

**BEFORE AN INDEPENDENT HEARING COMMISSIONER
APPOINTED BY THE WAIPĀ DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act 1991 (the **Act**)

AND

IN THE MATTER of a request by 638 Limited for Private Plan Change 35: Te
Awamutu Large Format Retail Centre to the Waipā District
Plan (**PPC 35**)

LEGAL SUBMISSIONS FOR 638 LIMITED

Dated: 10 August 2026

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1. INTRODUCTION

- 1.1 These legal submissions are made on behalf of 638 Limited in support of Private Plan Change 35 (**PPC 35**) to the Waipā District Plan.
- 1.2 They are deliberately brief. In the Further Directions dated 5 August 2026, the Independent Commissioner observed that there is now no opposition to PPC 35 and that the remaining differences between the parties are relatively minor drafting matters.¹ The Commissioner accordingly directed a streamlined hearing, with the planning evidence and section 42A report to be taken as read and the technical witnesses excused from attendance.
- 1.3 That assessment has been borne out by the further work undertaken since the Directions. Ms Hui and Ms Morris have conferred and prepared a Joint Summary Statement dated 7 August 2026 recording agreement on the amendments to the PPC 35 provisions and the associated section 32AA assessment.² There is now only one unresolved matter: whether particular wording within Rule 6.4.2.22(d)(iii) concerning the acquisition of land or easements required for the Cambridge Road/Access 1 intersection should form part of the standard itself, as 638 Limited and Foodstuffs seek, or appear as an advice note, as the Council prefers.
- 1.4 638 Limited agrees that the issues before the Commissioner are now narrow. These submissions therefore do not repeat the detailed assessments contained in the plan change request, the section 42A report or the evidence. They briefly address:
 - (a) what PPC 35 seeks to achieve;
 - (b) the legal framework and present status of the evidence and submissions; and
 - (c) the single outstanding drafting issue.

2. THE PLAN CHANGE IN BRIEF

- 2.1 At its heart, PPC 35 is straightforward. It establishes an integrated planning framework across the existing Te Awamutu Large Format Retail Centre at

¹ Further Directions of Independent Hearing Commissioner, 5 August 2026, at [2].

² The s 32AA assessment is at Attachment A to the Joint Summary Statement, while the recommended track change amendments are at Attachment B.

670 Cambridge Road (Area A) and the adjoining land at 638 Cambridge Road (Area B). It rezones Area B from Medium Density Residential to Commercial Zone, incorporates it within the Large Format Retail Centre, and introduces the provisions necessary to manage future development of the expanded Centre.

- 2.2 In practical terms, that framework will enable the existing Mitre 10 MEGA operation to relocate from its constrained approximately 5,485 m² premises in Area A to a purpose-built building improvement centre of up to 13,000 m² in Area B.
- 2.3 Mr Fitzgerald explains the commercial reasons for that proposal. The existing store has outgrown its site. Stock is presently dispersed between locations, there is no practical capacity to expand the existing premises, and both retail and trade demand have increased. Area B directly adjoins the existing Centre, has sufficient land to accommodate a modern store and associated trade, storage, parking and circulation requirements, and allows the business to remain within its established Te Awamutu retail location rather than creating a separate large format retail node elsewhere.³
- 2.4 PPC 35 is therefore not simply a rezoning in search of a use. It responds to an identified operational need and provides a coherent planning framework for a logical extension of an existing commercial centre. As Mr Fitzgerald records, 638 Limited is committed, if PPC 35 is approved, to progressing the detailed design, consenting and construction of the new store.⁴

3. STATUTORY FRAMEWORK

- 3.1 The statutory framework for a district plan change, including the principles commonly summarised through the *Long Bay* line of authority, will be familiar to the Commissioner. Very broadly, case law confirms that the matters that need to be addressed are:⁵

³ Fitzgerald at [3.5]-[3.6], [4.1]-[4.7] and [5.1]-[5.7].

⁴ Fitzgerald at [6.8]-[6.10].

⁵ The list of matters to be considered for plan changes was comprehensively set out in *Long Bay-Okura Great Park Society Incorporated & Ors v North Shore City Council* (Decision No. A 78/2008). Over time, amendments to the RMA and subsequent case law have updated the *Long Bay* summary. See *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [10]; *Reiher v Tauranga City Council* [2012] NZEnvC 121 at [10]; and *Quieter Please (Templeton) Inc v Christchurch City Council* [2015] NZEnvC 167 at [27]-[28].

- (a) Whether the proposed provision assists the territorial authority to carry out its functions in order to achieve the purpose of the RMA;
- (b) Whether it is in accordance with Part 2 of the RMA;
- (c) If a rule, whether it achieves the objectives and implements the policies of the plan;
- (d) Whether, having regard to efficiency and effectiveness, the provisions are the most appropriate way to achieve the objectives of the proposed plan, having regard to the benefits, the costs, and the risks of not acting; and
- (e) Whether the proposed provision gives effect to any relevant national policy statement, regional policy statement, and regional plan, as required by s 75(3) of the RMA.

