

Before the Independent Commissioner
Appointed by Central Otago District
Council

Under the Resource Management Act 1991

In the matter of Plan Change 19 to the Central Otago District Plan

**Foodstuffs South Island Limited and Foodstuffs (NW
Cromwell and NW Alexandra)**

Submitter ID: 61 and 62

Statement of evidence of Mark David Allan

16 May 2023

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Qualifications and experience

- 1 My full name is Mark David Allan.
- 2 I hold the qualification of Bachelor of Resource and Environmental Planning (Hons) from Massey University.
- 3 I have been employed by Aurecon since 2004 where I currently hold the position of Director – Environment and Planning.
- 4 My previous work experience includes more than 20 years in the field of resource management, both in the public and private sector. The majority of this has been in land development (residential, commercial and industrial), infrastructure and telecommunications, involving the preparation and oversight of resource management applications and plan change requests, and providing expert planning evidence in respect of the same. For the last 15 years I have been involved with district plan formulation processes, the rezoning of land and resource consenting for Foodstuffs (South Island) Properties Limited's (**Foodstuffs**) developments throughout the South Island, including all of Foodstuffs' existing operations within the Central Otago and Queenstown Lakes Districts.
- 5 This evidence is provided in support of Foodstuffs' submissions on Plan Change 19 (**PC19**) to the Central Otago District Plan (**CODP**), specifically the relief sought to rezone 32 and 34 Kenmare Street (New World Alexandra, #61) and a portion of 182 Waenga Drive (New World Cromwell, #62) from Residential Resource Area (**RRA**) to Business Resource Area (**BRA**). My role has been to provide planning advice on the appropriate zoning and rule framework considering the existing environment of the respective sites.
- 6 Relevant to these proceedings is that I provided advice on the planning and consenting aspects as well as overseeing the preparation of Foodstuffs' application to extend the existing New World Cromwell supermarket (**NW Cromwell**) and reconfigure the existing car parking, access and servicing (the **RC Application**). I have also been involved in several rezoning and resource consent applications relating to upgrades and expansions of the existing New World Alexandra supermarket (**NW Alexandra**) since 2010. I am familiar with the location and surrounding environment of NW Cromwell and NW Alexandra (**the Sites**), having visited on numerous occasions through my involvement in the above processes.
- 7 In preparing this statement of evidence I have considered the following documents:
 - (a) the statement of evidence prepared by Rebecca Parish for Foodstuffs (company evidence);
 - (b) CODC RMA decisions relevant to the Sites;

- (c) planning provisions relevant to my area of expertise; and
- (d) Section 42A Report – Report on Submissions and Further Submission PART 1 (Provisions) and PART 2 (Zoning Requests) prepared by Liz White (**s42A Report**).

Code of Conduct for Expert Witnesses

8 While this is not a hearing before the Environment Court, I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court of New Zealand Practice Note 2023 and that I have complied with it when preparing my evidence. Other than when I state I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

- 9 I have prepared evidence in relation to:
- (a) The relief sought by Foodstuffs in relation to the Sites;
 - (b) The existing environments of the Sites as lawfully established and/or authorised by CODC RMA decisions; and
 - (c) The appropriateness of BRA for the Sites compared to Low Density Residential Zone (**LDRZ**) or Medium Density Residential Zone (**MDRZ**) in the case of NW Alexandra, and MDRZ in the case of NW Cromwell.

Executive Summary

- 10 Residential activity is not anticipated on the NW Cromwell site. The revoked Reserve land is fundamental to the consented expansion of NW Cromwell. BRA is a more appropriate zone for the entire NW Cromwell landholding and operations than MDRZ. I agree with Ms White's recommendation that the subject land should be rezoned BRA to better reflect the existing and consented reality of NW Cromwell operations.
- 11 Residential activity is not anticipated on the NW Alexandra site. NW Alexandra is illustrative of the manner in which commercial development can be appropriately accommodated at the interface of BRA and the residential environment. NW Alexandra is a substantial supermarket development integrated with its setting. I consider BRA for the entire Site more appropriately reflects the existing environment. Amendments are not required to the policy and rule frameworks relevant to BRA.

