



Sections 104, 104A-D & 108 of the Resource Management Act 1991

Section 42A Planning Report for Hearing

Consent number:	LUC21/0029
Applicant's Name:	Tricroft Properties Limited
Street Address:	363 West Street, Ashburton
Legal Description of Site:	Lots 1 & 2 DP 1563 and Lot 1 DP 23503.
Zone:	Business C (Planning Map U47 & U48)
Application Summary:	Land use consent to use part of the existing building on the application site for a Smiths City retail tenancy of 1002m ² , a 360m ² area for storage and administration purposes, a secure yard area of 437m ² as well as ancillary car parking already established on site.
Notification:	The applicant requested that the application be publicly notified pursuant to section 95A(2)(b) of the RMA.
Submission Close Date:	23 July 2021
Submissions:	A submission was received from the Ashburton CBD Business Group, which included some 5 individual signatories, as well as a series of accompanying emails in which an additional 12 people stated they supported the Business Group's opposing submission.
Recommendation:	That subject to new or additional evidence being presented, the application be declined in its present form pursuant to section 104B of the Resource Management Act.

1 INTRODUCTION

This report has been prepared on behalf of the Ashburton District Council (the Council) as consent authority in accordance with section 42A of the Resource Management Act 1991 (RMA). This report has been prepared to assist the Commissioner acting as the consent authority under delegation. It should be noted that the recommendations made in this report are made at the time of writing with the information available. The recommendations herein are in no way binding and it should not be assumed that the Commissioner will reach the same conclusions having heard all the evidence.

My name is Nicholas (Nick) Brian Boyes. I am a planning consultant with Planz Consultants Ltd. I hold a Bachelor of Science (majoring in Plant and Microbial Science and Geography) from the University of Canterbury (1997) and a Master of Science (Resource Management) (Hons.) from Lincoln University (1999). I have worked in the field of planning/resource management since 1999, the last 20 years as a planning consultant. I am also a Ministry for the Environment accredited Hearings Commissioner.

Much of my work has focussed on processing applications for district councils. I previously worked for the Selwyn District Council (SDC) as a Planner from 1999 to 2001. More recently I have processed various

consents within both the Izone and Iport industrial developments at Rolleston, in which matters of retail distribution and impacts on the Rolleston Town Centre are key issues. Within the Ashburton District I have processed applications relating to irrigation storage facilities associated with both the Barrhill Chertsey and Rangitata Diversion Race irrigation schemes; as well as commercial development within the Business B and D zones (the latter including the 'Kmart' development on Cass Street). I am therefore familiar with proposals involving retail distribution and the provisions within the Ashburton District Plan specifically.

I confirm I have read the Code of Conduct for Expert Witnesses and agree to comply with it. In that regard I confirm that this planning report is written within my area of expertise, except where otherwise stated, and that I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed. The processing of the resource consent application and preparation of this report has been undertaken with specialist advice from Mr Tim Heath (Economics), attached as **Appendix A**.

This report effectively acts as an audit of the application originally lodged with the Council in March 2019 prepared by Mr David Harford, Planner and Director at David Harford Consulting Ltd on behalf of the Applicant, Tricroft Properties Ltd. Following a request for further information, primarily relating to the District Plan changes introduced by Plan Change 4 (PC4), the application documentation was substantially updated and re-submitted on 30 April 2021. This was the proposal publicly notified.

2 DESCRIPTION OF THE PROPOSAL

The application is described in detail within the application documentation prepared by Mr Harford and the accompanying documents. On that basis a brief overview of the proposal is set out below.

The Applicant, Tricroft Properties Ltd, proposes to establish a retail tenancy within the central part of the existing building located at 363 West Street Ashburton. The tenants of the remaining parts of the building are not yet known and do not form part of this application. The nature of the District Plan rules is such that the size and retail nature of any individual tenant must be known in order to assess compliance; and the potential retail distribution effects of any future tenant not complying with the standards therein. Whilst the application refers to potential tenants of the remainder of the building (one of which would comply), until these are confirmed it is not possible to assess compliance. On that basis any future tenant will either comply, or have its impact on the Ashburton Town Centre assessed on its merits as part of a future resource consent application. Such considerations are therefore beyond the scope of this application.

The entire building was most recently occupied by a 'Bunnings Warehouse' hardware and trade/DIY supply store established in accordance with resource consent LUC06/0071. The proposed new occupier of the central part of the existing building is proposed to be 'Smiths City', a furniture and home appliance retailer (amongst others).

The Smiths City tenancy will have a retail floorspace of some 1002m². An ancillary covered and internal area, measuring approximately 360m², is sought to the rear (1362m² total GFA). This space will provide for storage and administration purposes, along with toilet facilities and amenities for staff. Further north is a secure yard area measuring 437m².

Until recently Smiths City operated from a site to the southwest of the application site within the Business B zone at 38 Kermode Street. This application therefore involves what is essentially a relocation (from the Business B zone to the Business C zone).

The majority of the ancillary works required will be focussed internally, with the existing building being largely unchanged through the proposal. As shown on the plans provided, the main frontage and entry foyer will be retained as part of this development.

As illustrated on the proposed site plan (**Appendix B**), this application includes an increase in parking provision across the site as a whole. This will factor ability for up to 10 additional car parks above the 139 parks (6 accessible) already provided on the site.

3 DESCRIPTION OF THE EXISTING ENVIRONMENT

The application site is on the northern side of West Street (State Highway 1) in an area displaying a mix of both commercial and residential activities. The application site is bordered to the west by the Residential C Zone including residential dwellings fronting Queens Drive and to the north by a parcel of Open Space A land and Business C. The location of the site is shown in **Figure 1** below.



Figure 1: Site Location (Source: Canterbury Maps)

This site consists of the former Bunnings Warehouse store which offered hardware, garden and building supplies. A vet clinic and café exist within a separate building located to the south adjacent to the West Street frontage of the site. The total site at present offers 139 car parking spaces, 6 of which are accessible parks. The larger building on the site is currently vacant following the recent closure of the Bunnings Warehouse.

On the opposite side of West Street (State Highway 1), between the railway line and the State Highway, there are further commercial properties including BP Ashburton and a BP Truckstop. Further to the north is 'The Phat Duck' restaurant and bar.

West Street (State Highway 1) is a two-lane sealed road which is straight in alignment on this boundary. Under the control of the NZTA, this thoroughfare has a speed limit of 50km/hr through this section.

4 ASHBURTON DISTRICT PLAN

4.1 Relevant District Plan Rules

The application site is zoned Business C under the Operative Ashburton District Plan. The relevant chapters are Chapter 5 (Business Zones), Chapter 10 (Transportation) and Chapter 13 (Signs).

The compliance assessment submitted with the application notes the particular provisions of the District Plan in relation to this proposal (Section 4.3 of the application AEE).

The primary reason for consent is the non-compliance with Rule 5.8.6 i), in that the proposed Smith City retail floorspace of some 1002m² exceeded the permitted maximum of 750m² gross floor area (GFA) set out therein (in terms of the rule as it was when the application was lodged). On that basis the proposed retail activity has a **non-complying activity** status under the operative District Plan rules at that time.

In terms of other potential non-compliances, the application refers back to the consent issued for the former use of the site as a Bunnings Warehouse. However, as the activity now proposed is materially different to that activity; it is considered that the proposal cannot rely on that consent, and therefore any other residual non-compliances are still relevant to this application. These include:

- **Rule 5.9.8 Landscaping and Trees**

The District Plan requires that all sites in the Business B, Business C (except Tinwald), and Business D and Business E zones shall be provided with tree planting on road boundaries with a minimum of one tree for every 10m of frontage. Trees shall not be planted a distance of more than 25m apart or closer than 5m. Furthermore, all trees shall have a minimum height of 1.5m or be at least 3 years of age at the time of planting.

The frontage of the site is some 85m, as shown in **Figure 2** below, there are no trees located across the frontage.



Figure 2: Site frontage (Source: Google Earth)

- **Rule 5.9.9 Amenity**

Where a site adjoins a site zoned Residential, Rural or Open Space:

- *the minimum setback of buildings from the Zone boundary shall be 4.5m.*

The site adjoins land zoned both residential (to the west) and open space (to the north). The existing building on the site complies with this setback requirement.

A landscaped area with a minimum width of 2m shall be established and maintained along internal boundaries adjoining the Residential or Open Space Zone, and shall be planted with species, which at maturity, will screen the buildings from the adjoining sites. In addition, a solid wall or close boarded fence with a minimum height of 1.8m shall screen any outdoor storage areas.

The 2m landscape strip is not provided along either the west or northern boundaries of the site.

- **Rule 10.8.11 Tree planting within car parking areas**

Where a car parking area has central parking rows, which do not abut a site boundary or building, trees shall be planted at least 7.5m apart adjacent to the central car parking spaces. The trees shall be protected from damage by vehicles.

The existing car parking areas do not include any trees internally within the central car park area (refer **Figure 2** above).

- **Rule 10.8.12 Parking and Loading – Queuing Length**

a) *Where car parking is provided within a site, a minimum queuing length shall be provided in accordance with Table 10-4*

Rule 10.8.12 (and Table 10-4 referred to therein) requires that where more than 100 car parking spaces are provided, 30m queuing length is provided between the road boundary and the nearest vehicle control point or point where entering cars could conflict with vehicles already on the site.

A queuing length of 23m is provided at the existing crossing. This element was included as part of the approval of the previous use of the site as a Bunnings. As the volume of traffic associated with the site is not considered to be materially changing through this proposal, the crossing is considered to fall within the existing consented baseline and is not assessed further.

- **Rules 13.8 and 13.9 Signs**

The application states that all signs associated with the proposed Smiths City activity will comply with the District Plan rules. Any street signage will be provided at or about the same position as the existing 'Robert Harris' sign adjacent to the entrance (see **Figure 2** above).

4.2 PLAN CHANGE 4 TO THE DISTRICT PLAN

Ashburton District Council has prepared Plan Change 4 (PC4) to its Operative District Plan (2014). The change covers the following areas:

- Amendments to the Objectives and Policies of the Business Section (5.4) to reinforce and strengthen the role of the Town Centre (Business A) for commercial activity.
- Amendments to the Rules of the Business Section (5.8) to manage various types of business activities, including introducing thresholds as to the range and extent of commercial activities enabled to locate within particular Business Zones.
- Amendments to the definition of commercial Activities and associates sub-groups to improve clarity and certainty as to the range of activities provided in each of the respective Business Zones.

The Plan Change was publicly notified in Ashburton Guardian newspaper on 4 November 2020, being prior to the lodgement of the original application. However, at that time those proposed rule changes did not have any effect. It is noted that this is not a situation where section 88A applies, and in any case the proposed rule changes introduced by PC4 do not alter the status of the proposed activity, which remains non-complying.

The Commissioners Recommendation was adopted by the Council on 30 June 2021. No appeals were received and the Plan Change is now operative.

PC4 deletes the previous version of Rule 5.8.2 h), which allowed for 750m² of GFA for any individual tenancy (excluding services stations and vehicles sale and other outdoor display and sales) and replaced it with the following provision:

h) Retail Activity in the Business **C and D and E** Zones, other than where specified as a Non-Complying Activity, provided that:

- retail display and sales shall be 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 150m² located within buildings,

except that this limitation shall not apply to:

- **food and beverage** restaurants and take-away food outlets;
- **trade suppliers** vehicle sales and other outdoor display and sales.
- **Yard based suppliers.**
- The display and sale of livestock and the sale of refreshments to persons attending sales events at the Ashburton Saleyards (Lot 2 DP 46305 and Pt RS 20425 Blk IV Hinds (Hekeao) SD).

On that basis the proposal remains a **non-complying activity** in terms of the operative provisions now included in the Ashburton District Plan as amended by PC4.

The balance of the report considers only the operative District Plan as amended by PC4, in accordance with the statutory requirements set out in section 104(1)(b).

4.3 Activity Status

The application is a **non-complying activity** pursuant to Rule 5.8.6 as the proposal includes retailing of goods that are not produced or processed on the site. The retail activity undertaken by Smiths City is not considered to fall within either of the exceptions applying to trade suppliers or yard based suppliers. Non-complying activity status means that the application is subject to the 'threshold test' under section 104D in order to be eligible for approval (assessed further below).

5 NATIONAL ENVIRONMENTAL STANDARD (NES) FOR SOIL CONTAMINATION

The application sets out that Environment Canterbury's (ECan) historical records indicates how the storage of fuel and chemical or liquid waste occurred on site until 1998. The information available suggests that one underground storage tank was removed from the site in late 1997 and that there is one other underground storage tank on the site, the age and size not known.

Although the A17 HAIL activity has not been formally investigated, I agree with Mr Harford's assessment that the site has operated as a building, homewares and garden supplies facility and the establishment of smaller retailing tenancy will not result in soil disturbance.

Therefore, given that no changes are being made to the site in terms of additional building work or ground disturbance, the proposal is considered to not result in a change of use that would trigger the provisions set out therein.

6 REGIONAL CONSENTS

It is understood that no other consents are required from Environment Canterbury (ECan) in relation to this development.

7 STATUTORY CONSIDERATIONS

7.1 Sections 104, 104B & 104D

Section 104(1) of the RMA provides the statutory requirements for the assessment of the application and sets out those matters that the consent authority must have regard to when considering the application and submissions received. Subject to Part 2 of the RMA, it is considered that the relevant matters for the assessment of this application include:

- a) *Any actual or potential effects on the environment of allowing the activity; and*
- ab) *Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- b) *any relevant provisions of—*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
- b) *Any other matter that the consent authority considers relevant and reasonably necessary to determine the application.*

When forming an opinion in relation to any actual or potential effects on the environment of allowing the activity, section 104(2) allows the consent authority to disregard an adverse effect of the activity on the environment if the District Plan permits an activity with those effects (the permitted baseline).

Section 104(3) states that a consent authority must not have regard to trade competition or the effects of trade competition, or any effect on a person who has given written approval to the application. The application did not include any written approvals.

As outlined in the submissions, a key issue in relation to the consideration of this application is the economic impact of this proposal on the existing Ashburton Town Centre. In that context it is important to differentiate “trade competition” from wider retail distribution type effects that might go to effects on people and communities and their social, economic and cultural well-being. In that context the Council has previously sought legal advice on the extent to which trade competition effects must be disregarded. That advice, prepared by Mr Andrew Schulte from Cavell Leitch, is attached as **Appendix C**. That advice sets the framework by which the assessment of the application set out below is undertaken.

Section 104D sets out particular restrictions for non-complying activities, 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*

Under section 104B of the RMA the Council may grant or refuse an application for a non-complying activity, and if it grants the application, may impose appropriate conditions in accordance with section 108 of the RMA.

7.2 Part 2

The application of Part 2 in the context of considering resource consent applications has been impacted by case law arising from the High Court Decision of *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 (Davidson Decision). That decision set out that there was no ability to consider Part 2 of the RMA as a separate exercise in line with the ‘overall judgment approach’ that prevailed prior to

this judgement. Rather any consideration of Part 2 is in the context of section 104, unless there is invalidity, incomplete coverage, or uncertainty of meaning in the statutory planning documents, in which case the consent authority may refer to Part 2 in determining an application. However, following the decision of the Court of Appeal [NZCA 316] in relation to this matter, it is my understanding that an assessment subject to Part 2 is once again appropriate in certain circumstances, and in particular where it is considered a plan has not been prepared in a manner that reflects the provisions of Part 2.

Part 2 of the RMA sets out the purpose and principles of the RMA, being “to promote the sustainable management of natural and physical resources” which is defined to mean:

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 wellbeing 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.*

Section 6 sets out matters of national importance, there are no matters of national importance considered of particular relevance to the processing of this application.

Section 7 requires particular regard to be had to ‘other matters.’ Of relevance to this application are:

- (b) *the efficient use and development of natural and physical resources;*
- (c) *the maintenance and enhancement of amenity values;*
- (f) *maintenance and enhancement of the quality of the environment;*

Section 8 requires the principles of the Treaty of Waitangi to be taken into account. No particular cultural matters have been identified in relation to this application. Local runanga were directly served notice of the application as part of the public notification process. No submissions were received.

8 SUBMISSIONS SUMMARY

At the close of the submission period a total of one formal submission had been received from the **Ashburton CBD Business Group (Appendix D)**. 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.

The submission raises 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.

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.

In terms of the relief sought, the submitters would like Smiths City to have a long term future in Ashburton, but not be allowed to operate from the proposed location. On that basis 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.

9 ASSESSMENT OF ENVIRONMENTAL EFFECTS (SECTION 104(1)(a))

9.1 Written Approvals (Section 104(3)(a)(ii))

Under section 104(3)(a)(ii) of the RMA, the consent authority must not consider any effect on a person who has given written approval to the application. No written approvals were supplied with the application.

9.2 Permitted Baseline (Section 102(2))

Section 104(2) of the RMA sets out that when considering the effects of allowing an activity, a consent authority may disregard an adverse effect if the plan permits an activity with that effect.

In terms of use of the site in the Business C Zone, retailing activity is 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 150m² located within buildings. There are exceptions to this, most notably in this instance being 'food and beverage outlets', 'trade suppliers' and the 'yard based suppliers'.

The proposal is significantly larger than the retailing activity provided for in the Business C zone. The key consideration of the permitted baseline is that the District Plan clearly anticipates trade and yard based suppliers, based on fact that such uses are not a good fit within the Town Centre. Otherwise retailing activity is restricted to those uses that are not of a scale to impact on the Town Centre.

On that basis, whilst there is a comparable permitted baseline in terms of building scale, signage, traffic movements and car parking; in my view 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.

9.3 The Existing Environment

It is my understanding of relevant case law that the existing environment is to include consideration of any modifications that could occur as a result of resource consents, both implemented and unimplemented consents (the latter being where there is no resource management reason to consider that they will not be implemented).

