

Before the Independent Commissioner  
Appointed by the Selwyn District Council

Under the Resource Management Act 1991

In the matter of a hearing on submissions to the Partially Operative Selwyn  
District Plan – Variation 2: Levi Road rezoning

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

24 March 2025

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Kia ora koutou  
Naia te mihi kite mana whenua  
Naia hoki te mihi  
Ki a koutou Katoa

### May it please the Commissioner

- 1 These submissions are provided on behalf of Foodstuffs (South Island) Properties Limited (**Foodstuffs**), requesting rezoning of its site at the corner of Levi and Lincoln Rolleston Road, Rolleston (**the Site**) from Medium Density Residential Zone (**MDRZ**) to Large Format Retail Zone (**LFRZ**) in the Partially Operative Selwyn District Plan (**POSDP**) (hereinafter referred to as **Variation 2**).
- 2 Comprehensive evidence has been provided to support the request for rezoning (architectural, urban design, landscaping, transport, noise, economics, planning and servicing) which demonstrates that the proposed rezoning is more appropriate than the existing MDRZ. Variation 2 will secure an appropriate zone for the under-construction PAK'nSAVE supermarket (**PNS Rolleston**) and enable a trade retailer (i.e such as **Mitre 10**) to co-locate with a consistent approach to setbacks, design and layout to achieve an appropriate amenity for the adjacent residential environment. It is clear that no residential activities will be undertaken on the 4ha part of the Site where the PNS Rolleston is located. Under the MDRZ, supermarkets are a non-complying activity. The rezoning is a more appropriate reflection of the existing environment and will ensure the most efficient and effective provisions are in place to achieve the objectives of the POSDP, and the purpose of the Resource Management Act 1991 (**the RMA**).<sup>1</sup>
- 3 The residual 3ha of the Site is intended for a trade retailer activity. This activity and Variation 2 are assessed as most appropriate for this part of the Site.<sup>2</sup> Under the MDRZ, trade retail and trade supply activities are a non-complying activity so would otherwise be unable to locate on the Site. The Site is strategically located on two arterial roads which provide access to Rolleston Town Centre, supporting the establishment of another commercial offering to meet the needs of Rolleston, in a walkable distance of the TCZ.<sup>3</sup> The Site size enables necessary operational and functional requirements to be met for business viability and provision for high-quality architectural design and landscaping to absorb the scale of the activity and

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<sup>1</sup> Evidence of Mark Allan at [20] and [67]

<sup>2</sup> Evidence of Mark Allan at [33]

<sup>3</sup> Consistent with Objective 6.2.4 and Policy 6.3.4 Canterbury Regional Policy Statement. Officer's Report at [8.28]

provide amenity. Both activities will be major employees and it is agreed<sup>4</sup> (including by the Canterbury Regional Council<sup>5</sup>) that the loss of plan-enabled housing capacity arising from the rezoning will not impact stated housing bottom lines in the short and medium terms.<sup>6</sup>

- 4 Buildings will be generously setback from road boundaries with landscaping and acoustic treatment along the internal boundary with the adjoining residential zone.<sup>7</sup> The Site has a high level of connectivity and accessibility and is suitably positioned in proximity to public transport services, and within a wider walking and cycling catchment.<sup>8</sup> The traffic generated by a trade retailer like Mitre 10 will not affect the performance of the transport network.<sup>9</sup> Noise levels have been assessed as able to comply with existing district wide permitted standards.<sup>10</sup> Amendments to the POSDP provisions and a new ODP will ensure the proposed interfaces between residential and commercial activities are superior to those existing in the current LFRZ or the TCZ provisions.<sup>11</sup>
- 5 There are environmental benefits and synergies with locating a trade retailer adjacent to the PNS Rolleston, and within a broader residential catchment that alternative sites could not achieve. Smiths Mitre 10 is a locally family-owned business that has been deeply rooted in the local community since 1964.<sup>12</sup> Its customers are the same as PNS Rolleston, building layouts and designs are similar and the brands are recognisable as promoting low cost living and community presence.<sup>13</sup> Both activities when read together will strengthen the legibility of the Site.<sup>14</sup>
- 6 Variation 2 will add to Rolleston's plan-enabled business development capacity, responding to the growth of Rolleston and the identified shortage in hardware building and garden retail supply<sup>15</sup> It will provide consumer benefits such as

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<sup>4</sup> Evidence of Derek Foy at [3.24]-[3.25]; Evidence of Fraser Colegrave at [82]

<sup>5</sup> Submission of Canterbury Regional Council at [16]

<sup>6</sup> Objective 6.2.1a and Policies 6.3.6 and 6.3.7 Canterbury Regional Policy Statement. See Officer's Report at [8.27]

