

**BEFORE A COMMISSIONER APPOINTED BY ASHBURTON DISTRICT  
COUNCIL**

**UNDER** the Resource Management Act 1991 ("RMA")

**IN THE MATTER OF** An application for a resource consent under section 88 of the RMA by **Tricroft Properties Limited** to use part of an existing building for a Smiths City retail tenancy of circa 1002m<sup>2</sup>, a 360m<sup>2</sup> storage and administration area and a yard area of circa 437m<sup>2</sup> with ancillary car parking, signage and access areas. At 363 West St, Ashburton (Application No. LUC21/0029)

---

**EVIDENCE OF DAVID HARFORD  
ON BEHALF OF TRICROFT PROPERTIES LIMITED**

**Date: 16 SEPTEMBER 2021**

---

## **1. INTRODUCTION, QUALIFICATIONS & EXPERTISE**

- 1.1 My name is David Harford. I am an independent Planning Consultant and Director of David Harford Consulting Ltd (DHCL). I have a Bachelor of Resource Studies (Lincoln University) and I am an associate member of the New Zealand Planning Institute ("NZPI"). I have been involved in resource management for both local government and in a private capacity for over 22 years.
- 1.2 In preparing this evidence, although this is not the Environment Court, I acknowledge that I have read the code of conduct for Expert Witnesses in the Environment Court Consolidated Practice Note (2014). I agree to comply with this Code of Conduct. This evidence is within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 1.3 This evidence is given in support of the application for resource consent lodged with the Ashburton District Council by Tricroft Properties Limited ("the applicant").
- 1.4 The applicant wishes to continue the current operation of the retail tenancy within the building which offers a retailing floorspace of circa 1002m<sup>2</sup> with ancillary covered and internal area measuring approximately 360m<sup>2</sup> for administration, amenity and storage with inclusion of a secure yard area measuring circa 437m<sup>2</sup>. This uncovered yard area is available for the tenant for loading and logistics purposes.
- 1.5 Access to the front and rear of this building and on-site car parking for staff and customers is available and has been detailed within the application and the planning officers report.
- 1.6 I am authorised to give this evidence on behalf of the applicant.

## **2. SCOPE OF EVIDENCE**

- 2.1 I have been engaged by Tricroft Properties Ltd, to provide planning advice on its application for the proposed facility on this Business C zoned site in Ashburton. Specialist economic analysis was prepared to support the Assessment of Effects on the Environment ("AEE") documentation for the Application that is the subject of this hearing. I am thus familiar with the Ashburton area and Application site.

- 2.2 In preparing this evidence I have read the Officer Report and wish to record that it accurately describes the site location and the nature of the proposed development. Accordingly, there is no need for me to repeat the development description contained in the AEE or in the Officer Report.
- 2.3 Further, I wish to record that I support and agree with the thrust, assessment and nature of the recommended conditions in the Officer Report.
- 2.4 My evidence will address the following matters:
- (a) The existing environment.
  - (b) Overview and conclusions from the AEE and subsequent matters.
  - (c) Activity Status and Section 104D “gateway test”;
  - (d) Conclusions from other experts;
  - (e) Issues raised in submissions;
  - (f) Officer’s Report Recommended Conditions; and
  - (g) Conclusion;

### **3. THE EXISTING ENVIRONMENT**

- 3.1 The planning officer report detailed the existing environment which generally included the established building which initially was a large farm merchandising and ancillary facility pre 2006 and subsequent to that the Bunnings Warehouse facility which ceased trading at the site in June 2020.
- 3.2 To explore this some more I won’t go into the detail around the immediate surrounding environment with established residential and business related use as that has been well canvassed but focus on the resource consent held for the Bunnings retail facility (which includes the separate standalone building for the Robert Harris Coffee Shop and Veterinary clinic adjoining) and the current tenant (Smiths City) occupying the central part of the building and that tenants relocation from its previous site and their potential departure from Ashburton altogether.
- 3.3 I will also comment on the Ashburton town centre in relation to availability of a site(s) for Smiths City to occupy.

