

21 October 2014

Thames Coromandel District Council  
Private Bag 1001  
515 Mackay Street  
Thames  
**Via email**

**Attention: Lisa Madgwick  
District Plan Coordinator**

Dear Lisa

**Re: Thames Coromandel District Council's Proposed District Plan: Hearing Session (22-23 Oct)**

I write on behalf of our client, The National Trading Company of New Zealand Limited ("NTC"), in relation to their submissions on the Proposed District Plan, specifically as regards the Commercial and Industrial provisions to be addressed at the hearing session scheduled for 22<sup>nd</sup> – 23<sup>rd</sup> October. Of specific relevance to NTC, these matters include the provisions within Sections 42 (Commercial zone), 45 (Gateway zone), 47 (Light Industrial zone) and 51 (Pedestrian Core zone).

Although I will not be attending the Hearing on the 22<sup>nd</sup> – 23<sup>rd</sup> October on behalf of NTC, I would like to request that this letter be treated as evidence and tabled accordingly.

Having reviewed the section 42A reports, and further to NTC's original submission, the key points I wish to address are as follows:

**1. Original Submission**

In the original submission, NTC made the following relevant submission points:

- The PDP should include a separate definition and activity category for "supermarkets" as distinct from the more encompassing general commercial or retail categories listed. Supermarkets should be provided for as permitted activities in the Commercial, Gateway and Pedestrian Core zones.
- The PDP should allow for new buildings as permitted activities in the Pedestrian Core and Gateway zones, rather than the controlled activity status proposed.
- The assessment criteria associated with new buildings within the Pedestrian Core and Gateway zones are also too onerous in respect of urban design outcomes and the PDP should be rationalised accordingly, along with inclusion of the recognition of operational or functional requirements for commercial activities.



- The specific provisions requiring service lanes for activities in the Pedestrian Core zone are onerous and unachievable. The non-complying activity status that arises from infringing this standard is also onerous. The PDP should be amended accordingly.
- The coverage controls in the Gateway and Light Industrial zones should at least reflect the same flexibility as the same control in the Commercial zone, i.e. 80% versus 40% and 60% respectively.
- The 15m residential area yard proposed for activities in the Gateway zone is onerous and unnecessary and should be removed or reduced in the PDP provisions.
- The PDP should allow for the extension (by up to 20%) to existing supermarkets in the Light Industrial zone as a permitted activity to provide flexibility for such pre-existing activities.

## 2. Section 42A Reports

The various hearing reports have responded to NTC's submission points and have recommended the following:

- The planning officer considers that supermarkets are *"similar to other retail: department stores (e.g. Warehouse), hardware stores (e.g. Bunnings), etc"* (paragraph 22). To this end, no new or separate definition is proposed. The planning officer does note that *"the commercial provisions have been written with supermarkets (and other retail) in mind"*.
- The planning officer has rejected NTC's relief that new buildings should be permitted in the Pedestrian Core zone *"because the zone outcomes are most effectively addressed with a mix of basic standards (see Table 5) and design matters (see Table 6) (paragraph 42)*. Equally, the planning officer proposes retaining the controlled activity status for new buildings in the Gateway zone, citing the importance of promoting the objectives and policies for the zone as well as protecting adjacent residential amenity.
- The section 42a report has recorded NTC's support for the non-notification of controlled activity consents for new buildings (if retained), and no change has been made to this non-notification provision (paragraph 43).
- The planning officer rejects NTC's relief regarding the assessment criteria for new buildings in the Pedestrian Core and Gateway zones, including the potential for balancing the anticipated urban design outcomes with the operational or functional requirements of commercial activities (paragraph 47).
- The planning officer rejects NTC's relief regarding service lanes in the Pedestrian Core zone, noting that the *"pedestrian-intensive character of the zone means that service vehicles and service areas need a service lane to the side or rear"* (paragraph 44). No change is proposed to the standard.
- The planning officer has accepted NTC's relief regarding the anomaly in coverage control thresholds between the various commercial and light industrial zone. The section 42a report



proposes to alter the Gateway zone provision from 40 to 80% to be consistent with the Commercial zone and to remove the control from the Light Industrial zone altogether (paragraph 33).

