

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2023] NZEnvC 29

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 29 of Schedule
1 of the Act

BETWEEN REEFVILLE PROPERTIES
LIMITED

(ENV-2022-CHC-45)

Appellant

AND CHRISTCHURCH CITY COUNCIL

Respondent

Environment Judge J E Borthwick – sitting alone under s 279 of the Act

In Chambers at Christchurch

Date of Consent Order: 21 February 2023

CONSENT ORDER

A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed to the extent that Christchurch City Council is directed to amend Private Plan Change 6 to the Christchurch District Plan by making changes shown in Appendix 1, attached to and forming part of this order;
- (2) the appeal is otherwise dismissed.



B: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns an appeal against a decision of the Christchurch City Council on Private Plan Change 6 ('PC6') to the Christchurch District Plan.

[2] Reefville Properties Limited requested PC6 seeking that land referred to as the Northern Homebase Centre be rezoned from residential suburban to commercial retail park by way of private plan change. The land was ultimately rezoned to commercial retail park and additional development restrictions were imposed on the Northern Homebase Centre. Reefville Properties subsequently appealed that decision.

[3] I have read and considered the consent memorandum of the parties dated 23 December 2022 which sets out the agreement reached between the parties to resolve the appeal. I have also read and considered the accompanying Joint Witness Statement by the economic experts also dated 23 December 2022.

[4] The agreement reached involves a number of amendments to Chapter 2 (Abbreviations and Definitions), and Chapter 15 (Commercial) including:

- (a) deletion of the definition for "ANZSIC";
- (b) amendment to the definition relating to the Northern Homebase Centre to include a map identifying the Northern Homebase Centre;
- (c) the addition of a definition relating to the "Homebase Centre" to apply to the whole of the Homebase Centre zoned Commercial Retail Park on Marshland Road, Shirley;
- (d) minor amendments to Table 15.1 including:
 - (i) deletion of the reference to "Northern"; and

- (ii) amendments to specify that retail activities at the Homebase Centre are limited in type until 4 October 2031.

[5] The parties also agreed that Reefville Properties would no longer pursue its relief sought in relation to:

- (a) deleting the amendments to Rule 15.7.1.5 (NC1) and the deletion of Rule 15.7.1.5 (NC3) entirely; and
- (b) amending the minimum building setback from the road boundary for the Northern Homebase Centre with frontage to QEII Drive from 12 metres to 6 metres.

Other relevant matters

[6] No other person has given notice of an intention to become a party to this appeal under s 274 of the Resource Management Act 1991 ('RMA' or 'Act').

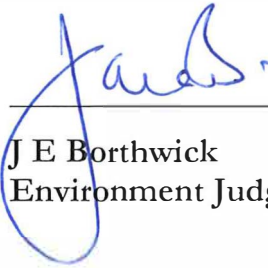
[7] No party seeks costs, all parties agreeing that costs should lie where they fall.

Outcome

[8] The court understands for present purposes that all parties to the proceeding have executed the memorandum requesting this order and are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, pt 2.

[9] On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought under s 279(1) RMA, such order being by consent, rather than representing a decision or

determination on the merits pursuant to s 297.


J E Borthwick
Environment Judge



APPENDIX 1

Key:

Any unchanged text from the Operative Christchurch District Plan is shown as normal text (including text that reflects the Council's decision on Private Plan Change 6).

Any text proposed to be added as a result of the consent order capturing the outcome of mediation is shown as underlined red text and text to be deleted as ~~struckthrough red text~~.

Text shown in underlined black text and ~~struckthrough black text~~ represents amendments to the Christchurch District Plan that have been made as a result of decisions on other plan changes.

Text in green font identifies terms defined in Chapter 2 - Definitions.

Text in blue font indicates links to other provisions in the District Plan and/or external documents.

