

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

a resource consent application by Ingham Motor Group Limited to develop a car dealership and undertake associated activities at 26 Lake Street Cambridge.

NOTIFICATION DECISION OF THE INDEPENDENT HEARING COMMISSIONER

6 June 2023

BACKGROUND

1. Ingham Motor Group Limited (“**applicant**”) has sought resource consent from Waipa District Council (“**Council**”) to develop a car dealership and undertake associated activities on a 6,852 m² site at 26 Lake Street, Cambridge (“**the application**”). The site has previously been utilized as a Bunnings Warehouse, and the existing building is proposed to be demolished and replaced with three standalone single-storey buildings.
2. The site is located in the Commercial Zone of the Waipa District Plan (“**District Plan**”) and is subject to the District Plan’s Pedestrian Frontage Area Policy and Character Precinct Cambridge B. I set out a more fulsome description of the subject site and the proposal later in this decision.
3. I have been appointed by the Council as an independent hearings commissioner to determine whether the application is required to be publicly notified under section 95A of the Resource Management Act 1991 (“**RMA**”) or limited notified under section 95B of the RMA.
4. I initially received the following documentation:
 - (a) The Council’s “Notification Report” dated 8 May 2023 (which was reissued on 22 May 2023 in order to replace one figure that was incorrect), and which recommended that the application should be publicly notified; and
 - (b) An email from the applicant’s consultants dated 19 May 2023 that included meeting notes from a pre-application meeting held on 16 March 2022, and which challenged the recommendation that the application should be publicly notified.
5. Because I considered it would help inform my decision, I issued directions on 24 May 2023 inviting the Council and the applicant to attend a Teams meeting to discuss their respective positions.
6. It was agreed that the Teams meeting would proceed at 2pm on Thursday 1 June 2023.

7. Shortly before the Teams meeting I received the following information on behalf of the applicant:
 - (a) A memorandum prepared by Ms Alex Clark, the applicant's planning consultant; and
 - (b) A memorandum prepared by Mr Phil Lang, counsel for the applicant.
8. The Teams meeting was attended by the following people:
 - (a) For the Council – Mr Quentin Budd, Council's Consents Team Leader, and consultant planners Mr Chris Dawson and Mr Paul Iacuone, noting that Mr Iacuone prepared the Notification Report referred to in paragraph 4 (a) above; and
 - (b) For the applicant – Mr Lang and Ms Clark together with several technical specialists who could answer any questions that may have arisen during the meeting.
9. The various documents referred to in paragraphs 4 and 7 above were taken as read and the Teams meeting proceeded as follows:
 - (a) Ms Clark spoke to her memorandum;
 - (b) Mr Lang spoke to his memorandum;
 - (c) Mr Iacuone made a number of comments that summarized the Notification Report and addressed matters raised by the applicant. Those comments were reduced to writing and circulated to the Council and myself on 2 June 2023; and
 - (d) I asked a number of questions of both the applicant and the Council, and closed the meeting by saying that I had reserved my decision on notification.

THE SUBJECT SITE AND PROPOSAL

10. A description of the subject site and proposal were set out in Section 1 of the Notification Report, which I reproduce below:

1 INTRODUCTION

The proposal includes the demolition of the existing Bunnings Warehouse building and the redevelopment of the overall site for a car dealership and associated vehicle servicing. The proposal will include three standalone single storey buildings and the utilisation of the existing vehicle crossings along Queen and Lake Street. The proposal includes illuminated pylon signage and

illuminated business identification signage. The proposed total floor area of the car dealership and showroom is 2,417m².

1.1 Description of site

The subject site is located on the north side of Queen Street and on the east side of Lake Street. The site contains 3 records of title with a combined total site area of 6,852m². The vacated Bunnings Warehouse building has a floor area of 3814m². Cyclone fencing and car parking bays remain onsite. The majority of the subject site is hard paved with the exception of the landscaping beds and a number of established trees along Queen Street and Lake Street. Refer to Appendix C for images of existing conditions.

The surrounding sites are commercial in nature. The land to the west contains take away food and drink outlets and automotive repairs and retail businesses. To the south of the subject site is a building constructed in 2016 containing furniture retailers. To the south east of the site a Mobil service station and a Countdown supermarket present to Queen Street. To the southwest of the site is the Cambridge Town Hall and associated public open space. The Town Hall is currently used for functions and events and is historically significant to the town. To the east of the site is a Nissan car dealership and a McDonald's restaurant. North east of the site contains a mixed use commercial and residential development and cinema. Directly north of the site is a public car parking area and a small area of public open space with heritage value due to a small curved gate known as the 'kissing gate'. Further north of the subject site is Lake Te Ko Utu and associated walkways and vegetation reserves.

