

IN THE ENVIRONMENT COURT
CHRISTCHURCH

ENV

I MUA I TE KOOTI TAIAO
I ŌTAUTAHI ROHE

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

AND

IN THE MATTER of the direct referral of an application for resource consent by **WOOLWORTHS NEW ZEALAND LIMITED** to the Environment Court under section 87G of the RMA

NOTICE OF MOTION BY WOOLWORTHS NEW ZEALAND LIMITED
SEEKING DIRECT REFERRAL

14 JANUARY 2020

Russell
McAugh

A A Arthur-Young | L J Eaton
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F +64 9 367 8163
PO Box 8
DX CX10085
Auckland

To: The Registrar
The Environment Court
CHRISTCHURCH

WOOLWORTHS NEW ZEALAND LIMITED ("Woolworths") applies under section 87G(2) of the Resource Management Act 1991 ("**RMA**") for the following order:

1. That the Environment Court accepts Woolworths' resource consent application to establish a residential and commercial mixed use development (RMA/2017/3185) ("**Application**") lodged with the Christchurch City Council ("**Council**") for direct referral under section 87G(2) of the RMA.

Grounds for the application

2. The grounds for the application are:
 - (a) The Council has agreed to directly refer the matter to the Environment Court in accordance with section 87E of the RMA.
 - (b) It is appropriate for the Environment Court to determine the Application instead of the Council for the following reasons:
 - (i) the Application has attracted submissions in opposition, in particular from adjoining landowners of the surrounding Key Activity Centre land and central city retailers. The nature of the submissions indicates that the Application is likely to be contentious;
 - (ii) if the Application is heard by the Council in the first instance, it is likely that the Application will be appealed to the Environment Court. Direct referral will therefore likely avoid the need for two hearings on the same issues which will result in time and cost efficiencies for all parties;
 - (iii) there are matters relating to the interpretation of the objectives and policies of the District Plan, which would benefit from determination by the Court;
 - (iv) the ability of the Environment Court to direct Court assisted mediation and provide for expert conferencing will narrow and focus the issues for determination; and

- (v) direct referral will enable the most efficient processing of the Application and will accord with the principles of the RMA.

Attachments

3. The following documents are attached to this notice of motion to be served with a copy of this notice:
- (a) an affidavit from Matthew Grainger in support of this application; and
 - (b) a list of names and addresses to be served a copy of this notice.

DATED 14 January 2020


A A Arthur-Young / L J Eaton
Counsel for Woolworths New Zealand Limited

TO: The Registrar
The Environment Court
CHRISTCHURCH

AND TO: Christchurch City Council

AND TO: Submitters on the Application

Advice to recipients of copy of notice of motion*How to become a party to proceedings*

You may be heard on this application if you come within section 274(1) of the Resource Management Act 1991. If you are a trade competitor of the applicant, your right to be heard may be limited.

You may be heard on the application as a party, if:

- (a) within 15 working days after this notice of motion was lodged with the court, you lodge a notice in form 33 with the Environment Court and serve copies of your notice on the relevant local authority and the applicant; and
- (b) within 20 working days after this notice of motion was lodged with the court, you serve copies of your notice on all other parties.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

ATTACHMENT A

Affidavit of Matthew Grainger

IN THE ENVIRONMENT COURT
CHRISTCHURCH

ENV

I MUA I TE KOOTI TAIAO
I ŌTAUTAHI ROHE

IN THE MATTER of the Resource Management Act 1991 ("RMA")

AND

IN THE MATTER of the direct referral of an application for resource consent by **WOOLWORTHS NEW ZEALAND LIMITED** to the Environment Court under section 87G of the RMA

AFFIDAVIT OF MATTHEW GRAINGER
IN SUPPORT OF NOTICE OF MOTION FOR DIRECT REFERRAL

SWORN 14 JANUARY 2020

Russell
McAugh

A A Arthur-Young | L J Eaton
P +64 9 367 8000
F +64 9 367 8163
PO BOX 8
DX CX10085
Auckland

I, **MATTHEW GRAINGER** of Auckland swear:

Introduction

1. I am Head of Property at Woolworths New Zealand Limited ("**Woolworths**").
2. I have personal knowledge of the matters set out in this affidavit and its contents are true to the best of my knowledge and belief. I am authorised by Woolworths to make this affidavit.
3. I make this affidavit in support of Woolworths' notice of motion for its resource consent application to establish a residential and commercial mixed use development (RMA/2017/3185) ("**Application**").