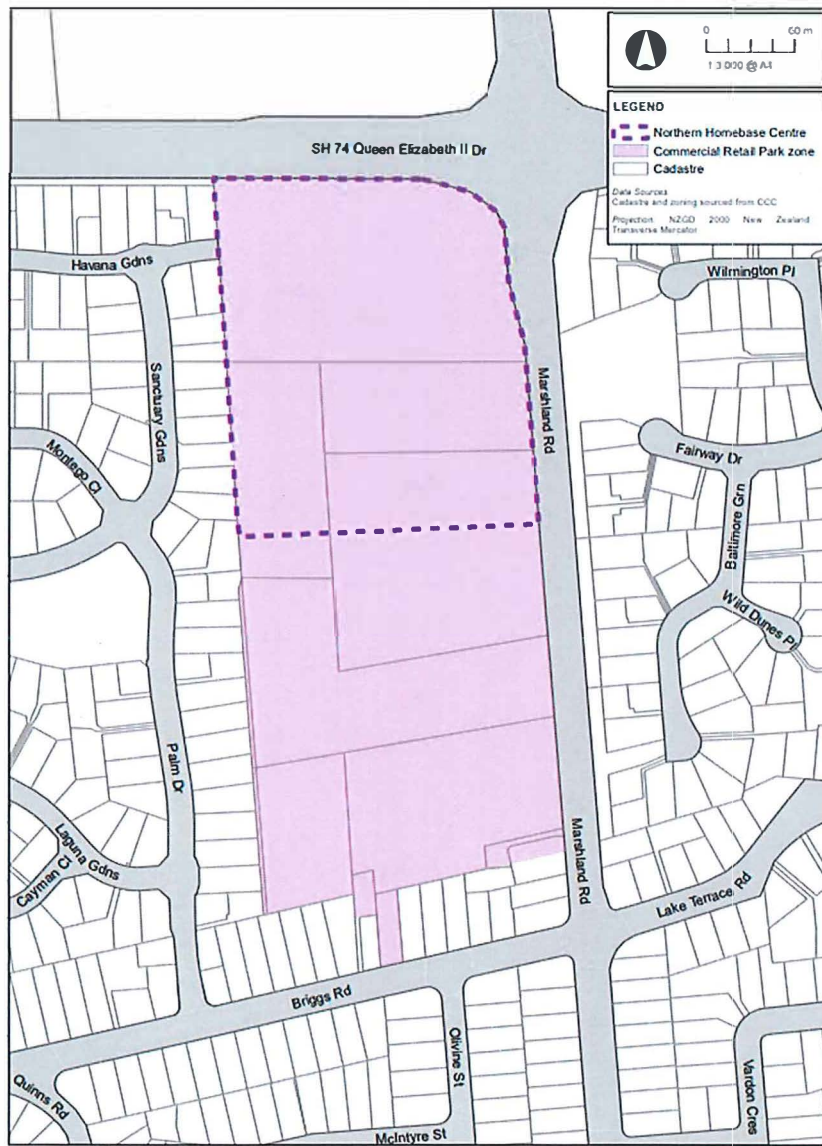
Chapter 2 Abbreviations and Definitions

ANZSIC

Means Australian and New Zealand Standard Industrial Classification, dated 2006

Northern Homebase Centre

means the area zoned Commercial Retail Park within 229 and 241 Marshland Road and parts of 24 Sanctuary Gardens and 215 Marshland Road as contained in CT CB645-62, CT 737304, CT 737303, and CT 60392 at 16 December 2022, shown in the Figure Below:



Homebase Centre

means the area zoned Commercial Retail Park located on Marshland Road between QEII Drive and Briggis Road.

Chapter 7 – Transport

7.4.4 Rules – Matters of control and discretion

7.4.4.18 High trip generators

- a. The following are matters of control for Rule 7.4.2.2 C1 or matters of discretion for Rule 7.4.2.3 RD1. The following diagram shows the matters of control or discretion that apply to each activity.

...