The property is sited within the Commercial Zone and is subject to the Pedestrian Frontage Area Policy and Character Precinct Cambridge B of the Waipa District Plan ('District Plan'). The provisions of the Zone and the specific policy and character areas are elaborated on further in this report. Council's Special Features Maps do not identify any special features overlaying the site.

This report will refer to Figures 1 to 4 shown below.

Figure 1: Aerial photograph of site (site shown in yellow)



Figure 2: District Plan Zone – Commercial Zone extent and the subject site shown in red.



Figure 3: District Plan Policy Overlays (Character Area B and Pedestrian Frontage Overlay)

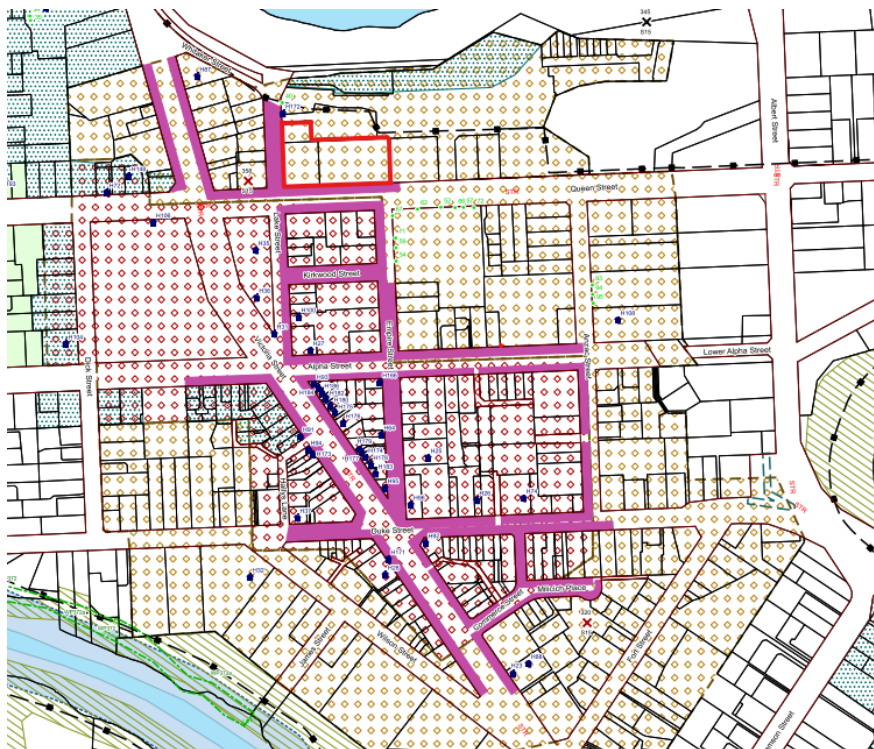
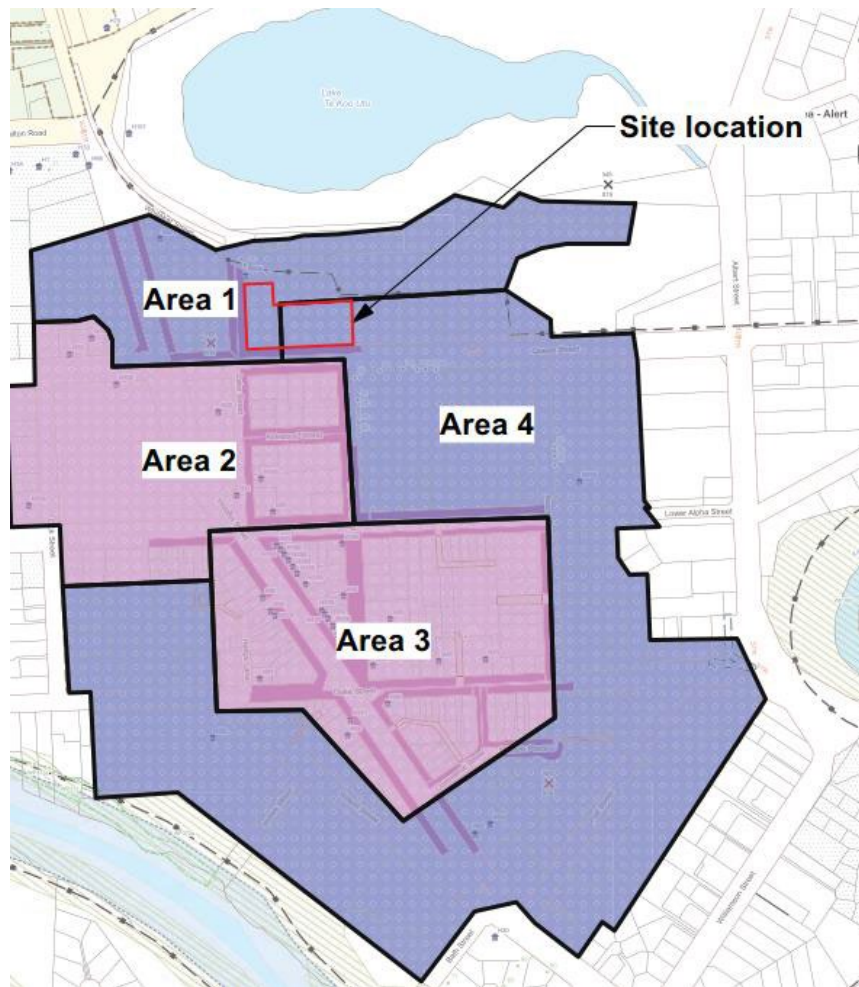


