

**BEFORE AN INDEPENDENT COMMISSIONER
ON BEHALF OF THE ASHBURTON DISTRICT COUNCIL**

In the matter of the Resource Management Act 1991

And

In the matter of Plan Change 4 to the Ashburton District Plan.

REPORT AND RECOMMENDATION OF THE INDEPENDENT COMMISSIONER

DAVID MOUNTFORT

Introduction

1. Plan Change 4 (**the Plan Change or PC4**) was notified by the Ashburton District Council on 4 November 2020.
2. I have been appointed by the Council and given delegated authority to hear the submissions and make a recommendation to the Council on Plan Change 4.

Reasons for the Plan Change

3. The stated purpose of PC4 is 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.
4. The Plan Change was prepared as 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 concerns raised by the Council (and community) as to a continued lack of private sector investment and loss of amenity within the Town Centre - as identified in a report by the consultancy Property Economics Ltd (2019)¹.

Summary of the Plan Change

5. In summary, PC4 proposes to make the following changes to the District Plan.
Alter the status and range of commercial activities and retail activities throughout the Business zones, including:
 - a) the removal of the 500m² threshold on retail activities seeking to establish in the Business A zone
 - b) Status of small-scale retail in the Business B zone changes from discretionary to non-complying.
 - c) Restrict the provision of stand alone offices within the Business B to E zones (Discretionary), but allow ancillary office.
 - d) Permit trade suppliers in the Business B, C and D zone, and restrict other forms of retail activity (non complying), including removal of the permitted maximum of 750m² GFA for retail activity in the Business C zone.
 - e) Restrict the range and scale of Food and Beverage outlets within the Business B, C, D and E zones.
6. While the removal of the 500m² threshold on retail activities seeking to establish in the Business A zone is enabling, overall, a more restrictive regime for the other business zones has been notified under PC4 than the status quo in the operative District Plan.

Submissions on the Plan Change

7. Submissions were received from the following

Submitter	Summary of Submission	Decision Sought
Eastfields Investments Ltd & Davidson Commercial & Trust & B.J. Davidson Investments Ltd	Support in full	Accept all proposed changes

¹ Property Economics. Ashburton Town Centre Zoning Economic Assessment (2019)

CJ Redmond Ltd	Support in full	Accept all proposed changes
Foodstuffs South Island Ltd	Support overall intent of plan change. Opposes the proposed provisions for supermarkets in the Business C zone.	Create a discrete exception to allow supermarket activity to establish as a permitted activity at 407 West Street subject to performance standards regarding effects on accessibility, effects on transport network, and reverse sensitivity effects. Or: Amend provisions by creating a discrete exception to allow supermarket activity to establish as a restricted discretionary activity in the Business C zone as follows:
Philip Bean	Requests certain amendments	Standalone offices in the Business A zone only and offices be non complying activities in zones B-F unless ancillary Support exclusion of Retail, Entertainment and restaurant/food/beverage from Business B-F. Making these non complying if less than 500sqm.
Selwyn Price	Requests amendments	Ease requirements that do not impact the health and safety of those living in the core retail area, so as to make it easier for residential developments to utilise otherwise unused above ground spaces.

8. Further submissions were received from

- Philip Bean in opposition to the submission by Foodstuffs South Island Ltd
- Foodstuffs South Island Ltd in opposition to the submission by Philip Bean as it relates to supermarket establishment.

Hearing

9. No hearing was required for any of these submissions as all submitters either reached agreement with the Council reporting officers on ways to resolve their issues, or did not wish to be heard.

Report under Section 42A of the Resource Management Act 1991

10. A report on the plan change was prepared on behalf of the Council by Mr Matthew Bonis, of Planz Consultants Ltd, with a supporting report by Mr Tim Heath, a director of the firm Market Economics Ltd. I accept and adopt the reports almost in their entirety and am grateful to Mr Bonis and Mr Heath for their clear and comprehensive reports.

11. Mr Heath reported that the Business A Town Centre zone has a number of vacant stores totalling nearly 3600m², and there is significant redevelopment potential within the zone as well as a number of under performing stores. He considered there is more than sufficient land accommodate retail growth over the

next 20 years. He also noted a number of older retail buildings in the Business A zone that would be very close to the ends of their economic lives and in need of repair, replacement or upgrade. There is an opportunity for new multilevel buildings that could offer significant additional capacity.