- 3.4 The scale of the Bunnings consent (LUC 06/0071) enabled the bulk sale of the wide range of goods generally specified in the consent. The nature and scale of those goods is relevant to the extent that Smiths City may have a range of goods that could be found within the former Bunnings facility.
- 3.5 Bunnings sold a broad range of retail goods in addition to just hardware and building supplies. Bunnings stores typically sell appliances (including kitchen and laundry appliances, vacuum cleaners) outdoor furniture, play equipment, heaters and fans, BBQs, lighting, storage and cleaning equipment as part of the range.
- 3.6 Smiths City are not a new retailer to the Ashburton market. They existed within the Business B zone on Kermode Street until earlier this year. Prior to that about circa 1996-2000 they were within the Business A zone on West St (now Jeff Marshall Motorcycles) prior to the move to Kermode Street. Therefore they can be considered to be part of the existing Ashburton environment.
- 3.7 The current move to the present site was, as it stood, the only option available to Smiths City in terms of the size and scale of building and ability to tenant the premises in what was a very rapid timeframe.
- 3.8 Mr Tony Gilbert from Tricroft Properties Ltd, as landlord, will provide written evidence to elaborate on the reasoning for Smiths City relocating to 363 West St as part of this application however from my understanding of the Ashburton CBD and what might exist for the applicant, there wasn't anything available and if it was, was unsuitable.
- 3.9 Therefore Smiths City, was preparing to depart the Ashburton retail market altogether. Ashburton is fundamentally a rural servicing town with a range of both existing and new retail facilities. I don't for a moment think that any persons within Ashburton District would want to see Smiths City depart. They provide another retail option for the goods they are renowned for to the wider public. A departure includes not only the loss of that choice of goods but loss of employment and contribution to a general loss of presence, activity and vibrancy in the town.
- 3.10 Ashburton's CBD is undertaking a transition if you like in terms of some street upgrades and beautification, one way systems introduced for both Burnett and Tancred Streets, upgrade of in ground services etc. and over recent year's demolition and clearance of some buildings has occurred. The reasoning behind this in most if not all cases is earthquake and dangerous

building related. To that end any new buildings on the site have not been constructed that might have been a suitable alternative for Smiths City to locate into.

- 3.11 On that basis, the existing consent authorises much of the activity that would take place on the site associated with the proposed use of the central part of the building as Smiths City, e.g., access, queuing length, parking, landscape strip and hours of operation. Therefore, for the most part the level of amenity of the receiving environment is in accordance with that provided for under the existing consent.
- 3.12 Any differences in character between the previous use of the site and the retail activity proposed are assessed further below. In terms of the economic impact of potential retail distribution on the Town Centre, the previous uses of this site included retailing activity. This in my view is a key activity that has occurred for some time in this site and therefore part of this existing environment. Whilst I acknowledge the type of retail may be different this is not a site where no previous retail has occurred at all.

#### **4. OVERVIEW & CONCLUSIONS FROM THE AEE AND SUBSEQUENT MATTERS**

- 4.1 For the reasons set out in the AEE documentation and in the conclusions section of the Officer Report, I consider that the Application should be granted subject to the imposition of conditions recommended by the Reporting Officer and in regard to the 2% figure relating *to less than one year's growth in the Ashburton Retail market*, Mr Foy has demonstrated in evidence that this figure can be quantified and therefore effects of this are no more than minor on the existing CBD retail environment.
- 4.2 The Business C zone limitations on retail have been detailed in the officer report being display and sales limited to single retail outlets selling goods produced or processed on the site and may include only ancillary products to goods produced or processed on the site, each with a minimum Gross Floor Area of 150m<sup>2</sup> located within buildings. There are the exceptions to this however the retail facility such as that proposed are not included within these exceptions.
- 4.3 Therefore the use of the application site for this proposal requires consent as a Non-Complying Activity under the District Plan. It is agreed with the planning officer, that regardless of Plan Change 4, consent for a non-

complying activity was required under the former District Plan rule in any event.

