

Before the Hearing Commissioner
Appointed by the Selwyn District Council

Under the Resource Management Act 1991

In the matter of a request by Four Stars Development Limited and Gould Developments Ltd to rezone approximately 53 hectares of Rural Inner Plains Zone to Living Z and Living Z Deferred at Levi, Lincoln Rolleston Roads and Nobeline Drive, East Rolleston (**Plan Change 71**)

Legal submissions on behalf of Foodstuffs (South Island) Properties Limited

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Introduction

- 1 Foodstuffs (South Island) Properties Limited (**Foodstuffs**) is directly affected by Plan Change 71 (**PC71**) because:
 - (a) it owns the 7.18 ha triangle-shaped site on the corner of Levi Road and Lincoln Rolleston Road (**Foodstuffs' Property**, the **Property**). The Property is included within PC71 and known as Part B PC71 and ODP4. Foodstuffs' Property is the only area of PC71 already zoned for urban activity and within the existing township boundary. When referring to PC71 in these submissions, I am referring to Part A PC71 and I do not include Foodstuffs' Property; and
 - (b) it is a retailer owned co-operative company and the wholesale supplier to PAK'nSAVE supermarkets, and intends to establish and operate a PAK'nSAVE supermarket on the Property. A resource consent application has been lodged for a discretionary activity and Foodstuffs is involved in the proposed Selwyn District Plan process to seek to enable supermarket activity on the Property.
- 2 PC71 seeks to rezone rural land outside the existing township boundary for residential purposes, with no provision to manage the interface with the intended non-residential activities on the Property. The proposed new road and pedestrian linkages into ODP4 will not be achieved and will cause safety issues and conflict with Foodstuffs' proposed operations and heavy vehicles servicing the PAK'nSAVE. Further if PC71 is made operative and included in the Selwyn District Plan there will be no provisions that control or manage the inevitable adverse amenity effects of the residential/non-residential interface.
- 3 The questions for you Commissioner, as the recommending decision maker, are:
 - (a) is it reasonable to consider this future intended (but not yet certain) activity in your assessment and decision? In my submission, yes, within the context of this change and its receiving environment.
 - (b) if you were to consider the future effects of a non-residential/residential interface between PC71 and the Property, is this a matter of detailed design that can and will be managed through subsequent resource consent processes? In my submission, no.
- 4 You may also like to ponder the appropriateness of a private developer via a private plan change request planning for residential activity which relies on connectivity through land owned by another party, when the affected landowner has confirmed the connections will not be implemented.

Foodstuffs' case

- 5 Foodstuffs is in the business of supermarkets, an essential service, providing daily support and significant employment for communities. Additional supermarket supply is required now and in the future in Selwyn. A PAK'nSAVE food warehouse has operational, size and locational requirements and it's not easy to find a suitable location near an existing centre, within future planned infrastructure and existing township boundaries, on appropriate transport and public transport routes, which can be supported by the multiple independent and company experts necessary to design and layout a site appropriate to the receiving environment. In fact it took 12 years of looking before the Property was secured¹. There are currently no suitable sites (size and location) for Foodstuffs' business within the Rolleston town centre in either the operative or proposed Selwyn District Plans, despite this now being a requirement in the National Policy Statement on Urban Development (**NPS-UD**)².
- 6 PC71 should assist the Selwyn District Council (the **Council**) to carry out its functions to achieve the purpose of the Resource Management Act 1991 (the **RMA**)³. Council functions include achieving integrated management and the control of any *potential* effects of the use and development of land⁴, and to specifically control emission and mitigation of noise⁵. The RMA is future focussed and "effects" includes potential and future effects⁶. Any new proposed zoning must be *more appropriate* than the existing zone, and assess anticipated effects⁷. A plan should provide certainty that anticipated effects on the surrounding environment can be managed, including by avoiding and mitigating reverse sensitivity effects and conflicts between incompatible activities⁸.
- 7 In my submission, Foodstuff's intended future use of the site is a relevant consideration in PC71. Why?
- (a) the presumption that residential zoning will be lawfully established prior to the consenting of the PAK'nSAVE is not one that can be made with certainty.

