

# Sections 104, 104B, 106 Resource Management Act 1991



Report recommending whether or not an application for resource consent should be:

- Granted or declined, and if granted, the conditions of the consent

**Author:** Jane Anderson

**Position:** Consultant Planner

**Resource Consent Number:** RC195454

<b>APPLICANT:</b>	Lincoln Developments Ltd
<b>PROPOSAL:</b>	To establish and operate a supermarket and café, with associated parking and landscaping
<b>LOCATION:</b>	581 Birchs Road, Lincoln
<b>LEGAL DESCRIPTION:</b>	Lot 4000 DP 518987 being 20.41 hectares in area more or less, as contained in Record of Title CB22F/1359
<b>ZONING:</b>	The property is zoned Living Z under the provisions of the Operative District Plan (Townships) Volume
<b>STATUS:</b>	This application has been assessed as a land use consent for a Discretionary activity under the District Plan. As such the relevant provisions of the District Plan (Townships) Volume and the Resource Management Act 1991 have been taken into account.
<b>HEARING DATE</b>	28 – 30 July 2020
<b>RECOMMENDATION</b>	Decline

## Preamble

1. This report reviews the application for resource consent and addresses the relevant information and issues raised. The recommendation made in this report is not binding on the Council and it should not be assumed that the Hearings Commissioner will reach the same conclusion having considered all the evidence brought before the hearing by the applicant and submitters.

## Report Author

2. My name is Jane Anderson. I am a consultant planner and director with Harakeke Consultants Ltd, a planning and resource management consulting company. I hold a Bachelor of Arts from the University of Canterbury and a Master of Regional and Resource Planning from the University of Otago. I have worked in the field of planning and resource management for more than 15 years and I am a full member of the New Zealand Planning Institute. I am currently employed by the Selwyn District Council as an in-house consultant.

3. Whilst this is a Council Hearing, I have read the Environment Court's Code of Conduct for expert witnesses, and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this report are within my area of expertise and have relied on the expert advice of others where stated. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
4. I have been asked by the Selwyn District Council (the Council) to prepare this report pursuant to section 42A of the RMA relating to the substantive consideration of the resource consent under sections 104, 104B and 108 of the RMA to establish and operate a supermarket and café, with associated car parking, signage and landscaping. This report follows a previous report prepared pursuant to sections 95A to F dealing with the matter of notification / affected parties (dated 27 February 2020).
5. The processing of the resource consent application and preparation of this report has been undertaken with specialist advice from Hugh Nicholson from Urban Shift (urban design), Jeremy Trevathan from Acoustic Engineering Services (acoustic), Andy Carr of Carriageway Consulting (transport) and Tim Heath of Property Economics (retail/economic). These assessments have been relied upon where stated.

## Introduction

6. The activity for which consent is sought has been subject to refinement over the course of the consent processing. A Request for Further Information (RFI) was made on 21 August 2019, with a response received on 31 January 2020.
7. The application was further amended by the applicant following the close of submissions, received in full on 1 July 2020. These changes include changes to the car park layout, building design and landscaping.
8. The following provides a brief overview of the proposal and describes the changes made by the revised plans.
9. The proposal seeks to construct and operate a supermarket and café within the north western corner of Lot 4000 DP 518987, 581 Birchs Road, Lincoln (refer Figure 1)<sup>1</sup>.



Figure 1 Approximate location of Proposed Supermarket (source: Revised Plans dated 25.06.2020)

<sup>1</sup> It is noted that while the plans and some documents refer to 555 Birchs Road, the application site is 581 Birchs Road.

10. The floor area for the proposed supermarket has been increased from 3063m<sup>2</sup> to 3122m<sup>2</sup>, with a mezzanine office area of 191m<sup>2</sup>. A café is proposed on the south-western corner of the building, with an area of 71m<sup>2</sup> with outdoor seating for 20 people. The building will have a maximum height of 7.5m at the front entrance, while the roof top plant will be 8.5m high. The revised plans and elevations are attached as **Appendix 1**.
11. The applicant has advised that the development will now include a pharmacy. The pharmacy will be operated as an in-house facility operated by Woolworths New Zealand Ltd. It is understood that the pharmacy will not operate on a separate tenancy.
12. The revised plans include a realignment of the orientation of the proposed car parks to an east to west alignment, with the overall number of car parks decreased from 176 spaces to 165 spaces. The car parking area includes 4 accessible parks, 3 parent's parks and 5 electric vehicle charging parks. The parking area has been redesigned to include a drive through area for the grocery pick up service.
13. One pedestrian walkway is provided, connecting Birchs Road to the entrance to the supermarket. This pedestrian walkway has been relocated slightly to the north from the original application. Cycle parking has been provided on the southern elevation of the proposed café.
14. Two way vehicular access to the site for customers is provided from Birchs Road and from Makybe Terrace. Service vehicles will access the site from Birches Road and exit onto Makybe Terrace.
15. The supermarket is proposed to be open between the hours of 7am and 10pm, seven days a week. Deliveries are to be undertaken between 7am and 7pm. The opening hours for the café are proposed to be 9am to 10pm daily.
16. The applicant has provided a revised landscape plan, attached as **Appendix 2**. In summary, the revised landscape plan has increased the number of trees to a total of 32 trees, to be located along the road boundaries and within the car park area. The revised plan includes a green wall is also proposed for the southern elevation, and lawn, low level plantings and hedging along the property boundary with Birchs Road and Makybe Terrace.
17. The proposed building facades are approximately 55 metres long, and range from 4.4 to 8 metres in height (8.5 metres including the roof mounted plant). The facades are predominantly constructed of pre-cast concrete panels or compressed sheet cladding, with glazing and louvres. Entrance to the building is provided via the eastern façade. This façade includes glazing of approximately 55% of the elevation and extensive canopies over the main entrance and pick up area. The southern façade has windows for the café, but no entrances. Both the southern and western elevations of the building are predominantly coloured in the corporate "Countdown" colour scheme and have signage identifying the Countdown brand and logo, and opening hours.
18. The majority of the northern and eastern elevations are proposed to be clad in pre-cast concrete. The revised plans identify three small windows to be constructed at the first floor level on the northern elevation. A small area of the northern elevation will also be clad in corporate green panels.
19. The applicant has also clarified that the loading bay will be enclosed across the accessway to Makybe Terrace by a chain-link fence and gate.
20. A pylon sign is proposed to be located adjacent to the intersection between Birches Road and Makybe Terrace. The pylon sign will be 9m high by 3.3m wide. No changes have been proposed to the pylon sign.
21. The extent of signage proposed on the plans as notified was approximately 246.46m<sup>2</sup>. The applicant has subsequently made a number of changes to the signage, as detailed in the revised plans and elevations attached as **Appendix 1** and **Table 1** below.
22. The final revised plans, elevations and landscape plans were received by Council on 1 July 2020. I consider that the revised application falls within the scope of the original application, however, this is ultimately a matter for the Commissioner to consider.

Location	Type	Area	Revised Area	Revised Total Area
Western Elevation	Countdown sign and logo Open Hours sign Pick-up signage panel	36.025m <sup>2</sup> 9.1 m <sup>2</sup> 58.54m <sup>2</sup>	28.7m <sup>2</sup> (removed) 58.54m <sup>2</sup>	87.24m <sup>2</sup>
Supermarket Car Park	Pylon sign Pick-up signage x5	29.7m <sup>2</sup> per side 6.85m <sup>2</sup> per sign		93.65m <sup>2</sup>
Southern Elevation	Countdown sign and logo Open Hours sign New Pharmacy sign	36.025m <sup>2</sup> 9.1m <sup>2</sup>	31.25m <sup>2</sup> 9.1m <sup>2</sup> 6.6m <sup>2</sup>	51.73m <sup>2</sup>
Café	Wall sign x2	2m <sup>2</sup>		4m <sup>2</sup>
<b>Total Signage Area</b>				<b>236.63m<sup>2</sup></b>

*Table 1: Proposed Signage*

## Background

23. The applicants met with Council officers in December 2017, April 2018 and December 2018 to discuss potential commercial development of a portion of the ODP Area 3 in Lincoln. The original proposal was for a smaller 1500m<sup>2</sup> supermarket and included discussions of a future pre-school, petrol station and additional retail/commercial units. At the time the council identified a number of concerns relating to the proposal, including retail distribution effects and the Canterbury Regional Policy Statement, the car park design and access issues. The proposal also included an area of land referred to as “the North Block”, being 555 Birchs Road. This site is no longer being considered as part of the development proposal.
24. Additionally, the applicant applied for an 85 lot residential subdivision in November 2018. This consent RC185644 was granted in January 2019, and includes the subject site.
25. The Selwyn District Council received a resource consent application to undertake a 23 lot subdivision, to construct and operate a supermarket and café, and to construct and operate a childcare centre within the wider application site, with frontage to Birchs Road. The application was received on 7 August 2019.
26. The application for the 23 lot subdivision and associated earthworks (RC195448 and RC195463) was processed separately and consent was granted on 11 May 2020. The childcare centre application was withdrawn by the applicant. A new resource consent was applied for on 3 March 2020 for a childcare centre for a site on O'Reilly Road. This consent was granted on 14 May 2020.

## Description of the Existing Environment

27. The site is legally described as Lot 4000 DP 518987 being 20.41 hectares in area more or less, as contained in Record of Title CB22F/1359.
28. The site is located on the eastern side of Birchs Road at the northern end of the Lincoln township. The site and surrounding land is zoned Living Z and is subject to ODP Area 3. The site is topographically flat and almost entirely fenced with deer fencing. The site is currently subject to extensive earthworks in accordance with resource consent RC195463.
29. The wider area is characterised by a mix of residential and rural allotments, as the area transitions from its historically rural character to residential in accordance with the Living Z and Lincoln Outline Development Plan Area 3 provisions. Immediately to the south is Stages 1A and 1B of a recent residential subdivision. These recently created lots have predominantly been built on. To the north of the site is a large rural block, separated from the application site by a mature shelterbelt.
30. On the western side of Birchs Road is the developing Barton Fields residential subdivision. Further to the north-west of the site is the Lincoln Baptist Church, and to the south-east a child care centre.



31. The site is located approximately 1.3 kilometres from the Lincoln Key Activity Centre, on the key route between the Prebbleton and Lincoln townships.
32. Birchs Road is identified as a Collector Road in the District Plan and has a speed limit of 50km/hour in this location. Birchs Road is a two-laned road and one of the main thoroughfares into the Lincoln township. An existing bicycle pathway ("the Rail Trail") is located on the eastern side of the road, providing a cycle connection between Prebbleton and Lincoln.
33. I have visited the site on a number of occasions, including in August 2019, February 2020 and June 2020.

## Operative Selwyn District Plan

34. The Selwyn District Plan ('the District Plan') was made operative on 03 May 2016. Under the District Plan the application site is zoned Living Z and is located within the Lincoln Outline Development Plan Area 3 within the Townships volume of the Operative District Plan.

### Land Use

35. The table below sets out the applicable District Plan standards pertaining to the proposed activity:

RULE	TOPIC	COMPLIANCE
<b>C4 Buildings</b>		
<b>4.8 Buildings and Building Height</b>		
4.8.1		
The erection of any building which has a height of not more than 8 metres shall be a permitted activity		
4.8.4		
Any activity which does not comply with Rule 4.8.1 shall be a discretionary activity		
4.8.1		
The erection of any building which has a height of not more than 8 metres shall be a permitted activity	The proposed building, including the rooftop plant, will have a maximum height of 8.5m.	<b>Discretionary</b>
<b>4.9 Buildings and Building Position</b>		
4.9.2		
Any building which complies with the setback distances from internal boundaries and road boundaries shall be a permitted activity		
4.9.47		
Any activity which does not comply with Rule 4.9.2 shall be a restricted discretionary activity. <sup>2</sup>		
Table C4.2		
Minimum setbacks for buildings for principal building	The proposed supermarket is located 2m from Makybe Terrace; therefore the building intrudes the setback by 2 metres for a length of 54m.	<b>Restricted Discretionary</b>
Internal 2m		
Road 4m		
<b>C5 Transport</b>		

<sup>2</sup> It is noted that as part of the s95 report I identified a non-compliance with Rule 4.9.1. This is incorrect. The proposed building does comply with this rule. This does not change the status of the activity. Further, given that the application is discretionary, any potential effects building from the location of the proposed building, including dominance, shading and privacy, are still considered relevant.

