

David Hattam

From: David McMahon <david@rmgroup.co.nz>
Sent: Thursday, 28 April 2011 5:34 p.m.
To: David Hattam
Subject: LLD submissions
Attachments: FINALCorrected Submission PC29 by LLD without TC shown.pdf

Importance: High

David

We lodged the submission by **both LLD and CDL Land** to this plan change by the 5pm deadline. The read receipts have been received confirming that. Thanks for that.

I noticed that the **LLD** submission had some annoying typos in it. I have corrected them and reattached. Would you please substitute this LLD version for the earlier LLD one. I can categorically assure you there is no substantive change to the submission or the relief and happy to illustrate the typo changes that have been made if necessary.

Many thanks

David



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Form 5

**SUBMISSION ON PUBLICLY NOTIFIED PLAN CHANGE NO.29 TO THE PARTIALLY
OPERATIVE SELWYN DISTRICT PLAN***Clause 6 of First Schedule, Resource Management Act 1991*

To: Selwyn District Council (SDC)
2 Norman Kirk Drive
Rolleston

NAME OF SUBMITTER: Lincoln Land Development (LLD)
(Note address for service below)

SUBMISSION – LINCOLN LAND DEVELOPMENT

LLD was formed in 2007 as a new joint venture between Ngai Tahu Property Limited and Lincoln University. LLD set out to develop a 117ha site on the west side of Lincoln known as the Dairy Block. The aim of this joint venture is to employ best practice urban design principles to create a 'flagship' integrated neighbourhood for the Lincoln Township and the Greater Canterbury area.

The northern half of the Dairy Block is subject to an Outline Development Plan (ODP) as set out in Appendix 18 of the Selwyn District Plan (SDP), and has been granted Stage 1 and Stage 2 subdivision consents. The site has a mix of residential Living 1, 1A3, 1A4 and 2 zones. The block also contains a portion of land zoned Business 3 at the west of the site which is currently used for car parking, and the south-eastern extent is zoned Outer Plains, but is identified in proposed Plan Change 7 as a Greenfield outline development plan area.

As a major developer in Lincoln, LLD has an interest in planning provisions that affect the Lincoln Township. While PC29 is limited to the Business 1 zone (see further discussion within the submission on this point), LLD have considered the implications that PC29 could have on the wider township, and consequently their ability to market residential sections and undertake "development" as defined in the plan change.

THE SPECIFIC PROVISIONS SUBMITTED ON:

The specific provisions of PC29 that LLD's submission relates to are as follows:

- Proposed Policy B3.4.22 & corresponding explanation.
- Proposed Policy B3.4.23a & corresponding explanation.
- Proposed Policy B4.3.6 & corresponding explanation.
- Proposed Rules 16.10 & matters for discretion (16.10.3.1-16.10.3.9)
- Proposed Rules 16.12.1, 16.12.2 & 16.12.3.
- Proposed amendments to Rule 19.1.1.6.
- Proposed Reasons for Rules.

NATURE OF LLD SUBMISSION

LLD **opposes** PC29. LLD understands the intent behind PC29, to better integrate commercial development with its surroundings. While LLD are generally supportive of the desire by the Council to improve design within Business 1 areas generally, LLD is concerned about the particular methods chosen to attempt to implement these goals. Specifically, LLD is concerned that there are a number of provisions within PC29 that are overly restrictive and/or lack flexibility, and are thus as currently framed do not represent the most appropriate way to achieve the objectives of the SDP, or the purposes of the Resource Management Act 1991 (RMA).

DETAIL OF LLD SUBMISSION

LLD notes that the intention behind PC29 is to ensure that the District's town centres have a high quality built environment, and will provide good facilities for pedestrians and cyclists. LLD considers that while some of the provisions of PC29 may be appropriate to achieve better integration between commercial developments and non-motorised traffic, they are part of an overall 'package', which in combination, is highly prescriptive and unprecedented, and will restrain future development. This, in turn, will reduce the attractiveness of Lincoln as a place to live, work and play.

