

BEFORE THE ASHBURTON DISTRICT COUNCIL

Under	The Resource Management Act 1991
In the matter of	Resource Consent Application Consent LUC21/0029, Tricroft Properties Limited (Tricroft), 363 West Street, Ashburton.
The Decision of	Ken Fletcher Independent Commissioner By delegation of the Ashburton District Council
Hearing held	Thursday 16 September Council Chambers, Ashburton District Council
Hearing Participants	For the Applicant, Tricroft Properties Ltd (Tricroft) Mr Tom Evatt (Solicitor) Mr David Harford (Planner) Mr Tony Gilbert (Tricroft) Mr Dave Williams (Tricroft) Ms Sally Carr (Tricroft) Mr Mark Tyrall (Smiths City Ltd) Mr Derek Foy, Economics (via Zoom) For Ashburton District Council (ADC) Mr Nick Boyes (s42A Reporting Officer) Mr Andrew Schulte (Solicitor) Mr Ian Hyde (ADC District Planning Manager) Mr Tim Heath, Economics (via Zoom)
Hearing Administrator	Mr Sikander Hirani, Ashburton District Council

Abbreviations and References

Throughout this decision references to the Ashburton town centre refer to the Ashburton Business A zone, as shown in light yellow on the map at the end of this decision.

- ADC means the Ashburton District Council
- GFA means Gross Floor Area
- LFR mean Large Format Retail
- PC4 means Plan Change 4 to the Ashburton District Plan

The Delegation

1. By delegation of Jane Donaldson, Group Manager Strategy and Compliance, of Ashburton District Council, I was appointed to

make a decision on notification, to hear submissions (if required) and to make a decision¹

on the application for resource consent LUC21/0029, Tricroft Properties Limited, 363 West Street, Ashburton

The Application

2. The Application is described extensively within the application², and summarised by Mr Boyes³, so what follows is a brief description only.
3. Tricroft own a very large building at 363 West St, in the Business C zone. They propose to divide the building into three parts. The Application is restricted to the middle of the three parts. The application is for Smiths City to relocate from their site in Kermodie St to the Tricroft site and operate as a department store selling a limited range of products, being furniture and appliances⁴. The Smiths City store will have 1,002m² of publicly accessible shop, 360m² of back office and storage floorspace, with a further 437m² secure yard area.
4. Both the Application and the s42A report (and other evidence) refers to the application as a “proposal”, and I read most of the documentation for the hearing on that basis. It was only in the week prior to the hearing that it was brought to my attention that Smiths City was in fact in place and operating from the site, and had been doing since May 2021, nearly 6 months. While nothing about the legality of that affects my consideration of the application, the reasons behind that premature occupation and operation are relevant, as will be discussed below.

¹ Delegation dated 3 June 2021

² Application PC4v2 at 3.0

³ s42A Report at 2

⁴ Application PC4v2 at 3.0

The History/Timeline

Of the Site

5. The site has a long history of retail activity,
 - It started life as a Wrightsons rural supply store.
When Wrightsons vacated the building it was purchased by Tricroft, refurbished and reopened as a Bunnings Warehouse operation, selling “hardware, garden and building supplies” to both trade and retail customers under a 2007 resource consent, as a restricted discretionary activity⁵.
 - Bunnings closed their Ashburton operation and left the District in 2020⁶.
 - Smiths City began operating from the site in May 2021.

Of the Application

6. The Application has gone through some revisions.
 - It was originally lodged with ADC on 26 March 2021. This version, with the Revision and Version status of “Final” referred only to the then operative District Plan provisions.
 - On 16 April, ADC requested it be amended, under s92, to reference the provisions of PC4, which had been notified in November 2020.
 - On 22 April, an amended application was provided to ADC, with the Revision still as “Final”, but “Final – Amended PC4” in the PDF filename, and Version of “Final – Amended Version April 2021” While containing references to PC4, this was still predicated on the rules in the operative District Plan.
 - On 28 April ADC wrote noting that the rules being referred to were redundant as having been rewritten by PC4, and further requesting details of the proposed tenant.
 - On April 30 a further amended version, with the PDF file name including “Final-Amended PC4 v2”, Revision of “Final PC4v2” was provided. This one correctly referenced the rules as per PC4, with the changes from the original application highlighted through Track Changes.
 - On 27 August, following a request from me, an untracked version was supplied, still referenced as “Final-Amended PC4 v2”. This is what I have used as the basis for my deliberations and in coming to this decision.
7. All the above versions are dated “March 2021” on the title page, with the Lodgement date of “March 2021” on the Quality Assurance section on page 3. They only differ in the PDF filename, the Revision status on the title page and the Version status on p3.

Notification and Re-notification

8. At the request of the Applicant, the Application was publicly notified on 18 June 2021.

⁵ S42A Report, Appendix E Resource Consent LUC 060071

⁶ Gilbert EIC p 2

9. I received the s42A Report on Wednesday 25 August. On an initial read on 26 August, I noticed the reference to a revision to the Application in April 2021⁷. On checking the Application copy I had been provided with by ADC, it appeared to be that originally filed on 26 March. This was confirmed by ADC, who also confirmed my concern that it was what had been provided to the Ashburton community for consideration in the Notification links.
10. As a result, I directed ADC to reopen the Application for submissions for a limited time (26 Aug to 9 Sept), publicise the error and the re-opened submissions period, and advise all those directly notified⁸.

The Submitters and their Submissions

11. An electronic submission was received from a group of Ashburton business people. The Submission form stated the submitters name as “Ashburton CBD Business Group”, indicated opposition to the Application, and that the group wished to be heard. Attached to the submission form was an email trail. Within the submission and email trail there were 15 individuals identified as supporting the submission, with a variety of further comments made by individuals.⁹

12. On 18 August an email was received that stated that, after talking with Tricroft,

“...the majority of the group wish to withdraw our submission completely...”

As ADC confirmed that the group was unincorporated, I treated the submission as set of individual submissions from those named within the form and email trail. I required ADC to contact each of the submitters and require individual withdrawals. By the end of the Hearing, there were four submitters still engaged with the Application, none of whom wished to be heard.

The remaining submitters are:

- John O’Brian, East Street Pharmacy
- Clark McLeod, McLeod Valuation and Consulting
- Roger Farr, ATEC (Ashburton Trust Event Centre)
- Max Cawte, no affiliation given

13. The common part of their submission is as follows:

“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 (Smiths 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

⁷ S42A Report at 1

⁸ Minute 5

⁹ Submission received 22 July 2021

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”

In terms of the decision sought, they stated:

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”

14. The additional comments made by the submitters were

Roger Farr

“I fully support the Retailer Associations initiative to prevent the drift of retail business away from the CBD. The council should also recognise that the development of satellite business hubs outside the CBD will ultimately lead to the demise of the CBD as we know it.”

Max Cawte

“I oppose a consent to be granted to Smith City on the grounds that it will not be conducive to good long term town planning, fragmenting yet again the CBD retail hub. Central Retail Business Hubs, to be vibrant, need to be developed in close proximity to each other to encourage and expand business networks, and support each other.”

Clark McLeod

“I believe it is very important that retail stays within the CBD and surrounds to ensure the businesses within the town centre are not adversely affected.”

Clark McLeod also provided a statement of evidence as an expert witness.

John O’Brien did not make any additional comment

Operative Plan

15. The operative district plan is the plan as modified by Plan Change 4. Referencing this is confused, as the Plan on the ADC Website has not been updated for PC4 changes as of today¹⁰. The link on the ADC website titled “Operative District Plan” takes you to the unmodified (pre-PC4) version of the Plan. To access the true operative plan requires looking at the PC4 decision. I understand that the version on the website has since been updated.

Activity Status

16. The activity status of the application is agreed to be non-complying by all parties, and this is accepted. It is non-complying due to the nature of the retail activity, a department store, not being in the permitted list of retail activities, and all other retail activities in the Business C zone are non-complying. This status came into play with PC4 and the change to Rule 5.8.6 (j), which now reads

5.8.6 Non-Complying Activities

...

Retail Activity in the Business C and D Zone, other than where specified as a Permitted Activity or Discretionary Activity

The only retail activity that is permitted in the Business C zone is goods produced or processed on site, or food and beverage, trade, or yard-based retailing¹¹.

17. Prior to PC4 retail was allowed in Business C, with the only restriction being a maximum floorspace of 750m² GFA. Under the pre PC4 plan, this proposal would still have been non-complying, but only because it exceeded the maximum floorspace limitation, not because of its basic retail nature, as is now the case.

18. The full suite of relevant rules as they now stand are:
(Emphasis in the original and highlighting the changes made by PC4)

5.8.2 Permitted Activities

The following shall be permitted activities, provided that they comply with all the relevant Site and Zone Standards below and all relevant District Wide Rules, and are not otherwise specified as a controlled, restricted discretionary, discretionary, non-complying or prohibited activity: ...

h) Retail Activity in the Business **C and D** and E Zones, other than where specified as a Non-Complying Activity, provided that:
(allows for goods processed on site, (maximum of 150m²), trade and yard based suppliers and food & beverage outlets

5.8.5 Discretionary Activities ...

¹⁰ 28 September 2021

¹¹ ADC ODP-PC4 5.8.2 (h)

i) Retail Activity in the Business C Zone, other than where specified as a Permitted Activity or Non-Complying Activity, where the maximum gross floor area of any individual retail tenancy shall not exceed 500m².

