then be considered and, if appropriate, incorporated into conceptual design.
16. Plan Modification 8 is expected to have significant potential adverse effects, in particular on traffic, parking, and access to the shopping centre by staff, customers and goods vehicles. It is unfortunate that Progressive has not been afforded the opportunity to have meaningful input into the conceptualization and design of Plan Modification 8 in order to assist in minimising the extent and impact of those effects.

Car parking and access

17. Plan Modification 8 seeks to enable the future expansion and redevelopment of the Westfield St Lukes shopping centre. Key to the concept plan for the redevelopment is the promotion of a “pedestrian oriented focus”.
18. The Applicant seeks to provide for car parking below levels contemplated in the Isthmus Plan. The Assessment of Environmental Effects (AEE) accompanying the plan change request states that the retail car parking requirement under the District Plan of one space per 17 square metres gross floor area (*sqm gfa*) might be considered as being overly generous for a shopping centre. Instead, a retail parking ratio of 1:22 sqm gfa is proposed. This ratio would result in less car parking than the 1:17 sqm gfa as prescribed for retail in Section 12 of the District Plan.
19. Despite this, it is noted in the Integrated Transport Assessment forming part of the AEE that car parking is normally considered to be at effective capacity when occupancy reaches 90%. The observed overall maximum for the St Lukes shopping centre was 97% occupancy of the on-site car parking, illustrating that the shopping centre is already at effective capacity. Reducing the carparking ratios further will inevitably be to the detriment of the surrounding environs and street network. Further, it will place an additional, unsustainable demand on the existing carparking, loading areas, and overall safety and efficiency of vehicle movements and vehicle / pedestrian interaction internal to the site.
20. The Integrated Transport Assessment goes on to assert that some constraint on car parking encourages staff and shoppers to use alternative travel modes; and that some parking constraint can influence visitor travel patterns, which allows spreading of peak demands.
21. Progressive supports in principle the provision of safe, pleasant and convenient pedestrian access to the shopping centre. However, Progressive understands the needs of its customers, and accepts that many of those customers require private vehicular access in order to transport grocery items, and potentially, shopping from other stores. Obvious difficulties arise where customers are required to transport grocery items long distances through the shopping centre (or even outside) to get to their vehicles. This can cause congestion, safety and security issues, management difficulties, and generally represents poor planning.
22. Due to what it sees as a lack of adequate consultation, Progressive has not had the opportunity to discuss the matters of carparking demand and access to its supermarket with the Applicant. Therefore, it has been necessary to lodge this submission in order to ensure that its customers have convenient vehicular access to, and adequate car parking within easy walking proximity to the Foodtown supermarket.

23. As a further issue, Progressive notes that the lease for its supermarket premises contains a term which states that no construction, alteration, variation or addition to the shopping centre shall reduce the area of car parking facilities without the prior written consent of Progressive. Progressive has not given such consent to the Applicant.

Loading areas

24. Progressive notes that the concept plan provided by the Applicant states that loading spaces shall be provided and formed in accordance with the existing provisions of the Isthmus Plan, "provided that surplus loading spaces existing prior to development of additional floor space can be used to satisfy this requirement" (see B7, 'Parking, Loading and Access' at paragraph 7.3).
25. The exact number, location and design of loading areas throughout the expanded shopping centre is apparently intended to be carried out in future resource consent stages.
26. The safe and efficient operation of a supermarket requires precise stock inventories and scheduling of deliveries. Progressive prides itself on the fact that it has developed very effective stock management procedures so that it can provide a premium service to its customers. However, in order to continue this service, it relies on the exclusive use of loading areas (which right is also set out in its premises lease).
27. Progressive is concerned at the possibility that the redevelopment of the shopping centre might involve some expectation that other parties may utilise its exclusive loading areas, or indeed lead to some attempt to alter, or compromise its exclusive use of those loading areas. This is something that Progressive wishes to avoid, as it would potentially require a significant investment in time and resources in order to review and, if necessary, amend its current delivery schedules.

Traffic effects

28. Progressive's experience is that traffic in the surrounding vicinity of the shopping centre is heavy and, particularly at peak times, traffic flow is very disrupted. This is most apparent at the intersection of Morningside Drive and St Lukes Road, and on local roads (including Exeter Road, Aroha Avenue and Cornwallis Street). Progressive is aware of feedback from its customers, and from operators of other premises in the shopping centre, regarding concerns about existing traffic congestion at peak times.
29. As noted above, customers of the Foodtown supermarket often require vehicular access to transport their grocery shopping. Therefore, those customers are directly affected by traffic congestion.
30. Progressive seeks that any redevelopment of the shopping centre be designed in such way as to ensure that no adverse traffic effects are occasioned. Again,

Progressive would have appreciated the opportunity for early meaningful consultation with the Applicant, to ensure that it had the opportunity to assist by way of directly informed input on likely traffic effects.

RELIEF SOUGHT

31. Progressive seeks the following decision from Auckland City Council with respect to Plan Modification 8:
 - (a) Reject Plan Modification 8 in its entirety; or
 - (b) Amend Plan Modification 8 such that it addresses Progressive's concerns; and
 - (c) Such further and consequential relief and/or amendment to Plan Modification 8 as may be necessary to address Progressive's concerns.
32. Progressive does wish to be heard in support of its submission.
33. If others make a similar submission, Progressive will consider presenting a joint case with them at a hearing.

PROGRESSIVE ENTERPRISES LIMITED

by its solicitors and authorised agents ChanceryGreen
per:



Jason Welsh / Chris Simmons

26 June 2009

instance. Further, having become aware of Plan Modification 8 only three days ago, Progressive has taken prompt and active steps to record and file a submission detailing its concerns about potentially significant adverse effects.

8. We look forward to receiving the Council's confirmation that the attached submission is accepted for filing.
9. In the meantime, should you wish to discuss any aspect of this matter, please contact the writer.

Yours faithfully
ChanceryGreen

PP. 

Jason Welsh
Partner

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