

BEFORE THE SELWYN DISTRICT COUNCIL

IN THE MATTER OF The Resource Management Act 1991 (**Act**)

and

IN THE MATTER OF RC195454 – Application for land use consent to establish
and operate a supermarket and café, with associated car
parking and landscaping, at 581 Birchs Road, Lincoln

and

IN THE MATTER OF **LINCOLN DEVELOPMENTS LIMITED**

Applicant

**DECISION OF HEARING COMMISSIONER DAVID CALDWELL
DATED 16 OCTOBER 2020**

Key to Abbreviations

AEE	Assessment of Environmental Effects
Applicant	Lincoln Developments Limited
Application	Resource Consent Application for land use consent to establish and operate supermarket and café with associated parking and landscaping at 581 Birchs Road, Lincoln
CRPS	Canterbury Regional Policy Statement 2013
HAIL	Hazardous Activities & Industries List
LLUR	Listed Land Use Register
RMA	Resource Management Act 1991

Representation and Appearances

Applicant

Ms Jo Appleyard and Ms Lucy Forrester - Counsel for the applicant

Mr Oliver Shaw – Property Development Manager for Woolworths New Zealand Limited

Mr James Whittaker – Transportation Planner

Mr Alex West – Acoustic Consultant

Mr Richard Knott – Urban Designer

Mr Daniel Kamo – Landscape Architect

Mr Mike Foster – Planner

Submitters

Mr Steve Meier (in opposition)

Mr Scott Loeffler (in support)

Mr Lian Tian (in support)

Ms Josiane Archer (tabled submissions – in support)

Ms Sarah Hartley (in opposition)

Ms Suzanne Hobby (in opposition)

Ms Laura Hull (in opposition)

Mr Don Babe (in opposition)

Mr Richard Clark (in opposition)

Ms Katherine Claridge (in opposition)

Mr Nathan Peter (in opposition)

Cooke Family Trust and Robert Lineham (in opposition)

Reporting Officers

Dr Trevanthan – Noise

Mr Andy Carr – Traffic

Mr Hugh Nicholson – Urban Design

Mr Tim Heath – Economics (via ZOOM and subsequent written response)

Ms Jane Anderson – Planning

Background and Procedural Matters

1. This is the decision of independent hearing Commissioner Mr David Caldwell.
2. I was appointed by Selwyn District Council as Independent Commissioner to hear and determine the resource consent application by Lincoln Developments Limited for land use consent to establish and operate a supermarket and café with associated car parking and landscaping at 581 Birchs Road, Lincoln.
3. The application has a somewhat complex history. The application was originally lodged on 7 August 2019. This was to undertake a 23 lot subdivision, to construct and operate a supermarket and café and to construct and operate a childcare centre within the wider application site, with a frontage on to Birchs Road.
4. The application for the 23 subdivision and associated earthworks were processed separately under RC195448 and RC195463 and consent was granted on 11 May 2020. I understand that the childcare centre application was then withdrawn by the applicant. A new consent for the childcare centre was applied for on 3 March 2020 and that is now situated on a site on O'Reilly Road.
5. The application was subject to considerable refinement throughout the consent processing period.
6. The application was publicly notified on 11 March 2020. As a result of the Covid-19 lockdown period, the submission period was extended. The submission period closed on 26 May 2020.
7. At the close of the submission period, Council had received 74 submissions. A list of submitters was provided as Appendix 3 to the S42A Report. I was provided with and have considered all submissions lodged.
8. The S42A Report provided a helpful summary of the submissions in support and in opposition¹. 49 submissions in support were received. The reasons for support included matters such as employment, increased competition and choice, convenience and walkability for residents in northeast Lincoln, reduced travel to Lincoln township, opportunities for social interaction, absence of adverse effects on the visual or aesthetic amenity and traffic capacity. A number of the submissions in support were identical and followed the same form.
9. Some of the submitters in support sought additional measures and one provided conditional support.

¹ S42A Report at paras [46]-[53]

10. Council received 23 submissions in opposition. Again, very much by way of summary, the matters in opposition included traffic and associated safety and amenity issues, adverse effects on users of the rail trail, staff parking and roading conflict.
11. Other issues included adverse effects on character and amenity, including adverse effects on visual amenity and existing character of the area, visual dominance, overlooking and general inappropriateness in a residential setting.
12. Noise was also identified, including adverse effects for residents close to the site, including adverse effects from its operation.
13. Strategic concerns were also identified, including consistency or otherwise with the Lincoln Structure Plan and Council's Long-Term Plan, that it was not in keeping with the ODP or subdivision plans and was not in accordance with the residential zoning. The issue of precedent was also raised. Economic effects / retail distribution was identified, together with social effects including concern about antisocial behaviour and effects of an additional Lotto outlet and retail liquor outlets in the township. Property valuation concerns were also raised.
14. There were two neutral submissions. The first of these was from the Canterbury Regional Council, which sought to ensure that public transport was considered in the traffic design for the development, including a bus bay into the frontage of the development along Birchs Road. The second neutral submission identified concern regarding staff parking in adjacent residential streets.
15. Following my appointment and throughout the hearing process I issued a number of minutes addressing various matters, including evidence, site visit and extension of statutory timeframes.
16. The hearing commenced at 9am on 28 July 2020 and was adjourned on 29 July 2020.
17. The hearing was closed on 10 September 2020. Following the close of the hearing, I took the somewhat unusual step of issuing a Minute on 5 October 2020 seeking further information and timetabling a response. This arose from the fact that the Proposed Selwyn District Plan was publicly notified on 3 October 2020.
18. Responses were received from the Reporting Officer, Ms Appleyard on behalf of the applicant and the Cooke Family Trust and Robert Lineham. On 13 October 2020 I received a query through the Hearings Officer from Ms Penny Butler, a submitter in support, which noted her views differed from the submission that had been forwarded by the Cooke Family Trust (of which she is a primary beneficiary). I advised, again through the Hearings Officer, that in the circumstances I did not

consider an extension of time to enable Ms Butler's comments to be made would lead to me being better informed, noting the applicant had provided its response.

Site Visit

19. I undertook a site visit on Tuesday 25 June 2020. I drove around the Lincoln area, including the town centre and a number of the roads around the application site. I also viewed the Prebbleton Fresh Choice, as requested by the applicant. I was accompanied on the visit to the site by Mr Shane Kennedy of the applicant. I had previously issued a Minute in terms of the site visit, including the caveat that the site visit was not an opportunity to discuss matters of evidence.
20. I also attended the property of the submitter Mr Meier at 14 Caulfield Crescent and Richard and Kirsten Clark at 12 Caulfield Crescent. Again, Mr Meier and Mr Clark simply allowed me into their properties and, when requested, identified various aspects such as boundaries and similar.
21. My site visit assisted in my understanding of the wider location and the proximity of a number of the submitters' properties.

The Proposal

22. As noted above, a number of amendments were made to the proposal throughout the consent processing. Following the close of submissions, further amendments were made with those changes being received on 1 July 2020. The changes included alterations to the car parking layout, changes to building design and changes to landscaping. The changes are most conveniently summarised in Ms Anderson's S42A Report, particularly in paragraphs 10-22.
23. By way of summary, the floor area for the proposed supermarket is 3122m², with a mezzanine office area of 199m². A café is proposed on the southwestern corner of the building with an area of 71m², with outdoor seating for 20 people. The building will have a maximum height of 7.5m at the front entrance, while the roof top plant will be at 8.5m.
24. The application also includes a pharmacy, which will be operated as an in-house facility by Woolworths New Zealand Limited rather than a separate tenancy.
25. The revised plans included a realignment of the orientation of the proposed car parks to an east-west alignment with a decrease in the overall number of car parks from 176 spaces to 167 spaces, including pick up points, accessible parks, parent parks and electric vehicle charging parks. The parking area was also redesigned to include a drive through area for a grocery pickup service. A covered pedestrian

walkway is provided connecting Birchs Road to the entrance to the supermarket and cycle parking is provided on the southern elevation of the proposed café. Two-way vehicle access is provided from Birchs Road and Makybe Terrace, with service vehicles accessing from Birchs Road and exiting from a separate egress onto Makybe Terrace.

26. The hours of operation are 7am to 10pm seven days a week, with deliveries being limited to the period 7am to 7pm. The café is proposed to be open 9am to 10pm daily.
27. The proposal includes landscaping, with 32 trees to be located along the road boundaries and within the car parking area, a green wall on the southern elevation, low level planting and hedging along the property boundary with Birchs Road and Makybe Terrace.
28. The building facades are approximately 55m long, ranging from 4.4m to 8m in height and are dominantly constructed of pre-cast concrete panels or compressed sheet cladding, with glazing and louvres. The façade includes glazing of approximately 55% of the elevation and there are extensive canopies over the main entrance and pickup area. The southern façade has windows for the café but no entrances and both the southern and western elevations are predominantly coloured in the corporate “Countdown” colour scheme, with signage identifying the brand, logo and opening hours. The bulk of the northern and eastern elevations are to be clad in pre-cast concrete, with small windows at the first-floor level on the northern elevation and again some corporate green panels.
29. The loading bay is to be at the rear of the building, with access along the northern boundary and egress to Makybe Terrace on the southern boundary. A pylon sign is proposed at 8m high, together with further signage on the western and southern facades.

Scope

30. Given the changes which have been made, particularly given the timing of those changes which followed the close of submissions, I have considered the issue of scope. Ms Appleyard, Mr Foster and Ms Anderson were satisfied that the changes were within scope. I consider the changes are within scope.
31. The legal test is whether the activity for which consent is sought is significantly different in scope or ambit from that originally applied for and notified, in terms of:
 - (a) the scale or intensity of the proposed activity; or

(b) the altered character of effects / impacts of the proposal.²

32. Overall, I consider that the scale and intensity of the proposed activity has not increased, nor do I consider the character of the effects has been altered.

Description of Existing Environment

33. The site is legally described as Lot 4000 DP518987, being 20.14ha in area more or less, but the overall site area for the purpose of this application is 4.8380ha. The site and characteristics were described in 1.2 of the AEE and in Ms Anderson's S42A Report at paragraphs 27-33.
34. For convenience and by way of summary, the site is located at the eastern end of Birchs Road at the northern end of the Lincoln township. The site is generally flat and is subject to extensive earthworks in accordance with the previously granted RC195463. The site is zoned "Living Z" in the District Plan and is within ODP Area 3.
35. The site is adjoined to the south by the applicant's completed Stages 1A and 1B of a recent residential subdivision and those created lots have predominantly been built on. There is a mix of residential and rural allotments as the area is transitioning from one of a rural character to one of a residential character in accordance with the Living Z and ODP Area 3 provisions. To the north is a large block, which at present has two dwellings on it. To the west, on the other side of Birchs Road, is the Barton Fields residential development.
36. The site is located approximately 1.3km from the Lincoln Key Activity Centre and is on one of the primary routes between Prebbleton and Lincoln townships. Birchs Road itself is identified as a collector road in the District Plan, with a speed limit of 50km in the location of this proposal. There is an existing cycle way/pathway on the eastern side of Birchs Road and along the frontage of the site, which provides a cycle connection between Prebbleton and Lincoln.

Summary of Evidence and Submissions

37. I was provided with a considerable amount of evidence from the applicant, the submitters and the reporting officers. I received all of the submissions lodged. I do not propose to summarise all the evidence, or the submissions. That is all publically available. I will however address the evidence and submissions as I consider and address the particular issues.

² Atkins v Napier City Council (2008) 15 ELRNZ 84 (HC)

Assessment

38. In assessing this application, I have considered the application documentation and assessment of environmental effects, the S42A Report, the further information provided by the applicant and all the matters raised in the submissions lodged. I have also carefully considered all the evidence provided to me, together with the legal submissions for the applicant and the proposed conditions of consent and associated documents provided.
39. While my assessment does not specifically address each and every point raised, I confirm that they have all been considered.

Statutory Considerations

Activity Status

40. It was agreed that the proposal is a Discretionary Activity under the Operative District Plan.
41. The application site is zoned Living Z and is located within the Lincoln Outline Development Plan Area 3 which is contained within the townships volume of the Operative District Plan.
42. The S42A Report addressed the applicable District Plan Standards³. I do not propose to recite the information provided in relation to non-compliances. A number of the non-compliance arise from the scale of the activity and the site's Living Z zoning.

National Environmental Standards

43. For completeness, I record that the Listed Land Use Register (**LLUR**) identifies the land as a HAIL site Type A10 – Persistent pesticide bulk storage or use. The NES therefore applies to activities on the site. A Detailed Site Investigation (**DSI**) report was provided, identifying areas where the contaminants exceed the expected background levels. That has been reviewed by the Contaminated Land Officer at Environment Canterbury and advised that excavated material may not be suitable to be deposited at a clean fill facility if removed from the site. The proposal is therefore a controlled activity under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.