5.8.6 Non-Complying Activities ...

j) **Retail Activity** in the Business C and D Zone, **other than where specified as a Permitted Activity or Discretionary Activity**;

The Background

19. Smiths City have been operating in Ashburton for 25 years, most recently from a site in Kermode St, within the Business B zone. Smiths City's lease on their former site expired in May 2020, and they were on a month-by month renewal since then. Prior to the expiry they attempted to negotiate renewal but were unsuccessful. Mr Tyrall stated that the issue was with the relationship with the landlord. The relationship had broken down for whatever reason, and they were unable to negotiate a long-term renewal. Around the turn of the year, they were given notice to vacate, and everyone had to move very quickly to establish on the Tricroft site by May 2021.
20. It is common ground between the parties that at the time, and to date, there are no sites of around 1,000-1,500m² GFA available in either the Business A or B zones. All parties agreed that the Business B zone was currently fully developed and occupied. There are vacant sites in the Business A zone, but none of a suitable size and ready to occupy. To find a suitable site within the Business A zone would require site amalgamation and/or redevelopment of existing buildings. However, Mr Gilbert acknowledged that Tricroft did not actively engage with the market seeking to put together a package within the Business A zone. He indicated that Smiths City engaged by internet searches using realestate.co.nz, and by walking around and identifying likely sites, rather than engaging with real estate agents to find something.
21. Tricroft, on learning that Smiths City was looking for a suitable site to relocate to, approached Smiths City in November 2020.
22. Tricroft have no holdings in Business A, and therefore had no interest in finding a site in Business A. Tricroft did not attempt to engage with the market to find a suitable site that was plan compliant. They took the clients stated needs as the requirements, and did not attempt to find a compromise that was acceptable to Smiths City but also plan-compliant.
23. Mr Tyrall stated that they were willing to look at anything, and make compromises on their business case requirements, but there was just nothing available. They did not have the option to wait 18-24 months for a suitable site to be prepared. It would have required closing the Ashburton operation and leaving the district for the duration.
24. The ideal site requirements for LFR, as identified by Mr Tyrall, are:
 - Appropriate floor area – for Smiths City in Ashburton this is 1000-1500 m²;

- Sufficient on-site storage;
- Suitable access for large trucks (B-trains), with ease of manoeuvring;
- Price;
- Carparking, separated from delivery vehicles;
- Patronage.

The actual zoning or location is not critical. Smiths would have located in the Business A zone if a suitable site was available in their required timeframe.

Plan Change 4

25. The changes to the District Plan brought about by Plan Change 4 (PC4) are central to this case. The genesis and timing of PC4 are relevant to this decision.

- The Business B LFR zone was created in 2008¹²;
- Since then, retail employment in the Town Centre zone (Business A) has been declining, while retail employment outside the Town centre has continued to grow¹³;
- The scale of retail developments in Ashburton outside of the Town Centre was dispersing investment, and resulting in the Town Centre having an aging building stock in need of repair, investment and upgrade¹⁴.
- There has been a gradual decline in the level of retail activity within the Town Centre, such that as of 2017 there was 3,600m² of vacant floorspace within the Town Centre, and retail employment in the Town Centre had declined by 230FTEs since 2006¹⁵;
- In 2019 ADC received, processed and granted Resource Consent LUC19/0012 for a Kmart and associated stores located in the Business D zone;
- In 2019, following the Kmart decision, ADC commissioned “Ashburton Town Centre Zoning Economic Assessment” from Property Economics;
- PC4 was notified November 2020;
- PC4 s42A report was circulated 23 April 2021 (no hearing was held);
- ADC accepted the Commissioner’s recommendations on 30 June and notified the PC4 decision on 8 July 2021. There were no appeals.

26. PC4 was

“...a response to a number of large scale resource consents being granted for core retail outside of the Town Centre, including the recent Kmart resource consent; and

¹² PC4 s32 report, fig 5

¹³ *ibid*

¹⁴ *Ibid* at 11-12.

¹⁵ *Ibid* at 13

concerns ... as to a continued lack of private sector investment and loss of amenity within the Town Centre ...”¹⁶

Its purpose was to

“...strengthen the role and function of the Town Centre (Business A zone) as the primary commercial, retail, recreation, cultural and entertainment centre for the district. The associated provisions restrict and manage the distribution of commercial activities and retail activities within the Business B, C, D and E zones of the District.”¹⁷

27. It can be seen from the above timetable that the PC4 processes were coterminous with those of Smiths City needing to find alternative premises, and Tricroft’s resource consent process. To see this, the relevant dates are laid out in a timeline in the table below.

¹⁶ PC4 s42A Report at 15

¹⁷ Ibid at 14

Table 1 Timing of PC4 and Tricroft Consent Processes

Date	PC4 Process	Tricroft Resource Consent Process
May 2020		Smiths City lease expired
November 2020	PC4 notified	Tricroft approached Smiths City re site
February 2021	Further submissions close	Smiths City agree to relocate to Tricroft site
26 March 2021		Tricroft application lodged
16 April 2021		ADC s92 request for the application to address PC4
22 April 2021		Amended application lodged
23 April 2021	PC4 s42A report on ADC website	
28 April 2021		ADC advises Tricroft that application references old rule
30 April 2021		Tricroft lodge final application
30 June 2021	ADC adopts PC4 recommendation	
8 July 2021	ADC decision to adopt PC4 notified	
20 August 2021	Appeal period closed with no appeals	

28. The application was lodged after PC4 was notified, but before the decision made was promulgated. Arguably, the relevant rules in PC4 were operative from the close of further submissions, given there were no submissions against them. However, there was no notification of that fact until the release of the s42A report on 23 April. So, although initially lodged under the pre-PC4 operative Plan provisions, it stands to be assessed against the Plan as changed by PC4.

My Site Visit

29. I spent the afternoon before the hearing visiting the site and then walking throughout the Business A and B Zones in Ashburton. On the day after the hearing, I did a further walk around parts of both the Business A and B zones.

The Issues

30. The significant issues that are in contention are:

- The effect of the activity in terms of trade diversion and retail distribution effects;
- The cumulative effect of the application in conjunction with the Kmart consent;
- The economic health of the Ashburton Town Centre;
- The effect on shopping and travel patterns, and therefore on travel efficiency;
- The effect of PC in effecting change;
- Relevance and significance to this application of the Bunnings retail activities;
- Availability of suitable land as a permitted activity;
- The effect of not granting the consent – Smiths City leaving the district, at least in the short term, or being allowed to trade without consent for a period of time to enable relocation;
- The precedent effects on the integrity of the Plan post PC4;
- The relevance of NPS-UD
- Duration of consent if granted.

The Effects of the Application

Trade Effects

31. This was an issue of contention between the two economics experts, Mr Foy for the Applicant, and Mr Heath for the s42A report.

32. Mr Foy used the same methodology he used to assess the earlier Kmart resource consent application. In doing so he has assumed that the vacated Smiths City site will be re-tenanted by a retail business drawing sales from the Business A, B and C zones in relative proportion to the current sales levels in those zones.¹⁸ He concludes that the relocation of Smiths City and the back-filling of its vacated site, would have no more than a 2% impact on the sales of the Business A retailers.¹⁹ He goes on to assess the cumulative effect of the Smiths City relocation on top of the Kmart application as no

¹⁸ Foy EIC at 7.6

¹⁹ Foy EIC at 7.17

more than 10%²⁰. On the assumption that retail business operating in 2019 were viable then, he considers that

“...most would still be viable after the proposed development opens, and the future Ashburton retail environment would be little different to what it was immediately pre-Covid.”²¹

33. He considered that the level of retail distribution effects arising from the trade competition effects he has assessed would be “well short” of significant²².
34. Mr Foy had assumed that the former Smiths City site in Kermode St would be back-filled by a retail activity of similar size. What Mr Foy did not anticipate was that the operation back-filling the site would be a relocation from the Business A zone. We now know that this is what has happened – that Noel Leeming is relocating from the LFR precinct in the Business A zone to part of the former Smiths City site. This is an example of trade competition effects, leaving another vacant tenancy in the town centre, which may or may not be filled after some period of being empty. A Macpac outlet is apparently taking the balance of the Kermode St site.
35. On the assumption that Noel Leeming has a similar sales-GFA ratio as Smiths City, this immediately brings into play the 2% effect on sales that Mr Foy is predicting
36. Mr Foy did concede during the hearing that his analysis for this application used the same Marketview data and model as was used for the Kmart application, that that data was for 2018 and not updated, and that the data did not distinguish between the Business A and B zones. He did not think that Covid had changed the world in any significant way that would make his 2018-based model inappropriate. He had not considered whether Covid had changed the validity of the Ashburton population projections he used to estimate future market growth. He considered that using pre-Covid data and models was the appropriate method until there was some definitive understanding of how the world may have changed post Covid. Mr Foy agreed when I suggested that events since 2018 had increased the degree of uncertainty around his estimates.
37. Mr Heath was critical of Mr Foy’s assessment of the trade effects of the relocation, but did not offer his own independent assessment of what those effects might be. In response to a question, he accepted that Mr Foy’s estimates of trade effects were “probably in the realm of sensibility”.