- 4.4 However, from a planning perspective, I consider that the application site is an appropriate location as it is an existing building with ability to operate as a larger scale retail facility within Ashburton now even though it is operating outside of the Business A zone. The West St site provides accessibility for heavy goods vehicles (HGV), ease of customer vehicle access and on-site parking to enable efficient functioning. In my opinion and without specific expert traffic comment, in terms of the ease of access/egress that may not be so easily achieved for HGV's within Ashburton's CBD. A one way street system with parking on either side of each road and the width of carriageway along the CBD roading may create difficulties in manoeuvrability.
- 4.5 In regards to a permitted baseline comparison, I agree with the planning officers comment ... *"there is a comparable permitted baseline in terms of building scale, signage, traffic movements and car parking;*
- 4.6 The planning officer expresses the view that ... *"it is 'fanciful' to consider that there could be any permitted retailing activity undertaken within the proposed tenancy at the scale comparable to that proposed by this application and therefore result in comparative levels of retail distribution effects on the Ashburton Town Centre".*
- 4.7 Prior to Plan Change 4, the District Plan allowed up to 750m<sup>2</sup> GFA subject to criteria, within the Business C zone which could provide for close to a comparable retail situation however Plan Change 4 has since changed this to now removing the maximum GFA for retail activities. Therefore, based on this change there are limited permitted retail activities that could locate within the subject site but both yard based and trade-based suppliers are permitted i.e. Bunnings, PlaceMakers or the like. These are still retailing activities and in terms of effects arguably they would have greater traffic generation, parking requirements and noise generation than the likes of Smiths City has.
- 4.8 There is limited or no ability to establish a facility of this scale within Ashburton on another site as was addressed in the application.
- 4.9 In respect of the Economic Impact assessments including the peer review, the key effect raised is with regard to the potential effects of the proposal on the existing and future retail within the Ashburton Central Business District, the Business A zone.

- 4.10 The Reporting Officer expresses the view in conclusion that there is an outstanding matter with regards to the economic and retail impact point of view that needs clarity and careful consideration. Until this is done it led him, on balance, to a recommendation to decline the proposal until it can be demonstrated that the effects of this proposal do not impact the role and function of the Business A zone.
- 4.11 The scale of the building and associated parking at the subject location is appropriate on the basis that there is limited to no availability of buildings or Business zoned land currently for this proposal.
- 4.12 In terms of other potential effects of this proposal as raised in the planning officer report the only other effect of any real moment was the lack of trees on the road frontage to the site. There have never been any trees planted on this road frontage however there is existing low shrubbery and plants which does provide a level of amenity for the site.
- 4.13 However, the applicant agrees to the proposed condition(s) regarding provision for trees on the frontage.
- 4.14 There was comment on the lack of any trees within the car parking area on the site and no provision for a 2-metre planting/landscaping strip on the boundary with the Residential C zone on the southwestern boundary of the site. There never has been any of these required plantings. Both of these matters will have been dealt with as part of the resource consent to establish the Bunnings and associated buildings on the site under LUC06/0071. I agree with the planning officers' comments that it's difficult to now establish these and particularly the 2m width landscape strip as that is within the access way to the rear of the building.
- 4.15 The matters raised about the queue space and signage matters. I agree with the planning officer on those comments.
- 4.16 I agree with the planning officers' comments that .... *"the consideration of this activity is considered to otherwise be restricted to the changes in character through the introduction of a retail department store into this part of Ashburton, including any reverse sensitivity effects, and the impact of proposed retail activity on the Ashburton Town Centre. Noting that the latter was the only issue raised in the opposing submission received. Accordingly, the balance of this planning report restricts its consideration to these character and retail distribution effects of the proposal"*.