<sup>7</sup> Evidence of David Compton-Moen at [23]

<sup>8</sup> Evidence of Andrew Metherell at [64(e)]

<sup>9</sup> Evidence of Andrew Metherell at [48]

<sup>10</sup> Evidence of Rob Hay at [40]

<sup>11</sup> Noting trade retailers and supermarkets are permitted activities in the TCZ and LFRZ

<sup>12</sup> Evidence of Murray Smith at [5]

<sup>13</sup> Evidence of Rebecca Parish at [14]; Evidence of Murray Smith at [14](b)]

<sup>14</sup> Evidence of David Compton-Moen at [21]

<sup>15</sup> Evidence of Fraser Colegrave at [44]

additional product choice and reduced travel.<sup>16</sup> Overall it is submitted the sustainable management purpose of the RMA will be met, and the rezoning is more appropriate than the existing zoning.

### **Key matters**

- 7 The Officer's report is comprehensive, well written and supports that Variation 2 is approved (with recommended changes to provisions). There is no expert evidence presented by submitters. The Applicant experts have traversed the issues raised by submissions. There remain differences between those recommended provisions in the Officer's Report and those considered necessary by experts who have assessed Variation 2 for Foodstuffs. The differences have been clearly set out in the Planning JWS, and further updated in the Summary Statement circulated by the Reporting Officer.
- 8 As a result, these submissions focus on the following key matters to assist the Commissioner:
  - (a) the legal tests for a plan change;
  - (b) scope of submissions;
  - (c) other matters of interest and relevance to understanding Variation 2:
    - (i) Why is the Commissioner considering a private plan change when the POSDP is still under appeal?
    - (ii) Has SDC advanced any new commercial areas to be zoned for business activities given the recent significant increase in residential housing in Selwyn?
    - (iii) Is the Commissioner required to consider whether there are better alternative sites in the Izone area?
    - (iv) Where has the Broadlands Drive link in the Variation 2 ODP come from?
    - (v) Is the NPS-UD still relevant to Variation 2 given that the POSDP is recent, and some changes have been made in response to the NPS-UD to the CRPS?
  - (d) general legal matters raised in submissions – air pollution, property values and precedent effect.

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<sup>16</sup> Evidence of Fraser Colegrave at [20]

## Legal tests

- 9 The legal tests when preparing and changing a district plan are well known, and are set out in Appendix 1 with reference to *Colonial Vineyards Limited v Marlborough District Council*.<sup>17</sup>
- 10 The key question is whether Variation 2 is the most appropriate way to achieve the purpose of the RMA, compared with the status quo. The Commissioner is required to consider the most appropriate way for achieving the objectives and policies of the District Plan, undertaking the assessment detailed in section 32 RMA.
- 11 There are no changes proposed to existing objectives of the POSDP. An additional new policy is proposed to manage built form and layout to maintain compatibility with adjacent residentially zoned land.<sup>18</sup> A new Precinct Outline Development Plan (**ODP**) is proposed to guide future development requirements for the Site. A number of provisions under the POSDP have been added to incorporate the LFRZ (Lincoln-Rolleston Road) Precinct (LFRZ PREC13).
- 12 The expert planners are in broad agreement that Variation 2 meets the relevant statutory tests, can achieve the purpose of the RMA, and is consistent with the National Policy Statement on Urban Development 2020 (**NPS-UD**), Canterbury Regional Policy Statement and the POSDP.<sup>19</sup>
- 13 As set out in the evidence of Mr Allan, and confirmed in the Planning JWS there are number of matters that have been agreed following amendments made in response to the Officer's Report.
- 14 Areas of disagreement are limited to additional prerequisites for the ODP:
  - (a) Requirement for a landscape plan, CPTED assessment and Integrated Transport Assessment to satisfy general compliance with the ODP;
  - (b) Additional landscaping specifications;
  - (c) Additional access annotations; and
  - (d) Additional north-eastern boundary connection.
- 15 Of particular relevance to the points which remain in contention, a section 32 analysis is required to consider whether the provisions are the most appropriate to

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<sup>17</sup> *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] onwards

<sup>18</sup> LFRZ-P4

<sup>19</sup> Evidence of Mark Allan at [74]; Officer's Report at [10.2], Officer's Report Summary of Key points at [18]

achieve the objectives, by assessing the efficiency and effectiveness of the provisions in achieving the objectives.

16 Mr Allan has summarised that the assessment provided in Variation 2 fulfils the statutory requirements of Section 32.<sup>20</sup> He considers:

- (a) the POSDP resource consent triggers and matters of discretion (both operative and as proposed to be amended) provide adequate direction and opportunity for detailed consideration of landscaping, CPTED, noise and transport matters; and
- (b) it is not necessary, or good practice, to “layer up” the POSDP with site specific requirements when a development proposal will be afforded appropriate assessment and discretion through the subsequent resource consent process.

