

Before the Independent Hearings Panel

Under the Resource Management Act 1991

In the matter of a hearing on submissions to the proposed Selwyn District Plan:
Strategic Directions

**Foodstuffs South Island Limited and Foodstuffs (South
Island) Properties Limited**

Submitter ID: DRP-0373

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

30 July 2021

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May it please the Commissioners

- 1 These submissions are provided on behalf of Foodstuffs (South Island) Properties Limited (**Foodstuffs**), a submitter on the proposed Selwyn District Plan (**Proposed District Plan**) who has existing established and planned future business activities in the Selwyn District.
- 2 Foodstuffs has identified a demand for additional supermarket offerings and is concerned that the Proposed District Plan does not appropriately provide for existing or future planned supermarket activity. Provision for new supermarkets in the Town Centre Zone is supported. As there is no suitable land for a new large format supermarket within existing Town Centre Zones, supermarkets should also be expressly provided for in the objectives, policies and rules for a range of centres. Foodstuffs is also seeking to be able to apply for resource consents outside centres and have its activity considered on its merits, particularly in catchments where there is a demonstrated need for this essential service and any adverse effects are appropriate and able to be managed. Foodstuffs will be appearing throughout the Proposed District Plan hearings and calling technical evidence to support its position.
- 3 This hearing relates to Strategic Directions which is intended to provide the key outcomes for future land use in the District. The directions take primacy, and all other provisions should be expressed and achieved in a manner consistent with them¹. Future resource consent applications will be assessed with specific reference to the Strategic Directions, and the purpose of presenting legal submissions and company evidence (Ms Rebecca Parish) is to ensure they do not unnecessarily restrict the ability to enable supermarket activity in the Proposed District Plan in future hearings.
- 4 Foodstuffs is generally supportive of the following Strategic Directions which will particularly impact its business growth and development in Rolleston, subject to some small changes which allow for flexibility while not taking away from the purpose or intent of the direction:
 - (a) Sensational Selwyn SD-DI-O1 (with the inclusion of the words "maintains and enhances");
 - (b) Vibrant and Viable Centres SD-DI-O5 (provided the notified word "preferred" is retained);

¹ Section 42A Report, 6.1 What is a strategic objective?

- (c) Compact and Sustainable Township Network SD-UFD-O1 (with the inclusion of the word "primarily" included and the notified words "in or around" retained); and
 - (d) Urban Growth and Development SD-UFD-O2 (with the notified words "meet anticipated demands" retained and not amended to "meet expected demands" as recommended by the Section 42A Report).
- 5 The amendments sought are detailed in **Appendix 1**. It is submitted the proposed changes sought by Foodstuffs:
- (a) would better assist the Council to give effect² to the recent National Policy Statement on Urban Development 2020 (**NPS-UD**)³;
 - (b) would give effect to the provisions in the Canterbury Regional Policy Statement (**CRPS**) (noting that where there is an inconsistency with NPS-UD, this would prevail);
 - (c) is the most appropriate way to ensure the Proposed District Plan contributes to a well-functioning urban environment (which as a minimum requires suitable sites for business activities such as supermarkets to be enabled and supported by an associated policy framework⁴); and
 - (d) would better achieve the sustainable management purpose of the Resource Management Act 1991 (the **RMA**).

Background to Foodstuffs' submission

- 6 The Proposed District Plan is an activities-based plan and seeks to direct the location of activities within identified zones. It splits the business section of the operative District Plan into commercial, mixed use, industrial and special purpose zones. It introduces a Township Network comprising a District Centre (Rolleston), Sub-District Centre (Lincoln), Service Townships and Rural Townships, and an Activity Centre Network comprising Key Activity Centres (Rolleston, Lincoln, Darfield and Leeston), Service Activity Centres and Rural Activity Centres and a hierarchy for commercial zones.

² Give effect to is a strong direction which means "implement": *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] 1 NZLR 593 (SC) at [80].

³ The NPS-UD took effect from 20 August 2020.

⁴ 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).

- 7 For context, the essence of Foodstuffs' submissions on the Proposed District Plan is that the package of provisions does not appropriately provide for supermarkets, including where existing lawfully established supermarkets are located. Supermarkets should be expressly provided for in a range of centres and their operational and functional constraints acknowledged. In other areas, supermarkets should be able to secure resource consents in catchments where there is a demonstrated need for the essential service, provided it can be justified on its merits and adverse effects managed when considering the receiving environment.
- 8 By way of example, the Rolleston Key Activity Centre (identified as the primary focus for commercial activities within the District and an area identified for significant growth) only provides for supermarkets within its confined Town Centre Zone (where there is no suitable land to accommodate an additional large format discount supermarket) and not in other commercial, mixed-use or non-commercial zones within and surrounding Rolleston. Any application for resource consent outside of the Town Centre Zone would be subject to an unduly restrictive objectives and policy framework.