In particular, LLD considers that the provisions intended to achieve a "*high quality built environment*" are overly prescriptive, and have the potential to either discourage or hinder commercial development within Business 1 zones, which will have a detrimental flow-on effect on residential development. In addition, some of the proposed provisions appear to be at odds with the outcomes sought, and in some instances, with the background reports informing the plan change. These specific concerns relate to the following provisions/matters:

- Assessment matters for large developments
- Buildings and external finish
- Signage
- Proposed Policies
- Planning Context
- Miscellaneous

LLD's concerns relating to these matters are as follows:

Assessment matters for large developments

Rule 16.10.1 proposes that any development in the Business 1 zone with a gross floor area of 450m² or above is automatically considered as a restricted discretionary activity, with Rule 16.10.2 listing those matters (16.10.3.1 - 16.10.3.9) to which the Council will restrict the exercise of their discretion to.

LLD considers that the matters specified for discretion are overly restrictive and that rather than being assessment considerations, they will in effect default to being additional standards against which any development would be assessed. For example, 16.10.3.1 requires consideration of whether the development:

- "b) contributes to a varied and visually appealing streetscene through:*
- *the subdivision of ground floor facades into traditional scale modules with a width of 5-10m;*
 - *the continuation of existing building lines;*
 - *the use of regularity of detailing (such as windows and architectural detailing) on upper floors and that such detailing is consistent with neighbours where appropriate*

LLD considers that these assessment matters are in fact prescriptive rules that any proposal would be assessed against, and that in effect, they require compliance, as opposed to being guidelines used for

assessment. LLD also considers that b) above is inconsistent within itself, as it seeks a “varied” streetscene, but then requires consistency with scale modules, building lines and detailing.

Similarly, 16.10.3.5 requires consideration of:

“The extent to which the development would maintain and provide continuous building lines, active frontage and verandahs along street boundaries and main pedestrian routes, particularly where adjacent to established retail activities”

LLD considers that this is a highly prescriptive “matter for discretion”, in effect, requiring maintenance and provision of those things identified. LLD considers that the underlying consideration is of visual integration and appeal, and that these are matters covered at a more general, and less prescriptive level, within the other identified matters of discretion, for example, 16.10.3.1.

The proposed wording of Rule 16.10.3.6 is again, written as a rule, not a matter for discretion:

“The design and layout of the site in relation to the location of car parking areas so that these are

- a) Located at the rear or side of developments; and*
- b) Not located between buildings and a road; and*
- c) Generally located where they are internalised within the development block; and*
- d) For large greenfield sites being developed progressively, that car-parking is not generally located at or within 20m of the boundaries of sites where it may compromise the establishment of buildings adjacent to the road; and*

In the section 32 report at p.20, there is discussion about the reason for all larger developments being discretionary, which concludes that a site specific assessment is necessary, as a rules-based approach: can become difficult to comply with for a complex development; can have unexpected outcomes particularly where designers try to comply with rules rather than producing a more suitable building; and that good urban design outcomes may involve trade-offs according to the circumstances. LLD accepts this argument, but considers that the prescriptiveness of the matters for discretion is such that in effect a rules-based approach is actually what is proposed under the PC29 provisions. LLD therefore considers that the provisions outlined above are not the most appropriate way to achieve the objectives of the SDP and the purpose of the RMA. In LLD’s view a more appropriate method for not only this matter (“*Assessment Matters for Large Developments*”) but also the following matter “Building and External Finish”) would be to include these provisions in a reworded format into a design guide into the district plan (it is noted the plan change references a design guide presumably outside the plan). A design guide in the plan would overcome legal problems associated with reference to an external document and would have the distinct added benefit of being less prescriptive and more flexible in achieving the sought outcomes of the plan change. This is an approach that has been successfully employed in the Wellington City Plan.

On that basis LLD seeks that the provisions outlined above (and below) be deleted from the Plan Change and ideally the plan change be rejected and re notified with a design guide approach.

Buildings and external finish

Rule 16.12 proposes restrictions on the exterior cladding of buildings, via use of specified materials (16.12.1.1 natural stone or natural or stained timber) or restrictions on colours (16.12.1.2 and 16.2.2.1). Under Rule 16.12.3, a breach of 16.2.1 is a non-complying activity.

LLD considers that the rules are overly restrictive, will impact upon commercial marketability, and are not the most appropriate way to achieve the objectives of the SDP.

LLD notes with respect to the restrictions on materials, that this does not appear to be discussed within the section 32 report, or any of the supporting documents (including the recommendations on page 52 of the background report), and as such, does not consider that the provision has been adequately assessed under

the requirements of the RMA. In fact, on page 12 of the background Report, it is stated that “...*architectural style and materials, which do not affect the function of the building, are a lesser consideration.*” LLD therefore seeks that this rule is deleted.