Background

4. On 15 January 2018, Woolworths lodged the Application with the Council. The Application seeks landuse and subdivision consents for a comprehensive residential and commercial development in Halswell, Christchurch.
5. Woolworths prepared detailed responses to two requests for further information from the Council in April 2018 and July 2018.
6. The Application was publicly notified on 31 October 2018, and submissions closed on 28 November 2018. Eleven submissions were received on the Application, six of which were in opposition.
7. On 5 December 2018, Woolworths made a formal request to the Council to directly refer the Application to the Environment Court (a copy of Woolworths' request is attached to this affidavit as **Exhibit A**). On 16 January 2019, the Council granted Woolworths' request to directly refer the Application to the Court. A full copy of the Council's decision to grant direct referral is attached to this affidavit as **Exhibit B**.
8. The Application was subsequently put on hold to enable Woolworths to refine the Application in response to matters raised by the Council and submitters. Woolworths submitted further explanatory material for clarification of this Application to the Council on 7 October 2019.
9. Woolworths received the Council's report pursuant to section 87F of the RMA on 2 December 2019 ("**Council's Report**"). After considering the



Council's Report, Woolworths wishes to proceed with direct referral to the Environment Court.

Reasons for direct referral

10. Of the eleven submissions received on the Application, six were lodged in opposition. Based on the nature of the submissions lodged, the Application is likely to be contentious.
11. In an effort to narrow and / or resolve the issues in contention, Woolworths has already undertaken measures to respond to the concerns raised by submitters and Council. This includes refining the Application in a number of ways to address key concerns raised by the submitters and the Council. The key refinements include:
 - (a) increasing the length of Days Drain that is to be enhanced and naturalised;
 - (b) strengthening the north-south routes through the site, including improvements to the "green corridor"; and
 - (c) refining the scale of the commercial floor space and layout of the site.
12. These refinements were incorporated into the Application by way of an addendum provided to the Council in October 2019.
13. I do not consider that a Council hearing will be able to provide resolution and the Application will likely be appealed to the Environment Court. Given the likelihood of appeals, I consider that it would be more efficient in terms of cost and time for all parties to have the application referred directly to the Environment Court.
14. The Council in the Council's Report also considered that some of the submitters in opposition to the Application may be trade competitors. This is a matter that will most appropriately and efficiently be dealt with by the Environment Court.
15. The Application, and the Council's Report, also raises issues in relation to the interpretation of the objectives and policies of the District Plan, the determination of which could have implications for other applications within the District. I consider that these issues would benefit from robust testing and determination by the Court.

Conclusion

16. I consider that direct referral of the Application to the Environment Court is necessary for the reasons outlined above and summarised in the notice of motion.

SWORN at Auckland on this 14th day of
January 2020 before me



A solicitor of the High Court of New Zealand

Emily Heather Davidson
Solicitor
Auckland


Matthew Grainger

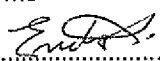
Form 7A: Request for application relating to resource consent to be determined by direct referral to the Environment Court

Section 87D, Resource Management Act 1991

To: Christchurch City Council (CCC)

1. *Woolworths New Zealand Limited (formally Progressive Enterprises Limited) (WNZL)*, requests that you allow the resource consent application described below and lodged by WNZL with the CCC to be determined by the Environment Court.
2. The resource consent application is for land use and subdivision consents to establish a residential and commercial mixed use development on approximately 21 hectares of land in Halswell, known as 201 Halswell Road (**Application or Proposal**).
3. The general location of the Application site is shown on the plan **attached as Appendix A**.
4. A copy of the relevant statutory form (Form 9) for the Application is **attached as Appendix B** to this request.
5. The Proposal includes the following main elements:
 - (a) subdivision to create development allotments capable of being further subdivided to provide for commercial, community and residential activities;
 - (b) the provision of services, vested recreational reserves, stormwater management areas and roading including signalised access onto Halswell Road (State Highway 75)/ Aidanfield Drive;
 - (c) commercial development of approximately 6,500 square metres (Gross Floor Area) including a supermarket, tavern, and retail;
 - (d) a medical centre and preschool of some 2,800 square metres (Gross Floor Area);
 - (e) a comprehensive residential development providing for 271 residential units at a density of 16.5 households per hectare including laneways, bridleways, pocket parks, covered swimming pool complex and apartment building; and
 - (f) associated car parking and accessways, landscaping, construction and earthworks including the partial piping of Days Drain and enhancement of the remainder of the drain.

