

**IN THE MATTER OF** the Resource

Management Act 1991

**AND**

**IN THE MATTER OF** an application by

Foodstuffs (SI) Properties  
Limited for a Plan Change  
(No. 09) to the Timaru  
District Plan

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**RECOMMENDATION OF COMMISSIONER**

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**INTRODUCTION**

The Highfield Shopping Centre at 143 Wai-iti Road serving suburban north-west Timaru in Wai-iti Road consists of a small supermarket, liquor store, café and a number of specialty shops. It was established in 1971. In 1973 some extra car parking was consented to in Chalmers Street and in 1981 an application to expand the shopping centre was declined. In 1989 consent was granted to further extend the car parking in Chalmers Street and in 2002 an application to establish a storage building in Sealy Street was declined. In its current situation the supermarket and shops with 338 car parking spaces fronting Wai-iti Road lies within the Commercial 2 Zone while the rest of the parking in Chalmers Street (70 spaces) lies within the Residential 1 Zone.

The supermarket is now out of date and unable to provide a full range of services. Foodstuffs have purchased the residential properties at 6, 8 and 10 Sealy Street, all of which lie adjacent to the existing car parking in Chalmers Street. Following the demolition of three houses, this will create a rectangular site on which a new supermarket

building can be placed. Once that is commissioned, it is proposed to demolish the old supermarket and liquor store and redevelop the mall with two new tenancies and increased on-site car parking.

The applicant seeks to rezone residentially zoned property in Chalmers Street which is currently used for car parking and 6, 8 and 10 Sealy Street from Residential 1 to Commercial 2. With this zone change accomplished the applicant anticipates removing the three dwellings on Sealy Street, constructing a new supermarket of 2,880m<sup>2</sup> in their place. Demolition of the old 1,358m<sup>2</sup> supermarket and its replacement with a new car parking area, reconfiguration of the existing car parking and new landscape work.

It is expected that the total gross floor area of buildings in the centre will rise from 2,610m<sup>2</sup> to 4,732m<sup>2</sup> as a result of development of the site in the exercise of the plan change.

The request for a plan change incorporates a requirement for all redevelopment of the site to be in accordance with a Concept Plan to be included as an appendix to the District Plan. This Concept Plan is to control the location of buildings within the expanded Commercial 2 Zone as well as introducing a requirement for extensive landscaping along the boundary with the residential properties to the north. No changes to the Objectives and Policies of the District Plan are proposed.

The application includes an analysis pursuant to section 32 of the Act and is accompanied by an Architectural Design Statement, a Transportation Assessment Report, an Acoustic Assessment and an Economic Assessment.

After a period of consultation undertaken by Foodstuffs (SI) Properties Limited and a meeting with local residents, the Plan Change request was lodged with the Council and

public notification was achieved on 15 December, 2007. Two submissions were received.

## **THE HEARING**

This was held in the Timaru District Council chamber on Tuesday 3 June, 2008.

At the hearing I was assisted by Fiona Eunson, Senior Planner/Analyst for the District Council. Ms Eunson had produced a section 42A report on the plan change that had been pre-circulated prior to the hearing. Her report was taken as read, although she spoke to some minor corrections at the opening of the hearing.

The applicant was represented by Legal Counsel, Mr G Cleary, who presented legal submissions and called the following witnesses:

- (a) Ms Rebecca Parish, the Development Manager for Foodstuffs.
- (b) Mr John McCoy, an Architect.
- (c) Mr Damien Ellerton, an Acoustic Consultant.
- (d) Mr Tony Penny, a Traffic Management Consultant; and
- (e) Mr Greg Dewe, a Consultant Planner.

Mr Rodger Davidson of Foodstuffs was present to answer questions if required.

Mr Cleary explained that post lodgement of the plan change application, the Council requested further information to clarify a number of matters relating to landscaping shading, noise and parking. Some future minor non-compliances were identified. It was agreed that a resource consent application would be the most appropriate method of addressing these issues. I have been delegated the task of making a decision on the

resource consent application, but my task with the Plan Change is to make a recommendation to the Council. Mr Cleary submitted that a sequential approach would be appropriate whereby, on the assumption that I would make a favourable recommendation for approval of the plan change that would go to the Council first, the Council could then make its decision and issue the required notices then a decision on the resource consent could follow. While there was no technical reason, a resource consent could not issue prior to approval of the plan change, he submitted that the procedure he outlined was more robust because the plan change could be given more weight.