- 4.17 I agree with the planning officer comments at section 9.5 *Effects on Character* where there is no change to the effects on amenity or character on the environment from this proposal.
- 4.18 The change from trade supplier to a furniture and home appliance retail store will not lead to a potential change in the character of the receiving environment. Due to the DIY focus of the former use, where traffic generation in terms of frequency of vehicle movements/duration of shopping experience, will be similar if not in my view, greater, to that anticipated by the Smiths City Ashburton use.
- 4.19 It is agreed that the proposed use of the site for retail is likely to involve reduced heavy vehicle movements, outdoor forklift use and general activities, particularly in the northern section of the site and circulating along the southwest boundary, which adjoins residential properties.
- 4.20 It is agreed that there are no reverse sensitivity effects and that public notification of the application did not result in any adjoining land occupiers submitting on this application.
- 4.21 I note the comments in relation to the planning officer on Mr Foy's reporting on the availability of *vacant land in zones where LFR is permitted and the significance of the NPS-UD*. I only wish to comment regarding the Council having to provide sufficient development capacity (i.e., suitably zoned land) for new LFR stores to establish, including to accommodate a range of different size options. There is not a significant amount of Business A and B zoned land available for LFR use in Ashburton.
- 4.22 Mr Foy also notes that the land made available must be suitable to meet the demands of the LFR sector (clause 3.3(2) (c)). *The Business B zone "provides predominantly for large-scale retail activities, sometimes called "big box" or "large format" retail, which frequently require large areas of associated car-parking or outdoor space"*. Figure 3 in the officer report demonstrates the zonings and the growth in LFR has meant that land has been taken up and there is very little potential for new LFR development within the zone.
- 4.23 The planning officer comments that the move by *Smiths City out of the Business B zone will presumably mean an additional 1,500m<sup>2</sup> GFA will become available*. In short this is true that the former Smiths City premises is now to be tenanted by Noel Leeming. They were within the Business A



zone and will move into the Business B zone. This then leaves a vacant premises within the Business A zone.

- 4.24 There is then discussion about the Kmart application and its District Plan considerations at that time. LFR was not permitted in any other zone other than Business B, and that zone was effectively full. There was certainly not sufficient land available to develop the extent of LFR required to facilitate the proposal put forward by Kmart. That is agreed.
- 4.25 Now the only retail exclusion in the Business A zone is service stations and supermarkets exceeding 1200m<sup>2</sup> in GFA. It can only be assumed that Council, rather than re-zoning additional land Business B, chose to amend the rules such that the restriction on LFR locating within the Business A zone was removed. While I understand the planning officer's disagreement re LFR development I would argue the rationale of enabling LFR in the CBD particularly if that was at a scale of the likes of a Smiths Ashburton or larger operation like Kmart.
- 4.26 The issue would be one where if you created a number of LFR stores within the CBD this leaves little other development options for the smaller specialty retail. It also creates an issue of parking demand and traffic generation that that really is a necessity for LFR stores due to the nature of the goods being purchased i.e., larger goods such as furniture, bedding, whiteware and the like.
- 4.27 I appreciate there is now the opportunity (I am not convinced on the availability of the land) in the Business A zoned land for LFR purposes. It's a consideration of the effects created by LFR going into that zone and other considerations such as logistics and ability for heavy vehicle movements into and out of the site and parking. However as its permitted for LFR to establish in the Business A zone there then there are no parking requirements for the Business A zone under the District Plan but how that works in practice for an LFR is another matter.
- 4.28 For the applicant, regardless of the zoning or ability to go into the CBD, there was no building or other options available and therefore Smiths City could not locate into the Business A or B zone in the timeframe they required. Simply leaving town whilst waiting for a suitable space to be available within the Business A or B zone was not an option. Further, I have not factored in any rental costs of locating into the CBD as that is outside on my planning brief.

- 4.29 A point was raised by the planning officer regarding the physical separation of the proposed site from the existing Business A and B zones and the decrease in trips to the town centre. Whilst in this case the site does not adjoin these zones and it is a little unknown whether there would be a decrease in trips to the CBD with Smiths City now outside of the Business B zone. In my opinion Smiths City in most cases is a destination store and would more often than not require a special trip due to the nature of the goods on offer. So, to that end people would make a trip to the store and may not necessarily be heading to the CBD in any event or even if they were, it is not necessarily so that Smiths alone being located at 363 West St would create a marked decrease in CBD trips. Mr Foy discusses this at paragraphs 7.19 and 8.2 of his evidence.