Similarly, restrictions on the colour of roofs does not appear to be discussed in the section 32 report and is only given a cursory mention in the background supporting documents. Again, LLD does not consider that the provision has been adequately assessed under the requirements of the RMA, and seeks that the provision be deleted.

LLD also submits that the appendix to the plan change ‘*The effects of colour*’ (Colour Report) does not support such a restrictive stance with respect to the colour of buildings. In the Colour Report it is acknowledged that red colours “*are viewed as active and exciting*” with blues and greens “*viewed as soothing and passive*”. The Colour Report also states that “*In town centres and commercial environments a wide variety of colours is expected and has the positive effect of creating a sense of activity and vitality.*” Neither the relevant objective nor policy supports the proposed method (Rule 16.12.1) in that:

- Objective B3.4.2 of the SDP states: “*A **variety** of activities are provided for in townships, while maintaining the character and amenity of each zone.*” [Emphasis added]
- Policies which seek to implement this objective include Policy B3.4.4: “*To provide Business 1 Zones which **enable a range of business activities to operate** while maintaining environmental quality and aesthetic and amenity values which **make the zone attractive to people.***” [Emphasis added]

LLD considers that the restrictions of external buildings will **not** achieve the policies and objectives outlined above with respect to allowing for a variety of activities within the zone and ensuring that the zone is vibrant and active and therefore attractive as a town centre. In particular, it is noted that the Colour Report concludes that “*Restraint in the use of strong colours therefore leads to a **more harmonious townscape***” [Emphasis added]. LLD consider that while this may be the outcome of the proposed provisions, this outcome is **not** that which is sought by the Objectives and Policies of the SDP.

It is LLD’s understanding that the example given in the Colour Report to support the discussion around the visual dominance of buildings with bright colours (a large format retailer in Ferrymead) was in a particularly sensitive landscape (the Avon-Heathcote estuary and wildlife area), and that it was not the bright colours proposed that were in themselves of concern, but rather those colours in that particular environment. This, in LLD’s opinion, is extremely different to a blanket restriction across **all** Business 1 areas.

The report also states that “...*using one colour rather than another is unlikely to have cost implications of any significance.*” LLD considers that this is a narrow viewpoint which takes into account only the cost of paint, but does not take into account the wider economic implications of such restrictive provisions. As acknowledged earlier in the Colour Report itself, “*Colour is a potent device in marketing. Individual premises use wall colour as well as signage to attract attention to themselves and colour can give an indication of the type of goods or services being offered.*” Restrictions on colour therefore have an impact on marketability. A land owner, for example, may not be able to attract a tenant whose business branding includes a colour scheme that would not be permitted. Where the appeal of a town centre for businesses is lost, LLD considers it is certain that this will have a flow-on effect on the marketability of residential properties. This then undermines the development of the wider Lincoln Township.

The proposed “Design Guide for Commercial Development” also briefly discusses colour, re-iterating the proposed rules under PC29, on p.9 of the guide, and the aim to avoid dominance through the use of bright colours. However, the guide goes on to suggest that “*Blank walls can be livened up with murals*”. LLD wonders how this would be possible under PC29, given that murals are usually painted in bright colours.

The discussion in the background report in relation to colour acknowledges that the proposed system (provisions) *"... has been used to control the colours of buildings in other district plans, usually for the sake of making them blend into rural surroundings"* [Emphasis added]. The section 32 report and background documents do not appear to suggest that the restrictions on colour proposed under PC29 are necessary to ensure buildings blend into the rural environment. Rather, the fact that colour is restricted in other districts in order to help them blend into rural surroundings emphasises the inappropriateness of the proposed provisions. The background report to the Plan Change acknowledges that *"A successful and vibrant town centre is a complex and rich mix of uses"*. A town centre, therefore, is intended to be vibrant and 'stand out', not blend into a rural backdrop. For all of the foregoing reasons, LLD seeks that the rule restricting colours of buildings be deleted in its entirety.

Overall, the background report, in discussing building design and materials states that these are *"...usually only regulated in areas where there is coherent existing character which would be eroded by unsympathetic modern design or materials. This situation does not exist in the district where townships are often characterized by an eclectic mix of buildings."* Again, LLD considers that a blanket approach to design in all Business 1 zones is inappropriate, and is inconsistent with the existing character of the zone. LLD is concerned that the restrictiveness of the proposed provisions will have a detrimental impact on development of the Business 1 zone, and that this will have flow-on effects on residential development, and undermine the sustainable growth of Lincoln Township.