## **Rule 5.3 Vehicle Crossings**

### **5.3.1.1**

The vehicle crossing is formed to the relevant standards in Appendix E13.2.2, E13.2.4 and E13.2.5

### **5.3.2**

Any activity which does not comply with Rule 5.3.1.1 and 5.3.1.2 shall be a restricted discretionary activity

### **E13.2.4.2**

For all sites in a Living zone there shall be a maximum of one vehicle crossing per site

Three vehicle crossings are proposed.

**Restricted Discretionary**

### **E13.2.4.5**

The maximum spacing and width of any vehicle crossing shall comply with Table E13.7

The three vehicle crossings will not comply with the requirements in Table E13.7.

**Restricted Discretionary**

## **Rule 5.5 Vehicle Parking and Cycle Parking**

### **5.5.1**

Any activity which provides for car parking, cycle parking, vehicle loading and parking access in accordance with the relevant conditions shall be a permitted activity

### **5.5.1**

Any activity which does not comply with Rule 5.5.1 shall be a discretionary activity

### **5.5.1.2**

All car parking spaces and vehicle manoeuvring areas are designed to meet the criteria set out in Appendix E13.1.5.2, E13.1.6 - E13.1.11.

The proposed queuing spaces for Makybe Terrace will not meet the 15.5m required by Appendix E13.1.10.

**Discretionary**

## **C7 Signs**

### **7.1 Outdoor signs**

#### **7.1.1**

Where any sign is not covered by Rules 7.2, 7.3 and 7.4, it shall be a permitted activity where the relevant conditions are met

#### **7.1.2**

Any activity which does not comply with Rule 7.1.1 shall be a discretionary activity

#### **7.1.1.5**

The sign does not exceed the height of:

- (a) The building to which it is attached; or
- (b) 2 metres if the sign is not attached to a building

The supermarket pylon sign will have a height of 9m.

**Discretionary**

#### **7.1.1.6**

The sign does not exceed 1m<sup>2</sup> in size

The proposal seeks to establish 9 signs on site, between 2m<sup>2</sup> and 58.54m<sup>2</sup> in size. The overall signage area proposed is 236.63m<sup>2</sup>.

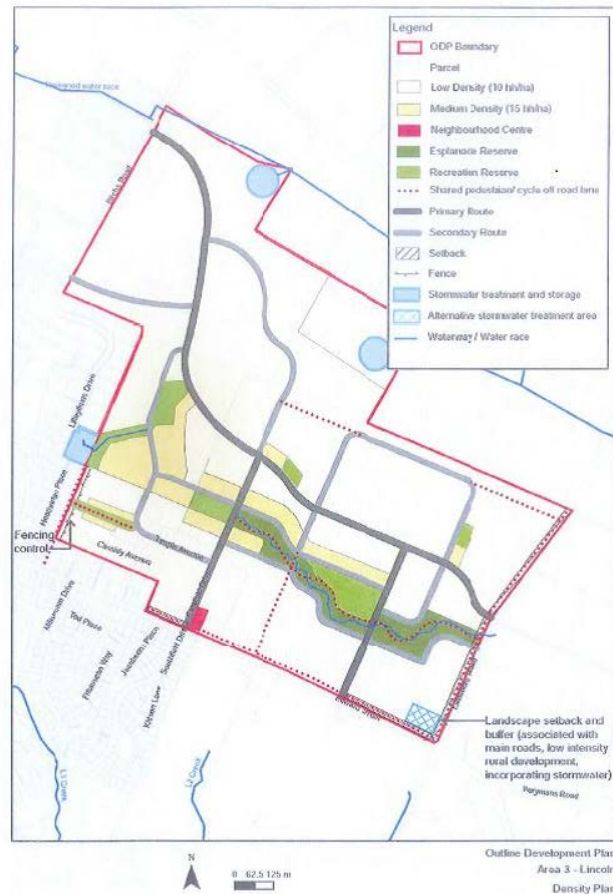
**Discretionary**

7.1.1.9	The sign complies with the relevant rules for building size, design or siting if it is attached to a building.	As above	<b>Discretionary</b>
<b>7.2 Directional signage</b>			
7.2.1	Any sign to direct pedestrians, cyclists or motorists shall be a permitted activity subject to the relevant conditions		
7.2.2	Any activity which does not comply with Rule 7.2.1 shall be a discretionary activity		
7.2.1.1	The sign does not exceed a height of 3m above the ground	A number of the signs will be located more than 3m above ground.	<b>Discretionary</b>
7.2.1.2	The display area does not exceed 0.6m <sup>2</sup>	The directional signage will exceed 0.6m in display area.	<b>Discretionary</b>
7.2.1.3	The message on the sign is limited to arrows or the word 'entry' or 'exit'	The messages in the signs include the name of commercial services.	<b>Discretionary</b>
<b>C9 Waste</b>			
<b>9.1 Waste Generation</b>			
9.1.1	Any activity, which is not a residential activity, which generates not more than 1 cubic metres of solid waste on average per week over a year, other than inert landfill, shall be a permitted activity		
9.1.2	Any activity which does not comply with Rule 9.1.1 shall be a restricted discretionary activity.		
9.1.1	Any non-residential activity shall generate no more than 1m <sup>3</sup> of solid waste	The proposed supermarket will exceed the 1 cubic metres of waste standard.	<b>Restricted Discretionary</b>
<b>C10 Activities</b>			
<b>C10.8 Activities and Scale of Activities</b>			
10.8.1	Any activity, which is not a residential activity, shall be a permitted activity if the following conditions are met		
10.8.3	Any activity which is not a residential activity, and which does not comply with Rules 10.8.1 or 10.8.2 shall be a discretionary activity		
10.8.1.1	No more than two full time equivalent staff	Whilst the application does not specify the number of staff that will be employed on site, staff numbers will exceed the maximum of two full time equivalent staff.	<b>Discretionary</b>

employed on the site live off site		
10.8.1.2		
The gross floor area of any building(s) other than the dwelling does not exceed 300m <sup>2</sup>	The floor area of the proposed supermarket is 3122m <sup>2</sup> , and the floor area of the café is 71m <sup>2</sup> .	<b>Discretionary</b>
10.8.1.3		
Vehicle movements do not exceed Collector Road: 40 per day plus 4 heavy vehicle movements per day. Local Road: 20 per day plus 2 heavy vehicle movements per day.	It is anticipated that the afternoon peak hour trip generation will be 325 vehicles per hour, with 70% of the traffic anticipated to use Birch Road (collector) and 30% to use Makybe Terrace (local).	<b>Discretionary</b>
<b>10.9 Activities and Hours of Operation</b>		
10.9.1		
Any activity, which is not a residential activity, shall be a permitted activity if the relevant conditions are met:		
10.9.2		
Any activity, which is not a residential activity, which does not comply with Rule 10.9.1 shall be a discretionary activity		
10.9.1.1		
The employment of staff who are not resident on site		
10.9.1.2		
Visits by customers, patrons, clients or other people to the site, who are not resident on the site shall only occur between the hours of 7am and 10pm on any day	<b>No staff employed on site will be resident on site. The supermarket will be open between 7am and 10pm.</b>	<b>Discretionary</b>

36. Overall, the proposal is a Discretionary activity under the Operative District Plan.
37. The application site is located within Lincoln Outline Development Plan (ODP) Area 3. The ODP identifies the future development of a large area to the north-east of the Lincoln township, bound to the west by Birchs Road, and the south by Edward Street (refer figure 3 below). The process for identifying the ODPs for the development of Lincoln was subject to extensive public consultation and a Plan Change.
38. The ODP specifically identifies a Neighbourhood Centre on Edward Street. It is noted that this centre has been developed in this location in the form of the Rosemerryn neighbourhood centre on the corner of Edward Street and Eastfield Drive.
39. Policy B4.3.63 of the Plan specifically provides for one neighbourhood centre as part of the development of ODP Area 3. There are no specific rules that are breached by the proposal in relation to the ODP Area 3, however it is noted that the proposal cannot be considered to be in accordance with the Outline Development Plan for Area 3 in Lincoln that provides for one neighbourhood centre.





## Notification

43. A decision regarding notification pursuant to sections 95A-E has been undertaken separately by a Council staff member with delegated authority. This decision is available to any party on request. In summary, it was determined that the application be publicly notified.
44. Notice of the application was served on 11 March 2020. The submission period was extended during the Covid-19 lockdown period to ensure fair and equitable access to information, technology and advice for any potential submitters on the application and to ensure natural justice for both submitters and the applicant. The submission period closed on 26 May 2020.
45. No affected party approvals were submitted by the applicant.

## Submissions

46. At the close of the submission period, the Council had received 74 submissions. A list of the submitters is provided in **Appendix 3**.
47. A brief summary of the submissions in support and in opposition is provided below. It is noted that full copies of the submissions have been provided to the Commissioner.

### In Support

48. The Council received 49 submissions in support of the proposed supermarket and café. The reasons for their support of the proposal included:
  - Providing employment for local people;
  - Providing an additional supermarket offer in the Lincoln township, providing increased competition and choice;
  - Providing a supermarket in a convenient, walkable location for residents in Northeast of Lincoln;
  - Reduced travel and associated costs for residents;
  - Reduced travel into Lincoln township in accordance with SDC's plans to make the Village centre more cycle and pedestrian friendly;
  - That the proposed café will provide opportunities for social interaction for locals and Rail Trail users;
  - That the proposed buildings will not create an adverse effects on the visual or aesthetic amenity of the area; and
  - That there is sufficient capacity on Birchs Road for the extra traffic from the supermarket
49. A number of these submitters sought additional measures including improved safety measures for users of the Rail Trail, a bus stop and pedestrian access across Birchs Road.
50. The Council received one submission providing conditional support, subject to Caulfield Crescent remaining a cul-de-sac.

### In Opposition

51. The Council received 23 submissions in opposition to the proposed supermarket and café. The reasons for their opposition to the proposal can be summarised into the following categories:

#### *Traffic*

- Increase in traffic on Birchs Road, including safety issues and increase in noise levels;
- Increase in heavy vehicle traffic servicing the supermarket, resulting in increased noise and vehicle movements;
- Adverse effects on the access and safety for users of the Rail Trail, including heavy vehicles and vehicle crossing the Rail Trail cycle lane;
- Adverse effects on adjacent local road network resulting from increased vehicle movements associated with the proposed supermarket;
- Safety issues for children and young people;
- Lack of information regarding safety pedestrian routes to the supermarket;
- Adverse effects associated with Countdown Home Delivery truck movements;
- Adverse effects on the pedestrian environment on Makybe Terrace;

- Adverse effects associated with staff parking on the adjacent residential streets;
- Proposed roading will conflict with the proposed main entrance to the Flemington development

#### *Character and amenity*

- Adverse effects on the visual amenity of the area;
- Design of building not in keeping with existing character of the area, including the scale of the building, cladding, proposed corporate colours and illuminated signage;
- Proposed landscaping will not mitigate the effects of the building and result in adverse effects on the adjacent public spaces
- Adverse effects associated with flashing orange hazard or warning lights;
- Proposed building will affect sunlight, warmth and privacy of the direct neighbours;
- Reduces the feeling of spaciousness for adjacent residents;
- Safety issues for children and young people;
- Visual dominance of the proposed signage;
- Proposed lighting inappropriate in a residential setting;
- Proposed hours of operation inappropriate in a residential setting

#### *Noise*

- Adverse effects of sustained 55dB for residents close to the site;
- Adverse effects from the operation of the supermarket, including roof mounted plant, forklift and heavy vehicle reversing beepers;
- Concern that the noise survey does not adequately represent the existing noise environment

#### *Strategic*

- Proposal contradicts the Lincoln Structure Plan and the Selwyn District Council's Long Term Plan;
- Proposed development is not in keeping with the ODP or subdivision plans;
- Not in accordance with residential zoning of the area;
- Approval of proposed supermarket will set a precedent for further commercial development in the area;
- No alternative locations assessed;
- Proposed development sets a precedent for further commercial development outside of commercial centres

#### *Economic effects/Retail distribution*

- Proposal will fragment Lincoln's retail precinct;

#### *Social Effects*

- Negative impacts of anti-social behaviour associated with supermarket including rubbish and trolleys being left in the surrounding residential area;
- Effects of additional lotto outlet and retail alcohol outlets in the township

#### *Property valuation*

- Proximity of supermarket will decrease the value of the surrounding properties

52. Two neutral submissions were also received. The first submission from Environment Canterbury sought to ensure that public transport is considered in the traffic design for the development, specifically seeking a bus bay to be incorporated into the frontage of the development along Birchs Road.
53. The second neutral submission identifies concerns regarding staff parking on the adjacent residential streets. The submitter specifically seeks that "the other Caulfield Crescent becomes a no exit to ensure that Makybe Terrace is used as a main thoroughfare".