³ S42A Report at para 35

S104 and S104B of the RMA

44. S104(1) of the RMA sets out the matters I must have regard to in consideration of the application. The relevant matters are as follows:
- “(a) *any actual and potential effects on the environment of allowing the activity; and*
 - (b) *any relevant provisions of –*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.”*
45. S104(1) RMA provides the matters listed are subject to Part 2, which includes ss5 through to 8. I will address Part 2 RMA matters, and the approach to be taken to that analysis subsequently.
46. Pursuant to s108, if I grant consent I may impose conditions. Pursuant to s108AA, a condition can be included, only if agreed to by the applicant or directly connected to an adverse effect on the activity upon the environment, or an applicable rule or standard.

Part 2 of the RMA

47. The application of the words “subject to Part 2” in an s104 context has been addressed by the Court of Appeal in its decision of 25 August 2018⁴. The Court of Appeal decision has been subject to comment in a number of Environment Court decisions. The approach I have taken is one that requires me to assess the objectives and policies in the planning documents against Part 2. If I consider the relevant plan documents have been prepared having regard to Part 2, and provided a coherent set of policies which are designed to achieve clear environmental outcomes, I do not need to expressly refer to Part 2 further, other than through applying the policies and objectives of the Plan. In undertaking that analysis, I am addressing Part 2 as required by s104. However, if the planning document does not appear to have been prepared in a manner that appropriately reflects the provisions of Part 2, I must refer Part 2 expressly when determining the application.

⁴ RJ Davidson Family Trust v Marlborough District Council CN97/2017

48. Ms Anderson undertook an assessment against the specific provisions of Part 2, as did Mr Foster for the applicant. For completeness I will briefly do the same although overall I consider the operative Plan has been prepared having regard to Part 2.

Principal Issues in Contention

49. In my view, the principal issues requiring determination are, in general terms, the following:
- effects on the environment;
 - consistency or otherwise with the relevant objectives and policies;
 - precedent;
 - Part 2 matters.

Land Use Covenant

50. An issue was identified in relation to a land use covenant relating to properties within the subdivision developed by the applicant, which is known as “Flemington”. I was advised that those properties are subject to a covenant which provides that the registered proprietor will not:

... oppose, object to, frustrate, or take any action, or encourage or cause others to oppose, object to, frustrate or take action that might in any way prevent or hinder the Developer from progressing or completing the Flemington development or the adjoining stages. Such Covenant extends to and includes (without limitation) development planning, zone changes, resource consents for land uses and subdivisions, Consent Authority or Environment Court applications, Territorial Authority Building Consent matters, or any other necessary consent process involving the Developer.

51. Ms Appleyard addressed this issue in her opening submissions⁵.
52. Ms Appleyard noted that the applicant had received legal advice, which Ms Appleyard agreed with, that covenants of this nature constitute written approvals of an application by the neighbouring properties who are subject to it. She noted that, as such, owners of these properties cannot be regarded as affected parties to the application, and Council must not have regard to any effect on those parties pursuant to s104(3)(a)(ii) of the RMA.

⁵ Opening Legal Submissions on behalf of Lincoln Development Limited at paras [7]-[10]

53. Ms Appleyard advised that the applicant had chosen not to actively pursue the enforcement of the covenant or seek that Council disregard the effect of the proposal on any submitter subject to the covenant.
54. She submitted that it was important that I was aware of the legal restriction on the owners of homes within the Flemington Development and she attached a map showing the location of submitters within that development. She advised that, while the applicant had chosen not to enforce the covenant, without prejudice to its rights on appeal, should I be of a mind to decline the application relying heavily on the effects that would be felt at those properties, such a decision could easily be scrutinised on appeal in the Environment Court.
55. I explored this further in discussions with Ms Appleyard. She confirmed that she was not saying I could not take into account effects on those persons, but she considered it appropriate to identify that may not be the applicant's position on appeal.
56. Ms Appleyard was very clear that the applicant was not relying on the covenant, nor saying that I must disregard the effects on submitters subject to it.
57. It is of no moment to me what the applicant may or may not raise in any subsequent Environment Court appeal. In my view the appropriate approach is to ignore the covenant. In doing so, I make no comment on whether the covenant does or does not constitute written approval. As stated, I have expressly been advised by the applicant that it is not seeking that I disregard the effects on those subject to it and I undertake my assessment on that basis.
58. Before moving to my assessment of effects, I briefly address the permitted baseline and what I term the comparison evidence of Mr Foster.

Permitted Baseline – S104(2) RMA

59. The Reporting Officer commenced her discussion of effects by referencing the permitted baseline⁶.
60. Ms Anderson identified that the site is zoned Living Z, which provides for the construction of residential dwellings as of right. She considered the non-residential permitted baseline was of most relevance. She then outlined that to be permitted the non-residential development would need to have:
 - a road boundary setback of 4m from Makybe Terrace and Birchs Road, with landscaping between the road and the building;
 - internal boundary building setback of 2m;

⁶ S42A Report at paras 62-64

- site coverage of 40%;
 - building that meets the Recession Plane requirements;
 - a building height of 8m;
 - maximum of two staff;
 - building gross floor area not exceeding 300m²;
 - 20 vehicle movements per day plus two heavy vehicle movements per day from Makybe Terrace and 40 vehicle movements per day, plus four heavy vehicle movements per day, from Birchs Road;
 - hours of operation between 7am and 10pm;
 - compliance with noise rules;
 - maximum of two signs, not exceeding 1m² in size.
61. Ms Anderson considered that, although there is a baseline, the scale of the proposal is far greater than what is anticipated by the Plan for the living zones. She considered the baseline did not offer a useful comparison when considering the proposal.
62. Mr Foster also identified s104(2) RMA⁷. Mr Foster's evidence noted that under the District Plan provisions medium density residential development is permitted. He considered that from a bulk and location perspective, the form, size and scale of the proposed development complies with the majority of the relevant provisions in the District Plan.
63. Mr Foster, in addressing shading issues on neighbouring properties, provided a comparison between a permitted medium density development and the present application. This illustrated a complying medium density development could result in potentially greater shading than this proposal. I have taken this into account.
64. Overall, I do not consider there is any permitted baseline against which the overall proposal could be realistically and usefully assessed.

Comparisons

65. Mr Foster provided information in relation to several supermarkets, which he advised were within residential zones. These included supermarkets in Nelson, Rangiora, Mosgiel, Tauranga and Porirua.⁸ He considered that the Lincoln supermarket will be another example. He considered the key to obtaining consent

⁷ Statement of Evidence of Mike Foster dated 14 July 2020 at para 7.10

⁸ Evidence of Mike Foster at para [4.6]

to a supermarket in a residential zone is the ability to demonstrate that any adverse edge effects can be avoided or mitigated.⁹

66. Overall, I do not consider that information to be of particular relevance to my decision making on this application. Each of those supermarkets would have been assessed in terms of the relevant environment and planning framework.
67. I was asked to view the Fresh Choice supermarket at 9 Tosswill Road, Prebbleton. I visited the site and viewed it in its context in relation to the surrounding environment. That was useful.
68. I note that is a much smaller supermarket than the one proposed here. I understand it is approximately half the size of the present proposal. I also understand the land on which it is situated is zoned Business in the Selwyn District Plan.
69. The supermarket appears to be similar to that which was originally being considered, which was a Fresh Choice supermarket of between 1100m² and 1700m².

Effects on the Environment – S104(1)(a)

70. Ms Anderson, after referring to the unrestricted nature of the assessment and that relevant guidance can be obtained in the District Plan's Reasons for Rules and relevant assessment matters, considered the adverse effects of the proposal broadly related to:
 - character and amenity;
 - transport;
 - retail distribution / economic effects;
 - soil contamination.
71. I agree that at a broad level Ms Anderson's categories capture the relevant adverse effects.
72. I consider guidance as to what are and what are not acceptable effects can be derived from a careful reading of the relevant objectives and policies. I will address those in more detail in my subsequent assessment. Suffice to say, in my view there is a strong signal, from the overall thrust of the policy framework, that acceptable effects will be those which are compatible with the character, quality and amenity values of the zone.

⁹ At para 4.7

Character and Amenity

73. Ms Anderson noted that the character and amenity of the area as a whole is influenced by various aspects, including street scene, visual amenity, interaction with the street, passive surveillance and perceptions of safety, landscaping, traffic amenity and the scale of the activity¹⁰. I agree, and this summary did not appear to be disputed by the applicant.
74. Ms Appleyard, in closing, submitted that one of the biggest points at issue related to the effects of the application on amenity values, with the majority of those submitters appearing expressing concern that the proposed supermarket would have unacceptable adverse amenity impacts on their properties.¹¹
75. Ms Appleyard referenced the statutory definition of ‘amenity values’ and submitted that, while partly subjective, the views of the residents needed to be objectively scrutinised to determine whether they are reasonably held by reference to the District Plan and the experts’ assessment of the effects generated by the proposal.¹²
76. Ms Appleyard referred to Schofield v Auckland Council¹³, where the Environment Court addressed the difficulties. The court there noted:
- “The topic of amenity can be emotionally charged, as this case has revealed. People tend to feel very strongly about the amenity they perceive they enjoy. Whilst s7(c) of the RMA requires us to have particular regard to the maintenance and enhancement of amenity values, assessing amenity values can be difficult. The Plan itself provides some guidance, but at its most fundamental level the assessment of amenity value is a partly subjective one, which in our view must be able to be objectively scrutinised. In other words, the starting point for a discussion about amenity values will be articulated by those who enjoy them. This will often include people describing what an area means to them by expressing the activity they undertake there, and the emotion they experience undertaking that activity. Often these factors form part of the attachment people feel to an area or a place, but it can be difficult for people to separate the expression of emotional attachment associated from the activity enjoyed in the space, from the space itself. Accordingly, whilst the assessment of amenity values must, in our view, start with an understanding of the subjective, it must be able to be tested objectively.”*

¹⁰ S42A Report at para 67

¹¹ Closing Legal Submission on behalf of applicant, 8 September 2020 at para 4

¹² At para 6

¹³ [2012] NZEnvC 68 at para [51]

77. In terms of understanding “the subjective”, I spoke to several the submitters about what contributed to their amenity. These discussions were principally with those living in the Flemington subdivision.
78. There were several themes which came through in those discussions. One was ‘family friendly’, with the streets designed to keep traffic flows low and slow. Several the submitters commented on the ability for children to play and ride bikes and similar in the local streets. They also commented on the ability of children to walk or ride to school and the considerable use made by local children of the rail trail. Some of the submitters advised that they bought into what was seen as a high-quality residential development and established their homes on that basis. One of them described building their ‘dream home’. There was a degree of frustration that this proposal had not been disclosed prior to their purchase.
79. Several of the submitters described the existing residential streets as very narrow with large numbers of people, children in particular, using the streets for walking and cycling. The proximity of the rail trail was also identified as contributing to overall amenity.
80. In terms of the existing noise environment, the submitters expressed some surprise as to the ambient noise levels relied on by the acoustic experts. When the construction work which is presently being undertaken on the site was not occurring, the overall noise environment was described as very quiet. There were periods when the traffic from Birchs Road was clearly audible, but also periods when the traffic on that road was light and noise not an issue.
81. A number of them spoke of the importance of the residential nature of the environment and this motivated them to purchase and build where they did. The nature of the residential community was clearly important to several the submitters.
82. Having viewed large parts of the Flemington subdivision, it is clearly a high-quality subdivision and the values expressed by the submitters were readily apparent.
83. As to the objective, the acoustic experts identified the high ambient noise levels at times from Birchs Road. It is one of the main routes between Lincoln and Prebbleton / Christchurch. During my site visit, which was mid-morning, noise from Birchs Road was not particularly noticeable and the traffic light.
84. In terms of the Plan and what it anticipates in relation to amenity, it is apparent residential amenity, and its maintenance, is given considerable importance. I will return to that aspect in my consideration of the relevant objectives and policies.

Urban Design

85. As Ms Appleyard submitted, 'good urban design' to an extent is a matter of opinion¹⁴. In the case of this application, there is considerable disagreement in the opinions of Mr Nicholson as Reporting Officer and Mr Knott for the applicant.
86. Both are well qualified and very experienced. Ultimately, they fundamentally disagreed in relation to the overall effects on character and amenity from an urban design perspective.
87. Ms Anderson described the receiving environment. She noted that the areas adjacent to Birchs Road, a collector road, which is one of the main gateways into the Lincoln township. She advised that the area is characterised by residential dwellings, mature landscaping and open space. She also noted that the area is in the process of transitioning from a more rural environment to a residential area as anticipated by the Living Z and Outline Development Plan Area 3 provisions in the District Plan. She considered, in overall terms, the existing environment to be very much in keeping with the anticipated environmental outcomes for a Living Z zone¹⁵.
88. Mr Knott provided comprehensive evidence in relation to urban design and associated amenity issues. Mr Knott is qualified in urban design and planning. He has been involved in a range of projects relating to commercial and town centre developments and he provided details of some of the relevant projects he had been involved in.
89. Mr Knott addressed the urban design issues by adopting the headings used by Mr Nicholson in his evidence. I will do likewise.