Signage

Under PC29, it is proposed to make changes to Rule 19.1.1.6 which would amend the current limitation of freestanding signs from 3m² per sign to 3m² per site, or 6m² per site where the road frontage of the site is 50m or more. In effect, this would limit the amount of signage per site, with very little consideration of the overall site size (and thus the ability of the sign to accommodate such signage). For example, a large site, with a large amount of road frontage, would only be permitted 6m² of signage in total, the same as a smaller site with only 50m road frontage. This is a large reduction in the amount of signage permitted in the Business 1 zone. In LLD's experience, road frontage is a poor proxy for determining the amount of signage that a site is capable of absorbing/accommodating without any adverse impact on amenity.

LLD firstly notes that the change to the rule would apply across all business zones, as it has not been restricted to just the Business 1 zone. This is contrary to the comments in the public notice and within the Plan Change itself, that PC29 pertains only to Business 1 land. LLD therefore question the scope for this aspect of the change.

Notwithstanding the above, LLD notes that there are no changes proposed to any Objective and Policies relating to signage. The overriding objective that is relevant is Objective B3.4.2:

"A variety of activities are provided for in townships, while maintaining the character and amenity values of each zone."

Policy B3.4.20 states:

"Ensure signs in all zones are designed and positioned to avoid:

- Adverse effects on the visibility or safety of pedestrians, cyclists or motorists;*
- Impeding access to or past sites;*
- Nuisance effects from sound or motion features on signs or from glare or reflectivity;*
- Adverse effects on the amenity values of the zone; or*
- Dominance of the 'skyline' or view, caused by large signs protruding above the roofs of buildings.*

Policy B3.4.21 pertains to signs in the Living Zones only, for which there are greater restrictions. This policy states:

"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."

The explanation to this policy notes that *"There are no equivalent policies or rules to restrict the number, design or size of signs in Business zones (other than at Castle Hill) because signage is an integral part of the amenity values of business areas."*

LLD considers that under the RMA, the test for the proposed amendments to the rule is whether, having regard to their efficiency and effectiveness, they are more appropriate to achieve the SDP's objectives than the current rules. LLD considers that the changes would be inconsistent with the policies (including explanations) noted above, and are therefore ineffective in achieving the Plan's objectives. In particular, the explanation to Policy B3.4.21 states that signage is an integral part of the amenity of business zones, and the overriding objective B3.4.2 seeks that activities are provided for which maintain the amenity values of each zone. The proposed changes, which seek to limit signage, are therefore inconsistent with the anticipated amenity values for the Business 1 zone. The discussion in the section 32 report relates largely to a supposed impact of signs on the "pedestrian experience". However, LLD submits that this approach is not supported by the Objectives and Policies of the SDP.

Accordingly, LLD's submission seeks deletion of the proposed amendments to Rule 19.1.1.6. In the event that this relief is not granted, LLD seek as secondary relief that the changes be restricted to the Business 1 zone only.

Proposed Policies

Proposed Policy B3.4.23a seeks that town centres (i.e. Business 1 zones) are integrated and vibrant. Should PC29 not be rejected in its entirety, LLD considers that the proposed Policy in a general sense, and any provisions retained which seek better integrated commercial development, will be more appropriate for achieving 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 townships, while maintaining the character and amenity values of each zone*) of the SDP, than the current provisions. The exception to this is that LLD consider that the proposed policy does not sufficiently address Large Format Retail (LFR) activities (except for a cursory mention in the explanation), and that this is inconsistent with the proposed suite of separate provisions for LFR.

The background report notes that due to its nature, LFR can be hard to accommodate in a town centre, with the car parks and service areas it requires, and larger buildings, which are difficult to design attractively, making them highly visible and dominant. The report considers that there is a variety of types of LFR, and some is accommodated in a town centre more easily than others. LLD consider that the proposed Policy B3.4.23a and supporting explanation should be expanded to specifically cover this. This in turn provides more backing for the proposed separate provisions for LFR development, and more guidance on when this development may be appropriate.

With respect to the concerns outlined earlier in this submission, LLD considers that some of the proposed provisions are inconsistent with Policy B3.4.22 and B3.4.23a and will not achieve the vibrant atmosphere that is sought by these policies. The proposed restrictions on building materials do not equate to the balance proposed Policy B3.4.22 seeks in relation to allowing people *"freedom in their choice of design"*, while avoiding *"adverse effects on adjoining sites"*, maintaining *"pleasant and attractive streets and public areas"*, and maintaining *"the character of areas with... special heritage or amenity values"*.