This is the annexure marked "A" referred to in the affidavit of **Matthew Grainger** sworn at Auckland this 14th day of January 2020 before me

Signature 

A Solicitor of The High Court of New Zealand
(Solicitor to sign in part on Exhibit)

Emily Heather Davidson
Solicitor
Auckland

PRO98221 7168393.1

6. The Proposal is on land zoned Residential New Neighbourhood and Commercial Core and included within the North Halswell Outline Development Plan and Commercial Core Zone (North Halswell) Outline Development Plan.
7. The Application includes an assessment of environmental effects that describes the Proposal in more detail.
8. The CCC's reference number for the Application is RMA/2017/3185.
9. The reasons for the request are as follows:

Legislative Background

- 9.1 The Resource Management (Simplifying and Streamlining) Amendment Act 2009 was enacted to improve the quality and certainty of decision making and to reduce delays and costs by simplifying procedures and rationalising the appeal process.
- 9.2 The Amendment Act introduced an alternative method for processing a notified resource consent application, commonly known as a "direct referral". This enables an applicant to make a request to a consent authority for an application to be decided by the Environment Court at the first instance instead of the consent authority¹.
- 9.3 This particular amendment to the Resource Management Act 1991 is intended to address the duplication of process, substantial costs, and time delays as a result of applications going through the Council hearing process and then being heard again de novo in the Environment Court.

Application - Notification and Submissions

- 9.4 The Application has been publicly notified and 11 submissions have been made:
 - (a) 6 in opposition;
 - (b) 2 that take a neutral position;
 - (c) 2 in support; and
 - (d) 1 partly in support.

Trade Competition

- 9.5 A number of the submitters in opposition are commercial developers/ landlords and are considered by the Applicant to be trade competitors (**Trade Competitor**

¹ Section 87D of the Act

Submitters) including the owner of commercial and residential land to the immediate north of the Application site.

- 9.6 Some of the Trade Competitor Submitters have already been involved in judicial review proceedings in the High Court challenging a CCC decision for a commercial development elsewhere in the Central City.

Reasons for Request

- 9.7 In light of this it is considered the Application is best dealt with by direct referral to the Environment Court for the following reasons;

- (a) appeals from the Council's decision on the Application are very likely if not inevitable;
- (b) decision-making associated with the Application would benefit from rigorous testing of evidence under oath that is provided for in the Environment Court;
- (c) the ability of the Environment Court to direct Environment Court assisted mediation and provide for expert conferencing will likely significantly narrow and focus the contested issues for determination; and
- (d) the ability of the Environment Court to properly consider all matters relating to the assertion that some of the submitters in opposition are trade competitors.

- 9.8 It would be beneficial for all parties to have a streamlined decision-making process that enables a decision to be made by the Environment Court that is final, subject to any appeals on points of law to the High Court.

10. Granting the request would achieve the outcomes intended by the Amendment Act. Direct referral to the Environment Court would reduce the duplication of process, time delays and significant costs by avoiding a two stage consenting process.

11. Overall direct referral is the most appropriate way to consider and decide on the resource Application for the Proposal.

Woolworths New Zealand Limited

by its solicitors and authorised
agents **Lane Neave**

Per:



Amanda Dewar/ Sophie Reese

Date: 5 December 2018

Address for service of the applicant:

Woolworths New Zealand Limited

C/- Lane Neave

PO Box 2331

Christchurch 8140

Phone: 03 379 3720

Fax: 03 379 8370

Contact person: Amanda Dewar /Sophie Reese

Email: amanda.dewar@laneneave.co.nz/sophie.reese@laneneave.co.nz

Appendix A – General Location of Application Site



Appendix B – Form 9 (excluding Assessment of Environmental Effects)

Page | 3

Form 9

APPLICATION FOR RESOURCE CONSENT

SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991

To: the Christchurch City Council

1. We, Progressive Enterprises Ltd (Private Bag 93306, Otahuhu Auckland, 1640), apply for the following resource consent:

Land use and subdivision consents to establish a residential and commercial development in general accordance with Appendix 8.10.4 of the Christchurch District Plan (District Plan) rules as it relates to 201 Halswell Road. The AEE and Technical Reports (Volumes 1, 2 and 3) provide further detail, however the proposal includes the following main elements:

- (a) Subdivision – The creation of 12 lots, including the formation of nine super lots (capable of being subdivided into 248 fee simple lots for residential uses), and staged development of these lots to provide for the commercial and residential land uses identified below.
- (b) Roading, and service provision to cater for the proposed land uses, including earthworks to facilitate the same.
- (c) Commercial development of 6,437m² GFA, including a 3,623m² GFA supermarket; medical facility and pre-school.
- (d) The provision of 272 dwellings, of which 24 are 'New York' style apartments contained in one building.
- (e) A 2.4ha stormwater management area (first flush basin).
- (f) Piping for the front 400m of Days Drain, and enhancement for the residual 400m.
- (g) Laneways, bridle paths and 'pocket parks'.