Effects on Lincoln Key Activity Centre

90. Mr Knott referenced Mr Nicholson's opinion that the proposed location of the Countdown supermarket on Birchs Road had the potential to fragment the retail offering in Lincoln, and would not support a walkable and integrated town centre that contributes to the cultural and social vibrancy of Lincoln. Mr Knott considered neither he, nor Mr Nicholson, could assist in relation to that issue given the specific expert evidence which had been provided by Mr Heath and Mr Thompson addressing retail distribution effects.
91. I will address that particular issue after I address the more specific urban design / amenity issues.

¹⁴ Opening Legal Submissions, 28 July 2020 at para 36

¹⁵ Officer's Report at para 69

Residential Neighbours

92. Mr Knott accepted Ms Anderson's description at paragraph 69, which I have referred to earlier. He did not however accept Ms Anderson's statement that: "*The proposal seeks to introduce a large commercial development into an intact residential area ...*"¹⁶
93. Mr Knott considered it was not accurate to describe the local area as an "*intact residential area*", with "*intact*" providing the impression of the area being in some way complete. He noted that all residential development in the surrounding area has only been constructed within the past 10 years, the land to the east remains undeveloped, the land to the north is partly developed and has not yet been brought forward for more intensive housing development. In his view, the proposal did not seek to introduce development into a completed residential area, but instead sought to bring forward a commercial development into an emerging area.¹⁷
94. Mr Knott did not accept Ms Anderson's statements at paragraph 72 of her S42A Report where Ms Anderson considered an increased level of amenity than that provided for in the Business 1 zone might be expected for the site and the street scene.
95. Mr Knott's opinion was that, while that may be appropriate in relation to those dwellings which were already constructed and the land which had already been subdivided, it did not stand for those areas to the east and north which are neither yet developed or subdivided for more intensive residential development and which do not form part of the existing environment. Those developments would be able to respond to the layout and form of the proposed supermarket as and when they are designed, subdivided and developed.
96. Mr Knott's view is a matter which I discussed with him. It appeared to me that his view could be interpreted as one which in essence put the costs of this development on future zoned subdivision. By that I mean that they need to design around it.
97. While I accept, as a matter of fact, that the residential zoning around the site has not been fully developed, it is zoned for that purpose. There are no commercial activities of anything like the scale of this proposal within the zone. To that extent, it is, in my view, *intact*.

¹⁶ S42A Report at para 70

¹⁷ Evidence of Richard Knott at para 5.3

98. Mr Nicholson considered the proposal would result in the liveability of the future residential sections being significantly less if this proposal went ahead. He considered that to be a burden on the future landowners.
99. For completeness, I am not suggesting that future residential sections which are not consented form part of a *Hawthorn*¹⁸ environment. I do however agree with Ms Anderson's description that it is *intact* in the sense she used term.

Assessment Matters

100. Mr Nicholson and Mr Knotts both referenced the expectations of the assessment matters applicable to the Business 1 zoned land (16.10.2). Ms Anderson acknowledged that was an appropriate approach, subject to a higher degree of amenity being anticipated given the residential zoning of the site.
101. Mr Nicholson identified that the length of the building, materials, car park, loading bay and pylon sign were activities not expected in a residential zone and would not meet the expectations of the assessment matters for visual variety applicable to Business 1 zoned land (16.10.2).
102. Mr Knott considered the residential buildings in local area, whilst mainly single storey, do vary significantly in materials, design, and overall size. He provided examples of those within the area which range from a 25m building frontage to a 33m building frontage. He also noted that the elevations of buildings are finished in a range of materials and that many dwellings in the area provided their own parking and turning area in front of the site. While he stated that the areas are of a far smaller scale than the supermarket car park, he considered they reflect a similar arrangement of buildings set behind parking/turning¹⁹.
103. He considered, given the range of building sizes and materials in the local area and the hard-surfaced areas associated with each dwelling, the supermarket development would not be "*entirely out of place*"²⁰.
104. Mr Knott was, overall, 'content' that the proposed development responded appropriately to 16.10.2 for the reasons he particularised²¹. These included design to provide visual variety, design to ensure roof mounted servicing equipment was screened, safe pedestrian links, the building provided an active frontage towards the car park area and towards Birchs Road, as well as an attractively designed frontage towards Makybe Terrace. While car parking is for practical and crime /

¹⁸ Queenstown Lakes District Council v Hawthorn Estates 12 ELRNZ 320

¹⁹ Evidence of Richard Knott at para 5.8

²⁰ BOE at para 5.9

²¹ BOE at para 5.10

safety reasons located to the front of the supermarket, it integrated high quality landscaping within it.

105. He considered this contributed to the sense of place of the area, helped to define the surrounding streets as high-quality places and contributed to achieving a positive pedestrian experience. Additionally, it mitigated the impact of the proposed building, assisting with reducing its overall apparent bulk when viewed from the street and surrounding sites. Finally, he considered that the range of materials used for the different elevations would again assist with providing an appropriate appearance when viewed from public and private locations and reduce the apparent bulk of the building. This, in his view, contributed to the overall pleasantness and attractiveness of the surrounding streets.
106. Mr Nicholson's summary of evidence responded to the 'comparison' of the three existing buildings. He noted that the dwelling at 576 Birchs Road had a floor area of 556m², the childcare centre at 4 Barton Field Drive had 421m², the dwelling at 5 Loxley Place was 399m², which could be compared with the proposed Countdown supermarket of 3122m², excluding the café. He noted the proposed supermarket is an order of magnitude larger than the nearby buildings in the residential zone.

East Boundary

107. Mr Nicholson's evidence of 3 July 2020 described a service lane with a façade of approximately 51m in length and 6-7m high constructed out of precast concrete panels and that the elevation included refrigerated plant, roller doors and high level canopy over the loading area, and three small windows into the mezzanine floor offices²².
108. Mr Nicholson considered that the proposed 3m wide landscape strip and acoustic fence along the eastern boundary would not be sufficient to mitigate the scale of the industrial façade or the associated manoeuvring and unloading of heavy vehicles in the service lane²³. He considered best practice in this situation would be to fully enclose the service dock within the building, provide an acoustic fence and an 8m setback from residential neighbours, including a 5m landscape strip²⁴.
109. Mr Knott noted that the land immediately to the east is likely to be divided into a front and rear residential site and an access driveway was shown alongside the boundary of the application site serving the rear residential site. He considered that the landscape strip and driveway would provide a setback of 7m to the west boundary of the front residential site and a distance of 9m to the closest part of the

²² Evidence of Hugh Nicholson at para 4.2

²³ At para 4.3

²⁴ At para 4.5

building which could be constructed on that site. This would result in a minimum likely distance of 24m between any new dwelling on the front site and the supermarket building (excluding the canopy over the loading area)²⁵.

110. He considered that the provision of the 1.8m fence promoted by Mr Nicholson would significantly limit the ability of a future resident to have views of anything other than the articulated roof line of the supermarket buildings²⁶. He considered that the rear site could also incorporate the equivalent width of the driveway area into the lot and this would provide an opportunity for any new dwelling to be set back an equal distance off the boundary and for further landscaping within the lot to provide screening²⁷.
111. This ability for those lots to undertake such treatment reflects the view expressed by him earlier in terms of the ability for future developers to design to take account of the supermarket.
112. Based on that ability to achieve significant setback from the boundary of the application site, he considered the existence of the supermarket would have only a minor effect on the amenity of future occupiers on those two planned residential lots²⁸.

North Boundary

113. Mr Nicolson had concerns about the effects on the land to the north. This is the land owned by the Cooke Family Trust.
114. Mr Nicholson considered that the proposed mitigation was not sufficient to mitigate the adverse effects for future residential neighbours to the north, which in his opinion resulted from the industrial scale of the proposed supermarket and service yard activities and the lack of screening or landscape treatment²⁹.
115. Mr Knott noted the proposed supermarket building was located to the south of future buildings on that boundary. In his experience, it would be very likely that the owners and designers of the land to the north would seek to maximise the benefits of the northern aspect of their land and that would be one of the most important factors in designing the subdivision. This, in his experience, would lead to future dwellings orientating principal rooms away from the supermarket development³⁰.
116. While he acknowledged that any future residents choosing to look south towards the supermarket building would be able to view it as a large building beyond the

²⁵ Evidence of Richard Knott at para 5.13

²⁶ At para 5.14

²⁷ At para 5.15

²⁸ At para 5.19

²⁹ Evidence of Hugh Nicholson at para 4.9

³⁰ Evidence of Richard Knott at para 5.24

acoustic fence, he considered that the recessive appearance of the clear sealed precast concrete elevations and simplicity of the eaves and roof line assisted with not drawing undue attention to the building in this view³¹.

117. Again, Mr Knott's view was, given the land to the north had not been subdivided and the location of the supermarket would be factor taken into account when the area is designed, Mr Nicholson's concerns were not justifiable. He considered the existence of the supermarket would have only a minor effect on the amenity of the future occupiers of those lots³². In terms of the closest existing dwelling on that land, he noted it was located to the northeast of the proposed service yard and appeared to have a curtilage / garden associated with the dwelling of approximately 3500m². That included the driveway. The dwelling was located approximately 40m from the boundary of the application site and he noted the main outdoor space and outlook appeared to be towards the northwest. Overall, he considered the existence of the supermarket would have only a minor effect on the amenity of the future occupiers of the existing dwelling³³.
118. The Cooke Family Trust and Mr Lineham had lodged comprehensive submissions, which was summarised and particularised in their oral presentation on 29 July 2020. The presentation noted that the area was designated in the ODP for residential purposes and to have a supermarket wedged in what will be a central point of the eventual full ODP residential area is unfair on other landowners in the area who could reasonably expect to enjoy and develop their land for residential purposes on both sides of the site. They considered the site was an unsuitable shape which resulted in the siting of the buildings being tightly fitted together on the back of the proposed site and that no amount of window dressing in terms of building shape and planting would mitigate the 'environmental blot' resulting from such a large building in the middle of an area which was expected to be residential.
119. They objected to the height of the building and particularly the small proportion in the middle of the roof which is to be the platform for air conditioners. They considered the height would increase noise transfer to neighbours. They were very concerned in relation to the scale of the development compared to the baseline for non-residential use in the Living Z zone in respect of building height, road setback, maximum staff, gross floor area, landscaping and vehicle movements.
120. They considered the bulk of the building in relation to the site location and the site size was completely inappropriate for a residential area irrespective of *marginal*

³¹ At para 5.26

³² At para 5.27

³³ At para 5.28

changes to the western exterior design, the footprint had not changed and the bulk remained very similar. They were concerned about lighting from the car park, the hours of operation, signage and drainage.

South Boundary

121. The south boundary of the site is essentially to be formed by an extension to Makybe Terrace. There would also be an area of reserve.
122. The existing dwellings at 12 and 14 Caulfield Crescent will be adjacent to Makybe Terrace and approximately 18m from the supermarket building.
123. There was a significant difference of opinion between Mr Knott and Mr Nicholson in relation to the effects of the amenity enjoyed by the residents at 12 and 14 Caulfield Crescent in particular.
124. As noted above, I had the opportunity to go on to both 12 and 14 Caulfield Crescent. Both of those properties contain high quality dwellings designed to maximise indoor / outdoor flow. Both are very close to the proposed supermarket.
125. At 12 Caulfield Crescent, the dwelling and the outdoor living is all orientated directly towards the proposed supermarket.
126. In relation to 14 Caulfield Crescent, while that dwelling is orientated more towards north-northwest, the outlook certainly encompasses the proposed supermarket and car parking areas.

Submitter Concerns

127. I received considerable evidence from the residents of the most affected Caulfield Crescent properties. Mr Clark, who along with his family resides at 12 Caulfield Crescent spoke to the written submission. He recorded that they consider the siting of this supermarket, café and car parking is inappropriate. He considered the proximity to existing residential properties was unreasonable and the development is not suitable for the proposed site due to the major impacts on their property and neighbouring properties, tightness of boundaries, heavy traffic, noise and other existing matters impacting on the amenities of the area.
128. Mr Clark stated that they purchased the section in February 2014 in good faith, based on the plans of the street and sections within a residential subdivision, which were provided to them by the applicant. He stated that they did not build their “dream house” on the basis that a 3022m² supermarket with a 55m wall façade and large supermarket signage would be clearly visible over the north fence. Additionally, the service lane directly opposite their property would see large trucks exiting the development seven days a week.

