**IN THE MATTER OF** the Resource

Management Act

1991

<u>AND</u>

**IN THE MATTER OF** Variation 29 to the

Proposed Selwyn

District Plan

# RECOMMENDATION OF THE COMMISSIONERS

# **INTRODUCTION**

Variation 29 has been proposed to rectify some potential difficulties which occurred over the public notification of Variation 28. It simply re-notified the definition of "Rural Activity" and proposed Rules 1.5 and 6.1 relating to the scale of activities, all of which had been introduced as part of Variation 28. The hearings panel for Variation 28 had noted some deficiencies in the public notice relating to the above provisions. A decision was, therefore, made to re-notify them and as a result Variation 28 has been adopted in part only.

# PUBLIC NOTICE

Variation 29 was publicly notified on 8 December 2007 with submissions closing on 30 January 2008 and further submissions extended to 24 April, 2008. The variation drew three submissions only but the submissions and further submissions lodged on Variation 28 which relate to the same subject matter are deemed to be submissions on Variation 29 as well. Thus

the submissions supporting or opposing Variation 28 (and in consequence Variation 29) are included in the considerations of the Panel.

# THE HEARING

This was held at the Rolleston Headquarters of the Selwyn District Council by a hearings panel comprised of:

Councillor Jack Pearcy (Chair)

Councillor Malcolm Lyall

Commissioner Mike Garland (Consultant)

At the hearing the Panel was assisted by Sean Elvines (Consultant Planner) who had prepared a comprehensive report pursuant to section 42A of the Act. Mr Elvines' report, together with a summary of the relevant submissions and further submissions and Variation 29 had been pre-circulated.

At the hearing the following parties were represented:

- Lincoln University
- The NZ Institute for Crop and Food Research Ltd
- AgResearch Ltd

By Katherine Snook (Consultant Planner)

- Ms Belinda Jones, Managing Director of Landmark Holdings
- L J Manion (by letter)
- The Poultry Industry Association of NZ and others

(Tegal Foods Ltd, P H Van den Brink Ltd, Brinks SI Ltd and Feedco Canterbury) – by letter

 TrustPower (Statement of Evidence by Ms E C Hunter, Planning Consultant) - by letter

Ms Snook explained that Lincoln University and its allied organizations undertook a variety of rural based research and associated activities at their research farms and research sites in the Selwyn District. They are concerned that these activities may be excluded from the definition of rural activity and that they would therefore not be permitted activities within the Rural Zone. In particular, they would not wish them to be classified as industrial or business activities within the rural zone. She made the point that the activities carried out by these organisations were contributions to and part of the primary producing rural land based activities which the Rural Zones provided for. The University and the other organizations sought the inclusion of the words "and associated education and research activities" in the definition of Rural Activity and that these activities be included as exclusions from the Scale of Activities rule.

<u>Ms Belinda Jones</u> appeared in support of Landmark Holdings to express agreement with Mr Elvines' recommendations.

A letter was received from Mr L J Manion who had indicated that he could not attend. He asked that this submission (copies supplied) be considered. He submitted that the variation should not provide – in a general sense – for the continued operation and expansion of intensive farming activities in the rural zone. He submitted that these should be confined to Rural Zones with minimum lot sizes of 20ha and not within the rural lifestyle block areas. He also sought that the setback rules for intensive farming activities should be reviewed.

A letter was tabled from Harrison Grierson Consultants Ltd on behalf of the Poultry Industry Association of NZ and Others. The letter supported the recommendations of Mr Elvines' report.

A statement of evidence by Ms Claire Hunter (Planning Consultant) on behalf of TrustPower Ltd was tabled. This submitter sought that utilities be clearly exempt from Rule 1.5 and that text be included to that effect. The recommendations of Mr Elvines were supported.

# **DISCUSSION OF ISSUES**

Only two matters are to be resolved: firstly, the issues raised by Mr Manion and secondly those raised by Lincoln University and its allied organisations. Mr Manion has requested that provisions be included and action taken that is clearly outside the scope of the variation which is confined narrowly to the definition of Rural Activity and the proposed Rules 1.5 and 6.1. For that reason, it is not possible to consider his submission further. It would require a further variation.