## **5. ACTIVITY STATUS AND SECTION 104D “GATEWAY TESTS”**

- 5.1 As discussed in the AEE and Officer Report, under the Operative District Plan the proposal is a non-complying activity due to non-compliance with activity standard 5.8.6 as the proposal includes retailing of goods that are not produced or processed on the site.
- 5.2 Section 104D of the Resource Management Act 1991 (**RMA**) directs, in relation to non-complying activities, as follows:

*“Despite any decision made for the purpose of [section 95A\(2\)\(a\)](#) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*

*(a) the adverse effects of the activity on the environment (other than any effect to which [section 104\(3\) \(a\) \(ii\)](#) applies) will be minor; or*

*(b) the application is for an activity that will not be contrary to the objectives and policies of—*

*(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*

*(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*

*(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity...”*

- 5.3 The application and officer report provide a high level of assessment details in terms of the potential effects. The application was supported by an expert economic report.
- 5.4 It is noted the comment about reverse sensitivity for this area. The fact that no submissions raised this point and that this application was publicly notified does mitigate any matter or concern for the most likely potentially affected parties.
- 5.5 In terms of visual amenity, it is agreed that the potential visual effects of the development compared with industrial buildings and development that could be undertaken on the site as a permitted activity is low. The current site with an existing building remains and other than the internal changes there is no other potential visual effects.

### **Economic Impact Assessment**

- 5.6 This is the assessment that essentially raises important considerations for this entire proposal. This is due to the extent that retail display and sales are limited to single outlets (minimum area of 150m<sup>2</sup>) selling goods produced or processed on the site and products ancillary to them.
- 5.7 Mr Foy prepared the original economic impact assessment for retail distribution effects. This was subsequently peer reviewed on behalf of the Council.
- 5.8 Mr Foy has prepared evidence on matters raised in the officer report and specifically matters raised by the peer reviewer, Mr Heath, from Property Economics.
- 5.9 In summary, Mr Foy's opinion that the proposed development would have any significant adverse retail effects on the existing or future Ashburton town centre business, has not altered.
- 5.10 Therefore, I consider the effects of this proposal are less than minor based on the low potential effect on the Ashburton's CBD from the relocation of the Smiths City facility. The requirement to have generally all other effects being

avoided, remedied or mitigated and therefore the proposal can meet the first test of section 104D (a) of the Resource Management Act.

### **Objectives and Policies of the Ashburton District Plan**

- 5.11 It is noted that the planning officer agrees with my assessment of the objectives and policies relating to traffic. It is the Business Zone objectives and policies created by Plan Change 4 that he raises issue with.
- 5.12 It is agreed that the specific objective and policies are those outlined by the planning officer at 11.1 of the officer report.
- 5.13 In particular these are.

#### *Objective 5.1*

*The contribution of business activities to the economic and social wellbeing of the district is recognised and provided for, with:*

- 1. Commercial activities and retail activities primarily focused to support vibrant and viable centres, and*
- 2. Business activities able to operate efficiently and effectively within the District's business zones as subject to environmental standards which reflect their function, location and role*

- 5.14 *Policy 5.1.A*

*Reinforce and strengthen the function, integrity, convenience and viability of the inner commercial areas (Business A zones) of Ashburton, Methven and Rakaia, and small villages, including through avoiding activities with the potential, either individually or cumulatively, to impact on the continuing ability of town centres to provide for:*

- 1. their community's social and economic wellbeing;*
- 2. maintained or enhanced amenity and vibrancy; and*
- 3. the function and role of Ashburton Town Centre (Business A zone) as the primary commercial, retail, recreational, cultural and entertainment centre for the district.*

- 5.15 The key aspect of this policy is avoiding activities with the potential to have an adverse impact on the continuing ability of town centres to provide for those three key matters. I would include here that Smiths Ashburton are not a new business to town. They have existed for close to three decades in Ashburton.
- 5.16 From a social and economic wellbeing perspective Smiths City had operated from the Business B zone and contributed to the town amenity and vibrancy.
- 5.17 I appreciate the Councils policy to protect the function and role of the Business A zone with the CBD as its *primary commercial ... centre*. Smiths City has removed itself from its present location and the wording of the policy is to avoid the potential of the activity to impact on the continuing ability to provide for those matters. In itself Smiths City is not an activity that has a direct impact i.e., an industrial activity with effects not suited to a compact CBD environment, however not locating in the CBD, where it would be permitted, challenges point 3 of the policy to serve to maintain the function, integrity and viability of the existing inner commercial area of Ashburton.