The overall activity status of the consents being sought by this application is non-complying.

2. The activity to which the application relates (the Proposed Activity) is as follows:

- Consent to subdivide Lot 1, DP 9329 into twelve (12) lots; nine (9) of these will be super lots capable of being further subdivided into 248 fee simple lots for residential uses; and
- Land use consent is sought to undertake earthworks, including earthworks within the waterway setback of Days Drain to facilitate piping of a 400m section, and naturalisation of a 400m section as it passes along the north-eastern boundary of the site; and
- Land use consent to enable the future development of 272 dwellings, of which 24 are 'New York' apartment style dwellings; and
- Land use to construct and operate commercial activities of up to 6,437m² gross floor area ('GFA') as anchored by a Countdown supermarket (3,623m² GFA), with an additional provision of a 2,436m² GFA medical centre and 353m² GFA Day Care facility, including associated carparking and landscaping; and
- Roadworks, services provision and car-parking areas to service the respective proposed land; and

- Consent under the National Environment Standard or Assessing and Managing Contaminants in Soil to Protect Human Health, 2011 (NES-Contamination).

The activity for which resource consents are being sought by this application is more fully described in the attached AEE which forms part of this application.

3. The site at which the proposed activity is to occur is as follows:

Address: 201 Halswell Road, Christchurch

Legal Description: Lot 1, DP 9329

Area: 211,575m² (21.15ha)

4. The full name and address of each owner and occupier (other than the applicant) of the site to which the application relates are as follows:

Stephen Jeffrey
Trustee of Yong Sun Investment Trust
C/- Lane Heave
141 Cambridge Terrace
Christchurch 8014

5. The other activities that are part of the proposal to which the application relates are as follows:

The development of some 21ha area of land comprising of an approximate 3.4ha commercial zone, 14.2ha of residential allotments/roading infrastructure and 2.4ha stormwater management area (first flush basin). Days Drain, a farm drain installed for the purpose of draining land runs parallel and along the proposed development northern boundary (800 m), flowing in a southeast direction. The drain now also conveys treated stormwater from the Aidenfield subdivision. As part of the development it is proposed that a 400m length of the drain be piped and the remaining 400 m length be widened and naturalised.

The following soil disturbance work includes:

- Cut and fill earthworks, including for roading and site preparation;
- Landscaping;
- Service Installation;
- Piping some 400m of Days Drain behind the commercial area of the proposal; and
- Re-contouring and landscaping the remainder (400m) of the drain.

6. The following additional resource consents are needed for the proposal to which this application relates and have been applied for:

Discharge, land use and non-consumptive takes associated with the construction and earthworks for the proposal. These activities require consent from the Canterbury Regional Council as also addressed in this application.

December 2017

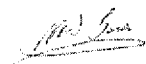
Progressive Enterprises Limited
Comprehensive Mixed Use Development
Assessment of Effects on the Environment
Halswell

PRO98221 7168393.1

7. We attach an assessment of the proposed activity's effect on the environment that—
 - (a) includes the information required by clause 6 of Schedule 4 of the Resource Management Act 1991; and
 - (b) addresses the matters specified in clause 7 of Schedule 4 of the Resource Management Act 1991; and
 - (c) includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.
8. We attach an assessment of the proposed activity against the matters set out in Part 2 of the Resource Management Act 1991.
9. We attach an assessment of the proposed activity against any relevant provisions of a document referred to in section 104(1)(b) of the Resource Management Act 1991, including the information required by clause 2(2) of Schedule 4 of that Act.
10. We attach the following further information required to be included in this application by the district plan, the regional plan, the Resource Management Act 1991, or any regulations made under that Act:

The statutory planning documents, assessed in the attached AEE and relevant to this application are the Canterbury Regional Policy Statement and Christchurch District Plan.

It is requested that the deposit of \$12,500 (incl. GST) for processing the application be invoiced by Council to 'Billing Address' provided below upon receipt of this application.