Finding

38. Given the lack of any alternative estimate of the trade effects of the relocation, I will accept Mr Foy’s estimates of 2% direct effect, and 10% cumulative on the Kmart resource consent, as the best available. However, I consider that Mr Foy’s estimate must be considered as the lower limit of the actual effects that will occur, given the

²⁰ Foy EIC at 7.27

²¹ Foy EIC at 7.28

²² Foy EIC at 7.29

heightened uncertainty around them, that they do not differentiate between the Business A and B zones, and that his estimate of effect has already occurred with the relocation of Noel Leeming, and the establishment of Macpac, to the vacated site. I note that these are the effects of trade competition, and so not directly relevant to this decision.

39. Before looking at the wider distributional effects that are relevant under the RMA, I need to consider the state of the Ashburton town centre retail economy.

The State of Health of the Ashburton Town Centre

40. This too was contentious between Mr Foy and Mr Heath. Mr Foy stated that he had visited Ashburton “a couple of times” over the space of a year or so, and probably some years before, but that he was not intimately familiar with the history and development of the town.

41. He considered that

“...the Ashburton Town Centre is in good economic ‘health’, has benefited from recent and ongoing redevelopment, and functions as a Town Centre of its size and location should do.”²³

He acknowledged that many buildings within the Business A zone

“...remain in need of investment or replacement due to age and structural concerns”²⁴,

that the required redevelopment will be expensive, and that the lack of redevelopment had resulted in many

“poor quality tenancies in the town centre becoming vacant”²⁵.

He acknowledged 10 vacancies totalling 3,570m² of GFA in the Business A zone as of 2019²⁶.

42. In contrast to the above, Mr Foy noted that there had been

“significant private investment ... and many new buildings”

in the town centre since 2015, and he identified 13 such redevelopments²⁷. He took this to indicate that there was a

“...high level of confidence in the town centre and that it is a sound location in which to invest.”²⁸

43. In summary, he considered that there was a

²³ Economics Joint Witness Statement at 4.10

²⁴ Application Foy at 4.7

²⁵ Application Foy at 4.8

²⁶ Application Foy at 4.9

²⁷ Application Foy at 4.2

²⁸ Application Foy at 4.3

“...high level of investor confidence...”

and that the town centre

“... is likely to remain very dominant within the Ashburton District.”²⁹

44. Mr Heath stated that he had been working on various projects in Ashburton over the last 20 years. He had a very different perception of the health of the Ashburton town centre. He considered that there had not been any real investment into the Business A zone over the last decade, and he attributed that to the investment going into the Business B and other zones. He considered that the level of vacancies, the quality of the retail offer and the quality of the shop fitouts indicated retailers were

“...not performing strongly or investing in their stores...”.

Further, the quality of the retail environment and shopping experience and the level of retail investment outside the Business A zone indicated a centre

“... not attractive to investment or retailers.”

He considered that over the last decade or so the town centre had not developed and was probably on a downward path. He noted that many of the developments Mr Foy had listed, while consented, had not actually been started.

He drew additional support for his position from the statements of the submitters and the evidence of Mr McLeod.³⁰

45. As noted above, Mr McLeod was a submitter who also filed a statement as an expert. He is an experienced valuer and commercial property consultant based in Ashburton with extensive knowledge and experience in the local market. I am very appreciative of Mr McLeod taking the time to prepare his statement.

46. Mr McLeod considered that the retail vacancy rates across the Business A & B zones was twice that indicated by Mr Foy³¹, and he included a listing of 13 significant vacancies in his Appendix A. He noted that Mr Foy had based his estimate on online listings, but that a number of premises are not advertised online³². He cited the example of the premises he occupies. It comprises more than 1000m² GFA, and it had been vacant for 4-5 years before he moved in temporarily until a suitable tenant was available. He occupies 150m² of the shop³³.

47. The evidence of Mr Hyde for the Council is also relevant to the health of the town centre. In response to my question regarding the NPS-UD, he stated that PC4

“...was intended to prioritise the revitalisation of town centre environments...”³⁴.

²⁹ Application Foy at 4.17

³⁰ Economics Joint Witness Statement at 4.11

³¹ McLeod at 14

³² McLeod at 12

³³ McLeod at 13

³⁴ Hyde at 4

He noted that in allowing, through PC4, for LFR to establish in the town centre, it was recognised that some of the Business A zone land was currently fragmented, but there are limits to the ability of the council to address that fact³⁵.

48. In the Hearing Mr Hyde referred several times to the rejuvenation currently underway in Ashburton town centre. He acknowledged that Council had a view that there was a need for investment in the Town Centre, and the streetscape was the Council's contribution to that.

49. All witnesses referred to the number of earthquake-prone buildings that are in need of significant work to bring up to standard. Many of these are vacant and have been so for an extended period. Mr McLeod noted that a significant part of the redevelopment that had occurred was the result of earthquake-prone buildings and insurance settlement, not necessarily due to market forces³⁶. He noted that the deadline for completing earthquake strengthening was rapidly approaching. He provided a map with those requiring upgrade highlighted, indicating that approximately 30 buildings in the Business A zone required redevelopment over the next few years.³⁷

50. I noted Mr McLeod's office on my site visit. It has an extensive street front, and from the street it gives the appearance of fully occupying the floor space, an impression given in part by the window signage that obscures the interior that extends across the entire window-scape. Alerted by this, I noted several other commercial premises doing the same (giving the appearances of fully occupying a vacant site) within the Business A zone, including on the main shopping streets.

51. The submitters also had a relevant comment on this. They said

The town centre businesses have endured significant disruption over the last few years...

52. My site visit was relevant to this issue as well. I noted several vacancies in prime positions within the town centre, as well as examples of businesses expanding to fill underutilised space. The quality of the shops fitouts was decidedly pedestrian, looking dated and worn. Admittedly it was Level 2, and the streetworks were disruptive, but there were few shoppers, and the vibrancy and energy of a bustling town centre was lacking.

53. While there were some obviously new and refurbished buildings, the overall impression was of aged buildings, lacking in maintenance and in need of significant work. Although the Business B zone was disjointed and would have benefited from some spatial planning from the outset, the buildings looked better and well-cared for. While still not busy, there was more people movement than in the town centre, albeit mostly from carpark to shops.

Finding

³⁵ Hyde at 13 & 14

³⁶ McLeod at 15

³⁷ McLeod at 16

54. Accepting Mr Heath’s observations, based long experience with the Ashburton town centre, supported by Mr McLeod’s evidence, the submitters comments, and my own observations, the Ashburton town centre is not in good economic health. While there has been retail growth in Ashburton overall in the last decade, this appears to have been mostly (or entirely) within the LFR Business B zone. The town centre has high vacancy and under-utilisation levels, and multiple buildings needing substantial earthquake strengthening, major refurbishment or demolition. This has been recognised by the Council, in the reports commissioned, and has prompted both PC4 and a significant investment in the town centre streetscape. Mr McLeod put it very succinctly in stating that

“The Ashburton CBD is currently vulnerable to a significant increase in vacancy if further investment and demand is not targeted within the CBD.”³⁸

The Wider Retail Distributional Effects of The Application

55. Mr Foy was clear that, at less than 2% trade effects on Ashburton town centre, the retail distribution effects on the town centre would be

“even smaller ... and there would be no noticeable change in visitation, vibrancy or vitality of the Ashburton town centre ...”³⁹

When he considered the cumulative effect of Smiths City and Kmart opening in 2022, he considered the 10% trade effect would result in the Business A sales returning to about 2019 levels, and the 2022 town centre environment being

“... little different to what it was immediately pre-Covid.”

Mr Foy considered that even the cumulative distribution effect would fall well short of what was considered significant in RMA terms.⁴⁰

56. Mr Heath was not very explicit in his view of the wider distributional impacts in the s42A Report. Rather, he is critical of the Application view of the impacts. He was sceptical of there having been any recent retail growth with the Business A zone, and Mr Foy’s suggestion that the loss of 4 years growth within the Business A zone from the cumulative effect of Kmart and Smiths City, he considered to be significant.⁴¹

57. In his appendix to his s42A report, Mr Heath noted that the marginal impact of the loss of vitality in a centre due to the loss of workers or shoppers was “extremely difficult to assess”⁴².

58. When we discussed the relative importance of direction and magnitude of the effect of a single proposal, Mr Foy and Mr Heath were in agreement that that the magnitude of the

³⁸ McLeod at 18

³⁹ Foy EIC at 7.20

⁴⁰ Foy EIC at 7.28-7.29

⁴¹ S\$@A Report, Heath at p 4

⁴² S42A Heath at p 12

effect of a particular development was difficult to estimate, partly due to the length of time the effects of a development take to play out in the market. Both agreed that it was the direction of the effect of a specific proposal that was of more concern than the magnitude.

59. The submitters comments are relevant here. They said

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.

And Mr Farr said

The council should also recognise that the development of satellite business hubs outside the CBD will ultimately lead to the demise of the CBD as we know it.