*Policy 5.1D*

*Provide through the Business B zone limited opportunities for the establishment of large format retail activities and trade suppliers:*

*(a) that are difficult to accommodate in the Business A zone due to their scale or functional requirements; or*

*(b) that generate high volumes of traffic and require large areas of parking; and*

*(c) where such activities do not detract from:*

*1. the amenity of adjoining areas;*

*2. the safety and efficiency of the roading network; or*

*3. the consolidation of the inner retail area of central Ashburton through limits on the establishment of small-scale retail activities or offices.*

- 5.18 Policy 5.1D above is specific to the Business B zone. In my opinion here there is limited to no available land for LFR in the Business B zone now.
- 5.19 Policy 5.1D refers to LFR activities that are difficult to accommodate in the Business A zone due to scale and function alongside associated traffic generation and parking demand not detracting from those three key points

under (c). In my opinion Smiths City would create, at times, those very issues. Therefore I don't consider this proposal to be contrary to that policy.

- 5.20 I agree that within Objectives 5.2 and 5.3 are amenity related and the applicant has agreed to provide additional landscaping in the form of trees on the West Street road boundary to increase the proposed levels of visual appearance and quality.
- 5.21 Whilst the dispersal of business activities to new locations can leave existing areas vacant and removes consolidation of the Business A zone this proposal is a business that was previously established outside of the Business A zone and as assessed earlier in this evidence there is no available building or space available for Smiths to establish within the Business A zone.
- 5.22 This proposal represents a relocation from the Business B zone to the Business C zone. To that end the proposal is not a relocation out of the Business A zone nor is it a proposal to enter the Business A zone which is contrary to Policy 5.1A in the sense the retail activity is not locating to the Business A zone which provides for this type of activity.
- 5.23 Mr Foy, in his economic assessment, has stated that most trips to the Business A zone would continue to occur as they do now, and in his opinion there would be no noticeable change in visitation, vibrancy or vitality of the Ashburton town centre if Smiths City were to establish on the application site.
- 5.24 I can agree here from the point of view that with the physical separation of the site from the balance of the commercial areas (Business A & B zones), could prevent pedestrian access to the Town Centre (as pointed out by the planning officer report) and act as a destination retail experience in its own right. My opinion here is in most cases there would have been limited pedestrian access from the likes of Smiths City to the nearby Business A and B zones anyway.
- 5.25 In my opinion most customers would have driven to Smiths City and if purchasing goods would more than likely have required a vehicle. Although the separation from the Business A and B zones will require specific trips to Smiths City, that does not mean that there will be a corresponding decrease in trips to the Business A zone. Mr Foy explains that point in paragraph 8.2 of his evidence.

- 5.26 For larger goods these could be delivered by Smiths to the customers address if required but I am not convinced of this pedestrian connection where Smiths is concerned as it stood in their former premises so to that end it would not be a significant effect at this new location.
- 5.27 The proposal is considered inconsistent with Objective 5.1 and Policy 5.1A. Whether it is contrary is assessed in the context of the section 104D threshold test below.
- 5.28 In terms of the threshold test held under Section 104D it is acknowledged that a positive effect of this proposal is the ability to retain Smiths City within Ashburton.