### **Lincoln Developments Ltd – Covenant**

54. Properties located within the subdivision developed by Lincoln Developments Ltd (known as "Flemington") are subject to a covenant that provides that no Grantor (being the registered proprietor of any servient tenement) will:

*"oppose, object to, frustrate, or take any action, or encourage or cause others to oppose, object to, frustrate or take action that might in any way prevent or hinder the Developer from progressing or completing the Flemington development or the adjoining stages. Such Covenant extends to and includes*

*(without limitation) development planning, zone changes, resource consents for land uses and subdivisions, Consent Authority or Environment Court applications, Territorial Authority Building Consent matters, or any other necessary consent process involving the Developer.”*

55. The applicant has previously sought to interpret the covenant as affected parties having already provided written approval to the resource consent application by virtue of this land covenant provision agreed to by the owners of sites within Flemington.
56. For the current application, the applicant has advised that “without prejudice to their rights on appeal”, the applicant “has decided not to actively pursue the enforcement of the covenant or seek that SDC disregard the effect on any submitters who are subject to the covenant”.
57. On this basis, the Council is not seeking consideration of the covenants as a procedural matter, and all of the submissions received by Council have been given full and due consideration as part of this assessment.

## Matters to be Considered

58. Section 104(1) of the Resource Management Act 1991 sets out the matters which must be considered by Selwyn District Council in considering an application for resource consent. In this case the relevant matters are:
  - Any actual and potential effects of allowing the activity (s104(1)(a));
  - The Canterbury Regional Policy Statement (s104(1)(b)); and
  - Any Plan or Proposed Plan (s104(1)(b))
  - The permitted baseline (section 104(2))
59. All matters listed in s104(1) are subject to Part 2 of the Act which contains its purposes and principles.
60. In addition, the following section(s) apply to the consideration of this consent.

### **Section 104B – Determination of applications for discretionary or non-complying activities**

61. After consideration of an application for a discretionary or non-complying activity, a consent authority may grant or refuse the application and if granted, may impose conditions under section 108.

## Assessment of Environmental Effects

### *Permitted Baseline*

62. Section 104(2) of the RMA directs that the decision maker may disregard an adverse effect on the environment of an activity if a rule in the District Plan permits an activity with that effect, a concept known as the permitted baseline. The application of the permitted baseline is discretionary and case law has established that the permitted baseline test relates to the effects of non-fanciful hypothetical activities which could be carried out as of right under the District Plan, as well as any existing lawfully established activity on the site or any activity for which resource consent has been granted.
63. The site is zoned Living Z providing for the construction of residential dwellings as of right. However, a non-residential permitted baseline is of most relevance to the current application. Therefore, a non-residential development would need to meet the following parameters to be permitted:
  - Road boundary setback of 4m from Makybe Terrace and Birchs Road, with landscaping between the road and the building
  - Internal boundary building setback of 2m
  - Site coverage of 40%
  - Building that meets the Recession Plane A requirements
  - Building height of 8m
  - Maximum of two staff
  - Building gross floor area not exceeding 300m<sup>2</sup>

- 20 vehicle movements per day, plus 2 heavy vehicle movements per day for Makybe Terrace, and 40 vehicle movements per day, plus 4 heavy vehicle movements per day for Birchs Road
- Hours of operation between 7am and 10pm
- Compliance with the noise rules
- Maximum of two signs, not exceeding 1m<sup>2</sup> in size.

64. It is noted that although the baseline exists, the scale of the proposal is far greater than what is anticipated by the Plan for the Living zones and therefore, it is considered that the baseline does not offer a useful comparison when considering the proposal.

### *Relevant Assessment Matters*

65. As a fully discretionary activity, the Council's assessment is unrestricted and all actual and potential effects of this proposal must be considered. Relevant guidance is contained in the District Plan's 'Reasons for Rules' and the relevant assessment matters. These are used as a framework for the assessment below.
66. Having regard to the planning framework, I consider the adverse effects of the proposal broadly relate to the following matters:
- character and amenity;
  - transport;
  - retail distribution / economic effects; and
  - soil contamination

### *Character and Amenity*

67. The character and amenity of the area as a whole is influenced by various aspects, including street scene, visual amenity, interaction with the street, passive surveillance and perceptions of safety, landscaping, traffic amenity, and the scale of the activity.
68. The applicant has provided an urban design assessment as part of the application, and a response to the Council's Request for Further Information (RFI) from urban designer Mr Richard Knott. Mr Hugh Nicholson from Urban Shift has been engaged by the Council to provide a peer review of these assessments. A full copy of his report is attached as **Appendix 4**.

### **Urban Design**

69. In considering the receiving environment, it is noted that the area is adjacent to Birchs Road, a Collector Road, which is one of the key gateways into the Lincoln township. This area is characterised by residential dwellings, mature landscaping and open space. Further, the area is in the process of transitioning from a more rural environment to a residential area as anticipated by the Living Z and Outline Development Plan Area 3 provisions in the District Plan. In overall terms, I consider that the existing environment is very much in keeping with the anticipated environmental outcomes for a Living Z zone.
70. The proposal seeks to introduce a large commercial development into an intact residential area, outside of the identified Key Activity Centre and outside of the Neighbourhood Centres provided for commercial development in Lincoln. The location of the proposed supermarket outside of these identified commercial areas will result in a dispersal and fragmentation of the retail offering in the township. It is considered that the proposal would be out of character with the residential setting and the existing urban form of the township.
71. The applicant has used the rules for the Business 1 zone as a guide in assessing the application, "*given that the proposed activities service local convenience needs of the surrounding neighbourhood, and any area shown within an Outline Development Plan as a Neighbourhood or Local centre is subject to the provisions of the Business 1 zone*"<sup>3</sup>. A detailed assessment of the proposal against the Business 1 zone

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<sup>3</sup> Zomac Planning Solutions, Assessment of Environment Effects, July 2019, page 37.



provisions has not been provided, however it is noted that the AEE and Mr Knott both conclude that the proposal will sit comfortably within its residential context<sup>4</sup>.

72. In considering the design of the building, I agree that the Business 1 zone provisions provide a useful guide for assessing the proposal. However, given the intact residential character of the receiving environment, and the residential zoning of the site, I consider an increased level of amenity than that provided for in the Business 1 zone might be expected for this site and its street scene.
73. Mr Nicholson has provided a detailed assessment of the revised proposal using the framework of the principles of urban design provided as minimum requirements of the Business 1 zone for a commercial development. In summary Mr Nicholson notes that the revised architectural treatment is a:
- “significant improvement with the gabled roof forms, the reduced emphasis on corporate signage and the use of the smaller scale forms on the western and southern facades, the building is still significantly larger, and uses materials and over-scale signage that would not reasonably be anticipated in a residential zone without adequate setbacks and landscape treatments”.*
74. Two pedestrian routes are provided within the application site. The first runs east west from Birchs Road to the supermarket entrance and the second provides access from Makybe Terrace to the café and supermarket entrances. Proposed footpaths are also identified along the Birchs Road and Makybe Terrace, outside of the application site. Mr Nicholson considers that the proposed pedestrian routes will not provide a walkable or well-integrated development. In order to address the walkability of the site, Mr Nicholson recommends a second east-west pedestrian route in the northern portion of the site, and that the proposed footpaths on the adjacent roads are formed with a measure of pedestrian priority as a condition of consent.
75. In terms of urban design Mr Nicholson considers that “the proposed development would significantly reduce the residential amenity and pleasantness of the adjacent residential land to the east, south and north”<sup>5</sup> as well as for pedestrians along Makybe Terrace.
76. I accept Mr Nicholson’s conclusions regarding the architectural treatments and design of the building and car parking area, and consider that the amenity impacts on the public realm and therefore the users of it – the wider community – will be more than minor.

### **Shading, outlook and privacy**

77. The assessment provided by the applicant states that the proposed supermarket will meet all the relevant bulk and location requirements in the zone<sup>6</sup>. However, it is noted that the proposal will breach the maximum height limit and road boundary setback. Together, a breach of these rules potentially result in adverse effects on visual amenity, dominance of buildings, access to sunlight, spaciousness and to some extent levels of privacy.
78. The building will have an area of 3122m<sup>2</sup>, with a height of between 7 and 8.5 metres. The building is setback two metres Makybe Terrace road boundary and 4.9 metres from the internal boundary with 555 Birchs Road. Mr Nicholson has provided a detailed assessment of the effects of the proposal relating to the bulk and location of the building, and the potential effects of the building when viewed from adjacent neighbours. Mr Nicholson considers that the proposed setbacks, landscape treatments and proposed interface with the adjacent residential land are insufficient to mitigate the scale and adverse effects that the proposed supermarket is likely to cause. Similarly, Mr Nicholson notes that the pedestrian experience of Makybe Terrace will be influenced by the close proximity of the building to the road and lack of active frontage and modulation.
79. On balance, I consider that the potential adverse effects associated with the non-compliances with the identified bulk and location provisions of the Plan will be more than minor.

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<sup>4</sup> Zomac Planning Solutions, Assessment of Environment Effects, July 2019, page 47 and Richard Knott Ltd, Response to Request for Further Information, 23 December 2019, page 2.

<sup>5</sup> Evidence of Hugh Nicholson, Urban Shift, 3 July 2020, page 9.

<sup>6</sup> Zomac Planning Solutions, Assessment of Environment Effects, July 2019, page 46 and Section 92 Response, 6 January 2020, page 1.

## **Landscape**

80. The applicant has provided a revised landscape plan, attached as **Appendix 2**. This revised plan has increased the total number of trees to 32 trees, to be located along the road boundaries and within the car park area. The revised plan includes a green wall is also proposed for the southern elevation, and lawn, low level plantings and hedging along the property boundary with Birchs Road and Makybe Terrace, and a landscape strip along the western portion of the northern boundary and along the eastern boundary.
81. Mr Nicholson has provided an assessment of the proposed landscaping against the Business 1 landscaping requirements set out in Rule 16.10.2.6, noting that given the residential zoning and character of the area, these matters take on added significance for maintaining amenity. Mr Nicholson concludes that the proposed trees are too few in number and too small in size to mitigate the adverse visual effects of the proposed supermarket and car parking area, or to contribute to a high quality pedestrian experience. Further, Mr Nicholson notes that the proposed tree species are not suitable as specimen trees in this situation.
82. The proposed landscape strips and boundary treatments are considered to be insufficient to mitigate the effects of the building and car park in a residential context. In particular, Mr Nicholson notes that while limited information has been provided regarding the proposed green wall (southern elevation), it is unlikely a green wall will be successful established and maintained on a south facing external wall.
83. The conclusion of Mr Nicholson is that the proposed landscaping fails to meet the minimum standards for landscaping for the Business 1 zone, and does not provide adequate mitigation for the proposed supermarket building, the large car park area and the amenity effects of the activities associated with the operation of the supermarket. I accept Mr Nicholson's assessment and consider that the potential adverse effects on the residential character and amenity of the public realm will be more than minor.

## **Signage**

84. The residential zoning of the site provides for signage, to a maximum area of 1m<sup>2</sup>, with a maximum height of 2m. The rule seeks to restrict signage in the residential zone, in recognition that signage may conflict with the amenity values of residential areas. It is noted that the commercial signage in the adjacent residential area is limited to signage for an existing childcare centre and for small home businesses.
85. The proposal includes approximately 236.63m<sup>2</sup> of signage across the site, including a 9 metre tall illuminated pylon sign on the Birchs Road frontage, and a number of large scale signs on the western and southern facades of the building, the majority of which will be illuminated. It is acknowledged that the applicant has reduced the amount of signage across the site since notification, and that the design, scale and number of signs are in keeping with modern supermarket design. However, within the context of the receiving environment, I consider that the scale and number of signs proposed, and the illumination of those signs will not maintain the quality of the environment and amenity values of the surrounding Living Z zone.
86. The proposed illuminated signage on the southern elevation directly faces the residential neighbours located across Makybe Terrace. It is considered that the signage will be visually dominant when viewed from these properties, particularly during the night-time period. Given that the signage on the southern elevation faces a local road and residential neighbours, it is considered that the viewing opportunities for this advertising is limited. Therefore, it is considered appropriate that any signage on the southern elevation is reduced in area and moved to the western end of the façade.
87. The proposed signage also includes an illuminated pylon sign that provides information relating to hours of operation and parking as well as advertising lotto and the pharmacy. The area of the sign is 59.4m<sup>2</sup> and the maximum height of the pylon is 9 metres. The pylon sign is taller than the proposed supermarket and similar in height to the existing power poles. In the context of the surrounding residential environment, it is considered that the proposed pylon sign will be visually dominant and out of keeping with the existing residential character and amenity of the surrounding area, when viewed from the residential properties located on the western side of Birchs Road and by users of the adjacent public spaces.
88. Mr Nicholson has reviewed the proposed signage and proposed conditions limiting the size of the pylon sign and the extent of signage on the southern elevation of the building. Should the applicant by of a

mind to accept these conditions, I consider that the adverse effects associated with signage could be mitigated to an acceptable level.