17 I would further add that the Commissioner is considering a new district plan and the application of rules which will apply equally to all new development in the district. The development of the POSDP has been recently robustly considered and has been guided by the following matters (which equally apply to this process):

- (a) the move to a simplified administration and streamlined approach sought to be achieved through national planning standards;
- (b) procedural principles that a decision maker must take all practicable steps to ensure that plans include only those matters relevant to the purpose of this Act and are worded in a way that is clear and concise<sup>21</sup>;
- (c) a section 32 evaluation that must be undertaken at a level of detail that corresponds to the scale and significance of effects that are anticipated and which requires consideration of the efficiency and effectiveness of the provisions<sup>22</sup>. Provisions are defined to include the policies, rules, or other methods that implement or give effect to the objectives of the proposed change<sup>23</sup>.

18 Variation 2 ensures SDC will retain appropriate discretion and control over future development of the Site through the standard resource consent, detailed design and engineering processes. It is acknowledged that the Reporting Officer considers

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<sup>20</sup> Evidence of Mark Allan at [58]

<sup>21</sup> Section 18A RMA (Procedural principles)

<sup>22</sup> Section 32(2) RMA

<sup>23</sup> Section 32(6) RMA

that additional provisions provide greater certainty for design outcomes.<sup>24</sup> However, the outcomes sought can still be achieved through the discretion that SDC has under the POSDP and the future consenting process. A process which considers the environment at the time, against a detailed proposal that is sought to be constructed. This is the most appropriate time to "lock down" certain design outcomes.

- 19 There is no need to unnecessarily clutter the new plan or doubt its application. This is particularly when you consider the context of this plan change. Variation 2 will enable one new development. There is also an example of a successful resource consent process on the Site already (i.e. the PNS Rolleston). The District Plan at the time did not require the PNS Rolleston application to provide all the certainty of design and landscaping detail in its application. The Council had broad discretion to consider relevant matters. Here, you have even more certainty given the precinct approach.

### **Scope of submissions**

- 20 The Commissioner must make recommendations and the SDC must give a decision (i.e. accept or reject) on the provisions and matters raised in submissions. This may include matters relating to any consequential alterations necessary to the POSDP *arising from the submissions* and any other matter relevant to the POSDP *arising from the submissions* (clauses 10 and 29, Schedule 1 RMA).
- 21 The test to determine scope, as set out in various decisions of the Environment Court and the High Court<sup>25</sup> is whether or not the amendments sought are ones which are raised by and within the ambit of what is reasonably and fairly raised in submissions. This should be approached in a workable fashion rather than the perspective of legal nicety. Whether interested parties would reasonably have appreciated that such an amendment could have resulted from the decisions sought by the submissions summarised by the local authority must be considered.
- 22 The Reporting Officer considers there is sufficient scope for the amendments proposed.<sup>26</sup>

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<sup>24</sup> Officer's Report at [7.26] and [8.52]

<sup>25</sup> Most commonly cited is *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 (HC) at [56-57], and [63] (which respect to the caution to Councils)

<sup>26</sup> Landscape: S05.2, S05.5 & S05.6 J Hindley & S14.3 P Beechey, Officer's Report at 7.8(f); Urban design: S04.1 B-A Roche, S05.1 & S05.8 J Hindley, S14.1 P Beechey, & S15.1 D Schmidt, Officer's Report at 7.12(c); Transport: S03.1 M van Haastrecht, S04.2, S04.5 & S04.6 B-A Roche, S05.4 & S05.8 J Hindley, S14.6 P Beechey and S15.3 D Schmidt, and S21.1 J White, Officer's Report at 7.67

