

BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA

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

AND of an appeal under s 120 of the Act

BETWEEN POKENO BACON  
MANUFACTURING LIMITED

ENV-2019-AKL-000282

Appellant

AND WAIKATO DISTRICT COUNCIL

First Respondent

AND WOOLWORTHS NEW ZEALAND  
LIMITED

Applicant

Environment Judge M Harland sitting alone under s 279 of the Act  
IN CHAMBERS at Auckland

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**CONSENT ORDER**

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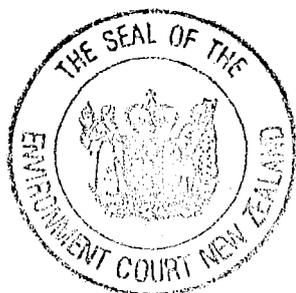
- [A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:
- (1) the conditions of consent are amended as shown in underline and strikethrough in **Appendix A** of this order;
  - (2) the appeal is otherwise dismissed; and
- [B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

**REASONS**



## Introduction

- [1] This order relates to the resolution of the appeal by Pokeno Bacon Manufacturing Limited (**the appellant**) against the decision of Waikato District Council (**the Council**) to grant resource consent to Woolworths New Zealand Limited (**Woolworths**) to construct and operate a supermarket and associated activities at 58 Great South Road, Pokeno (**Decision**).
- [2] The appellant lodged an appeal against the Decision seeking that Woolworths' resource consent be declined.
- [3] Winifred McIntosh, Pokeno Village Holdings Limited, The Pokeno Community Committee and Z Energy Limited joined the appeal under s 274 of the Act.
- [4] The Pokeno Community Committee opposed the relief in the appeal, but raised concerns around the removal of the existing angled parking on Great South Road during construction of the supermarket. Pokeno Village Holdings Limited, Winifred McIntosh and Z Energy Limited opposed the relief sought in the appeal.
- [5] Since the appeal was filed, the parties have engaged in discussions regarding the resolution of the appeal. Through those discussions, the issues in contention were significantly narrowed to the availability of carparks around the site during construction of the supermarket. In particular, the appellant confirmed it was concerned with the loss of the existing angled carparks on Great South Road and the potential for contractors to use public carparks near the site during construction, which may reduce the availability of parking for local businesses during that period.
- [6] The existing carparks on Great South Road are partially located on Woolworths' site and partially located within the public road reserve. They are not marked. Part of the area currently used for angled parking traverses the head of Wellington Street, which currently sits as an unformed paper road and junction to Great South Road. Wellington Street will be formed to enable the construction of the supermarket.



- [7] In the Decision, the Commissioners acknowledged that the carparks partly lay outside the subject application site, and noted that they were satisfied that it was not necessary for Woolworths to be required to provide temporary carparks (although the Commissioners appreciated the efforts made by Woolworths to make space available for the Council to arrange temporary parking).<sup>1</sup> However, the Commissioners also acknowledged that the carparks have been utilised by the public for some time and that their removal will disadvantage those wishing to stop at the Pokeno shops.<sup>2</sup>
- [8] Accordingly, the Commissioners imposed condition 5A, which requires Woolworths to take the necessary measures to keep the existing carparks on Great South Road available for public use for as long as reasonably practicable during construction, and that parking by construction vehicles only occurs on the construction site.

#### **The agreement reached**

- [9] The parties have further refined, and now reached agreement on revisions to, condition 5A to address the concerns raised in the appeal and to provide clarity to local businesses. The condition proposed is as follows:

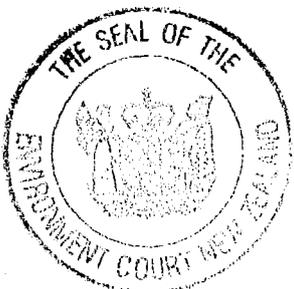
5A The consent holder shall, to the satisfaction of the Waikato District Council, take the measures necessary in order that:

- (a) with the exception of those carparks within the area marked "No Parking Zone" on the Parking Exclusion Plan annexed to this consent, the existing angle carparks on the road frontage of the site and Great South Road are retained for as long as reasonably practicable during construction works authorised by this consent until three months prior to the anticipated date the supermarket will commence trading, or longer if practicable without delaying the construction program for the supermarket.

The consent holder shall provide written notice to the Council and local businesses within the vicinity of the Parking Exclusion Plan area no later than one month prior to the carparks being removed; and

<sup>1</sup> Commissioners' Decision dated 25 September 2019, at 7.1.1.

<sup>2</sup> Commissioners' Decision dated 25 September 2019, at 7.1.1.