### **Lighting**

89. The proposal includes a lighting plan for the car parking area and for the illumination of the building. The applicant has advised that the use of artificial lighting will produce an illuminance up to but not exceeding 3 lux at any residential boundary. Further, the report states that “all outdoor lights not required for security purposes will be turned off when the supermarket and café are not open”.
90. A number of submitters have identified concerns regarding the extent of lighting proposed and the likely period of illumination proposed, particularly what lighting will remain lit outside of operating hours, and whether the pylon and building signage will be illuminated during the night-time period. The application does not define what lighting is required for “security purposes”.
91. It is considered that any adverse effects associated with the proposed illumination of the signage can be managed through clarification of the extent of lighting required during the night-time period and conditions of consent.

### **Traffic Amenity**

92. It is noted that neither the Stantec report nor the Carriageway Report have considered the traffic amenity effects of constructing a commercial development within the Living Z zone. The traffic amenity resulting from the number, scale, type and location of vehicle movements may include glare, vibration, reversing signals, safety and access issues and visual intrusion of vehicles at various times of the night and day and during weekends.
93. The District Plan provides for non-residential activities in the Living zones, subject to the activity being of a scale that is consistent with the surrounding residential amenity. Rule 10.8 seeks to restrict the number of vehicle movements to 40 per day plus 4 heavy vehicle movements per day on Collector Roads (Birchs Road) and 20 vehicle movements per day on Local Roads (Makybe Terrace). The identified number of traffic movements seek to reflect the anticipated residential amenity and are based on the scale and nature of effects normally associated with households and residential activities. These restrictions on traffic movements seek to manage the traffic amenity effects from non-residential activities. The Stantec report identifies that the total site traffic generation will be 325 vehicle movements per hour during the PM peak, with a third of all traffic and all service vehicles exiting onto the adjacent local road, Makybe Terrace.
94. Whilst it is acknowledged that the existing amenity of the application site and surrounding residential environment is influenced by its proximity to Birchs Road, it is noted that the amenity for the existing properties located to the south of the subject site, on Caulfield Crescent, is more in keeping with the character and amenity anticipated in a residential area. These properties (12, 14 and 16 Caulfield Avenue) are located in close proximity of the proposed supermarket. The outdoor living areas of these houses generally face north towards the proposed development, with the rear boundaries of 12 and 14 Caulfield Avenue located approximately 16 metres from the application site boundary.
95. The proposed supermarket will result in a significant number of vehicles utilising Makybe Terrace, adjacent to the northern boundaries of these Caulfield Crescent properties, including all service vehicles exiting the site onto Makybe Terrace. The applicant has estimated that there will be approximately 98 vehicles per hour using the local Makybe Terrace through the afternoon peak hour. The proposed design of Makybe Terrace may result in larger service vehicles scrubbing their tyres along the kerb of the road, or passing into and utilising the opposing traffic lane<sup>7</sup>. It is considered that the close proximity of these activities would have an adverse effect on the residential amenity of the immediate area, particularly should these movements occur in the morning or evening when residents are likely to be home. Whilst these aspects can be considered to be predominantly affecting the adjacent properties on Caulfield Crescent, pedestrian and vehicular users of Makybe Terrace may also be considered to be affected by service vehicles impeding safe passage along the road.

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<sup>7</sup> Carriageway Consulting, Peer Review, 14 February 2020, pages 4 and 5

96. Additionally, the proposal includes a large car parking area, located along the western portion of the northern boundary, immediately adjacent to 555 Birchs Road and across the road from a number of residential properties on Birchs Road. In order to mitigate the potential adverse effects from the proposal, a landscape strip, with a minimum width of 2 metres, has been proposed along the northern boundary of the site. The landscape plan for this landscape strip includes a post and rail fence for the length of the car park, with two specimen trees and hedging to a maximum height of 1 metre<sup>8</sup>. Low level landscaping with three trees are also proposed along the Birchs Road frontage. It is considered that the potential traffic amenity effects associated with the operation of the proposed car parking area will not be adequately mitigated by the proposed fencing and landscaping when viewed from adjacent properties to the north and west, as well as from the adjacent public space of Birchs Road.
97. It is considered that the number, scale and type of vehicle movements to, from and within the site is out of keeping with the existing residential character and amenity of the surrounding area, and will have a more than minor effect on the adjacent residential neighbours, as well as users of the public space adjacent to the site.

### Noise

98. Marshall Day Acoustics (MDA) have been engaged by the applicant to assess the noise environment resulting from the proposed supermarket. The key sources for noise identified in the report include heavy vehicle movements, loading bay activities, light vehicle movements, mechanical plant and noise from the café. The MDA report undertook an attended noise survey during peak morning traffic (between 0700 and 0800 hours on the 21 May 2018) to determine the existing noise environment. The measured levels of the ambient noise environment was determined to between 71 and 72 dB L<sub>Aeq</sub> (15 min) during the morning peak. No further surveys were undertaken outside of the morning peak period.
99. The predicted noise levels from heavy and light vehicle movements are provided in Table 9 and 10 of the MDA report, identifying the noise levels at adjacent properties as being between 46 and 54 dB L<sub>Aeq</sub> (15 min) for heavy vehicle movements and between 45 and 52 dB L<sub>Aeq</sub> (15 min) for light vehicles during the peak traffic period<sup>9</sup>. The MDA report anticipates that there will be noise non-compliances at 12 Caulfield Crescent, 26 Caulfield Crescent, 555 Birchs Road and 560 Birchs Road<sup>10</sup>. Further, the expected noise environment resulting from the proposed outdoor seating area for the café is anticipated to be below the District Plan standards, with the exception of an exceedance of 1dB at 560 Birchs Road during the night-time period<sup>11</sup>. The MDA report considers that, subject to a number of identified conditions, the proposed supermarket will result in acceptable noise effects at nearby residential dwellings.
100. The MDA report has been peer reviewed by Acoustic Engineering Services (AES), a copy of this report is provided as **Appendix 5**. The AES report accepts the majority of the conclusions reached by the MDA report and subsequent responses to the Request for Further Information.
101. The MDA report have considered the sound power of the heavy vehicles as 88 dB L<sub>AE</sub> at 10 metres, at a level of 1 to 1.5 metres in height for assessing heavy traffic movements and the use of the loading bay. This assessment does not anticipate the use of refrigeration trucks. These trucks typically include a refrigeration unit above the truck cab, which generates a significant level of noise. The AES report notes that *“as the noise source for these trucks is elevated, the effectiveness of any acoustic fencing will be reduced.”* The AES report considers that the predicted noise levels from a refrigerated truck may increase by up to 4 dB, and recommends that the proposed acoustic fence is increased to a height of 2.5 metres to ensure that the noise levels meet the proposed criteria of 55 dB L<sub>Aeq</sub>. Additionally, a number of conditions are recommended by the AES report in order to manage the noise effects of heavy vehicles and activities within the loading bay. These conditions include limiting all delivery and service vehicles to operating between 0700 and 1900 hours and requiring all forklift to be fitted with a broadband alarm.
102. The AES report identifies the potential for 555 Birchs Road to be developed in accordance with its Living Z zoning, and notes that noise levels of up to 62 dB L<sub>Aeq</sub> have been predicted at the boundary of this site

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<sup>8</sup> It is noted that there is an existing shelterbelt on the neighbouring property (555 Birchs Road), however this is not part of the application site and therefore I have disregarded it for the purposes of this assessment.

<sup>9</sup> Marshall Day Acoustics, Assessment of Noise Report, 29 July 2019, pages 14 and 15.

<sup>10</sup> Marshall Day Acoustics, Response to Request for Further Information, 6 September 2019.

<sup>11</sup> Marshall Day Acoustics, Response to Request for Further Information, 6 September 2019.



adjoining the proposed car park during the off-peak time due to heavy vehicle movements. The MDA report recommends a 1.8m solid boundary fence to be constructed along the site's entire northern boundary. AES accepts that this recommended condition extending the acoustic fence along the car parking area would be appropriate to managing the noise environment for any future residential development of 555 Birchs Road<sup>12</sup>.

103. The proposed café includes outdoor seating for 20 patrons. Both MDA and AES agree that the overall noise effects from the use of the outdoor café area will be minimal if it was used within the day-time period. In order to manage any potential adverse effects associated with night-time use of this area, AES has proposed that the hours of operation were limited to between 0730 and 2000 hours.
104. In response to the concerns identified by submitters regarding the hours of operation extending to 2200 hours, AES notes that without further information on the current ambient noise levels expected during this time, it would be appropriate to limit the use of the loading bay to 1900 hours.
105. A number of submitters have also sought clarification as to the proposed noise limits of 55 dB L<sub>Aeq</sub> and a night-time noise limit of 45 dB L<sub>Aeq</sub> would be acceptable for this environment. AES have advised that *"the proposed noise limits remain in line with the recognised guidance to retain appropriate amenity and to prevent sleep disturbance in residential areas"*.
106. In conclusion, the AES report agrees with the MDA report that the noise effects associated with the non-compliances will be minimal provided that the mitigation measures are implemented on site. I accept their conclusions and consider that any potential noise effects will be less than minor subject to the proposed conditions.

### **Conclusion on Character and Amenity Effects**

107. I do not consider that there are any remaining specific character and amenity issues identified by submitters that have not been dealt with by the relevant expert assessments and my assessment in the preceding paragraphs.
108. In my opinion, the potential adverse effects of the proposed development on the character and amenity of the surrounding environment would be more than minor.

### **Transport**

109. A Transport Assessment Report has been prepared by Stantec on behalf of the applicant. The Stantec Report anticipates an expected afternoon peak hour trip generation of 325 vehicles per hour for the supermarket. The café is anticipated to generate approximately 10 vehicle movements per hour during the same period, however, it is considered to not be a wholly standalone generator of traffic.
110. The Stantec report has been peer reviewed by Andy Carr of Carriageway Consulting, his report is included as **Appendix 6**. Mr Carr has reviewed the revised car park layout and has concluded that subject to a number of conditions of consent and/or further information to be provided by the applicant, the proposal can be accommodated on the surrounding transportation networks. The conditions identified by Mr Carr include the following matters:
  - *"Detailed drawings shall be provided by the consent-holder showing layouts for access to the consented activities, and any resultant changes on Birchs Road and Makybe Terrace, that comply with the Manual of Traffic Signs and Markings. These drawings shall be submitted to the Council for approval;*
  - *The drawings shall be subject to a road safety audit by a suitably qualified traffic engineer independent of the Applicant's team, and the audit report provided to the Council at the same time as the detailed design drawings;*
  - *The consent-holder shall be responsible for all costs associated with the works identified on the detailed design drawings.*

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<sup>12</sup> I note that the proposed solid acoustic fence would be in conflict with the proposed landscape plan that identifies a post and rail fence located along the northern boundary for the length of the car park, should the residential development of this adjacent lot occur in the future.