3.2 Those matters have been comprehensively assessed. Ms Hui concludes that PPC 35, as amended, accords with and assists the Council in carrying out its RMA functions, gives effect to the relevant national policy statements and the Waikato Regional Policy Statement, appropriately has regard to the other relevant strategies and plans, and is the most appropriate way to achieve the purpose of the plan change and the sustainable management purpose of the RMA.⁶

3.3 Ms Morris reaches the same overall conclusion in the section 42A report. There is no contrary expert planning evidence before the Commissioner. The further amendments agreed following the Commissioner's Directions have also been assessed in terms of s 32AA in the Joint Summary Statement (with the general conclusion that the planners' recommended revised provisions, as set out in Attachment B to the Joint Summary Statement, are the most appropriate).

4. SUBMISSIONS, SECTION 42A REPORT AND EVIDENCE

4.1 PPC 35 attracted five submissions and two further submissions. They raised issues concerning consultation, urban growth, transportation, flooding and

⁶ Hui at [7.3]-[7.8] and [1.11].

stormwater, ecology and landscaping, rezoning of the right-of-way, and the detailed planning provisions.

4.2 Importantly, the submission process did what it is intended to do. 638 Limited engaged with the submitters, undertook further technical work, and refined the proposed provisions.

4.3 In particular:

- (a) Waka Kotahi NZ Transport Agency initially raised concerns about the adequacy of the assessment of effects on the State Highway network. Further modelling was undertaken. NZTA subsequently advised that the effects on it were acceptable and that it no longer wished to be heard.⁷
- (b) Waikato Regional Council was neutral on the rezoning but raised flood hazard issues. Further modelling and engagement addressed those concerns.⁸
- (c) Waipā District Council supported PPC 35 in part and sought amendments principally concerning transport, ecology and the detailed form of the provisions. Those matters have since been worked through between Ms Morris and Ms Hui and, save for the single issue addressed below, are now agreed.
- (d) Foodstuffs North Island Ltd (Foodstuffs) did not oppose PPC 35 provided its concerns relating principally to the continued efficient operation and future development of Pak'n Save were addressed. Extensive engagement resulted in agreed amendments to the Centre Plan and provisions.⁹ Foodstuffs and 638 Limited remain aligned on the one issue now before the Commissioner.

4.4 Jay E L Limited and Park Road Holdings Limited, as adjacent developers of Waipiko Landing, adopted a neutral position, while recognising that PPC 35 generally supports the growth strategy for Te Awamutu and provides additional retail choice. These submitters have not filed any evidence, and it

⁷ Appendix 6 to the section 42A report.

⁸ Appendix 5 to the section 42A report.

⁹ Appendix 7 to the section 42A report.

is understood that they do not intend to attend the hearing. No issue arising from this submission remains live before the Commissioner.

4.5 The section 42A report subsequently recommended that PPC 35 be confirmed, subject to amendments to the associated provisions.

4.6 The Applicant's evidence then addressed the remaining matters in detail:

- (a) Mr Bell concludes that the signalised Cambridge Road/Access 1 intersection is technically feasible, that the necessary transport effects can be appropriately managed, and that there is no transport effect or constraint that prevents PPC 35 being approved.¹⁰
- (b) Mr Fokianos concludes that there is no civil engineering or three waters impediment to the rezoning of Area B. Flood, stormwater and servicing matters can be appropriately managed, with detailed matters dealt with through subsequent resource consent and design processes.¹¹
- (c) Ms Hui brings those assessments together and concludes that PPC 35, as amended, provides an appropriate planning framework and satisfies the relevant statutory and policy requirements.¹²

4.7 The Commissioner's Further Directions reflect the resulting position.

4.8 Since then, Ms Hui and Ms Morris have resolved the matters identified in those Further Directions and have jointly recommended the resulting suite of amendments. Consistently with the Commissioner's Further Directions, any remaining detail of the agreed provisions can be addressed directly with Ms Hui and Ms Morris at the hearing, including how their discussions have narrowed the issues and where the drafting has ultimately landed.

¹⁰ Bell at [1.2]-[1.8].

¹¹ Fokianos at [1.3].

¹² Hui at [1.11] and [7.8].