As referred to above, the entire building was most recently occupied by a 'Bunnings Warehouse' hardware and trade/DIY supply store established in accordance with resource consent LUC06/0071. That consent was given effect to and now forms part of the existing environment. A copy of that decision is attached as **Appendix E**.

In summary, that consent authorises:

- A building supply outlet stocking a range of products, including:
 - Timber and panel products
 - Building hardware;
 - Tools;
 - Plants and gardening supplies;
 - Paint and home decorating supplies;
 - Landscape supplies;
 - Bathroom and kitchen fittings; and
 - Outdoor furniture.
- Hours of operation being 7.00am to 7.00pm (Monday to Friday) and 8.00am to 6.00pm (weekends and public holidays).
- Parking for 171 vehicles utilising an existing layout.
- Vehicle crossing onto West Street (as approved by NZTA).
- Up to 10 goods deliveries per day between 7.00am to 5.00pm.
- Lack of a landscape strip along the residential boundary.

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. It is noted

that whilst referring to the car park layout (and absence of trees therein) being carried over from the previous use of the site, the report relating to LUC06/0071 makes no mention of the street frontage landscaping. This may have been in the basis that the landscaping was similarly not changing at that time from the previous use of site as a PGG Wrightson store and office. This matter and any differences in character between the previous use of the site as a trade supplier and the retail activity now proposed are assessed further below.

In terms of the economic impact of potential retail distribution on the Town Centre, it is noted that the previous uses of this site included retailing activity. The use of the site by PGG Wrightson included the display and sale of various farm and outdoor related clothing and equipment. More recently it should be acknowledged that there is a limited degree of cross-over between the goods previously sold by Bunnings under the existing consent and those of Smiths City; namely in relation to camping accessories, heating and outdoor furniture.

The extent to which the existing consent provides a 'consented baseline' for the retail activity proposed by Smiths City was raised with Mr Heath during the course of processing the consent. In an email dated 11 June 2021, Mr Heath stated:

In terms of the existing consent, I read that last night again and don't consider there to be any material difference to the baseline effects as the Bunnings Trade hardware store has very limited trade overlap with town centre retailers. The whole argument around there is an existing consent so our starting point is some impacts are already consented is more hyperbole than reality. That's why hardware stores are allowed to go in industrial zones as they don't have have {sic.} any material trade impacts on retail stores in town centres. So consideration of the existing consent has been made in our report and no change is required.

Based on that advice, it is considered that the retail distribution effects between the consented activity and that now proposed are sufficiently different and require detailed consideration, i.e., they do not fall within the consented baseline.

9.4 Relevant Matters for Assessment

As a non-complying activity, it is noted that the full range of adverse effects can be considered. However, as explained above, much of the activity associated with the proposed activity either complies, or is lawfully established by way of the existing consent.

As the building is existing, and no physical changes are proposed to the building design and bulk, the structure itself is existing and considered to be lawfully established. Similarly any exterior changes, installation of signs, addition of car parking are all considered to comply with the underlying zone rules.

The lack of a landscape strip along the residential boundary was assessed and considered as part of the previous consent. Furthermore, although notice of the application was served on all adjoining residential owners, none have lodged a submission or otherwise raised that matter.

Therefore, 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.

9.4.1 Town Centre Definition

It should be noted that the definitions Chapter of the District Plan includes a definition of Ashburton Town Centre, being:

**LUC21-0029 Tricroft Properties Ltd
363 West Street, Ashburton**

for the purpose of the Business Zone rules, the Ashburton Town Centre is the area of Business A zoned land contained generally within the area bounded by Mona Square north, Park Street, Wills Street, William Street, Cass Street, Moore Street, and State Highway 77/Kermode Streets.

This defined area is subject to specific height and site coverage standards set out in Section 5.9 of the District Plan. For the purpose of this discussion, the Ashburton Town Centre is that larger area zoned Business A as shown in **Figure 3** below.

The Business A Zone provides principally for small scale retail activity. The zone statement set out in Section 5.3 of the District Plan includes:

Although providing for a range of accommodation, community and commercial uses, the Business A Zone provides for commercial activity (such as offices, commercial services, hospitality, and retail activity)...

The diversity of activities aims to encourage the continued vitality, pleasantness and convenience of the District's Business A Zone and encourage efficient use and reinvestment in existing infrastructure and buildings.

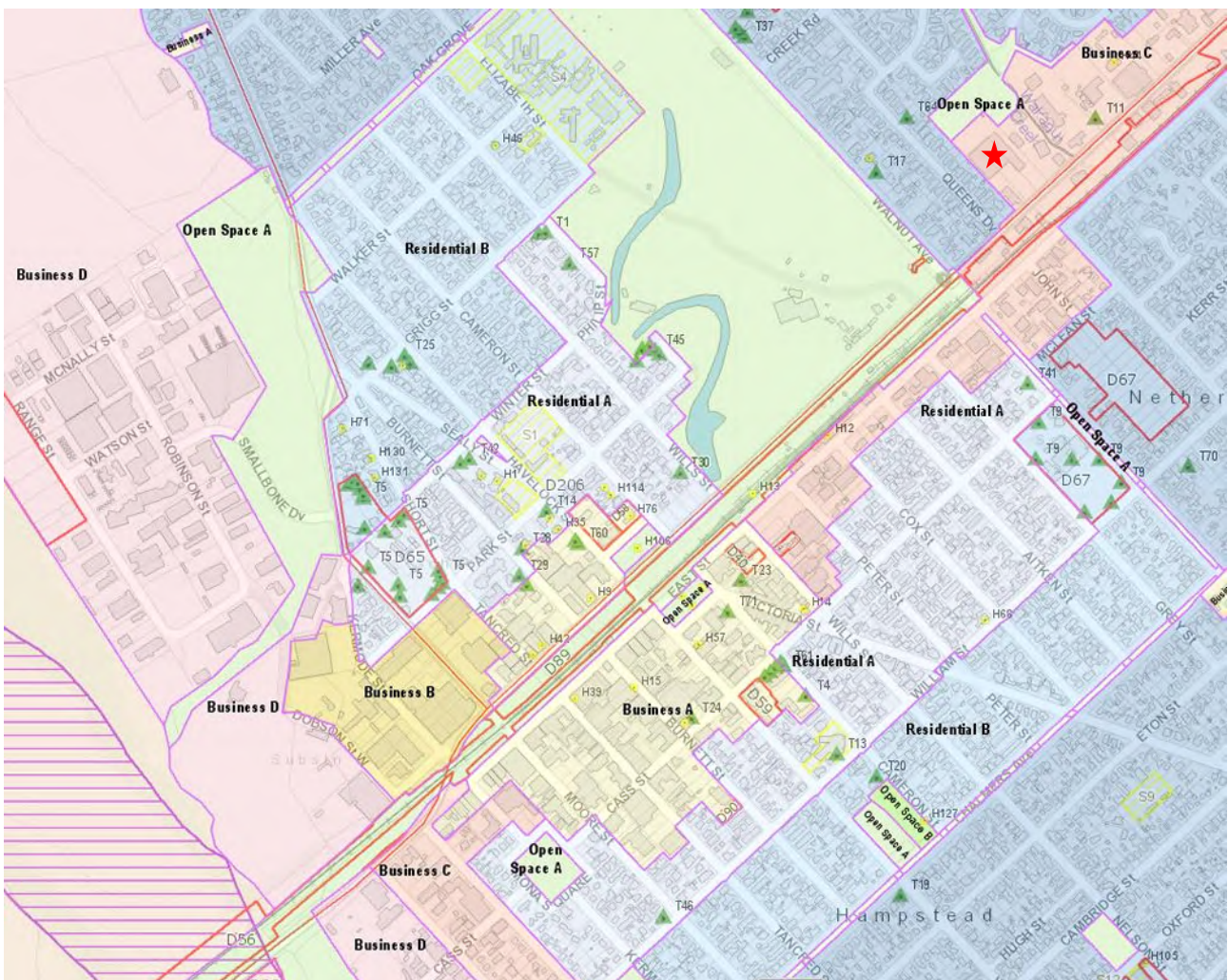


Figure 3: Ashburton District Plan zoning of central Ashburton, application site indicated by red star (Source: www.adc.govt.nz).

9.5 Effects on Character

The change from the use of the central part of the existing building from trade supplier to a retail department store could lead to a potential change in the character of the receiving environment. However, in this instance such concerns are mitigated by the DIY focus of the former use, which means that its traffic generation profile, in terms of frequency of vehicle movements/duration of shopping experience, was much closer to that anticipated by the proposed Smiths City use than other trade suppliers where visits

would potentially be less frequent and include a higher proportion of heavy vehicles. The proposed use of the site for retail is likely to involve reduced heavy vehicle movements and outdoor forklift use than a permitted trade supplier, particularly in the northern section of the site and circulating along the south west boundary, which adjoins residential properties. On that basis I do not expect the resulting amenity of the receiving environment arising from the proposed retail department store to be materially different (or adversely impacted) from that arising from the former (permitted) use of the site.

In terms of reverse sensitivity, there do not appear to be any heavy industrial activities in the immediate environs that would result in shoppers to the site being subjected to adverse nuisance type effects. It is noted that the public notification of the application did not result in any adjoining land occupiers raising such issues. In summary, no reverse sensitivity effects are anticipated.

It is acknowledged that the front part of the site has been used as a sealed car park for some considerable time. At present the site does not include trees along the frontage or within the car park itself. It is acknowledged that it is somewhat difficult to retrospectively install trees into an existing sealed carpark. However, in the absence of any demonstrable existing use right, it is considered appropriate to require additional street trees across the site frontage in order to provide the amenity/street scene in accordance with the District Plan expectations. Therefore, the requirement for additional street trees is recommended to be included as a condition on any consent granted.

Based on the inclusion of street trees across the frontage, the proposal is not considered to result in any adverse effects on the amenity or character of the area when compared to the permitted activities that could otherwise establish within the Business C zone.

9.6 Economic Impact Assessment

In the Business C zone retailing as a permitted activity is provided for only to the extent that retail display and sales are limited to single outlets (minimum area of 150m²) selling goods produced or processed on site and products ancillary to them. Provision is also made for food and beverage, trade and yard based suppliers (**Rule 5.8.2(h)**).

As evident by the concerns raised in the submission received opposing the application, the matter of the adverse effects on the Ashburton Town Centre as a result of this activity is considered to be the key matter for the assessment and consideration of this application.

The Applicant's assessment of environmental effects (AEE), included a report by Mr Derek Foy (at that time of Market Economics Limited (MEL), now employed by Formative Ltd) on potential retail distribution effects of the proposed Smiths City retail activity. This report has been peer reviewed on behalf of the Council by Mr Tim Heath of Property Economics (PE), this final peer review is attached as **Appendix A**. In response to the initial peer review, Mr Foy provided a Memorandum in response on behalf of the Applicant (dated 14 June 2021). Mr Heath's peer review report has subsequently been updated to include reference to Mr Foy's response and the submission received.

9.6.1 Trade Competition versus Retail Distribution

As outlined above, section 104(3) of the RMA specifically states that a consent authority must not have regard to trade competition or the effects of trade competition. How this should be interpreted in terms of assessing any potential economic impacts on the existing Ashburton Town Centre was outlined in legal advice from Mr Andrew Schulte from Cavell Leitch obtained in relation to a previous application for retail activity in the Business D zone (**Appendix C**).

Based on that advice it is my understanding that effects on other individual retailers essentially falls under trade competition as referred to in section 104(3) above. In order to be an effect to be considered under the RMA this trade competition must extend to the threshold at which the Ashburton Town Centre generally were likely to suffer, resulting in adverse amenity related type effects across the entire town centre such that it was no longer seen as desirable. In other words the effects would extend beyond simple

trade competition, and impact on the ability of people and communities being able to provide for their well-being as set out in section 5 of the RMA. In that context the threshold whereby retail distribution effects arise is relatively high, and extend beyond the economic viability of individual stores within the Town Centre, but to the attractiveness and desirability of the Centre itself. It is in that context that the assessment below is undertaken.

9.6.2 Applicant's Position - Summary

As set out in the 14 June response Memorandum, Mr Foy's assessment can be summarised as follows:

- The proposed relocation of Smiths City (from the Business B zone) is necessitated by the ending of their current lease, and an absence of alternatives given the very limited supply of LFR premises, or vacant land in the zones where LFR is permitted, in Ashburton.
- That limited supply is contrary to Council's obligation under the NPS-UD to ensure the provision of sufficient, suitable business land.
- The relocation would potentially result in a net addition of retail floorspace in Ashburton.
- The direct effects of the relocation on the Business A zone would be equivalent to less than a year's growth in the retail market. A revised assessment indicates that Smiths City would be expected to generate trade competition effects of around 2% on the Business A zone. Meaning that the effects would be only temporary, and less than minor.
- The Smiths City relocation and the new Kmart together would have only marginally greater impacts than those assessed for the Kmart alone, which were determined to be acceptable, given the granting of that application.

There are elements of these conclusions that require further planning consideration, the matters are inter-linked and relate to:

- Availability of vacant land in zones where LFR is permitted
- The significance of the NPS-UD.
- The Council's approval of the Kmart application.

9.6.3 District Plan Provision for LFR & NPS-UD

The National Planning Statement on Urban Development (NPS-UD) requires that "*local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term*" (Policy 2). Mr Foy sets out that in the context of this application, this requires Council 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. 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*"¹. To facilitate this outcome **Rule 5.8.2 g)** sets out that retail display and sales shall be limited to single retail outlets, each with a minimum gross floor area of 500m² located within buildings, except that this limitation shall not apply to:

- *service stations for which any indoor retail floor area shall not exceed 150m² in area;*
- *food and beverage*
- *trade suppliers*
- *yard based suppliers*
- *lotto kiosk of café associated with and ancillary to supermarkets*

¹ Zone Statement (Section 5.3.2 of the District Plan).

As can be seen in **Figure 3**, the land area within the Business B zone is relatively small when considered against the spatial extent of the other business zonings. 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. However, it is noted that the move by Smiths City out of the Business B zone will presumably mean an additional 1,500m² GFA will become available.

It must be acknowledged that the Kmart application was considered against the District Plan provisions as they were pre-PC4. At that time **Rule 5.8.2 f)** restricted the maximum gross floor area of any individual retail tenancy in the Business A zone to 500m². Furthermore, LFR was not permitted in any other zone other than Business B, and that zone was effectively full, and there was certainly not sufficient land available to develop the extent of LFR required to facilitate the proposal put forward by Kmart. So it was (at that time) not a situation where the District Plan otherwise guided the Kmart LFR development to be located within (or be better placed) within the Town Centre/Business A zone.

This situation has changed post-PC4. The only retail exclusion in the Business A zone is now service stations and supermarkets exceeding 1,200m² in GFA. The issue of the supply and demand of Business B zoned land was known at the time of promulgating PC4. 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. In that context, I disagree with the observations made by Mr Foy regarding the availability of land available for LFR development and the conclusion that the Council has not met its obligations under the NPS-UD. LFR is now provided for in the Business A zone (in addition to Business B). Whilst Mr Foy might argue the suitability of that land in terms of size and availability, it is clear that the District Plan framework seeks to create demand for land zoned Business A over allowing out of centre development. That increase in demand will (in time) create incentives for landowners to release/rationalise land such that it becomes available for redevelopment.

In summary, it is no longer the case (post-PC4) that LFR is provided for exclusively in the Business B zone. On that basis there is now the opportunity and availability of Business A zoned land for LFR purposes. In that context it is considered that the Council has met its obligations under the NPS-UD to supply sufficient development capacity for suitable LFR development. It is noted that was not the case when the resource consent for the Kmart development was considered. Furthermore, the Kmart development required significantly more land than is required for the proposed Smiths City development. In any case, I disagree with Mr Foy's suggestion that this application should be approved because it has lesser effects than Kmart, which was determined to be acceptable (by way of being approved). As explained above, the planning context of this application is very different to that which applied at the time the Kmart application was considered (being pre-PC4)².

9.6.4 Peer Review Findings

Mr Heath reaches the conclusion that the ME report does not provide sufficient information to support its position regarding the potential level of retail impact on Business A zoned activity. Mr Heath states (page 4) that *“Unfortunately, there is no data, methodology or information to review that supports the 2% level of effects identified... It is not therefore possible to provide a position on the veracity of these impacts on the Business A zone”*.

Compounding any such adverse effects is Mr Heath's view that the Ashburton Town Centre currently exhibits a low-quality retail environment, with a significant level of vacancies as well as proportional and nominally decreasing employment activity. Mr Heath considers that continuing to detract from this environment is contrary to the District Plan objectives and policies and is likely to continue to undermine the role and function this centre should play in community well-being.

² It should be noted that I was engaged by the Council to be the processing/reporting officer on that Kmart application.

Overall, Mr Heath reaches the view that the ME report is “materially flawed” and that the proposal is likely to result in adverse economic outcomes.

9.6.5 Discussion

In terms of the economic effects on the Ashburton Town Centre, there is some considerable difference in the conclusions reached by Mr Foy and Mr Heath. Notwithstanding, it is considered that the level of potential effects identified by Mr Heath go beyond simple trade competition and are therefore relevant to the consideration of this application under section 104(1)(a).

Should Mr Foy’s assessment not be “*materially flawed*”, I understand that the direct effects of the relocation on the Business A zone would be equivalent to less than a year’s growth in the retail market, or described in other terms that Smiths City would be expected to generate trade competition effects of around 2% on the Business A zone. In my view that level of adverse effect is not what I would describe as significant.

I understand that the methodology used by Mr Foy is to apply the same model as used for the assessment undertaken in relation to the Kmart application (January, 2019), but being updated to derive impact estimates for the Smiths City relocation from the Business B. As noted by Mr Foy, Mr Heath similarly peer reviewed that assessment and did not raise such fundamental concerns with the methodology used at that time.