- *Either: The Applicant shall widen the carriageway of Makybe Terrace and provide revised swept paths showing that this widening would result in trucks staying on their own side of the road OR large vehicles shall only be permitted to exit the site at off-peak times, to minimise the potential for meeting oncoming traffic*
- *The vehicle crossing at Birchs Road shall be constructed with a 50mm high over-run area to enable large trucks to enter while also providing a clearly delineated narrower route for drivers of smaller vehicles.*
- *Space 1 within the supermarket car park shall be clearly marked as being for staff only.*
- *Where landscaping is within a required sight triangle it shall either comprise of a species that is less than 1m in height at maturity, or shall be 'limbed up' such that all branches or leaves are more than 1.5m above the level of the surrounding ground; and*
- *The provision of a revised site layout also means that swept paths should be provided for vehicles manoeuvring within the car park, in order to ensure that the layout will function satisfactorily in practice."*

111. A full outline of the conditions identified by Mr Carr are detailed in **Appendix 9** of this report.
112. Mr Carr has also consider all submissions relating to traffic effects, and considers that these concerns are adequately addressed by various conditions proposed.
113. These submissions include the potential effects of the proposal on the safe and efficient use of the Rail Trail by pedestrians and cyclists. The Rail Trail runs alongside the eastern edge of the formed carriageway of Birchs Road. Mr Carr has reviewed these submissions and the provision for cyclists and pedestrians along the road frontage of the proposal. Mr Carr considers that a condition of consent requiring detailed plans to be reviewed by Council, and that these plans are subject to a road safety audit.
114. Another matter identified by submitters was the provision of public transport from and to the site. In particular, Environment Canterbury has identified the need for a bus stop outside the proposed supermarket. It is understood that the process of identifying the appropriate location for bus stops is undertaken by Selwyn District Council and is not the responsibility of the applicant. Further, Mr Carr has advised that there is sufficient space within the road reserve to accommodate future bus stops.
115. A number of submitters located on Caulfield Avenue have sought assurances that the western portion of Caulfield Crescent will be maintained as a cul de sac, with the intention of restricting traffic to Makybe Terrace. The Council has recently granted resource consent for the wider 17 lot subdivision, which identifies Caulfield Crescent as a cul de sac and identifies the land between the head of the cul de sac and Makybe Terrace as land to be vested in the Council as "Local Purpose (Access) Reserve". A copy of the consented subdivision plan is provided in **Appendix 7**.
116. I do not consider that there are any remaining specific transport issues that have not been dealt with by Mr Carr's report and my assessment above.
117. I accept Mr Carr's advice and consider that subject to the applicant's acceptance of the proposed conditions, the transport effects will be able to be mitigated adequately.

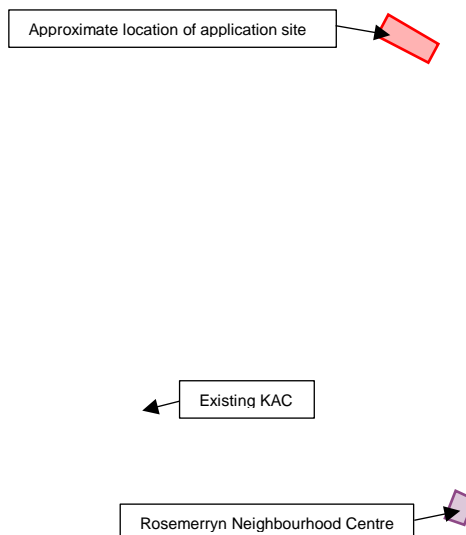
### *Retail Distribution / Economic Effects*

118. The applicant engaged Urban Economics to provide an Economic Assessment of the proposed supermarket. This report provided an assessment of an earlier proposal for a "1,500m<sup>2</sup> Fresh Choice Supermarket, with a service station, pharmacy, café and a community services tenancy"<sup>13</sup>. An addendum was provided to this initial report stating that increasing the size of the proposed supermarket to an area of 3063m<sup>2</sup> had no change to the conclusions of the initial report, and that "the proposal would have significant economic benefits and no economic cost"<sup>14</sup>.

<sup>13</sup> Urban Economics, Economic Assessment of Proposed Supermarket, Lincoln, 20 February 2018, page 4.

<sup>14</sup> Urban Economics, Addendum to Economic Assessment of Proposed Supermarket, Lincoln, 8 April 2019, page 2.

119. The Urban Economics Report has been peer reviewed by Mr Tim Heath from Property Economics. A full copy of his report is provided in **Appendix 8**.
120. With regard to the consideration of retail distribution effects on the Lincoln Key Activity Centre (KAC) (refer **Figure 4** below), Mr Heath notes that, “for flow-on effects to be able to be considered under the RMA they must go beyond direct competition effects, affecting the role, function, amenity and viability of the centre”. Case law has determined that where trade competition produces social and economic effects that are not significant and are not beyond the effects ordinarily associated with trade competition, those effects are to be disregarded when assessing an application<sup>15</sup>.



**Figure 4 Location of the Existing Key Activity Centre and Neighbourhood Centre in Lincoln**

121. The Property Economics report considers that flow-on effects on the KAC will be highly unlikely and that any effects are likely to be confined to one store – the existing supermarket. The RIA acknowledges that the proposed supermarket will result in a direct trade impact on the existing supermarket, however any trade diversion effects are likely to be offset by market growth in Lincoln within five years.
122. In response to submitters identifying concern over the fragmentation of the retail offering in Lincoln, Mr Heath notes that the proposal will result in further fragmentation of the retail provision in Lincoln and inefficiencies in the market, which are valid economic cost considerations under the RMA, but notes that *“these inefficiencies are not likely to reach a level where economic inefficiencies/ effects in conjunction with trade diversion effects could be considered likely to result in significant distributional effects on the Lincoln Town Centre”* (my emphasis).
123. I consider that the town centre may experience a decline in visitors and investment in the centre as a result of the dispersal of retail offerings within the township, with a potential for subsequent adverse effects on visual amenity. However, I accept Mr Heath’s assessment that the potential adverse effects do not reach the threshold necessary for consideration under the RMA.
124. A number of submitters have stated that any additional supermarkets should be located in the town centre and have further identified the loss of the economic benefits of having an additional supermarket located in the town centre. In response to these submissions, Mr Heath acknowledges that the establishment an anchor tenant in the town centre would result in economic benefits to the town centre. However, Mr Heath considers that there is insufficient provision of land within the commercial centre to accommodate a modern supermarket.
125. The conclusion of Mr Heath is that there will be no significant adverse retail distribution effects generated by the proposed supermarket on the Lincoln KAC in the context of the economic effects under the RMA. I accept the conclusions of Property Economics and consider that any adverse effects on retail distribution will be no more than minor.

<sup>15</sup> Northcote Mainstreet vs Discount Brands Limited (High Court, CIV-2003-404-5292); and Discount Brands Limited v Westfield (New Zealand) Limited (2005) 2 NZLR 597 (SC)

### *Soil Contamination*

126. The Listed Land Use Register identifies the land as a HAIL site type A10 – persistent pesticide bulk storage or use and therefore the NES applies to activities on the site. The applicant has provided a Detailed Site Investigation report identifying areas where the contaminants exceeded the expected background levels, which are outside the area of the proposed supermarket. The Contaminated Land Officer at Environment Canterbury has reviewed the DSI and confirmed that excavated material may not be suitable to be deposited at a cleanfill facility if removed from the site.
127. Given that the proposed supermarket is located outside of the area deemed to be contaminated, it is considered that any potential adverse effects associated with contamination will be less than minor.

### *Waste Management*

128. The District Plan provides for a maximum of 1m<sup>3</sup> on average per week per year to be generated from non-residential activities in the Living zones. As a restricted discretionary activity, the Council is directed to restrict its discretion to the approval of a waste management plan to minimise waste from the activity and dispose of the waste in a way that mitigates adverse effects on the environment.
129. The applicant has acknowledged that the proposal will exceed the District Plan standards for generating waste. A number of local residents have identified waste management issues in their submissions. It is considered that matters relating to waste can be addressed by way of a condition of consent requiring a waste management plan to be submitted to Council for approval prior to the supermarket becoming operational.

### *Precedent*

130. A number of submitters have identified their concern that consenting the proposed supermarket will set a precedent for the expansion of commercial activities in this area, or for other “out of zone” commercial developments.
131. It is noted that any application for a commercial activity, regardless of location, is assessed on a case by case basis. Further, as a discretionary activity, matters of precedent and any potential effects on the integrity of the Plan are not legally required to be considered. Should the commissioner be of a mind to grant consent to this development, it is considered that this will not set a precedent for the expansion of commercial activities at this site, nor for other commercial activities on alternative Living zoned properties.

### *Property Valuation*

132. A few submitters have also raised concerns regarding the potential devaluation of their properties located in proximity to the proposed development. It is understood that from a legal perspective, property values are not strictly relevant to the assessment of the effects of the application under the RMA because the assessment of impact on property values can be seen as ‘double counting’ of environmental effects that have been considered separately. Therefore, whilst I acknowledge these submitters concerns, I consider that these have been thoroughly addressed in the assessment above.

### *Positive Effects*

133. A number of positive effects have been identified by the submitters. I consider that the positive effects of the proposed development include the following:
- Provision of opportunities for local employment;
  - Provision of opportunities for increased competition and choice from a second supermarket offering in the township;
  - Provision of a supermarket offer in a walkable location for residents of the north-east area of Lincoln; and
  - Opportunities for social interaction at the café.

### **Summary – Assessment of Environmental Effects**

134. Overall, I consider that the environmental effects of this proposal will be more than minor.

## District Plan Objectives and Policies

135. The objectives and policies that I consider relevant are:

### *Objective B2.1.1*

*An integrated approach to land use and transport planning to ensure the safe and efficient operation of the District's roads, pathways, railway lines and airfield is not compromised by adverse effects from activities on surrounding land or by residential growth.*

### *Policy B2.1.2*

*Manage effects of activities on the safe and efficient operation of the District's existing and planned road network, considering the classification and function of each road in the hierarchy.*

### *Policy B2.1.6(a)*

*Require activities to have adequate on-site parking and loading facilities to minimise potential adverse effects from roadside parking and to require adequate on-site manoeuvring area to avoid the need for reversing onto or off roads particularly State Highways and Arterial Roads (...).*

### *Policy B2.1.7*

*Provide for pedestrian safety, security, circulation and access within parking areas by considering the interaction of vehicle access and manoeuvring, circulation, loading and parking, with likely pedestrian routes onto the site, including for users of public transport, and between car and cycle parks and building entrances.*

136. For the reasons set out in my Assessment of Effects above, I consider these provisions would be achieved by the proposal, subject to a number of conditions of consent.

### *Objective B3.4.1*

*The District's townships are pleasant places to live and work in.*

### *Policy B3.4.2*

*To provide for any activity to locate in a zone provided it has effects which are compatible with the character, quality of the environment and amenity values of that zone.*

### *Objective B3.4.2*

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

137. Objective B3.4.1 and B3.4.2 and associated Policy B3.4.2 seek to ensure that townships are pleasant places to work and live, and that a variety of activities are provided for while maintaining the existing amenity values of the surrounding environment. The existing amenity of the surrounding environment is characterised by recent residential development, constructed in accordance with ODP Area 3 and the Living Z zoning provisions.

138. I consider that the proposed development will create a large, highly visible and overtly commercial development on land which is anticipated by the District Plan zoning to be residential in nature.

### *Policy B3.4.9*

*Ensure noise in all zones does not adversely affect the health or well-being of people.*

### *Policy B3.4.10*

*Maintain background sound levels which are appropriate to the quality of the environment and amenity values of each zone.*

### *Policy B3.4.15*

*Ensure the operating hours of non-residential activities in Living zones do not disturb surrounding residential activities, particularly at night.*

139. I consider that the proposal will achieve the policies relating to noise, subject to the conditions discussed in the Assessment of Effects above and outlined in **Appendix 9**.

*Policy B3.4.18*

*Ensure non-residential activities in Living zones generate vehicle and pedestrian movements on a scale compatible with the quality of the environment in Living zones.*

140. Policy B3.4.18 seeks to ensure that non-residential activities in the Living zone are compatible with the quality of the Living zone environment. It is acknowledged that the amenity of the application site is influenced by the traffic environment of Birchs Road. However, it is considered that the number of traffic movements anticipated on Makybe Terrace is of a scale and frequency that is incompatible with the existing quality of the environment and with the anticipated environment outcomes for a Living Z zoned area.

*Policy B3.4.20*

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

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

*Policy B3.4.21*

*Ensure signs in Living zones are of a size, design and number which maintain the quality of the environment and amenity values of the zone, but recognise the need for retail activities located in Living zones to have extra signs on the site.*

141. The proposal seeks to provide a number of signs on the site. The proposed signage will not result in adverse effects on visibility, safety or access for pedestrian, cyclists or motorists. No sound or motion features are proposed.
142. The proposal includes approximately 236.63m<sup>2</sup> of signage across the site, including a 9 metre tall illuminated pylon sign on the Birchs Road frontage, and a number of large scale signs on the western and southern facades of the building, the majority of which will be illuminated. It is acknowledged that the applicant has reduced the amount of signage across the site since notification, and that the design, scale and number of signs are in keeping with modern supermarket design. However, within the context of the receiving environment, I consider that the scale and number of signs proposed, and the illumination of those signs will not maintain the quality of the environment and amenity values of the surrounding Living Z zone.