The submission by Lincoln University and others however is within scope and the panel has given it careful consideration. Mr Elvines has pointed out that the Proposed District Plan includes a definition of "research" as including such things as product development and testing, consultancy and marketing of research information which embodies such things as commercial conferencing accommodation and retail facilities. Clearly the inclusion of the words sought would considerably broaden the bounds of what can be accepted as a rural The panel agrees that, for example, ancillary administrative commercial, activity. conferencing accommodation and retail facilities are not commonly regarded as rural activities and nor are their associated effects akin to activities of a rural nature. Reverse sensitivity effects could also arise. Their inclusion as activities that would be permitted as of right in, some instances, would be likely to lead to situations which are contrary to the purpose of the Act. The Panel considers that the research and education farming activities are adequately covered by the definition of Rural Activity as it stands. The inclusion of educational activities associated with other rural activities would similarly broaden the range of effects. Research farms used for that purpose and to educate student scientists are adequately included by the words "use of land or buildings for the purpose of growing or rearing of crops or livestock including forestry viticulture and horticulture" and the effects which are what the district plan seeks to control - will be the same.

While it might be possible to further refine the definition, it is clear that other definitions would also have to be altered such as that for "research". That would very clearly be beyond the scope of this variation.

# RECOMMENDATION

For the above reasons the following decisions in relation to the submissions and further submissions are recommended:

#### **Recommendation 1**

The submissions and further submissions by V. Saxton (92.1, 92.2), Rolleston Square Ltd (94.1), A & C McLenaghan (103.1), Eastern Selwyn Residents Assn (123.1), Mr & Mrs Hammond (126.1), Belinda Jones (124.1), Foodstuffs SI Ltd (132.1), Darren and Geraldine Rogers (134.1) and Robert John Dally (299F) be accepted;

The further submissions by Trustpower Ltd (339F), Poultry Industry Association of New Zealand and Others (170F), Landmark Holdings Ltd (159F), VM Challies (315F) and Prebbleton Community Association (327F) be rejected.

## **Amendment Required**

None required

#### **Recommendation 2**

That submissions and further submissions by AB Annand & Co Ltd (130.1), Peter Baylis (131.1, 131.2) and Poultry Industry Association of New Zealand (140.1)(353.1)(353.4)(170F), Selwyn Plantation Board Ltd (309F), Murray Implements Ltd (313F), Trustpower (339F) be rejected;

The further submissions of Landmark Holdings Ltd (159F), Robert John Dally (299F), VM Challies (315F), Prebbleton Community Association Inc (327F), Trustpower (339F) and L J Manion and others (365F) are accepted.

## **Amendment Required**

None required

#### **Recommendation 3**

That the submission and further submission by Meadow Mushrooms Ltd (135.1), Landmark Holdings Ltd (354.3) and Robert John Dally (299F) be accepted; and the further submission by Trustpower Limited (339F) be rejected.

## **Amendments Required**

None required

#### **Recommendation 4**

That the submissions and further submissions by Poultry Industry Association of New Zealand (140.3)(353.3), Trustpower Ltd (339F) are accepted.

The further submissions by Landmark Holdings Ltd (159F), VM Challies (315F), Prebbleton Community Association Inc (327F), TrustPower (364F) and L J Manion and others (365F) are rejected.

## **Amendments Required**

Rural Activity: means the use of land or building(s) for the purpose of growing or rearing of crops or livestock, including forestry, viticulture, and horticulture and intensive livestock production and may include a dwelling.

## **Recommendation 5**

That the submissions and further submissions by NZ Institute for Crop and Food Research Ltd (127.1), Lincoln University (128.1), AgResearch Limited (129.1), Rolleston Square Ltd (166F), Trustpower Ltd (339F) are rejected.

The further submissions by Landmark Holdings Ltd (159F), VM Challies (315F), Prebbleton Community Association Inc (327F) are accepted.

# **Amendments Required**

None required

#### **Recommendation 6**

That the submissions and further submissions by VM Challies (136.6)(315F), Prebbleton Community Association Inc (137.6)(327F), Poultry Industry Association of New Zealand Inc (140.7) Landmark Holdings Ltd (138.6)(354.1)(159F) and Robert Dally (299F), Peter & Lorraine Tolhoek (157F), Jennifer Nepton (158F), Debbie Hendry (333F), William Lapsley (297F), David Pearson (321F), Belinda Jones (323F), Maki & David Ferguson (325F), Mary Fitzpatrick (335F), Lorraine Tolhoek (337F) and TrustPower (352.1)(364F)(339F) are accepted in part to the extent of amendments made.

That the submissions and further submissions by NZ Institute for Crop and Food Research Ltd (127.2), Lincoln University (128.2), AgResearch Limited (129.2), Darren and Geraldine Rogers (134.3), Rolleston Square Ltd (166F), Swap Stockfoods Ltd (141F), Landmark Holdings Ltd (159F), VM Challis (315F), Poultry Industry Association and NZ and others (170F) and Prebbleton Community Association (327F) are rejected.