Ms Eunson had expressed concern that any conditions imposed in respect of the Residential 1 Zone would be made redundant by a change of zoning. Mr Cleary explained, however, that the resource consent application proposed a set of conditions which were to address amenity effects and to supplement the provisions of Commercial 2 Zone. Foodstuffs would have to comply with these conditions regardless of any change of zoning.

Bearing in mind that there was to be no change to the Objectives and Policies of the District Plan (which are settled), the Council is faced with evaluating the proposed plan change as a method of achieving the outcomes anticipated by those provisions. Such evaluation must be in accord with Part II of the Act.

Broadly speaking, the objectives and policies anticipate the expansion of commercial zones provided that the road network is not compromised, adequate infrastructure can be provided, potential noise conflicts are minimized, residential amenity is safeguarded and conflict between land uses is minimized. Mr Cleary acknowledged that concerns had been expressed in the officer's report on a number of these issues and these were to be addressed by the witnesses.

Relevantly, Mr Penny explained that heavy vehicles would not have to back onto the street, all necessary manoeuvres could be carried out within the site. Mr Penny did not

believe any of the mitigation measures such as repositioning of the loading area, road markings within the parking areas, the reversal of traffic through the southern Chalmers Street access, and street works were necessary. Mr Ellerton addressed issues relating to noise producing a noise management plan. This would ensure that all the relevant standards were complied with. Mr McCoy modeled the sun patterns from the proposed buildings and indicated that although commercial in function, they would be sympathetic to the local environment.

Mr Dewe considered the relevant provisions of the Regional Policy Statement, the District Plan and the Resource Management Act expressing the opinion that the proposed plan change was consistent with all of these.

Of the two submitters, Mr Tony Shaw (who chose not to appear at the hearing) sought a condition or conditions to ensure that staff were instructed to park their cars on site rather than on the street. Mr Shaw is the owner of property at 16 Chalmers Street on the opposite side from the car parking on the corner with Wrights Avenue.

Mr and Mrs Dewar own property at 11a Chalmers Street one property away from the existing car parking area. Mr Dewar explained that he was concerned about noise from the unloading of goods vehicles, the effect of lighting, the adequacy of landscaping, the possibility of changes to the colour scheme, the storage and collection of rubbish and continuing compliance with conditions which might be imposed. Mr and Mrs Dewar were not opposed in general to the plan change.

In response, Ms Eunson, assisted by contributing consultants, expressed satisfaction with Mr Ellerton's noise management plan, although there remained a small concern that the loading bay door would remain open when a B train was being unloaded. It would however, be closed for the loading of other vehicles.

Ms Eunson considered that despite Mr Penny's report, there were still problems with traffic circulation on site. The inward tracking pattern for B trains compromised the staff car parking at the northern end of the Chalmers Street site and passed so close to some of the parking spaces that over long parked vehicles would impede progress. The exiting of B trains onto Chalmers Street would require the vehicle to travel for a short distance on the wrong side of Chalmers Street and that was not desirable. She still considered that the southern access from Chalmers Street should be for egress only because of the difficulty posed for right turns into the site in the face of queuing traffic turning from Chalmers Street into Wai-iti Road. Ms Eunson considered that having the parking spaces on the south boundary of the site arranged at right angles may pose access problems. The information provided by Mr Penny in his paragraph 74 had indicated that Timaru's district plan requirements for parking were light compared with other plans leading her to wonder if on-site parking would be sufficient.

Replying to matters raised, Mr Cleary noted that a lighting plan had been lodged with the Council, a condition requiring a colour palette would be acceptable and could be included in the plan change. Deliveries would be on a 7 day a week basis not before 7.00 am with 95% of them completed by 10.00am.

Mr Davidson emphasised that Foodstuffs was constituted so that, unlike other companies, it could not be taken over. All the businesses are owner operated. The colours and materials for New World are strictly controlled in order to be suitable in residential locations. Some flexibility with a colour palette would be desirable but Foodstuffs did not wish to have bright colours.