*Policy B3.4.24(a)*

*Ensure that Business 1 zoned town centres are walkable and well integrated, and that development in those town centres contributes to the economic and social vibrancy of the District's towns (...)*

143. The location of the proposed supermarket outside of the Lincoln town centre will attract shoppers away from KAC, reducing the number of pedestrians, opportunities for social interaction and reducing the number of potential clients for the smaller businesses located in the KAC. Mr Heath has assessed the effects of locating the supermarket outside of the KAC as fragmenting the retail offering in Lincoln, but that the level of effect will not meet the RMA threshold of "significant". On balance, I consider that the proposal is not inconsistent with Policy B3.4.24(a).

*Policy B3.4.23*

*Allow people freedom in their choice of the design of buildings and structures except where building design needs to be managed to:*

- *Avoid, remedy or mitigate adverse effects on adjoining sites; or*



- *Maintain the character of areas with outstanding natural features or landscape values or special heritage or amenity values; or*
- *Maintain and establish pleasant and attractive streets and public areas in the Business 1 zone.*

#### *Policy B3.4.26*

*Ensure buildings are setback an appropriate distance from road boundaries to maintain privacy and outlook for residents and to maintain the character of the area in which they are located.*

#### *Policy B3.4.27*

*Ensure buildings and structures in Living zones which are used for non-residential activities, are of a size and bulk and in a setting compatible with the quality of the environment and amenity values of a residential area*

144. The application site is located in area that is predominately characterised by recently developed residential subdivisions and larger more rural landholdings transitioning to residential developments. The majority of these residential sites are characterised by single storey dwellings and landscaping. I consider that the proposal will adversely affect the wider character and amenity values of the Lincoln township by creating a large highly visible and overtly commercial development on land which is anticipated by the District Plan zoning to be residential in nature. I consider that the proposal is inconsistent with Policies B3.4.23, B3.4.26 and B3.4.27.

#### *Objective B4.3.3*

*For townships within the Greater Christchurch area, new residential or business development is to be provided within existing zoned land or priority areas identified in the Regional Policy Statement and such development is to occur in general accordance with an operative Outline Development Plan.*

#### *Policy B4.3.1*

*Ensure new residential, rural residential or business development either:*

- (...);
  - (...);
  - *The land is rezoned to an appropriate Living or Business zone and, where within the Greater Christchurch area, is contained within existing zoned land and greenfield priority areas identified in the Regional Policy Statement and development in accordance with an Outline Development Plan incorporated into the District Plan.*
145. The application site is located within the Greater Christchurch area, within the Lincoln ODP Area 3. The ODP provides for a small local neighbourhood centre that has already been developed for this purpose. The inclusion of a second commercial centre, in the form of the proposed supermarket and café would not be in accordance with the ODP. The site has not been rezoned to an appropriate business zone.
146. It is noted that the policy framework does not preclude new development. Rather, the policy places emphasis on the use of rezoning to provide for development, whereby rezoning of the land enables a full and proper consideration of all the relevant issues associated with changing the use of the land. It is considered that the proposal is contrary to Objective B4.3.3 and associated Policy B4.3.1.

#### *Objective B4.3.8*

*Commercial growth is primarily focused within the Key Activity Centres of Rolleston and Lincoln in a way and at a rate that:*

- (1) *Meets the economic needs of commercial businesses, provides for their communities with convenient access to goods and services, and ensures opportunities for employment and social interaction; and*
- (2) *Ensures an adequate supply of land to meet commercial and community demands.*

#### *Policy B4.3.4*

*Encourage new residential or business development to occur on vacant land in existing Living or Business zones, if that land is available and appropriate for the proposed activity.*

147. The application site is located within an existing Living Z zone and is currently vacant. I consider that for reasons of effects on the residential character and amenity, that the land is not appropriate for the proposed activity.

*Policy B4.3.10*

*To ensure that the key principles and outcomes sought in operative Outline Development Plans are achieved and where development is proposed that is not in general accordance with an operative Outline Development Plan in the District Plan, consideration shall be given as to whether:*

- The proposed change will better achieve the key principles of the Outline Development Plan, as set out in Policy B4.3.7 and any specific ODP requirements set out in any area-specific ODP policy, than the land use pattern shown in the operative ODP;*
- The proposed change will potentially compromise the outcomes sought within the remainder of the Outline Development Plan area. This is especially the case where changes are proposed that only cover a portion of the ODP area and/or have implications for other parts of the ODP area beyond the applicant's control. Where development is not in general accordance with the ODP is proposed via a subdivision consent application, it is preferable that the application covers the entire ODP area so that the implications of such changes are able to be fully understood and assessed;*
- Adequate provision has been made to ensure that such changes are aligned to corresponding land use provisions of the District Plan and that this is transparent to current and future landowners.*

*Policy B4.3.11*

*Provide Neighbourhood and Local Centres, as shown in operative Outline Development Plans, to satisfy the more localised and convenience needs of people and communities, whilst recognising that neighbourhood and local centres are to complement Key Activity Centres which shall remain the primary focus for commercial, social and community activity within that Township.*

*Policy B4.3.63*

*Ensure that development within each of the Outline Development Plan areas identified on the Planning Maps and Appendices within Lincoln addresses the specific matters relevant to each ODP Area number listed below:*

*Outline Development Area 3*

- (...)*
  - Provision of Rail Trail Route, and main pedestrian and cycle links to township*
  - Provision of one neighbourhood centre;*
  - Provision of a minimum net density of 10 households per hectare averaged over the ODP area*
148. The introduction to the Lincoln ODP Area 3 states that, consistent with the Lincoln Structure Plan, the ODP supports the principles of strong connectivity to Edward Street, Birchs Road and Ellesmere Road, protection of valued drainage paths through the site and provision for a neighbourhood centre. The Rosemerryn neighbourhood centre has been constructed on the corner of Edward Street and Eastfield Drive in accordance with the ODP.
149. The explanation for Policy B4.3.11 states that Town Centres with each township form an important function as significant physical resources for providing for the social, cultural and economic wellbeing of their respective communities of influence. Crucially such Town Centres serve as focal points in terms of providing important public and private services and facilities in the most efficient manner to the wider community, and should remain the focus of commercial, business and retail development in future.
150. Of relevance to the proposed supermarket, the explanation for Policy B4.3.11 seeks to define the scale of activities appropriate for each commercial centre. Neighbourhood Centres identified in ODPs should range in size, but generally comprise 1,000m<sup>2</sup> – 2,000m<sup>2</sup> total floor space, comprised of smaller retail tenancies (with a maximum retail tenancy of 350m<sup>2</sup> GFA) and community facilities. Similarly, Local Centres should comprise of smaller retail tenancies and community facilities, limited to approximately 450m<sup>2</sup> total floor space for the centre.

151. The proposed supermarket will have a floor area of 3122m<sup>2</sup>, with office space of 191m<sup>2</sup>. The proposed café will have a floor area of 71m<sup>2</sup>. The proposed supermarket will exceed the maximum floor area for an entire Neighbourhood Centre by 56%. The scale of the proposed development is significant, and will create a focal point for the community that will detract from the existing Lincoln Town Centre. The construction of an additional commercial development within this ODP area would not be in accordance with the ODP, and may compromise the visual amenity of the existing Rosemerryn centre by attracting customers and investment away from the centre.
152. In my opinion, the District Plan takes a strong line against ad hoc establishment of business centres by way of resource consent and calls for a deliberate process of zoning and preparation of Outline Development Plans. The current form of the Lincoln ODP Area 3 was subject to extensive public consultation and a Plan Change, while this proposal was not. Therefore, I consider that the proposal is contrary to Policies B4.3.10, B4.3.11 and B4.3.63.

### Summary – District Plan Objectives and Policies

153. Overall, I consider the proposal to be contrary to the relevant Objectives and Policies of the Selwyn District Plan.

## Canterbury Regional Policy Statement

154. The Canterbury Regional Policy Statement ('CRPS') sets out the resource management issues for the Canterbury region and the objectives, policies and methods to achieve integrated management of natural and physical resources. The CRPS became operative on 15 January 2013.
155. Chapter 5 of the CRPS provides for general urban development. I consider the following policy framework to be relevant to the proposal:

### *Objective 5.2.1 – Location, design and function of development (Entire Region)*

*Development is located and designed so that it functions in a way that:*

1. *Achieves consolidated, well designed and sustainable growth in and around existing urban area as the primary focus for accommodating the region's growth; and*
2. *Enables people and communities, including future generations, to provide for their social, economic and cultural well-being and health and safety; and which*
  - c. *encourages sustainable economic development by enabling business activities in appropriate locations;*
  - i. *avoids conflict between incompatible activities.*

### *Policy 5.3.2 – Development conditions (Wider Region)*

*To enable development including regionally significant infrastructure which:*

1. *Ensure that adverse effects are avoided, remedied or mitigated, including where these would compromise or foreclose:*
    - a. *(...)*
    - b. *Options for accommodating the consolidated growth and development of existing urban areas*
156. The applicant considers that the proposal is in accordance with Objective 5.2.1 and associated policies, as it provides for consolidated growth within an existing urban area and that the proposal has been designed to be in keeping with the adjoining residential areas. While I agree that the proposal is located within the existing urban area, I do not consider that the proposed development achieves well designed and sustainable growth. I therefore consider the proposal to be only partially consistent with Chapter 5 of the RPS.
157. Chapter 6 of the CRPS relates to the recovery and rebuilding of Greater Christchurch. I consider the following objectives and policies to be relevant to the proposal:

### *Objective 6.2.1 Recovery Framework*

*Recovery, rebuilding and development are enabled within Greater Christchurch through a land use and infrastructure framework that:*

- 1. Identifies priority areas for urban development within Greater Christchurch;*
- 2. Identifies Key Activity Centres which provide a focus for high quality, and, where appropriate, mixed-use development that incorporate the principles of good urban design:*
- 3. Avoids urban development outside of existing urban areas or greenfield priority areas for development, unless expressly provided for in the CRPS*

#### *Objective 6.2.2 Urban form and settlement pattern*

*The urban form and settlement pattern in Greater Christchurch is managed to provide sufficient land for rebuilding and recovery needs and set a foundation for future growth, with an urban form that achieves consolidation and intensification of urban areas, and avoids unplanned expansion of urban areas, by:*

- 1. (...)*
- 4. encouraging sustainable and self-sufficient growth of the towns of Rangiora, Kaiapoi, Woodend, Lincoln, Rolleston and Prebbleton and consolidation of the existing settlement of West Melton*

#### *Objective 6.2.5 Key Activity and Other Centres*

*Support and maintain the existing networks of centres below as focal points for commercial, community and service activities during the recovery period.*

- 1. The Central City*
- 2. Key Activity Centres*
- 3. Neighbourhood Centres*

#### *Objective 6.2.6 Business Land Development*

*Identify and provide for Greater Christchurch's land requirements for the recovery and growth of business activities in a manner that supports the settlement pattern brought about by Objective 6.2.2, recognising that:*

- 3. New commercial activities are primarily directed to the Central City, Key Activities Centres and neighbourhood centres;*
- 4. A range of other business activities are provided for in appropriate locations; and*
- 5. Business development adopts appropriate urban design qualities in order to retain business, attract investment and provide for healthy working environments.*

#### *Policy 6.3.1 Development within the Greater Christchurch Area*

*In relation to recovery and rebuilding for Greater Christchurch:*

- 1. Ensure new urban activities only occur within existing urban areas or identified greenfield priority areas as shown on Map A, unless they are otherwise expressly provided for in the CRPS.*

#### *Policy 6.3.2 Development form and urban design*

*Business development, residential development (including rural residential development) and the establishment of public space is to give effect to the principles of good urban design, and those of the NZ Urban Design Protocol 2005, to the extent appropriate to the context (...)*

#### *6.3.3 Development in accordance with outline development plans*

*Development in greenfield priority areas and rural residential development is to occur in accordance with the provisions set out in an outline development plan or other rules for the area (...)*

#### *Policy 6.3.6 Business land*

*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. (...)*

3. *Reinforces the role of the Central City, as the city's primary commercial centre, and that of Key Activity Centres;*
  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*
158. Chapter 6 of the CRPS specifically relates to managing growth and development to support earthquake recovery within the Greater Christchurch area, including business recovery and growth. The policy framework seeks to reinforce the hierarchy of business areas, whilst providing for business growth that give effect to the principles of good urban design.
  159. The applicant considers that the proposed development is consistent with the objectives and policies of Chapter 6 of the CRPS, stating that there is sufficient demand to support a further supermarket, and that the proposed location is the "*only suitable location in Lincoln which satisfies criteria relating to commercial feasibility, size and market access*"<sup>16</sup>.
  160. As has been discussed, it is considered that there is sufficient demand within the Lincoln township to support a second supermarket. Further, as Mr Heath has stated, any potential retail distribution effects on the existing KAC and neighbourhood centres will not be significant. However, based on the advice of Mr Nicholson, I do not consider that the proposal gives effect to the principles of good urban design, nor is the proposal in accordance with the Outline Development Plan Area 3. I therefore consider the proposal to be only partially consistent with Chapter 6 of the RPS, I do not however consider it contrary to it.