Mr Heath notes that the representative proportion of retail within the Town Centre has dropped markedly over the past 15 years and there has been a significant move away from properties providing for the retail market in the Town Centre. In my view much of this shift has been the growth of LFR provided within the Business B zone, which as stated above is now at capacity. This shift has occurred in compliance with the District Plan zoning framework, therefore such effects must have been anticipated and considered acceptable. Much in the same way that if Smiths City stayed within the Business B zone there would be no consenting ability to consider any adverse retail impacts on the Town Centre/Business A zone. It is only the potential for the 1,500m² of GFA previously occupied by Smiths City to be taken up by a retailer that would otherwise have located within the Business A zone that is of concern.

Of greater concern in my view is the physical separation of the proposed site from the existing Business A and B zones where such activity would otherwise be anticipated. Unlike the Business B zone, the application site is not within walking distance of the Ashburton Town Centre. In this regard I disagree with the commentary of Mr Foy that not all trips to Smith City will result in a decrease in trips to the town centre, given the limited range of products sold at Smiths City. Mr Foy considered that “*most trips to the Business A zone would continue to occur as they do now, and in our opinion there would be noticeable change in visitation, vibrancy or vitality of the Ashburton town centre if the Smiths City were to establish at 363 West Street*” (page 15, Smiths City Ashburton Economic Impact Assessment, ME, May 2020).

The separating distance means that it is much more likely that visits to Smiths City will be vehicle dependent and it will operate as a destination retail experience outside the existing centre. Any such concerns could be exacerbated depending on the nature of the future occupants of the other two tenancies within the application site. However, as stated above, these will be considered on their own merits, including cumulative impacts, should they similarly require resource consent to establish.

9.7 Summary of Environmental Effects

As assessed above, there are no concerns regarding the amenity or character of the receiving environment from introducing a Smiths City department store in the proposed location. The site has existing and approved access onto West Street/State Highway 1, the parking is similarly established and the site has been used for trade supply retail (Bunnings) during the period 2006 to 2020.

The key assessment matter for the consideration of this application is the retail distribution effects of the proposed Smith City establishing outside the recognised zones for such LFR activity, being the Business B and A zones (in that order of preference under the District Plan framework).

The effects assessed by Mr Foy (some 2% or less than one year's growth in the Ashburton retail market) are not what I would consider to be more than minor in the context of impacts on the vibrancy and viability of the existing Ashburton Town Centre. The question then becomes the extent to which this assessment can be relied upon given the serious nature of the critique provided by Mr Heath. The difficulty being an absence of how to quantify what impact any such methodological inaccuracies might have on the overall conclusion reached.

Notwithstanding the above, another key issue is the physical separation of the proposed site from the existing Business A and B zones, being the effective Town Centre; and the implications this has in terms of connectivity and the creation of a separate retail destination experience.

Section 104D of the Act directs that the first gateway of the threshold test requires a consent authority to be satisfied that the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor. Whilst there is a degree of uncertainty, at this stage it is considered that the application potentially meets this threshold test.

The overall substantive consideration of the application will much depend on the nature of the policy changes introduced through PC4 to the District Plan and the second aspect of the section 104D threshold test as assessed below.

10 RELEVANT OBJECTIVES, POLICIES, RULES AND OTHER PROVISIONS OF THE CANTERBURY REGIONAL POLICY STATEMENT [SECTION 104(1)(B)(V)]

Under section 104(1)(b)(v) of the RMA, the consent authority shall have regard to the relevant provisions of a regional policy statement. The Canterbury Regional Policy Statement (CRPS) became operative on 15 January 2013. In my view the nature and scale of the proposed activity is such that it does not impact on any matters relevant to the CRPS.

11 RELEVANT OBJECTIVES, POLICIES, RULES AND OTHER PROVISIONS OF THE ASHBURTON DISTRICT PLAN [SECTION 104(1)(B)(VI)]

The objectives and policies found in the operative Ashburton District Plan have been assessed in the application document prepared by Mr Harford. Those included therein are contained within *Section 10: Transport Zones 10.3* and *Section 5: Business Zones 5.4 Objectives and Policies*. Based on the findings above I agree with and adopt the assessment of Mr Harford in relation to those traffic objectives and policies. Therefore, the assessment below focusses on those relating to the Business Zones (Section 5).

11.1 Business Zone – Section 5

The introduction to this Section of the District Plan highlights the role buildings and in particular town centres play in enabling communities to provide for their economic and social well-being. Section 5.2.1 states (**bold** indicates text introduced through PC4, emphasis added):

*Town centres (**as zoned Business A**) are a source of identity for their communities, as they represent a meeting place for many people, particularly associated with comparison shopping, professional and administrative services **and commercial development**. It is not a coincidence that the commercial heart of towns very often is physically located in or near their geographic centre. Consolidating the area within which these activities take place will reinforce the communities' perception of the character and form of their towns and their identity, not only as a place of business, but also as a venue for social and cultural events.*

*Providing for retail activities in a central location also maximises the opportunity for access on foot from the surrounding residential areas. A compact town centre enables pedestrians to walk to areas without the need to drive from one area of retail to another... However the advent of **large format** retail has facilitated the need to use vehicles; the **limited provision for large format** retail in Ashburton (Kapuka) on the opposite side of State*

*Highway 1 to the town centre (**Business B zone**) allows additional capacity for such retail activities that would not otherwise be able to be incorporated in the Town Centre (Business A zone) and does limit but not prevent pedestrian access to the town centre...*

*It is not considered **either efficient or appropriate** to provide for retail activities throughout **all Business zones, or the residential and rural areas of the District.** Such development has the potential to create reverse sensitivity effects, **reduce consolidation of commercial activities in the Business A zone**, as well as the need to extend infrastructure into areas otherwise not currently serviced.*

It is noted that the underlined addition introduced through PC4 could be interpreted in a way that contradicts the observations I made above regarding the ability for LFR to now establish as of right within the Business A zone. However, the fact remains that PC4 made a change to remove the 500m² maximum GFA restriction that previously applied in the Business A zone. In that context I am not aware of why the above comment was added to the 'Issues' section of the Business Chapter. It may be reference to the fact that the fragmented nature of ownership means there is a practical difficulty in acquiring the land parcel size required to establish LFR in the Town Centre. As pointed out by Mr Foy, there are some 267 parcels zoned Business A, of which 252 are 100m² or larger. Those 252 parcels are owned by 124 different owners, and the average parcel size is 767m².

There are three Business Zone objectives included in Chapter 5 of the District Plan. The first **Objective 5.1** 'Business Area Development and Effects' is the most important in terms of the issues raised by this application and was effectively rewritten through the PC4 process:

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***

The key policies underlying this objective are considered to be 5.1A and 5.1D, as follows:

Policy 5.1A

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.***

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.***

The explanation and reasons effectively sums up the overall approach to the District Plan policy framework when considering the growth, maintenance and consolidation of the District's business areas:

...

*The consolidation of business areas is **critical** to ensure that people have access to well-maintained and functioning business areas with a wide range of business activities that maintain their vitality, pleasantness and convenience. The dispersal of **commercial** activities to new locations can leave existing **Business A zoned** areas vacant, under-utilised, unattractive, and unable to provide the services **or identity** the community desires. The consolidation of **commercial activities in Business A zoned** areas assists in making efficient use of public investment in roads and other **community and public** services; assists in retaining the vitality of **Business A zoned** areas; and the perception of the District's towns as prosperous and lively centres. Dispersal of business activities throughout the District can also result in the mixing of incompatible activities...*

The peer review prepared by Mr Heath raises concerns around the ability of this proposal to achieve **Objective 5.1** and **Policy 5.1A**. The diversion from the other retail areas within Ashburton, whilst not entirely from the Town Centre, will no doubt have an adverse impact and not serve to maintain the function, integrity and viability of the existing inner commercial area of Ashburton.

Policy 5.1D deals specifically with LFR, and clearly guides such development to locate within the Business B zone. However, the amended policy is clear that only "*limited opportunities*" for LFR will be provided "*that are otherwise difficult to accommodate in the Business A zone due to their scale or functional requirements*". It is noted that the applicable rules would appear to indicate that the scale of retail activity "*difficult to accommodate in the Business A zone*" is some 500m² of GFA (see **Rule 5.8.2 g**). This is considerably less than the 1360m² of GFA required by Smiths City. In the context that PC4 was drafted in clear knowledge that the existing capacity for additional LFR within the Business B zone was limited, PC4 provides mixed guidance for additional LFR now seeking to establish in Ashburton. Whilst above I have stated that the amended Rules now provide the ability for LFR to establish within the Business A zone, the amended policy framework also makes statements that LFR "*would not otherwise be able to be incorporated in the Town Centre*" (**Section 5.2.1**) and is "*difficult to accommodate in the Business A zone due to their scale or functional requirements*" (**Policy 5.1D**). On that basis the amended District Plan refers to providing limited LFR opportunities when the applicable zone was known to be at capacity with no clear policy guidance as to where such activity should otherwise locate.

Notwithstanding, the key matter that requires consideration is whether the proposed LFR will detract from the consolidation of the inner retail area of central Ashburton (including both Business A and B zones). It is noted that Economic Assessment submitted with the application refers to the proposal being "contrary" to the objectives and policies contained in the Ashburton District Plan and as amended by PC4 (as it was at the time). Notwithstanding, Mr Harford's planning AEE concluded that "*a balanced judgement falls in favour of not being contrary with those policies*".

The dispersal of business activities to new locations can leave existing areas vacant, under-utilised, unattractive, and unable to provide the services the community desires. The consolidation of business areas assists in making efficient use of public investment in roads and other services in the business areas; assists in retaining the vitality of business areas. Notwithstanding, noting the findings of Mr Heath, the possible threat to the viability of the existing Ashburton Town Centre is acknowledged.

Another factor that counts against the subject proposal is the physical separation from the other applicable Business A & B zones that otherwise provide for such activity (refer Figure 3). This serves to increase vehicle dependency and does not maintain or enhance the amenity or vibrancy of the central part of Ashburton or provide for the Business A zone as the primary commercial, retail, recreational, cultural and entertainment centre for the district.

Both **Objective 5.2** and **Objective 5.3** are amenity related. **Objective 5.2** 'Qualities of Business Areas' focusses on the amenity within and in the immediate surrounds of the proposed development, whilst **Objective 5.3** 'Effect of Business Areas on Surrounding Amenity', is more aimed at strategic consideration of new growth areas that might adjoin residential and rural areas. **Objective 5.2** sets out to ensure that:

Business areas that are pleasant places to visit and work within.

The visual amenity aspects of the proposal have been assessed above. Subject to some relatively minor recommended changes to street frontage landscaping requirements it is considered that the proposal accords with this objective. It is noted that the recommendation to require street tree planting along West Street accords with **Policy 5.2B**, which is:

Ensuring the frontages of sites for industrial and service activities present an attractive, landscaped aspect to the street.

11.2 Objectives and Policies Summary

Taken at face value the amended policy framework seeks to reinforce and strengthen the role of the Town Centre (Business A) for commercial activity. Whilst this proposal represents a relocation from the Business B zone to the Business C zone, the opportunity for retail activity to establish within the vacant premises that would otherwise locate within the Business A zone is still a relevant consideration.

The Business B zone provides limited opportunities for LFR, the Smiths City premises was located within that zone and has for whatever reasons chosen to seek consent for LFR outside the identified zones that provide for such use (notwithstanding the mixed policy guidance as referred to above).

Mr Foy 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 the Smiths City were to establish on the application site. In my view the physical separation of the site from the balance of the commercial areas (Business A & B zones) is such that it will effectively prevent pedestrian access to the Town Centre and act as a destination retail experience in its own right.

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.

12 THRESHOLD TEST FOR A NON-COMPLYING ACTIVITY (SECTION 104D)

As set out in full above, section 104D of the Act directs that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either 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 the application is for an activity that will not be contrary to the objectives and policies of the relevant plan (section 104D(1)(b)(i)).

I understand that when considering whether the adverse effects will be minor, there is no statutory authority to consider the positive effects that might accrue from the proposal. The positive effects of this proposal appear to be limited to the ability to retain Smiths City within the district, as set out in the Letter from Mr Tony Gilbert from Smiths City attached as Appendix 1 to Mr Foy's Economic Impact Assessment Report (6 May, 2021).

Rather 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 assessment above, whether the proposal results in "more than minor" adverse economic impacts on the Town Centre has yet to be determined given the vastly different positions between Mr Foy and Mr Heath.

When assessing the second aspect of the threshold or gateway test, my 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.

Regardless of the level of effects, the proposal is considered to be contrary to **Objective 5.1 and Policy 5.1A** of the District Plan as recently amended by PC4 relating to the function, integrity, convenience and viability of the Ashburton Town Centre. On that basis whether the application can meet the threshold test

for a non-complying activity and therefore be eligible for approval is dependent on any finding that the adverse effects are minor.

13 CONSIDERATION OF ALTERNATIVES

Schedule 4 of the RMA sets out that an AEE must include a description of any possible alternative locations or methods of undertaking the activity where it is likely the activity will result in adverse effects. Based on the peer review undertaken by Mr Heath, this may well be the situation in regard to this application.

Mr Harford addresses alternatives in Section 5.79 of the application AEE. Mr Harford concludes that:

The size and scale of the proposed tenancy and necessary car parking areas are such that this development could not easily be accommodated within the (more central) Business A and Business B Zones, short of demolishing a significant number of buildings and creating a land area the equivalent of what is available at the site.

Section 5 of Mr Foy's Economic Impact Assessment Report considers vacant sites in the Business A & B zones and refers to the situation of site unavailability having consequences in terms of the Council's obligations under the NPS-UD as discussed above.

It is clear that the Council has made a conscious decision to provide only limited opportunities for LFR by way of a constrained size of Business B zone. The other alternative location now provided under the District Plan framework is within the Business A zone itself. A Town Centre location is the most obvious method by which to address the potential economic impacts of the proposal; and would now be a permitted activity under the changes introduced by PC4. It is acknowledged that achieving a sufficiently large area of land may be a practical difficulty of establishing within the Town Centre. However, the restriction of land supply is presumably a method of providing incentives for at least some of the existing Town Centre landholders to move toward redevelopment.

In summary, in the absence of vacant Business B zoned land, the rule changes introduced by PC4 guides such development to establish as of right within the Business A zone as an alternative to further "out of centre" development such as that proposed.

14 OTHER MATTERS (SECTION 104(1)(C))

Section 104(1)(c) sets out that when considering an application for a resource consent the consent authority must, subject to Part 2, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine the application.

In the context of the subject application the only 'other matter' I consider relevant is the question of precedent and plan integrity.

14.1 Precedent and Plan Integrity

It is my understanding from relevant case law that the concept of precedent reflects a concern that the granting of resource consent may have planning significance beyond the immediate vicinity of the land concerned; with plan integrity more likely to affect the public confidence in the plan and its consistent administration. It is acknowledged that "precedent" is not an adverse effect on the environment. However, these are considered to be matters that can be considered under section 104(1)(c) of the RMA, with the appropriate weight to be given to them being dependent on the circumstances of the particular application.

In this instance the matter of plan integrity is of greater significance, this being the first application received post PC4. The precedent represented by this outcome would mean that LFR could occur throughout the Business zones, including those more directed towards yard based and trade supplier retail activity.

In order to avoid precedent and subsequent effects on the integrity of the District Plan, a proposal for a non-complying activity as proposed would need to establish unusual qualities that might distinguish it

from other applications. In this instance the only mitigating factors would appear to be the previous use of the site for DIY related trade supplier activity and the relocation from an existing premise not otherwise within the Town Centre.

Policy 5.1A refers to avoiding activities with the potential, either individually or cumulatively, to impact on the continuing ability of town centres. This is a clear and direct statement and based on the concerns expressed by Mr Heath in relation to this proposal it is considered that this application has the potential to result in an adverse precedent undermining the integrity of the District Plan as amended by PC4.

15 CONCLUSION & RECOMMENDATION

Tricroft Properties Ltd proposes to establish a retail tenancy for Smiths City within the central part of the existing building located at 363 West Street Ashburton. The Smiths City tenancy will have a retail floorspace of some 1002m². An ancillary covered and internal area, measuring approximately 360m², is sought to the rear (1362m² total GFA). Further north is a secure yard area measuring 437m². Until recently Smiths City operated from a site to the southwest of the application site within the Business B zone at 38 Kermod Street. This application therefore involves what is essentially a relocation (from the Business B zone to the Business C zone).

The entire building was most recently occupied by a 'Bunnings Warehouse' hardware and trade/DIY supply store established in accordance with resource consent LUC06/0071.

The adverse effects assessed by Mr Foy (some 2% or less than one year's growth in the Ashburton retail market) are not what I would consider to be "more than minor" in the context of impacts on the vibrancy and viability of the existing Ashburton Town Centre. However, the peer review undertaken by Mr Heath on behalf of the Council has raised questions as to the extent this assessment can be relied upon. As it stands there is some difficulty in being able to quantify what impact any such methodological inaccuracies might have on the overall effects conclusion reached.

The proposal is considered to be contrary to **Objective 5.1 and Policy 5.1A** of the District Plan as recently amended by PC4 relating to the function, integrity, convenience and viability of the Ashburton Town Centre. The recent introduction of PC4 places greater emphasis on the assessment of this proposal potentially undermining the integrity of the new provisions. In my view the approval of this application would impact on the integrity of the changes made through the PC4 process.

Overall, in the absence of any clear resolution in terms of the potential economic impacts of the proposal on the Town Centre/Business A zone it is difficult to reach an overall recommendation regarding this application. Notwithstanding, the strengthened policy framework introduced through PC4 and the effects granting consent would have on the integrity of those provisions moving forward are relevant considerations.

On balance I consider this application should be declined, unless it can be demonstrated that the level of effects does not impact the function and role of Ashburton Town Centre (Business A zone) as the primary commercial, retail, recreational, cultural and entertainment centre for the district.