Mr Penny emphasised that it was only with the B trains that the loading door would remain open. The front of the truck would protrude a little. Cones would be placed to aid the B train access and staff car parking would be able to be managed to avoid any conflict because peak staffing coincided with peak trading after 3pm. Nearly all servicing would be in the morning. Mr Penny explained that the swept path shown was generous. A skilled driver could travel a much more restricted path and there should be no problem

with parked cars. He disposed that the proposed reversal of traffic at the southern Chalmers Street access would have no advantages and fewer cars would use it because the ATM machine which drew a good deal of custom is to be removed. The right angled parking spaces at the southern boundary would be 2.6m wide to aid entry and exit. Mr Penny considered that the proposed car parking was sufficient and that for convenience some customers would park on the street even when plenty of off street spaces were available. He was very strongly of the opinion that a median was not required in Sealy Street.

### **SITE VISIT**

Following the hearing, I visited the site between 4 and 4.30pm. At that time, although the mall and the supermarket were busy, the parking areas were only about 50% full. Few cars were parked in the street. The aerial photograph accompanying the officer's report showed a very similar situation.

### **DISCUSSION OF ISSUES**

It is uncommon for a Commissioner or for that matter a council hearings panel to hear an application for a plan change and a resource consent for the same project simultaneously. The reason for filing a resource consent is because some elements of the proposal would not entirely meet the requirements of the Commercial 2 Zone. These matters are minor and relate to landscaping, car parking and a small setback intrusion. Since my task is to make a recommendation on the plan change and I am delegated the task of making the decision on the resource consent, I have proceeded with the consideration of the plan change first of all, this is in accord with a suggestion made by Counsel for the applicant.

### **Statutory Issues**

The First Schedule to the Resource Management Act 1991 prescribes the procedures for a plan change and sections 74 and 75 identify the matters that are to be considered. Section 74, among other things, refers to the provisions of Part 2 and the Council's duty in terms

of section 32 and Section 75 relevantly requires a plan change not to be inconsistent with the Regional Policy Statement and other regional documents.

A plan change must be accompanied by an assessment made in terms of section 32 of the Act. This is usually conducted first in terms of the appropriateness of objectives and policies and then in terms of the methods through which the objectives and policies are to be implemented. In this case, no changes to the current objectives and policies are proposed so the full test outlined in *Eldamos Investments Ltd vs Gisborne District Council* (WD 4705) is not necessary. The Council's task is a more simple case of examining the changes proposed to the zoning which must be effective in implementing the already settled policies and objectives.

The plan change was accompanied by an economic analysis and in this case, as well as adopting the current rules for the Commercial 2 Zone a further constraint in the form of a concept plan is proposed. This extra level of control helps to ensure the integrated management of effects in terms of Section 31 of the Act.

I have concluded that the plan change is the most appropriate for achieving the settled objectives and policies in the plan. Assisting me toward this conclusion is the fact that no challenge has been mounted in terms of section 32. The relevant objectives and policies have been outlined by Ms Eunson and these relate principally to maintenance of a safe and efficient roading network, infrastructure, amenity values such as visual and noise and potential conflict with other land uses. The Commercial Zones are the settled method of exercising these policies and the appropriateness of extending the zone at Highfield at least in part simply confirms a resource consent granted some eighteen years ago. The plan change cannot extend beyond the land concerned and the Outline Development Plan ensures a proper landscaped interface with the residential zone together with appropriately located entrances, although that onto Chalmers Street closest to Wai-iti Road is a little too close to the intersection in terms of District Plan standards. Some matters of detail beyond this are more appropriately addressed at a resource consent stage.

The two submissions received raise a number of issues and these, together with other concerns have been discussed in Ms Eunson's report as advised by the Council's consultants. I discuss these below.

### **Traffic Issues**

Submitters' concerns were largely directed at the need to provide sufficient off street car parking thus avoiding congestion in local streets. Council officers were concerned that delivery vehicles would have to reverse onto the site from the street. Mr Penny, however, demonstrated that this was not so and suggested modifications to the concept plan layout were not necessary. He explained that B trains serving the supermarket would affect staff parking spaces but since this would generally be one visit (occasionally two) at around 8am daily this could be managed very easily. The B train would also have to take up more than half of the Chalmers Street entry/exit and would have to cross the street centre line on exit. Again, this is a common occurrence with such shopping centres and would cause no difficulty during the delivery times. B train access was not required to the other shops and swept path analysis shows that service vehicles up to the size of an 8m rigid truck can manoeuvre through the front parking area to use the identified pick up/delivery area.