- 12 The nature and extent of the existing supermarket operations is relevant to the PC19 process. BRA provides the appropriate framework for proper recognition of existing and ongoing supermarket operations. The PC19 process provides a pathway to align the underlying zone of NW Alexandra and NW Cromwell with the lawfully established and consented commercial activities that occur within the Sites.
- 13 Overall, in my assessment the entire NW Alexandra landholding and operations are suitable for BRA in light of the existing environment. Extending the BRA boundary to capture all established supermarket operations in the manner requested will ensure the most efficient, effective and appropriate provisions are in place to achieve the objectives of the CODP, PC19 and the purpose of the Act.

Relief Sought

- 14 The relief sought by Foodstuffs is most easily illustrated by the following series of images, where the Sites are demarcated by the red line and the land sought to be rezoned BRA is highlighted yellow.

NW Cromwell (#62) – rezone from MDRZ to BRA



Figure 1: PC19 Planning Map, NW Cromwell

- 15 First established in 1996, NW Cromwell has undergone several substantial extensions and building upgrades in response to population growth, advancements

in the supermarket industry and changing customer expectations. The most recent and relevant example of this commercial evolution includes:

- (a) 3 November 2021 – CODC resolution passed to revoke the reserve classification from 619m² of the Waenga Drive Greenway Reserve at 182 Waenga Drive (**the Reserve**) to facilitate expansion of the supermarket
 - (b) 1 August 2022 – RC210493 (**the Consent**) granted for the expansion of supermarket operations (building and vehicle access) into the Reserve land to be revoked (refer Figure 3)
 - (c) 4 May 2023 – Minister of Conservation approval to revoke the Reserve land
- 16 NW Cromwell is lawfully established and the Consent authorises the expansion of supermarket operations over the revoked Reserve land. NW Cromwell as authorised by the Consent is to be considered a part of the existing environment.
- 17 For the above reasons, I agree with Ms White's assessment that BRA is a more appropriate zone for the revoked Reserve land than MDRZ, and that the entire NW Cromwell landholding and operations should be reflected by BRA¹.
- 18 The remainder of this statement focuses on the rezoning sought for NW Alexandra, where Ms White and I disagree as to the appropriateness of BRA for the properties at 32 and 34 Kenmare Street (highlighted in Figures 2A, 2B and 2C).

NW Alexandra (#61) – rezone from LDRZ to BRA



Figure 2A: Existing Environment, NW Alexandra

¹ paras 175-178, pp. 57-58, s42A Report

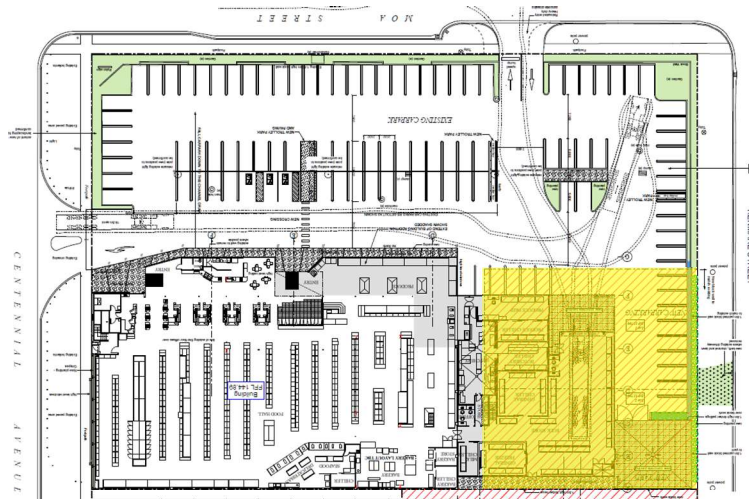


Figure 2B: Existing Environment, NW Alexandra



Figure 3: PC19 Planning Map, NW Alexandra

Existing Environment – NW Alexandra

19 NW Alexandra is located at 89, 93 & 95 Centennial Avenue, 1 & 3 Moa Street and 32, 34, 36 & 36A Kenmare Street, comprising 7,284m² held in nine records of title in Foodstuffs' ownership. First established in 1983, NW Alexandra has undergone several substantial extensions and building upgrades in response to population growth, advancements in the supermarket industry and changing customer expectations. The most recent and relevant examples of this commercial evolution include:

- (a) October 2012 – RC120061 granted for the expansion of supermarket operations (car parking) across 36 and 36A Kenmare Street (RRA);
 - (b) November 2012 – Private Plan Change 9 approved for the rezoning of 36 and 36A Kenmare Street from RRA to BRA to reflect the consented commercial activity (RC120061);
 - (c) May 2015 – RC150015 granted for the expansion of supermarket operations (building extension, service/loading area) across 32 and 34 Kenmare Street (RRA).
- 20 RC150015 authorised a 975m² building extension comprising internal loading bay, bulk storage, freezer/chiller units and plant room. The extension occupies approximately two-thirds of the total 1,294m² area of 32 and 34 Kenmare Street, with the balance area designated for outdoor service yard and carparking (refer Figures 2A and 2B).
- 21 RC150015 is subject to conditions of consent relating to adherence to approved plans, screening and landscaping, truck delivery times, noise limits and lightspill. Many of the conditions deal specifically with residential interface issues along the internal boundary with the adjoining residential property at 30 Kenmare Street (RRA), and replicate existing BRA rules, including:
- (a) establishment of a 1.8m-high concrete block wall along the boundary with 30 Kenmare Street², with landscape strip and plantings behind³;
 - (b) limiting the height of goods and palette storage to 1.8m in the adjacent service yard⁴;
 - (c) maximum noise limits measured at the boundary with 30 Kenmare Street⁵, and limiting forklift use to 7AM to 8PM; and
 - (d) directing security lighting away from neighbouring sites in the RRA.⁶
- 22 RC150015 has been implemented and NW Alexandra is operating in accordance with the same. This represents the existing environment.

² Rule 8.3.6(ix) Fencing, BRA, CODP

³ Rule 8.3.6(viii) Landscaping, BRA, CODP

⁴ Rule 8.3.6(vii) Outdoor Storage Areas, BRA, CODP

⁵ Rule 8.3.6(vi) Noise, BRA, CODP

⁶ Rule 8.3.6(xi) Lightspill, BRA, CODP

- 23 It is relevant to note that the records of title for 32 Kenmare Street (OT3C/827) and 34 Kenmare Street (OT15B/1184) are both subject to section 77 certificates pursuant to the Building Act 2004. These certificates were registered as a condition of the grant of building consent for the works authorised by RC150015, which state that the allotments must not be transferred or leased except in conjunction with each other. On this basis, the titles (along with those for 89, 93 & 95 Centennial Avenue and 1 & 3 Moa Street) can only be dealt with together.
- 24 NW Alexandra is located at the northern extent of the BRA and represents a long-established commercial activity at the interface with the residential area. Established residential properties are located to the north, east and west of the site, commensurate with their RRA zoning. Centennial Avenue is flanked by commercial properties consistent with their BRA zoning, and establishing a visibly legible interface between BRA and RRA that effectively mirrors the zoning maps. In the block bound by Centennial Avenue, Moa Street, Kenmare Street and Brandon Street, 32 and 34 Kenmare Street are the only 'outliers' where the established activity does not align with the underlying zoning. Foodstuffs' submission seeks to rectify this.

BRA provisions and expansion of activities

- 25 The current BRA policy and rule frameworks broadly seek to maintain the District's business areas as focal points for the community that are safe, convenient and pleasant places to visit and work.⁷ Adverse effects of activities in the BRA on the residential character and amenity values of neighbouring RRA are avoided, remedied or mitigated by performance standards relating to such matters as building bulk and location; parking and access; landscaping, fencing and visual screening; signage; noise limits and lightspill.⁸ Under BRA, any expansion of NW Alexandra operations would require resource consent where:
- (a) it has the effect of providing 10 or more parking spaces
 - (b) building within 5m of the boundary with 30 Kenmare Street (MDRZ under PC19)
 - (c) exceeding 10m building height
 - (d) no 1.8m-high wall is provided along the boundary with 30 Kenmare Street (MDRZ under PC19)