12. Mr Heath said that population in Ashburton is forecast to increase to around 40,500 residents by 2038.
13. Mr Heath therefore recommended the establishment of a core retail area within the Business A zone to consolidate commercial activity. This area should become the focal point for new retail and commercial development by the private and public sector to re-establish the town centre as the economic heart of the Ashburton district. He also recommended the opportunity for encouraging some higher density residential development in the Business A zone outside the core retail area, and the encouragement of upper level residential activity in the core retail area. He said this would have the effect of building up the residential population base in and around the town centre, enable more people to have walking access to the town centre, improve the town's vibrancy, social amenity and well being and promote a more productive and efficient use of currently underused land in parts of the zone.
14. He also recommended removing the current retail cap rule 5.2.(f) which limits individual retail tenancies to a maximum of 500m² with the town centre. This rule restricts large format retail tenancies from establishing in the zone when they can often form important anchor tenants for town centres. This would also reduce the need to rezone further Business B land which currently accommodates larger stores, as this would create another retail destination to compete with the town centre.
15. In his report Mr Bonis provided a summary of the existing district plan approach to commercial activity and retail distribution issues.

Operative Plan Approach

16. The Section 32 Report provides a detailed overview of the Operative Plan provisions (Section 3) as these relate to commercial activity and retail distribution. In summary, that review concluded:

In terms of objectives and policies:

- The framework was not prescriptive, and largely enabling.
- There was no strategic or clear intent as to the range of activities anticipated within respective zones, and the corollary which zones certain activities should be discouraged so as to achieve environmental outcomes.
- The framework is overly focused on managing effects, and correspondingly did not provide a more predictive approach to managing activities within the differing Business zones.
- There is an absence of clarity and connection between the objectives and policies, and subsequent rules to implement those provisions²⁵.
- There is no distinction, and associated regulation, between the type, role and purpose of large format retail (retail with the prospect of distributional effects vs more trade supplier retail with little prospect for such), in terms of the locational and agglomeration benefits attributed to such larger scale retail activities.

In terms of rules:

- A lack of clarity and conciseness in terms of a number of relevant definitions, including retail activity, commercial activity and office.

- A zoning approach that did not link consistently to the objectives and policies.
- The Business A zone confines the range and scale of retail activity contrary to its purpose of providing the primary retail and commercial focus for Ashburton.
- The Business B zone, despite a stated purpose for enabling Large Format Retail, also provides for a wide range of commercial activities and retail. Equally, the Business C zone provides for a substantial range of commercial activity and retail activity.
- The Business B, C, D and E zones provides for office activities as permitted activities, despite the agglomeration benefits of such associated with built form investment and ancillary spending where located within the Business A zone, and potential for reverse sensitivity effects within the Business D and E zones especially.
- A lack of clarity and conciseness in terms of a number of relevant definitions, including retail activity, commercial activity and office.

17. He then summarised the Plan Change approach

- A key focus of PC4 was to introduce plan provisions narrowly tailored with respect to the distribution and distinction of retail activity and commercial activity. The notified provisions in relation to these activities seeks to ensure that the Plan objectives and policies are 'giving effect' to the respective higher order documents, and that the rules were the 'most appropriate' in implementing those provisions.
- Improve clarity of definitions, and nesting between definitions. Provide a distinction between Retail and Trade Supplier, enabling the latter in the Business B, C and D zones.
- Delete the 500m² GFA maximum limit threshold from the Business A zone for retail activities.
- Alter the status and range of commercial activities and retail activities throughout the Business zones, including:
 - (a) Status of small-scale retail in the Business B zone changes from discretionary to non-complying.
 - (b) Restricting the provision of stand alone offices within the Business B to E zones (Discretionary), but allow ancillary office.
 - (c) Permit trade suppliers in the Business B, C and D zone, and restrict other forms of retail activity (non complying), including removal of the permitted maximum of 750m² GFA for retail activity in the Business C zone.
 - (d) Restrict the range and scale of Food and Beverage outlets within the Business B, C, D and E zones.

18. The Plan Change does not:

- introduce any new zones or amend any existing zone boundaries.
- amend the function or purpose of any zone.
- amend the extent (or status) of retail activity or commercial activities already provided for in any zone other than Business zones (that is provisions in the Residential zone, Rural zone etc are not amended).
- amend any built form controls, urban design requirements, or transport requirements.