Finding

60. It is the wider distributional effects that are relevant under the RMA, not the trade competition effects, and that these must be significant to be given consideration. These wider distributional effects go beyond the closing or relocation of some shops, or the potential loss of some jobs, arising from Smiths City relocation from Business B to Business C. The effects of concern are the reduction in vitality, amenity and vibrancy that might flow from such closures, relocations, or job losses. However, to be considered, these effects must be significant.

61. I have found that

- the Ashburton town centre – the Business A zone – is not currently in good economic health;
- the trade effects are estimated be in the order of 2% direct effect, and 10% cumulative effect on the Kmart resource consent;
- there is uncertainty around these estimates and they should be considered the lower limit;

62. Taking these into account, I consider that Ashburton is particularly vulnerable to the trade effects, and it is likely that they will have a disproportionate flow on effects on the vitality, amenity and vibrancy of the Ashburton Business A Zone. I agree with Mr Heath when he stated that the town centre is on a downward path, and the effect of the Smiths City relocation will add to the downward pressure.

63. However, to be considered, distribution effects must be significant. Are distribution effects arising from the identified 2% direct or 10% cumulative trade effect, even on a vulnerable, declining centre like Ashburton, significant? The requirement to be “significant” is not subject to a numerical analysis outside of the context in which it sits. The standard cannot be replaced with a bright-line test that it must be X% before it is significant. In some context 10% may not be significant, while in another 5% may be significant.

64. In the context of Ashburton, where the town centre is in decline, with a significant level of vacancies and under-utilisation, many building requiring significant redevelopment to enable them to be tenanted, and having experienced a decline in retail activity over the last decade, the distribution effect of a 10% loss of trade to out-of-zone activities is significant. Even the distributional effects from a 2% loss is likely to be significant to the Ashburton town centre.

Travel Efficiency

65. Mr Harford, in the application, claimed that the proposal would improve travel efficiency⁴³. Mr Boyes in the s42A report considered that, being outside the town centre, Smiths City will be vehicle dependant and operate more as a retail destination⁴⁴. Mr Foy stated that he had not assessed travel efficiency effects of the proposal, but considered that it would probably be negative. This was based on his opinion that trips to Smiths City would be car based, and the increased separation from the town centre would increase the distance travelled. Mr Heath agreed that it would be less efficient.

Finding

66. I agree with both Mr Foy and Mr Heath that there would be an increase in car-based trips as a result of the relocation, and this would have an adverse effect on travel efficiency. This adverse effect has not been quantified.

The District Plan

67. The relevant part of the District Plan is Section 5, Business Zones, as amended by PC4. As noted above, the District Plan on the ADC website has not yet been updated for PC4 changes. What follows, and is used throughout this decision, has been taken from what I understand is the document prepared by the Commissioner for PC4, and was what was approved by Council. This document has the file name of **Attachment-1a-05-Business-Zones-18-April-s42A-Amended-2-August-2021.PDF** and is available here https://www.ashburtondc.govt.nz/_data/assets/pdf_file/0017/38600/Attachment-1a-05-Business-Zones-18-April-s42A-Amended-2-August-2021.pdf.

I understand that the version on the website has since been updated, but all references in this decision are to that referred to above.

In all cases the emphasis shown below is in the original and reflects the changes introduced by PC4. Deletions made by PC4 have not been shown. **Bold text** was in the original PC4 as notified, **red text** was added by the Commissioner.

68. The **5.1 Introduction** to this Section states

The buildings, infrastructure and car-parking areas within business zones represent significant investment, and are part of the physical resource of the District. Business

⁴³ Application p 29

⁴⁴ S42A Report p 15

activities provide employment and generate economic activity which enables communities to provide for their economic and social well-being.

And **5.1.1 Ashburton** states

The majority of retail and administrative and professional services are provided within an inner commercial area encompassed within East/Cass/Havelock and Moore Streets, and the sites fronting East Street between Moore Street and Kermode Street **(as zoned Business A)**

Note that this identifies a subset of the Business A zone (bounded by East/Cass/Havelock and Moore Sts) as the retail centre. It is notable that even before PC4, the Plan recognised the role the town centre plays, and the significant investment in the town centre,

69. The **Issues** Statement starts with

5.2.1 Location, Growth and Consolidation of Business Areas

Inappropriate location of business activities or the fragmentation of business areas can result in loss of vitality, convenience, accessibility and the identity of such areas.

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 employment...**

It continues with

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 scale 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 ...** Such development has the potential to create reverse sensitivity effects, **reduce consolidation of commercial activities in the Business A zone ...**

Note that the provision of space for Large Format Retail (LFR) in the Business B zone has a "limit". In answer to my questions, Mr Hyde, ADC District Planning Manager, confirmed that PC4 was intended to direct LFR into the town centre Business A zone, rather than outside the Business A and B zones. PC4 removed a 450m² retail GFA maximum that had been in place within the Business A zone.

70. The Issues Statement goes on

Consolidation of business areas will prevent the general dispersal of activities into new locations, which may leave existing areas vacant, unattractive, under-utilised and unable to provide the services the community desires. Given the central and or convenient location of most business areas within the District, consolidation of business activities into defined areas, combined with public investment in roads and other services in these areas, will assist the vitality of business centres. This has benefits for the District's community in terms of the range of services available, their convenience, pleasantness and accessibility.

Note that the Town Centre is identified as being zoned Business A, but it is ambiguous whether the Town Centre encompasses all of Business A zone or the subset of it referenced in the Introduction at 5.1.1.

71. The Issue Statement goes on to state

... in recent years there has been a growth in the number of car yards and businesses selling large machinery such as agricultural equipment. It is not suitable to provide for these within the traditional retail areas of the District as the nature of such activities would undermine the finer grained retail areas and their character ... it is proposed to provide for such **Trade Suppliers** within the commercial area surrounding the main retail area of Ashburton (Kapuka) (**Business C zone**), and within the lighter industrial areas (**Business D zone**), where it is considered that they will not cause adverse effects on the functioning of the area or its character.

The Business C zone is providing for trade-based suppliers not compatible with finer-grained retail provision.

72. The issues statement goes on to state

Consolidation of business areas will prevent the general dispersal of activities into new locations, which may leave existing areas vacant, unattractive, under-utilised and unable to provide the services the community desires ... (The) consolidation of business activities into defined areas, combined with public investment in roads and other services in these areas, will assist the vitality of business centres. This has benefits for the District's community in terms of the range of services available, their convenience, pleasantness and accessibility.

73. The **Zone Description** states

5.3.1 Business A

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).

Of note in this statement is that the phrase "principally for small scale" has been deleted by PC4, thus allowing LFR within the Business A Zone. It goes on to state

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.

...

The emphasis **on amenity and urban design and the consolidation of commercial activities** is **to strengthen and reinforce** an environment that, whilst accessible, is safe, attractive and convenient for the pedestrians.

Of note in this statement is the recognition of a need to reinvest in the Business A zone, and that the phrase "**strengthen and reinforce**" has replaced "maintain and enhancing".

74. Moving to the Business B and C zones

5.3.2 Business B

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. These large-scale retailing activities are limited to single purpose stores, **with the establishment of commercial offices or smaller scale retail activities prevented**, to **avoid** the establishment of shopping malls limiting the potential for dispersal of retail activities and, therefore, any detracting from the role and function of the finer-grained, more pedestrian retail oriented Business A Zone areas of Ashburton (Kapuka).

...

5.3.3 Business C

The Business C Zone provides for **limited commercial activities**, service and community activities, **as well as a range of light industrial activities**. Commercial activities include recreational facilities **and Entertainment Activities** such as bowling alleys and ice-rinks which are conducted within large buildings and for which a fee is paid. These types of indoor pursuits are considered to be partially protected from the effects of surrounding activities.

Of note in this statement is that PC4 removed "retail" from the limited commercial activities provided for in this zone.

75. The relevant Objective and Policies have been substantially rewritten by PC4

5.4 Objectives and Policies

Objective 5.1: Business Area Development and Effects

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.

Of note in this Objective, which was totally re-written by PC4, is that it is the only part of the Plan that gives some scope for retail in the Business C zone, and then only by the "primarily" qualification to the focus of commercial activities to support centres, and the objective of businesses been able to operate "efficiently and effectively" within the business zones.

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 5.1B

Provide opportunities in the suburban areas of Ashburton for the establishment and on-going operation of business activities, **limiting retail activities and commercial activities to where these:**

- 1. meet the convenience needs of local neighbourhoods.**
- 2. are ancillary to, or support anticipated business activities; and**
- 3. do not compromise the viability or vibrancy of Town Centres (Business A zones);**

...

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.**

...

Again, the provision for LFR in the Business B zone is limited.

76. Moving on to the Explanation and Reasons for this Objective and its policies

Explanation and Reasons

The inner commercial areas (**the Business A zone**) of Ashburton (Kapuka), Methven and Rakaia are the focal points for a broad range of commercial, professional and administrative activities in these towns, particularly their comparison or “browsing” and retailing functions **and extent of commercial office activities.**

...

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 business **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.

...

In order to maintain the vitality and pleasantness of existing business areas and to make efficient use of their resources and servicing, the ongoing occupation and redevelopment of existing sites is to be encouraged through enabling a broad range of activities to establish throughout the business areas of the District.