With particular regard to the latter consideration, LLD notes that the proposed changes would apply to all Business 1 zones, rather than to a specific character area with *special* amenity values that the policy anticipates. As such, the identified provisions will not give effect to the above objectives of the SDP. In line

with the changes sought to the identified provisions, LLD also seeks that the amendments proposed to the first and third paragraphs to the explanation to Policy B3.4.22 are rejected.

Planning Context

The background report considers the provisions of Plan Change 1 (PC1) to the Regional Policy Statement, acknowledging that PC29 shall have regard to PC1. The background report quotes Objective 2: Character and Sustainability, and supporting Policy 7: Development Form and Design, which refers to the principles of the Urban Design Protocol (Ministry for the Environment, 2005). LLD consider that the provisions of PC29 discussed in this submission **do not give effect to** PC1 because they will not achieve a “built environment” that has a “sense of character and identity”, and will restrict the ability of business to be “functionally efficient and economically vibrant” (Objective 2). Neither will these provisions provide for “a high standard of visual interest and amenity” (Policy 7).

Miscellaneous

As noted earlier, it is clearly intended that PC29 applies to the Business 1 zone only (‘Proposed Plan Change 29: Design of Development in the Business 1 zones’). However there are some provisions in the proposed change that would apply to other zones, and accordingly, LLD seek that these be amended. These include:

- Policy B3.4.23a refers to ‘town centres’, but as there is not a ‘town centre’ zone in the plan, this should specifically refer to “Business 1 zones” so that the intention is clear;
- Policy B4.3.6 refers only to “business”, and should refer to “Business 1”;
- The previous discussion on changes to signage Rule 19.1.1.6.

LLD SEEKS THE FOLLOWING DECISION FROM SELWYN DISTRICT COUNCIL:

- A. That, as the primary relief sought, PC29 is rejected in its entirety. NB. The LLD submission is such that whilst a number of changes could be made to the Plan change (as outlined below), the number of changes is such that the Plan Change would be rendered less effectual (“the death by a thousand cuts” syndrome). On that basis, and given the LLD desire to preserve the intended outcomes of the plan change, but via a different method (design guide approach) LLD prefer to have the plan change rejected in its entirety.
- B. If the primary relief sought is not granted, then the secondary relief sought is that PC29 be amended as follows
 - **Retain** operative wording in paragraphs 1 & 3 of the ‘Explanation and Reasons’ to Policy B3.4.22 and **reject** proposed changes to those paragraphs;
 - **Amend** proposed Policy B3.4.23a, by:
 - replacing references to “town centres” with “Business 1 zones”;
 - Adding an additional bullet point as follows: “ensuring that large developments are complimentary to the Business 1 zone and do not undermine the town centre character.”
 - Amend the seventh bullet point of the explanation to read as follows (amendments shown using underline or ~~strikethrough~~: “Large developments have a greater scale of effects but can be designed comprehensively and include on-site public space.”

However, not all large developments will be able to be accommodated in the Business 1 zone, and larger developments will therefore not always be appropriate. These proposals therefore need a greater degree of scrutiny, so they are restricted discretionary activities, but assessment can include the overall effects of the development on the environment (rather than rigid compliance with standards)."

- Amend proposed Policy B4.3.6 to refer to the 'Business 1 Zone' only;
- Delete the word "through", and the following bullet points from proposed Rule 16.10.3.1(b);
- Delete proposed Rule 16.10.3.5
- Amend Rule 16.10.3.6 to read as follows: *"The design and layout of the site in relation to the location of car parking areas."*
- Delete proposed Rules 16.12.1 and 16.12.2 in their entirety, and consequently 16.12.3;
- Retain operative wording of Rule 19.1.1.6 and reject proposed changes to rule.
- Delete the following paragraph from 'Reasons for Rules': *"Rule 16.12 manages the external finish of buildings to ensure that Business 1 zones are not dominated by buildings with large areas of very bright colour."*

HEARING

LLD wishes to be heard in support of its submission. If others make similar submissions, LLD may be prepared to consider presenting a joint case with them at any hearing.

Submission signed for and on behalf of LLD:



.....
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Dated: 28 April 2011

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