⁷ Objectives 8.1.1, 8.1.2 & 8.1.3, CODP

⁸ Policies 8.2.2, 8.2.3 & 8.2.4 and Rule 8.3.6, CODP

- (e) noise limits and lightspill standards are breached
- 26 The restricted discretionary activity status triggered by such matters allows for appropriate assessment and consideration of the effects a proposal may have in the context of the receiving environment, being the interface of established commercial and residential properties.
- 27 In addition to any resource consent requirement triggered by a future change or expansion of the NW Alexandra operations under BRA, in my experience it is also good planning practice to review and seek consequential variations to any existing resource consent affected by the change or expansion – effectively ‘keeping the books in order’. This provides a further mechanism for Council to assess the effects of the change or expansion in terms of the circumstances in which the consent was originally granted.

Appropriateness of BRA

- 28 The statutory framework for an assessment of the rezoning relief sought is set out within Sections 31 and 32 and 72 to 76 of the Act. Within the relevant sections of the Act are a number of requirements which I consider to be of specific relevance to the rezoning. These are outlined below:

The Proposal must accord with and assist the Central Otago District Council in carrying out its functions so as to meet the requirements of Part 2 of the Act

- 29 The purpose of the Act is to promote the sustainable management of natural and physical resources, as outlined in Section 5(2) of the Act.
- 30 The CODP and PC19 application of zones and associated policy and rule frameworks sets out the Central Otago District Council's (**the Council**) direction with respect to appropriate land use and activities within identified areas which are expected to achieve ‘sustainable management’.
- 31 There are no Section 6 (Matters of National Importance) or Section 8 (Principles of the Treaty of Waitangi) relevant to NW Alexandra that must be provided for or taken into account when exercising the functions and powers of the Act and particularly when considering the appropriate zoning framework.
- 32 Section 7 (Other Matters) matters that I consider most relevant when considering the Proposal 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:*

33 I consider these matters to be relevant due to the nature and extent of development associated with the NW Alexandra operations, the business / residential interface that has established at the common boundary with 30 Kenmare Street in accordance with RC151005, and the consistency of the conditions of RC151005 with the corresponding BRA rules.

The rezoning must have regard to the actual and potential effects of activities on the environment

34 All effects associated with the establishment and operation of NW Alexandra were comprehensively assessed by subject matter experts and experienced decision-makers through the various resource consent and rezoning processes that have contributed to the existing environment, including architecture / urban design, landscape / visual amenity, acoustics and transport. Conditions were imposed on RC151005 for the express purpose of managing or mitigating effects of activities on 30 Kenmare Street. As I have noted, these conditions effectively replicate current BRA performance standards that have already been deemed appropriate for avoiding, remedying or mitigating adverse effects at the BRA / RRA interface.

35 I consider that the actual or potential environmental effects of recognising the entire NW Alexandra operations through the BRA zone and rule framework will be no more than minor, and akin to those already deemed acceptable through the issuance of RC151005 (and preceding consents). Extending BRA across 32 and 34 Kenmare Street will serve to recognise NW Alexandra's integrated activities and manage the nature, scale and intensity of activities in the future. It complements the existing NW Alexandra operations in the most pragmatic of ways.

36 I am satisfied that the effects of the Proposal will be appropriate and acceptable, taking comfort from the existing environment established by RC151005, and the efficacy of the operative BRA provisions to guide future development that is considerate of the receiving environment. While I accept the relief sought signifies, in a theoretical zone sense, a fundamental 'shift' from residential to commercial, it more accurately represents the 'on-the-ground' reality of commercial development and activity established and occurring on 32 and 34 Kenmare Street, and is therefore more appropriate than LDRZ or MDRZ, as Ms White has recommended as an alternative.