The District Plan requires two-way vehicle access to Commercial sites (General Rule 6.7.3(a) and that such access be a minimum of 10m from the nearest intersection (General Rule 6.7.3(ii)). The existing access from Chalmers Street to the front parking area as shown on the concept plan does not comply with either: it is proposed to have one way traffic into the site (as it is currently) and although over ten metres back from the kerb line, it is only about 8m back from a threshold produced by linking the property frontages along Wai-iti Road.

The officer's report recommends that this access be changed to exit only with a median splitter to further restrict it to left turn exit only. There was considerable discussion on

this matter. Council officers were concerned that vehicles wishing to turn right into the site from Chalmers Street would be blocked by vehicles stacked in line waiting to exit onto Wai-iti Road. Mr Penny explained that the use of the Chalmers Street after leaving Wai-iti Road entrance was expected to decrease with the removal of the ATM machine which currently attracted much of the traffic. This, however is not a certain outcome of the plan change. Vehicles turning right from Chalmers Street would face low opposing volumes and if they had to wait momentarily, it was at a point where there was no kerbside parking and vehicles could pass them on the left. If the flow was reversed, vehicles searching unsuccessfully for a parking space along the Wai-iti Road frontage would be forced to exit onto Chalmers Street and find another parking area via the local road network. Under the existing arrangement cars would emerge into the Sealy Street car parking area where there would be likely to be more spaces. Mr Penny also considered that a medium splitter was not desirable whichever direction of traffic flow applied. People would U turn or drive round the obstacle on the wrong side. Retaining the existing direction of flow would not cause confusion with local drivers used to the arrangement and restrictions signs would not be required on Chalmers Street.

I have reflected on these matters and have concluded that Mr Penny's view is to be preferred, at least in the foreseeable, or short term future. Current and likely future levels of traffic do not warrant any changes but this could change in the longer term. The access point on Chalmers Street is non-complying and could be subject to a review condition on resource consent. It should be labeled thus on the Outline Development Plan so that a non-complying situation is not perpetuated.

There was also discussion about the need for a median island across the access in Sealy Street. This access is in a complying position. Mr Penny took the officer's report to be recommending a barrier extending from Wai-iti Road for the full 40m to the access in Sealy Street. As it turned out, this was not what the officers were recommending: they had something more modest in mind. Mr Penny said that this would restrict right hand turns in and out of the shopping centre driveway therefore encouraging U turns and other

unsafe practices. He opined that levels of traffic were such that there should be no movement restrictions.

The officer's report recommends a new General Rule 6.6.5 to deal with the upgrading of existing roads. This would be triggered when urban commercial activities at the shopping centre are expanded. This would require contributions for roading upgrades to provide safe and efficient vehicle cycle and pedestrian access. This is recommended in partial acceptance of the submissions. Mr Shaw was concerned that parking on the roadside should be minimised. Mr and Mrs Dewar, in terms of traffic, had similar concerns and sought controls over loading and unloading so I do not think the submitters sought this kind of solution. However, on the face of it, Council concern to ensure the efficient and safe operation of the street network can well be a reason for such a rule. Christchurch City, for instance, has a high traffic generator rule which provides for any project requiring more than 25 parking spaces to be considered as limited discretionary activity with discretion limited to traffic effects. This could allow the consent authority to impose conditions relating to access such as streetworks to be undertaken at the applicant's cost. No such rule exists here and to include a rule now may lead to questions of scope particularly when it is generally agreed that overall there is unlikely to be a significant impact on the road network. I think this is a situation where there can be no justification for the proposed barriers at least in the foreseeable near future.

### **Parking Issues**

There have been several methods of assessing parking demand. In the officer's report all floor areas have been considered as shops generating a requirement of 190 spaces. The GHD review breaks it down into shops, offices and cafes to arrive at a need for 170 spaces. Mr Penny used the categories of shops, offices and storage to arrive at a requirement of 153 spaces. 154 are to be provided. The officer's report concludes that parking issues will be addressed if staff parking is required to be on site and the issues about access are addressed. I agree that staff should be provided with on site car parking and this is shown on the Outline Development Plan. I note that the applicant is willing to implement a work place travel plan for staff but this is not relevant to the Plan Change.