Matt Bonis (Associate)
Pianz Consultants Limited
On behalf of Progressive Enterprises Limited

Address for Service:
Pianz Consultants Limited
PO Box 1845
CHRISTCHURCH 8140
Attention: Matt Bonis
Mobile: 021 796 670
Email: matt@pianzconsultants.co.nz

Address for Billing:*
Progressive Enterprises Limited
Private Bag 93305
Otahuhu
Auckland 1640
Attention: Brady Nixon (Project Manager)
DDI: 021 368 482
Email: brady.nixon@countdown.co.nz

* Pianz Consultants Limited accepts no liability for any Council costs or charges. Invoices for all such work are to be sent to the Applicant's address above for billing.

Resource Management Act 1991

Christchurch
 City Council 

Report /Decision on Request for an Application to be Referred Directly to the Environment Court

(Section 87E)

Application Number: RMA/2017/3185
Applicant: Woolworths New Zealand Limited (formally Progressive Enterprises Limited)
Site address: 201 Halswell Road
Description of Application: To establish a residential and commercial mixed use development

Introduction

Resource Management (Simplifying and Streamlining) Amendment Act 2009

1. The Resource Management (Simplifying and Streamlining) Amendment Act 2009 (Amendment Act) was enacted to improve the quality and certainty of decision making and to reduce delays and costs by simplifying procedures and rationalising appeal processes.
2. The Amendment Act introduced an alternative method for processing a notified resource consent, commonly known as "Direct Referral". This enables an applicant to make a request to a Council to allow an application to be decided by the Environment Court at the first instance instead of the Council.
3. This particular amendment to the Resource Management Act 1991 (RMA) was designed to address the duplication of process, additional costs, and time delays as a result of applications going through the Council hearing process and then being heard again in the Environment Court.

Application

4. Woolworths New Zealand Limited has applied for land use and subdivision consents from Christchurch City Council (Council) to establish a residential and commercial mixed use development on approximately 21 hectares of land at 201 Halswell Road. The application was lodged on 15 January 2018 and was publicly notified on 31 October 2018. Submissions closed on 28 November 2018. A total of 11 submissions were received.
5. On 5 December 2018, the applicant wrote to Council requesting that, pursuant to Section 87D of the Resource Management Act, the Council allow the resource consent applications to be determined by the Environment Court rather than by the Council.

Supplementary Information

6. This report should be read in conjunction with the:
 - The Assessment Criteria for a Direct Referral (referred to later in this report).
 - The request for the direct referral.
 - The submissions lodged in respect to this application.
7. These documents have been provided to the Commissioner determining this matter.

Statutory Considerations

8. Section 87D of the Resource Management Act states:

87D. *Request for application to go directly to Environment Court*

(1) *The applicant must request the relevant consent authority to allow the application to be determined by the Environment Court instead of by the consent authority.*

(2) *The applicant must make the request in the period—*
 (a) *starting on the day on which the application is made; and*

This is the annexure marked "B" referred to in the affidavit of
Matthew Grainger sworn at Auckland this 14th day of January
 2020 before me

Signature
 A Solicitor of The High Court of New Zealand
 (Solicitor to sign in part on Exhibit)

Emily Heather Davidson
 Solicitor
 Auckland

(b) ending 5 working days after the date on which the period for submissions on the application closes.

(3) The applicant must make the request electronically or in writing on the prescribed form.

9. Section 87E the Resource Management Act states:

87E. Consent authority's decision on request

(1) If the consent authority determines under section 88(3) that the application is incomplete, it must return the request with the application without making a decision on the request. Section 88(4) and (5) apply to the application.

(2) If the consent authority receives the request after it has determined that the application will not be notified, it must return the request.

(3) If the consent authority receives the request before it has determined whether the application will be notified, it must defer its decision on the request until after it has decided whether to notify the application and then apply either subsection (4) or (5).

(4) If the consent authority decides not to notify the application, it must return the request.

(5) If the consent authority decides to notify the application, it must give the applicant its decision on the request within 15 working days after the date of the decision on notification.

(6) In any other case, the consent authority must give the applicant its decision on the request within 15 working days after receiving the request.

(6A) Despite the discretion to grant a request under subsection (5) or (6), if regulations have been made under section 360(1)(hm),—

(a) the consent authority must grant the request if the value of the investment in the proposal is likely to meet or exceed a threshold amount prescribed by those regulations; but

(b) that obligation to grant the request does not apply if the consent authority determines, having regard to any matters prescribed by those regulations, that exceptional circumstances exist.

(7) No submitter has a right to be heard by the consent authority on a request.

(8) If the consent authority returns or declines the request, it must give the applicant its reasons, in writing or electronically, at the same time as it gives the applicant its decision.