5. THE REMAINING ISSUE — RULE 6.4.2.22(d)(iii)

- 5.1 The sole remaining (narrow) area of disagreement concerns the final bullet point of Rule 6.4.2.22(d)(iii).
- 5.2 The substance is agreed. If the required Cambridge Road/Access 1 intersection upgrades cannot be accommodated within the existing road reserve, the rule may provide for either vesting of land as road or the granting or reserving of easements in gross.
- 5.3 The remaining question is what status should be given to the further wording agreed between 638 Limited and Foodstuffs concerning how any necessary private land interests are to be secured.
- 5.4 638 Limited seeks the following formulation as part of Rule 6.4.2.22(d)(iii), which is supported by Ms Hui:
- Vesting of land as road or the granting/reserving of easements in gross (as agreed by Waipā District Council) if the required intersection upgrades cannot be accommodated within existing road reserve. **The acquisition of land for vesting (if any) or the creation of easements is the responsibility of the Applicant by way of agreement with relevant landowner(s) and will not be directly undertaken or facilitated by Waipā District Council.**
- 5.5 Ms Morris prefers the latter sentence to appear as an advice note. The planners otherwise agree on the substance of the provision. Their Joint Summary Statement therefore describes the remaining disagreement as one of “placement”.
- 5.6 638 Limited has had the benefit of reviewing the legal submissions of Mr Sadlier on behalf of Foodstuffs in advance. We respectfully agree with them and do not duplicate them.
- 5.7 Three short points may nevertheless assist:
- (a) First, the 638 Limited / Foodstuffs formulation gives the provision a clear function. If the required intersection design depends upon third party land, it makes clear that the necessary interest is to be obtained by the applicant by agreement with the landowner, if this aspect of the proposal is to proceed on a controlled activity basis.

- (b) Second, locating that requirement in the rule provides certainty for all concerned: the future applicant, Council and affected landowners. This does not purport to remove or constrain any statutory power Council may otherwise possess. Rather, it identifies the basis upon which reliance on third party land is contemplated within the controlled activity framework. If a proposal cannot satisfy the standards in Rule 6.4.2.22, it will not qualify for the controlled activity pathway and Rule 6.4.1.5(b)(i) provides for non-complying activity status.
- (c) Third, the issue is, in practical terms, a contingency. Mr Bell's present assessment is that the signalised intersection, including the dedicated left-turn lane, is technically feasible within the legal boundaries of Cambridge Road and Access 1.¹³ Ms Hui accordingly records that the present expectation is that additional private land will not be required.¹⁴ The provision nevertheless sensibly caters for the possibility that detailed design establishes otherwise.
- 5.8 The updated s 32AA assessment identifies the same distinction. The Joint Summary Statement leaves the relative efficiency and effectiveness of the two alternatives for the Commissioner to determine.
- 5.9 638 Limited respectfully submits that its and Foodstuffs' version is the preferable and more effective drafting. It states the intended outcome directly, avoids uncertainty as to the legal significance of an advice note, and gives effect to the resolution reached with the landowner whose interests prompted the qualification in the first place.
- 5.10 As Foodstuffs also notes, *Paokahu Trust v Gisborne District Council*¹⁵ illustrates that the substantive function of plan wording, rather than the label attached to it, may ultimately determine its status. There is little advantage in creating that uncertainty here. If the provision is intended to form part of the framework determining whether the controlled activity pathway is available, it should say so in the rule.
- 5.11 The Environment Court's treatment of advice notes in the resource consent context is consistent with that approach. In *Hapu Kotare Ltd v Manukau City*

¹³ Bell at [1.4].

¹⁴ Hui at [8.12]-[8.16].

¹⁵ *Paokahu Trust v Gisborne District Council* (W036/05).

Council, the Court said that advice notes may usefully be added to consent conditions, but should not give directions or require the consent holder to undertake action or work; an advice note going that far “effectively becomes a condition”.¹⁶ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* adopted that framework, adding that advice notes should be used sparingly and for information purposes only, and that where their content is relevant to the consent it is preferable to include it in the conditions.¹⁷ More recently, in *Marlborough District Council v Aitken*, the Court observed, in interpreting the scope of a resource consent, that an advice note “has no regulatory effect”.¹⁸ While those decisions concern resource consents rather than plan drafting, they generally support the point that substantive wording intended to have regulatory effect is better located in the operative provision than in an advice note.

6. CONCLUSION

- 6.1 PPC 35 is now effectively unopposed.
- 6.2 The section 42A report recommends its confirmation. The Applicant's planning, transport and three-waters evidence supports approval. The Commissioner's Further Directions recognised that the issues had narrowed to drafting. The subsequent Joint Summary Statement has narrowed them further still, leaving only the question addressed above.
- 6.3 638 Limited therefore respectfully requests that the Commissioner:
 - (a) approve PPC 35;
 - (b) adopt the provisions agreed between Ms Hui and Ms Morris and recorded in the Joint Summary Statement and accompanying tracked provisions; and
 - (c) in respect of Rule 6.4.2.22(d)(iii), adopt the **638 Limited / Foodstuffs formulation**, with the land acquisition and easement wording forming part of the rule rather than an advice note.

¹⁶ *Hapu Kotare Ltd v Manukau City Council* (A133/05), at [80].

¹⁷ *Te Maru o Ngāti Rangiwewehi v Bay of Plenty Regional Council* (A17.09), at [12]–[13].

¹⁸ *Marlborough District Council v Aitken* [2016] NZEnvC 226 at [81].

6.4 Subject to that discrete matter, there is now a high degree of agreement between the Applicant, Council and submitters as to both the appropriateness of PPC 35 and the provisions required to implement it.

DATED the 10th day of August 2026



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