In particular, it is worthy of note that peak staffing does not occur until peak trading times in the afternoon. This will enable a management regime that maintains a clear path for the B train deliveries.

Apart from the directional arrows to ensure one way traffic in an easterly direction and give way markings, where there is a cross road intersection between aisles, no further markings other than those shown on the Outline Development Plan are proposed by the applicant. There was some discussion about the possibility of the marking of pedestrian paths with crossings but here I agree with Mr Penny that the parking areas are small and distances are too short to justify further formal markings.

The applicant plans to provide 15 cycle parking places and there are to be pedestrian footpaths through the Mall and across the front of the supermarket. A further accessible car park has been shown in the front car park.

### **Noise**

The applicant commissioned a report from Marshall Day Associates recommending that a boundary fence be constructed with 11 Chalmers Street of sufficient height to break the line of sight between the first floor window and the supermarket. In fact a brick wall is proposed. This would need to be over 2 m high and would have to be met with the agreement of the owners of that property. This is best dealt with as a condition of a resource consent. A noise management plan would be the appropriate method to adopt and this should ensure that the relevant district plan noise standards are met. Ms Eunson has recommended some additions to the performance standards for noise and these have not been contested.

### **Lighting**

At the hearing, we were informed that a lighting plan had been lodged with the Council. It was not presented at the hearing. It is evident, however, that the applicant intends to comply with the existing district plan requirements and no change to them is required.

### **Hours of Operation**

In theory (and probably practice) the performance standards for noise effectively limit the hours of operation. For that reason, no change to the District Plan provisions is appropriate. I note, however, that the accompanying resource consent application 6632 prescribes the hours of operation.

### **Landscaping**

Ms Eunson has suggested that a provision be included in the Performance Standard for Visual Amenity in the Commercial 2 Zone to ensure that trees are of sufficient stature when planted to mitigate the visual effect of the development on the residential area. This has not been contested.

### **Rubbish**

It is anticipated that the project will comply with Rules 3.5.6.5.5.4 and 3.5.6.5.5.7. No change is necessary.

### **Colours**

The currently proposed colour scheme meets with universal approval. That it might change to something unsuitable in future is of concern to one submitter. Ms Eunson has suggested that the performance standards for Visual Amenity be amended to require the colour scheme to be of low-key earth tone colours.

As I understand it, this accords with the applicant's intentions.

## **CONCLUSION AS TO ISSUES**

For the most part, few issues are outstanding because the applicant has not contested the recommendations in the officer's report. Those still contested are those related to access and the car parking. I have had to decide between the officer's recommendations supported by Mr Turner and the opinions expressed by Mr Penny. In the event I have decided that Mr Penny's views generally are to be preferred but it is not without some misgivings among other things because of the position of the entrance from Chalmers Street which is closest to Wai-iti Road and this could be cemented in place by the adopting of the Concept Plan. The answer to that may be to show an entrance set back depicting the full 10 metres in the Concept Plan so that on redevelopment if or when it occurs leads to compliance. Failing that, a note could be attached to the plan to the effect that on development this entrance should be repositioned to comply.

## **RECOMMENDATIONS**

That Proposed Plan Change 9 be **approved** subject to amendments in line with the above discussion.

1. **Amend planning maps 35 and 38 by rezoning the "back" parking area adjoining Chalmers Street (Lots 1-2 DP 57047 and Pt Lot 88 DP 3110) and the three residential sites at 6, 8 and 10 Sealy Street (Lot 3 DP 57047 and Lot 1-3 DP 16705) from Residential 1 to Commercial 2;**
  
2. **Amend the list of Permitted Activities for the Commercial 2 Zone by inserting an asterisk after each of the following rules: 1.1 Shops\*... 1.2 Offices\* ... and ... 1.9 Carparking\*;** and
  
3. **Amend the list of Permitted Activities by inserting the following words:**  
  
(\*See Performance Standards 5.10 and 5.11 for this zone).