(9) If the consent authority declines the request under subsection (5) or (6A) the applicant may object to the consent authority under section 357A(1)(e).

10. If the consent authority grants the request for direct referral, the consent authority must prepare an officers' report on the application and submissions and provide a copy of it to the applicant and submitters (section 87F). If the applicant at that stage still wants the matter directly referred to the Environment Court then the applicant must commence that proceeding in the Court (section 87G). If following receipt of the officers' report the applicant does not want the matter directly referred to the Environment Court then the Council will continue to process the application.

Applicant's reasons in request for Direct Referral

11. The reasons given by Woolworths for requesting direct referral of the consents are as follows:

Legislative Background

- 9.1 The Resource Management (Simplifying and Streamlining) Amendment Act 2009 was enacted to improve the quality and certainty of decision making and to reduce delays and costs by simplifying procedures and rationalising the appeal process.
- 9.2 The Amendment Act introduced an alternative method for processing a notified resource consent application, commonly known as a "direct referral". This enables an applicant to make a request to a consent authority for an application to be decided by the Environment Court at the first instance instead of the consent authority¹.
- 9.3 This particular amendment to the Resource Management Act 1991 is intended to address the duplication of process, substantial costs, and time delays as a result of applications going through the Council hearing process and then being heard again de novo in the Environment Court.

Application - Notification and Submissions

- 9.4 The Application has been publicly notified and 11 submissions have been made:
- (a) 6 in opposition;
 - (b) 2 that take a neutral position;
 - (c) 2 in support; and
 - (d) 1 partly in support.

Trade Competition

- 9.5 A number of the submitters in opposition are commercial developers/ landlords and are considered by the Applicant to be trade competitors (Trade Competitor

Submitters) including the owner of commercial and residential land to the immediate north of the Application site.

- 9.6 Some of the Trade Competitor Submitters have already been involved in judicial review proceedings in the High Court challenging a CCC decision for a commercial development elsewhere in the Central City.

Reasons for Request

- 9.7 In light of this it is considered the Application is best dealt with by direct referral to the Environment Court for the following reasons;

- (a) appeals from the Council's decision on the Application are very likely if not inevitable;
- (b) decision-making associated with the Application would benefit from rigorous testing of evidence under oath that is provided for in the Environment Court;
- (c) the ability of the Environment Court to direct Environment Court assisted mediation and provide for expert conferencing will likely significantly narrow and focus the contested issues for determination; and
- (d) the ability of the Environment Court to properly consider all matters relating to the assertion that some of the submitters in opposition are trade competitors.

- 9.8 It would be beneficial for all parties to have a streamlined decision-making process that enables a decision to be made by the Environment Court that is final, subject to any appeals on points of law to the High Court.

10. Granting the request would achieve the outcomes intended by the Amendment Act. Direct referral to the Environment Court would reduce the duplication of process, time delays and significant costs by avoiding a two stage consenting process.

11. Overall direct referral is the most appropriate way to consider and decide on the resource Application for the Proposal.

Discussion

12. The applicant made the request that the Council allow direct referral within 5 working days after the close of submissions, as required by section 87D.

13. Christchurch City Council have produced criteria to assist staff, Subcommittees or Commissioners when considering an applicant's request that the Council allow direct referral. The criteria are non-statutory criteria and are therefore not binding however they provide a useful basis to consider such requests.

14. The introduction to those criteria set out that:

The starting point for considering a direct referral request should be neutral. There is however a clear intention in the Resource Management (Simplifying and Streamlining) Amendment Act 2009, to enable applications to be directly referred to the Court so as to reduce duplication of process, costs, and time delays as a result of applications going through a Council hearing process and then being heard again by the Environment Court. This overall intent should be kept in mind when considering a direct referral request.

There is no particular weight to be given to each criteria in making a decision. Meeting or failure to meet one criteria is not necessarily determinative on whether the application should be referred or not.

15. The criteria relate to the necessity for referral, providing an enabling process, cost and timeliness, technical resolution and any other relevant matter. I have reviewed these matters and have considered them in the assessment below.