- The planning officer has rejected NTC's relief regarding the residential area yard with the Gateway zone and it remains as notified at 15m (paragraph 37).
- Finally, the planning officer has rejected NTC's relief regarding the provision for extending existing supermarket activities in the Light Industrial zone (by up to 20%) as a permitted activity, noting that the non-complying activity status should be retained to ensure that *"new or expanded supermarket[s] in the Light Industrial zones [are] assessed against the RMA Section 104D tests"* (paragraph 34 of the Industrial section 42a report).

### **Response to section 42A reports**

In response to the hearing reports, the following comments are made.

#### **Supermarket Definition and Activity Status**

NTC reiterate the position that supermarkets are distinct from general retail and should be provided for in a separate provision within the PDP. NTC disagree with the assertion from the reporting planner that supermarkets, department stores and hardware stores are similar and that they all fall within the ambit of general retail (paragraphs 22, 31(b) and 41(d)). These are very clearly different activities that result in different effects.

For example, a department store may be considered to replicate a retail offering in the town centre and therefore it is not appropriate to provide for such activities outside of that centre on the basis that such a proposal would result in adverse effects on the vitality and viability of the town centre.

Conversely, a supermarket is a complementary retail offer to comparison goods often found in boutique or small-scale retail tenancies and can either co-locate or indeed anchor other retail around it.

To this end, providing for supermarkets as a separate activity is not considered repetition (as raised by the reporting planner as a concern, paragraph 22), but clarification, to ensure that supermarkets are indeed provided for.

Notwithstanding the retail arguments above, NTC acknowledges that the PDP is intended to allow for supermarkets within the wider category of retail or "general commercial" activities such that they are permitted within the relevant commercial zones.

NTC therefore supports the permitted activity status of supermarkets in the Commercial, Gateway and Pedestrian Core zones but reserves its position on the separate definition and activity status matters.



### New Buildings in the Pedestrian Core and Gateway zones

NTC maintains that appropriate urban design outcomes can be readily achieved by the application of appropriate standards, which the PDP already incorporates. For example, the PDP has identified street frontages of note within relevant centres and then specifies the appropriate design response in terms of building to the boundary, providing an active and articulated edge and/or verandahs. Other general performance standards assist in terms of bulk and location.

Where an application proposes to infringe any of these standards, consent to a restricted discretionary activity is required and the Council has the opportunity to undertake a robust assessment of the urban design merits of the proposal and consider them against the relevant criteria.

With respect, it is not considered an acceptable or robust response from the reporting planner to state in the section 42a report, in response to NTC's point above, *"this is not how the Pedestrian Core zone works"* (paragraph 42). Surely the way the zone should "work" is to consider various approaches to achieving the outcomes of the PDP, in this case being attractive urban design for the relevant zones and ensuring it is adopting the most efficient and effective way to do so.

Instead, the "belt and braces" approach that the Council is adopting by removing the permitted baseline for new buildings within these zones along with extensive urban design standards and extensive assessment criteria is considered onerous and repetitious.

For these reasons, NTC maintains its submission point that a more appropriate approach would be to allow for new buildings as permitted activities within the Pedestrian Core and Gateway zones and retain the various urban design standards that apply to such development.

### Assessment Criteria

NTC raised concern with the one-sided urban design focus of the assessment criteria relating to development within the Pedestrian Core zone. NTC's submission sought rationalisation of these criteria, however the reporting planner has rejected the submission (paragraphs 47-48). The section 42a report does not evaluate NTC's alternative request for a criterion that seeks to balance the urban design outcomes with recognition of the operational functional requirements of commercial activities.

NTC does not consider that this balanced approach would undermine the Council's intended outcomes for the Pedestrian Core zone in terms of achieving *"fine-grained pedestrian character of the district's town centres"*. However, it would achieve recognition of the commercial realities of operating supermarkets (such as the need for back-of-house locations that do not directly interact



with the street and that require vehicular access) and ensure that these necessary elements of the commercial activities are taken into account in the broader urban design context.

For the above reasons, NTC reiterates its submission point that, at the very least, a new criterion should be inserted into the PDP (Table 7 of Section 51), as follows:

*“14. The extent to which the above criteria can be achieved having regard to the operational and functional requirements of the proposed activity.”*

### Service Lanes

This rule (table 5, standard 10 of section 51) requires service lanes to be provided for access at the side or rear of a lot within the Pedestrian Core zone. NTC raised concern with the control, particularly since non-complying activity consent is required if this control is infringed (compared to restricted discretionary for the other standards in table 5).