129. Mr Clark stated that there was never any indication that the residential area would be changed to commercial zoning and that was not anticipated. They chose to live there because of a residential subdivision that met the criteria of where they wanted to live. Mr Clark noted that they were not opposed to the building of a supermarket in Lincoln in a correctly zoned area. He noted their living area was north facing, directly facing into the proposed development. He noted the proposed building facades are approximately 55m long and range from 4.4m to 8m in height and, based on the current plan, there is a distance of approximately 16m to 18m from the application site boundary.
130. After noting that Mr Foster at 6.11 of his evidence had accepted that in relation to traffic there would be some loss of amenity for the existing houses at 12 and 14 Caulfield Crescent and had offered mitigation, Mr Clark advised that they had not had any contact in that regard but in any event it would not address their concerns.
131. Ms Hartley from 8 Caulfield Crescent also presented at the hearing. Her concerns, very much in summary, related to staff parking potentially leading to blocked roads, emergency services and larger vehicles not being able to access certain streets and cars being forced to travel on the wrong side of the road to avoid parked cars. That was unacceptable and a major safety concern.
132. She also expressed her concern with the effects on children, noting that the lockdown had illustrated just how many children there are in the area. She noted that in their street alone there are children in almost every house, ranging from babies to secondary school age. These children enjoy walking, biking, scooting around the neighbourhood and at 3pm each day an influx of children arrive home from school safely walking through the streets.
133. She expressed real concern that if there was a 'constant stream' of Countdown staff driving round looking for parks, the safety of the children would be seriously at risk.
134. She also expressed real concerns in relation to the rail trail.
135. Mr Meier, from 14 Caulfield Crescent, identified concerns in relation to the master plan he had been shown when he purchased his property and statements being made that only small cafes and shops would be included within the subdivision. Again he expressed considerable concern in relation to the process and the effects this proposal would have.
136. Ms Hobby, who also resides at 14 Caulfield Crescent, spoke. She addressed concerns in relation to traffic and cycle ways with the major road being developed. She was concerned about about congestion. She noted that Makybe Terrace was

the main egress and was not designed for heavy vehicles. She expressed concern in relation to various matters, including inadequate landscape, signage, noise, building design, security and staff parking.

137. My site visit enabled me to better understand the concerns residents of those properties had in relation to the proximity to the supermarket and the use of the extended Makybe Terrace. Mr Nicholson's opinion was that the existing and potential residential sites on Makybe Terrace along the southern boundary would be significantly affected by the proposed supermarket and associated activities in terms of outlook, noise and lighting, particularly in the evening and weekends³⁴.
138. I acknowledge the evidence of the acoustic and traffic experts and that lighting appears to have been carefully considered. It is however difficult to escape a conclusion that the owners and occupiers of those properties will experience a significant and detrimental change to their amenity. That was, to a limited degree, acknowledged by the applicant's experts and Mr Foster in particular.
139. The applicant has offered the properties at 8, 12, 14 and 16 Caulfield Crescent to:
 - plant additional trees, at least 1.8m in height, along the boundaries of the above properties;
 - liaise with Kamo Marsh, Landscape Architects, with regard to tree types and positioning to ensure the tree planting on the reserve does not block the sun from the above properties; and
 - replace the existing fences at 12, 14 and 16 Caulfield Crescent with a 2m high acoustic fence and reinstate any damage to planter boxes and gardens arising from the construction of the fence.
140. I acknowledge that offer may go some way to address the direct effects, but in my view does not significantly mitigate the amenity effects on the occupiers of those properties.
141. Mr Nicholson did not assess the mitigation offered by the proposed reserve in his evidence. I did however ask him about that. He considered that, if the reserve is taken into account, that would provide some mitigation for the concerns relating to the car parking area only and did not address the issues in relation to the southern side of the supermarket itself.

West Boundary

142. The west boundary of the development is formed by the frontage to Birchs Road.

³⁴ Brief of Evidence of Hugh Nicholson at para 4.18

143. Mr Nicholson described the land to the west of Birchs Road, noting its zoning Living Z. He identified that Birchs Road was a relatively busy one, with associated traffic noise and street lighting and that the road corridor was 20m wide.
144. He considered the outlook from the residential area across Birchs Road would include the proposed 167 space supermarket car park, with lighting columns, a covered walkway and a 9m (I note this has now changed to 8m) tall illuminated sign with the supermarket behind.
145. In essence, he considered the proposed landscape strip along the boundary of Birchs Road is too narrow to be effective and that there is insufficient landscaping within the car park to mitigate the extensive hard surfaces, car park lighting and traffic movement³⁵.
146. Mr Knott described the character and appearance of Birchs Road local to the application site as being formed by a number of factors, including topography, recent residential development, dwellings fronting the street behind low hedges, three rail fences or higher closed boarded fences, dwellings often having areas of parking and hard surfacing between the house and the street, dwellings generally clearly in view from the street, a few trees within front yard areas and no street trees and footpaths directly abutting the carriageway, with a narrow rear berm alongside site frontages.³⁶
147. He considered that the proposed landscape treatment along the site frontages was typical of the area and respects the character of the surroundings, together with a limited number of trees which provide further softening of the frontage. Overall, he considered the car park would not appear overly dominant in views from the street and would provide an appropriate outlook from the dwellings located to the west of Birchs Road. He considered the effect on neighbours opposite would be comparable to the potential three or four houses with their own hard surfaced car parking and vehicular accesses that would otherwise be expected.³⁷
148. While I acknowledge and accept Mr Knott's description of the local area in terms of road frontages, I do not accept his opinion that the effects on those residing to the west of Birchs Road would in essence be similar to a three or four dwelling house situation. The residents in those properties will overlook a large car parking area, signage and a large-scale supermarket.

³⁵ Evidence of Hugh Nicholson at para 4.14.

³⁶ Evidence of Richard Knott at para 5.32

³⁷ At para 5.33

149. I consider Mr Nicholson's assessment to be more appropriate. In terms of visual amenity, I accept that, due to the intervening road, those effects are likely to be minor.

Pedestrian Environment

150. Mr Nicholson had concerns in relation to pedestrian movement routes within the site, to the wider area and around the site. He was of the view that the proposed pedestrian routes provide logical access to the site from Birchs Road and the southern half of the car park, but there was no pedestrian access provided from the northern half. He considered that, as a minimum, a further east / west pedestrian route with pedestrian crossings would be required in the northern half of the car park connecting to the supermarket.
151. Mr Knott did not agree. He considered that, apart from 16 car park spaces located to the north of the route that service vehicles will use, the majority of the car park will be a very low speed environment and from most of the car park spaces customers would be able to safely walk along the vehicular aisles. He accepted that from the 16 spaces to the north of the main service route access to the supermarket would be more difficult. Given the impact in terms of available car park spaces and that the additional access would benefit users of less than 40 spaces, he could *"see no significant benefit of the additional pedestrian route, and the disbenefit of the loss of parking space"*.
152. Overall I consider the proposed internal pedestrian routes are acceptable.
153. In terms of footpaths along Birchs Road and along the Makybe Terrace extension, Mr Nicholson considered that if consent were to be granted, construction of these paths should be a condition of consent. Mr Knott agreed, but noted they would not be on the application site although the applicant could offer a condition in that regard.
154. Clearly, if consent were to be granted, this issue would need to be addressed.

Architectural Treatment

155. In terms of the architectural treatment, Mr Nicholson acknowledged that the revised architectural treatment of the proposed supermarket was a significant improvement from that originally proposed, but remained of the view that the building was still significantly large and uses and materials and over scaled signage would still not reasonably be anticipated in a residential zone with adequate setback and landscape treatments.

156. Mr Knott did not address this issue in any detail as a specific matter. He considered that the 'minor effects' of the proposed building on neighbours and its suitability for the site had been addressed in his earlier responses which I have outlined above.
157. In terms of architectural treatment, undoubtedly what is now proposed is significantly better than that initially sought.
158. The degree of modulation, different use of materials and other treatments significantly break up the visual effect. Its scale remains, in my view, one that is not anticipated in the residential zone. Largely as a result of that scale, its overtly commercial appearance and the constraints of the site in terms of its width, the building itself has adverse effects on character and amenity. This is particularly so for those residents of the Caulfield Crescent properties identified earlier.
159. Signage was addressed by Mr Nicholson and Mr Knott. Mr Nicholson was concerned that the pylon sign was overly large, and it should be reduced by 33%. Mr Knott had some sympathy for that view and considered that the sign should be reduced to 8m in height in order to sit comfortably within the local area.
160. In my view, the pylon sign and overall signage add to the overall adverse effects on amenity generated by the proposal.

Active Frontages

161. Mr Nicholson addressed this in paragraph 10 of his evidence, Mr Knott in his paragraph 11.
162. Rule 16.10.2.4 directs that Council considers the extent to which the development provides ... active frontage and verandas along the street boundaries and main pedestrian routes where practicable.
163. Mr Nicholson considered that the proposal provided a relatively attractive pedestrian frontage with an outdoor seating area, glazing, footpaths, bike racks and canopies along the western façade and outside the café and the main entrance, but that there was no active frontages along either Birchs Road or Makybe Terrace. In his view, a wider landscape strip along the boundary and more green space within the car park and more large trees would contribute to the Birchs Road frontage providing a "*pleasant park like*" appearance for traffic arriving and leaving. Makybe Terrace he considered to be more problematic in that there was no other form of activation along the street edge. He considered this section of Makybe Terrace would be "*blighted*" and would be unpleasant to walk or cycle along.

164. Mr Knott considered, taking into account the constraints of the site, such as its width, and the business requirements, including the need to avoid excessive solar gain and provide for a flexible interior, the activation was sufficient.
165. His evidence was the only way to achieve further ground floor glazing would be *“sleeve the supermarket building with smaller retail units”*. He noted that the width of the site was constrained and incorporating additional units on the southern side of the supermarket building would come at a cost of reducing the overall area of the supermarket itself. He stated this was not a viable option.
166. Given those matters and taking account of the desire to provide an active frontage towards the car park, he considered it ‘inevitable’ that an active frontage could not be provided to Makybe Terrace. He considered the significant thought and attention that had been given to the detailed design of the southern elevation would result in the building not being viewed as a single large mass and that was supported by landscaping and the provision of a green wall.
167. The lack of active frontage along Makybe Terrace does, in my view, contribute to the amenity effects, particularly in relation to visual amenity. The residents at 10 – 14 Caulfield Crescent will be overlooking a substantial and clearly commercial building.

Landscape

168. In terms of landscape treatment, this was addressed by Mr Nicholson, who holds a qualification in that area, and Mr Kamo. Mr Knott did not address it, rather leaving it to Mr Kamo.
169. Mr Kamo has been a Landscape Architect with Kamo Marsh Landscape Architects for 16 years.
170. He addressed the key changes in relation to the landscape treatment proposed. He identified these as increasing landscaping amenity across the site and the inclusion of the recreation reserve to the southern edge of the site.
171. In relation to the car park design, he noted the changes included an increase in specimen trees, hedging and shrub planting within and adjacent to the car park site. The updated proposal now includes 32 specimen trees across the site, not including those within the proposed reserve area. He considered the increased landscaping combined to break up the car park area and provide further screening of the development and also helped to reduce the effects on the wider visual amenity of the car parking area.

172. He noted that pedestrian connection had been strengthened through a significantly wider covered footpath across the car park which would connect Birchs Road to the supermarket entrance and café, ensuring a safe and more considered pedestrian solution.
173. He addressed the amended design in relation to Birchs Road and Makybe Terrace treatment noting the increased planting width within the landscaped buffers on those frontages to provide a green buffer between 3.2m – 10m wide to Birchs Road and 3m – 5m to Makybe Terrace. This consists of low hedging, native shrubs and groundcovers to a height that will mitigate views of parked cars and specimen trees to break up the development beyond.
174. Mr Kamo also noted that the updated proposal included hard landscape elements, which were to provide a stronger degree of connection to the neighbouring Flemington development and the wider Lincoln township through the use of locally sourced stone walling and timber post and rail fencing to achieve an increased landscape amenity and a sense of place.
175. In terms of the reserve, he noted that the reserve to the south of Makybe Terrace had more than doubled in size and extended out to the Birchs Road and Makybe Terrace intersection. He was confident that this was included in the application site and would occur in conjunction with the supermarket development, creating a “park-like” entrance to the development, with the indicative design showing large open lawn space and footpaths beneath medium to large specimen trees.
176. Mr Nicholson remained concerned with the overall landscape treatment. As identified earlier, Mr Nicholson’s evidence disregarded any proposed mitigation outside the application site boundary. That was explored and discussed in my questioning of Mr Nicholson and he acknowledged the benefits of that in relation to the carpark.
177. Overall he considered the landscape treatment did not mitigate the adverse effects. He considered the proposed landscape strip and post and rail fencing along the western part of the northern boundary would not provide sufficient mitigation for the adjacent residential land to the north from the adverse effects associated with the supermarket car park, which would open seven days a week from 7am to 10pm.
178. He noted from the residential areas to the west of Birchs Road the view would include the proposed supermarket car park with lighting columns, a covered walkway and an illuminated sign, with the supermarket behind it. While he noted that Birchs Road is relatively busy and the effects on the residential neighbours on the western side would be correspondingly less, they would have a reasonable

expectation of a well landscaped and visually attractive supermarket car park across the road. He considered it was too narrow to meet that expectation.