Necessity for Referral

16. There are three aspects to this suggested by the Council's criteria: first, whether a hearing is necessary; secondly, whether there is another decision making process (such as the EPA) that could better determine the application; and thirdly, whether there are substantive matters raised by the application and submissions that are unlikely to be resolved without an appeal hearing.
17. With regard to the first of those matters, the application has been publicly notified and 11 submission have been made, 6 in opposition; 2 that take a neutral position; 2 in support; and 1 partly in support (this submitter set out that they were both in support and opposition to the proposal). The issues raised in the submissions in opposition to the proposal primarily relate to matters associated with the commercial area. All submitters in opposition have sought to be heard in a hearing. A hearing is necessary.
18. With regard to the second of those matters, there does not appear to be any suitable decision making process other than the standard resource consent or direct referral process. I do not consider that the proposal is a matter of national significance that would warrant an EPA process.
19. With regard to the third of those matters, the applications raise substantive issues concerning the objectives and policies of the District Plan. Submitters from the Central City¹, the Halswell Residents Association and Spreydon Lodge Ltd have raised fundamental issues about the expansion of the commercial area and the associated distributional effects of this proposal especially how it relates to the objectives and policies of the relevant planning documents. I doubt whether these issues could be resolved through either a pre-hearing meeting for a Council decision or mediation before the Environment Court. The applicant considers that a number of these submitters are trade competitors and while this report is not the platform to determine this, if this is in fact the case, the Environment Court would analyse this aspect of the applicant's case.
20. If a decision was made by Council to approve the land use and subdivision applications it is possible that the decision could be appealed by one or more of the submitters in opposition. Equally if a decision was made by Council to refuse the applications it could be appealed by the applicant. It has already been outlined that the applicant considers that an appeal is very likely if not inevitable. This is a matter of judgement and I consider that it is difficult to assess the likelihood of such an appeal. However in comparison to other resource consent applications that go through publically notified process I consider that there is a higher probability that an appeal will result given the nature of the submissions relating to the expansion of the commercial area.
21. Other submitters (whom are not in opposition) have raised a number of issues, which those submitters themselves consider can be resolved by via amendments to the proposal and/or conditions of consent.

Providing an Enabling Process and Cost & Timeliness

22. There is a clear intention in the Resource Management (Simplifying and Streamlining) Amendment Act 2009, to enable applications to be directly referred to the Court so as to reduce duplication of process, costs and time delays as a result of applications going through a Council hearing process and then being heard again by the Environment Court. It is difficult to draw a firm conclusion on all the reasons set out by the applicant because it involves making predictions on a number scenarios that could unfold. I would expect that most requests to Council's for a direct referral would be determined with some uncertainty.
23. The applicant outlines that having the consent decided by the Court is likely to reduce costs, delays and uncertainty for all parties.
24. It is possible that for some resource consent applications submitters may be deterred from appearing in Court due to the unfamiliar and formal nature of the Court process and the overall cost. I consider that this is less of an issue for this application because most of the submitters who wish to be heard would be familiar with resource management processes and regardless of the decision making process:

¹ Carter Group Ltd, Antony Thomas Gough, Lichfield Holdings Ltd and the Central City Business Association

- i. the issues raised in any submission will need to be given due consideration by the decision maker; and
- ii. any submitter still has the ability to engage their own experts and/or legal representatives to prepare and present evidence in support their submissions at the hearing phase.

25. One further relevant factor is the cost to the Council of participating in, and engaging legal counsel and expert witnesses for the Environment Court. Until the applicant lodges a Notice of Motion commencing the direct referral process in the Court, the Council can use its usual powers under section 36 of the RMA to recover its costs. These costs can include the Council application fee, notification costs, and any other costs incurred in receiving and processing the application up to the point of direct referral. This includes the cost of Council preparing its planning report under section 87F for the Court (in the same way as a council would recover the costs for preparing its section 42A report for a council hearing if the application had not been directly referred). The Council can also seek to recover its costs from the applicant for its involvement in a direct referral application once it is before the Court however that outcome would be dependent on a decision of the Environment Court. These include costs of assisting the Court in relation to its report (section 87F), appearing before the Court as a party, and giving evidence.

26. There is the potential for the costs on Council (and consequently ratepayers) to be relatively substantial for a direct referral given the breadth of issues that would need to be addressed for a decision on these applications. Accordingly I initially held the view that a recommendation to approve the request for direct referral should be dependent on the applicant agreeing to pay all of these costs. I outlined this to the applicant who advised that ... *the applicant will pay all reasonable costs in accordance with the RMA up until the Environment Court process and then in accordance with any directions set by the Court.* I now consider that this situation is similar to the one that the Council would be in if there was an appeal to the Environment Court following a Council decision on a resource consent application. As I have noted above, in this case there appears to be a higher probability than other notified resource consent applications that an appeal will result.

Technical Resolution

27. The Environment Court will assist the resolution of matters of technical natures and will enable determination of the application through examination and presentation of sworn evidence. Of particular relevance, the determination of this application by the Environment Court will help provide direction for other similar applications where commercial activity is proposed in residential zones, in particular how to implement the related objectives and policies in Chapters 3, 14 and 16 of the District Plan.