Figure 4: Character Precinct Cambridge B (Area 1 and Area 4 impacting the subject site)



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1.4 Proposal

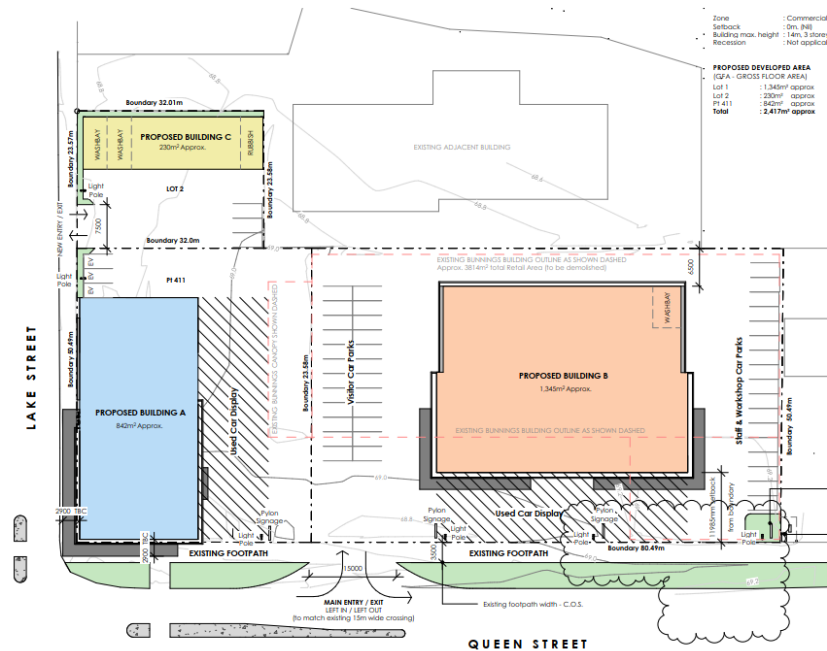
Pursuant to Section 88 of the Resource Management Act 1991 ('the Act') the Ingham Motor Group have applied for a land use consent to develop the site for a commercial car dealership and associated workshops for the servicing of vehicles.

Built Form

The proposal includes three standalone single storey buildings and associated car parking for staff and visitors and the display of vehicles. The use includes car sales and associated car servicing and the intent is for the buildings to be used/occupied for multiple car dealerships however the land is to remain under single ownership and be used as a single entity.

Refer to Figure 5 for the proposed site plan for the activity.

Figure 5 Proposed Site Plan



Building A is setback 500mm from the western boundary and 500mm from the southern boundary. The southern section of the building contains a showroom and the northern section of the building contains a workshop. The building also contains an amenities area and a mezzanine level. Building A has a gross floor area of 842m². The building has an overall height of 7.675m.

Building B is setback 11.985m from the southern boundary and 6.5 metres from the northern boundary. Building B contains a showroom which faces Queen Street, an amenities area, a workshop and a wash bay. It contains multiple vehicle access points and roller doors. The building has an overall height of 7m.