A set of conditions that would be appropriate to impose on any consent granted are attached as **Appendix F**. This includes provision for additional tree planting across the street frontage.

Report prepared by:



Nick Boyes

Consultant Planner (Planz Consultants Ltd) on behalf of the Ashburton District Council

Date: 25 August 2021

LUC21-0029 Tricroft Properties Ltd
363 West Street, Ashburton

APPENDIX A

Economic Impact Assessment Peer Review – Mr Tim Heath, Property Economics Ltd

PROPERTY **E**ECONOMICS



ASHBURTON SMITHS

CONSENT APPLICATION

ECONOMIC REVIEW

Client: Ashburton District Council

Project No: 51993

Date: August 2021



SCHEDULE

Code	Date	Information / Comments	Project Leader
51993.2	August 2021	Report	Tim Heath / Phil Osborne

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1. INTRODUCTION

Property Economics has been engaged by Ashburton District Council to undertake a review of an economic assessment presented by Mr Derek Foy of Market Economics (**ME**) dated 6 May 2020 (*sic*), on the relocation of Smiths City from a site zoned Business B to the vacant Bunnings site in the Business C zone. Subsequent to this review Mr Foy, now at Formative, provided a response to this review which Property Economics will make some brief commentary. Additionally a review of the CBD Group submission will be made and economic position taken on their key submission points.

The application is for the relocation of the existing Smiths City at 38 Kermode Street (Business B zone) to the former Bunnings site at 363 West Street (Business C zone). The former store is approximately 1,500sqm with the new tenancy covering 1,360sqm.

This review is not intended to provide an exhaustive outline of every economic matter raised in the ME report, but traverse matters where retail economic issues remain and form an economic position on the relocation to assist the Council in framing an economic position on the proposal.

There are three substantive economic aspects addressed in the ME report. These are:

1. The potential distributional retail impacts on the Ashburton Town Centre
2. The relative '*health*' of the Ashburton Town Centre
3. The planning framework context in terms of community objectives for the Ashburton Town Centre

The ME report provides an overview of the current planning provisions and the expectations of Business zones A, B and C. Additionally, it outlines the objectives of Plan Change 4, notified in

November 2020 intended to strengthen the role and function of the Ashburton Town Centre (Business A zone). The summary to this section highlights that Smiths City is permitted in both Business A and Business B zones but would be non-complying, based on the District Plan's objectives and policies, in the proposed Business C zone.

Potential Economic Impacts

It is considered prudent to firstly assess the potential retail distributional impacts identified in the ME report before placing these in the context of the receiving environment, relating to the current and anticipated state of the Ashburton Town Centre, as well as in the context of the District Plan objectives and policies.

Essentially the ME report provides little assessment of the potential effects. Section 6.1 of the report states that because the current store is located in Business B its level of impact on the Town Centre is unlikely to be materially changed, albeit there is potential for the store to improve sales in this location, based on the proposed location remaining outside the Centre. While the existing store is currently located outside of the Business A zone, it is located within an identified large format retail zone, therefore the proposed relocation does represent a significant movement of retail activity outside of the identified retail zones.

As identified in the ME report, the relocation leaves 1,500sqm of additional retail space within the Business B zone that has the potential to be occupied by additional retail. The report states that this additional 1,500sqm of competing retail is likely to redirect 2% of retail sales from the Town Centre.

Unfortunately, there is no data, methodology or information to review that supports the 2% level of effects identified in paragraph 2 of this section. It is not therefore possible to provide a position on the veracity of these impacts on the Business A zone.

The ME report also comments on the potential cumulative effects, on the Town Centre, of the consented Kmart development as well as the additional retail space potentially created by the proposal. This has been estimated at approximately 10%. The report then states that this level of impact could be absorbed through growth from 2019 to the proposed opening of the Kmart in 2022. Once again, no actual assessment in the ME report has been provided to substantiate this.

The position here appears to be that if the Town Centre has experienced growth (which appears contrary to the current numbers) or is expected to grow to 2022 the proposed developments will only set it back, at minimum 4 years. This assumes the growth has gone into the Town Centre and then assumes that the community, through the District Plan, are comfortable this redirection of retail activity is in keeping with strengthening the role and function of the Town Centre. Given that the two ME reports (Kmart and Smiths City applications) indicate a potential loss of activity in the Town Centre the significance of this loss is pertinent in terms, not only of

the objectives of the Plan, but also in terms of the *'health'* of the receiving environment, the Town Centre.

Relative Impacts and Ashburton Town Centre Health

A key consideration in assessment of relative retail effects is the condition of the receiving environment. A substantial nominal impact on a centre that is performing well and meeting its role and function may not be considered significant, while a lower nominal impact on a centre that is struggling could be considered significant.

Section 4 of the ME report outlines some considerations with regard to the potential health and improvements to the Ashburton Town Centre. It identifies a handful of new developments and some refurbishments that have taken place over the past 6 years. It also identifies a planned development that has yet to be actioned and has subsequently been put on hold. The report **also identifies the 'long overdue' nature of these developments** given the low quality of the existing space within the Town Centre.

The ME report contends that while the District has seen growth in the retail sector the Town Centre has shown a decline with a commensurate increase in hospitality employment. No information is provided to support this position. While, once again, no information is provided within the report to corroborate this contention, ME **concede that there are 'many vacant premises in the Ashburton Town Centre'**. Property Economics concurs with this finding based on its own recent economic analysis of the Town Centre.

The ME report further states that the small level of redevelopment that has occurred over the past 6 years represents an **'earnest' to redevelopment** and a **'high level of investor confidence'** in the Town Centre. This leads the report to find that the Town Centre is likely to remain very dominant within the District. Unfortunately, no information provided within the report supports this position. At the very least the report has acknowledged that the Town Centre has fallen as a proportion of the District's retail activity and in fact retail activity has fallen nominally (in terms of employment).

While the subdued level of investment in the Town Centre may indicate some level of willingness to improve the Town Centre the falling activity (over the longterm), poor quality offer and high level of vacancies would all suggest that the Town Centre requires significantly more investment and encouragement to meet its role and function within the community and **effectively contribute to Ashburton's economic and social wellbeing.**

Finally, the ME report outlines three new retail developments proposed for Ashburton. While none of these 3 projects are proposed for the Town Centre, it is of interest that both the development at East Street and the 7,000sqm Kmart on Cass Street are to be developed outside the Business A and Business B retail zones. This would reinforce that during a period of

growth within the retail sector the Town Centre continues to exhibit an overall lack of demand, leading to a low-quality offer and vacant retail stores.

Impacts Under PC4 and District Plan Objectives

This section of the ME report outlines, in detail, the objectives and policies of both the current plan and those of Plan Change 4 (PC4). These policies seek to recognise the significant investment within business zones as well as the contribution that the Town Centre makes to the community. PC4 seeks to further re-establish the Town Centre's position by consolidating business activity within the centre to achieve a vital and attractive centre.

The ME report summarises this section by establishing that Smiths City is permitted with Business zones A and B while being non-complying under the current proposal.

As identified above it is important to consider the level of retail distributional impacts resulting from Smiths City relocating out of zone, in the context of both the receiving environment and the objectives and policies of the District Plan. It is clear, even from the impacts identified in the ME report, that this proposal is contrary to the objectives of the Plan. This proposal simply disperses retail activity away from the appropriate and recognised zones resulting in impacts that further degrade the Town Centre rather than aiding in its vitality, amenity, role and function within the community.

Conclusion

The ME report on the application to relocate Smiths City does not provide sufficient information to support its position regarding the potential level of retail impact on Business A zoned activity. The ME report provides a high-level summary of potential impacts and then discounts these based on their significance without sound justification. If this level of nominal impact were accepted the current condition of the receiving environment would suggest that the impacts are potentially significant.

The Ashburton Town Centre currently exhibits a low-quality retail environment, with a significant level of vacancies, **high number of 'lower quality' / lower performing stores**, as well as proportional and nominally decreasing employment activity. Continuing to detract from this environment is contrary to the District Plan objectives and policies and is likely to continue to undermine the role and function this centre should play in community well-being.

It is Property Economics position that the ME report is materially flawed and that the proposal is likely to result in adverse economic outcomes.

Comments on Mr Foy's Response to Peer Review

Mr Foy (Formative Ltd) provided a response dated 14 June 2021 to Property Economics peer review. Again, this brief missive is not intended to provide an exhaustive response of every

economic matter raised in Mr Foy's reply but identifies a few higher order matters where a response is considered helpful to Council in framing an economic position on the proposal.

As a general comment, there is no new evidence or economic material provided in Mr Foy's response that would cause me to alter my position on economic matters regarding the subject application. An expansion on the basis for my economic position and concerns around Mr Foy's impact assessment and what has not been considered in his assessment are provided in Appendix 1 which outlines the economic benefits of consolidated commercial activity. These are benefits that would be lost or undermined as a result of the subject application resulting in private sector gain at public sector cost, particularly when considering the cumulative effects when adding in the Kmart development effects which are yet to play out on the Ashburton Town Centre.

Higher level comments:

1. Property Economics raised a number of concerns with the Market Economic retail impact assessment for Kmart at the hearing and this certainly does not mean we would agree with the assessment of Smith City, and therefore imply there is no need to supply an impact assessment for this application.
2. The fact that a 1,300sqm provision is a proportionately small aspect of the entire economy does not mean the shift is not significant. If this were the case, and applying this approach, no retail application outside of centre would ever be an issue.
3. The impacts of Kmart have yet to be realised in the market, as Foy says LFR out of centre has impact town centre activity.
4. The suggestion that this application represents a **year's** growth is misleading, as there's already a cumulative impact from Kmart, again if 1,300sqm is a **year's** growth then the town centre should have grown over the past 10 years. Clearly applications that are not considered at a cumulative level just continue to redistribute growth.
5. The fact that the Ashburton Town Centre has under performed for the last decade is no reason to relegate it to that level of performance. Mr Foy fails to address how further retail operating out of centre (and Business B zone) is helpful to providing for investment, amenity, performance, and vitality of the town centre. He also fails to consider other economic costs identified in Appendix 1 (of this report) in his impact assessment.
6. In terms of the LFR trends Foy suggests they are simply the driver of town centre vacancies yet fails to consider the subject application represents a continuation investment outside the town centre over the last decade or so (Business B zone, Countdown supermarket, Kmart development and now the subject application).

Response to Submissions

The relevant submission to my area of expertise is from the Ashburton CBD Business Group which contains a number of emails with reasons outlining why they are opposed to the subject application. As a general proposition, the Ashburton CBD Business Group submission contains multiple concerns which are best drawn out in quotes from supporting submitters, such as (*underline emphasis added ...*):

- The Ashburton CBD Business Group is “very concerned” about retailers establishing activities outside the town centre, and that the continuation of such diminishes from the “ambience and vibe of the CBD, it detracts from the activities in the CBD and also has a significant economic impact on the existing CBD businesses”.
- “The town centre businesses have endured significant disruption over the last few years and allowing yet another commercial hub to operate will only add to the deterioration of and activity in the CBD. Ultimately diminishing the attractiveness of the town centre to tourists, would be new residents, and existing users of commercial business in the CBD.

Other residents supporting the Ashburton CBD Business Group submission and that come under this submission’s broader umbrella stated:

- “It is very important that retail stays within the CBD and surrounds to ensure businesses within the town centre are not adversely effected” (Mr Clark McLeod).
- “We have to look after our CBD and the retail and commercial we have running here” (Ms Amanda Patrick)
- “We believe it is very important for retail businesses to stay in the CBD, encompassing the millions spent on the upgrading of the infrastructure in the CBD” (Don & Sue)
- “We need to be keeping our CBD as a Retail Hub, too many small towns lose their local shops and become obsolete to the community” (Tracey Mewes)
- “The Council should recognise that the development of satellite business hubs will ultimately let to the demise of the CBD” (Roger Farr)
- “I wish to register with you my utmost condemnation to allow a retail business to trade out of the previous Bunnings site. I oppose a consent to be granted to Smiths City on the grounds it would not be conducive to good long term town planning, fragmenting yet again the CBD retail hub” (Max Cawte)
- “I’m very concerned, and definitely object to any consents issues which allow retail businesses to set up outside the Ashburton CBD” (Judy McAuliffe)

These quotes and concerns are from retailers and residents who live, work, visit and frequent the Ashburton Town Centre every day. They represent raw real-world concerns from locals who



have experienced the decline of the town centre first-hand, and are not based on some modelled outcomes or evaluative judgement from an out of town economist.

I concur with the sentiments and personal evaluations of these retailers and local residents from an economic perspective. It confirms with authentic local context that the Ashburton Town Centre is not considered 'healthy' by the local community and has been in a state of decline for some years. Retail fragmentation is considered an issue hurting the Ashburton Town Centre in respect of performance, amenity and vitality.

Noticeably, there is a distinct vacuum of submissions countering these comments and suggesting the Ashburton Town Centre is healthy, performing strongly, is a centre of high amenity and is thriving. This is because in reality the Ashburton Town Centre is not performing well and is not meeting its potential or the aspirations of the local community.

APPENDIX 1: ECONOMIC BENEFITS OF CONSOLIDATED COMMERCIAL ACTIVITY

There are important **economic benefits attributable** to Council's centre hierarchy approach and to the focus on consolidating commercial activity in the Ashburton Town Centre. This was an underlying driver of the recent introduction of Plan Change 4 in the Ashburton District Plan.

From an economic viewpoint commercial zoning provisions for centres are important tools in directing commercial activity and development to achieve greater degrees of efficiency and certainty in terms of public and private investment. The level of flexibility and capacity indicated by zoning impacts upon business fundamentals such as locational efficiency, competitiveness and productivity.

The need for exogenous intervention into the market is necessitated by the fundamental intent of seeking to maximise community wellbeing either through improvements in equity or an improvement in economic efficiency. The Ashburton District Plan and PC4 seeks to improve economic efficiency within the city's business environment consequently enhancing community wellbeing. In simple terms the fact that the market will not seek to maximise community wellbeing but pursue individual party interests is key in understanding whether the market requires a balancing mechanism in order to redress the potential imbalance between community interests and individual interests. It is important to note that this is not simply an academic exercise, the result of an individual party or parties gaining an additional proportion in profits (or simply a decrease in costs) could result in the loss of a tangible resource for the community hundreds of times more valuable.

There is a distinct thread running through the Resource Management Act 1991 (**RMA**) that deals with community wellbeing in terms of efficiency. A primary guiding principle of the RMA is the efficient (and sustainable) utilisation of scarce resources within a community. There has been recognition from the Environment Court that efficiency, as it pertains to the RMA, relates to economic efficiency and there is a need for this to instruct policy governing the utilisation of these resources. This implies that the decisions by which these resources are consumed are derived in an economically efficient manner.

The market is indeed a powerful mechanism for the efficient allocation of resources and all too often unnecessary intervention causes markets to operate inefficiently with potential benefits lost to the community in order to protect private concerns. However, the essential proviso here is providing that **society's resources are priced according to their real value to society as a whole** rather than individuals. This is the **basis for Council's economic argument** when District Plan and PC4 were developed, that left to its own devices the commercial market will not operate efficiently given the fact that the market fails to consider total community well-being.

Economic efficiency is essential when providing for sustainable resource use, this efficient employment is key with regard to economic well-being. As stated and consistent with the RMA 1991, this efficiency should not be a rationalization for the protection of individual businesses or business locations through simple trade competition. However, what is essential is the identification of any distributional effects from the markets operation. These distributional

effects are costs or benefits that are not considered by the market and yet are critical to **enhancing the community's economic and social well-being**. In relation to the District Plan these are not simply the potential decreases in trade or business in any given area but the additional real benefits to the community of having these activities in these specific locations.

In part the justification for intervention in locating business activity is similar to that given for residential. Councils restrict the spread of residential development to more intensive zones because the cost of allowing dispersal are significant and are not considered by the market, such as increased infrastructure costs, reduced transport efficiencies, inefficient land use, as well as reduced community amenity. These are factors that an individual participant in the market does not always consider, not just the impact of these costs on themselves but the cost of their decision on others. While Councils generally seek to improve the overall attractiveness of **appropriate locations, this 'reinforcement' however is seldom enough to change individual behaviours sufficiently and generally requires some form of regulation.**

The opposing costs of not allowing residential to spread are potentially a short-term increase in residential prices and reduced development. These are costs that in commercial business are likely to be less than in residential and yet the net benefits of restricting residential expansion are clear. The continued expansion of residential would not only incur increasing community costs but has the potential to stifle innovation and produce a dispersed community. Planning is about informed value judgements and potentially restricting individual choice for the benefit of **the entire community's well-being**.

A fundamental factor in operating competitive vibrant business centres is the level of amenity offered; key to this is the level and choice of retail activity within a given area. To remain competitive and fulfil its role and function in the community it is crucial that a primary business centre provides an appropriate level of both retail and commercial (office) activity. This is a symbiotic relationship where one relies on the level of activity produced by the other. This relationship primarily between commercial and retail activities creates more vibrant community centres which translates to greater community wellbeing.

It is important to note that this appropriate level of activity is proportionate to the competitive size of the city and economy in general. It is not appropriate to assume that the level of centralised activity, in the primary centre, within a larger economy is the same as in a small district. Larger economies typically have a greater number of business centres that represent a smaller proportion of the total activity while still creating economies of scale and efficient resource use. In recent times the economic decline from the Global Financial Crisis, the devastating Canterbury earthquakes and the COVID-19 pandemic have however elevated the importance to local economies of centralising activity to improve efficiency and competitiveness. As businesses seek to improve efficiency and productivity it is vital that Ashburton offers a competitive town centre.

Market decisions are primarily made based on private costs and benefits, typically costs or benefits borne by the community that are not recognised by the participants and therefore lead to an inefficient allocation of resources. Businesses choose locations based on a series of criteria

that are balanced against their own costs and benefits and therefore produce the highest net gain for themselves. These criteria generally include but are not limited to; suitable profile / exposure, accessibility for customers and suppliers, feasible costs, appropriate parking provision and appropriately shaped sites.