¹ Ms Rebecca Parish, at [6].

² To give effect to the requirements of the NPS-UD, the provisions of a Plan must contribute to a well-functioning urban environment which, as a minimum, enables suitable sites (in terms of both location and size) for business activities to be realised and supported by an associated policy framework. Well-functioning Urban Environment is defined in Policy 1 NPS-UD 2020; Policy 1(b) and (d) are referenced in this statement. Nothing in Part 3 limits the general obligation under the Act to give effect to objectives and policies (Part 3, 3.1 NPS-UD 2020).

³ Section 32(1), RMA.

⁴ Section 31(1)(a) and (b), RMA.

⁵ Section 31(1)(d), RMA.

⁶ Section 3, RMA.

⁷ Section 32(1), RMA .

⁸ Mr Mark Allan, at [33], referring to Policy 5.3.2, Canterbury Regional Policy Statement.

The proposals are being advanced in parallel within different RMA processes;⁹ and

- (b) PC71 is an out of sequence zoning, focused on the forward thinking NPS-UD which looks to the future environment. For example, Objective 1 seeks a *"well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future"*¹⁰. PC71 has assessed (and indeed relies on¹¹) other future possible (or not) occurrences such as the future possible reserve (the **Reserve**), the future possible lifting of airport contours, and the future possible connections. These are not yet "lawfully established" by resource consents or designations; nor are they recognised in the operative or proposed Selwyn District Plans. However, they are being planned for and so should the intended neighbouring supermarket operation. PC71 must plan for the non-residential/residential integration and to manage effects to ensure there are no issues with incompatibility or reverse sensitivity accordingly.
- 8 The Commissioner must have regard to the potential effects of the activity on the environment¹², which includes future effects such as how the environment might be modified by permitted activities if PC71 is approved. The Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (**Housing Enabling Bill**) amends the RMA to enable greater supply of housing in urban areas. On 20 December 2021 it was passed into law. Tier 1 Councils need to publicly notify the new rules and policies enabling medium density and intensification in their district plans by 20 August 2022. For existing zoned residential land, the new rules and policies will have immediate legal effect from the date of notification (so within 6 months), and any rules in a plan which are inconsistent with those in the Housing Enabling Bill will cease to have legal effect¹³.
- 9 The impact of the Housing Enabling Bill is certain and imminent. On residential zoned land in Rolleston, as a permitted activity, there can be up to 3 units per site, to a maximum 11m high, with a setback of 1m from the common boundary with Foodstuffs (i.e. the boundary alongside the unloading and loading area for service

⁹ Decision on plan changes are required to be made no later than 2 years from notifying the plan (RMA, Schedule 1, Clause 10(4)); publicly notified decision on a resource consent application has a 6 month timeframe.

¹⁰ Mr Mark Allan, at [22].

¹¹ PC71 relies on the existence of the Reserve as a positive contribution to the proposed residential development. See PC71 Application at [27]; [48]; 184(e)(f)); Appendix 2 – NPS Assessment. The Officer's Report considers as part of its assessment that the close location of the Reserve will contribute to a well-functioning urban environment, at [116].

¹² Section 76(3), RMA.

¹³ Section 86BA Housing Enabling Bill.

vehicles at the rear of the building).¹⁴ There is no opportunity for Foodstuffs to be a notified party in this process.¹⁵ Once the PC71 zoning takes effect, and there is no inclusion of a qualifying matter (such as open space provided for public use) there is no way to further control or manage the anticipated permitted medium density bulk. Associated subdivision is enabled and will be a controlled activity¹⁶ so resource consent must be granted but may be subject to conditions.