Other Matters

28. I am not aware of any other matters that require further assessment.

Recommendation

That the request for the resource consent application to be directly referred to the Environment Court be approved pursuant to Section 87E of the Resource Management Act.

Or

That the request for the resource consent application to be directly referred to the Environment Court be declined pursuant to Section 87E of the Resource Management Act.

Reported and Recommended by:
Date: 14 January 2018

Paul Lowe, Principal Advisor Resource Consents

Commissioner's Note

I note first that I am familiar with the applications and the site, through having been the Commissioner who determined under section 95A of the Resource Management Act that the applications should be publicly notified. I am thus familiar with the issues that have been raised through the notification process and the applications themselves.

As noted by Mr Lowe it is difficult to predict whether, if the standard resource consent process was left to run its course and be heard by the Council, an appeal would arise. However, in this case the stakes are high, and most of the parties are well-resourced. I consider it more likely than not that whatever the outcome of a Council decision on these applications, an appeal or appeals would be lodged. There is therefore likely to be a significant saving in costs and avoidance of delays if the applications do proceed directly to the Environment Court. In any case, even if the decision was not appealed, it is likely that a hearing at Council level would be complex and perhaps almost as costly as a hearing in the Court, given the need for expert evidence and legal representation.

I note also that, if the matter goes first to the Council, there are additional legal issues that might arise. These include, firstly the possibility of a section 357 objection by the applicant to any decision not to refer the application to the Court². Secondly there is the trade competition issue to determine, which might also generate preliminary proceedings. If the matter is directly referred any preliminary issues could be more efficiently dealt with by the Court as part of its process.

As against the above considerations, an initial hearing before the Council can sometimes identify the issues of concern more clearly and enable at least some of them to be resolved. The concerns about the adequacy of stormwater management raised by Sparks Rd Gardens Limited could be an example of this, as well as the issues raised in the submissions of Environment Canterbury and the NZ Transport Agency.

Another concern with direct referral is that some of the submitters may be reluctant to appear in the Court, because of concerns about formality and costs. However, my experience in the Court, including on one direct referral case, is that the Court generally gives lay parties a sympathetic hearing and assists them to express their concerns.

This case is raising major issues about the interpretation and application of a new district plan, which contains detailed objectives and policies relating to urban and economic development, as well as quite prescriptive provisions relating to urban design and the natural environment for this particular site. The applications challenge at least the site-specific provisions such as the Outline Development Plans, and according to some submitters and possibly the Council, also the more general objectives and policies. As these site-specific provisions are a feature used also for other growth areas throughout the City, the outcome this case will inevitably create a precedent for such other areas.

On balance, I have concluded that this case raises quite significant issues and it would be preferable for the case to be referred directly to the Environment Court.

Decision

That the request for the resource consent application to be directly referred to the Environment Court be approved pursuant to Section 87E of the Resource Management Act.

Commissioner:

Name: David Mountfort

Signature: 

Date: 16 January 2019

² Under section 87E(9) of the RMA

ATTACHMENT B

List of names and addresses of persons to be served

	Name	Address for service
1.	Christchurch City Council	c/- Paul Lowe; Brent Pizzey Paul.Lowe@ccc.govt.nz Brent.Pizzey@ccc.govt.nz
2.	Carter Group Limited	nicki@cartergroup.co.nz
3.	Antony Thomas Gough	antony@theterrace.co.nz
4.	GW Halswell Limited	Hamish Wheelans hamish@gwlimited.nz
5.	Halswell Timber Limited	c/- Andrew Schulte (Cavell Leitch) Andrew.Schulte@cavell.co.nz
6.	Lichfield Holdings Limited	Nick Hunt lichfield.hold@xtra.co.nz
7.	Sparks Road Garden	c/- David Lee and the Lee Family 288 Sparks Road Halswell, Christchurch 8025
8.	Central City Business Association	Paul Lonsdale paul@ccba.co.nz
9.	Halswell Residents Association Inc	John Bennett, David Hawke, Matthew Shallcrass secretary.HRA@gmail.com
10.	Spreydon Lodge Limited	Kerstin Ghisel ruth@barker.co.nz
11.	Environment Canterbury	Edward Wright edward.wright@ecan.govt.nz
12.	New Zealand Transport Agency	Stuart Pearson stuart.pearson@nzta.govt.nz consentsandapprovals@nzta.govt.nz