The benefits of the market lead approach are the clear market signals which are necessary to produce equilibrium in the market where the amount of business land supplied is in balance with demand in any given location. Traditionally retail and office along with other activities, **have clustered into 'centres' due to observable benefits to both the consumer and producer.** These benefits of agglomeration have, in part, been recognised by the market and are inherent in business location decisions.

However, in the presence of externalities, or wider market failures, (impacts not considered by the market) these signals can fail resulting in either an over or under production of business activity in the wrong locations. Without regulation business locational decisions in Ashburton will be based on private cost benefit decisions that do not address wider community considerations of overall economic prosperity and recovery. Given the opportunity operators and developers will continue to locate based on their own returns and will not have regard for what is best for the community.

Individual businesses within Ashburton are sometimes motivated by private benefits that carry with them costs to community that far outweigh these individual gains. Although many of the criteria outlined above are represented within centres the weighting of these is crucial. For **example 'destination' retailers prioritise land costs given that they do not require the critical mass created within established areas.** This is often justified by the potential savings they offer to consumers while reducing their own costs. It is argued that these private benefits are often outweighed by the costs to the community of this locational strategy; this cost is further exacerbated by the exodus of smaller stores following the larger profile retailers. This pulling power is evident in the retail market as it operates currently. When consolidated retail landlords such as malls negotiate lease terms with larger anchor tenants they factor in the large patronage they will generate for smaller retailers and leverage the rents accordingly. While the situation for commercial office activity may not be as obvious it is still driven by the profile created by other businesses.

It is important when considering the dispersal of business activity within Ashburton to consider the difference between the marginal impacts of a business operating inefficiently and isolated impacts. This is an important point especially with regards to centres. For example, the loss of shoppers, or workers, in a centre will have a marginal impact on vitality. This change is extremely difficult to assess comparatively however, for example shoppers would need to be asked what impact on the vitality value a 10% decrease in shoppers would have on a centre. Therefore, when making a decision on the likely impacts consideration must be had for the total value (cost and benefits) and the likely proportional (incremental) impact on the variables affecting these (e.g. the number of shoppers visiting a centre). Often however a value

judgement must be made by public decision makers as to the comparative values of these costs and benefits.

Spatially it is important to note that decentralisation also refers to the sprawl of centres, as opposed to the growth of centres, where capacity exists within the identified centre but activity often takes the path of least individual resistance and spreads throughout the periphery. This in effect undermines the potential efficiencies of intensified land use. The argument that some businesses require these locations to operate effectively simply reflects an individual position and does not consider the net impacts on the economy as a whole. While it is important that the market has a degree of choice and flexibility it is also important that the parameters of this flexibility are as clear as possible to provide businesses with the ability to balance locational decisions. These parameters function as release valves to provide businesses with clear choices while still considering the wider community well-being.

The economic thrust of the Ashburton District Plan is to create a hierarchy of centres within a wider centre network that provides for the vitality and vibrancy of these centres encouraging growth and efficiency of investment and business productivity.

Given that there are potential costs associated with regulation, not least of which is the muting of market indicators, there needs to be a clear understanding of the level of potential effects associated with the market failure. These assessments are not intended to quantify the direct impact of proportional decentralisation but to indicate the potential social and economic values that are jeopardised.

The economic argument for intervention is based on the fact that the market fails to consider significant community benefits achieved through the consolidated location of business activity. These failures conceal the true value of centres and if unchecked are likely to result in an inefficient use of resources. It is important to note that the loss of these potential benefits is not confined to the impacts on existing business activity but must also be considered in terms of the potential future efficiencies that could be achieved. In these terms a lost social benefit is tantamount to a social cost.

The potential loss to the community of 'decentralised' business activity is coined in this section in terms of the benefits of 'in-centre' activity. The benefits (or alternatively dis-benefits) discussed here include the decline in centre function and amenity along with adverse effects on the roading network, public transport provision, resource productivities, land efficiencies, community facilities, productivity and centre infrastructure. Each is also assessed in terms of whether they should be regarded as 'true' externalities and to what level the market may (or should) be considered to have regard for them.

Decline in Amenity of Centres

The amenity of a centre is directly related to its vitality and vibrancy, which in turn has a strong correlation with the level and potential level of people within a centre. A loss of patronage to a centre is not only likely to result in decreased infrastructure efficiencies and a fall in other

activities but is very likely to reduce the value residents place on the vibrancy and sense of community achieved there.

It can be argued that this activity and vibrancy act as a competitive advantage for the centres and thereby work as trade competition. However, the value of a centre to patrons is not just determined by their own decisions but those of other participants who do not consider this loss in their decision making, resulting in a direct resource effect on a third party. By dispersing business activity the value of a vibrant centre is reduced, there is little doubt that, allowing for congestion, there is typically a direct relationship between the level of activity in a centre and the average amenity value achieved from it.

For the Ashburton Town Centre this is crucial as less intensive commercial, or commercial activities based in other areas, argue that they provide a unique attractive area for business. In economies the size of Ashburton such areas are unlikely to result in 'additional' business activity within the district and simply detract from the potential efficiencies of this activity being consolidated. In simple terms once again although there may be some benefit to the individual businesses in locating in less intense areas the loss to the economy as a whole will inevitably outweigh this.

A more liberal view may also illustrate the problem of reducing the choice of some people for the benefit of others. The issue here pertains to welfare economics; it is the wider community well-being that should concern policy makers. This is the purpose for intervention impacting upon what the market would produce so that it creates a social equilibrium. In making a private decision a patron may weigh up a price saving of say \$50 per annum (in an out-of-centre location) with their social value of an existing centre, \$40, and make the decision based on the perceived \$10 gain. However, the fact that they no longer use the centre may have a cumulative effect on everyone else of \$100 per annum. Thus, the community well-being is enhanced by having that patronage in the centre.

In terms of benefits to the wider economy vibrancy and local amenity are often key factors in the housing and employment decisions made by skilled labours. This environment is more likely to lead to increases in value added goods and productivity gains for the local economy. The subject application under which businesses would locate at the former Bunnings site is likely to exacerbate the dispersal of this activity reducing Ashburton's, and in particular the town centre, overall competitiveness not only for business in general but in terms of its appeal as a visitor destination and residence.

Agglomeration and Productivity Gains

The arguments for agglomeration pertain mainly to specific productive activities within an economy. The basis for these arguments is that increased densities lead to synergies, improved flow, economies of scale and utilisation of resources. The presence of agglomeration effects within the New Zealand market is somewhat contentious, however the supporting academic

and empirical evidence identifying the economic benefits are particularly strong and widely accepted.

Work undertaken in 2007 by Ascari Partners and Richard Paling Consulting (Williamson, Paling & Waite, 2007) has shown a doubling of employment densities accompanied by accessibility will result in productivity gains of around 6%. While work undertaken in Britain (Dan Graham 2006) found that the doubling of the effective density rate (in a given area) resulted in average productivity gains of 12.5% and service sector gains of 22.1%. It is important to note here that these productivity gains would need to already exist in a market for them to be considered by individual firms and are therefore less likely to occur without other incentives for them to locate here.

Agglomeration benefits are generally based around the ability for a centre to provide the following:

- Increased specialisation;
- Knowledge spill overs, both between firms in the same sector and across sectors, leading to increased innovation;
- Competition – the presence of lots of firms offering similar products spurs on competition, innovation and efficiency and there are lots of buyers to compete for;
- Larger labour markets offer wide choices for employers and the opportunity to recruit staff with specialist skills; and
- Economies of scale are created by serving larger markets

There are varying levels of these benefits given the overall size and role of a centre within an economy. While most of the centres in Ashburton are historically small, they still represent an opportunity for consolidated activity in order for the local community to retain additional commercial activity that is not simply drawn here by the extent of agricultural services within the wider region.

It is important to note that agglomeration is not restricted to large cities but is the result (at differing levels) of diversity and the ability for an area to attract more productive sectors into the economy that would otherwise service Ashburton from outside the area. These sectors will typically only locate in accessible areas that exhibit synergies (spatially) with the local market. The consolidation of activity, within the existing Ashburton Town Centre, is a fundamental means by which Ashburton will attain a degree of these agglomeration benefits and improve its economic competitiveness.

The agglomeration of commercial activity has two effects which are important to distinguish between, the first is the increased profile created by a critical mass of activity. There are obvious 'flow-on' benefits to suppliers of locating within a vibrant and active centre along with the potential for some economies of scale. These benefits however are for the most part considered

by the market in its locational decisions. Based on these benefits alone there would be no requirement for intervention as the market would operate efficiently.

However, the second impact of agglomeration has to do with the environment that is created through this critical mass. Centralised business activity creates both amenity and diversity with the local area. The agglomeration of commerce into centres provides an environment that will facilitate that agglomeration of other commercial activities and allow for the productivity gains identified above.

The ability of commercial and retail activities to provide this environment, and thereby improve community wellbeing, is not considered in individual business decisions and are therefore distributional impacts with regards to this resource.

Adverse Effects on Community Infrastructure

The provision of community facilities and infrastructure is a social investment. The justification for this investment is the social value that these services and facilities provide to the community. This is considered to be significant enough that they are publicly funded and supplied. The reason they are publicly supplied is because given their social value the free market would not supply enough of them given a patrons individual value (price).

These facilities may include libraries, civic and administrative functions, community centres, public meeting areas, police stations, etc. These are generally provided in centres with high activity so as to coincide with retail and other uses. The scale of these facilities also coincides with the scale of activity located within the centre. This, in and of itself, is reason to suggest that there is a direct relationship between use of community facilities and other activity such as retail and commercial activity. Simply put the greater the level of activity and accessibility in a centre the greater the utilisation of such public assets. Not only is profile important for these types of facilities but they are located to make good use of multi-use trips.

The provision of these facilities are sometimes seen as 'sunk costs', dismissing their relevance and their potential underutilisation as costs to decentralised retail activity. Although this line of thinking is correct with regards to the fixed investment it fails to consider the return from the community investment that is lost if these assets are undermined. The utilisation of these assets has community value that must be considered when potentially reducing their usage. In this regard, as sunk costs are in fact community investments that must be considered in terms of their initial costs (and hence on-going opportunity cost) to society. Even if the investment is irrecoverable (hence not property etc) there is still a need to have regard for this investment, especially if not considering their value is likely to lead to a duplication of facilities.

There are two potential effects of reduced usage of community facilities within centres. The first is that the marginal cost per patron increases thereby reducing efficiency and reducing the social benefits through its provision, and the second is that the infrastructure has to be duplicated (even on a small scale) elsewhere causing significant inefficiencies of community

resources. The costs involved in underutilisation of these resources or indeed their duplication are relative obvious and must be considered when locating associated activities.

Ashburton District Council provides these resources because they have significant social benefit to the community, to undermine their use, in any way, diminishes that benefit. The basic principle here is to try and maximise the net social benefit gained through provision of these goods, therefore the location of these is extremely important. To put a library in the middle of no-where and then to argue that people still have the choice to use it if it enhances their own well-being is absurd, it increases the private cost and reduces the social benefits associated with that facility. This co-location also has the potential to increase accessibility and efficiencies in terms of travel.

The argument pertains to whether the choice made by patrons is an informed one and whether the 'free' market will take into account the true value of these resources to the community. Society is continually restricting consumer choice based on what is most beneficial to the community as a whole, cigarettes, drugs, pollution etc, private choice is restricted for the betterment of society. Individual choices must be held accountable to the community.

Transportation Efficiency

The basis for this argument lies in the transport efficiencies achieved through the agglomeration of activities with one of the key generators or these travel patterns being retail patronage.

Transportation efficiencies are fundamental when considering the economic costs and benefits associated with this intervention. These values are inherently linked to the level of accessibility to activities and assets within these areas. In terms of costs, relating to the District Plan, it is crucial that consideration is made for the capacity of this infrastructure as the benefits are likely to be tempered by a 'crowding out' effect. In terms of transportation this is often referred to as congestion. The impact of this is to reduce the benefits attributable to these locations while increasing the costs in terms of reduced convenience and increased travel times. Given the conditions that exist in the Ashburton Town Centre it is highly unlikely that this will occur.

Efficient transportation networks provide obvious benefits to the community that are not considered in these decisions. These benefits include:

- Reduced public costs for roading and transport infrastructure (reducing the need for duplication)
- Reduced pollution
- Increased certainty around public and private sector infrastructure investment
- Reduced marginal cost (reducing the 'per trip' cost)

It is generally accepted that there are transport efficiencies associated with centralised activity. It is fundamental to note that not all these benefits are considered in individual decisions. Given that the level of investment into this form of infrastructure climbs into the billions of dollars it is

critical that this be given some level of security as to its efficient utilisation and therefore effective return. Retail location is essential both directly and indirectly in these decisions due both to the level of activity generated by this market and the co-location of other activities due to amenity.

Land Use Efficiencies

A key purpose of planning is to produce the most efficient use of an economy's land resource. Planning regulations are designed to control private uses for this resource so as to produce a sustainable long-term outcome. Inherently there are two potential shortfalls of the market in achieving this with regards to business location.

The first issue is associated with the potential lack of information available to private developers. This may take the form of making decisions without full knowledge of competitor investment plans. Inaccurate forecasts of future demand may affect the efficient allocation of this land resource. This potentially leads to an oversupply of commercial space within the market. The relevance to commercial locations is that there is a propensity of out-of-centre development to have a greater degree of viability (and lower risk) in the short-run thus resulting in the over-supply.

Secondly potential efficiencies are lost where a resource is over allocated as the market has no necessity to utilise these efficiently, e.g., without restrictions on residential land some efficiencies would be lost from higher density living. The efficient use of land is fundamental to community well-being. The provision of relatively cheap land in inappropriate locations provides the market with misleading signals which has the potential to reduce the productivities of land for the entire economy. This position is only partly tempered by the need to provide adequate quantities of land in appropriate locations to meet the potential demand and provide a competitive environment. However, the negative impacts of an oversupply of land are most acutely felt in the commercial market and so are most crucial in terms of net effects. Within a market the provision of what is seen as low-priced commercial land will inevitably result in reduced land efficiencies.

