



**ADDERLEY  
HEAD**

ENVIRONMENTAL LAW SPECIALISTS

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**SUBMISSION ON PROPOSED  
PLAN CHANGE 4 TO THE ASHBURTON DISTRICT PLAN**

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**To:** Ashburton District Council  
5 Baring Square West  
Ashburton 7700

**Submitter:** **FOODSTUFFS SOUTH ISLAND PROPERTIES LIMITED**  
  
C/- Adderley Head,  
PO Box 1751, Christchurch 8140  
Attention: Chris Fowler

**Proposal:** Plan Change 4 to the Ashburton District Plan

## SUBMISSION ON PLAN CHANGE 4 TO THE ASHBURTON DISTRICT PLAN

### Name of submitter

- 1 The submitter is Foodstuffs South Island Properties Limited (the **submitter** or **Foodstuffs**).

### Trade competition

- 2 The submitter could not gain an advantage in trade competition through this submission.

### Specific provisions of Plan Change 4

- 3 This submission relates to the following parts of Proposed Plan Change 4 (**PC4**) to the Ashburton District Plan:
  - (a) The amendments made to Objective 5.1, and Policies 5.1A – 5.1C, which have the effect of restricting supermarket activities outside of the Business A and B zones;
  - (b) The amendments to Rules 5.8.2 – 5.8.6 which have the effect of restricting supermarket activities outside of the Business A and B zones; and
  - (c) The additional consequential amendments to the wider passages in the Business Chapter 5, e.g. Explanation and Reasons, and Anticipated Environmental Results.

### Submission

- 4 The submitter **supports** the overall intent behind PC4, being to protect the vibrancy and vitality of the Ashburton Town Centre (or **CBD**) located within the central Business A zone.
- 5 However Foodstuffs is strongly **opposed** to the way that PC4 provides for supermarkets in the Business C zone for the reasons discussed below.

### Reasons for submission

#### Background and context

- 6 There are currently three large supermarkets in Ashburton, two Countdowns and one New World. All three large supermarkets are located immediately adjacent to the Ashburton CBD, but outside of the Business A zone.
- 7 Foodstuffs currently owns and operates the Ashburton New World, located on 2 Tancred Street in the Business B zone. The other two existing supermarkets are located in the Business C zone. See Appendix A for a visual representation.

- 8 There are an additional two smaller supermarkets:
- (a) Tinwald SuperValue, located at 113 Archibald Street, Tinwald and zoned Business C; and
  - (b) Netherby Four Square, located at 2 Bridge St, Netherby and zoned Business A.
- 9 Foodstuffs owns the property at 407 West Street, Ashburton (the **subject land**), purchased on 21 October 2012, with the aim of developing this site into a PAK'n SAVE. See Appendix A for a visual representation of the location.

#### Current ODP zoning and availability of land within Ashburton

- 10 The ODP contains a number of Business zones, of which Business zones A – C are relevant to this submission. Each zone can be characterised briefly in the following way:
- (a) Business A – or the “town centre zone”<sup>1</sup>. This zone is intended to comprise small-scale shops, which provide opportunities for comparison or “browsing” within environments that are intended to be intimate, vibrant, pedestrian-friendly, and have a high amenity<sup>2</sup>;
  - (b) Business B - or “big box” or “large format” retail zone. This zone is intended to comprise larger-scale single-purpose retail stores (including supermarkets) which often require large areas of associated car-parking or outdoor space<sup>3</sup>; and
  - (c) Business C – is intended to provide for a range of commercial, retail, service and community activities. Retail activity is expected to be larger-scale and without the amenity and intimacy of the town centre zone<sup>4</sup>.
- 11 Regarding the availability of land in the above three zones, there is only one small area of Business B-zoned land in Ashburton, which appears to have established business across all its lots. By contrast, Ashburton’s Business A and Business C zones are larger and more plentiful, and contain land which is either vacant or suitable for redevelopment.

#### Changes proposed by PC4 affecting supermarkets in the Business C zone

- 12 Under the Operative Ashburton District Plan (ODP), supermarkets are classed within the definition of “retail activities” unless supermarket activity is expressly listed. Most

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<sup>1</sup> As per the PC4 Section 32 Report at page 23, where the Author relates the Business A zone to the equivalent zone named in the National Planning Standards.

<sup>2</sup> See the Zone Description at 5.3 of the ODP.

<sup>3</sup> See the Zone Description at 5.3 of the ODP.

<sup>4</sup> See the Zone Description at 5.3 of the ODP.

commonly, supermarkets do not have their own rules in the ODP and instead are managed under the general retail activity rules for each zone.