- 23 I have read through the submissions summary, and the submissions made on Variation 2, and submit:
- (a) no submissions specifically sought the changes recommended in the Officer's Report; but
  - (b) it is accepted that a decision of Council *may* include "any other matter relevant" to the POSDP provided that it has "*arisen from the submissions*"; and
  - (c) having reviewed the amendments proposed by the Reporting Officer and agreed to by Mr Allan against the submissions, it is submitted those changes may be included as arising out of the broad opposition submissions referenced in the Officer's Report.
- 24 With respect to the matter of an east-west connection (with the exception of Broadlands Drive link), this was not a matter which *has arisen from the submissions*. It has arisen from the experts representing SDC. The Reporting Officer maintains that multiple benefits can be gained by requiring at least a walking and cycling connection through to development area DEV-RO12 (i.e. the MDRZ zoned land to the east of the Site that was subject to Plan Change 71). He recognises that this presents operational challenges for Foodstuffs and the adjoining property owner supports the continuation of the north-eastern boundary treatments along the full extent of the Site, but thinks there are workable design solutions to establish a connection<sup>27</sup>.
- 25 The Officer's Report considered there is sufficient scope through submissions made by J Hindley and P Beechey. With respect, I don't agree. Even taking a "workable fashion" approach and considering the whole relief package detailed in opposing submissions, there was no signal to the public that Variation 2 could be altered in the way now sought for an east-west link (to include either a road, cycle or pedestrian link).
- 26 As noted, the only submitter on this topic is the neighbour to the east who supports the rezoning on the basis that the acoustic and landscape treatments, which were developed in consultation with them, are retained.<sup>28</sup> This submitter certainly wouldn't have been aware from the summary of submissions of what the SDC officers now propose.
- 27 Regardless of scope, Foodstuffs opposes this potential link for operational and public safety reasons, and the evidence of the experts (who you will hear from)

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<sup>27</sup> Reporting Officer, key points, at [38]

<sup>28</sup> Submitter #22, Gould Developments Limited



representing Variation 2 is that this further access is not necessary to achieve good connectivity or accessibility of the Site. Further it is submitted:

- (a) Reference to connections from DEV-RO12 (PC71 land) to DEV-RO1 (applying to the Site) must be considered in the context in which they were designed – for residential activities.
- (b) This has significantly changed now with the PNS Rolleston, and is proposed to be changed by Variation 2. Despite this, experts representing SDC continue to refer to DEV-RO1 for justification of a pedestrian link<sup>29</sup>.
- (c) What must be properly considered is that the Site as sought to be enabled by Variation 2 is a destination site (whereas previously in the current POSDP it is a "thoroughfare"). Currently under the POSDP – DEV-RO1 there is one roading connection through the site (i.e. the Broadlands Drive link which remains with Variation 2). There is one entry and exit for a road from Lincoln Rolleston Road. There are two indicative cycle/pedestrian links from DEV-RO12 to this road. There is no access proposed to or from Levi Road.
- (d) Variation 2 enables the site to become a local destination servicing the residential catchment. Mr Ross acknowledges this in his summary *"I would expect that the PAK'nSAVE and Mitre 10 facilities will provide positive local amenities for residents and become a local destination in its own right"*. The majority of the Site will be accessible by the public (with the exception of the loading bays and biodiversity strip). Variation 2 enables more connections than could be anticipated by a residential development. There is pedestrian, cycling and vehicle accesses from the two arterial roads – Levi Road and Lincoln Rolleston Road. There will be at least five pedestrian connections (and additional internal connectivity between site activities) and nine vehicle accesses. It is certain that the future residents to the north-east (i.e. PC71 area) will be able to visit the Site in a shorter time – however measured - than it will take them to get to the Rolleston Town Centre.
- (e) It is not appropriate to consider the Site against residential design guidelines and against connections that were placed on the Site when the activities that were to be enabled were residential in nature. Consideration must be given to the operational and functional requirements of the activities enabled and how accessibility and connectivity will be achieved in the context of the district wide provisions relating to active modes. Those provisions are clear that consideration must also be given the interaction between vehicle access

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<sup>29</sup> For example, Gabe Ross key points at [21].

and manoeuvring, loading and parking areas when determining whether on-site pedestrian and cycling routes are safe.<sup>30</sup>

- 28 If Variation 2 is accepted in the form proposed by Foodstuffs, SDC can consider connectivity when there is a detailed application for resource consent for a trade activity before it:
- (a) Connectivity and provisions for multi-modal connections that support walking, cycling and access to public transport through land use activities are considered on a district wide basis (i.e. not specifically in commercial areas such as the LFRZ, TCZ) but under the Transport Chapter with the high trip generating activities rule applying across all zones.
  - (b) An application for a trade retail activity will be assessed against these provisions as a high trip generating activity, and specific consideration must be given to whether the activity promotes opportunity for travel other than private cars (including safe and convenient travel for active modes)<sup>31</sup>.
  - (c) As noted above, specific consideration must also be given to the interaction between vehicle access and manoeuvring, loading and parking areas when determining whether on-site pedestrian and cycling routes are safe.

## **Matters of interest and of relevance to understanding Variation 2**

*Why is the Commissioner considering a private plan change when the POSDP is still under appeal?*

- 29 A private plan change request can be made to a proposed plan, although the Environment Court has held that if approved it cannot take effect until the plan is operative<sup>32</sup>.
- 30 The RMA enables any person to request a change to a district plan (private plan change request) in the manner set out in Schedule 1, Part 2 (i.e. clause 21) of the

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<sup>30</sup> TRAN-P6(4) requires establishing safe, multi-modal connections that support walking, cycling and access through land use activities that provide for the interaction between vehicle access and maneuvering, loading and parking areas when determining on-site pedestrian and cycling routes.