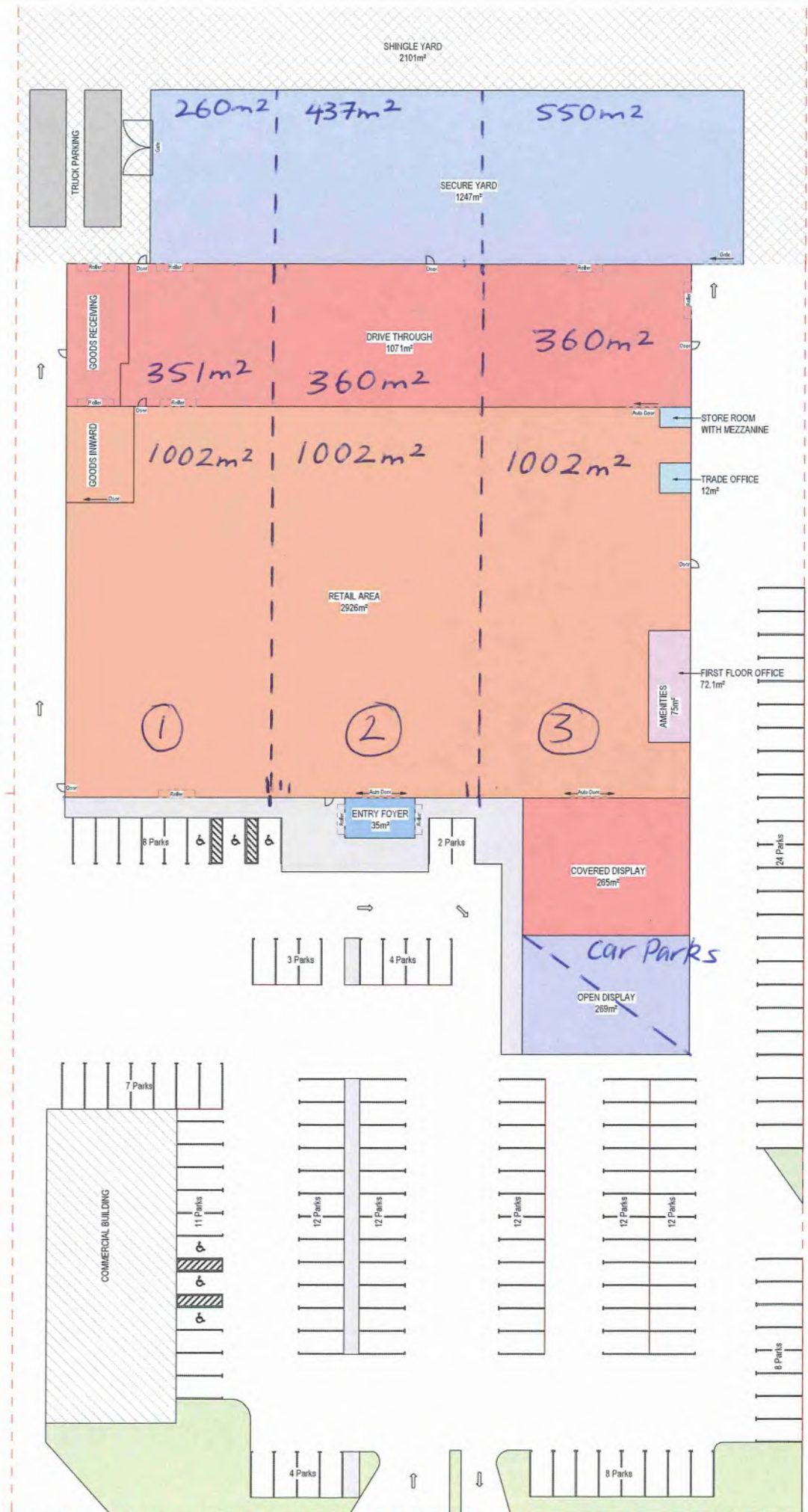
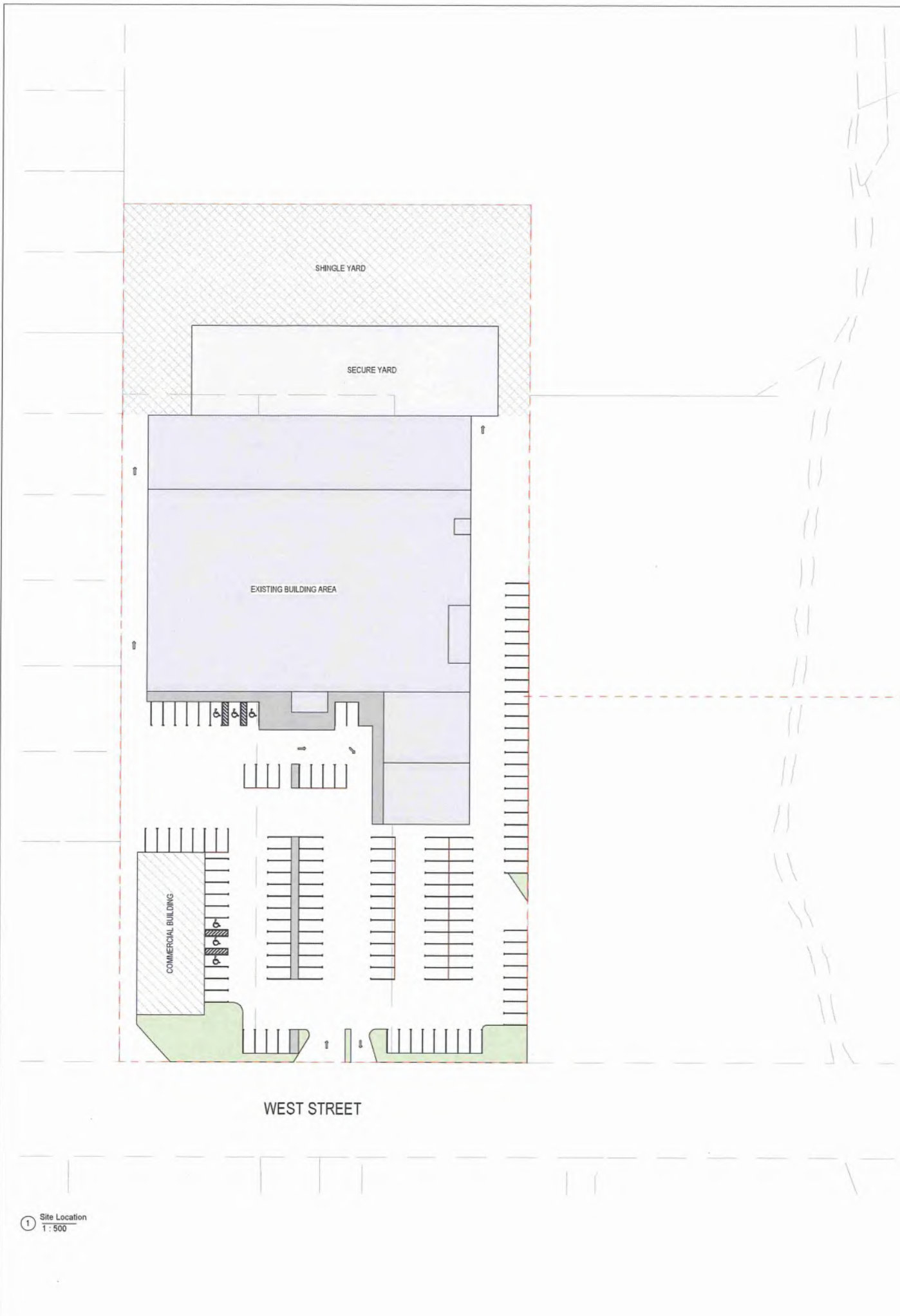
LUC21-0029 Tricroft Properties Ltd
363 West Street, Ashburton

APPENDIX B
Proposed Site Plan

SITE AREAS

ENTRY FOYER	35m ²
AMENITIES	75m ²
FIRST FLOOR OFFICE	72.1m ²
TRADE OFFICE	12m ²
RETAIL AREA	2926m ²
DRIVE THROUGH	107.1m ²
COVERED DISPLAY	265m ²
OPEN DISPLAY	269m ²
SECURE YARD	1247m ²
SHINGLE YARD	2101m ²
TOTAL LEASED AREA	4725.1m²
TOTAL SITE AREA	8073.1m²

CARPARK NUMBER	139
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PRELIMINARY
Subject to Structural Engineer
and Building Consent

Rev#	Amendments	Date
SHEET ISSUE DATE		11/03/14

Tricroft
West Street Site Plan
363 West Street, Ashburton

All Drawings property of Thompson Engineering 2002 Ltd

SCALE	As indicated	JOB #	00000
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DRAWN BY	DATE	22/05/2020
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CHECKED BY	Rev
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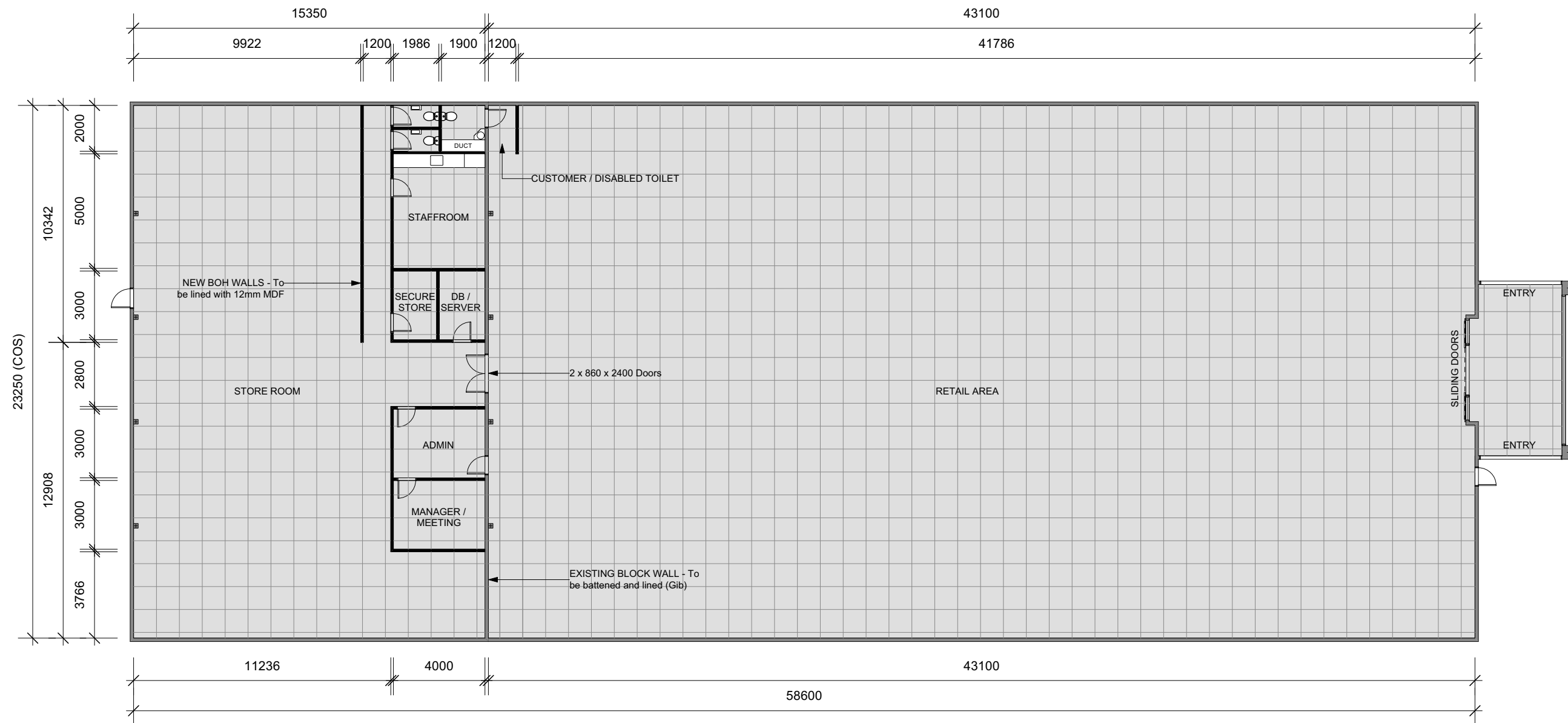
Site	A0100
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Please note: All dimensions to be verified on site. Paper size A1



Thompson Engineering 2002 Ltd
PO Box 2081, Washdyke - Timaru
PH 0800 688 716
www.thompsonengineering.co.nz Design@thompsonengineering.co.nz

Arch



1 Proposed Floor Plan
Scale: 1:200

	Client Smiths City 2020	Drawing Proposed Floor Plan	DS Design 217 Knowles Street, Christchurch 8052 E:davidstott1976@gmail.com T:021 246 0476
	Project Smiths Ashburton	Address 363 West Street, Allenton, Ashburton 7700	
NO. DATE NOTE	Job No. 0016	Rev.	Scale 1:200 @ A3
THE BUILDER IS RESPONSIBLE FOR THE SETTING OUT OF THE WORKS, THE CHECKING OF ALL DIMENSIONS AND LEVELS ON SITE, AND THE REPORTING OF ANY DISCREPANCIES TO THE PROPRIETOR PRIOR TO COMMENCEMENT OF WORK. DO NOT SCALE FROM DRAWINGS.	Date 8/03/2021		Dwg No. A-03

LUC21-0029 Tricroft Properties Ltd
363 West Street, Ashburton

APPENDIX C

Trade Competition Legal Advice – Mr Andrew Schulte, Cavell Leitch

23 October 2019

Ashburton District Council
PO Box 94
Ashburton 7740

By email: ian.hyde@adc.govt.nz

Dear Ian

Application by River Crossing Limited - Legal Interpretation

1. You have asked for some advice on behalf of the officers involved in considering the application by River Crossing Limited for consent to a retail development including both 'big box' retailing and some at a lesser scale (**application**). The advice sought involves the extent that section 104(3)(a)(i) of the Resource Management Act (**RMA**) expects decision makers to exclude "*...the effects of trade competition*".
2. In other words, how far down the chain of actual or potential effects does the decision maker need to exclude from their assessment of effects.
3. Based on the discussion below, my opinion is that:
 - 3.1. Despite the amendment to section 104 in 2017 that changed the format and added "*and the effects of trade competition*" to section 104(3)(a)(i), and arguments that the exclusion should include any competitive benefits, the approach to the exclusion has not materially altered;
 - 3.2. The amendment amounted to a codification of the law, reflecting the approach taken by the Courts since *Westfield (NZ) Ltd v North Shore City Council*, this view is reinforced by the observations in the pre-existing caselaw that the requirement to exclude involved trade competition and its effects, and by reference to comments at select committee; and
 - 3.3. That includes the normal incidences of trade competition but does not exclude "significant effects on the environment" that go beyond trade competition or the effects of trade competition.

Legal framework

4. Section 104(3)(a)(i) provides:

s.104

(3) A consent authority must not,—

AJS-635532-148-15-V1-e
GC02

- (a) when considering an application, have regard to—
 - (i) trade competition or the effects of trade competition;

...

[my underlining]

5. This formulation was inserted into the RMA by the Resource Management (Simplifying and Streamlining) Amendment Act 2009. Prior to that change, the exclusion was worded as follows:

- (3) A consent authority must not—
 - (a) have regard to trade competition when considering an application;

...

6. The question is whether this change means there is any extension to the exclusion of effects, such that it might now include those significant effects on people and communities, on their social, economic and cultural well-being, on amenity values and on the environment, previously regarded as more than the effects ordinarily associated with trade competition?

Approach to interpretation

7. As required by the Interpretation Act I have considered the text of the provision in light of its purpose. And, as noted in Powell, this is an exercise that cannot be conducted in a vacuum and requires, as necessary, consideration of the scheme of the section and the wider act and other clues to interpretation. This may include going so far as to consider Parliamentary debates and select committee reports on the relevant amendments.
8. There are also maxims of interpretation which one needs to be cognisant of, one of which is that Parliament makes changes for a reason. In other words, the fact that a change has been made usually means that the meaning must also have changed.
9. However, that is not always the case and amendments will also be made to aid clarity or, as the title to the 2009 amendment act suggest, to streamline and simplify. Therefore, it is not always the case that a change in an act represents a material departure from the existing policy or application of the provision.

Discussion

10. That there may be unintended consequences of the formulation of the prohibition from consideration has been raised by the Courts. In a decision that was ultimately overturned by the High Court (though not specifically on account of the reasoning quoted below) the Environment Court observed¹ that:

Trade competition issues

[35] Read literally, section 104(3)(a)(i) has the effect that the good effects of trade competition- such as the tendency to increased competition and lower prices - cannot

¹ In *Foodstuffs (South Island) Limited v Queenstown Lakes District Council* [2012] NZEnvC 135, at page 16.

be had regard to. Nor could any consequential effects on social conditions. The courts have rather contorted themselves over this in the RMA. For example, in the leading decision of the Supreme Court in *Westfield (NZ) Limited v North Shore City Council*² Blanchard J, giving the majority decision, and after noting that "competition effects would have to be disregarded", wrote:

... that social or economic effects must be "significant" before they can properly be regarded as beyond the effects ordinarily associated with trade competition on trade competitors.

Blanchard J continued:

... effects on amenity values would be those which had a greater impact on people and their communities than would be caused simply by trade competition. To take a hypothetical example, suppose as a result of trade competition some retailers in an existing centre closed their shops and those premises were then devoted to retailing of a different character. That might lead to a different mix of customers coming to the centre. Those who had been attracted by the shops which closed might choose not to continue to go to the centre. Patronage of the centre might drop, including patronage of facilities such as a library, which in turn might close. People who used to shop locally and use those facilities might find it necessary to travel to other centres, thereby increasing the pressure on the road system. The character of the centre overall might change for the worse. At an extreme, if the centre became unattractive it might in whole or part cease to be viable.

With respect, there are puzzling issues about causation here: surely the social effects the Supreme Court refers to are merely remoter effects of (otherwise desirable) increased trade competition. The effects may be greater from a social perspective, but their causes are the same. The effects therefore appear to fall into the class of effects referred to in section 104(3)(a)(i), and it is very difficult to make a straight forward exception out of the Supreme Court's decision. We understand that the mischief Parliament is trying to prevent is the anti-competitive behaviour of traders or retailers seeking to restrict other traders from entering the relevant market or market sector. This has often caused "rent seeking" - that is, behaviour by an existing trader or retailer to manipulate a district plan to keep competitors out. In our respectful view it would be useful if Parliament could amend section 104 to make its directions simpler to understand.

[36] In the meantime we understand *Westfield* to mean that we should disregard the direct adverse effects of trade competition on trade competitors, but may take into account the remoter adverse effects on the environment of a new entrant into the market provided those effects are "significant" (which means at least more than minor).

...

[my underlining]

² *Westfield (NZ) Ltd v North Shore City Council* [2005] 2NZLR 597, [2005] NZSC 17, [2005] NZRMA 337 (**Westfield**).

11. On appeal to the High Court³ (which was allowed due to the High Court's finding that the use of the figure of 20% as a surrogate for what, depending on context, might be considered a "minor" effect, was an error of law) the passage in *Westfield* was also discussed. However, on the face of the decision the High Court did not refer to the fact that there had been a change to section 104(3).
12. The discussion in *Westfield* on the nature of the exclusion of trade competition of course predated the changes in 2009.
13. The original exclusion of trade competition had been introduced in 2003, as noted by the High Court in *Queenstown Central*, and included section 308A & B, that modified the right to make a submission under section 96.
14. Section 104(3) was again amended in 2009 by reformatting and, as seen above the addition of "...or the effects of trade competition". The amendment, on its face, could bring into question the dichotomy described in *Westfield*, and subsequent cases, between **direct** trade competition and trade competition effects and significant **indirect** effects. By making the change that it did, Parliament may arguably have determined no such effects could be considered, which would also extend, as the Environment Court observed, to any positive effects of trade competition.
15. But did it?
16. A review of several key cases that occurred around (or prior to) the time the change was made indicates that, in addressing s.104(3)(a), the Courts were already speaking of its impact, in limiting the ability to consider trade competition and the effects of trade competition. With reference to *Westfield*, the High Court in *General Distributors v Waipa District Council*⁴ (**General Distributors**) and in *Infinity Investment Group Holdings Limited v Queenstown Lakes District Council*⁵ (**Infinity**) plainly considered that significant social or amenity effects, or effects on markets generally, went *beyond* "trade competition or the effects of trade competition".
17. The argument that s.104(3) barred consideration of *positive* trade competition effects was also raised in *Bunnings Limited v Hastings District Council*⁶. The Environment Court observed:

[26] ...In our experience, trade competition arguments have generally arisen in the context of the claimed adverse effects of trade competition. However, Mr Casey is correct in his observation that the definition of effect includes ... any positive or adverse effect. [underlining in decision]

18. The Court went on:

[27] The term trade competition is not defined in the RMA. However the term has been the topic of discussion by the Courts and we think is succinctly summarised in the

³ *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 815, (2013) 17ELRNZ 585, [2013] NZRMA 239 (**Queenstown Central**)

⁴ (2008) 15ELRNZ 59

⁵ (2011) 16ELRNZ 460, [2001] NZRMA 321

⁶ *Bunnings v Hastings District Council* [2011] NZEnvC 330, (2011) 16ELRNZ 767

Environment Court decision [*Infinity*] where the Court discussed it in the context of s74(3) RMA which contains a similar provision as s104(3). The Environment Court made the following observation:

[17] “Trade competition” is not defined in the RMA. However, Wylie J considered the words “refer succinctly to the rivalrous behaviour which can occur between those involved in commerce”. Clearly the mischief the provision was introduced to address was competition between traders of the same kind – for example competition between the big supermarket chains. The provision is not addressed to the operation of markets be they competitive or otherwise.