## Greater Christchurch Regeneration Act 2016 and the Land Use Recovery Plan

161. The Greater Christchurch Regeneration Act (GCR Act) came into force on 19 April 2016 and replaces the Canterbury Earthquake Recovery Act 2011, which was repealed on the same date.
162. The application site is within Greater Christchurch, as defined by the Act (within Selwyn, Springs and Selwyn Central Wards). As such, the GCR Act needs to be considered in relation to this application.
163. The Land Use Recovery Plan (LURP) applies to the Greater Christchurch area. It was approved by the Minister for Canterbury Earthquake Recovery and gazetted on 6 December 2013. Although prepared under the Canterbury Earthquake Recovery Act 2011, the LURP is a Recovery Plan under s4 of the GCR Act and so needs to be considered in relation to this application.
164. The LURP considers the impacts of the earthquakes on residential and business land use, and provides a pathway for the transition from rebuild to longer term planning. The LURP sets a policy and planning framework necessary to:
  - Rebuild existing communities
  - Develop new communities
  - Meet the land use needs of businesses
  - Rebuild and develop the infrastructure needed to support these activities
  - Take account of natural hazards and environmental constraints that may affect rebuilding and recovery.
165. The LURP identifies what needs to be done in the short and medium term to co-ordinate land use decision-making, identifies who is responsible and sets timelines for carrying out actions. It directs amendments to be made to Environment Canterbury's Regional Policy Statement, the Christchurch City Plan, the Selwyn District Plan and the Waimakariri District Plan.

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<sup>16</sup> Zomac Planning Solutions, Assessment of Environment Effects, July 2019, page 17.



166. When considering an application for a resource consent for a restricted discretionary, discretionary or non-complying activity, any person exercising powers or performing functions must not make a decision or recommendation that is inconsistent with the LURP (s60 of the GCR Act).
167. The LURP encourages the location of new business and service activities within identified Key Activity Centres. The Outline Development Plans and associated policy and rule framework contained in the District Plan have been written in the context of the LURP. As has been discussed, it is considered that the proposal is inconsistent with the District Plan and is only partially consistent with the CRPS. For the reasons outlined in the assessment above, I consider that the proposal is not inconsistent with the GCR.

## Other Matters

### *Lincoln Structure Plan*

168. The purpose of the Lincoln Structure Plan (2008) is to outline an urban design vision for the future development of Lincoln Town Centre and to provide a strategic framework to guide the development process. The Structure Plan was subject to extensive public consultation and formed the basis for the Lincoln Outline Development Plans and associated Plan Changes.
169. Whilst the Structure Plan has been superseded to some extent by the subsequent processes for the identification and development of the ODP areas and associated Plan Change, a number of the core principles of the Structure Plan remain relevant.
170. The Structure Plan seeks to consolidate the town centre as the main area for retail activity in Lincoln, *"thereby reducing potential conflicts and distributional effects between centres and strengthen its position"*. Further, the Structure Plan notes that a supermarket in the town centre will become a core retail anchor for the main street, drawing people into the town centre, *"strengthening the viability of the core retail area and main street function"*.
171. A number of submitters have noted that the proposal will result in a dispersal of retail activities, and will fail to support the vibrancy and viability of the Town Centre. I consider that the proposed supermarket is not in accordance with the Lincoln Structure Plan.

## Part II of the Resource Management Act 1991

172. The purpose of the Resource Management Act 1991 is to promote the sustainable management of natural and physical resources. This is defined to mean:  
*"managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –*
  - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
  - (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
  - (c) Avoiding, remedying or mitigating any adverse effects of activities on the environment*
173. Section 6 sets out matters of national importance. No matters of national importance are affected by this proposal.
174. Section 7 requires particular regard to be had to "other matters". Of relevant to this application are:
  - (b) the efficient use and development of natural and physical resources;
  - (c) the maintenance and enhancement of amenity values;
  - (f) maintenance and enhancement of the quality of the environment.
175. It is considered that the proposed supermarket can be considered to be an efficient use and development of natural and physical resources, given that the proposal seeks to develop land that has been identified as appropriate for urban development. That said, I do not consider that the proposal will adequately maintain and enhance amenity values in the area, as the scale and design of the building will have significant adverse effects on the amenity values for the surrounding residential environment. I also

consider that the proposal will fail to maintain, and will compromise the quality of the environment in a manner that is not contemplated by the Plan, and thus will not promote the purpose of the Act.


176. Section 8 requires the principles of the Treaty of Waitangi to be taken into account. No cultural matters arise in the consideration of this proposal.
177. For the above reasons, particularly those pertaining to Section 7, I consider that the proposal is inconsistent with Part II of the Resource Management Act.

## Summary

178. After considering the actual and potential effects on the environment of allowing the application, it is my conclusion that the proposal will result in more than minor adverse effects on the visual amenity and residential amenity values.
179. In my opinion the proposal is contrary to the objectives and policies of the Selwyn District Plan. This is because overall, the proposal is incompatible with the character of the site and the receiving environment.
180. I consider that the proposal is inconsistent with Part II of the Resource Management Act 1991.
181. Having considered all of the relevant matters under Sections 104, and 104, it is my opinion that consent should be refused.

## Recommendation

182. I have assessed this application to construct and operate a supermarket and cafe, with associated car parking and landscaping, at 581 Birchs Road. Having considered all the matters relevant to this application, I recommend that this application be refused pursuant to Sections 104, 104B and 108 of the Resource Management Act 1991.
183. In case Commissioner Caldwell is of the opinion that the application can be granted, I have compiled a list of appropriate conditions of consent in **Appendix 9** to this report.
184. I consider a number of these conditions, which have been identified to be outside the scope of the Council's discretion. The agreement of the applicant would be required to impose these conditions.

<b>Reported and recommended by</b>  <b>Jane Anderson</b> <b>Consultant Planner</b>	<b>Date: 6 July 2020</b>
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## Appendix 3 List of Submitters

No.	Name	Address	Support/ Oppose	Wish to be heard	Joint Submission
1	Lindsay and Robin Philips	73 Robinsons Road, Lincoln	Support	No	Yes
2	Alan Kennedy	48 Sunline Avenue, Lincoln	Support	No	No
3	Rosemary Nienaber	77 Sunline Avenue, Lincoln	Support	No	No
4	Lin Tian	581 Birchs Road, Lincoln	Support	Yes	Yes
5	Jason Daly	28 Faulks Drive, Lincoln	Support	No	Yes
6	Abanoob Fam	24 Doncaster Avenue, Lincoln	Support	Yes	No
7	Jing Li	24 Doncaster Avenue, Lincoln	Support	Yes	No
8	Michelle Feyen	9 Loxley Place, Lincoln	Support	No	No
9	Christine Allport	3 Carnaveron Drive, Lincoln	Support	Yes	Yes
10	Eva Huismans	2 Pentire Parade, Lincoln	Support	No	Yes
11	Scott H Loeffler	47 O'Reilly Road, Lincoln	Support	No	Yes
12	Tim Hodge	5 William Street, Lincoln	Support	No	No
13	Chris Grant	4 Faulks Drive, Lincoln	Oppose	No	Yes
14	Tianxi Yin	24 O'Reilly Road, Lincoln	Oppose	No	No
15	Amanda Parkin	10 Kajens Court, Lincoln	Oppose	No	No
16	Robyn Twemlow	21 Foxbridge Lane, Lincoln	Oppose	Yes	Yes
17	Kelvin Rice	36 Craig Thompson Drive, Lincoln	Oppose	No	No
18	Kay Bartlett	45 Zabeel Street, Lincoln	Oppose	No	No
19	Umesh Sami	52 Oaks Drive, Lincoln	Support	Yes	Yes
20	Justine Gooding	13 O'Reilly Road, Lincoln	Oppose	No	Yes
21	Karen Dickie	3 Heathridge Place, Lincoln	Oppose	No	No
22	Elizabeth and David Biddick	42 Sunline Avenue, Lincoln	Support	No	No
23	Karen Hurley	7 Doncaster Avenue, Lincoln	Oppose	Yes	

24	Nathan Peter	11 Caulfield Crescent, Lincoln	Oppose	Yes	Yes
25	Cooke Family Trust and Robert Lineham	555 Birchs Road, Lincoln	Oppose	Yes	Yes
26	Steve Meier	14 Caulfield Crescent, Lincoln	Oppose	Yes	Yes
27	Suzanne Hobby	14 Caulfield Crescent, Lincoln	Oppose	No	Yes
28	Laura Burgess	560 Birchs Road, Lincoln	Oppose	Yes	No
29	Richard and Kirstin Clark	12 Caulfield Crescent, Lincoln	Oppose	Yes	Yes
30	Charles Butler	555 Birchs Road, Lincoln	Support	Yes	Yes
31	Penny Butler	555 Birchs Road, Lincoln	Support	Yes	Yes
32	Astrea Paahi	4 Zabeel Street, Lincoln	Support	Yes	Yes
33	Aaron Paahi	4 Zabeel Street, Lincoln	Support	Yes	Yes
34	Sarika Prasad	52 Oaks Drive, Lincoln	Support	Yes	Yes
35	Shweta Swastika	52 Oaks Drive, Lincoln	Support	Yes	Yes
36	Ayush Sami	52 Oaks Drive, Lincoln	Support	Yes	Yes
37	Manisha Sami Gautam	52 Oaks Drive, Lincoln	Support	Yes	Yes
38	Pranshul Gautam	52 Oaks Drive, Lincoln	Support	Yes	Yes
39	Peter Hollow	17 Carnaveron Drive, Lincoln	Support	Yes	Yes
40	Linda Fowler	17 Carnaveron Drive, Lincoln	Support	Yes	Yes
41	Wendy Graham	5 Goodwood Avenue	Support	Yes	Yes
42	Rhonda Tapp	72 Verdeco Boulevard	Support	Yes	Yes
43	Wayne Tapp	72 Verdeco Boulevard	Support	Yes	Yes
44	Sarah Kate Hartley	8 Caulfield Crescent, Lincoln	Oppose	Yes	Yes
45	Kathryn Claridge	550 Birchs Road, Lincoln	Oppose	No	Yes
46	Rose Abbott	10 Caulfield Crescent, Lincoln	Oppose	No	No
47	Tricia Warwick-Naziris	6 Pentire Parade, Lincoln 7608	Support	No	No
48	Ethan Gerken	2 Hurrah Way	Support	Yes	Yes
49	Stuart McKinlay	24 Carnavon Drive	Support	No	No
50	Josiane Archer	30 Pentire Parade	Support	Yes	Yes
51	David Broderick	8 Temple Avenue	Support	No	No
52	Phil and Brenda Short	29 Clydesdale Way, Lincoln 7608	Support	No	Yes

53	Kevin Delamore	130 Verdecos Boulevard, Lincoln	Support	Yes	Yes
54	Brent Mettrick	14 Craig Thompson Drive, Lincoln	Support	Yes	Yes
55	Natalie McLean	3 Merlewood Road, Prebbleton 7604	Support	Yes	Yes
56	Mary Edwards	81 Main South Road, Rolleston	Support	Yes	Yes
57	Carla Ashby	3 Woodlaw Crescent, Prebbleton	Support	Yes	Yes
58	Selena Gemmell	3a Birchs Road	Support	Yes	Yes
59	Janice Weatherall	8 Goodwood Ave, Lincoln	Support	Yes	Yes
60	Danielle and Daniel Corry	6 Caulfield Crescent, Lincoln	Conditional Support	Yes	Yes
61	Deborah O'Connor	20 Oaks Drive, Lincoln	Oppose	Yes	Yes
62	Don Babe	475 Robinsons Road	Oppose	Yes	Yes
63	Monica Harris	8 Bonecrusher Street, Lincoln	Support	No	No
64	Thea Hewitt	469 Tai Tapu Road, Lincoln	Oppose	No	Yes
65	Virginia Lang	30 Sunline Avenue, Lincoln	Support	No	No
66	Aaron and Kerry Winter	21 Doncaster Avenue, Lincoln	Support	Yes	Yes
67	Jeremy Greenwood	14 Coxley Place, Lincoln	Support	No	No
68	Rob Preston	9 Woodlaw Crescent, Prebbleton	Support	Yes	Yes
69	Brad Tucker	33 Zabeel Street, Lincoln	Support	Yes	Yes
70	Jeanette Tucker	92 Verdecos Boulevard	Support	Yes	Yes
71	Michelle Day	49 Caulfield Crescent, Lincoln	Oppose	Yes	Yes
72	Karen and Stephen Sullivan	16 Caulfield Crescent, Lincoln	Oppose	No	Yes
73	Environment Canterbury c/ Edward Wright		Neutral	No	No
74	George Lattimore				