## **Amendments Required**

Amend Part 3, Rule IX-Activities Rule, Scale of Activities-Rule 1.5-Permitted Activities as follows:

#### Scale of Activities

- 1.5 Any activity which is not a rural activity or a residential activity if the following conditions are met:
- 1.5.1 The maximum gross floor area <u>of any site covered by</u> building(s), loading, storage and waste areas used for any other activity on the site shall be 100m<sup>2</sup>.
- 1.5.2 No more than 2 full-time equivalent persons are employed in undertaking any other activity on the site.

Note: Rule 1.5 does not apply to any temporary activity, <u>Rural Based Industrial activity or any Other Industrial Activity (where Rule 1.24 and 3.1.1 apply), or Utilities (where rules in Part 3, Rule V – Utilities apply).</u>

#### **Recommendation 7**

That the submissions and further submissions by Poultry Industry Association of New Zealand (140.10)(353.3), VM Challies (136.8), Prebbleton Community Association Inc (137.8) and Landmark Holdings Ltd (138.8) (354.2), Robert Dally (299F), Peter & Lorraine Tolhoek (157F), Jennifer Nepton (158F), Debbie Hendry (333F), William Lapsley (297F), David Pearson (321F), Belinda Jones (323F), Maki & David Ferguson (325F), Mary Fitzpatrick (335F) and Lorraine Tolhoek (337F) and TrustPower (364F) be accepted in part to the extent of amendments made as identified below;

The further submissions by Landmark Holdings Ltd (159F), VM Challies (315F), Prebbleton Community Association Inc (327F), Selwyn Plantation Board (309F), Poultry Industry Association of New Zealand (170F), Swap Stockfoods Ltd (141F), L J Manion and others(365F) be rejected.

#### **Amendments Required**

Amend Reasons for Rules, Part 3, Rule IX – Activities as follows:

Reasons for Rules

. . .

Rules 1.2 and 3 lists activities which are non-complying activities, whether they comply with the rules for permitted activities or not. The effects associated with other types of industrial activities (i.e. those that are not defined as "rural-based" industrial activities) are considered to be generally inappropriate in all parts of the Rural Zone, except for industrial activities involving the use or extraction of natural resources in the Port Hills, Malvern Hills and High Country and those operating as a home based occupation given their size and operational constraints. While there is a degree of acceptance for rural-based industrial activities within parts of the rural area, other types of industry may result in significant adverse visual effects, increased traffic generation and noise, and a reduction in rural outlook and openness. As such, it is appropriate that these types of industrial activities are directed to locate within Business 2 Zones, unless significant adverse effects can be avoided.

. .

Rules 1.5 and 6 that the effects of <u>non rural and non residential</u> activities in the rural area, <u>including business and community activities but excluding rural based industrial activities</u> and other industrial activities (which are covered under Rules 1.24 and 3.1.1 respectively). The rules allow for small-scale <u>business and community activities</u> to establish as a permitted activity in the Rural Zone, however resource consent will be required (as a discretionary activity) where the scale exceeds the permitted standards. The Plan recognises that the rural area accommodates a variety of activities, however, the scale, nature and intensity of some business <u>and community</u> activities may not maintain rural character or the quality of the environment. Activities that do not comply with the permitted activity rules may still be able to establish in the rural areas, if any significant adverse effects on the amenity and character of the receiving environment can be adequately avoided, <u>remedied or mitigated</u>.

# **SUMMARY OF RECOMMENDED TEXT CHANGES TO VARIATION 29**

Recommended text changes are underlined, strikeout and bolded. The bracketed number denotes the submission(s) the change is associated with.

#### Amendments to the Rural Volume of the Proposed District Plan

Rule, Part 3, Rule IX – Activities Rule, Scale of Activities - Rule 1.5– Permitted Activities (page 316), as follows:

#### Scale of Activities

- 1.5 Any activity which is not a rural activity or a residential activity if the following conditions are met:
  - 1.5.1 The maximum gross floor area of any site covered by (136.6, 137.6, 138.6, 354.1) building(s), loading, storage and waste areas used for any other activity on the site shall be 100m<sup>2</sup>.
  - 1.5.2 No more than 2 full-time equivalent persons are employed in undertaking any other activity on the site.