[28] The quotation from Wylie J was from his decision in [*General Distributors*]. The Environment Court went on to quote the further finding of Wylie J that:

Effects may however go beyond trade competition and become an effect on people and communities, on their social, economic and cultural wellbeing, on amenity values and on the environment. In such situations the effects can properly be regarded as being more than the effects ordinarily associated with trade competition. [my underlining]

(The findings of Wylie J in the High Court are in turn founded on findings of the Supreme Court in *Discount Brands v Westfield (NZ) Ltd.*)(sic⁷)

[29] The Environment Court’s analysis was considered on appeal in the High Court by Chisholm J who agreed with that analysis and observed:

On the other hand, subs (3) is highly relevant to the intention of Parliament in relation to the interaction between the preparation or changing of district plans and the marketplace. It can be inferred that parliament considered that issue. Its response was to include s74(3) which is confined to trade competition or the effects of trade competition. A wider prohibition, for example one relating to the market generally, was not imposed. [my underlining]

19. The Court in *Bunnings* concluded therefore that:

[30] It is apparent from the above discussions and descriptions that the term trade competition is constrained in its meaning and relates to those matters arising directly out of the rivalrous behaviour occurring between those involved in commerce and does not extend to wider effects on the market or the environment. [my underlining]

20. Then, after considering the evidence on retail distribution that highlighted the positive effects from the proposed development and the competition it would bring, the Court concluded this part of the decision as follows:

[40] ... We concur with the submission that the clear purpose of s.104(3) is to prevent traders frustrating their competitors’ activities for the purpose of preventing commercial competition. We also agree that excluding consideration of the positive effects of trade

⁷ I note, respectfully, that there may be an error in this citation, as noted above, the relevant Supreme Court decision was *Westfield. Discount Brands* was a decision of the Court of Appeal.

competition appears to be inconsistent with the purpose of the RMA which seeks to enable people and communities to provide for their economic wellbeing.

[41] Ultimately, in light of the findings we have made that the beneficial effects of the Bunnings' proposal (*sic*) extend beyond the effects of trade competition, we do not have to determine Mr Casey's point. If he is correct, the outcome must be described as unusual.

21. The importance of this discussion and useful summary of the views of the meaning of trade competition in s.104(3) *prior* to the addition of the words "...or the effects of trade competition", is that the Courts were already reading the ban on considering trade competition as including its effects, at least and until those effects were such as they went *beyond* or were *more* than the effects "*ordinarily associated with trade competition*".
22. Therefore, it seems arguable that the meaning of "*trade competition or the effects of trade competition*" has not changed at all. The approach pre-2009 amendments remains the approach subsequent to those amendments. So the amendment itself may be seen, in much the same way that the permitted baseline practice was, for the most part, included in the Act (at s.104(2)), as an amendment recognising or codifying law that had been developed by the Courts. Therefore, the change to s.104(3)(a)(i) was intended to confirm what was already current practice.
23. There is certainly no higher Court authority that suggests that this is not the case.
24. There are also practical reasons why the concept of "*trade competition or the effects of trade competition*" should not be extended. Just as the concept of the existing environment and its future component has been limited (i.e. to only including permitted activities and resource consents that are likely to be given effect to), expanding the meaning of trade competition and its effects beyond what the Courts have previously held the term to mean, raises issues of causation.
25. Those effects, which may have trade competition as a contributory factor but may equally be affected by other aspects of the proposal, start becoming less proximate to trade competition and become more market driven or can be seen as separate environmental effects.

Other indicators

26. As noted above it is permissible, especially where the meaning of legislation remains unclear, to consider the comments of Parliament and its select committees in the formulation of legislation. I have done so here in order to see whether the interpretation I favour might be *contrary* to the stated intent of the legislators. I have discovered that it is not, rather it is entirely consistent, as shown by comments in the report back to Parliament of the select committee in 2009⁸ (**report**).

⁸ Resource Management (Simplifying and Streamlining) Amendment Bill, report dated 18 August 2009.

27. At page 3, the report commences a discussion on “Frivolous, vexatious, and anti-competitive objections”. On page 4, trade competition and its meaning are discussed as follows:

Meaning of trade competition and effects of trade competition

Clause 139 would insert a new Part 11A “Act not to be used to oppose trade competitors” into the principal Act. New sections 308A to 308H would limit the opportunities for trade competitors to make submissions, to be party to proceedings in the Environment Court, or to bring appeals under the Act. Under new Part 11A third parties (or “surrogates”) could not be used to disguise the identity of trade competitors, and any party who had obtained a declaration that a person had contravened Part 11A could seek damages from that party.

As introduced, the bill does not define “trade competition”. Many submitters were unclear whether the term “trade competition” would encompass parties competing for scarce natural resources, business interests that might be adversely affected as a result of environmental effects, and local authorities who might wish to make submissions on plans, including those of neighbouring authorities.

While we do not wish to recommend any changes to the policy intent we did attempt to find a suitable statutory definition of “trade competition” and “effects of trade competition” to provide greater clarity. However, we acknowledge the great difficulty of defining these terms, and the risk that any definition could lead to unintended consequences and a reinterpretation of the law as it currently stands.

We are advised that “trade competition” as the term is currently used in resource management case law is not competition for use of natural resources that are not in private ownership, and that the “effects of trade competition” do not include significant adverse environmental impacts arising from effects of businesses, and that this is consistent with the intention of the trade competition measures in the bill. We consider that there is adequate guidance in existing case law and the trade competition reforms do not seek to change this. Therefore we reject suggestions that trade competition and its effects should be defined by statute.

[my underlining]

Conclusion

28. Having considered the pre-amendment case law and, in particular, its discussion of the purpose of and policy behind the exclusion of the consideration of trade competition and its effects, I conclude that the change to section 104(3)(a)(i) was intended as part of the simplifying intent of the 2009 amendment to the RMA. In other words, it did not signal an extension to the matters excluded beyond those already settled by the Court.
29. I am reinforced in that conclusion by my review of the history of the 2009 Amendment Act.

30. Please advise if you require anything further.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'A Schulte', written in a cursive style.

Andrew Schulte

PARTNER | RESOURCE MANAGEMENT | CHRISTCHURCH

DIRECT: +64 3 339 5640 | EMAIL: andrew.schulte@cavell.co.nz

LUC21-0029 Tricroft Properties Ltd
363 West Street, Ashburton

APPENDIX D

Submission from the Ashburton CBD Business Group

Please find attached to this submission a number of signatures and emails from businesses in the CBD group in support of this submission.

Regards Bob Mc Donald



Please return this form to: info@adc.govt.nz or Ashburton District Council, PO Box 94, Ashburton 7740

Submitter Details

Name:	Ashburton CBD Business Group		
Postal address:	c/o Health 2000 Ashburton ltd the Arcade Ashburton		
Home number:	021 525 347	Work number:	03 3081815
Mobile number:	021 525 347	Email address:	h2k11@xtra.co.nz

Consent Application

Name of applicant:	Tricroft propertys ltd at 363 west st Ashburton
Application number:	LUC21- 0029

I/We support this application

I/We oppose this application

The reasons for making my submissions are (please state the nature of your submission and give reasons):

The CBD business group is very concerned about retailing and business activity moving outside of the designated areas in the Ashburton CBD. The Bunnings site was consented to be a single site now it appears the current retailer (Smith City) is operating outside of the rules and also the owner of the building is hoping to house multiple businesses in the building. Importantly it diminishes from the "ambience" and vibe of the CBD, it detracts from the activities in the CBD and also has a significant economic impact of the existing CBD businesses. The town centre businesses have endured significant disruption over the last few years and allowing yet another commercial 'hub' to operate will only add to the deterioration of and activity in the CBD. Ultimately, diminishing the attractiveness of the town to tourists, would be new residents and existing users of the commercial business' in the CBD.

We strongly oppose this request for Resource Consent and would appreciate an opportunity to speak to our submission.


I wish the consent authority to make the following decision (please give details, including the general nature of any conditions sought):

We would like retail in locations outside the Business A zone to be limited to goods manufactured and serviced on site. It is difficult in this particular case as it appears permission has already been granted to trade before a resource consent is granted. We appreciate that any business is beneficial within the town and we would like to see this business have a long term future within Ashburton however we do not wish that business to be in the proposed location. We do oppose the resource consent application although we would be accepting for a short duration of say 24 months to enable the business to secure a more suitable premise in a central Business A or B zone.



I wish to be heard in support of my submission

I do not wish to be heard in support of my submission

Signature and Date

Signature:  22/7/21

Note: The person making this application must send a copy to the applicant as soon as reasonably practicable

Name	Signature	Business	Date
John O'Brien		East Street Pharmacy	21.7.21
Terry McNab	Paul PP.	Paper Plus Ashburton	21/7/21
Amardo Petrele		Fusion Gallery	
Focus Optometry	N-a-a-l-u-m PP.	David Atkinson	

LUC21-0029 Tricroft Properties Ltd
363 West Street, Ashburton

APPENDIX E
Bunnings Warehouse Resource Consent LUC06/0071

ASHBURTON DISTRICT COUNCIL REPORT

FILE NO: LUC 060071
DATE: 8 February 2007
REPORT TO: Environmental Services Committee
FROM: Senior Planner
SUBJECT: Application LUC 060071- Tricroft Properties Ltd

5. APPLICATION LUC 060071 – TRICROFT PROPERTIES LTD

Pages 25-46

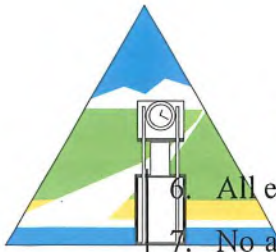
5.1 SUMMARY

Applicant: Tricroft Properties Ltd
Site location: 363 West Street
Legal description: Lots 1, 2 DP 1563 and Lot 1 DP 21503
Description of application: Land use consent to establish and operate a hardware, garden and building supplies outlet including retail sales and to establish and operate a Café at 363 West Street, Ashburton.
Zoning: Business 3A
Status of activity: Discretionary (restricted)

5.2 RECOMMENDATION

“That application LUC 060071 being consent to establish and operate a hardware, garden and building supplies outlet, including retail sales, and to establish and operate a Café at 363 West Street, Ashburton, be granted subject to the following conditions:

1. The consent is to proceed in general accordance with site plan 8306C03C dated 15 November 2006, and details included with the application dated 11 December 2006.
2. No goods deliveries to the site are to occur outside the hours 0700 – 1700, Monday to Friday, through the south side goods access. A gate is to be installed, preventing access along the south side goods access, which is to be locked in accordance with the above hours.
3. The consent holder shall, following six weeks from the opening of the building supply / hardware store, provide a noise report to show compliance with the District Plan’s residential zone noise standards.
4. A noise management brief shall be provided to the Council’s Environmental Services Manager prior to the opening of the building supply outlet to outline what the methodology for condition 3 will be.
5. Should non compliance with the District Plan noise requirements be detected in 3 above, remedial measures shall be undertaken to achieve compliance within one month from the date the non compliance was detected.



ASHBURTON DISTRICT COUNCIL

5 Baring Square West, Ashburton, New Zealand.

e-mail info@adc.govt.nz Website www.ashburtondc.govt.nz

6. All exterior lighting shall be directed away from adjoining properties and roads.
7. No activity shall result in greater than 3 lux spill (horizontal and vertical) of light onto any adjoining property, measured at any point more than two metres inside the boundary of the adjoining property.
8. The hours of operation for the building supply outlet shall not exceed 8.00 am – 6.00 pm on Saturdays, Sundays and public holidays.
9. The Ashburton District Council may, within 20 working days following each anniversary of the granting of this consent, serve notice of its intention to:
 - a. Review the conditions of this consent for the purposes of dealing with any adverse effects on the environment that may arise from the exercise of this consent in regard to effects on the surrounding environment from the scale, frequency and duration of the activity for which consent has been granted. The actual and reasonable costs of conducting such a review shall be payable by the consent holder.
 - b. Carry out monitoring of the activity for the purposes of assessing compliance with the resource consent and / or dealing with any adverse effects on the environment that may arise from the exercise of this consent in regard to effects on the surrounding environment from the conduct of the activity for which consent has been granted. The actual and reasonable costs of conducting such a monitoring shall be payable by the consent holder and shall be in accordance with fees adopted by the Council from time to time.

Advice Note:

1. Pursuant to the Council's LTCCP, development contributions are payable at the time of building consent.

The consent holder is advised that pursuant to Part 8, sub-part 5 of the Local Government Act 2002, and the Council's financial and development contributions policy contained in the Long Term Council Plan (LTCCP) there is a requirement that development contributions to fund growth related investment in network infrastructure and community facilities be imposed.

Development contributions are not conditions of this resource consent, however development contributions for high pressure water supply, sewage disposal and a community infrastructure payment may be payable at the time of uplifting a building consent.

2. The proposal should comply with all relevant standards in the District Plan with regards to hazardous substance storage and use.
3. The consent holder should obtain any necessary discharge permits for on-site stormwater disposal from Environment Canterbury prior to commencing this consent.

5.3 BACKGROUND

The proposal is to convert the former PGG Wrightsons building to a hardware, garden and building supply outlet. The site is some 1.56 ha in area and contains the existing buildings which have ceased to have been used for over a year. The existing buildings comprise a large single storey warehouse / building of some 4510m² gross floor area and setback 56m from SH1. The proposal utilises the existing building with no new buildings proposed.

The site is located within a Business 3A zone which in this vicinity is dominated by mixed business / industrial activities. There is a residential zone to both the south of the site and the land to the west, nearest the proposal, is a stormwater retention pond owned by Environment Canterbury.

The application is as described below by way of recent history. The proposal now includes the hardware building supply store and the veterinary / café building.

In August 2006, an application was lodged for a building supply outlet only within the former PGG Wrightsons building. At this time a separate building was under construction near the West Street road frontage to relocate the existing veterinary practice.

No resource consent was required for the veterinary practice as it is not a retail activity subject to any restriction for retail sales fronting SH1. The separate building had a balance area which at this time had no confirmed tenant and no resource consent would have been required if the tenancy was to have been used for a non retail type activity.

This resource consent application for the building supply outlet was lodged separately which included affected party approvals from adjoining neighbours, however Transit New Zealand, which is an affected party, was not prepared to provide written approval unless amendments were made for access from SH1.

Essentially, the original application was amended and re-submitted in December 2006, to provide a single access / egress point to SH1 (previously there were two). The original application was deficient in car parking numbers but this has now been amended to comply.

As part of the amended application a café tenant was confirmed as the ground floor tenant adjoining the separate vet clinic building. This café requires a resource consent as it is a retail activity fronting SH1 which does not meet the relevant standards in the District Plan.

The applicant has now amended the application to include both the café and building supply outlet together as one single application.

Building Supply Outlet

The proposed building supply outlet will stock and sell a range of products, which includes –

- timber and panel products
- building hardware
- tools
- plants and gardening supplies
- paint and home decorating supplies
- landscape supplies
- bathroom and kitchen fittings
- outdoor furniture.

The proposed hours of operation will be 7.00 am to 7.00 pm, Monday to Friday, and 8.00 am to 6.00 pm on weekends and public holidays. The occasional use of the building for small group meetings, builder trade demonstrations and DIY workshop classes are proposed for weekday evenings concluding before 9.00 pm.

The existing car park will provide up to 171 car parking spaces which exceeds the minimum requirement of 164 spaces.

There are vehicle crossings proposed to West Street as shown on the Traffic Design Group site plan appended to this report. The crossings have been proposed following consultation with Transit New Zealand who was not comfortable with the original application for two separate access / egress points.

Pages 29-32



ASHBURTON DISTRICT COUNCIL

There is a sealed access proposed along the north side of the building which will provide access to car parks alongside customer access to drive-through facilities to a timber yard at the rear of the building.

Goods access will be via the existing 5m wide access along the southern side of the building. It is estimated that goods deliveries will average up to 10 per day. There will be two major deliverers per week by either B-Train or articulated trucks. The remainder of deliveries will be by medium trucks and courier vans. Goods deliveries will only be between 7.00 am to 5.00 pm, Monday to Friday. Inwards goods will not be accepted after these hours.

In terms of services the building has access to reticulated water and sewer. Stormwater disposal will be into the existing stormwater system which is located on the northern side of the present car park. The building is already connected to stormwater and there is no increase in roof area, however there may well be resource consents required for discharge of stormwater under ECan's NRRP. The applicant has undertaken consultation with ECan to determine if resource consent is required as there is the possibility of an existing use right for stormwater disposal being applicable.

With regards to the proposed Café it will have seating for up to 64 persons and a public floor area of 87m². The café will be a typical café serving coffee, teas and other refreshments as well as food and snacks. It will not be licensed. It will operate seven days per week to similar hours as the building supply depot.

The café would normally be permitted within a Business 3a zone; however resource consent is required due to it being a retail activity accessing SH1.

The vet clinic will adjoin the café as two separate ground floor tenancies. A small 101m² mezzanine office is proposed above the vet clinic.

The building supply outlet and café are both described as commercial activities in the District Plan which are permitted in the Business 3a zone subject to compliance with relevant site and zone standards. A table demonstrating the consideration of all relevant standards is shown on pages 5, 6 and 7 of the application.