<sup>31</sup> TRAN-P3 requires high trip generating activities to establish that the high trip generating activity can be supported by active transport modes, including accessibility to safe and convenient walking and cycling connections and access to public transport.

<sup>32</sup> *Prospectus Nominees v Queenstown Lakes District Council* [1996] NZRMA 522 – the status of the plan to be changed was proposed and not operative, and this was held not to be a ground for rejecting the private plan change request. This case was confirmed in *Friends of Nelson Haven and Tasman Bay Inc v Nelson City Council* (W008/03) which then stated "therefore a district council is not free to reject a private plan change even if the change can only be confirmed when the plan is operative" (at [7]). The relevant sections of the RMA remain relevant today.

RMA (section 73(2) RMA). The term "district plan" is defined to mean an operative plan and includes all operative changes to a plan whether arising from a review or otherwise (section 43AA RMA).

- 31 Variation 2 was lodged as a private plan change 'request' pursuant to Schedule 1, Clause 21 RMA. It is understood that SDC chooses to refer to the request as a 'variation', to signify that the plan change request is being processed at a time when the POSDP is not yet fully operative. SDC resolved to accept Variation 2 pursuant to Schedule 1, Clause 25 (2)(b) RMA on 15 May 2024.<sup>33</sup>
- 32 At the time of lodging Variation 2, there were no appeals lodged on the POSDP in respect of the Site or in respect of the relevant LFRZ provisions. Relevantly, rules in a district plan becomes operative if no appeals have been lodged (section 86F RMA).
- 33 The area subject to PC71 (i.e. DEV-RO12) was appealed to the Environment Court in October 2023<sup>34</sup>. These provisions were under appeal through the processing and submissions periods of Variation 2. The provisions have been operative since 17 December 2024.

*Has SDC advanced any new commercial areas to be zoned for business activities given the recent significant increase in residential housing in Selwyn?*

- 34 No. The Proposed Selwyn District Plan was notified in October 2020 and there has been significant change to the planning environment of Selwyn since the scope of that process was set by submissions. By way of context:
- (a) The NPS-UD had recently come into force on 20 August 2020. The Government directed councils to be responsive and provide for sufficient development capacity to meet expected demands for business land at all times under the NPS-UD<sup>35</sup>. Specifically, Policy 8 NPS-UD introduced a requirement for councils to be responsive to plan changes which add significantly to development capacity and contribute to well-functioning urban environments.
  - (b) Frustrated with the lack of progress and response by Councils to the NPS-UD, the Resource Management (Enabling Housing Supply and Other

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<sup>33</sup> Planning and Climate Change Committee - 15 May 2024 Meeting Agenda (selwyn.govt.nz), including the reports entitled "Consideration of Private Plan Change Requests to the Partially Operative District Plan", (pg.'s 41 to 44) and "Decision on How to Consider the Private Plan Change Request from Foodstuffs (South Island) Properties Limited at 157 Levi Road, Rolleston" (pages 45 to 54).

<sup>34</sup> The appeal was subsequently withdrawn on 17 December 2024

<sup>35</sup> Policy 2 NPS-UD

Matters) Amendment Act 2021 (the **Enabling Act**) was subsequently passed into law and commenced on 21 December 2021.

- (c) The SDC, as part of one of the five largest urban environments in New Zealand, was required to notify a single variation to the PSDP which constituted its Intensification Planning Instrument (**IPI**) to incorporate the Medium Density Residential Standards and give effect to policy 3 of the NPS-UD by 20 August 2022. The Council did this via Variation 1 enabling significant residential development (including new greenfield development areas sought to be rezoned to residential by submitters) *but no additional new commercial zoned areas*<sup>36</sup>.
- (d) Submissions made which sought rezoning of additional commercial areas for LFRZ (such as the one made by Foodstuffs for this Site) were considered to be outside scope of Variation 1.

35 This sequence of events has resulted in significant change to housing supply being enabled in Rolleston, but no enabling of additional business land necessary to support this supply.

36 Mr Colegrave notes that despite being New Zealand's fastest growing district by a clear margin, Selwyn has an anomalously low level of hardware building and garden retail supply<sup>37</sup>. It is 7 times lower than the national average relative to building activity, and 4 times lower than the national average relative to population size<sup>38</sup>.

*Is the Commissioner required to consider whether there are better alternative sites in the Izone area?*

37 There is no requirement to consider alternative sites when assessing a private plan change for an individual site.<sup>39</sup> That said, Mr Colegrave has considered the limited capacity for trade retail in Selwyn district in his evidence and Mr Smith has explained his preference for the Site.