37 Influential to my finding the effects of the relief sought to be acceptable are the contextual and locational factors of NW Alexandra, including:

- (a) the significant investment and fundamental supermarket operations occurring on 32 and 34 Kenmare Street⁹;
 - (b) the 1.8m-high walls established along the Kenmare Street frontage and the internal boundary with 30 Kenmare Street, consistent with that required by BRA;
 - (c) the size (994m²) and use of the land area in question – two-thirds is occupied by a supermarket building with a 30-year life¹⁰ and the balance is committed to essential servicing, parking and maneuvering space associated with supermarket operations. This is unlikely to change in the foreseeable future and leaves no room for new or different commercial activity that would otherwise be enabled by BRA.
- 38 That 32 and 34 Kenmare Street have been occupied by substantial built form and fundamental operational activities (chillers, bulk store, loading and servicing areas) since 2016 only reinforces my opinion that BRA for this land is the most efficient, effective and appropriate way to achieve the objectives of PC19.

The rezoning must have regard to any evaluation report prepared in accordance with Section 32

- 39 Section 32AA of the Resource Management Act requires that a further evaluation is required for any changes made to or proposed since a Section 32 evaluation report for a proposed plan was completed. Essentially assessment under Section 32AA of the Act is a comprehensive evaluation of the proposed changes.
- 40 I have not prepared a standalone Section 32AA evaluation report in respect of the rezoning of 32 and 34 Kenmare Street. However, I consider I have demonstrated within the body of my evidence that adopting the operative BRA provisions unchanged is the most appropriate way to achieve the purpose of the Act. BRA will contribute to and maintain the clear delineation of business and residential land in the District while appropriately maintaining the amenity of neighbouring RRA properties and contributing to a well-functioning urban environment.
- 41 BRA ensures the Council will retain appropriate discretion / control over future development through the resource consent process, as has been evident through previous resource consent applications processed under the BRA provisions. The benefit for Foodstuffs is that there is a reasonable level of certainty that

⁹ Paras 9-12, Statement of Evidence of Rebecca Parish, 16 May 2023

¹⁰ Para 13, Statement of Evidence of Rebecca Parish, 16 May 2023

appropriately sited and designed building improvements and/or expansion would be approved on the Site on a non-notified basis.

42 I note Ms White has recommended changes to the non-residential activities policy¹¹ to provide specific direction in relation to the expansion of any existing non-residential activity, which she considers would provide direction for any changes that may be proposed to the activity in the future. This does not overcome the fact that a non-complying activity consent would be required for any change or expansion of NW Alexandra operations on 32 and 34 Kenmare Street. In the context of the extensive and interdependent commercial activities on the site, I do not see how this presents a more pragmatic and rational alternative to rezoning this discrete area of commercially functioning land to BRA.

43 In my opinion, pursuing resource consent applications for non-residential activity would not be a viable alternative to the rezoning. Seeking and obtaining resource consents for typical maintenance, upgrade and expansion works associated with established supermarket operations on residential land would come at a significant cost and no guarantee of a successful outcome. These costs are unwarranted when the potential adverse effects of the proposed rezoning can be appropriately remedied and mitigated, as demonstrated by the grant of RC150015 subject to conditions of consent that mirrored BRA performance standards. The cost benefit of the rezoning outcome versus a prolonged (and uncertain) resource consent process will be substantial.

The rezoning must give effect to the Otago Regional Policy Statement (RPS) and the National Policy Statement on Urban Development (NPS-UD)

44 Section 75(3) of the Act requires that the CODP must give effect to the RPS and the NPS-UD.

45 The expansion of NW Alexandra operations onto 32 and 34 Kenmare Street underwent extensive scrutiny against the relevant objectives and policies of the RPS through the processing of RC150015. At that time, my conclusions as to consistency with the RPS were effectively endorsed by the Commissioners, who in granting RC150015 found the application did not conflict with any national or regional planning document.¹² I consider the conclusions reached in respect of RC150015's consistency with the policy framework of the RPS are equally applicable to the proposed rezoning of the corresponding Site.