The only matters of non compliance are –

- Retail uses (building outlet and café) do not comply with site standard 7.7.5.1.11(b) – Commercial Activities, as access is from SH1.
- The vehicle crossing width exceeds 9m on an arterial road as required by Appendix 12 to the Transportation Rules – Rule 6.5.2.2.6.
- No 2m landscaping strip is provided along the residential boundary to the south – Site Standard 7.7.5.1.10.
- The hours of operation contravene site standard 7.7.5.1.17 as the building supply outlet will operate outside of the hours of 9.00 am – 5.00 pm, on Saturdays, Sundays and public holidays (8.00 am – 6.00 pm proposed).

These non compliances make this activity restricted discretionary with Council's discretion being limited to these matters only.

Consideration is also required as a controlled activity (which must be granted) for water supply sewage disposal and community infrastructure from the café. These are calculated in the form of development contributions under Council's LTCCP policy and will be charged at the time of building consent uplift. These contributions have been calculated by the Council's Water Services Manager and they equate to three water and wastewater contributions totaling \$10,590.75.

No development contributions are applied to the building supply outlet or veterinary building as it is an existing commercial use in accordance with Council's Development Financial Contributions policy. The reason for this is that the change of use will not create any additional demand on water or wastewater services.

The application has been processed under Section 94(2) of the Resource Management Act 1991. The Council is not required to serve notice of this application as all persons who, in the opinion of the consent authority may be adversely affected by the activity, have given their written approval to the proposal.

The amendments made to the application essentially make potential effects less than what was originally sought in August 2006.

5.4 OPTIONS

The Committee has the following options regarding this application –

1. To grant the consent; or
2. To decline the consent.

If granting the consent, Council may impose conditions under Section 108 of the Resource Management Act only for those matters specifically in the District Plan which it has restricted the exercise of its discretion.

5.5 STATUTORY IMPLICATIONS

The Council must consider this application with regard to the relevant provisions of the Resource Management Act. These are considered to be –

Section 104

- Matters to be considered

- (1) Subject to Part II when considering an application for a resource consent and any submissions received, the consent authority shall have regard to:
 - (a) Any actual and potential effects on the environment of allowing the activity
 - (b) Any relevant regulation
 - (c) Any relevant National Policy Statement, New Zealand Coastal Policy Statement, Regional Policy Statement and Proposed Regional Policy Statement
 - (d) Any relevant objectives, policies, rules or other provisions of a plan or proposed plan
 - (e) Any relevant Regional Plan or Proposed Regional Plans where the application is made in accordance with a District Plan
 - (f) Any other matters the consent authority considers relevant and reasonably necessary to determine the application.

Section 104 (C)

- Particular restrictions for restricted discretionary activities

When considering an application for a resource consent for a restricted discretionary activity, a consent authority –

- (a) must consider only those matters specified in the plan or proposed plan to which it has restricted the exercise of its discretion; and
- (b) may grant or refuse the application; and
- (c) if it grants the application, may impose conditions under section 108 for those matters specified in the Plan to which discretion is restricted.

Assessment of Environmental Effects

All the matters of non-compliance are restricted discretionary activities which limits Council's discretion to the matters subject to these standards only. However, the applicant has volunteered conditions for both noise and lighting to ensure these meet the District Plan minimum standards.



ASHBURTON DISTRICT COUNCIL

In this regard the Council can impose the conditions without fear of an objection from the applicant.
5 Baring Square West, Ashburton, New Zealand.
e-mail info@adc.govt.nz Website www.ashburtondc.govt.nz

Retail and Traffic Effects:

If calling, please ask for:

Site Standard 7.7.5.1.11 in the District Plan places control on vehicle crossings and access for retail activities specifically from SH1.

The building supply outlet and café comply with the minimum retail floor space limitations that otherwise apply in the Business 3a zone. This zone does anticipate retail activities occurring which are vehicle oriented and include sales of bulky materials such as building supplies. The café is specifically excluded from the retail floor space limitations. Therefore the outlet and café would therefore be permitted in any other Business 3a zone if it did not have access to the highway. Transit has given written approval to the amended access / egress to the site and therefore any effects in this regard can be said to be minor.

The applicant assessed the reason for Council's rule for retail activity which states –

"Retail activities are considered to be a significant determinant of the number of vehicle movements to and from a site and require assessment as to the effects on the safety and efficiency of State Highway One ..."

The reason for the rule 7.7.5.1.11 does not prevent retail activities with access to the State Highway but assesses the effects of each proposal on a case by case basis.

Transit New Zealand provided written approval to the amended application based on the access being changed to a single access. The access has been designed with separate in / out lanes being marked on site, separated by a raised median; turning curves for B-Trains are shown and the applicant will provide a painted flush median on that part of SH1 fronting the site. All costs of providing the painted median strip will be met by the applicant. Finally, all on-site lighting will be designed and located so that no direct glare from external lighting will affect traffic on SH1.

Transit New Zealand has taken into account the proposed café and has said it has no concerns with these amendments in relation to this development.

A traffic impact report from Traffic Design Group was included with the application. The assessment addresses the likely traffic generation of the proposal and effects on the highway. An initial traffic report was prepared in August 2006, which concluded that the 144 car parks then shown (153 were required to meet the District Plan) and the two separate vehicle crossings, were not expected to adversely affect public safety or affect the efficient operation of the local traffic network. Overall the proposed design will be able to be properly and safely accommodated without any noticeable adverse effects on the existing traffic environment.

The amended traffic report, following amendment to the site access of two access points to one, reassessed the potential effects.

The inclusion of the café and office area increases the required car parking from 153 to 164 car parks. The applicant is now supplying a total of 171 car parking spaces. The traffic assessment report provided details that the maximum parking demand for the building supply outlet would not exceed 126 spaces. This demand, including the 16 spaces required for the veterinary clinic, would represent approximately 80% of the parking spaces supplied on the site. Therefore 171 car parking spaces are considered more than adequate to meet the demand.

The revised access has been at the request of Transit New Zealand as previously the traffic impact report assessed the location of two separate crossings to the site as having minor effects. Provision has been made for turning circles for B-Train vehicles entering from the south and departing to the north onto SH1.

A key point is that the turning requirements for these larger vehicles means the access width of 20 metres at the kerb will exceed the allowable width of 9 metres required by the District Plan.

The assessment of this non-compliance provides good vehicle access and caters for pedestrians moving between West Street and the main building entrance.

The question of effects becomes one of whether having one 20m vehicle crossing compared with two 9m crossings would create any issues. The new access design will allow easier site access for heavy vehicles. These vehicles are not anticipated to cause any adverse effect on the safety and efficiency of vehicles on SH1. The proposed access and associated traffic effects are therefore not anticipated to affect public safety or the efficient operation of SH1.

Landscaping

The District Plan requires a two metre landscaping strip as per rule 7.7.5.1.10 in the Business zone site standards in the District Plan. Essentially this requires the planting of species along the boundary and the inclusion of a minimum 1.8m fence.

The landscape strip would be required along the southern boundary with the residential zone. The situation is existing as there has never been a two metre landscape strip on this boundary. No new buildings are proposed and the use of the southern boundary area for rear site access will not change.

The existing wall of the building closest to this access will be improved as it will be repaired and painted. There is an existing fence along the residential / business zone boundary which will meet the screening aspect of the site standard in the District Plan.

Further to this, all residential landowners on this boundary have provided written approval to the proposal.

Hours of Operation

The non-compliance with the hours of operation is for the weekend and public holidays only. The breach in the prescribed hours is 8.00 am to 9.00 am and 5.00 pm to 6.00 pm. It is considered that these hours are not excessive considering the level of surrounding activity at these times, ie vehicle movements on the State Highway and the operation of the businesses located on the opposite side of SH1.

No goods deliveries will occur during the weekends or public holidays.

The applicant mentions there will be small amounts of activities in the open timber yard at the rear of the building which may generate noise – ie trucks, vehicle movements including forklifts. The applicant has proposed that, alongside the proposed noise mitigation conditions, that investigation into an acoustic fence may be possible along the south side of the timber yard. My suggestion is to await the outcome of the proposed noise monitoring condition which will determine if there is any breach of noise standards.

Otherwise, it is not considered there are any significant issues with the increase in trading hours.

Financial Contributions

The proposed café will be subject to financial contributions for high pressure water supply and sewerage disposal in the form of development contributions imposed under the Council's Long Term Council Community Plan in accordance with the Local Government Act 2002; a community infrastructure fee is also payable. These development contributions will be imposed at the time of building consent uplift.

Other Matters

As far as stormwater disposal is concerned, the applicant is investigating whether a resource consent for the discharge of stormwater is required from Environment Canterbury.



ASHBURTON DISTRICT COUNCIL

The plans for stormwater disposal on site include interceptors and sumps which will be designed to trap any debris or foreign material prior to entering the nearby waterway, Wakanui Creek. Council's Water Services Manager provided comment to this effect.

In reply, please quote:

If calling, please ask for:

In any event this resource consent application is for a restricted discretionary activity and stormwater disposal is not a matter for Council's discretion, therefore no condition can be imposed. An advice notice to this effect has been recommended.

Objectives and Policies of the District Plan

The relevant objectives and policies relate to transport matters for the potential effects of traffic efficiency and safety of activities which require access / egress from SH1. Based on the assessment provided with the application and the details outlined in this application it is not considered that this proposal is contrary to the relevant objectives and policies of the District Plan.

Other Relevant Matters

Part II of the Resource Management Act 1991 includes the purpose and principles of the Act, Matters of National Importance and Other Matters. This proposal is not considered to be contrary to any of those principles.

5.6 CONSULTATION

The proposal was processed by way of non-notification pursuant to Section 94(2) of the Resource Management Act 1991. Written approvals were sought from the following persons who were considered to be adversely affected by the proposal.

1. Transit New Zealand
2. D & S Moore, 18 Queens Drive, Ashburton
3. E Day, 12 Queens Drive, Ashburton
4. F Whitelaw, 20 Queens Drive, Ashburton
5. M L Gundry, 2 Queens Drive, Ashburton
6. B P Margaret, 16 Queens Drive, Ashburton
7. M W Nicoll, 22 Queens Drive, Ashburton
8. N & M Hosking, 10 Queens Drive, Ashburton
9. K S Small, 6 Queens Drive, Ashburton
10. B C Cui, 8 Queens Drive, Ashburton
11. L W & N J Coleman, 359 West Street, Ashburton
12. S Lyons, 14 Queens Drive, Ashburton
13. N Rickard, 4A Queens Drive, Ashburton

Pursuant to Section 104(3)(b) of the Resource Management Act, the Council cannot have any regard to any effect on those persons who have provided written approvals to this proposal.

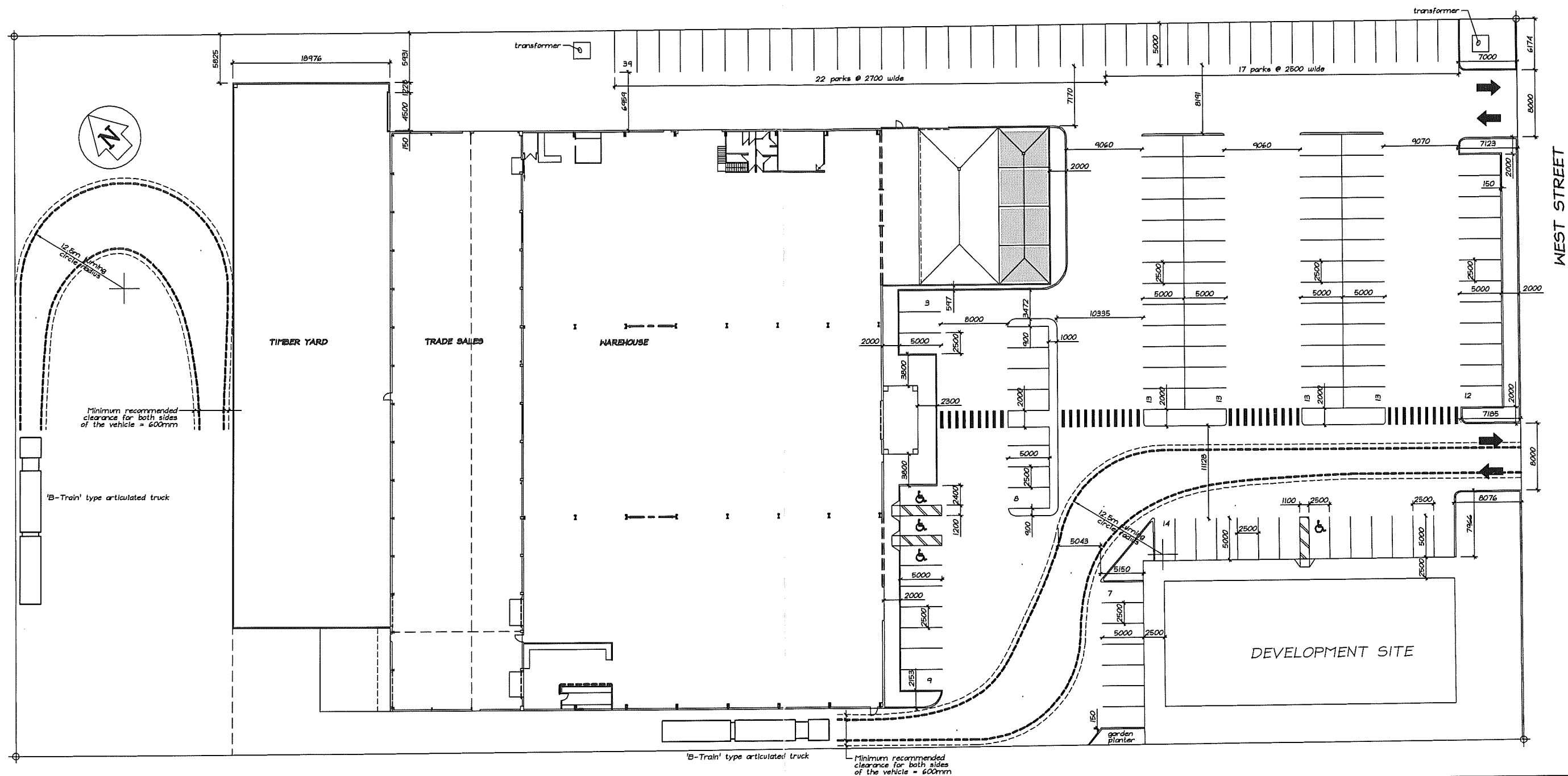
5.7 STRATEGIC LINKS

The joint ADC / Transit New Zealand Traffic Study is relevant as is Environment Canterbury's Natural Resources Regional Plan (Water Quality Chapter) and the Regional Policy Statement (Transport Chapter).

5.8 FINANCIAL

As outlined in this report, development contributions are sought for high pressure water, sewage disposal and community infrastructure.

D HARFORD
Senior Planner



Proposed Carparking Plan
1:250

St. Moore
Draw

1	09.05.06	consent	
ISSUE	DATE	AMENDMENT	CHECKED
<p>consulting engineers heating + ventilation mechanical structural electrical acoustic civil fire</p> <p>Unit 3, Amul Park One Beckley Ave & Court 18B P.O. Box 28-118, Christchurch Phone: 353 8000 (03) 366-1177, mobile (03) 378-1526 fax engineering@pfc.co.nz www.pfc.co.nz website</p>			
WRIGHTSONS WAREHOUSE CONVERSION WEST STREET, ASHBURTON			
PROPOSED CARPARKING PLAN			
CONTRACTOR MUST VERIFY ALL DIMENSIONS ON SITE			
SCALES:			
	DESIGNED	KJS	11/05
	DRAWN	GV	04/06
	CHECKED		
SET	JOB NO.	SHEET NO.	ISSUE
	051406	SK6	1
			OF - SHEETS
THIS DRAWING IS COPYRIGHT ©			
DATE PRINTED:			

LUC21-0029 Tricroft Properties Ltd
363 West Street, Ashburton

APPENDIX F
Recommended Conditions on any Consent Granted

That resource consent LUC21-0029 for the proposed Smiths City tenancy at 363 West Street Ashburton. Pursuant to sections 104 and 104B of the Resource Management Act 1991, consent is approved subject to the following conditions imposed under section 108 being completed to the satisfaction of the Council and at no cost to the Council:

GENERAL

1. The development shall proceed in accordance with the information submitted with the application dated April 2021, including the plan prepared by **Thompson Construction and Engineering, Rev A0100, dated 22/05/2020**, except where modified by specific conditions set out below.
2. The retailing of goods within the subject tenancy shall only be those specified in the application including but not limited to whiteware, home appliances, bedding, furniture, homewares and electronics (large and small). There shall be no smaller retail established within this subject tenancy i.e. internal café or bookshop.

LANDSCAPING

3. That a minimum of 7 specimen trees be provided across the West Street frontage of the application site. The chosen trees species must be at least 1.5m in height at the time of planting and once established must be maintained at a height of not less than 3.0m.
4. All landscaping required under this consent shall be maintained and provided irrigation. Any dead, diseased, or damaged tree is to be replaced immediately with the same or similar species capable of reaching the same height at maturity.
5. All required landscaping shall be established the first planting season following the issue of a Code Compliance Certificate for the large format retail building on the site.

HOURS OF OPERATION

6. The hours of operation shall not extend outside of 8am to 6pm Monday to Friday and 9am to 5pm Saturday and Sunday

TRANSPORTATION

7. That no areas provided for vehicle movement, parking spaces or loading areas are to be used for permanent displays; storage or any other purpose which would prevent use for their intended purpose.
8. All deliveries to the store shall be within the prescribed hours of operation detailed in 2 above.

LIGHTING

9. Exterior lighting on the building shall not cast lighting in excess of District Plan standards on any adjoining properties.

ADMINISTRATION

10. The lapsing date for the purposes of Section 125 of the RMA 1991 shall be 5 years from the date consent is issued.

ADVICE NOTES:

- a) This resource consent only provides approval under the Resource Management Act 1991. The Consent Holder will need to obtain all other relevant approvals prior to works commencing.
- b) The Council will require payment of its administrative charges in relation to monitoring, as authorised by the provisions of section 36 of the Resource Management Act 1991.

DRAFT