179. In relation to the three existing residential properties to the south at 12, 14 and 16 Caulfield Crescent and the one proposed residential neighbour to the east, he considered that those persons would be significantly adversely affected in terms of amenity.
180. Mr Nicholson considered that the proposed trees were too few in number and too small in size. He did not consider Lancewoods to be suitable as individual specimen trees. His estimate of the total area of planting within the car park, excluding the boundary planting strips, was 3-4% of the car parking area, which he considered would not be sufficient to mitigate the adverse visual effects of the extensive hard surfaces, lighting and structures associated with it.
181. In terms of the proposed landscaped strips along the street boundaries. He remained of the view that they were too narrow and the planting too low to mitigate the adverse visual effects of siting a 167 space car park and the industrial scale building in a residential context. He considered that the small-scale planting, hedges, stone walls and post and rail fences would be appropriate around and within the car park.
182. Mr Nicholson was concerned about the proposed green wall and its likely success. Mr Kamo was confident that that could be successfully established, notwithstanding its southern aspect.

Assessment of Landscape Treatment

183. By the time of the hearing, the applicant had made further changes. As noted by Mr Nicholson, it was now on to the sixth version.
184. One of the issues that I see in relation to the proposed landscape treatment is that there is an inability to screen the car park and the building from the surrounding properties. This is as a result of both the scale of what is proposed and other issues in terms of a need for visibility and safety issues.
185. There is no doubt the applicant has taken significant steps to mitigate character and amenity effects through its landscaping proposals. The proposed reserve, while being outside of the supermarket bounds, is nevertheless put forward as part of the proposal. That does in my view have real benefits from a landscape perspective from that viewpoint. It is not however without issues. Mr Peter, from 11 Caulfield Crescent, which is adjacent to the reserve, considered it to be of no value and would have issues in terms of shading and also noted that he had

anticipated there would be houses between his property and Birchs Road. Shading on other properties in Caulfield Crescent is also a potential effect.

186. Overall, I consider the landscape treatment proposed is useful in terms of mitigating a number visual effects. However, given the scale of this proposal in a residential context, and in the context of the relevant objectives and policies which I address subsequently, it does not address all relevant amenity concerns.

Noise

187. Concerns about noise were raised by a number of submitters. A number of comments were made regarding the 'quiet residential area' that the neighbours currently enjoy. Issues were raised in relation to the ambient noise measurements and the hours of operation.
188. Mr West had prepared a noise assessment report of 29 July 2019. He also provided an RFI response dated 9 September 2019 and 2 April 2020.
189. In Mr West's evidence, he explained the use of alternative limits to those used in the Operative Plan. He considered that those noise limits and associated metrics were representative of the most up to date guidance related to the onset of critical health effects. He considered they would provide for an acceptable level of amenity and were consistent with typical guidelines for noise in a developing rural / residential environment.
190. He considered noise from vehicle activities would comply with proposed day time noise criteria, noting that the application did not provide any provision for activity during the night-time period, which on his alternative metrics was from 2200 to 0700. He noted the application did not include activity during the night- time period as he specified, apart from mechanical noise.
191. He noted that, compared to the District Plan Day Time Noise Standards, the predicted noise levels exceed the permitted noise standard by 2dB at 12 and 26 Caulfield Crescent and up to 3dB at 560 Birchs Road. This was as a result of vehicle activity. In terms of the 1-2dB increase, he considered that was generally imperceptible and, given that noise level was generated by the movement of heavy vehicles, when they are not present it was expected that noise levels would comply with the District Plan limits. In terms of the 3dB increase, he described that as just perceptible and that, given the proximity to Birchs Road, he anticipated it would be difficult to distinguish between traffic noise on the public road network and the vehicle noise from the supermarket site.

192. He considered the combination of operational restrictions on delivery and service vehicles, the use of noise control fences around the loading bay and broadband alarms on forklifts would provide best practicable mitigation for residential sites surrounding the supermarket loading bay area. He noted that the mechanical plant would operate during the night- time and would be designed to a level 10dB below the proposed noise limit and that overall the noise effects from the site would be acceptable in nature.
193. Dr Trevanthan of Acoustic Engineering Services Limited provided a peer review of 6 July 2020 and provided a summary of his conclusions at the hearing. He agreed with Mr West in relation to the relevant noise limits in the Operative District Plan. He considered the LA10 metric to be outdated and the night- time 35dB limit to be unusually stringent. He noted the daytime period starts later and finishes earlier than usual.
194. He considered that the point of reference for the consideration of noise effects suggested by Mr West be appropriate and realistic. He agreed that noise levels of up to 55dBLAeq from 0700 hours were acceptable in the environment, but that would mean that there was a large non-compliance with District Plan 35dBLA10 noise limit during that 30 minute period. Dr Trevanthan advised that Mr West's analysis suggested that the development could readily comply with the proposed daytime limit between 2000 and 2200 hours if undertaken in accordance with the application. Overall, he considered the noise effects of the development to be minimal but in discussions he did advise there would be additional sounds which would be audible, with heavy trucks being the most noticeable.
195. He identified the key mitigation measures as:
- any forklifts on the site being fitted with broadband alarms
 - a 2.5m high acoustic fence being located around the supermarket loading bay
 - service vehicles and deliveries and use of forklifts only occurring during 0700 to 1900 hours
 - all mechanical plant noise being limited to 35dBLAeq at all neighbouring site boundaries.

Evaluation on Noise Issues

196. Having considered the matters raised by the submitters, both in their submissions and in the course of the hearing, and having had the opportunity to consider and explore the evidence of the acoustic experts, I consider that noise effects, by themselves, are likely to be less than minor. There will be a perceptible change in the noise environment for a number of the submitters. Those effects form part of

the overall change to amenity which this activity would bring to the adjacent residential occupiers.

Transport

197. A traffic assessment report was provided by Stantec. It was dated 30 July 2019 and addressed the application as originally proposed, including the childcare centre.
198. In terms of the supermarket, based on survey data from a number of Countdown supermarkets across New Zealand, it noted the data suggested the pm peak trip rates of around 10.6vph per 100m² gfa can be expected. It identified a pm peak hour trip generation of 325vph, but noted that many of those visiting the store will be drawn from traffic already travelling on the adjacent road network, identifying that approximately one third of traffic would already be passing the site on Birchs Road, but the remaining two thirds were expected to be new traffic on the network. It considered that the café would have an overall trip generation of 10vph but noted that many of the trips would coincide with supermarket trips.
199. Mr Whittaker's evidence described the site location and the road environment, noting that Birchs Road is classified as a collector road carrying approximately 6500 vehicles per day. He noted that the Birchs Road carriageway formation comprises a single traffic lane in each direction, kerbside parking, footpaths on the western side and a shared path on the eastern side, abutting the site, which forms part of the Prebbleton to Lincoln 'rail trail'. He noted the shared path is formed to around 1.5 wide along the site but is proposed to be widened and upgraded as part of the development proposal. He also advised that the speed limit was 50km/h.
200. In terms of the proposed development, he noted that the vehicular access would be provided by a two way drive off Birchs Road, accommodating customer entry / exit and service vehicle access, and via two separate site driveways off the newly formed Makybe Terrace which would provide for customer entry / exit and a dedicated service vehicle exit only driveway. He considered the location and design of the site driveways were appropriate and logical and that through development of a suitable detailed design were capable of providing safe access and egress onto both Birchs Road and Makybe Terrace.
201. A number of issues were raised by submitters in relation to traffic matters. Mr Whittaker noted that the key issue raised with regard to transportation matters related to safety concerns for vehicles / pedestrians / cyclists on the network, or traffic congestion and poor network operation performance.

202. In terms of road network performance, he considered that some drivers may experience longer delays in making right hand turns into Birchs Road from side streets and driveways. He considered the supermarket driveway on Birchs Road, as well as the new Makybe Terrace intersection would operate with a very good level of service A or B on all the movements during the site's peak activity period. In terms of effects on residential driveways, he considered that an appropriate outcome can be achieved. In terms of Birchs Road, the detailed design arrangements which will be subject to a safety audit and certification from Council.
203. In terms of increased heavy vehicles, he considered Makybe Terrace to be developed to a standard consistent with the Council provisions. He identified that the supermarket was expected to generate around 20-25 service vehicle movements per day, which would include a range of vehicles.
204. In terms of pedestrian safety, he noted that many of the submissions describe a perception that the existing pedestrian environment in the vicinity with the site will be significantly compromised. He noted that, with the expectation that the proposed activities on the site will generate additional pedestrian trips on the adjacent network, submitters had asked for further detail on the proposed pedestrian environment and for confirmation of a formal crossing point on Birchs Road adjacent to the site, particularly in view of the number of school children in the vicinity.
205. He advised the concept designs provided in his report are indicative only and, while acknowledging that changes within the road reserve were outside the applicant's control, he expected that as part of the detailed design work for the changes to Birchs Road adjacent to the site, provision could be made in terms of a formal crossing point and pedestrian refuge.
206. Mr Whittaker then addressed the Birchs Road driveway and impacts on the rail trail. This was a matter raised by several submitters. He noted that commercial driveways that connect with shared paths are not unusual and that there were several industry documents available that give design guidance on good practice. He advised the proposed Birchs Road driveway had been specifically designed to include a narrowed vehicle entry / exit for car park traffic in order to reduce the crossing width for such movements and required vehicles to approach the shared path at a perpendicular angle, which would provide improved visibility of pedestrians and cyclists on the path.
207. He considered that those steps, along with measures to appropriately delineate the rail trail/ shared path would ensure a suitable and safe outcome for all users.

208. He addressed staff parking, noting that the applicant was willing to accept a consent condition to implement a parking management plan. He considered this to be appropriate.
209. He also noted that submitters had raised concerns around access for emergency vehicles on Birchs Road and Makybe Terrace. He considered the proposed arrangements would fully and appropriately accommodate emergency vehicle access.
210. Mr Whittaker addressed traffic amenity and the concerns expressed by Ms Anderson in relation to traffic amenity effects. He advised that the proposal was not dissimilar in scale or vehicle composition to other established supermarket developments located within residential areas and repeated that he considered the vehicle movements generated could be adequately and safely accommodated. Overall, he concluded that the proposed development could be established in a safe and appropriate manner.
211. Mr Carr, a director of Carriageway Consulting Limited, provided expert evidence as part of the S42A Report. In his written evidence, he discussed concerns he had previously identified in relation to the swept paths provided, which show that a large truck travelling from the site towards Birchs Road would cross the centreline and intrude into the right-turn lane. He noted this remains the case as no changes were made in that part of the layout. He remained of the view that either the applicant should widen the carriageway of Makybe Terrace or limit the times when large vehicles exit the site to times when there is little potential for the truck to encounter an opposing vehicle.
212. Mr Carr also provided a response to submissions. He agreed that the proposal would lead to higher traffic volumes, but considered that the forecast flows could be accommodated on the roading network and would not result in adverse effects arising that were more than minor, even at times of peak flows. In terms of traffic safety, he agreed that adverse road safety effects were unlikely to arise.
213. In terms of the submitter concern that the development would lead to adverse effects on Caulfield Crescent, and terms of access for emergency vehicles, he did not consider the roading layout dimensions would prevent the passage of larger vehicles. As to staff parking on roads, he considered the parking provided on site to be sufficient for both staff and customers, although he did note that he was aware of anecdotal information that staff parking at supermarkets does occur on surrounding roads. He considered that could be addressed through a standard review clause.

214. In relation to the increased traffic flows adversely affecting the rail trail, he proposed conditions requiring detailed plans which would be subject to a road safety audit. He suggested a number of conditions in his written summary, and in discussions during the hearing.
215. He identified that Mr Babe had indicated that around 200 people per day use the shared pathway and that most were commuters. He considered that would suggest peak volumes of around 30 people per hour. He also considered it important to note that this is a vehicle crossing, therefore vehicles must give way to pedestrians and cyclists, not the other way round. He considered the vehicle crossing can and should be designed in such a way to reinforce this. This could include a raised crossing. He also noted that in some cases peak times on the cycle route would not correspond with peak times of the supermarket. In his experience, the rail trail would be busiest during the morning and evening weekday commuter peak and during weekday afternoons. He considered restricting delivery vehicles to off peak times would provide a suitable mitigation to eliminate conflict between trucks and rail trail users.
216. Mr Carr was however concerned that the applicant had only provided drawings of the proposed changes to the roading networks at a generally low level of detail. He considered this to be an unusual approach for a resource consent application. He advised, orally, that he had considered recommending decline on the basis of that lack of information, but in the end considered that was not an appropriate recommendation.

Submitters

217. Traffic concerns were a common feature of the submissions in opposition. These related to safety and the perception of safety and amenity, with a number of submitters noting that they would no longer let their children use the shared pathway if the supermarket were to proceed. Real concerns were expressed in relation to heavy vehicles turning left off Birchs Road into the site and the risk to pedestrians and cyclists being within the blind spot of those heavy vehicles. Reference was made by a number of submitters to a recent tragedy in Springs Road where a cyclist was killed by a left turning heavy vehicle.
218. Ms Burgess noted traffic as her primary concern, particularly the impact on their driveway and their ability to turn right. Their driveway is located directly across the road from the proposed Birchs Road entrance.
219. She sought greater clarity in relation to what the applicant proposed in relation to the upgrade of the rail trail path, but in any event considered widening the path did not adequately mitigate the adverse effects. In terms of the rail trail, she expressed

a concern in relation to the interruptions which users of the rail trail would experience on that section and safety.