Building C is setback 1m from the northern boundary and 1m from the western boundary. It includes internal wash bays, car grooming bays, rubbish bays and a miscellaneous storage room. The building has an overall height of 6m. This building will not be used for car sales. Refer to Appendix A for a full set of plans. Building materials include; precast cladding (textured), glazed sliding entry doors and aluminium composite cladding and canopy, textured precast panels, exposed aggregate exterior slab and steps, bagged brick cladding (Building C only), aluminium composite with feature exterior window shroud, glazed façades, exposed aggregate steps, recessed entry portals and reverse run aluminium cladding. Refer to Appendix B for a set of elevations.

Use

The proposed use will operate 7 days a week and include the following hours of operation; Monday to Friday 7.30am – 5.30pm. On the weekend the workshop will operate Saturday 7.30am – 1pm and will be closed on Sundays. The car sales will operate Saturday and Sunday 9am-4pm.

The proposal includes a maximum of 35 full time staff members. Visitor numbers are expected to range from 50 to 80 customers a day.

THE NOTIFICATION REPORT

11. The pre-circulated Notification Report drew three clear conclusions, namely:
 - (a) In the event that limited notification was being contemplated, the proposal will not have adverse effects on the owners and occupiers of potentially affected (neighboring) properties that are more than minor;
 - (b) The effects of the proposal on the environment will be less than minor, other than in respect of effects on “neighbourhood character and amenity”; and
 - (c) In respect of effects on “neighbourhood character and amenity”, they were assessed as being more than minor, such that public notification was considered necessary.

12. In respect of effects on “neighbourhood character and amenity” the Notification Report’s reasoning was as follows:

4.6.1 Effects on Neighbourhood Character and Amenity

The Act defines amenity values as “those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”.

The Commercial Zone encourages business and employment to remain in Cambridge. This proposal will achieve this goal. The proposal is considered to support the economic and social function of the existing centre in which it is situated, it adjoins similar uses.

Buildings not set on the road boundary.

Building A is setback 500mm from the southern and western boundary. Building A spans the southern boundary for a length of 20m and the western boundary for a length of 41.2m. The remainder of the Queen Street and Lake Street (with the exception of Building C) boundaries is left void of built form and does not adhere to commercial policy which requires built form to be located on the boundary and activate the streetscape.

Pedestrian frontage areas have been identified within the primary commercial centres to reinforce the pedestrian focus and vibrancy of these areas. The proposal does not strictly adhere to this requirement however does introduce elements of design that will reinforce pedestrian focus to the southwestern corner of the site and ensure the vibrancy of the streetscape is enhanced. However, the majority of the site is left with an outcome that does not meet the intent of the pedestrian frontage area policy. This site is a perfect opportunity to redevelop a large area of critically important commercial land in a way that sets the correct precedent for the remainder of town.

Passive surveillance and verandahs are required by the pedestrian frontage areas. Building A provides verandahs in part with a depth of 2.9m. Building A also provides surveillance opportunities from the showroom facility in the southwestern corner of the site, however, the vast remainder of the subject site does not. The development is more akin to a commercial zone site not within the pedestrian

frontage area.

Exceedance of the gross floor area.

Within the pedestrian frontage area, any new building or activity located at ground floor level must not exceed 1,000m² GFA.

The total floor area of the proposed built form combined is 2,414m², this is more than double the permitted GFA.

The subject site has a total area of 6,852m², this is a site coverage of 35%. Due to the large nature of the subject site, a 35% site coverage is not considered to be excessive. However, the very large GFAs are not encouraged in this location of the township.

Large scale activities only permitted outside the pedestrian frontage area (effects on the town centre)

Larger scale commercial activities including those that are vehicle orientated are encouraged within the Commercial Zone outside of the pedestrian frontage areas. The proposal introduces large scale buildings that are dominated by vehicle parking areas and hard paving, the design is contrary to this policy requirement and uses a strategically identified parcel of land in a manner that is not encouraged by the wider strategic vision for the township.

Vibrancy

The Activity proposed is not conducive to bringing vibrancy to a commercial strip or commercial area strategically set aside to encourage visitors, shoppers and customers to travel to by various methods and stay for varying amounts of times.