Note: Note: Rule 1.5 does not apply to any temporary activity, <u>Rural Based Industrial activity or any</u>

Other Industrial Activity (where Rule 1.24 and 3.1.1 apply), or Utilities (where rules in Part 3, Rule V – Utilities apply). (352.1, 354.1)

Part 3, Rule IX – Activities Rule, Scale of Activities - Rule 6.1 – Other Activities (page 316)

Scale of Activities

6.1 Any activity which does not comply with Rules 1.5.1 or 1.5.2 shall be a *discretionary activity*.

Reasons for Rules, Part 3, Rule IX – Activities (page 339-341A)

Reasons for Rules

...

Rules 1.2 and 3 lists activities which are non-complying activities, whether they comply with the rules for permitted activities or not. The effects associated with other types of industrial activities (i.e. those that are not defined as "rural-based" industrial activities) are considered to be generally inappropriate in all parts of the Rural Zone, except for industrial activities involving the use or extraction of natural resources in the Port Hills, Malvern Hills and High Country and those activities operating as a home based occupation given their size and operational constraints (134.2, 136.8, 137.8, 138.8, 140.10). While there is a degree of acceptance for rural-based industrial activities within parts of the rural area, other types of industry may result in significant adverse visual effects, increased traffic generation and noise, and a reduction in rural outlook and openness. As such, it is appropriate that these types of industrial activities are directed to locate within Business 2 Zones, unless significant adverse effects can be avoided.

...

Rules 1.5 and 6 that the effects of <u>non rural and non residential</u> (354.2) activities in the rural area, <u>including business and community activities but excluding rural based industrial activities</u> and other industrial activities (which are covered under Rules 1.24 and 3.1.1 respectively). (354.2) The rules allow for small-scale <u>business and community activities</u> (354.2) to establish as a permitted activity in the Rural Zone, however resource consent will be required (as a discretionary activity) where the scale exceeds the permitted standards. The Plan recognises that the rural area accommodates a variety of activities, however, the scale, nature and intensity of some business <u>and community</u> (354.2) activities may not maintain rural character or the quality of the environment. Activities that do not comply with the permitted activity rules may still be able to establish in the rural areas, if any significant adverse effects on the amenity and character of the receiving environment can be adequately avoided, <u>remedied or mitigated</u>. (353.3)

...

#### Part 3, Definitions, Rural Activity,

Rural Activity:

Rural Activity: means the use of land or building(s) for the purpose of growing or rearing of crops or livestock, including forestry, viticulture, and horticulture and intensive livestock production (140.3, 353.2) and may include a dwelling.

# SUMMARY OF RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS LODGED TO VARIATION 29

SUMMARY OF SUBMISSIONS AND FURTHER SUBMISSIONS, VARIATION 29		
Submission and Further Submission Point	Recommendation	
92.1	Accept	
339F	Reject	
92.2	Accept	
339F	Reject	
94.1	Accept	
339F	Reject	
299F	Accept	
103.1	Accept	
339F	Reject	
123.1	Accept	
339F	Reject	
124.1	Accept	
339F	Reject	
170F	Reject	
126.1	Accept	
339F	Reject	
127.1	Reject	
166F	Reject	
339F	Reject	
	Submission and Further Submission Point  92.1  339F  92.2  339F  94.1  339F  103.1  339F  124.1  339F  126.1  339F  127.1  166F	

	127.2	Reject
Rolleston Square Limited	166F	Reject
128 Lincoln University	128.1	Reject
Rolleston Square Ltd	166F	Reject
Trustpower Ltd	339F	Reject
	128.2	Reject
Rolleston Square Ltd	166F	Reject
129 AgResearch Limited	129.1	Reject
Rolleston Square Limited	166F	Reject
Trustpower Ltd	339F	Reject
	129.2	Reject
Rolleston Square Ltd	166F	Reject
130 AB Annand & Co Ltd	130.1	Reject
Landmark Holdings Ltd	159F	Accept
Poultry Industry Association of New Zealand and Others	170F	Reject
Robert John Dally	299F	Accept
Selwyn Plantation Board	309F	Reject
V M Challies	315F	Accept
Prebbleton Community Association Inc	327F	Accept
131 Peter Baylis	131.1	Reject
Landmark Holdings Ltd	159F	Accept
Poultry Industry Association of New Zealand and Others	170F	Reject
Robert John Dally	299F	Accept
Selwyn Plantation Board Ltd	309F	Reject