Summary of Submissions

19. The relief sought by the submitters can be categorised as:
- Submissions supporting the Plan Change in Full (Eastfields Investments Sub 1, Redmond).
 - Submissions supporting the intent of the Plan Change, but:
 - (a) Opposing restrictions as these relate to Supermarkets within the Business C zone (Foodstuffs New Zealand Ltd).
 - (b) Seeking greater restrictions for stand-alone offices (status to be amended to non-complying) in the Business B to F zones, where office activities are less than 500m² (P Bean) and not-ancillary to a primary activity.
 - (c) Ease requirements, such as the requirement for off-street car parking for residential developments in the Business A zone (S Price).
20. There are no submissions opposing the intent or purpose of PC4 in managing the distribution of retail activity and commercial activity such that these are primarily focused in the Business A zone.

Analysis of Submissions

21. There only three matters of seeking changes arising out of the submissions.

Supermarkets

22. The submission from Foodstuffs seeks provision for supermarkets in the Business C zone, which would have become non-complying activities under the Plan Change as notified. Alternatively Foodstuffs sought that a supermarket be made a permitted activity on a site it owns at 407 West St, Ashburton.
23. Mr Bonis and Mr Heath pointed out that it would be very difficult to find a site for a modern supermarket in the Business A zone due to the very large sites required. They said that this could be detrimental to the economic well-being of Ashburton. They also pointed out that even if a site could be found in the Business A zone, a supermarket there could be detrimental to the closely built up and pedestrian friendly environment that is desirable in a Town Centre zone. Discussions have taken place with the supermarket operators and as a result Mr Bonis has recommended that an exception be made by creating a Supermarket Overlay for the three existing supermarkets and the 407 West St site, in which supermarkets would be a Restricted Discretionary Activity. Appropriate amendments to the objectives, policies and rules have been recommended. The package has been accepted by the supermarket operators. All this was discussed extensively in the section 42A report. I accept and adopt the reasoning of the report on this and do not need to repeat it.

Offices outside the Town Centre Zone

24. The second matter raised in the submissions was the submission by Mr Philip Bean which seeks that stand-alone office premises should be in the Business A Town Centre zone only, and be otherwise non-complying activities in the Business B to F zones.
25. PC4 as notified, amended the status of office activities from being permitted in the Business A to E zones within the operative plan, to being deemed a discretionary activity unless ancillary to a primary activity on the site and occupying no more than 30% of the gross floor area of all buildings on the site. Stand alone offices in the Business B to E zones are discretionary under the Plan Change while in in the Business F zone they remain as non-complying activities.
26. The issue is therefore a very narrow one, simply whether stand-alone offices should be discretionary or non-complying in the Business B to E zones.

Mr Bean's submission is brief but stresses the need to ensure stand alone offices are located in the Town Centre Business A zone to strengthen the viability of the zone. Mr Bonis did not fundamentally disagree, but could not rule out the possibility that there may be some limited instances where such offices could have legitimate locational reasons, and associated wellbeing benefits, to support a non-CBD location and there would be a more efficient and effective outcome.² Accordingly he recommended that this activity remain discretionary, noting that a resource consent application would still be required allowing all effects to be considered.

27. I agree with and adopt Mr Bonis' reasoning.

Residential activities in the Town Centre Zone

28. The submission by Mr Selwyn Price seeks

"The easing of requirements that do not impact the health and safety of anyone living in the core retail area, such as a requirement for each apartment to have off-street parking provision, in order to make it easier for residential developments to utilize otherwise unused above ground spaces".

29. Mr Bonis considers that this submission is out of scope, as the Plan Change does not actually make any change to the provisions relating to residential activities in the Business A zone and therefore it is now too late in the process to introduce such provisions. In that he is correct, as if further matters were to be considered necessary that have not been previously publicly notified, this would have to be by way of a publicly notified variation to the Plan Change, allowing potentially affected parties to make submissions if they wished to.³

30. Other than car parking, Mr Price has not specified any particular changes to the rules that can be considered on their merits.

31. Mr Bonis noted that with regard to car parking, under the National Policy Statement for Urban Development, which the Council is required to give effect to, the Council has until February 2022 to remove car parking provisions (excluding accessible spaces) from the District Plan.

