

**BEFORE AN INDEPENDENT HEARINGS COMMISSIONER
IN TE AWAMUTU**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHEKE
TE AWAMUTU**

UNDER the Resource Management Act 1991 ("the Act")
IN THE MATTER of Proposed Private Plan Change 35 to the Waipā District Plan

SUBMISSIONS ON BEHALF OF FOODSTUFFS NORTH ISLAND LIMITED

10 AUGUST 2026

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MAY IT PLEASE THE HEARING COMMISSIONER

1. These submissions are on behalf of Foodstuffs North Island Limited (“**Foodstuffs**”). Foodstuffs lodged a submission (04) and further submissions (FS2) (together the “**Foodstuffs Submission**”) in relation to Proposed Private Plan Change 35 to the Waipā District Plan (“**PPC35**” and “**District Plan**”).
2. By way of summary:
 - (a) The Foodstuffs Submission is focused on ensuring that PPC35 will not have inappropriate adverse effects on the continued efficient operation of the Pak’n Save Te Awamutu supermarket located within the Te Awamutu Large Format Retail Centre at 670 Cambridge Road, Te Awamutu (“**Pak’n Save**”).
 - (b) Foodstuffs has had constructive and fruitful discussions with 638 Limited, and all issues were wholly addressed in the revised provisions and amended Te Awamutu Large Format Retail Centre Plan (“**Concept Plan**”) which were then presented to Waipā District Council (“**Council**”) by 638 Limited, prior to completion of the section 42A report.
 - (c) There is one remaining outstanding issue as between Foodstuffs (and 638 Limited) and the Council, being whether rule 6.4.2.22(d)(iii) should incorporate certain additional wording as part of the rule, or as an “advice note”.
 - (d) Foodstuffs submits that the additional wording it seeks should form part of Rule 6.4.2.22(d)(iii), and that inclusion as an “advice note” is less appropriate, less efficient and effective and will not assist the Council in pursuance of its RMA functions.
3. Rule 6.4.2.22 provides for development in general accordance with the Concept Plan as a controlled activity, subject to conditions.
4. 6.4.2.22(d)(iii) is a condition which requires specified transport upgrades to be constructed, prior to any activities commencing within Area B, as shown on the Concept Plan. Foodstuffs supports the requirement for the transport

upgrades, to ensure that if Area B is developed as proposed by 638 Limited, that the Te Awamutu Large Format Retail Centre as a whole, and the local load network it relies upon, can continue to function appropriately.

5. In a submission on PPC35 (3/1), the Council sought the inclusion of the following as part of the required transport upgrades:

Vesting of land as road in the event that the required intersection upgrades cannot be accommodated within the existing road reserve.

6. Foodstuffs opposed the above submission, on the basis that:

- (a) All of Foodstuffs' existing landholdings are required to accommodate its existing and future operations; and
- (b) It is for the District Plan to anticipate that Foodstuffs' land may be required to vest in Council in order to accommodate intersection upgrades to facilitate development of Area B.

7. Foodstuffs is also concerned that, should it not be possible to accommodate the intersection upgrades within the existing road reserve that:

- (a) An application for a controlled activity consent could be made on the basis that conditions are imposed requiring the intersection upgrades, notwithstanding that private land acquisition is required to accommodate them; and
- (b) The Council then comes under pressure from private interests (638 Limited, or any future landowner) to use its more draconian powers to facilitate the acquisition of Foodstuffs' land.

8. To resolve these concerns, 638 Limited agreed to include additional wording as follows:

Vesting of land as road in the event that the required intersection upgrades cannot be accommodated within the existing road reserve. The acquisition of land for vesting (if any) is the responsibility of the Applicant (for any resource consent to which this rule applies) by way of agreement with relevant landowner(s) and will not be directly undertaken or facilitated by Waipa District Council.