13 PC4 makes the following changes to the ODP provisions relation to supermarkets (relevantly):

(a) Changes to the objectives and policies of the ODP to:

- i. focus commercial activities and retail activities within the CBD, to support the CBD's vibrancy and viability;
- ii. manage commercial activities seeking to establish outside of the CBD to ensure they do not, individually or cumulatively, detract from the role and function of town centres;
- iii. provide greater specificity as to the role of the Business B zone, including that the zone provides limited opportunities for large format retail (including supermarkets) otherwise unable to be accommodated within the Ashburton Town Centre;

(b) Changes to the rules of the ODP to:

- i. Permit retail activity in the Business A zone with a gross floor area of over 500 m<sup>2</sup>, where this activity was previously a discretionary activity; and
- ii. Reduce the threshold for non-complying retail activity gross floor area within the Business C zone to 500 m<sup>2</sup>; where the previous threshold was 750 m<sup>2</sup>.

14 The retention of non-complying activity status for large supermarkets in the Business C zone coupled with the proposed changes to the objectives and policies would make it virtually impossible to secure resource consent to locate a supermarket on the subject land.

15 The section 32 Report notes that should PC4 impose a reduced range of commercial activities in the Business B, C and D zones in combination with more prescriptive polices seeking to discourage or avoid such activities, those land owners with substantial commercial offerings in those zones are entitled to seek that either the status quo is retained, or a more liberal zoning is applied<sup>5</sup>.

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<sup>5</sup> Section 32 Report at paragraph 187

### General reasons for opposition

- 16 In addition to the specific reasons discussed below, the general reasons for the submitter's opposition to PC4 are that PC4:
- (a) Does not promote the sustainable management of natural and physical resource in accordance with section 5 and the relevant matters at section 6 and 7 of the Resource Management Act 1991;
  - (b) Does not provide for integrated management of Ashburton's commercial land resources;
  - (c) Is not based on an adequate and/or accurate section 32 evaluation and as consequence the Ashburton District Council has failed to properly consider the costs and benefits of providing for supermarkets outside of Business A and B zones; and
  - (d) Does not implement the National Policy Statement on Urban Development 2020, which requires local authorities to provide within their plans enough development capacity to ensure that demand can be met for different types of business land, and that such development capacity must be commercially feasible to develop, and plentiful enough to recognise that not all feasible development opportunities will be taken up.

### Specific reasons for submission

- 17 The submitter considers that insufficient consideration has been given to the significant stifling effect that PC4 provisions will have on supermarket activity within Ashburton. Consequently, the submitter considers that PC4 is materially flawed insofar as it relates to provision for supermarket activity.

#### *Insufficient development capacity for supermarkets in the Business A and Business B zones*

- 18 There is insufficient development capacity within the Business A and Business B zones to provide for the anticipated demand for supermarket activity over the life of PC4.
- 19 As mentioned in the Section 32 Report<sup>6</sup>, the Business B zone is already built out and therefore cannot accommodate new supermarket activity.
- 20 Land within the Business A zone is not suitable for supermarket activity in terms of location and site size. The CBD is a proliferation of smaller sites, with mostly occupied buildings and uses, located largely on side roads with poor frontage and access. There is

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<sup>6</sup> Paragraph 132.b.i

no available land in the CBD that could accommodate the size, dimensions and road frontage required for a large new supermarket.

- 21 Due to the typically smaller sites in the CBD, it would be virtually impossible for the submitter to acquire enough contiguous titles at once to service the needs of a large-scale supermarket. For context, a PAK'n SAVE can require 6500 m<sup>2</sup> to 7000 m<sup>2</sup> gross floor area, as well as a large car parking area. The total site area required for a PAK'n SAVE can be upwards of 1.2 ha.
- 22 Further, it is important for a retail operation such as a PAK'n SAVE to be located on a main road network, with road network profiling to ensure that the significant volumes of vehicle movements (over 30,000 visitors per week) are located on a main road, rather than local side streets. Ease of access and convenient access to the site is critical to the successful operation of these supermarkets.
- 23 These circumstances are recognised in the Section 32 report which refers to fragmented ownership within the Business A zone<sup>7</sup> and notes that redevelopment opportunities can be hampered by fragmented ownership and titles<sup>8</sup>. However these constraints are not considered with respect to supermarket activities or assessed in the options evaluation.
- 24 As a consequence, PC4 and the supporting Section 32 Report are fundamentally flawed as they relate to large format supermarket activity. The preferred option identified in the Section 32 Report is to reinforce the town centre by creating opportunity for supermarkets to locate in the Business A zone and making it more difficult for them to locate in the Business C, D and E zones. However, in the context of supermarket activity, the development opportunity for town centre supermarket development cannot be realised in the Business A zone and consequently the PC4 provisions cannot be justified as they relate to supermarket activity.