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<sup>36</sup> Except three notified Neighbourhood Centre Zones (NCZ) of existing consented commercial areas within residential developments

<sup>37</sup> Evidence of Fraser Colegrave at [37]

<sup>38</sup> Evidence of Fraser Colegrave at [39]

<sup>39</sup> *Brown v Dunedin City Council* [2003] NZRMA 420 (HC) at [16]. The Supreme Court in *King Salmon (Environmental Defence Society Inc v New Zealand King Salmon Company Ltd)* (2014) 17 ELRNZ 442 at [168] – [170]) upheld this conclusion, but added there are circumstances in which it may be relevant to consider alternative sites such as a proposal on public land or an assertion that the subject site possesses unique features; in these circumstances a proposal will need to be tested against other locations.

38 There appears to be a presumption by some of the few opposing submitters that residential activities and supermarket and trade retail activities are incompatible. This just simply does not stack up when considering what is enabled in Rolleston by the POSDP. The POSDP doesn't only provide for trade retail activities across the train tracks in the industrial area as suggested:

- (a) Trade retail activity and supermarket activities are permitted in the LFRZ but they are also also permitted in the Town Centre Zone<sup>40</sup>, which is adjacent to residential zones; and
- (b) There are generally no setback areas between the Rolleston TCZ activities and residential activity<sup>41</sup>. Outdoor storage is to be screened from a residential zone by a fence or wall of at least 1.8m high<sup>42</sup>. A site adjoining a residential zoned site must provide a minimum of 2m wide landscaping strip (excluding areas covered by a building). The landscape planting shall be a species capable of achieving a height of at least 2m at maturity<sup>43</sup>. There are no other rules relevant to the residential interface.

*Where has the Broadlands Drive link in the Variation 2 ODP come from?*

39 Mr Lawn for the SDC has provided a neutral submission relating to exploring an opportunity for an Emergency Services Campus at 317 Lincoln-Rolleston Road which:

- (a) focused on a concern about conflict from vehicles leaving their site directly onto Lincoln Rolleston Road. The evidence provided by Mr Lawn does not provide any further information on this; and
- (b) signaled that the future intersection of Broadlands Drive and Lincoln Rolleston Road may be formed as traffic signals (instead of a roundabout). There has been no explanation provided with the concept plan as to why it is proposed to shift the road alignment (as it is currently shown in the POSDP), regardless of whether it is a roundabout or intersection.

40 By way of summary, the Broadfield Drive Link is provided in the POSDP in the following ways:

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<sup>40</sup> TCZ-R9, R11

<sup>41</sup> In PREC 2 – there is a small section by the Rolleston Community Centre which has a no built setback of 12m from the Residential Boundary Zone (TCZ-REQ-4). It is noted for completeness that this no built area extends into PREC 1 for a short length but there is no related rule.

<sup>42</sup> TCZ-REQ5

<sup>43</sup> TCZ-REQ7

- (a) With respect to the Variation 2 Site:
- (i) This Site is located within the Rolleston 1 Development Area – DEV-RO1.
  - (ii) DEV-RO1 provides for a new primary road link in the form of an extension of Broadlands Drive to cross the southern part of the development area to connect up with DEV-RO12 providing direct east-west access to the proposed District Park. It states the intersection of Broadlands Drive with Lincoln Rolleston Road shall be formed as a roundabout.
  - (iii) Subdivision of this land must comply with this development plan. If compliance is not achieved discretionary activity consent is required<sup>44</sup> and an application needs to demonstrate that the outcomes of the development plan are met<sup>45</sup>.
  - (iv) Variation 2 proposes to continue this link and has added to it to make it clear that the link is also for pedestrian and cycle connectivity. An application in Variation 2 needs to demonstrate that the outcomes of the development plan are met or discretionary activity consent is required<sup>46</sup>.
- (b) With respect to the land to the north east of the Site (i.e. PC71 land):
- (i) This land is located within the Rolleston 12 Development Area – DEV-RO12.
  - (ii) DEV-RO12 proposes a primary road connection as an extension to Broadlands Drive across DEV-RO1 (i.e the Site).
  - (iii) There is a development restriction (south of a specified development line) pending the formation of a roundabout at the intersection of Lincoln Rolleston Road and Broadlands Drive and the extension of Broadlands Drive over DEV-RO1. Should the main connection west across DEV-RO1 to Lincoln Rolleston Road not yet be available, a temporary walking and cycle connection is to be provided via the shortest possible alternative route.