9. The Section 42A report author considers that the agreed wording provides "advice" about the responsibility for acquisition of land and does not form a

functional part of what the rule is intended to address (para 4.3.18). It suggests that the additional text could be included as an “advice note”, and otherwise suggests additional wording to enable the granting/reserving of easements as an alternative to vesting of land.

10. Foodstuffs takes no issue with providing for the granting/reserving of easements as an alternative to vesting of land in Rule 6.4.2.22(d)(iii). For completeness, Foodstuffs records that an easement is likely to be equally unacceptable as vesting where it is to provide for permanent public infrastructure on Foodstuffs’ land. Foodstuffs disagrees that the agreed text is purely advisory in nature. While beneficial as a clear signal of intent to any future plan user/reader, Foodstuffs also intends the additional wording to constrain the scope of activities captured by Rule 6.4.2.22 as a controlled activity. It:
 - (a) Assists the Council to fulfil its functions and duties, by ensuring that any application is complete and any consent that is granted is capable of implementation;
 - (b) Provides clarity as to the information required to support any application for consent under the rule;
 - (c) In the event that proposed upgrades cannot be accommodated within the existing road reserve, provides a trigger for a change in activity status enabling consideration of potential adverse effects such as on the efficient operation of the Pak’n Save, as well as pathways to notification and/or substantive decline of consent if those effects are inappropriate;
 - (d) Minimises the risk that separate costly and duplicative processes are required in relation to one project; and
 - (e) In this way, ensures that Rule 6.4.2.22 is appropriate, achieves the purpose of the RMA, and is efficient and effective.
11. Foodstuffs also submits that clear inclusion of the additional text within the body of the rule avoids confusion as to its status. In *Paokahu Trust v Gisborne District Council* (W036/05) (at para [6]) the Environment Court held that a

provision in a plan may constitute a “rule”, whatever label it is given, if it exists for the purpose of assisting the Council to carry out its functions under the Act. It is therefore arguable, for the reasons set out above, that the additional text would constitute a rule whether it is characterised as an “advice note” or not. This is also the view of 638 Limited and Ms Hui who considers that either approach will achieve the same practical outcome, while expressing a preference for the agreed approach (paras 8.14-8.16).

12. The Joint Summary Statement of Ms Hui and Ms Morris, at paragraph 3.3 records that Ms Morris is concerned that including the text as part of the standard may “*hinder Council’s ability to [facilitate] land acquisition or easement arrangement in the event that is necessary*”. Foodstuffs disagrees. Rather, any proposal that does not involve vesting of land by agreement will not comply with Rule 6.4.2.22(d)(iii) and therefore would no longer comprise a controlled activity. In light of the potential implications of land acquisition for Foodstuffs (or indeed any other potentially affected landowner), Foodstuffs considers that is appropriate.
13. In terms of the Foodstuffs Submission, the issue for determination by the Independent Commissioner is a binary one – which of the following options is the most appropriate approach to the final bullet point of Rule 6.4.2.22(d)(iii):

***Foodstuffs/638 Limited
option***

Vesting of land as road, or the granting / reserving of easement in gross (as agreed by Waipa District Council) if the required intersection upgrades cannot be accommodated within the existing road reserve. The acquisition of land for vesting (if any) or the creation of easements is the responsibility of the Applicant (for any resource consent to which this rule applies) by way of agreement with relevant landowner(s) and will not be directly undertaken or facilitated by Waipa District Council.

or

***Council section 42A author
option***

Vesting of land as road, or the granting / reserving of easement in gross (as agreed by Waipa District Council) if the required intersection upgrades cannot be accommodated within the existing road reserve.

Advice Note: The acquisition of land for vesting (if any) or the creation of easements is the responsibility of the Applicant (for any resource consent to which this rule applies) by way of agreement with relevant landowner(s) and will not be directly undertaken or facilitated by Waipa District Council.

14. Foodstuffs respectfully requests that, for the reasons given in these submissions, the Commissioner prefers the Foodstuffs/638 Limited option and decides accordingly.

Daniel Sadlier

Counsel for Foodstuffs North Island Limited

10 August 2026