- i. Access and manoeuvring (safety and efficiency): Whether the provision of access and onsite manoeuvring area associated with the activity, including vehicle loading and servicing deliveries, affects the safety, efficiency, accessibility (including for people whose mobility is restricted) of the site, and the transport network (including considering the road classification of the frontage road).
- ii. Design and Layout: Whether the design and layout of the proposed activity maximises opportunities, to the extent practicable, for travel other than by private car, including providing safe and convenient access for travel by such modes. Within the Northern Homebase Centre, this includes consideration of:
 - A. the provision of pedestrian and cycle access for the public and users of the Centre through the site from Sanctuary Gardens or Havana Gardens to Marshland Road;
 - B. integration of pedestrian and cycle access with development (including building frontages, circulation routes, sightlines and lighting) within the Northern Homebase Centre; and
 - C. any potential safety or nuisance effects and methods to address such effects including by way of a Crime Prevention Through Environmental Design (“CPTED”) assessment.
- iii. Heavy vehicles: For activities that will generate more than 250 heavy vehicle trips per day, whether there are any effects from these trips on the roading infrastructure.
- iv. Accessibility of the location: Whether the proposed activity has demonstrated the accessibility of the site by a range of transport modes and whether the activity's location will minimise or reduce travel to and from the activity by private vehicles and encourage public and active transport use.
- v. Network effects: Having particular regard to the level of additional traffic generated by the activity and whether the activity is permitted by the zone in which it is located, whether measures are proposed to adequately mitigate the actual or potential effects on the transport network arising from the anticipated trip generation (for all transport modes) from the proposed activity, including consideration of cumulative effects with other activities in

the vicinity, proposed infrastructure, and construction work associated with the activity.

- vi. Strategic framework: Whether the proposal is consistent with the local and regional transport policy framework.

Chapter 15 – Commercial

15.2 Objectives and Policies

Table 15.1 – Centre’s Role D. Large format centre

	Role	Centre and size (where relevant)
D.	<p>Large format centre</p> <p>Standalone retail centre, comprising stores with large footprints, yard-based suppliers, trade suppliers including building improvement centres, and other vehicle oriented activities.</p> <p>Provision of other commercial activities and residential and community uses is limited. This includes limiting offices to an ancillary function, and at Tower Junction, providing for a limited amount of commercial services.</p> <p>At the Northern Homebase Centre, retail activities are limited in type until <u>4</u> October 2031.</p> <p>Serves large geographical areas of the city.</p> <p>Not necessarily connected to a residential catchment.</p> <p>Primarily accessed by car with limited public transport services.</p> <p>The extent of the centre is the Commercial Retail Park Zone.</p>	<p>Centres: Moorhouse Avenue, Shirley Homebase, Tower Junction.</p>

15.2.2.6 Policy – **Northern Homebase Centre**

- a. Require development within the Northern Homebase Centre to:
 - i. be of a scale and type of built development and activity that:
 - A. avoids adverse effects from vehicle access on the western boundary of the Northern Homebase Centre on the safe, efficient and effective functioning of the road network and amenity of the surrounding residential area;
 - ~~B. enables stormwater to be disposed of in a manner which maintains or enhances the quality and ecological values of downstream surface waterbodies; and~~
 - ~~C. B. avoids manages the risk of~~ inundation on people and property on surrounding land, including roads such that any risk of inundation is reduced to acceptable levels;
 - ii. ~~be of a scale, type and timing of retail activity that supports the function and recovery of the Shirley / Palms District Centre;~~

~~iii.~~ manage adverse effects on amenity values in the adjoining residential areas to the west; and

~~iv.~~ iii. provide safe and convenient pedestrian and cycling connectivity between the adjoining residential areas to the west and Marshland Road.

b. Require development within the Homebase Centre to be of a scale, type and timing of retail activity that supports the function and recovery of the Shirley/Palms District Centre.