220. The Cooke Family Trust noted that, having lived at the property since 2003, they were aware of the current and growing traffic risks. They were concerned in relation to the movement of traffic travelling north and turning right into the supermarket car park, considering this would require the addition of two turning lanes in the middle of the road. They noted that their driveway was 4m from the proposed supermarket car park entrance and that currently they have to take particular care to stop and check the cycleway and the roadway before driving out and those risks would be significantly increased.
221. They again provided commentary in relation to the cycleway risks, noting how careful they need to be when arriving at their entranceway from the north and they noted it was very easy for cyclists to be in a blind spot and considered it would be even harder for a B-train driver. Again, when leaving their property, they advised it was very easy to miss seeing a cyclist. They expressed concern about irregular users of the proposed entranceway not displaying the appropriate degree of caution.
222. Ms Hartley summarised the concerns expressed by many in relation to road safety for children, with the area being used by young children and increased traffic and parking on surrounding streets would be contrary to the safe use.
223. Mr Babe, the chairperson of the Christchurch-Little River Rail Trail Trust provided helpful evidence in relation to the rail trail and its usage. He noted that the rail trail was well used, with an average of *“a few more than 200”* a day, with a number of the users being school children. His evidence was that at weekends there were always families with young children out together using a bike track that feels safe. He described it as much more than a tourist attraction but provided infrastructure for local trips. He expressed a concern about the impact on that. He noted that the continuing, and hopefully expanding, use depended on peoples’ perception of safety. The proposed crossing of a supermarket entrance would reduce the perception of safety to cyclists.
224. Mr Peter raised concerns with the rail trail and the effect this proposal would have on its users. He was also concerned about staff parking on the surrounding streets and the noise from the additional traffic.
225. Ms Anderson in her S42A Report identified that neither the Stantec report nor the Carriageway report consider the traffic amenity effects of constructing *“a commercial development within the Living Z zone”*. The traffic amenity resulting from the number, scale, type and location of vehicle movements may include glare,

vibration, reversing signals, safety and access issues and visual intrusion of vehicles at various times of the day and night.

226. She noted that the District Plan provides for non-residential activities in the living zones, subject to the activity being of a scale that is consistent with the surrounding residential amenity. She identified the rules, including Rule 10.8, which seeks to restrict the number of vehicle movements to 40 per day plus four heavy vehicle movements per day on collector roads (Birchs Road) and 20 vehicle movements a day on local roads (Makybe Terrace). She considered the identified numbers of traffic movements sought to reflect the anticipated residential amenity and was based on the scale and nature of effects normally associated with households and residential activities. Those restrictions on traffic movements sought to maintain the traffic amenity effects from non-residential activities. She identified here the peak 325 vehicle movements per hour during pm peak, with a third of all traffic and all service vehicles exiting onto the adjacent local road, Makybe Terrace.
227. She acknowledged that the existing amenity of the application site and surrounding residential environment was influenced by the proximity to Birchs Road, but the proposed supermarket would result in a significant number of vehicles utilising Makybe Terrace adjacent to the northern boundaries of the Caulfield Crescent properties, including service vehicles. She noted that the applicant had estimated there would be approximately 98 vehicles per hour using Makybe Terrace through the afternoon peak period.
228. Ms Anderson addressed this largely as an amenity issue, while noting that pedestrian and vehicle users of Makybe Terrace may also be considered to be affected by service vehicles impeding safe passage.

Evaluation

229. I have carefully considered all of the matters addressed above. I have two traffic experts who consider that the effects on traffic safety are likely to be minor. I note Mr Carr has residual concerns including the lack of detail as to precisely what is proposed.
230. From a traffic safety perspective, it appears that the design and review process will ensure that such effects will be less than minor. It is somewhat difficult for me to fully consider and determine that issue when the traffic design plans are indicative only. The design and review process does not address the issue of the perception of safety, which has been clearly expressed by the submitters, nor does it address the issue of impacts on amenity from the generation of significant amounts of traffic, particularly on Makybe Terrace.

231. I acknowledge that a perception not based on facts is not an effect of itself. However, in this case the perception of safety appears, on Mr Babe's evidence, to be critical to the ongoing use and expansion of the rail trail, which is an asset clearly valued by the community.
232. Overall, I consider that the traffic safety effects are likely to be able to be addressed and managed appropriately through the detailed design, review and certification process, but the effects on amenity will not.
233. I accept that Birchs Road has appropriate capacity and, subject to Mr Carr's reservations, Makybe Terrace would be capable of accommodating the traffic generated.
234. However, the volume of traffic generated by this proposal will, in my view, have adverse effects on those residential properties bordering Makybe Terrace in terms of their overall amenity. The traffic generated by this proposal is not of a scale which reflects the relevant objectives and policies of the Plan.

Retail Distribution / Economic Effects

235. The original application included an economic assessment of what was initially proposed. This was for a 1500m² Fresh Choice supermarket, with a service station, pharmacy, café and community services tenancy.³⁸ An addendum was provided following the applicant's decision to proceed with the larger Countdown Supermarket. That noted that the increase in size did not change the conclusions of the initial report and that it would have significant economic benefits and no economic cost.³⁹
236. The Council engaged Mr Tim Heath from Property Economics to provide a peer review. He noted that for flow-on effects to be able to be considered under the RMA, they must go beyond direct competition effects, to those affecting the role, function, amenity and viability of the centre. Mr Heath referenced the Discount Brands cases⁴⁰. He considered the proposed supermarket would result in a direct trade impact on the existing supermarket, but that any trade diversion effects were likely to be offset by market growth in Lincoln within five years. He noted the proposal would result in further fragmentation of the retail provision in Lincoln and inefficiencies in the market, but considered the inefficiencies were not likely to reach a level where economic inefficiencies / effects in conjunction with trade

³⁸ Urban Economics, Economic Assessment of Proposed Supermarket, Lincoln, 20 February 2018.

³⁹ Urban Economics, Addendum to Economic Assessment of Proposed Supermarket, Lincoln, 8 April 2019, page 2

⁴⁰ Northcote Main Street v Discount Brands Limited High Court, CIV 2003-404-5292 and Discount Brands Limited v Westfield (New Zealand) Limited [2005] 2NZLR 597(SC)

diversion effects could be considered to result in significant distributional effects on the Lincoln town centre.

237. After an unsuccessful attempt to have Mr Heath join the hearing by way of ZOOM, I issued a Minute with a series of questions for Mr Heath, which he responded to by way of memorandum dated 14 August 2020. This addressed the matters of clarification that I had.
238. It also addressed a question I had in relation to Covid-19 and in particular whether the predicted economic impact of that may impact on the robustness of any of the projections. Mr Heath advised that it was not possible to quantify with precision and confidence what the impacts would finally be on the growth projections and expenditure levels in Lincoln. He noted that, while a recession seemed inevitable, the depth and duration of recession and the characteristics of the recovery are highly uncertain and it was not possible to quantify with precision and confidence what the impacts would finally be on the growth projections and expenditure levels in Lincoln.
239. I asked Mr Heath about to the inclusion of the pharmacy. Mr Heath noted that the inclusion of the specific internalised pharmacy section was not an aspect specifically considered in his retail assessment. He noted it was an emerging trend in supermarkets. He considered trade competition effects would likely be spread across all three existing pharmacy and personal care goods retailing store types identified in the centre audit but were unlikely to result in any single store closing. Any such impacts of this aspect of the proposal were in his view likely to be confined to trade competition effects only.
240. I raised a question in relation to comments Mr Heath had made in relation to fragmentation. His evidence was that the reality is the development has to result in increased fragmentation of the market, given the supermarket's proposed location on the fringe of Lincoln's urban centre, and fragmentation of a market leads to market inefficiencies and loss of a market's economic effectiveness.
241. Ultimately he considered that, while this was a negative factor of the proposal, it was not an aspect on which the application either rises or falls, but forms part of the retail economic impacts consideration process which needs to be balanced against other positive and negative attributes the application would likely bring to Lincoln. These positive impacts were summarised at page 23 of his report and included increased local employment opportunities (which he noted was of increased importance post Covid), reduced retail leakage and increased market

size of Lincoln to retain spend overall (i.e. more money in the local Lincoln economy).⁴¹

242. Pursuant to s104(3)(a)(i), I must not have regard to trade competition effects.
243. In general terms, effects must be “*significant*” before they can be regarded as beyond effects normally associated with trade competition. Blanchard J in Discount Brands⁴² stated:
- “The Court of Appeal considered that only ‘major effects’ needed to be considered since only then would the effect on the environment be more than minor in terms of s94(2)(a). But in equating major effects with those which were ‘ruinous’, the court went too far. A better balance would seem to be achieved in the statement of the Environment Court which Randerson J adopted, that social or economic effects must be ‘significant’ before they can properly be regarded as beyond the effects ordinarily associated with trade competition or trade competitors.”*
244. On the evidence before me, and the reports and response from Mr Heath, I conclude that there are no significant retail distribution effects.
245. The issue of trade competition was raised by Ms Appleyard in another context in her opening submissions. This related to the submission by the Cooke Family Trust and the commercial background between that trust and the applicant.
246. Ms Appleyard suggested that the submission itself was not entirely effects-based and covers matters which go beyond the scope of assessment under the RMA – akin to trade competition effects.⁴³
247. Ms Appleyard did not explore this issue further in closing. For the avoidance of doubt, I do not consider the Cooke Family Trust to be a trade competitor in terms of s104(3)(a)(i).

Fragmentation from a Spatial Perspective

248. Mr Nicholson remained concerned in relation to fragmentation from a ‘spatial’ perspective. In Mr Nicholson’s summary of evidence, he accepted the evidence of Mr Heath regarding the capacity of the Lincoln retail catchment to support a second supermarket, and that there was insufficient land currently zoned for commercial use within the Lincoln Key Activity Centre (**KAC**) to support a modern supermarket.⁴⁴ Mr Nicholson noted that Mr Heath agreed that the proposed supermarket would fragment the retail offering and that the proposed location would lose the economic benefits of having an additional supermarket located in

⁴¹ Response to Commissioner’s economic questions, 14 August 2020 at para 6

⁴² Discount Brands Limited v Westfield (New Zealand) Limited [2005] 2NZLR 597

⁴³ Opening Legal Submissions on behalf of Applicant, 28 July 2020 at para 59

⁴⁴ Summary of Evidence at para 1.2

the town centre. He considered the application site to be too small to accommodate the proposed supermarket, café and associated facilities, together with appropriate setbacks required to mitigate the adverse effects within the residential setting and considered it would be appropriate to undertake a comprehensive study of alternative spatial locations for a second supermarket before making a decision on this resource consent.

249. I accept that this proposal would, if granted, result in a spatial fragmentation of the retail offering. It clearly, on the evidence, does not amount to a retail distribution effect. From a spatial perspective, it remains of some relevance to my decision making, but it is not one I have given any weight to.

Alternative Sites

250. Several submitters raised the issue of alternative sites. As noted, Mr Nicholson suggested a comprehensive of alternative spatial locations before deciding on this resource consent application.
251. Mr Shaw, for the applicant, provided evidence in relation to site selection. He is the Property Development Manager for Woolworths New Zealand Limited. His role involves the development of Countdown supermarkets, including the identification and acquisition of new sites and management of the design, consent, and construction processes.
252. He discussed the 'Woolworths development philosophy' and identified the site and design requirements, noting that for a supermarket to be successful it must be considered by the customers to:
- (a) be convenient;
 - (b) be accessible;
 - (c) be visible;
 - (d) provide a good product offer in a well laid out store; and
 - (e) be proximate to the catchment population.⁴⁵
253. Mr Shaw noted that, while Woolworths often looks to develop its supermarkets in existing centres, its site selection assessment is driven by design requirements and the catchment that the supermarket will serve. In terms of this supermarket, it was determined that the most suitable site was outside of the Lincoln town centre. He explained the investigations which were undertaken into alternative site options outside the town centre before selecting the present site by virtue of its location, accessibility, visibility and green fields nature as it presented the most viable option

⁴⁵ Statement of Evidence of Oliver Shaw at para 5.1

for a second full sized supermarket within Lincoln. It was a convenient shopping location for commuters.⁴⁶

- 254. Ms Appleyard also addressed the issue of alternative sites in her reply submissions.⁴⁷ Ms Appleyard noted that several submitters, e.g. Mr Meier and Mr Peter, had suggested alternative sites.
- 255. Ms Appleyard, very much in summary, submitted that both Council and the applicant have had appropriate regard to alternative locations as required under the RMA and no further assessment was required or necessary.
- 256. Overall, I accept Ms Appleyard's submissions in this regard. I have focused my assessment on this application on this particular site. The applicant appears to have undertaken a process to identify alternative sites. Whether there are better and available alternative locations is not an issue for me to determine.