*Provision for supermarkets in the Business C zone will not impact on the vibrancy of the CBD*

- 25 The proposed use of the subject land within the Business C zone for supermarket activity is not anticipated to cause any material impact on the vitality and vibrancy of the CBD.
- 26 The relief sought by Foodstuffs is limited to supermarkets. These activities are commonly found outside centres due to their practical requirements (large scale and connectivity to transportation network) and therefore in practice the extent of retail distribution effects will be minimal. This point is evidenced in the Ashburton context by the location of virtually all existing supermarkets outside the town centres.

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<sup>7</sup> Paragraph 20.c

<sup>8</sup> Paragraph 19.c

27 Further, the large format nature of supermarkets and associated car parking area is not consistent with the high level of amenity anticipated in the Business A zone.

28 In addition, the high traffic generation caused by large supermarkets is ill-suited to the transport network and pedestrian-friendly environment anticipated in the Business A zone.

*Business C zoned land well suited to supermarket activity*

29 The submitter has already purchased land located in the Business C zone that is considered well suited to help meet predicted future demand for supermarket activity within Ashburton.

30 More localised effects arising from use of the subject land for supermarket activity in terms of reverse sensitivity and impacts on the transportation network have already been considered by the submitter at the time of purchase and are considered to be minor.

31 Use of the subject land for supermarket activity is not anticipated to cause any material impact on the adequacy of supply of Business C zoned land for activities anticipated within this zone by the District Plan. Instead, the submitter would be adding value to the site as the previous grain storage activity is not well suited to this location.

*Significant benefits of allowing supermarket activity in Commercial C zone*

32 The submitter's proposed relief will have positive net benefits relative to PC4 as notified by improving efficiency with respect to the supply-demand balance of land within Ashburton by providing sufficient development capacity to meet expected demand for supermarket activity.

33 Currently, the closest alternative PAK'n SAVE stores are Hornby and Timaru, both of which a significant distance from the Ashburton catchment. An Ashburton PAK'n SAVE would be a food warehouse for the overall Ashburton catchment including the hinterland. As a regional attractor, it would draw from all of the District. Food affordability is a topical issue affecting many New Zealand families. The submitter sees a need for a PAK'n SAVE store in Ashburton within the next five years.

34 The submitter's proposed relief will avoid the stifling effect of the PC4 provisions insofar as they relate to supermarket activity by enabling this use to establish within the Business C zone. Consequently the proposed relief will make a more meaningful contribution to economic growth and employment than PC4 as notified.

## Relief sought

### General relief

- 35 Amend the PC4 provisions relating to distribution of retail and commercial activities in Business zones to enable supermarket activity to establish in the Business C zone.

### Specific relief

- 36 Amend the PC4 provisions that seek to reinforce a centres-based strategy by creating a discrete exception to allow supermarket activity to establish as a permitted activity on the subject site, subject to performance standards regarding effects on accessibility, effects on transport network, and reverse sensitivity effects.
- 37 In the alternative, amend the PC4 provisions that seek to reinforce a centres-based strategy by creating a discrete exception to allow supermarket activity to establish as a restricted discretionary activity in the Business C zone as follows:
- 38 Insert new Policy 5.1XX as follows:

Only allow large format food and beverage retail activity to locate in the Business C Zone where:

- a. The activity will not detract from the vibrancy and functioning of the town centre;
  - b. The activity does not significantly affect the supply of Business C zone land for other commercial activities;
  - c. The location is appropriate for the proposed activity having regard to:
    - i. The potential for reverse sensitivity effects on permitted activities;
    - ii. The extent of any adverse effects from vehicle movements; and
    - iii. The extent of any adverse effects on street parking supply.
- 39 Amend Objective 5.1 and the Business C zone rules to provide for supermarkets as a restricted discretionary activity subject to matters of discretion criteria to manage potential reverse sensitivity effects and transportation effects.
- 40 In the further alternative, amend PC4 provisions so that the existing status quo under the Operative District Plan is retained insofar as supermarket activity in the Business C zone is concerned.
- 41 Make any alternative amendments, additional amendments, or consequential amendments, deletions, or additions that are necessary or appropriate to give effect to the intent of this submission.



**Conclusion**

- 42 The submitter does wish to be heard in support of this submission.
- 43 If others make a similar submission, the submitter will consider presenting a joint case with them at the hearing.
- 44 The submitter appreciates the opportunity to submit on PC7.