77. And how these play out in the environment

5.5 Anticipated Environmental Results

- Enhancement and **reinforcement** of the vitality, convenience, accessibility, character, and pleasantness of towns’ central retail areas (**Business A zones**).
- Maintenance of amenity levels within business zones through the minimisation of noise disturbance and provision of landscaping.
- The spatial separation of business activities into defined zones **based on their functions, effects and need to operate effectively and efficiently.**

...

- Enhanced street appearance through landscaping.

...

- The consolidation of the form of business areas.

78. Implementation of the Objectives and Policies is not just through the District Plan

5.6 Methods of Implementation

..

Through the LTP

- Provision of finance and initiation of projects for street and open space enhancement and the provision of public facilities and conveniences.
- Through the acquisition and development of land, as necessary, for roads, service lanes and car-parking.

79. The reasons behind all this are relevant

5.7 Reasons for Rules

5.7.8 Landscaping

The dominant form of landscaping is the planting of trees and shrubs. Landscaping has the benefits of enhancing the appearance and/or the screening of a site and buildings as viewed from or across streets, or from adjoining properties.

A landscaped area is not required in all Business zones. In the Business A Zone the Council undertakes any street beautification works and opportunities for onsite landscaping are extremely limited with buildings typically positioned up to the road boundary.

Of note, the Council is undertaking the streetscape upgrade within the Business A zone

In the Business B, C, D and E (except Ashburton Business Estate) Zones, landscaping or tree planting is required along all road boundaries. The Council wishes to ensure that the commercial and light industrial areas of the District are functional but still retain some level of amenity. Tree planting will partially screen bulky buildings and storage areas whilst providing a pleasant frontage when viewed from the street or adjoining properties. Tree planting is often more practical to achieve and maintain. Landscaping areas require more maintenance but provide a pleasant amenity over time.

...

5.7.16 Commercial Activity Limits Retail Floor Space

There are a range of reasons for **limitations on commercial activities within Business zones** including:

- to ensure the consolidation of the business areas and the functioning, integrity, convenience and viability of the inner commercial areas (**Business A zones**) of the towns is realised;

...

The dispersal of general **commercial** activity throughout the business areas may result in adverse effects on the functioning, convenience, vitality, pleasantness and viability of the inner commercial areas of the towns. Fragmentation and dispersal of general retail activities **and office activities** may result in closure of shops in the inner commercial areas, a reduction in the range of services available in these areas, a loss of vitality and attractiveness to shoppers, and an undermining of their roles as principal areas for comparison retailing, and as focal-points and sources of identity for their communities.

Unlimited **commercial** activity throughout the business areas may also result in the dispersal of activity along the State Highways, with consequential adverse effects on traffic safety and efficiency, traffic congestion and vehicle/pedestrian conflicts. Furthermore existing public infrastructure in the inner commercial areas, in the form of public car-parking, **civic and community facilities**, may become inefficiently used.

...

There are no restrictions on commercial activity in the Business A zone, recognising the need to consolidate and coordinate commercial activity in the zone and support a wide range of retail, commercial, civic and social activities.

...

The minimum retail floor area restriction for the Business B Zone, which is specific to Ashburton (Kapuka), seeks to ensure a **limited** opportunity exists for larger format retailing, **outside of, but on the fringe of** the town centre, but where vehicle access is convenient and sites are sufficiently large. A number of such retailers are already concentrated in this location. The retail floor area rule for the Business B Zone also provides for restaurant and take-away food outlets and **trade suppliers**. **A strict limitation on** smaller sized retailing activities seeking to locate within the Business B Zone **is provided to ensure maintenance of the** function, convenience, integrity and viability of the Business A Zone; the potential for fragmentation of retailing activity to compromise achieving that and other Business Zone objectives; and the need to protect pedestrian safety and convenience in a location that is recognized to be predominantly vehicle oriented.

The establishment of **limited opportunity for** large-scale, vehicle-oriented retail activities, including supermarkets, on the west side of the Ashburton (Kapuka) town centre is not considered to have significant adverse effects on the town's inner commercial area.

The rule as it applies to the Business C Zone **restricts the establishment of commercial activities, excluding trade suppliers, food and beverage outlets and entertainment activities. This is an appropriate response to these fringe town centre locations which could, if left unregulated, result in substantial retail and office activities establishing outside of the town centre.**

...

With respect to **food and beverage** outlets, these tend to be vehicle-oriented in many locations and their function is not necessarily related to the comparison retailing which is sought to be concentrated in the inner commercial areas.

80. Overall, PC4 has considerably strengthened the direction that retail activity go into the Business A zone, with provision for LFR in Business B as well as in Business A. There is no provision for core retail outside of these two zones. It has provided clear direction that the Business A zone should be redeveloped to provide for different forms of core retail, rather create these forms outside of the Business A zone. All restrictions on retail activity within the Business A zone have been removed by PC4.

PC4 has also very clearly narrowed any possible interpretation of the “town centre” or “inner commercial area” to be the Business A zone, whereas prior to PC4 these could be interpreted to include the Business B, C and even D zones.

81. The very clear reason behind this is the “critical”⁴⁵ importance of the town centre/Business A zone to the District; that dispersal of commercial activities

“... can leave existing Business A zoned areas vacant, under-utilised, unattractive, and unable to provide the services or identity the community desires...”⁴⁶

and that retail development outside the Business A & B zones has the potential to undermine the town centre by

“... result(ing) in closure of shops in the inner commercial areas, a reduction in the range of services available in these areas, a loss of vitality and attractiveness to shoppers, and an undermining of their roles as principal areas for comparison retailing, and as focal-points and sources of identity for their communities.”⁴⁷

82. There is a limited provision for LFR in the Business B zone, but beyond that LFR is directed into the Business A zone. The clear intention is to encourage

“...reinvestment in existing infrastructure and buildings”⁴⁸ and “consolidation of commercial activities in the Business A zone”⁴⁹

and avoid

“... leav(ing) existing areas vacant, unattractive, under-utilised and unable to provide the services the community desires.”⁵⁰

⁴⁵ ADC DP(PC4) at 5.4 Explanation and Reasons

⁴⁶ ADC DP(PC4) at 5.4 Explanation and Reasons

⁴⁷ ADC DP(PC4) at 5.7.16

⁴⁸ ADC DP(PC4) at 5.3.1

⁴⁹ ADC DP(PC4) at 5.4 Explanation and Reasons

⁵⁰ ADC DP(PC4) at 5.2.1

The Gateway Tests of s104D

83. Before assessing the merits of the application, it must first get through the gateway tests of s104D which, for a non-complying activity as this one is, requires that I am 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...

(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.⁵¹

The First Gate s104D(1)(a)

84. I have already found that Smiths City relocating to the Business C zone will have a significant adverse effect on the Ashburton Business A zone, given the poor condition of the town centre core retail area. Mr Evatt considered that

“,,,the existing environment, which is the environment which the effects must be assessed against, includes the Bunnings consent which, in my submission, already has an impact on the town centre.”⁵²

However, the evidence of Mr Heath is very clear that Hardware stores do not have material retail trade effects on town centres. He stated

“That's why hardware stores are allowed to go in industrial zones as they don't have any material trade impacts on retail stores in town centres.”⁵³

This is consistent with the views that I have heard from every other retail economist in other hearings, both at council level and before the Environment Court, and was confirmed by both Mr Heath and Mr Foy in the hearing, so I have no problem in accepting it.

The Bunnings operation did not have the distribution effects that are associated with a core retail operation like Smiths City.

85. The relocation of Smiths City to the site will have an adverse retail distribution effect on the town centre that is more than minor, and this effect was not already in place due to the Bunnings activity, so the application appears to fail the first test (s104D (1) (a)).

86. However, subsection (2) is relevant. S104(2) states

⁵¹ RMA s 104D 91)

⁵² Transcript

⁵³ S42A at 9.3 p 10

When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.⁵⁴

87. Mr Evatt stated in his legal submissions that

“When forming an opinion as to the potential effects on the environment, a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect or is authorised by an existing consent including in this case the economic effects on the Town Centre related to the Bunnings consent.”⁵⁵

With respect to Mr Evatt, that is not how I read s104(2) of the Act. That very clearly states that I may disregard an activity with similar effects that is permitted by the plan. It does not say where a resource consent permits those effects. The Bunnings activity, and its associated effects were allowed by a resource consent under a previous plan, not the current plan. It is the off-site, retail distribution effects that are relevant in this case. Mr Heath captured this distinction when he stated

*“That’s why hardware stores are allowed to go in industrial zones as they don’t have any material trade impacts on retail stores in town centres.”*⁵⁶

Although the plan pre-PC4 may have permitted retail distribution effects up to the limit of 750m² GFA, it is very clear that the plan post-PC4 does not. The current plan does not permit activity with retail distribution effects to operate in the Business C zone. S104(2) does not allow the proposal to pass through the s104D(1) (a) gate, so the application does fail this first test.

The Second Gate s104D(1)(b)

88. Moving on to the second leg of the test, the requirement that the proposal is not contrary to the objectives and policies of the plan, I had a very useful discussion with Mr Evatt and Mr Schulte on what being “contrary” meant, and they provided a helpful joint statement on this topic after the hearing. Noting that the question may be determined with reference to the objectives and policies of the plan as a whole⁵⁷, I first consider the relevant policies individually.