## **6. SECTION 104D SUMMARY**

- 6.1 It is agreed that it is the adverse effects, as proposed to be remedied and/or mitigated, and taken as a whole, that are to be no more than minor. Based on the application and evidence provided by myself and particularly the evidence of Mr Foy, the proposal does not result in “more than minor” adverse economic impacts on the Town Centre. This meets the first threshold test.
- 6.2 When assessing the second aspect of the threshold or gateway test, I agree with the planning officer’s understanding that the term “contrary” means that a proposal must be “repugnant” to the relevant plan objectives and policies rather than simply not being in accordance or inconsistent with them. *This is considered to be a high threshold, and in order to be considered ‘contrary’ the application must demonstrate significant level of inconsistency with the policy framework.*
- 6.3 Because of the wording to “avoid” this does challenge and makes the proposal inconsistent with Objective 5.1 and Policy 5.1A of the District Plan on the basis Smiths City not locating within the Business A zone however on balance whether it reaches the definition of being repugnant to the policy is not easy to determine.
- 6.4 However, the key finding in my opinion is the effects are minor or less than minor and therefore as a non-complying activity the proposal is eligible for approval under Section 104D.
- 6.5 For the reasons set out in the AEE, the Officer’s Report and earlier in my evidence, it is my opinion that with the inclusion of appropriate consent conditions, the effects of the proposal will be minor or less than minor I

therefore consider that the application satisfies one of the “gateway or threshold tests” in section 104D of the Resource Management Act 1991 (“RMA”) and granting consent in this instance would meet the sustainable management purpose of the RMA.

**7. SECTION 104(1) (C)**

7.1 The matters of Precedent and District Plan Integrity was raised in the application and is addressed by Mr Boyes at section 14 of the officer report.

7.2 The precedent effect matter is one where in my view the approval of this application does not then raise an immediate onus of Council to approve similar consent(s).

7.3 I agree from the planning officer’s understanding from relevant case law that the consideration is whether the concept of precedent may have planning significance beyond the immediate vicinity of the land concerned. I don’t consider this proposal of an existing business such as Smiths City could be easily established in this zone within the Ashburton area on the scale and character as this proposed.

7.4 It is the plan integrity that is more likely to affect the public confidence in the plan and its consistent administration. There is a question around there being enough Business A and B zoned land to accommodate business’s that wish to locate there. The Business B zone has little or no available land and Business A has some land but it may not all be suitable for LFR development.

7.5 The proposal is for a business that is already in existence within the town albeit not the Business A zone. In order to avoid effects on the integrity of the District Plan, this proposal for a non-complying activity as proposed does have some unusual qualities in that it is upon a site that holds resource consent for a retail activity being a hardware and trade supply retailer which has effects arguably greater than what this proposal would ever generate in terms of actual effects. In terms of traffic, noise and hours of operation and the fact that it is a business that had existed within the Business B zone prior to its location to the present site, this proposal is essentially within a larger building that was refit for purpose into separate tenancies which allowed Smiths City the option to be a tenant.

7.6 Non-compliance with a plan cannot of itself create a precedent effect. The integrity of the plan is not always placed at issue simply because an activity is classified as non-complying.



- 7.7 Precedent effect only ever arises for consideration if the proposal runs up against the District Plan's objectives and policies. It needs to be considered whether the hypothetical 'floodgates' argument overshadows (without good reason) a proposal with some merit.
- 7.8 Even if there is an element of precedent, it does not automatically follow that the grant of consent will threaten the integrity of the plan or confidence in its administration. Particularly where the application is unlikely to be easily replicated elsewhere in a particular district.
- 7.9 In my opinion, the issue of precedent is not a serious concern in this case. I say this because the application does not create a serious conflict with the objectives and policies of the District Plan, when viewed as a whole.
- 7.10 Confidence will only be affected if a decision-maker ignores a district plan's policies and objectives and allows an activity with major effects and which would be contrary to those objectives and policies. This proposal is not considered to have major effects.
- 7.11 Accordingly, there should be no concern that the integrity of the District Plan will be placed in jeopardy, should consent be granted to this proposal. In considering community expectation, it is relevant to reflect on the limited numbers of submissions on this particular proposal.

## **8. CONCLUSIONS FROM OTHER WITNESSES**

- 8.1 For completeness, I record that I have read the evidence of both Mr Foy in terms of Retail Impact effects and Mr Gilbert with regards to Tricroft's commercial evidence and I agree with their conclusions.