15.7 Rules – Commercial Retail Park Zone

15.7.1 Activity status tables – Commercial Retail Park Zone

	Activity	Activity specific standard
...
P2	Retail activity, unless specified Below	<p>a. The minimum tenancy size of any single retail activity shall be 450m² GLFA.</p> <p>b. Prior to 4 October 2031, retail activity in the Northern Homebase Centre shall not include clothing stores or footwear stores (as categorised by their primary classification under ANZSIC categories) or department stores.</p> <p><u>b. Prior to 4 October 2031, there shall be no more than one department store in the Homebase Centre. A department store shall not be considered as a department store for the purpose of this rule where the GLFA of any combination of the following comprises no more than 5% of the total GLFA of that department store:</u></p> <ul style="list-style-type: none"> <u>i. clothing</u> <u>ii. footwear</u> <u>iii. cosmetics</u> <u>iv. jewellery</u> <p>c. Prior to 4 October 2031, the total amount of floorspace provided for the sale of footwear and/or clothing shall not exceed 10% of the total GLFA within the Homebase Centre; except that GLFA used for the sale of footwear and/or clothing in the following circumstances shall be exempt from this 10% limit:</p> <ul style="list-style-type: none"> <u>i. Department store that includes the sale of footwear and/or clothing; and</u>

		<u>ii. Any retail tenancy where the sale of footwear and/or clothing comprises no more than 5% of the total GLFA of that tenancy.</u>
P3	Supermarket	<p>a. Prior to 4 October 2031, there shall be no supermarket in the Northern Homebase Centre.</p> <p><u>a. Prior to 4 October 2031 in the Homebase Centre, there shall be no supermarket that has a GLFA that exceeds 1000m², except that one supermarket that has a GLFA that exceeds 1000m² may be established provided that:</u></p> <p><u>i. resource consent RMA/2016/3708 existing as at 19 December 2022 has been amended so that the resource consent no longer authorises the establishment of a supermarket at the Homebase Centre; and</u></p> <p><u>ii. the supermarket shall not exceed 4300m² GLFA.</u></p>
P4	Trade supplier	Nil
P5	Yard-based supplier	
P6	Second-hand goods outlet	
P7	Service station	
P8	Food and beverage outlet	

Rule 15.7.1.5 Non-complying activities:

	Activity
NC1	Any retail activity listed in Rule 15.7.1.1 P2 that does not meet one or more of the activity specific standards.
...	...
NC3	Any supermarket listed in Rule 15.7.1.1 P3 that does not meet the activity specific standard.
NC4	Any activity or building within the Northern Homebase Centre that does not meet one or more of the built form standards in Rules 15.7.2.9, 15.7.2.10 or 15.7.2.11.

15.7.2 Built form standards – Commercial Retail Park Zone

15.7.2.1 Maximum Building Height

- a. The maximum height of any building shall be 15 metres, except for the Northern Homebase Centre.

- b. For the Northern Homebase Centre, the maximum height of any building shall be 12 metres.
- c. Any application arising from this rule shall not be publicly notified.

15.7.2.2. Minimum building setback from road boundaries:

- a. The minimum building setback from road boundaries shall be as follows:

	Activity	Standard
i.	Any activity unless specified in ii – v below	3 metres
ii.	Ancillary offices	1.5 metres
iii.	For sites with frontage to two intersecting roads in the Commercial Retail Park Zone, except for the Northern Homebase Centre	1.5 metres on one road boundary and 3 metres on the other road boundary
iv.	For sites within the Northern Homebase Centre with frontage to QEII Drive	12 metres
v.	For sites within the Northern Homebase Centre with frontage to Marshland Road	6 metres

- b. Any application arising from this rule shall not be limited or publicly notified.

15.7.2.3 Minimum building setback from residential or open space zones

- a. Where a site shares a boundary with a residential or open space zone, the minimum building setback from boundaries shall be 3 metres, except for the Northern Homebase Centre.
- b. For the Northern Homebase Centre, where a site shares a boundary with a residential zone, the minimum building setback from boundaries shall be 11 metres.
- c. Any application arising from this rule shall not be publicly notified.