89. Policy 5.1A as quoted above, is about reinforcing and strengthening the Business A zone by

“avoiding activities with the potential”

for adverse retail distribution effects on the Ashburton Business A zone (my emphasis). Those words very severely limit the possibility that any retail activity of this size and

⁵⁴ RMA s 104 (2)

⁵⁵ Evatt at para 27

⁵⁶ S42A at 9.3 p 10

⁵⁷ Joint Memorandum at 3.5.5

nature is likely to be acceptable outside the Business A zone, unless explicitly allowed for in a more specific policy or a rule. I find the proposed activity is contrary to this policy.

90. Policy 5.1B as quoted above, is about the circumstances where retail and commercial activities may be acceptable outside the Business A zone. It provides for two types of retail activity (convenience retail serving local areas and ancillary retail to activities permitted in the relevant zone), with the proviso that they do not compromise the Business A zone. There is also a limited provision for supermarkets. This policy provides a specific exception to the restriction in Policy 5.1A. This application clearly does not fall within the exceptions allowed for in Policy 5.1B. At best Policy 5.1B is irrelevant to this application, but the activity is clearly contrary to the very specific nature of the exceptions.
91. Policy 5.1C is about supermarkets and is not relevant to this activity.
92. Policy 5.1D is about permitting this activity within the Business B zone, some reasons why this activity may not fit well within the Business A zone, and that by being in this location, the activity will not “detract ... from the consolidation” of the Business A zone. Clearly by not being in the Business B zone, the proposed activity is inconsistent with this policy, but that does not make it contrary to it. Being about the Business B zone, this policy has less relevance to the application.
93. The policies 5.1E and 5.1F are not relevant to this application. The other two objectives (5.2 Qualities of Business Areas and 5.3 Effects of Business Areas on Surrounding Areas) and their related policies, while relevant to the application, do not affect the core issue of s104D(1) (b), the contrariness or otherwise of the activity.
94. Turning now to the overall objective of this part of the Ashburton District Plan, Objective 5.1, in light of these policies and the explanation and reasons for them. Having regard for the strength of the focus on the centre, the critical nature of the consolidation of business areas, the potential impact on the Business A zone if commercial activity is dispersed, and the need to focus redevelopment activity within the Business A zone, I find that the activity would be contrary to the objectives and policies of the Plan, but for the unique circumstances of this particular application – the timing of the application in relation to the timing of PC4.
95. While I have not done a detailed analysis of the plan as it was pre-PC4, I consider that the activity would not have been contrary to the pre-PC4 objectives and policies. With a GFA limit of 750m², the pre-PC4 plan provided for retail activity within the Business C zone, and it is not hard to envisage circumstances where retail in excess of that limit would be consented - the Kmart proposal was consented in the Business D zone under the pre-PC4 plan.
96. PC4 has fundamentally changed the Plan, such that LFR activity, if not in the Business B zone, is very clearly directed into the Business A zone, to bring about the necessary redevelopment of that area and create a consolidated retail and commercial centre.

And so, in the PC4-framed future of Ashburton, an activity like Smiths City in the Business C zone is contrary to the objectives and policies of the plan.

97. However, the reality, that all parties acknowledge, is that in this immediate post-PC4 period, there is no available site for the Smiths City activity within either the Business A or B zones. The PC4 changes to the Plan have not had time to play out in the market.
98. Mr Evatt considered that the unavailability of suitable land in the Business A or B zones was relevant to the s104D (b) test. Mr Boyes agreed that it was relevant, but stated that he still considered the proposal was contrary to the Objectives and Policies.
99. I agree that the lack of any suitable site within the Business A or B zones is relevant. Objective 5.1, in recognising and providing for the contribution of business activities within the District, provides for those business activities to be

“...able to operate efficiently and effectively within the Districts business zones...”⁵⁸.

While the post-PC4 Plan provides the means by which that is to happen within the Business A and B zones, that takes time to play out in the market. While PC4 enables it to happen, it does not make it an immediate reality.

100. Mr McLeod identified three properties that could be developed or redeveloped to accommodate Smiths City within the Business A zone⁵⁹, but that redevelopment takes time. Similarly, it is accepted by all parties that many holdings in the Business A zone are small, and would require some title amalgamation to enable development of a site the size required by Smiths City, which would take more time.⁶⁰

101. District plans are dynamic and operate within the real world and the market. PC4 changed the Plan, but it could not immediately change the world that it operates in, and the market takes time to respond to and effect the changes that it enables. For businesses to operate

“...efficiently and effectively within the District’s business zones...”

they require the resources to do so, and provision of those resources in response to the changed market brought about by PC4 takes time. It would not be efficient or effective to prevent Smiths City operating within the Ashburton market due to the short-term inability of the Plan to enable access to the necessary resources.

102. There is currently no suitable site available in the Business A or B zones to accommodate Smiths City, and the changes to the Plan brought about by PC4 have not had time to play out in the market. For this reason alone, and in this particular window of time, the activity applied for is not contrary to the objectives and policies of the Plan. So, this application does pass through the second leg of s104D, and can be considered under s104.

⁵⁸ Objective 5.1 (2)

⁵⁹ McLeod at 19

⁶⁰ Foy EIC at 2.15

Analysis under s104

103. S104 of the RMA specifies those things I must have regard to in making a decision on this application, and I deal with these in turn below.

The actual and potential effects on the environment of allowing the activity s104(1)(a).

104. Above I have discussed the trade effects (para 31 ff), the retail distribution effects (para 55 ff) and the travel efficiency effects (para 65 ff), and do not propose to revisit them.

105. Much was made in the evidence⁶¹, and in the hearing, that if consent is declined Smiths City will exit the Ashburton market, at least temporarily. A letter to this effect from Smiths City was presented to support this view⁶². I note that Smiths City have traded from the site for 5-6 months without a consent so far, and I do not know what attitude ADC will take if consent is declined. ADC may well give notice requiring Smiths City to cease operations, but with a time frame that may enable them to find an alternative, consentable site.

106. Regardless, I accept that granting consent enables Smiths City to continue to trade legally within Ashburton, and that declining consent will mean that Smiths City will not be able to legally trade within Ashburton for some months, perhaps stretching to years. Smiths City trading legally in the District is a positive effect of granting consent, while having them trade illegally for a period of time, or exiting the district temporarily or permanently, would be adverse effects.

107. It was acknowledged that the site does not meet the landscaping requirements of the Plan, probably dating from the construction of the building, and the operative rules at the time. Specifically:⁶³

- There is no tree planting across the road frontage s required by rule 5.9.8;
- There is no minimum 2m of landscaping on the adjoining zone boundary as required by Rule 5.9.9;
- There is no tree planting within the carpark, as required by rule 10.8.11;
- The minimum queuing requirements of Rule 10.8.12 is not achieved, being 23m rather than the required 30m;

The applicant has proposed to address the tree-planting requirement along the road frontage, and has accepted a condition to that effect⁶⁴. It is agreed that the other points above are accepted as part of the consented baseline from the Bunnings consent⁶⁵.

⁶¹ e.g. Foy EIC at 2.19

⁶² Foy EIC Appendix 1

⁶³ S42A p 4

⁶⁴ Harford EIC at 10.1 and s42A report Appendix E at 3

108. It is notable that this application applies only to 1/3rd of the building to be tenanted by Smiths City. I was initially concerned over how I assessed the effects of this, knowing that it was highly probable that there would be two further retail activities in the other parts of the building, and whether such activity would be future events that produced effects under s3 that should be taken into consideration in this decision. I sought advice on this from Counsel, and both gave the same answer, that the effects future uncertain events are not part of the environment that I have to consider under s 104(1)(a) . Rather, they suggested that I may consider tis matter as a precedent issue under other matters in s104(1)(c).

The Statutory Documents s104(1)(b).

109. In addition to the District Plan, those that have been brought to my attention are

- National Environmental Standard for Soil Contamination (NES-SC)
- National Policy Statement – Urban Development (NPS-UD)

110. Although there is a possible contamination of the site though historic storage of fuel and/or chemicals, and that there may be an underground storage tank remaining on the site, given there is no intention to disturb the soil, and the site has been sealed by buildings and the carpark for many years, it was not considered to trigger the provisions of the NES-SC⁶⁶.

National Policy Statement – Urban Development (NPS-UD)

111. Mr Foy made quite an ardent claim that the Council was not meeting its obligations under the NPS-UD in not providing for sufficient supply of suitable land for LFR activities. He considered that the NPS-UD required the Council to provide sufficient land enabled for LFR that meet the requirements of LFR operators, including access to customers and a reasonable profile location, suitable site size to enable on-site parking, and being available for occupation. He acknowledged that PC4 may stimulate the supply of such land in the future, but he considered that this did not address the current requirements.⁶⁷

112. With respect to Mr Foy, the NPS-UD requires councils to provide sufficient “development capacity” to meet the expected demand for business land⁶⁸, that in the short term that land should be zoned for “business”⁶⁹ and that the requirement to prepare a Housing and Business Development Capacity Assessment (HBA), which brings with it the requirements of suitability in terms of location and site size⁷⁰, does not apply

⁶⁵ S42A at 9.4

⁶⁶ S42A at 5

⁶⁷ Foy EIC at 5

⁶⁸ NPS-UD 3.3 (1)

⁶⁹ NPS-UD 3.4 (1) (b)

⁷⁰ NPS-UD 3.29

to a tier three authority like Ashburton⁷¹. Further, the HBA is required to assess retail land, but not sub-categories of retail land.