The issue with the proposed design response is wider than just the receiving environment. The wider Cambridge township could significantly be disadvantaged by this key site being developed in a way that is contrary to the strategic vision set out for the township. Queen Street could suffer in the long run by the introduction of the incorrect land use and the resultant loss of vibrancy the use will bring. The physical location of the subject site would break up the continuity of the pedestrian frontage area and would lead to a fragmentation of pedestrian frontage areas in the future. This goes against the strategic ideology of a connected and vibrant township.

Overall, the adverse effects on the wider environment with regard to the loss of character and amenity are considered to be more than minor.

MATTERS RAISED IN THE MEETING

13. The key thrust of **Ms Clark's** position from a planning perspective, can be summarized as follows:
 - (a) The development on the site has remained unchanged since the Waipa District Plan ("**District Plan**") was notified in 2012;
 - (b) The development and use of surrounding sites have remained largely large format and outdoor display activities over that period;

- (c) The council has not fully recognized and placed significant weight on the “existing environment” and the realistically predicted the future environment;
- (d) The council’s position on notification (being that public notification is required because of more than minor effects on character and amenity) is heavily policy-related with no actual assessment of effects on the environment;
- (e) It is more appropriate to consider those policy-related matters under section 104, rather than in respect of public notification under section 95A;
- (f) The council has not considered in detail either the proposal itself, nor the applicant’s urban design assessment; and
- (g) She can see no indication that the future environment around the site will be substantially different to the existing environment.

14. The key legal issues raised by **Mr Lang** were as follows:

- (a) The notification decision is to be made on the basis of the effects of the proposal on the environment, with the only relevance of District Plan policy provisions being as guidance on the nature and extent of environmental effects. Notification does not require evaluation of the proposal against the objectives and policies for any other purpose;
- (b) The relevant environment for consideration of effects is the existing environment as it might be modified by permitted activity changes and by existing consents that are likely to be exercised¹;
- (c) Any determination of the nature of the future environment must be carried out on a “real world” basis, to avoid identifying artificial or theoretical environments² that are unrealistic. The existing environment is clear. It includes the consented use of the site for a large format retail store, surrounded by large format and outdoor display activities on large sites;
- (d) The existing environment along the southern side of Queen Street is the same, with a large format retail store, service station and supermarket development, all vehicle-oriented and not compatible with pedestrian access due to the high traffic volumes;
- (e) There are no permitted activity redevelopment opportunities of the site or surrounding sites because all new building require resource consent, and even if that were possible, it is realistically unlikely, given the scale, nature and vehicle-oriented nature of surrounding activities;
- (f) The Notification Report was very much based on policy analysis rather than

¹ Queenstown Lakes District Council v Hawthorn CA45/05

² High Court decision in Queenstown Central Limited v Queenstown Lakes District Council & Ors [2013] NZHC815.

analysing the effects of the proposal;

- (g) Any effects assessment needs to recognise that the proposed development along the Lake Street frontage of the site is largely as anticipated for the Pedestrian Frontage Area, with development either up to or very close to the street, verandas in place along much of that frontage. This development is much more in keeping with the Pedestrian Frontage Area development controls than on the western side of Lake Street, where the activities are largely limited to the non-pedestrian service areas of those activities, vehicle access within a very non-pedestrian friendly environment.
- (h) The main departure from the development format envisaged for the Pedestrian Frontage Area is along the Queen Street frontage, where the adjoining land to the east is not within the Pedestrian Frontage Area and where the benefits of pedestrian fronted development would be least important. This is very much a vehicle-oriented location where large format development is in place, is appropriate and is the most likely form of development to occur into the future.
- (i) The high traffic environment of Queen Street and isolation of the site from the rest of the town centre have prevented the site and its neighbouring sites from having high pedestrian activity. None of that is likely to change unless the function of Queen Street changes substantially. That is not a realistic outcome.
- (j) Consideration of the future environment surrounding this site can be guided to a significant degree by the way in which the locality has developed in the past, the land title structure, in the context of the existing zoning and overlay.
- (k) The District Plan provisions for Pedestrian Frontage Areas have been in place for approximately 9 years, without gaining any traction in this locality. That is understandable given the lot sizes, traffic environment, surrounding development and the ongoing opportunities for larger scale development surrounding the development site.
- (l) In the present case the notification assessment in the Notification Report is that there are no effects that are minor or more than minor on immediate neighbours, only effects that are "less than minor". That assessment is appropriate and well founded, taking account of the current and future environment that will be impacted by the proposal.
- (m) In the face of that conclusion and recommendation about effects on the immediate environment, it is extraordinary to have a finding and recommendation that the effects on the environment beyond that immediate locality will be more than minor, although those locations are more remote. There is a lack of logical connection between those two findings and recommendations.