Dated 4 December 2020



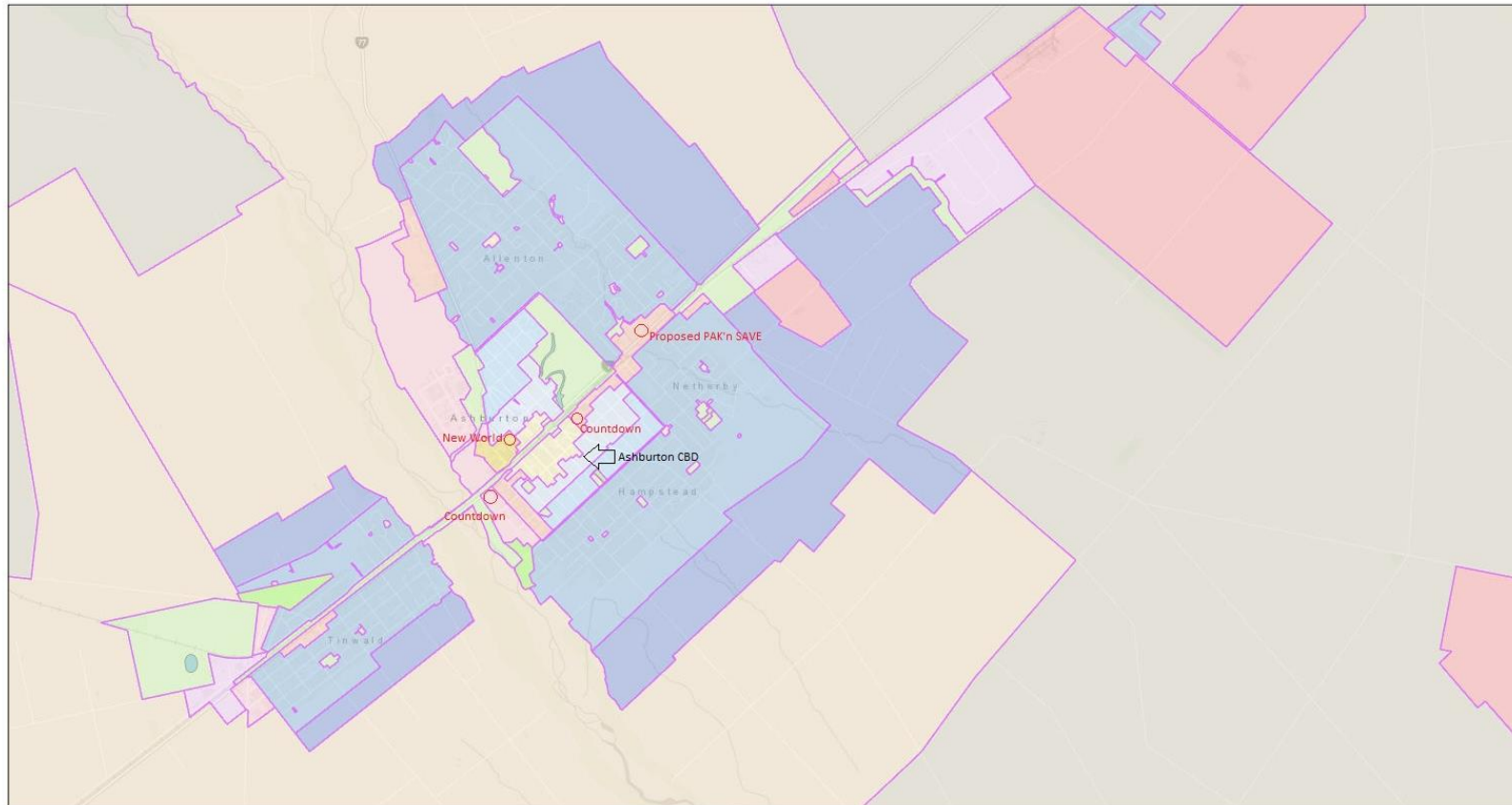
Chris Fowler

Counsel for Foodstuffs South Island Properties Limited

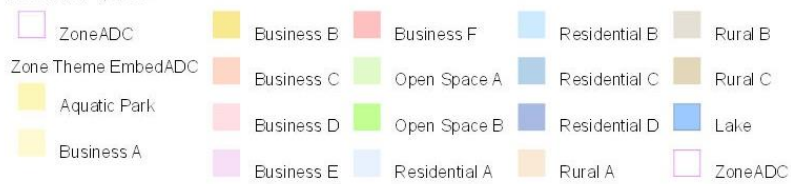
**Address for service:**

C/- Adderley Head  
PO Box 1751, Christchurch 8140  
Level 5, 77 Hereford Street, Christchurch 8011  
P 021 311 784  
Contact person: Chris Fowler  
E: [chris.fowler@adderleyhead.co.nz](mailto:chris.fowler@adderleyhead.co.nz)

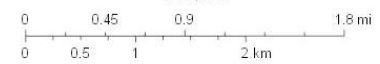
Map showing location of existing and proposed Ashburton supermarkets in relation to the Ashburton CBD and ODP zoning



December 1, 2020



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Land Information New Zealand, Eagle Technology, Ashburton District Council