113. In response to Mr Foy's evidence, I requested the ADC to report on what actions they had taken, were taking, and intended to take, in response to the NPS-UD⁷². Mr Hyde in his response pointed to PC4 as removing floor area restrictions in the Business A zone while placing restrictions on retail and office activity in other zones, including Business C. He noted that the s32 report for PC4 referenced the NPS-UD explicitly.⁷³ He reported that ADC were undertaking work for a Future Development Strategy, and had largely completed the first stage of this work in commissioning a Housing and Building Assessment.⁷⁴

114. I consider that the ADC is meeting its obligations under the NPS-UD in enabling a wide range of business activity, including LFR, in the Business A through PC4. This is zoned for LFR and is available for LFR development.

Other Relevant Matters s104(1)(c)

115. As mentioned above, the precedent effect of granting this consent is a relevant Other Matter. The concern, as I understand it from the legal submissions⁷⁵, is that if this application is granted, it will be difficult to decline future consents on similar facts.

116. This is particularly relevant in this case given the remaining two parts of the building that were not included in this application. It is very foreseeable that, in the very near future, there will be applications for similar retail activities in the vacant parts of the building. This was in fact signalled in this application, indicating that those applications may include a rural supply and a pharmaceutical supply business. The granting of such consents would create a significant retail hub at the site and would clearly fly in the face of the changes to the Plan introduced by PC4.

117. I was offered some relief on this matter during the hearing when Mr Gilbert for Tricoft, acknowledging the changes brought into the Plan with PC4, stated that those signalled activities were no longer being pursued, and that they would not be applying for retail activities that were not allowed for under the Business C zoning. This was confirmed in Mr Evatt's closing submissions, where a condition to this effect was offered⁷⁶.

118. However, precedent concerns are wider than just the rest of the building. They could extend to anywhere within the Business C zone, and potentially into the Business D zone. This was the crux of Mr Boyes concern about this application, that it would

⁷¹ NPS-UD 3.19

⁷² Minute 7

⁷³ Hyde at 4-5

⁷⁴ Hyde at 8-9

⁷⁵ Schulte at 9-10

⁷⁶ Evatt Closing Submissions at 2

“... create an adverse precedent and integrity issue for Plan Change 4, such that it doesn’t continue the existing pattern that continues to undermine the town centre.”⁷⁷

119. Against this concern, I note the very unique circumstances of this application, in terms of its timing in parallel to the PC4 decision processes as detailed in **Table 1** above.
120. There is no suitable site within the Business A and B Zones, and this might be quoted as a unique circumstance that speaks against any precedent effect. However, I note that this will always be the case, until someone does the development work to create suitable spaces in the Business A zone. Any future application, claiming to be time-limited in requiring a suitable site, could claim that there are no suitable sites available in the Business A zone.
121. I consider that precedent effects arising from the Tricroft application are still a real concern, although lessened by the unique timing in parallel to PC4 processes.

Subject to Part Two

122. All of the above s104 considerations are “subject to Part 2” of the Act.
123. In this light, I note the Purpose being

“...to promote the sustainable management of natural and physical resources ...”

and the this includes both the Ashburton town centre and the Tricroft building as physical resources. Relevantly,

“...sustainable management means managing the use (and) development ... of... physical resources in a way ... which enables people and communities to provide for their social, economic, and cultural well-being ... while ... sustaining the potential of physical resources ... to meet the reasonably foreseeable needs of future generations”.

A viable and vibrant town centre is necessary for the economic, cultural and social needs of the Ashburton community into the future. A retail activity in the Business C zone is not.

124. There are no matters of national importance (s6) matters at play in this case
125. I consider that I am required to have particular regard (s7) to
- The efficient use and development of physical resources (s7(b));
 - The maintenance and enhancement of amenity values (s7(c)) ; and
 - The maintenance and enhancement of the quality of the environment (s7(f)).
126. The physical resources in question are the Ashburton town centre, the buildings, roading, streetscape, and the amenity that is embodied in them, and the building at 363

⁷⁷ As stated in the Hearing.

West St. The proposal is an efficient use of the physical resource at the site, but, taking the wider perspective, it detracts from the efficient use and development of the town centre. While it maintains the amenity at the site, it does so at the expense of the amenity of the town centre. The environment of the town centre – the vibrancy and vitality – will be detrimentally affected by the proposal.

Summary

- The Ashburton town centre is in a state of decline. The growth in retail activity that has occurred in Ashburton over the last decade has been in the adjoining LFR zone. Recent consented activities outside the Business A and B zones is dispersing private investment. The town centre does not have tumbleweeds, but it does have a high level of building vacancy and building under-utilisation, many vacant or under-utilised for several years. It has an aging building stock in need of repair, earthquake strengthening and redevelopment. The town centre has been losing amenity along with retail employment and the lack of private investment.
- PC4 was a response to this situation, as is the streetscape upgrade currently underway.
- The trade effects of this proposal, although apparently small, estimated at 2% direct and 10% cumulative with the Kmart consent, will have a disproportionate effect on the town centre, due to the poor health of the town centre. The distribution effects of the proposal, directly and cumulatively with the Kmart consent, on the town centre will be significant.
- The proposal will have an adverse effect on travel efficiency.
- The proposal flies in the face of the changes made to the District Plan by PC4.
- If not for the lack of a suitable site within the Business A or B zones, in the immediate post-PC4 period, the application would have failed both gates of the s104D test.
- Enabling Smiths City to continue to trade legally trade within the District brings benefits to the District.
- Having Smiths City trading illegally for an extended period, or exiting the District, either temporarily or permanently, would be detrimental to the District.
- Tricroft have offered a condition to the effect that the other 2/3rds of the building will not be used for retail activities that are not a permitted activity in Business C.
- The very unique circumstances of this application in terms of its timing in relation to the PC4 processes gives only a very limited window when other applications may claim precedent in seeking to establish retail activities outside the Business A and B zones.
- A viable and vibrant town centre is necessary for the economic, social and cultural well-being of the Ashburton District community, but a retail activity in the Business C zone is not.

Duration

127. Part of the relief requested by the submitters group states

“...we would be accepting for a short duration of say 24 months to enable the business to secure a more suitable premise in the central Business A or B zone.”

RMA s123(b) states

... the period for which any other land use consent, or a subdivision consent, is granted is unlimited, unless otherwise specified in the consent:

Mr Evatt confirmed in his closing submissions that this allows for a limited duration consent, while stating that the application was for an unlimited duration.

128. I discussed the possibility of a limited duration consent with the applicants. Mr Harford confirmed that it is legal and possible in this case.

129. Mr Gilbert indicated that he could accept a limited duration consent, but that the 2 years suggested by the submitters would not work from a commercial perspective. Tricroft wanted a long-term relationship with Smiths City. He indicated that the 2 years suggested would have a significant impact on their business, would impact on their banking arrangements, and would not be palatable to them.

130. Mr Tyrall indicated that a 2-year consent would not be palatable to Smiths City. He further commented that a limited duration consent would not be in the interest of the environment, as all the fitout that has already been made for Smiths City on the Tricroft site would be wasted, ending up in the landfill.

131. In discussion with Mr Boyes, he considered that a limited duration consent was attractive in light of his concerns over precedent and Plan integrity. He confirmed that a condition could limit the duration of a consent, and referred to s108. Although I did refer to a condition to limit the duration in my discussion with Mr Boyes, on reflection I think we were looking in the wrong place, and Mr Evatt is correct that s123 is the appropriate place to consider duration. From s123 I gather that duration is not a condition of a consent, but a separate matter that is part of the consent itself.

132. Mr Boyes went on to agree with the applicant that two years would probably be a bit short, and

“... in all fairness it would probably be slightly longer than that...”.

However, he did still have concerns that once someone was in place, they tend to stay in place, applying for a new consent, claiming to be part of the existing environment. He was also concerned that, if consent was granted, there should be a very strong signal in the decision that this application is different to all other applications. He indicated that from the applicant’s evidence there were other parties seeking to establish LFR in Ashburton, and the risk is that they apply for an out of centre site.

133. Mr Boyes was very clear with respect to Mr Tyrall's point about the fitout going to landfill in the event of a limited duration consent, that that was a consequence of Smiths City and Tricroft acting in advance of their consent application, and was not something that is relevant to my decision as to duration. I agree.

Reasons for Short Duration Consent (s113 (1) (b))

134. I have found that the Ashburton town centre is in poor health and vulnerable. The retail activity within the Business A zone has declined in employment, and probably in the real value of sales, over the last decade or so, and this is probably due, at least to a significant degree, to the development and growth of LFR within the Business B zone, as allowed by the District Plan. This vulnerability has been recognised by the Council, prompted, at least in part, by the Kmart resource consent, and has led to both PC4, which has both limited LFR opportunities in the Business B zone and opened them up in the Business A zone; and the substantial investment in the streetscape upgrade that is currently underway.

135. I have found that this application, if granted, is likely to have a significant adverse distribution effect on the vitality, vibrancy and amenity of the Business A zone.