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<sup>44</sup> SUB-REQ3

<sup>45</sup> SUB-P5

<sup>46</sup> LFRZ-REQ7 Outline Development Plan

- (c) With respect to the SDC land (where SDC are investigating whether to locate the emergency service precinct):
  - (i) This land is located within the Rolleston 2 Development Area – DEV-RO2.
  - (ii) Relevantly, DEV-RO2 provides for a planned extension of Broadlands Drive into the adjoining residential area via a road which runs along the southern boundary.
  - (iii) The alignment of this link follows the existing established Broadlands Drive road (from the south western end of the SDC Site).
  - (iv) Subdivision of this land must comply with this development plan. If compliance is not achieved discretionary activity consent is required<sup>47</sup> and an application needs to demonstrate that the outcomes of the development plan are met<sup>48</sup>.

41 These are the provisions which currently exist and are not sought to be changed by Variation 2.

42 The SDC submission now considers that they *may* in the *future* change the alignment of Broadfield Drive across their land or *may* change the connection across Lincoln Rolleston Road from a roundabout to traffic lights.

43 As the Council Officer notes, this future potential Campus can be taken into consideration at the resource consent stage if it has been lawfully established at that point.<sup>49</sup> He considers limited statutory weight should be given to the concept plan<sup>50</sup>. I agree. It is unclear how the Reporting Officer can then support the additions sought by Mr Carr in response to Mr Lawn (for SDC).

*Is the NPS-UD still relevant to Variation 2 given that the POSDP is recent and changes have been made in response to the NPS-UD to the CRPS?*

44 Yes. Plan changes are required to give effect to any national policy statement or operative regional policy statement.

45 The Site is identified on Map A of the CRPS as being within a Greenfield Priority Area – Residential and the Project Infrastructure Boundary. Change 1 to the CRPS

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<sup>47</sup> SUB-REQ3 POSDP.

<sup>48</sup> SUB-P5 POSDP

<sup>49</sup> Officer's Report at [7.70]

<sup>50</sup> Reporting Officer Summary of Key Points at [10].

(operative May 2021) amended Map A to introduce Future Development Areas (**FDA**) in response to an identified shortfall in housing development capacity. Notably, Change 1 did not identify any future development areas for business development capacity in Rolleston, or indeed anywhere in Greater Christchurch.<sup>51</sup>

- 46 The CRPS was prepared prior to the NPS-UD and does not implement the direction for responsive planning. Change 1 to the CRPS (2021) did not give effect to all provisions of the NPS-UD. The Report to the Minister on Change 1 confirmed that work is underway to progressively implement the new national direction set out through the NPS-UD, including changes to the district plans, the completion of a new capacity assessment and future development strategy, and the CRPS review, including those in Chapter 6<sup>52</sup>. It is expressly noted, the CRPS does not give effect to section 3.8 and policy 8 of the NPS-UD.
- 47 Further changes to the CRPS on 16 September 2022<sup>53</sup> and October 2024<sup>54</sup> have had a housing (and not business land) focus. The only mention of sufficient development capacity to meet expected demand for business land appearing in the explanatory text to Policy 6.3.12 (Future Development Areas).<sup>55</sup>
- 48 No issues have been raised by the planners or Canterbury Regional Council with respect to the general consistency of Variation 2 with the CRPS, but it is important to be aware that the CRPS does not fully give effect to the NPS-UD which should be considered separately as well.

### **Legal matters raised in submissions**

Variation 2 was publicly notified and attracted 23 submissions.<sup>56</sup> The majority of submissions received were in support of the rezoning, including for the following reasons:

- (a) Location – convenient; accessible from neighbouring residential areas and Rolleston township; promotes cross-shopping with PAK'nSAVE.

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<sup>51</sup> Evidence of Mark Allan at [43]

<sup>52</sup> Report to the Minister on Change 1 to Chapter 6 of the CRPS, at paragraph 133.

<sup>53</sup> Objective 6.2.1a, Targets for sufficient feasible development capacity for housing deleted and replaced with objective 6.2.1a Housing Bottom Lines, in accordance with the NPS-UD 2020. Consequential minor corrections to policy 6.3.12

<sup>54</sup> Objective 6.2.1a and Table 6.1, updated to reflect the timeframes and figures in the March 2023 Housing Development Capacity Assessment in accordance with the NPS-UD

<sup>55</sup> Evidence of Mark Allan at [46]