15.7.2.4 Sunlight and outlook at boundary with a residential zone

- a. Except for the Northern Homebase Centre, where an internal site boundary adjoins a residential zone, no part of any building shall project beyond a building envelope contained by a recession plane measured from any point 2.3 metres above the internal boundary, in accordance with the diagrams in Appendix 15.15.9.
- b. For the Northern Homebase Centre, where an internal site boundary adjoins 30 Palm Drive, 20, 22, 24, 26, 28, 30, 32 or 34 Sanctuary Gardens or 30 and 33

Havana Gardens, no part of any building shall project beyond a building envelope contained by a 32.4 degree recession plane measured from any point 2.3 metres above the internal boundary.

- c. Where sites are located within a Flood Management Area, recession plane breaches created by the need to raise floor levels shall not be limited or publicly notified.
- d. Any application arising from this rule shall not be publicly notified.

15.7.2.6 Landscaping and trees

- a. Landscaping and trees shall be provided as follows:

Standard	
i.	Except as specified in iii. below for the Northern Homebase Centre, the area adjoining the road boundary frontage of all sites shall contain landscaping in accordance with the following standards: <ul style="list-style-type: none"> A. Minimum width - 1.5 metres B. Minimum density of tree planting - 1 tree for every 10 metres of road boundary frontage or part thereof, evenly spaced.
ii.	On sites adjoining with an internal boundary with a residential zone, trees shall be planted adjacent to the shared internal boundary at a ratio of at least 1 tree for every 10 metres of the boundary or part thereof, with the trees evenly spaced along that boundary.
iii.	On sites adjoining QEII Drive within the Northern Homebase Centre, trees shall be planted adjacent to the road boundary with QEII Drive at a ratio of at least 1 tree for every 6 metres of the road boundary or part thereof, with the trees planted in singles and groupings, spaced between 6-10m apart. These trees are to be large tree species that are capable of growing to a height of 15m at maturity and must be a minimum height of 2.5m at the time of planting. These trees may be a combination of evergreen and deciduous species but must comprise at least 20% evergreen.
iv.	1 tree shall be planted for every 5 car parking spaces (or part thereof) within any car parking area and along any pedestrian routes.
v.	All landscaping / trees required for these rules shall be in accordance with the provisions in Appendix 6.11.6 of Chapter 6.

- b. Any application arising from clauses a.i, a.iii and a.iv of this rule shall not be publicly or limited notified.

Advice notes:

1. Any landscaping required by Rule 15.7.2.6 may be located in common areas, where the development comprises land and/or buildings in separate unit titles.
2. Stormwater facilities that support multiple values such water quality treatment, biodiversity enhancement and landscape amenity, should be incorporated into landscaped areas, where practicable, to achieve effective stormwater management in an integrated manner.

15.7.2.9 – Scale ~~and staging~~ of development - Northern Homebase Centre

- a. Within the Northern Homebase Centre, the total amount of floorspace for all activities shall not exceed 20,000m² GLFA; ~~and~~
- ~~b. Within the Northern Homebase Centre, the total amount of floorspace for retail activities shall not exceed the following:~~
 - ~~i. 5,000m² GLFA prior to 4 October 2026;~~
 - ~~ii. 10,000m² GLFA prior to 4 October 2031.~~

15.7.2.10 – Vehicle access - Northern Homebase Centre

- a. Within the Northern Homebase Centre, there shall be no vehicle access for any activity over the western boundary to Havana Gardens or Sanctuary Gardens.

15.7.2.11 – Pedestrian and cycle access - Northern Homebase Centre

- a. Prior to the occupation of any building within the Northern Homebase Centre, a pedestrian and cycle path shall be provided through the site from either Sanctuary Gardens or Havana Gardens to Marshland Road.