**4. Amend the Commercial 2 Zone rules by inserting the following new Performance Standards:**

- *Compliance with Concept Plans for Highfield Shopping Centre*

*Location of Shops, Offices and Parking*

5.10 *In that part of the Commercial 2 Zone bounded by Wai-iti Road, Chalmers Street and Sealy Street, Timaru, all development shall be located in accordance with the Concept Plans included with the Commercial 2 Zone rules.*

*Provision of Landscaping*

5.11 *Landscaping for that part of the Commercial 2 Zone bounded by Wai-iti Road, Chalmers and Sealy Streets shall be established in accordance with the Concept Plans included with the Commercial 2 Zone rules.*

**5. Amend the Commercial 2 Zone rules by inserting the Concept Plans (ie plans AS05 and Sk03) at the end of the Commercial 2 Zone rules, but subject to amendments detailed below (some of these modifications were indicated by the applicant at the hearing):**

- (i) that at least one accessible parking space be relocated from the “back” parking area at the entrance to the proposed supermarket to the “front” parking area;
- (ii) include further onsite directional road marking (such as give way markings within the “front” parking area where the left and right turn movements meet at the eastern end of the shopping centre and in the “back” parking area where vehicles exit the aisle adjacent to Chalmers Street);
- (iii) indicate where cycle parking facilities will be located within both parking areas;
- (iv) identify taxi loading areas within both parking areas;

- (v) show pedestrian linkages through both parking areas to the proposed shopping complex including to Sealy and Chalmers Streets;
- (vi) identify pedestrian areas at the front or western entrance to the proposed supermarket, and
- (vii) indicate that vehicle access to the Chalmers Street from the “front” parking area, that adjoins Chalmers and Sealy Streets and Wai-iti Road is entry only.

**6. Amend the Commercial 2 Zone rules by inserting the following new performance standard under the subheading “Noise”:**

The following rule applies to activities on land within the Commercial 2 Zone bounded by Chalmers and Sealy Streets and Wai-iti Road in Timaru:

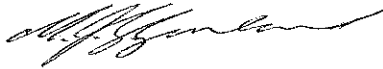
- (i) That the building plans for the proposed new supermarket and/or redeveloped shopping centre ensure that any louvres associated with mechanical equipment are situated so that they do not face the nearest houses.
- (ii) That a boundary fence shared with 11 Chalmers Street be established to a height that breaks the line of sight between the first floor window of the supermarket to further reduce noise to the dwelling (note: a fence over 2 metres may mitigate noise further).
- (iii) That a Noise Management Plan be prepared in advance of the proposed new supermarket and supplied to the Council prior to opening, that it be reviewed annually and/or on receipt of a complaint and that it address the following:
  - a. All forklifts are to be operated inside the supermarket and/or shopping centre with the external storeroom door to be kept closed except for when trucks are ingressing or egressing the supermarket building;

- b. Any goods delivered to the supermarket must be unloaded within the supermarket building behind closed doors for all vehicles except B trains the tractor unit of which may protrude during unloading operations;
  - c. All chiller units on delivery vehicles must be shut off whether queuing or parked on or off-site while waiting to enter the supermarket and/or the shopping centre to deliver goods;
  - d. Opening and closing of the mechanical sectional door into the loading area of the supermarket is kept to a minimum.
- (iv) That the delivery schedule to the supermarket and/or shopping centre be made available upon request of the Council and that it include sufficient detail so that should any complaint be made that it is possible to identify the name of the delivery company, date, and time of any delivery to the shopping complex.
7. **Amend the Commercial 2 Zone rules by inserting the following new performance standard under the subheading “Visual Amenity”**
- (i) That landscaping of the site bounded by Chalmers Street, Wai-iti Road and Sealy Street include at least semi mature trees.
  - (ii) That the colour scheme used for any future buildings on the site bounded by Chalmers Street, Wai-iti Road and Sealy Street be low key neutral or earth tone colours.
8. **Amend General Rule 6.8 by inserting the following new rule under the new subheading “Work Place Travel Plans”**
- That Work Place Travel Plans be provided for all staff working at the shopping complex in the Commercial 2 Zone bounded by Chalmers Street, Wai-iti Road and Sealy Street and these plans promote an alternative means of travelling to work to

the use of private cars including public transport, car pooling, pooling of taxis, cycling and walking.

9. **That the Concept Plan be altered to indicate a Chalmers Street entrance that complies with the standards in the district plan (10 m setback)\*.**
  
10. **That to the extent the plan change has been modified by the above, the submissions be accepted in part.**

\* Note that the existing entrance will be able to be retained under existing use rights until such time as redevelopment of the mall is undertaken.



**M J G Garland**  
**Commissioner**

**Date: 31 July, 2008**