Contamination

- 257. As noted by Ms Anderson, the LLUR identifies the land as a HAIL site type A10 – Persistent pesticide bulk storage or use.
- 258. She noted that the applicant had provided a Detailed Site Investigation report identifying areas where the contaminants exceeded the expected background levels, which were outside the area of the proposed supermarket. Given that location, she considered that any potential adverse effects associated with contamination would be less than minor. I agree.

Property Values

- 259. Some of the submitters raised concerns regarding the potential devaluation of their properties located in proximity to the proposed development. I acknowledge their concerns are genuinely held, particularly given the level of investment a number of the submitters have made in developing their homes.
- 260. The applicant, through Mr Foster, provided an email from Mr Martin Dillon, a Sales Consultant, which attached information in relation to sales around the Countdown Mosgiel supermarket and recording his view that in over 30 years in real estate a supermarket does not have a negative effect on house prices. Overall, I found that of little assistance.
- 261. In City Rail Link Limited the Court held that adverse effects on land and property values are not in themselves a relevant consideration. It stated at [63]:

⁴⁶ At para 6.8

⁴⁷ Closing Legal Submissions on Behalf of Applicant, 8 September 2020 at paras 14-23

“If property values are reduced as a result of activities on adjoining land, the devaluation would reflect the effects of that activity on the environment. The correct approach is to consider those effects directly rather than market responses because the latter can be an imperfect measure of environmental effects.”⁴⁸

262. I have therefore focused my assessment on the primary effects, rather than the concerns expressed in relation to property values.

Positive Effects

263. Many of submitters in support identified positive effects. These include: social interaction in the neighbourhood; provision of opportunities for local employment; potential for increased competition and choice; walkability for residents in the northeast area of Lincoln.
264. I listened carefully to the submitters in support who attended the hearing and expressed their views. There are clearly positive effects which I need to consider in my overall evaluation. These are as expressed by the submitters in support and by Mr Heath as referenced in paragraph 241 above.

Overall Evaluation of Effects

265. Having considered all of the above and for the reasons I have outlined throughout this part of my decision, I consider, notwithstanding the considerable improvement which has been made to the design, there will be adverse amenity effects on the occupiers and residents to the south, particularly those in Caulfield Crescent. The Cook Family Trust and the properties opposite the site will also, in my view, experience direct amenity effects.
266. In terms of the wider environment, there are likely to be adverse effects associated with traffic generation from an amenity perspective. These include effects on those accessing the community facilities, including the school, in the local area. It also includes the users of the rail trail. I agree with Ms Anderson that there will be effects on the wider character and amenity from establishing a large highly visible and overtly commercial development on residentially zoned land.
267. When each effect is considered in isolation, some of them may be able to be mitigated to an appropriate level, but in combination, as a result of the scale and nature of this commercial development and in light of what is anticipated for a residential zone, the effects are not appropriate. The proposal seeks to introduce a large-scale commercial activity into a residential zone. The building itself is

⁴⁸ City Rail Link Limited (CRRL) (Successor to Auckland Transport) & Ors v Auckland Council, Decision No. [2017] NZEnvC 204

significantly greater in scale than anticipated in the zone. It is overtly commercial and includes considerable signage. The car park is large with sealed surfaces and all of the activity carparking generates. The traffic generated is significant when compared to that anticipated in the zone and in my view will have adverse amenity effects on the residents and the users of the rail trail. The changes in the noise environment form part of the overall bucket of effects.

268. I have considered the positive effects carefully. There is no doubt that this proposal would provide opportunities for local employment and provide for a more readily accessible supermarket for those in the northeast area of Lincoln. It also has the potential to provide for increased competition and choice.

S104(1)(b) of the RMA – Relevant Planning Provisions

Summary of Applicant's Position

269. The AEE, at pages 18-27, provided an assessment against the relevant objectives and policies of the District Plan. Mr Foster remained firmly of the view that the proposal is not inconsistent with the relevant objectives of the Proposed District Plan.⁴⁹
270. He identified that the objective and policy framework for the living zone primarily focuses on the maintenance or enhancement of the character of residential areas by ensuring adverse effects on the amenity of an area are avoided, remedied or mitigated.⁵⁰
271. Mr Foster's opinion was that the site must be considered in the context of the surrounding environment and the land uses permitted within it. In this case he described the context in this part of the residential zone as characterised by residential facilities and large vacant sites. In his opinion, it was not inconsistent with the objectives and policy framework and the proposal had been designed to integrate with the environment without causing adverse effects.⁵¹ He also noted there was no reason why the site may not be rezoned to commercial as part of the District Plan review process.
272. Overall, Mr Foster considered the proposal to be consistent with the relevant objectives and policies of the CRPS and the Plan.
273. Ms Anderson considered the proposal was only partially consistent with Chapter 6 of the CRPS, but not contrary to it. She considered that overall the proposal was contrary to the relevant objectives and policies of the Selwyn District Plan.

⁴⁹ Brief of Evidence Mike Foster, 14 July 2020 at para [9.1]

⁵⁰ At para [9.2]

⁵¹ At para [9.3]

274. Ms Appleyard addressed the objective and policy framework in her opening legal submissions.⁵² By way of summary, Ms Appleyard identified that the site was contained in the Lincoln Outline Development Plan Area 3. She submitted that ODP3 provides for largely residential activity, some reserves and one identified neighbourhood centre. She submitted that ODPs were developed in order to give effect to Chapter 6 of the CRPS, which effectively required authorities to identify priority areas for urban development and CACs. Ms Appleyard considered, on the basis of Mr Foster's evidence, that there were a number of objectives and policies that demonstrate that a proposal such as this is one contemplated and therefore not inconsistent with the CRPS and ODP3. She identified Objective 6.2.6 Business land development, which provides:

"Identify and provide for greater Christchurch's land requirements for the recovery and growth of business activities in a manner that supports the settlement pattern brought about by Objective 6.2.2, recognising that: ...

3. new commercial activities are primarily directed to the central city, key activity centres and neighbourhood centres;

4. a range of other business activities are provided for in appropriate locations; ..."

275. Ms Appleyard submitted that the applicant had tried its hardest to provide for the commercial activity in accordance with Objective 6.2.6(3), but had been unable to do so and further submitted that 6.2.6(4) does enable a range of other business activities to be provided for in appropriate locations. She submitted that, if the effects were deemed to be appropriate, the location of the proposal would be consistent with the CRPS.⁵³

276. In terms of ODP3, she submitted that it was drafted to give effect to (among others) Objective 6.2.6 and it must therefore be contemplated within the ODP3 that other business activities might be appropriate at locations not expressly identified in it. She submitted that ODP3 was a high-level document which should not be interpreted as defining all the types and locations of future development allowed within a particular area. She considered to do so would render the rules contained within the District Plan for that area somewhat redundant and that could not be right. She submitted that ODP3 provides planning guidance as to what is anticipated, but does not necessarily preclude developments not expressly identified by it; rather such developments should be assessed for appropriateness (in light of ODP3) on a case by case basis.

⁵² At paras 16-34

⁵³ At para [26]

277. Ms Appleyard also identified Policy 6.3.6 Business land, which provides:
- “To ensure that provision, recovery and rebuilding of business land in greater Christchurch maximises business retention, attracts investment, and provides for healthy working environments, business activities are to be provided for in a manner which:*
4. *recognises that new commercial activities are primarily to be directed to the central city, key activity centres and neighbourhood centres where these activities reflect and support the function and role of those centres; or in circumstances where locating out of centre, will not give rise to significant adverse distributional or urban form effects; ...”.*
278. She submitted that policy recognised there are circumstances where it may not be possible for a new commercial activity to locate in an identified centre and that in such cases it is appropriate to locate those activities out of centre, provided they do not give rise to significant adverse distributional or urban form effects.⁵⁴
279. Ms Appleyard submitted that, given her analysis of the CRPS and the fact that the District Plan does not preclude developments within a Living Zone, she strongly disagreed with Ms Anderson’s opinion that the proposal was contrary to, for example Objective B4.3.3 and Policies B4.3.1, B4.3.1, B4.3.11 and B4.3.63 of the District Plan.

Canterbury Regional Policy Statement

280. Both Mr Foster and Ms Anderson identified Chapter 5 of the CRPS in terms of urban development. Objective 5.2.1 – Location, design and function of development (entire region) was identified, as was associated Policy 5.3.2 – Development conditions (wider region).
281. Ms Anderson agreed that the proposal was located within the existing urban area, but she did not consider that the proposed development achieved well designed and sustainable growth and was therefore only partially consistent with Chapter 5 of the RPS.
282. Mr Foster referred back to the AEE and, as noted above, stood by that. The AEE considered that the proposal was in accordance with Objective 5.2.1 in that it provides for consolidated growth in an existing urban area and enables people and communities to provide for their social, economic and cultural wellbeing in a manner which enables commercial development in an appropriate location without adversely affecting the CACs.

⁵⁴ At para 29

283. Mr Foster considered that there were objectives and policies that demonstrated the development is consistent with the CRPS and ODPA3. He identified Objective 6.2.6. He noted that there was no land available in the KAC and that supermarkets were not contemplated within neighbourhood centres given the definition in the District Plan as a *“group of principally convenience stores”*. Nevertheless, he considered that the objective still contemplates that some commercial developments will be appropriate outside of the centre.⁵⁵
284. In terms of Policy 6.3.3, he considered it *“could be argued”* the development was in accordance with the ODPA3. He considered that, just because the development was not specifically denoted on the plan, it did not mean it was not contemplated in the CRPS.
285. Further, in terms of Policy 6.3.6(4), which states, inter alia:
“or circumstances where locating out of the centre, will not give rise to significant adverse distributional or urban form effects”.⁵⁶
He considered the proposed development would not generate such effects.
286. I discussed with Mr Foster during the hearing that there did appear to be, in my preliminary view, a theme of supporting and maintaining existing key activity centres and neighbourhood centres, this being derived from a combination of Objective 6.2.5 and Objective 6.2.6. Mr Foster properly acknowledged in terms of that particular issue, it could not be said the proposal maintains or supports the existing KAC. He stated that was why there was a degree of frustration with the inability to have this matter progressed by way of a plan change given the impending District Plan review.
287. Ms Anderson identified that there was sufficient demand for the Lincoln township to support a second supermarket and noted that Mr Heath, in terms of economic matters, had identified that any potential retail distribution effects on the existing KAC and neighbourhood centres would not be significant. She did not accept that the proposal gave effect to the principles of good urban design, nor that it was in accordance with ODPArea3 which was an outcome of the community engagement in the planning process.
288. Ms Anderson addressed Chapter 5 which she considered was to ensure that development occurs in a consolidated manner in existing urban areas and that any adverse effects of development are adequately managed. She identified that Chapter 6 seeks to manage growth and development within the greater Christchurch area, directing growth to the central city, key activity centres and

⁵⁵ Brief of Evidence of Mike Foster at para 8.3

⁵⁶ At para 8.3

neighbourhood centres, and requiring development to give effect to the principles of good urban design.

289. Overall, she considered, given the scale and design of the building, the proposal was incompatible with the surrounding residential environment. She did not therefore consider it gave effect to the principles of good urban design. On that basis, she considered the proposal was only partially consistent with Chapters 5 and 6 of the CRPS.
290. While of course the objectives and policies of the CRPS are important, and I have had careful regard to them, I do not consider they offer particular assistance to my decision making on this application. They clearly direct commercial activities to be primarily focused in Key Activity Centres and neighbourhood centres, but provide for a range of other businesses in appropriate locations.
291. I consider that in terms of the CRPS the question for me is one of appropriateness of this particular proposal in this particular location. I agree that proposal could not be said to be contrary to the relevant objectives and policies of the CRPS in an overall sense. The District Plan provides considerably more assistance in my assessment.

Operative Selwyn District Plan

292. I consider that considerably more assistance can be obtained from the District Plan objectives and policies. These were identified in paragraphs 18-27 of the AEE and by Ms Anderson in her paragraphs 135-152.
293. Mr Foster stated:
- “The objective and policy framework for the Living Zone primarily focuses on the maintenance or enhancement of the character of residential areas by ensuring adverse effects of activities on the amenity of an area are avoided, remedied or mitigated”⁵⁷.*
294. Ms Anderson considered that Objectives B3.4.1 and B3.4.2 and associated policies sought to ensure that the townships are pleasant places to live and to provide for activities which are compatible with the character and quality of the environment and amenity values of that zone.
295. That identifies, in my view, the critical issue for determination: is this proposal compatible with the character and quality of the environment and amenity values of the Living Z zone?