This is an unworkable and onerous approach, especially for development in established town centres where an existing lot has no such service lane access and no ability to provide one. The reporting planner’s response notes that *“most lots in the Pedestrian Core zone have a Council service lane, a service lane designation or a private service lane, but a few lots do not in Whitianga and Thames”* (paragraph 44). The reporting planner offers no explanation for what these lots should do to gain access and further, there is no clear explanation as to why this standard alone warrants non-complying activity status to infringe.

NTC proposed an assessment criterion approach whereby consideration is given to appropriate access. A further option would be to set up a hierarchy of access within the transport section of the PDP, whereby access to a service lane is required if available but where it isn’t, then a site should gain access from the road with the lower ranking in the hierarchy, obviously preserving those streets with key retail or heritage frontage (where no accesses are allowed already in accordance with rule 51.7, table 4, standard 2).

NTC reiterates its opposition to this standard regarding service lane access.

### Residential Area Yard

NTC maintains that 15m is an excessive set back requirement for a “residential area yard” in the Gateway zone (this phrase remains undefined).

The reporting planner cites protection of residential amenity as the reason for the control (paragraph 37), however the PDP already includes maximum height and height to boundary controls,



provision of fencing on the boundary, along with the requirement to comply with noise standards – all of which are considered to adequately protect neighbouring residential amenity.

Further, if the Council wants to encourage more development closer to the front boundary of sites along Joan Gaskell Drive, it might consider removing or altering the 7m front yard setback as an alternative.

The reporting planner mentions the ability of making an application to reduce the yard to nil if adjoining landowners' signatures are obtained and cites the fact that this has never occurred is perhaps a reason to retain the rule as proposed. With respect, it is more likely that the difficulty of obtaining landowners' approvals is the reason for this not occurring rather than developers being accepting of the 15m set back.

NTC reiterates its opposition to this standard regarding a 15m residential area yard in the Gateway zone.

#### Existing Retail Activities in Light Industrial zone

NTC operates an existing supermarket in the Light Industrial zone and currently, any additions or alterations would require non-complying activity consent. This seems overly onerous considering the activity is established. NTC sought flexibility to ensure ongoing operation, including any future upgrades that may be required to facilitate that. The reporting planner rejected this approach, noting that both a *"new and expanded supermarket in the Light Industrial zone should be assessed against the section 104D tests"* (paragraph 34 of the industrial section 42a report).

However, NTC reiterates its submission point in this regard and considers that the flexibility sought could be appropriately achieved via a restricted discretionary activity status for limited additions and alterations to existing supermarkets in the Light Industrial zone. The criteria could include the consideration of relevant potential adverse effects, most importantly relating to impact on the vitality and viability of nearby centres and use of industrial land for a non-industrial activity. Further, the proposed threshold of 20% would ensure that such an application could not be made to create an "expanded supermarket" and that such a large-scale re-development would fall to be considered non-complying.

For these reasons, NTC reiterates its suggested relief, as follows:

*"Additions and alterations to existing supermarkets that result in a maximum of 20% increase of existing GFA" – restricted discretionary activity in the Light Industrial zone.*



Alternatively, consideration could be given to a site-specific rule that captures NTC's existing New World in Whangamata and allows for the small-scale additions and alterations as previously proposed.

#### Related Changes

Finally, it is noted that in respect of the previous hearing session on noise (16-18 Sept), tracked changes were proposed to various zone chapters, ensuring that the noise generated by emergency power supply generators would be excluded from the requirement to comply with the relevant zone noise standards. These changes have not been carried through into the various zone chapters that have been updated in advance of this hearing on the Commercial and Industrial provisions. NTC is concerned to ensure that previous relief that has been adopted is taken on board in these provisions.

I ask that you table this letter on 22<sup>nd</sup> – 23<sup>rd</sup> October in place of personal attendance on NTC's behalf at the hearing. Please do not hesitate to contact me should you have any queries regarding the above matters.

Yours faithfully

**Barker & Associates Ltd**



Kay Panther Knight

**Senior Planner**

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# B&A