Decision on Submissions

32. Overall I accept and adopt Mr Bonis' reasoning on the submissions. As a result the submissions are all accepted in part except for the submission by Mr Price which is rejected, although the relief he seeks in regard to carparking will be achieved anyway.

Statutory Documents

33. Mr Bonis has made an analysis of the various statutory under which this plan change is to be considered. I touch on them briefly because I accept and adopt his analysis in all respects.

Resource Management Act 1991.

34. The Act contains the purposes and principles which must be achieved through this plan change. Mr Bonis analyses these, paying particular attention to the purposes of a district plan, which is to achieve the sustainable management purpose of the Act. I accept that Plan Change 4 is necessary to strengthen the viability and vitality of the town centre of Ashburton which would otherwise continue to decline as buildings age and business activities relocate to other zones. I consider this is likely be achieved while not creating unacceptable adverse effects such as lack of opportunities for business owners and and occupiers in other business zones. It will thus achieve the sustainable management purposes and principle set out in Part 2 of the RMA. In response to submissions, amendments to the Plan Change have been recommended to remove unintended effects on the supermarket industry.

² As required by section 32 of the RMA

³ Under Schedule 1 clause 16A of the RMA.

35. Schedule 1 contains the process which must be followed for preparing and processing a proposed Plan Change. I am satisfied that this has been correctly followed.
36. As required by section 32 of the RMA, the Plan Change was preceded by an analysis of its efficiency and effectiveness. Section 32AA of the RMA requires a further analysis to be carried out of any proposed amendments to the Proposed Change. Mr Bonis has prepared a brief report under section 32AA for this purpose which I adopt in full. This is attached to this recommendation report.

National Policy Statement on Urban Development (the NPSUD)

37. The Council is required to give effect to the NPSUD. The relevant part of that was summarised by Mr Bonis as follows

The implications for PC4 of the NPS-UD are that the Ashburton District Council is to provide at any one time sufficient business development capacity¹⁶ for different business sectors, in the short (3 years), medium (10 years) and long terms (30 years).

38. The NPSUD contains a number of objectives and policies about how this is to be carried out, including research and analysis and identifying and making available sufficient land and infrastructure for these purposes on an on-going basis. Relying particularly on Mr Heath's conclusions that the Business A zone contains sufficient capacity for retail and office development, as well as the provisions in the other Business zones for large format retail, offices and other commercial activities, I am satisfied that the Plan Change is consistent with the NPSUD.

Canterbury Regional Policy Statement.

39. Mr Bonis wrote that

The respective Canterbury Regional Policy Statement provisions are set out in Section 2.5.1 of the Section 32 Report.

*These provisions seek to ensure urban growth occurs in a form that concentrates existing urban areas and promotes coordinated patterns of development. Business opportunities are to be of a character and form that supports urban consolidation (**Policy 5.3.1(2)**), encourage high quality urban design and enhancement of amenity values (**Policy 5.3.1(5)**), and avoid conflicts between incompatible activities (**Objective 5.2.1(2)(i)**).*

⁴There is misalignment between the provisions of the CRPS which seek a consolidated and co-ordinated approach to managing urban growth, and a dispersal of retail and commercial development outside of the Business A (town centre) zones.

40. I agree with that and I am satisfied that the Plan Change will correct this misalignment and make the Ashburton District Plan consistent with the Regional Policy Statement.

Iwi Management plans

41. Mr Bonis briefly discussed the relevant iwi management plans and observed that these do not specifically address business distribution issues.⁵

Conclusions

42. Plan Change 4, with the recommended amendments will contribute towards achieving the objectives of the district plan in an effective and efficient manner. It will give effect to the purpose and principles of the RMA, and the functions of the Council and the District Plan in relation to commercial activities and retail activities, as set out in the accompanying s32AA evaluation.

⁴ S42A report paragraphs 52 - 54

⁵ S42A report, paragraphs 55-57

RECOMMENDATION

1. For the reasons set out in this report, I recommend that Plan Change 4 be amended in accordance with Attachment 1 to this report and approved.
2. For the reasons set out in this report I recommend that the submissions and further submissions on Plan Change 4 be accepted in part or rejected.
3. I recommend that the analysis under section 32AA set out in Attachment 2 to this report be adopted.

A handwritten signature in blue ink that reads "D. L. Mountfort". The signature is written in a cursive style and is positioned above the printed name.

David Mountfort
Hearings Commissioner

21 June 2021