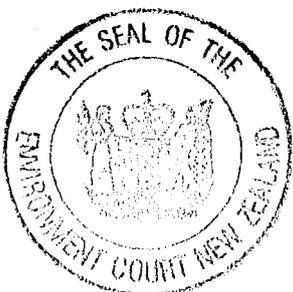


- (b) all construction staff are notified that they may not park in the "Contractor Parking Exclusion Zone" marked on the Parking Exclusion Plan annexed to this consent. The Contractor Parking Exclusion Zone will be monitored during the period of construction by the consent holder and a copy of the Parking Exclusion Plan will be included in the integrated Construction Management Plan.  
~~Parking by construction vehicles occurs on the construction site.~~

Advice note: for the avoidance of doubt, the consent holder is not required to maintain, and may remove the existing carparks within the area marked "No Parking Zone" on the Parking Exclusion Plan annexed to this consent.

[10] The parties agree that the revisions to the above condition are the most appropriate way to resolve the issues raised in the appeal. The key features of, and rationale for, the proposed condition are as follows:

- (a) The amended condition requires Woolworths to undertake the construction of the site in a manner that enables most of the area currently used for angled carparks on the frontage of Great South Road to remain available for public use until three months prior to the supermarket commencing trading.
- (b) Prior to the supermarket commencing trading, Woolworths will require access to the land currently occupied by the carparks to construct the landscaped public plaza on the Great South Road frontage. The public plaza is an integral element of the proposal which is necessary to meet the Council's vision for development of the town centre, and the urban design requirements of the Waikato District Plan. The three month period is a sufficient timeframe to enable Woolworths to undertake these works prior to the supermarket opening.
- (c) Some of the existing angled carparks will need to be removed for the construction of Wellington Street and access to the construction site. These are the carparks highlighted yellow on the Parking Exclusion Plan and marked "No Parking Zone". As a result, these parks cannot be made available to the public during construction. An advice note has been included in the amended condition to clarify that there is



no obligation on Woolworths to maintain, and that it may remove, the carparks within the "No Parking Zone".

- (d) The amended condition requires Woolworths to give notice to the Council and local businesses within the vicinity of the Parking Exclusion Plan one month before the angled carparks must be removed to construct the public plaza. This is appropriate to ensure that the Council and local businesses are provided with sufficient notice prior to the carparks being removed to enable completion of the supermarket.
- (e) The Parking Exclusion Plan specifies which areas are not to be used by Woolworths' contractors during construction, ensuring that those parks are available for the public, including customers of the appellant. While Woolworths has no control over these parks, the amended condition requires Woolworths to notify its contractors that they may not park within this area during construction and that Woolworths will monitor the spaces for compliance.

### **Consideration**

[11] The Court has read and considered the appeal and the joint memorandum of the parties dated 25<sup>th</sup> November 2019.

[12] The Court is making this order under s 279(1)(b) of the RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction and conform to the relevant requirements and objectives of the RMA, including in particular Part 2; and
- (c) all parties are aware that the consent order is in settlement of all aspects of the appeal.



**Order**

[13] In the circumstances of this case I am prepared to grant the amendments sought by the parties on the grounds that an agreement has been reached between them. Accordingly, this order does not represent a reasoned decision of the Court, but confirms the agreement reached between the parties by consent.

[14] The Court orders, by consent of the parties, that:

- (a) the conditions of consent are amended as shown in underline and strikethrough in **Appendix A** of this order;
- (b) the appeal is otherwise dismissed; and
- (c) there is no order for costs.

DATED at Auckland this 29<sup>th</sup> day of November 2019



M Harland

M Harland  
Environment Judge

## Appendix A

A. The consent holder shall, to the satisfaction of the Waikato District Council, take the measures necessary in order that:

(a) with the exception of those carparks within the area marked "No Parking Zone" on the Parking Exclusion Plan annexed to this consent, [The existing angle carparks on the road frontage of the site and Great South Road are retained for as long as reasonably practicable during construction works authorised by this consent until three months prior to the anticipated date the supermarket will commence trading, or longer if practicable without delaying the construction program for the supermarket. The consent holder shall provide written notice to the Council and local businesses within the vicinity of the Parking Exclusion Plan area no later than one month prior to the carparks being removed; and

(b) all construction staff are notified that they may not park in the "Contractor Parking Exclusion Zone" marked on the Parking Exclusion Plan annexed to this consent. The Contractor Parking Exclusion Zone will be monitored during the period of construction by the consent holder and a copy of the Parking Exclusion Plan will be included in the integrated Construction Management Plan. Parking by construction vehicles occurs on the construction site.

**Advice note:** for the avoidance of doubt, the consent holder is not required to maintain, and may remove the existing carparks within the area marked "No Parking Zone" on the Parking Exclusion Plan annexed to this consent.





# ANNEXURE 1 – PARKING EXCLUSION PLAN

Contractor parking exclusion zone

No parking zone