<sup>56</sup> Attachment 2, Evidence of Mark Allan – Submitter Location Plan



- (b) Demand – addresses critical need to provide building, hardware goods/materials and gardening supplies for the growing Rolleston community.
  - (c) Economic benefits – job creation; boost to local economy; improved business productivity.
  - (d) Environmental – reduced emissions (removing need for travel to Christchurch for trade supplies).
  - (e) Transport – reduced congestion / usage of road network by having dedicated location for trade retail in Rolleston.
- 49 Six submitters opposed the rezoning. No expert evidence has been circulated by these submitters. There is little opposition from the surrounding area, particularly from those properties adjoining or opposite the Site. It is submitted that the lack of submitters in opposition can be seen as a broad acceptance of Variation 2 by the local community.<sup>57</sup>
- 50 Responses to legal issues raised in opposing submissions are set out below:
- (a) Additional traffic causing air pollution<sup>58</sup> – this issue is a Regional Council matter and outside the scope of Variation 2, noting it has lodged a neutral submission<sup>59</sup> and further submission<sup>60</sup> and not raised this as an issue.
  - (b) Property values – loss in value due to presence of Mitre 10 in a residential neighbourhood.<sup>61</sup> Effects on property values are not a relevant consideration for decision makers in a resource management context, essentially being considered as double counting of effects.<sup>62</sup>
  - (c) Precedent effect – it is suggested there is potential for other large-scale trade and retail stores, such as Placemakers, to seek to move into residential areas if this decision is allowed.<sup>63</sup> Precedent or plan integrity effects are generally limited to resource consent applications and are not relevant to plan change requests. A plan change will be required to enable any other

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<sup>57</sup> Evidence of Mark Allan at [69]

<sup>58</sup> Joanna Hindley (S5)

<sup>59</sup> Submission on behalf of Canterbury Regional Council, dated 22 October 2024

<sup>60</sup> Further Submission on behalf of Canterbury Regional Council, dated 18 December 2024

<sup>61</sup> Joanna Hindley (S5)

<sup>62</sup> City Rail Link Limited (CRRL) (Successor to Auckland Transport) & Ors v Auckland Council, [2017] NZEnvC 204; See also Wilson v Dunedin City Council [2011] NZEnvC 164 at [28].

<sup>63</sup> Peter Beechey (S14); Daniel Schmidt (S15)

trade activity as otherwise it is assessed as non-complying in the MRZ, and any future proposal can be assessed against the statutory provisions as to whether it is appropriate. Mr Smith explains in his evidence, Mitre 10 has a strong retail (not trade) base with a focus on supplying its residential community.

## **Conclusion**

51 It is submitted that on the basis of the evidence before you, the Commissioner can confidently recommend approval of Variation 2, with the provisions which have been carefully considered and proposed by Mr Allan.

## **Evidence**

52 The below evidence is provided in support of Variation 2:

- (a) Rebecca Parish – Foodstuffs
- (b) Murray Smith – Mitre 10
- (c) Bernard Johnston – Architecture
- (d) Dave Compton-Moen – Urban Design and Landscape
- (e) Tony Milne – Landscape architecture
- (f) Andrew Metherell – Transport
- (g) Rob Hay – Noise
- (h) Fraser Colegrave – Economics
- (i) Ruben Thielmann – Servicing
- (j) Mark Allan – Planning

Dated 24 March 2025



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Alex Booker/Sarah Schulte  
Counsel for Foodstuffs (South Island) Properties Limited

## Appendix 1 – Statutory framework

- 1 The statutory tests when preparing and changing a district plan, are as set out in *Colonial Vineyard Ltd v Marlborough District Council*<sup>64</sup>. In summary, these require that the operative Selwyn District Plan:
  - (a) Accord with and assist Council in carrying out its functions, including:<sup>65</sup>
    - (i) Achieving integrated management of effects of the use, development and protection of land and associated natural and physical resources;
    - (ii) Ensuring that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district; and
    - (iii) Controlling any actual or potential effects of the use, development, or protection of land, including for the purposes of the avoidance or mitigation of natural hazards;
  - (b) Have regard to the actual and potential effects on the environment, including in particular any adverse effect;<sup>66</sup>
  - (c) Accord with Part 2 of the Act;<sup>67</sup>
  - (d) In respect of the existing statutory documents:
    - (i) Give effect to any national policy statement or operative regional policy statement;<sup>68</sup>
    - (ii) Have regard to any proposed regional policy statement, and management plans and strategies prepared under any other Acts;<sup>69</sup>

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<sup>64</sup> *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].

<sup>65</sup> Section 31(1)(a), (aa) and (b)

<sup>66</sup> Section 76(3)

<sup>67</sup> Section 74(1)(b)

<sup>68</sup> Section 75(3)(a) and (c)

<sup>69</sup> Section 74(2)

- (iii) Have regard to the extent to which the plan is consistent with the plans of adjacent territorial authorities;<sup>70</sup> and
- (e) Establish the most appropriate method for achieving the objectives and policies of the District Plan, undertaking the assessment detailed in section 32.

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<sup>70</sup> Section 74(2)(c)