Murray Implements Ltd	313F	Reject
V M Challies	315F	Accept
Prebbleton Community Association Inc	327F	Accept
Trustpower Ltd	339F	Accept
	131.2	Reject
Landmark Holdings Ltd	159F	Accept
Poultry Industry Association of New Zealand and Others	170F	Reject
Robert John Dally	299F	Accept
Selwyn Plantation Board Ltd	309F	Reject
Murray Implements Ltd	313F	Reject
V M Challies	315F	Accept
Prebbleton Community Association Inc	327F	Accept
Trustpower Ltd	339F	Accept
132 Foodstuffs SI Ltd	132.1	Accept
Trustpower Ltd	339F	Reject
134 Darren and Geraldine Rogers	134.1	Accept
Landmark Holdings Ltd	159F	Reject
V M Challies	315F	Reject
Prebbleton Community Assoc Inc	327F	Reject
	134.3	Reject
Landmark Holdings Ltd	159F	Accept
V M Challies	315F	Accept
Prebbleton Community Assoc Inc	327F	Accept
135 Meadow Mushrooms Ltd	135.1	Accept

Robert John Dally	299F	Accept
Trustpower Ltd	339F	Reject
136 V M Challies	136.6	Accept in part
Robert John Dally	299F	Accept
Swap Stockfoods Ltd	141F	Reject
Poultry Industry Association of New Zealand and Others	170F	Reject
	136.8	Accept in part
Robert John Dally	299F	Accept
Selwyn Plantation Board Ltd	309F	Reject
Poultry Industry Association of New Zealand and Others	170F	Reject
137 Prebbleton Community Association Inc	137.6	Accept in part
Poultry Industry Association of New Zealand and Others	170F	Reject
Robert John Dally	299F	Accept
Swap Stockfoods Ltd	141F	Reject
	137.8	Accept in part
Poultry Industry Association of New Zealand and Others	170F	Reject
Robert John Dally	299F	Accept
138 Robert John Dally	138.6	Accept in part
Swap Stockfoods Ltd	141F	Reject
Peter & Lorraine Tolhoek	157F	Accept
Jennifer Nepton	158F	Accept
Poultry Industry Association of New Zealand and Others	170F	Reject
William Lapsley	297F	Accept
Robert John Dally	299F	Accept

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David McKay Pearson	321F	Accept
Belinda Mary Jones	323F	Accept
Maki & David Ferguson	325F	Accept
Debbie Hendry	333F	Accept
Mary Fitzpatrick	335	Accept
Lorraine Margaret Tolhoek	337F	Accept
	138.8	Accept in part
Swap Stockfoods Ltd	141F	Reject
Peter & Lorraine Tolhoek	157F	Accept
Jennifer Nepton	158F	Accept
Poultry Industry Association of New Zealand and Others	170F	Reject
William Lapsley	297F	Accept
Robert John Dally	299F	Accept
David McKay Pearson	321F	Accept
Belinda Mary Jones	323F	Accept
Maki & David Ferguson	325F	Accept
Debbie Hendry	333F	Accept
Mary Fitzpatrick	335	Accept
Lorraine Margaret Tolhoek	337F	Accept
140 Poultry Industry Association of New Zealand	140.1	Reject
Landmark Holdings Ltd	159F	Accept
V M Challies	315F	Accept
Prebbleton Community Assoc Inc	327F	Accept
	140.3	Accept
<u> </u>	1	1

Trustpower Ltd	339F	Accept
Landmark Holdings Ltd	159F	Reject
V M Challies	315F	Reject
Prebbleton Community Assoc Inc	327F	Reject
	140.7	Accept
Trustpower Ltd	339F	Accept
Landmark Holdings Ltd	159F	Reject
V M Challies	315F	Reject
Prebbleton Community Assoc Inc	327F	Reject
	140.10	Accept in part
Landmark Holdings Ltd	159F	Reject
V M Challies	315F	Reject
Prebbleton Community Assoc Inc	327F	Reject
352 TrustPower	352.1	Accept in part
353 Poultry Industry Association of New Zealand	353.1	Reject
L J Manion and others	365F	Accept
	353.2	Accept
TrustPower	364F	Reject
L J Manion and others	365F	Reject
	353.3	Accept
TrustPower	364F	Accept
L J Manion and others	365F	Reject
	353.4	Reject
L J Manion and others	365F	Accept

354 Landmark Holdings Ltd	354.1	Accept
TrustPower	364F	Accept
	354.2	Accept
TrustPower	364F	Accept
	354.3	Accept

Cr Jack Pearcy

Chairman

Cr Malcolm Lyall

M J G Garland

Commissioner

Date: 1st September, 2008