## **9. ISSUES RAISED IN SUBMISSIONS**

- 9.1 One submission was received in relation to the Application from the Ashburton CBD Business Group (Appendix D).
- 9.2 The planning officer summarises this submission was specifically endorsed by five signatories and included accompanying emails which included the names of an additional 12 business owners/operators from the Ashburton Town Centre as supporting the submission.
- 9.3 The applicants had met with some members who are connected to the submission. Following that meeting(s) the submitters requested to withdraw this submission however the commissioner was asked to rule on the validity

of this and the finding was that basically as I understood it that unless all of those collective 12 persons formally withdrew in writing then the submission would still stand.

- 9.4 It is unknown whether any of the twelve will appear at the hearing to speak to this submission.
- 9.5 The planning officer summarises this submission with the thrust of it being concerns regarding *the retailing activity establishing outside of the Town Centre as it diminishes from the activity undertaken therein and has adverse economic consequences for existing CBD businesses.*
- 9.6 The submission refers to *Town Centre businesses having endured significant disruption over the last few years and allowing another commercial hub to operate would only add to the deterioration of the CBD.* I would comment that this is not the desire of the applicant to create a commercial hub that might pose a threat to the existing CBD businesses.
- 9.7 In terms of the relief sought, the submitter suggests *that consent for a short duration (2 years) would be appropriate to allow the Applicant the opportunity to secure a more suitable location in the Business A or B zone.* This suggestion is not accepted by the applicants. To have a tenant such as this on a limited duration tenancy is not in the applicants interests.

## **10. OFFICERS REPORT RECOMMENDED CONDITIONS**

- 10.1** The proposed conditions recommended at Appendix E of the officer report are supported.

## **11. PART II OF THE RMA**

### Section 5

- 11.1 *Section 5 outlines the purpose of the Act as follows:*

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, “sustainable management” means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while:*

- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
  - (b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
  - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*
- 11.2 By re-establishing a retail activity, the site will continue to contribute towards the Town's overall social and economic well-being with less than minor effects on the existing and future Business A zone of Ashburton. This has been addressed in the evidence and particularly the economic evidence of Mr Foy in terms of the empirical data.
- 11.3 Additional employment will be retained with the approval of the application alongside the retail offering that Smiths City have.
- 11.4 Although it will occupy a smaller floor area than the former Bunnings Warehouse which was a retail activity that was consented on the site within the whole building. The scale of this proposal is an LFR by its definition and it can be considered that Smiths are an existing retailer in Ashburton which operated outside the Business A zone prior to locating to this present site.
- 11.5 The positive aspects of the development from an economic, social and cultural perspective will outweigh any detrimental impact upon the Business A Zone as detailed and therefore it is considered that the proposed development achieves this purpose by avoiding, remedying or mitigating any adverse effects.
- 11.6 Accordingly, the proposal will achieve the purpose of Section 5 of the RMA  
Section 7
- 11.7 Section 7 outlines other matters that need to be considered. Matters of relevance are:
  - (c) The maintenance and enhancement of amenity values;
  - (f) Maintenance and enhancement of the quality of the environment.
- 11.8 Section 7(c) and (f) of the Act are matters to which Consent Authorities should give particular regard to when making informed decisions. When assessing a non-complying land use consent application in the business

zone, consideration may be given to the effects on amenity values and maintenance and enhancement of the quality of the environment as a result of the proposed activity.

11.9 The proposal is considered to be consistent with these Part II matters.

## **12. CONCLUSION**

12.1 Overall, I consider that any effects of the proposal on the environment will be less than minor or can be adequately addressed through appropriate conditions.

12.2 The proposal is potentially inconsistent with one of the objectives and policies of the District Plan as explained in the evidence.

12.3 It is therefore my opinion that the Proposal can satisfy at least one of the “gateway tests” in section 104D and would meet the sustainable management purpose of the RMA.

12.4 The application is in order to be approved with conditions.

**David Harford**

16 September 2021