- (n) The reality in this situation is that the real issues to be determined under s104 are policy matters, that the Council is fully equipped to deal with itself, without the need for external input through public notification.
15. The Notification Report was taken as read, but Mr lacuone made a verbal presentation, that was subsequently reduced to writing and circulated to the applicant and myself.
16. Key matters raised in Mr lacuone's presentation, that may not have been explicitly raised in the Notification Report, include:
8. However the applicant is applying for a new development and use and while they have come forward in their design (in part by relocated building A onto the front boundary), the vast majority of the objectives and policies set forth for this zone are not achieved as the remainder of the built form is set well back from the front boundary and the front setback is used for hard paving, car parking, car display and minimal landscaping. The proposed use does not encourage multi purpose trips to the area and will be shut during night time hours creating another void in this prominent commercial site, this is not the expectation of the District Plan which anticipates vibrancy.
 10. Paragraph 49 [of the applicant's urban design report] states the buildings appear as retail, but they are not. It then states that the four areas of non compliance (boundary set back, floor area, verandah extent and tree ratio to carparks) result in a less than minor effect on urban amenity. It goes on to say that the proposal meets the intent of the rule rather than technical compliance. It is my position that the significant departure from these predominant rule requirements will potentially have effects on the urban environment which are more than minor. The wider community expectation as set out in the relevant objectives and policies of the Pedestrian Frontage area of the Commercial Zone is a vibrant active commercial strip set on the boundary with an array of uses and a particular built form outcome.
 11. Effects are described in the notification report. Those effects that have the potential to be considered more than minor are the loss of neighbourhood character and amenity including; buildings not set on the boundary, exceedance of total floor area, large scale car oriented activities and a lack of vibrancy.
 12. Lack of vibrancy is an effect I consider to be potentially more than minor. The adverse effects of the lack of vibrancy for a strategically identified site could be long lasting and irreversible. Anticipated uses on the site could be smaller format commercial activities, uses such as food, beverage, retail and services that develop the site so as to activate the streetscape through design, fenestration, building siting and additional hours of operation.
 13. The community could see the proposed development as a missed opportunity on a site with major potential to create an outcome sought by the District Plan. The lack of built form along all front boundaries, the lack of continuous weather protection, the lack of uses that draw in the community and create a sense of place, vibrancy and activity are effects that are more than minor.

14. It is more than likely that the public are aware of the requirements and expectations of the District Plan in this location, especially the preferred character outcomes sought. Since the granting of the original consent in 2008 there is a new District Plan with a set of objectives and policies specific to the Pedestrian Frontage area of the Commercial Zone. Moreover, there is an expectation that the community holds for sites in the pedestrian frontage areas as they would have been involved in the inception and adoption of these policies. It is therefore considered that the public, or those considered affected, may want the opportunity to submit on the application.

MY EVALUATION

17. Having carefully considered all the information available to me, I am not persuaded that the application meets the threshold for public notification, nor limited notification, and have determined that the application should be processed on a non-notified basis.
18. The reasons for reaching that conclusion are as follows:
- (a) The existing environment includes the Bunnings Warehouse buildings and the use thereof pursuant to the resource consents it holds;
 - (b) When assessed against that existing environment, the proposal will have positive amenity and streetscape effects;
 - (c) The objectives and policies of the District Plan provide context for assessing the effects of the proposal, but are not determinative;
 - (d) A “real world” assessment of the neighbourhood leads me to conclude that it is unrealistic to expect it to change significantly from the status quo situation, which comprises, in large part, large format, vehicle dependent activities; and
 - (e) The policy matters raised in the Notification Report and in Mr Iacuone’s presentation, can, and will need to be considered by the processing planner(s) and decision-makers when undertaking the section 104 assessment;
 - (f) There are no special circumstances that warrant public notification³; and
 - (g) Mr Iacuone’s contention that “*the public, or those considered affected, may want the opportunity to submit on the application*” is not a relevant consideration.

³ RMA – section 95A(9)

DECISION

19. For the reasons outlined above, the application is to be processed on a non-notified basis.

A handwritten signature in blue ink, appearing to read "P H Mitchell", followed by a period.

P H Mitchell
Independent Hearing Commissioner
6 June 2023