Statutory tests

- 9 The statutory tests when preparing and changing a district plan are as set out in recent case *Colonial Vineyard Ltd v Marlborough District Council*.⁵
- 10 Of relevance to Foodstuffs' submission, the Proposed District Plan must accord with and assist Council in carrying out its functions, including:⁶
- (a) achieving integrated management of effects of the use, development and protection of land and associated natural and physical resources; and
 - (b) ensuring that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district.
- 11 In respect of the existing statutory documents the Proposed District Plan must give effect to any national policy statement or operative regional policy statement.⁷ This is discussed further below.
- 12 The Proposed District Plan must establish the most appropriate method for achieving the objectives and policies of the District Plan. When undertaking the

⁵ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] onwards. See also *Adams and others v Auckland Council* [2018] NZEnvC 8 at [53]; and more recently in *Trojan Holdings Limited and Skyline Enterprises Limited v Queenstown Lakes District Council* at [2020] NZEnvC 79 at [23]; *Edens v Thames-Coromandel District Council* [2020] NZEnvC 13 at [10].

⁶ Section 31(1)(a), (aa) and (b).

⁷ Section 75(3)(a) and (c)

assessment detailed in section 32, economic considerations are an important element that must be considered alongside all other relevant matters, and the purpose of the RMA.

- 13 Pre-2013 RMA amendments, section 32(4) RMA required that the evaluation of the appropriateness of each objective "*take into account the benefits and costs of policies, rules or other methods*", whereas the Proposed District Plan is required to consider post-2013 RMA provisions which are more directive. A Section 32 evaluation report must assess environmental, economic, social and cultural effects, including opportunities for economic growth and employment. Sections 32(1)(b)(ii) and 32(2)(a)(i)-(ii) RMA require when assessing the "efficiency and effectiveness" of each objective, the evaluation report must identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including (specifically) the opportunities for economic growth and employment that are anticipated to be provided or reduced.
- 14 It is Foodstuffs submitted that significant economic benefits are anticipated to be provided by additional supermarkets in the District.
- 15 Ultimately, the Proposed District Plan must accord with Part 2 of the RMA.⁸

NPS- UD

- 16 The NPS-UD is part of the urban planning pillar of the Government's Urban Growth Agenda (UGA) which aims to remove barriers to the supply of land and infrastructure and make room for growth (up and out).⁹
- 17 The Environment Court has previously said the purpose of the (now superseded) National Policy Statement on Urban Development Capacity 2016 is "... *to open doors for and encourage the development of land for business and housing, not to close them*"¹⁰. This statement remains applicable to the NPS-UD.
- 18 The NPS-UD is designed to improve responsiveness, and is a recent statement which recognises the national significance of:

⁸ Section 74(1)(b) RMA

⁹ Urban Growth Agenda can be located here: <https://www.hud.govt.nz/urban-development/urban-growth-agenda/>

¹⁰ *Bunnings Limited v Queenstown Lakes District Council* [2019] NZEnvC 59, [2019] NZRMA 426 at [39]

- (a) having well-functioning urban environments that enable all people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety, now and in the future;¹¹ and
 - (b) providing at least sufficient development capacity to meet the different needs of people and communities.
- 19 Of particular relevance, the NPS-UD applies to Planning Decisions that affect an urban environment¹² (i.e. the Proposed Selwyn District Plan). To give effect to the NPS-UD, the Proposed District Plan is:
- (a) to be enabling of more businesses to be located in areas of urban environment in or near a centre zone or other area with many employment opportunities and where there is high demand for housing (Objective 3); and
 - (b) to achieve a well-functioning urban environment by having or enabling as a minimum a variety of sites that are suitable for different business sectors in terms of location and site size; and supporting the competitive operation of land and development markets (Policy 1(b) and 1(d)).¹³
- 20 It is submitted that to give effect to the requirements of the NPS-UD, the provisions of the Proposed District 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.¹⁴
- 21 There is limited (if any) opportunity for a supermarket operator to secure sufficient land for a large format discount supermarket in a centre (and particularly the Rolleston Town Centre Zone). The notified provisions of the Proposed District Plan do not provide for supermarkets to locate outside a centre. These restrictions will likely result in loss of social and economic wellbeing for the community and will not give effect to the NPS-UD.
- 22 It is submitted the Strategic Directions must not unnecessarily restrict the ability for the Proposed District Plan to make provision for supermarkets in subsequent chapters.

¹¹ Objective 1 NPS-UD 2020

¹² Urban environment is defined as any area of land that is, or is intended to be, predominantly urban in character; and is, or is intended to be, part of a housing and labour market of at least 10,000 people.

¹³ Well-functioning Urban Environment is defined in Policy 1 NPD-US 2020; Policy 1(b) and (d) referenced.

¹⁴ 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).

CRPS

- 23 The Proposed District Plan is required to give effect to both the NPS-UD and CRPS. The CRPS was prepared under the previous NPS-UDC, so it cannot be assumed that it fully gives effect to the NPS-UD. The NPS-UD will prevail over the CRPS in the case of conflict between the provisions of the two documents.
- 24 That said, the CRPS provides for development in and around existing urban areas as the *primary* focus for accommodating the region's growth (Objective 5.2.1 Location, Design and Function of Development), and recognises that new commercial activities are *primarily* directed to the central city, key activity centres and neighbourhood centres (Objective 6.2.6(3) Business Land development); and a range of other business activities are provided for in appropriate locations (Objective 6.2.6(4) Business Land development).
- 25 The CRPS also expressly provides that some new commercial development will be appropriate outside of a centre subject to appropriate management of effects. Policy 6.3.6 Business Land provides:

To ensure that provision, recovery and rebuilding of business land in Greater Christchurch maximises business retention, attracts investment, and provides for healthy working environments, business activities are to be provided for in a manner which: ...