- 10 On this basis, Foodstuffs does not accept that design of the supermarket and future residential development is not a matter for the present hearing¹⁷. To kick the can, as proposed by Ms Fiona Aston, and deal with Foodstuffs concerns as part of detailed design may well have been a legitimate planning exercise in the past because resource consents were required as a discretionary activity. As it stands PC71 has the potential to impact the ability of the Property to operate efficiently as a supermarket, which is a day/night operation, and the significant potential and future adverse effects cannot simply be worked out at a detailed design phase.
- 11 Foodstuffs have designed and laid out the Rolleston PAK'nSAVE to comply with the existing (and anticipated) surrounding environment as far as operationally practicable. It includes generous road and internal boundary setbacks and landscaping, a building setback of approximately 18m from the eastern boundary (common with PC71 Part A) that comprises a 10m-wide biodiversity planting strip contiguous with the boundary, acoustic fencing and restriction of activities at night. It is Foodstuffs submission that the same needs to occur within PC71 to ensure an appropriate future well-functioning urban environment¹⁸.

Relief sought

- 12 Foodstuffs concerns as an affected neighbour could be pragmatically resolved, and a well-functioning future urban environment ensured by making the following amendments to PC71:
 - (a) Retaining the status quo ODP4 area as most appropriate provisions for Foodstuffs' Property. The proposed transport and pedestrian links into the Site should be removed as they are best described as futile:

¹⁴ Housing Enabling Bill, Schedule 3A, Part 2.

¹⁵ Housing Enabling Bill, Schedule 3A, Part 1. Clause 4. Public notification is precluded for resource consents and subdivision applications for the construction and use of 4 or more residential units if they comply with density standards.

¹⁶ Housing Enabling Bill, Schedule 3A, Part 1, Clause 3.

¹⁷ Ms Fiona Aston, at [146].

¹⁸ Ms Rebecca Parish, at [12].

- (i) Supermarket traffic could run through the PC71 network and the roads would preclude the proposed layout of the Supermarket and create conflict with heavy vehicles servicing the supermarket along the eastern boundary of the supermarket site and potentially significant safety effects.¹⁹
 - (ii) Foodstuffs' resource consent application includes footpaths immediately outside the Site on Levi Road to integrate with the external pedestrian network and cycle networks. The provision of these links replaces the need for direct pedestrian linkages between PC71.
 - (iii) If a threshold is required for the development of the Broadlands Drive link, then the Applicant's evidence is that 491 dwellings/allotments could be accommodated prior to requiring the Broadlands Drive connection²⁰. There are only 440 households in areas not subject to noise contours and by excluding the proposed deferred zoning, as recommended by the Reporting Officer²¹, this makes the necessity and appropriateness of this link redundant.
- (b) If PC71 is approved, it will move the noise compliance location to the common boundary between Foodstuffs' Property and PC71 and will create unacceptable noise effects from the movement and operation of heavy vehicles. Foodstuffs has taken care to ensure that community noise exposure is as low as practicable though selection of the site, layout, and design²². PC71 must be amended to include adequate provision for noise by providing a combination of a 2m noise control barrier on the common boundary, a substantial setback comprised of a greenway and/or no build and open space area within the PC71 site and an increased permitted night-time noise limit at the common boundary between the Property and PC71 Part A to 45 dB LAeq (15min).²³

13 If these mitigations are not offered, it is submitted PC71 should be declined. The proposed new zoning is not more appropriate than the status quo and it does not provide any comfort for adequate management of potential adverse effects²⁴. Simply adopting the existing residential provisions is not acceptable and risks

¹⁹ Ms Rebecca Parish at [11].

²⁰ Ms L Williams, at [24].

²¹ Officer's Report, at [182].

²² Mr Rob Hay at [20].

²³ Robert Hay at [31]

²⁴ Mr Mark Allan, at [40] and [48].

negative consequences for Foodstuffs' operations, the future residents and the wider community.²⁵

14 Foodstuffs submissions are supported by the following witnesses, who are available to answer any questions from the Commissioner:

- (a) Ms Rebecca Parish (Foodstuffs);
- (b) Mr Rob Hay (acoustic); and
- (c) Mr Mark Allan (planning).



Alex Booker
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²⁵ Ms Rebecca Parish, at [9].