136. This application flies in the face of the District Plan as amended by PC4. But for the very unique circumstances of the timing of the need to relocate, and the immediate effect of PC4, meaning that in this particular window of time there is no permitted site available for the relocation of Smiths City, the proposed activity would be contrary to the relevant objectives and policies of the Plan, and would therefore have fallen at the gateway tests of s104D.

137. The RMA is not a shield to protect commercial actors from the consequences of their commercial decisions and actions. Smiths City's lease at their former site expired in May 2020. They knew long before that date that the lease was coming up for renewal. For whatever reason, the relationship with their landlord deteriorated to the degree that they were unable to negotiate a renewal of that lease. Their decisions and actions would have contributed to that situation.

138. They sought to find alternative premises, but there were none available in the Business B zone, and, until PC4 became operative, they were precluded by the Plan rules from seeking premises within the Business A zone. They took the straw that was available when Tricroft approached them with the option of part of Tricroft's vacant building in the Business C zone.

139. The RMA is not a shield to protect commercial actors from the negative effects of actions by other commercial actors. When, for whatever reason, Bunnings vacated their lease with Tricroft and left the district, Tricroft were left with a very large, vacant building. On learning of Smiths City's lack of a secure lease, they had a mutually beneficial solution to both their problems, although PC4 had been notified by then.

140. Both parties should have been aware of the implications of PC4 for their plans, but they proceeded anyway. To be fair, Smiths City had no alternative other than to exit the

district, at least temporarily. Tricroft had options in working with Smiths City. They could have engaged with the market and endeavoured to put together a deal for Smiths City within the Business A zone as allowed by PC4, seeking a temporary consent while that was being done. But they had no property within the Business A zone, and they had a vacant property that could be modified to meet Smiths City's requirements. They had no incentive to attempt to find solutions for Smiths City that would fit within the PC4-modified Plan, and a real incentive to make this proposal work outside the bounds set by PC4.

141. The RMA is not a tool to give commercial actors an unequal advantage over the market. Granting consent to this proposal gives Smiths City a market advantage over similar traders operating within permitted activities. Mr Tyrall, of Smiths City, stated in the hearing that they are trading better at their new site than at their old site. It is a superior site in terms of visibility, accessibility, parking, service space and logistics⁷⁸. Lease costs reduce the further you can locate from the town centre, as Mr McLeod stated.⁷⁹ And Tricroft have given Smiths City a reduced rental⁸⁰. For Smiths City, operating at this Business C zone location gives them advantages over the rest of the market. For Tricroft, it gives them a strong anchor tenant around which to lease the rest of the building.

142. If it had not been for:

- the lack of any available site of the size required by Smiths City within either the Business A or B zones; and
- the timing of the application coinciding with PC4 process, such that the rules were changed while the proposal was being put together; and
- the PC4 changes had not had time to work within the market to accommodate Smiths City within the Business A zone;

this application would have been declined due to the adverse distribution effects on the town centre, and for being contrary to the objectives and policies of the Plan.

143. Depending on the approach taken by ADC, declining the application may have resulted in Smiths City leaving the District, at least temporarily, with the consequential loss of jobs, and reduced competition in the Ashburton furniture and homeware market. These would be adverse effects of not granting consent.

144. A short duration consent gives Smiths City, Tricroft and the market time to work within the provisions of the post-PC4 Plan to put together a suitable redevelopment within the Business A or B zones. Such a redevelopment, in the Business A zone, would reinforce and strengthen the town centre, be a more efficient use of the physical resources of the town centre, work to maintain and enhance the amenity of the town

⁷⁸ Gilbert EIC p 3

⁷⁹ McLeod EIC at 22

⁸⁰ AEE p 22

centre, be a better use of the physical resources, and better sustain the potential of the town centre for future generations.

145. The relief suggested by the submitters was a 2-year duration.

146. In the hearing we discussed more than two, and up to 5, years as a possible duration. Having determined from witnesses on both sides that 2 years would be “a bit short”, I recognise that there is no magic about four versus five years. I appreciate Mr Boyes’s point that once someone is on site and have “their feet under the table”, they tend to seek to stay via a new consent. He wanted a “very strong signal” that this application was different.

147. I agree that two years would be the minimum time required to put together a development without any title amalgamation required, plan and build a suitable facility, and probably is “a bit short”. I recognise that site amalgamation may be required, and a 4-year duration allows for this to happen. Four years also allows time for PC4 to play out in the market, the streetscape redevelopment to be completed and enjoyed, the Kmart complex to be completed and settled into the environment, and the effects of these on the vibrancy, vitality and amenity of the town centre to become apparent. Five years run increased risk that Smiths City and Tricroft get “their feet under the table” and become comfortable at this site. I agree with Mr Boyes that a very strong signal is required, and a four year duration provides this signal while still providing enough time to bring together a suitable development within the Business A or B zones.

Decision

148. For the reasons detailed in this decision, and summarised above, this application for a resource consent for a retail activity as described at 363 West St, Ashburton is granted, subject to the conditions as agreed between the parties, and including that offered by the applicant after the hearing, as attached, for a limited duration of four years from the date of this decision.

Re resource consent application LUC21-0029 by Tricroft Properties Ltd for the Smiths City tenancy at 363 West Street Ashburton:

Pursuant to sections 104, 104B, 104D and 123 of the Resource Management Act 1991, consent is GRANTED for the LIMITED DURATION of FOUR (4) years from the date of this decision, subject to the conditions below, imposed under section 108, being completed, and complied with, at no cost to the Council.

Signed

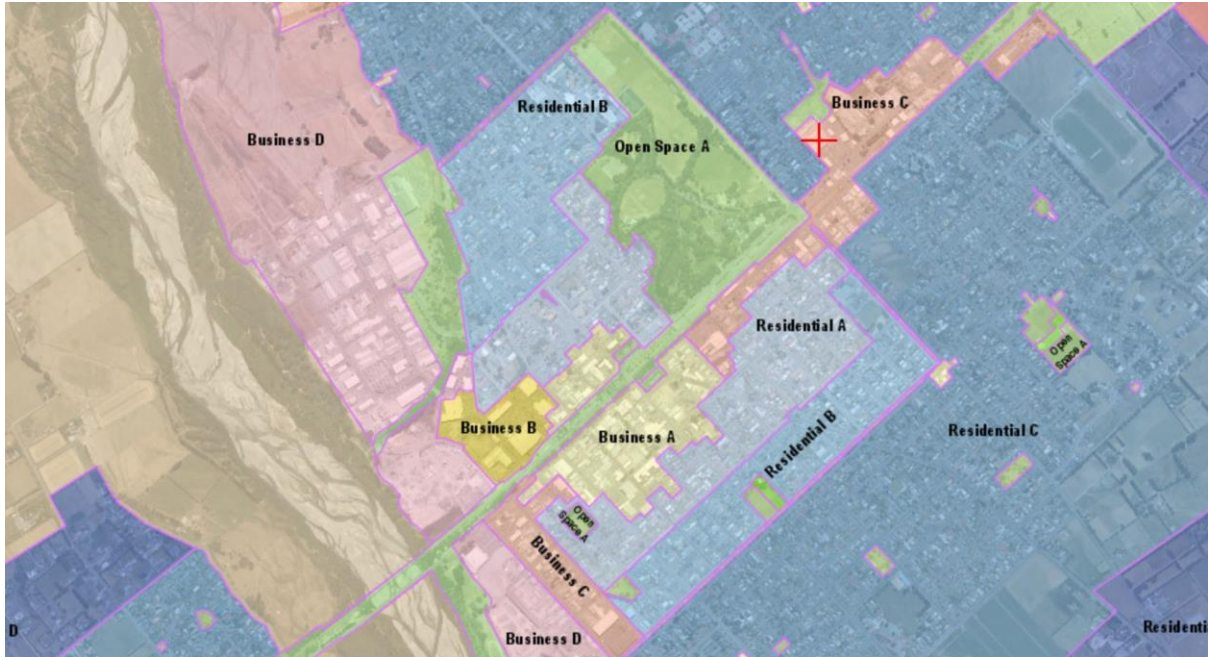


Ken Fletcher

Date

18 October 2021

Ashburton Business Districts, with the site marked by the red cross



Conditions

GENERAL

1. The development shall proceed in accordance with the information submitted with the April 2021 version of the application dated March 2021, including the plans prepared by **AP Design, Site Area Plan, Revision 1, dated 13/04/2021**, by **DS Design, Drawing A-03 dated 8/03/2021**, and by **Lysaght & Associates Ltd, Drawing D10 dated 1/03/21**, 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.

3. There shall be no retail activities carried out in the parts of the building not occupied by Smiths City, other than trade and yard-based suppliers, recreational facilities or entertainment activities as are permitted in the District Plan.

LANDSCAPING

4. 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.

5. 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.

6. All required landscaping shall be established during the first planting season following the date of this decision (ie. within 12 months). Any plants which are damaged, or die, shall be replaced as soon as possible with items of the same or similar species, to the satisfaction of the District Planning Manager.

HOURS OF OPERATION

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

TRANSPORTATION

8. 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.

9. All deliveries to the store shall be within the prescribed hours of operation detailed in 7. above.

LIGHTING

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

ADMINISTRATION

11. The lapsing date for the purposes of Section 125 of the RMA 1991 shall be 4 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.