4. Recognises that new commercial activities are primarily to be directed to the Central City, Key Activity Centres and neighbourhood centres where these activities reflect and support the function and role of those centres; or in circumstances where locating out of centre, will not give rise to significant adverse distributional or urban form effects; ...

- 26 The changes sought by Foodstuffs to the Strategic Directions will give effect to the CRPS.

Conclusion

- 27 The Proposed District Plan lacks provision for, and imposes unduly restrictive standards and policies on, supermarkets. It ignores existing lawfully established activities, and does not provide sufficient flexibility to accommodate current and future growth and business demand.
- 28 The Strategic Directions will set the scene for the Proposed District Plan and its implementation. It is important that the directions retain sufficient flexibility to ensure that discussion can be had about the suitability of, and provision for, business activities in subsequent chapters.

- 29 Foodstuffs is generally supportive of the following Strategic Directions which will particularly impact its business growth and development in Rolleston, subject to some small changes. The small changes in **Appendix 1** sought by Foodstuffs will better give effect to the NPS-UD, and enable social and economic wellbeing for the community.
- 30 The evidence of Ms Rebecca Parish from Foodstuffs is produced to support this submission.

A handwritten signature in black ink that reads "A Booker". The signature is written in a cursive, flowing style.

Alex Booker
Counsel for the Foodstuffs (South Island) Properties Limited

30 July 2021

APPENDIX 1: PROPOSED SELWYN DISTRICT PLAN – STRATEGIC DIRECTIONS (HEARING 1)

Strategic Direction <u>(as recommended to be amended by the Section 42A Report)</u>		Amendments requested by Foodstuffs <u>(additions underlined)</u>	Explanation
<p>Note: <u>For the avoidance of doubt, this means that for resource consent applications, the Strategic Objectives may require specific consideration and application to proposals, as a relevant consideration under section 104(1)(b)(vi).</u></p>			
District identity			
	<p>31 takes into account the character of individual communities;</p> <p>32 is well-connected, safe, accessible, and resilient; and</p> <p>33 enhances environmental, economic, cultural, and social <u>and health</u> outcomes for the benefit of the entire District.</p>	<p>1 takes into account the character of individual communities;</p> <p>2 is well-connected, safe, accessible, and resilient; and <u>maintains and</u> enhances environmental, economic, cultural, and social <u>and health</u> outcomes for the benefit of the entire District.</p>	<p>The inclusion of the words "maintains and" reflects the intent in the Section 32 Report on Strategic Directions (p7).</p> <p>"The purpose of this strategic objective is effectively to <i>maintain or</i> enhance the amenity of Selwyn, to ensure the effective and efficient use of resources, and to provide for various opportunities for the betterment of the four realms". (my emphasis added)</p>
Vibrant and Viable Centres SD-DI-O5	Selwyn's hierarchy of activity centres are the preferred location for shopping, leisure, cultural, entertainment, and social interaction experiences in accordance with their anticipated role within the Activity Centre Network.	No change.	The reference to "preferred location" provides discretion for appropriate development outside activity centres, particularly where it can be demonstrated existing activity centres do not have capacity to meet demand/need [subject to appropriate policy and rule framework that provides for consideration of specific out-of-centre activity which is to be determined through other chapters.]

Urban form and development			
<p>Compact and Sustainable Township Network</p> <p>SD-UFD-O1</p>	<p>Urban growth is located only in or around <u>adjoining</u> existing townships and in a compact and sustainable form that aligns with its anticipated role in the Township Network, while responding considering to the community's needs, natural landforms, cultural values, <u>highly productive land</u> and physical features.</p>	<p>Urban growth is located <u>primarily only</u> in or around existing townships and in a compact and sustainable form that aligns with its anticipated role in the Township Network, while responding considering to the community's needs, natural landforms, cultural values, <u>highly productive land</u> and physical features.</p>	<p>The plan needs to be responsive and provide sufficient flexibility for the life of the plan.</p>
<p>Urban Growth and Development</p> <p>SD-UFD-O2</p>	<p>There is sufficient feasible development capacity to meet anticipated <u>expected</u> demands for housing and business activities.</p>	<p>There is sufficient feasible development capacity to meet <u>anticipated</u> demands for housing and business activities.</p>	<p>The original 'anticipated' is more appropriate than s42A 'expected', based on following distinctions, where 'anticipate' speaks more to action and enabling, and therefore better aligned to NPS-UD.</p> <p>"Anticipate" means to expect something and take action in expectation. "Expect" means regard as likely to happen and does not require any action.</p> <p>"Expected" does not have the implication of waiting, but does mean you have reason to believe something is going to happen. "Anticipated" implies that you knew beforehand and you were prepared for (and actively waiting for) the event to happen.</p>