⁵⁷ BOE at para 9.2

296. As both Mr Foster and Ms Anderson noted, the context of the surrounding environment is important. In Ms Anderson's summary of evidence at 2.1, she expressed her opinion that the context of the surrounding environment is a significant consideration where a commercial development is proposed in a residential zone.
297. She stated that in this case the surrounding environment is in the process of transitioning from a rural environment to a residential one. This transition is occurring in accordance with key directives of the Land Use Recovery Plan Zone and ODP 3 and Living Z zoning. She went on to say that the proposal seeks to construct a large commercial building, with an extensive hard stand area for parking, within this residential environment.
298. Mr Foster considered that, in the context of this surrounding environment and the land uses permitted within that environment, this part of the residential zone is characterised by residential facilities and large vacant sites.
299. In his opinion the proposal is not inconsistent with the objectives and policy framework and has been designed to integrate with the environment without causing adverse effects on the ability for people to continue to enjoy their homes and properties.⁵⁸
300. While I have considered the relevant objectives and policies in their entirety, I consider the following are the most relevant.
301. Objective B3.4.1 – *“the district’s townships are pleasant places to live and work in”*; and
Objective B3.4.2 – *“a variety of activities are provided for in township, while maintaining the character and amenity values of each zone”*;
302. In my view these objectives clearly illustrate the outcome which is sought. That is to provide for a variety of activities, but to maintain a pleasant place to live and work and the character and amenity values of each zone.
303. Policy B3.4.2 is:
“To provide for any activity to locate in a zone provided it has effects which are compatible with the character, quality of the environment and amenity values of that zone.
304. Clearly this is a very relevant policy, given the scale and intensity of this proposal. It is enabling of other activities but subject to a very clear caveat. In light of my findings in relation to amenity effects, in my view proposal is not compatible with

⁵⁸ BOE at para 9.3

the character, quality of the environment and amenity values of the Living Z zone. I agree with Ms Anderson's view that the proposed development will create a large, highly visible and overtly commercial development on land which is anticipated by the District Plan zoning to be residential in nature.

305. Again, in terms of the more particular policies they are zone focused. Policy B3.4.10 provides:
"Maintain background sound levels which are appropriate to the quality of the environment and amenity values of each zone".
306. Policy B3.4.15 provides:
"Ensure the operating hours of non-residential activities in Living Zones do not disturb surrounding residential activities, particularly at night".
307. Policy B3.4.18 provides:
"Ensure non-residential activities in Living Zones generate vehicle and pedestrian movements on a scale compatible with the quality of the environment in Living Zones".
308. Policy B3.4.20 provides:
"Ensure signs in all zones are designed and positioned to avoid: ... adverse effects on the amenity values of the zone".
309. Policy B3.4.21 provides:
"Ensure signs in Living Zones are of a size, design and number which maintain the quality of the environment and amenity values of the zone, but recognise the need for retail activities located in Living Zones to have extra signs on the site".
310. Policy B3.4.26 provides:
"Ensure buildings are set back an appropriate distance from road boundaries to maintain privacy and outlook for residents and to maintain the character of the area in which they are located."
311. Policy B3.4.27 provides:
"Ensure buildings and structures in Living Zones which are used for non-residential activities, are of a size and bulk and in a setting compatible with the quality of the environment and the amenity values of a residential area."
312. The specific policies referred to above clearly have, at their core, at the very least the maintaining the quality of the environment and amenity values and ensuring compatibility with those qualities and values.

313. Given my findings on effects, I conclude that this proposal is at the very least inconsistent with the relevant objectives and policies and what they seek to achieve for the Living Zone. I agree with Ms Anderson that it is contrary to some of the key objectives and policies.
314. I acknowledge of course that there is no prohibition on commercial activities in the Living Zone, but they must in my view reflect the character and amenity values of that environment and zone. In my view this proposal does not.
315. Overall, while I agree with Ms Anderson's opinion that the District Plan does take a strong line against ad hoc establishment of business activities, it does provide for proposals such as this to be assessed on their merits. This is reflected by the discretionary activity status.
316. The planning framework is in my view very clear as to what is anticipated in the Living Z zone, and what is acceptable in terms of non-residential activities. They are to be of a size and bulk that is compatible with the character and the quality of the environment and amenity values of any the zone. While a variety of activities are anticipated, they are to maintain the character and amenity values of each zone.

Proposed Selwyn District Plan

317. As noted, I provided the parties with the opportunity to comment on the notified Proposed Plan. Ms Anderson's memorandum of 6 October 2020 helpfully identified the relevant objectives and policies.
318. In terms of residential zones, Objective RESZ-02 is:
"Residential activities are the principal use in residential zones".
319. Objective RESZ-05 is:
"Built form of a high design standard and appearance that responds to and reinforces positive aspects of the local environment".
320. Objective RESZ-06 is:
The role, function and predominant character of the residential zones is not compromised by non-residential activities".
321. Policy RESZ-P3:
"Maintain and enhance the character and amenity values of residential zones by ensuring that all new buildings are:
1. *of a scale appropriate to the locality;*

2. *sites in a location to enable privacy and retain open space and access to sunlight and daylight;*
3. *designed to enable ancillary activities such as accessory buildings, manoeuvring and landscaping to be accommodated on site”.*

322. Policy RESZ-P15:

“provide for non-residential activities and community facilities that:

1. *are of a nature and scale that meet the needs of the local community;*
2. *are consistent with the amenity values and character of the locality;*
3. *encourage co-location and shared use of community facilities where practicable; and*
4. *do not undermine the viability of commercial centres.”*

323. Ms Anderson identified that given the recent notification of the Plan, limited weight could be given to it. She provided a brief assessment. In relation to the objective and policy framework for the residential zones, she considered the Proposed Plan sought to ensure that the built form of those zones is of a high quality that responds to the character and amenity of the surrounding environment, including development being of a scale appropriate to the locality. She considered further that the objectives seek to ensure that residential environments are not compromised by non-residential activities. In her view, the scale and design of the proposed supermarket and car parking area are not in keeping with the character and amenity of the surrounding residential environment.
324. She concluded the Proposed District Plan provides a strong policy framework for the control of non-residential activities, but very little weight can be given to it.
325. Ms Appleyard also provided a very helpful memorandum. She submitted that the Proposed Plan does not appear to have substantially changed the consenting requirements for the proposal. Her understanding was that under the Proposed Plan the proposal would still be assessed as discretionary activity. In terms of the proposed objectives and policies, she considered that they remained very similar to those of the Operative District Plan.
326. I agree with Ms Appleyard and Ms Anderson that little weight can be given to the proposed Plan. In any event it does not appear to substantially change the consenting framework for activities such as this. From my reading of the relevant rules, which of course have no legal effect, I am not entirely clear that Ms Appleyard’s understanding as to activity status remaining as discretionary is correct but that is not of any moment to my decision.

Precedent / Plan Integrity

327. Ms Anderson considered that, as a discretionary activity, matters of precedent and potential effects on the integrity of the Plan were not required to be considered. In her opinion, if I were to grant consent, that would not set a precedent for the expansion of commercial activities at the site or an alternative Living zone property.⁵⁹
328. Ms Appleyard addressed the issue of precedent in her closing submissions, particularly in response to concerns raised by the submitter Ms Hobby.
329. Ms Appleyard properly acknowledged precedent effect to be a legitimate consideration under s104(1)(b)(vi).⁶⁰
330. Ms Appleyard identified several the leading cases, including Dye v Auckland Regional Council⁶¹ and Progressive Enterprises Ltd v North Shore City Council⁶².
331. Ms Appleyard also referred to Campbell v Napier City Council⁶³.
332. Ms Appleyard submitted that the Selwyn District Plan does raise any precedent issues / consideration in its relevant objectives and policies. Further, 'commercial development' establishing within the vicinity of the application site, as asserted by Ms Hobby, would not be a precedent unless a substantially similar supermarket (with similar effects) was proposed. Any suggestion this might occur Ms Appleyard described as fanciful.⁶⁴
333. Ms Appleyard concluded that any subsequent commercial developments seeking to establish in this area would be assessed on a case by case basis as against the relevant provisions of the Plan. She submitted the risk of precedent effects arising from this application is therefore non-existent.

Evaluation

334. Ms Appleyard is correct in her submission that precedent can be a relevant issue on a discretionary activity application. That issue was addressed by the Environment Court in Rawlings v Timaru District Council & Ors⁶⁵.

⁵⁹ S42A Report at paras 130-131

⁶⁰ Closing Legal Submissions at para 45

⁶¹ Dye v Auckland Regional Council [2002] 1 NZLR 337 (CA)

⁶² Progressive Enterprises Limited v North Shore City Council HC Auckland, CIV-2008-485-2584, 25 February 2009

⁶³ EC Wellington W67/07, 8 August 2005 at para [63]

⁶⁴ At para 48

⁶⁵ Leslie Raymond Rawlings v Timaru District Council & JM Hunt, CJ & JA Pilcher Decision No. [2013] NZEnvC 67

335. The Court recorded that all parties in that case agreed that the issue of precedent was applicable to consideration of applications for consent to a discretionary activity. It stated:
- “In that regard we refer to Mr Garland’s observation that ... Convention has it that if a proposal fits the criteria for a discretionary activity, it is anticipated to be appropriate in some circumstances. We agree that view is sometimes expressed, but it is not correct ... There is no anticipation either way as to whether a proposal for a discretionary activity is likely to be appropriate or not. That view is consistent with the view of the High Court in Stirling v Christchurch City Council.”*
336. Ms Appleyard appeared to suggest that precedent must be identified expressly in a Plan before it becomes relevant. If that is what Ms Appleyard meant, and I may have misinterpreted her, I do not accept that. It is more that a consideration of the objectives and policies inform whether precedent may be an issue.
337. The Court in Campbell considered the answer was essentially that it is all about having due regard to any relevant provisions of a Plan or Proposed Plan and therefore it is “probably” not now good law as it was under previous legislation, that discretionary activity is *“presumed to be appropriate in a zone subject to being approved for a particular site”*. Instead, it is about what the objectives, policies and other relevant provisions of the District Plan provide.⁶⁶
338. I acknowledge a resource consent has no precedent effect in a strict legal sense. While it is necessary and appropriate to have consistency in the application of legal principles, in factual terms no two applications are ever likely to be the same, albeit one may be similar to another.⁶⁷
339. Given my findings in relation to the inconsistency of this proposal with the objectives and policies of the Operative Plan and my findings as to the scale of this proposal in relation to compatibility with the character and amenity of the Living zone, I consider precedent and Plan integrity are relevant matters informing my overall decision.

Part 2

338. Identified previously in this decision, both of the planning experts undertook a limited traditional Part 2 analysis.

⁶⁶ At para [63]

⁶⁷ Dye v Auckland Regional Council [2002] 1 NZLR 337

339. Mr Foster addressed this in paragraph 7.2 through to and including 7.8. Mr Foster recorded his view that the overriding consideration of the resource consent application is the extent to which the proposed development will achieve the purpose and principles of the RMA. He set out section 5. At 7.3 he advised that whether the purpose of the RMA is being achieved involves an overall broad judgement with the assessment informed by reference to the matters set out in sections 6,7 and 8 of the RMA.
340. He considered that there were no matters of national importance relevant to the application. In terms of section 7 he considered there were three matters of relevance to which particular regard must be had. These were:
- (b) The efficient use and development of natural and physical resources;
 - (c) The maintenance and enhancement of amenity values;
 - ...
 - (f) maintenance and enhancement of the quality of the environment.
341. He considered the proposed development of the site to be consistent with the sustainable management purpose of the RMA.
342. Ms Anderson addressed this in paragraphs 172 – 177 of her s42A report. She identified the purpose of the Act and that there were no relevant sections 6 matters. She also identified as relevant section 7 (b), (c) and (f). She considered the proposed supermarket *“Can be considered to be an efficient use and development of natural and physical resources, given that the proposal seeks to develop land that has been identified as appropriate for urban development”*.
343. It was her opinion that the proposal would not adequately maintain and enhance amenity values in the area, as the scale and design of the building will have significant adverse effects on the amenity values for the surrounding residential environment. She also considered that the proposal would fail to maintain and would compromise the quality of the environment in a matter that is not contemplated by the Plan and this would not promote the purpose of the act.
344. Overall, I accept that the use of this land for the proposed supermarket could be said to be an efficient use although there was relatively little analysis on the evidence before me. I was not directed to any comparing the benefits of the supermarket with the benefits of the permitted residential use.

345. I agree with Ms Anderson that it would not maintain or enhance amenity values and would compromise the quality of the environment.
346. Having regard to the relevant Objectives and Policies of the Operative Plan I consider the proposal does not meet the purpose of the Act.

Overall Evaluation

347. I have carefully considered all submissions, documents, evidence and legal submissions presented to me. I accept that there are positive effects or benefits from the proposal, and I have outlined those above.
348. I have found there are adverse effects on the local residents and the wider environment. I do not consider those effects are properly avoided, remedied or mitigated. I also consider there is a potential precedent, and I am concerned about the integrity of the plan, acknowledging it is currently under review.
349. I consider that there is a very clear policy framework as to what is appropriate in terms of non-residential activities in the Living Z zone.
350. Having carefully considered the submissions, evidence and relevant materials provided, and having considered the relevant Part 2 matters, I find that both the relevant Objectives and Policies of the Plan and the purpose of the Act are better met by declining this consent.

Overall Decision

351. For the above reasons the application is **declined** pursuant to ss104 and 104B of the Resource Management Act 1991.



David Caldwell
Independent Commissioner

Dated: 16/10/2020