## Appendix 9 Recommended Draft Conditions of Consent

1. Except as modified by the following conditions, the development shall proceed in accordance with the following documents, plans and further information responses
  - a. The Application and Assessment of Environmental Effects prepared by Zomac Planning Solutions, dated July 2019; which includes:
    - Appendix 1 – Plans and Elevation (superseded);
    - Appendix 2 – Transport Assessment, issued on 30 July 2019, prepared by Stantec;
    - Appendix 3 – Landscape Design Statement, issued June 2019, prepared by KamoMarsh;
    - Appendix 4 – Assessment of Noise Effects Report, issued 29 July 2019, prepared by Marshall Day Acoustics;
    - Appendix 5 – Economic Assessment, issued 20 February 2018 and an Addendum to the Economic Assessment, dated 8 April 2019, prepared by Urban Economics;
    - Appendix 6 – Lighting Compliance, issued 18 July 2019, prepared by Electrical Consulting Services Ltd; and
    - Appendix 7 – Record of Title.
  - b. The further information responses provided to the Council in full on 31 January 2020; and
  - c. The revised plans, elevations and landscape plans, and letter from the applicant received in full on 1 July 2020, which includes:
    - Site Plans and Elevations referenced Job no 205-244-03 sheet numbers RMA A101 revision 7, A300 revision 1, and A401 revision 1, issued on 29 June 2020, prepared by BSM Group Architects Ltd; and
    - Landscape Concept Package, issued on 29 June 2020, prepared by KamoMarsh.

### *Urban Design*

2. Prior to the issue of a building consent, a revised site plan shall be provided to Council for approval identifying a second east-west pedestrian route in the northern portion of the site;
3. Prior to the issue of a building consent, the proposed footpaths on the adjacent roads shall be formed and constructed with pedestrian priority

### *Landscaping*

4. Except as modified by Conditions 5 - 10, the proposed landscaping shall be established and maintained in accordance with the information and plans contained in the Landscape Concept Package, Sheets 1001 and 1004 and dated 29 June 2020.
5. The landscape plan shall be amended to provide the following along the Birchs Road road frontage:
  - a. One large tree (greater than 10 metres in height at maturity) every ten metres of road frontage;
  - b. Adjacent to the car park, a minimum of 3 metres of the landscape strip shall be planted with a mixture of trees and shrubs;
6. The landscape plan shall be amended to provide the following along the Makybe Terrace road frontage:

- a. One large tree (greater than 10 metres in height at maturity) every ten metres of road frontage;
  - b. Adjacent to the car park, a minimum of 3 metres of the landscape strip shall be planted with a mixture of trees and shrubs;
  - c. Adjacent to the supermarket, a minimum of 5 metres of the landscape strip shall be planted with a mixture of trees and shrubs
7. The landscape plan shall be amended to provide the following along the northern boundary of the site:
  - a. One medium sized tree (five to ten metres in height) for every five metres of boundary;
  - b. Provision of a five metre landscape strip planted in trees and taller shrubs.
8. The landscape plan shall be amended to provide the following along the eastern boundary of the site:
  - a. One small tree (up to five metres in height) every five metres;
  - b. Provision of a five metre landscape strip planted in trees and taller shrubs.
9. The landscape plan shall be amended to provide the following within the car park area:
  - a. One medium sized tree (five to ten metres in height) for every ten car parks (or 17 trees in total);
  - b. Provision of 1.8 x 10 metre intermediate landscape strips in each double row of car parks; and
  - c. Provision of 1.8 x 5.0 metre intermediate landscape strips in the single rows along the northern and western boundaries.
10. A landscaping strip with a minimum width of 5 metres shall be provided along the road frontages of Birchs Road and Makybe Terrace, plantings in the strip shall be as follows:
  - a. Adjacent to the car park, a minimum of 3 metres of the landscape strip shall be planted with a mixture of trees and shrubs;
  - b. Adjacent to the supermarket, a minimum of 5 metres of the landscape strip shall be planted with a mixture of trees and shrubs
11. All specimen trees identified on the plant schedule included within the Landscape Concept Package (Sheets 1001 and 1004 dated 29 June 2020) prepared by KamoMarsh shall be at least 2 metres in height at the time of planting, and once established must be allowed to grow to their full natural height.
12. All required landscaping shall be provided on site within the first planting season following the work being completed on site.
13. All landscaping required for this consent shall be maintained. Any dead, diseased or damaged landscaping is to be replaced immediately with plants of similar species. Where a tree is to be replaced, it shall be at least 2 metres in height at the time of planting.

### *Signage*

14. Revised plans of the proposed signage shall be provided to the Consent Manager for approval that;
  - a. Reduce the scale of the pylon sign by 33%; and
  - b. Reduce the extent of the signage on the southern elevation and relocate the signage to the western end of this elevation.

### *Lighting*

15. Revised lighting plans shall be provided to the Consent Manager identifying lighting required for security purposes.
16. Prior to the issue of a building consent, the applicant shall submit an electrical completion certificate demonstrating that the proposed outdoor lighting shall comply with the District Plan standards for lighting.
17. Illumination of all signs shall be restricted to between 0700 hours and 2200 hours.
18. All security lights shall be directed into the site and away from neighbouring properties.

#### *Noise*

19. Noise from the activity should meet the following noise levels when received at the boundary of the neighbouring sites, and the notional boundary of the dwelling at 555 Birchs Road (measures and assessed in accordance with NZS6801:2008 and NZS6802:2008):

Daytime (0700 to 2200 hours)      55 dB  $L_{Aeq}$

Night-time (2200 to 0700 hours)    45 dB  $L_{Aeq}$  / 75 dB  $L_{AFmax}$

20. That a 2.5 metre high acoustic fence is constructed around the supermarket loading bay.
21. That any forklifts on the site shall be fitted with broadband alarms.
22. Service vehicles and deliveries, and the use of forklift shall only occur between 0700 and 1900 hours.
23. Prior to the issue of a building consent, the applicant shall submit a report from a suitably qualified person demonstrating that the mechanical services for the facility shall comply with a noise level of 35 dB  $L_{Aeq}$  at all neighbouring site boundaries.
24. In the event that additional residential dwellings are constructed on the 555 Birchs Road site, 1.8m metre high acoustic fencing shall be installed, at the applicants cost, along the northern boundary of the car park, and the noise limits outlined in Condition 18 will apply at all site boundaries.
25. That outdoor seating at the café shall be limited to operating between 0730 hours and 2000 hours.

#### *Traffic*

26. Car parking and access shall be constructed as per shown on the approved Architectural Drawing labelled RMAA101 (Revision 7, dated 29.06.2020) prepared by BSM Group Architects Limited and contained in Appendix C of the Approved Consent Documents.
27. For avoidance of doubt the car park shall contain 165 car parks, including 5 accessible parks.
28. All accessible parks and staff parks shall be permanently marked and signed on site for people with disabilities and staff.
29. The consent holder shall at all times maintain and enforce a management plan for staff parking. The plan shall require that all staff of the supermarket, pharmacy and café shall not park on Caulfield Crescent or Makybe Terrace for the purposes of employment.
30. Delivery vehicles shall be restricted to daytime hours of between 0700 and 1900 hours.
31. A footpath shall be constructed on both sides of Makybe Terrace and on Birchs Road as per shown on the approved Architectural Drawing labelled RMAA101 (Revision 7, dated 29.06.2020) prepared by BSM Group Architects Limited and contained in Appendix C of the Approved Consent Documents.

32. Detailed drawings shall be provided by the consent-holder showing layouts for access to the consented activities, and any resultant changes on Birchs Road and Makybe Terrace, that comply with the Manual of Traffic Signs and Markings. These drawings shall be submitted to the Council for approval;
- a. The drawings shall be subject to a road safety audit by a suitably qualified traffic engineer independent of the Applicant's team, and the audit report provided to the Council at the same time as the detailed design drawings;
  - b. The consent-holder shall be responsible for all costs associated with the works identified on the detailed design drawings.
33. With regard to the large truck crossing the centreline of Makybe Terrace:
- a. Either: The Applicant shall widen the carriageway of Makybe Terrace and provide revised swept paths showing that this widening would result in trucks staying on their own side of the road;
  - b. Or: large vehicles shall only be permitted to exit the site at off-peak times, to minimise the potential for meeting oncoming traffic
34. The vehicle crossing at Birchs Road shall be constructed with a 50mm high over-run area to enable large trucks to enter while also providing a clearly delineated narrower route for drivers of smaller vehicles.
35. Space 1 within the supermarket car park shall be clearly marked as being for staff only.
36. Where landscaping is within a required sight triangle it shall either comprise of a species that is less than 1m in height at maturity, or shall be 'limbed up' such that all branches or leaves are more than 1.5m above the level of the surrounding ground.

#### *Waste Management*

37. Prior to the issue of a building consent, the applicant shall submit a waste management plan to the Council for approval.

#### *Construction*

38. All construction noise on the site shall be planned and undertaken to ensure that construction noise emitted from the site does not exceed the noise limits outlined in Table 2 of NZS6803:1999 Acoustics – Construction Noise. Sound levels associated with construction activities shall be measured and assessed in accordance with the provisions of NZS 6803:1999 Acoustics – Construction Noise.
39. The consent holder shall implement best practicable option measures to avoid or mitigate the dispersal and deposition of dust from construction and earthworks activities beyond the boundary of the property.
40. The consent holder shall implement best practicable option measures to avoid or mitigate the discharge of sediment laden runoff beyond the boundary of the property.

#### *Development Contributions*

41. Development contributions are not conditions of this resource consent and there is no right of objection or appeal under the Resource Management Act 1991. Objections and applications for reconsideration can be made under the Local Government Act 2002.

42. The consent holder is advised that pursuant to the Local Government Act 2002 and the Council's Development Contribution Policy the following contributions are to be paid in respect of this development before the issue of a code compliance certificate under section 95 of the Building Act 2004.

Note: The amounts set out in the attached table are applicable at the time of the granting of this consent. If the time between the date the resource consent is granted and the time which the Council would normally invoice for the development contributions (usually the time an application is made for the issue of a code compliance certificate under section 95 of the Building Act 2004) is more than 24 months, the development contributions will be reassessed in accordance with the development contributions policy in force at the time the consent was submitted. To avoid delays, the consent holder should seek the reassessed amounts prior to the application for the code compliance certificate. Please contact our Development Contributions Assessor on 03 347 2800 or at [development.contributions@selwyn.govt.nz](mailto:development.contributions@selwyn.govt.nz)

The following should be noted with regard to the calculations below:

- 1 All \$ totals are GST inclusive and are subject to annual PPI adjustments.
- 2 The Activity Based HUE Equivalent is as per the Development Contributions Policy included in the 2018-2028 Long Term Plan.
- 3 The total HUE is calculated as per the Development Contributions Policy and is applied based on actual land use.

Water Contributions - Supermarket								
Gross floor area (Square metres)	Litres per GFA	Total HUE (1HUE = 545L)	Development Contribution per HUE (GST excl)	Total for category	HUE Credit Available	Total credit available	Total (GST Excl)	Total (GST Incl)
3313	4	24.32	\$1,831.00	\$44,521.86	0	\$0.00	\$44,521.86	\$51,200.14

\*Based on water reading data from other supermarkets in Selwyn District

Wastewater Contributions - Supermarket								
Gross floor area (Square metres)	Litres per GFA	Total HUE (1HUE = 545L)	Development Contribution per HUE (GST excl)	Total for category	HUE Credit Available	Total credit available	Total (GST Excl)	Total (GST Incl)
3313	4	24.32	\$5,244.00	\$127,510.99	0	\$0.00	\$127,510.99	\$146,637.64

\*Based on water reading data from other supermarkets in Selwyn District

Transportation Contributions - Supermarket								
Gross floor area (Square metres)	HUE conversion factor	Total HUE	Development Contribution per HUE (GST excl)	Total for category	HUE Credits Available	Total Credit Available	Total (GST Excl)	Total (GST Incl)
3313	0.0184	60.96	\$1,769.00	\$107,836.82	0	\$0.00	\$107,836.82	\$124,012.35
							<b>Total including GST</b>	<b>\$321,850.13</b>