¹¹ Para 50, s42A Report (Part 2); paras 80 & 81, s42A Report (Part 1)

¹² Page 10, RC150015 Decision of Hearing Commissioners, 5 May 2015

- 46 The NPS-UD represents the Government's latest thinking on how to encourage well-functioning and liveable urban environments. It aims to remove barriers to the supply of land and infrastructure and make room for growth. It applies to all planning decisions that affect an 'urban environment'. Giving effect to the NPS-UD involves:
- (a) having well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future (Objective 1);
 - (b) enabling more businesses to be located in areas of an urban environment in or near a centre zone or other area with many employment opportunities and where there is high demand for housing (Objective 3);
 - (c) requiring decisions on urban development that affect urban environments to be integrated with infrastructure planning and funding decisions; strategic over the medium and long term; and responsive, particularly in relation to proposals that would supply significant development capacity (Objective 6);
 - (d) Council making planning decisions that contribute to well-functioning urban environments that have or enable a variety of sites for different business sectors in terms of location and site size; have good accessibility between housing, jobs, community services, natural spaces, and open spaces; and support the competitive operation of land and development markets (Policy 1(b), (c) and (d)); and
 - (e) Council providing at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term (Policy 2).
- 47 The NPS-UD direct the Council to provide for more housing and businesses to be built in places close to jobs, community services and public transport; and to respond to market demand. Assessing the rezoning request in isolation of this higher order document would not present an appropriately balanced or considered view of the environment in which NW Alexandra is situated.
- 48 Based on the nature and level of commercial development and activity that has been established on 32 and 34 Kenmare Street, I consider BRA would contribute to a well-functioning urban environment, i.e., being located immediately adjacent a Centre Zone, well serviced by existing public transport, and within comfortable walking and cycling distance of existing and growing residential areas. NW Alexandra has taken advantage of the site's regular shape and location to contribute to a compact, consolidated urban form in a location that is accessible for all modes of transport. It makes sense, both practically and administratively, that this be recognised through BRA zoning of the underlying residential land.

49 For these reasons it is my view that the environmental outcomes anticipated by BRA will, like RC150015, be consistent with a well-functioning urban environment and will meet the general directive of the NPS-UD. In short, I consider BRA will give effect to the NPS-UD more than would LDRZ or MDRZ.

Summary

50 LDRZ or MDRZ (as recommended by Ms White) does not reflect the existing environment associated with the NW Alexandra operations, specifically:

- (a) RC150015 has been given effect to continuously since 2016 and Foodstuffs' landholding will not be used for residential activity¹³;
- (b) retail activity or other non-residential activity of the nature and scale that already exists (including the expansion of the same) is a non-complying activity in LDRZ or MDRZ and discouraged through avoidance policies¹⁴ that are unjustifiably obstructive in the context of the Site; and
- (c) no residential activities can occur on 32 and 34 Kenmare Street based on established fundamental supermarket operations and Foodstuffs' ownership and land use intentions.

51 In summary, what is sought is a consistent zoning regime across the entire NW Alexandra operations. BRA acknowledges the lawfully established activity on site and will ensure future development outcomes continue to respect the residential interface. Put simply, BRA will better reflect the existing environment of the Site than the notified LDRZ (or MDRZ) and is considered the most appropriate zone.

52 The statutory assessment required under BRA for any future expansion on the Site is robust and adequate to ensure the receiving environment is afforded appropriate protection whilst providing for the continued provision of essential goods and services to the community. It also provides Foodstuffs certainty that all supermarket-related activities, including any building maintenance, upgrade or expansion works, will continue to be provided for into the future without being unduly compromised by a disparate zoning and rule framework.

Conclusion

53 Overall, I consider BRA is a more efficient and effective representation of the existing environments of NW Cromwell and NW Alexandra than the notified MDRZ or LRZ. BRA reflects the established reality and provides certainty for Foodstuffs

¹³ Para 15, Statement of Evidence of Rebecca Parish, 16 May 2023

¹⁴ LRZ-P5 / MRZ-P6 Other non-residential activities; LRZ-R16 / MRZ-R17 Large format retailing, PC19

and the community that supermarket activity is appropriate and anticipated on the Sites.

- 54 BRA recognises the lawfully established environment and will not fragment the key business or residential areas in Alexandra and Cromwell because the extension of BRA is limited to discrete areas that better reflect, recognise and respond to the existing, consented and future use of the Sites.
- 55 The PC19 process presents the appropriate opportunity and timing to implement this change.

Mark David Allan

Dated this 16th day of May 2023