

Before the Hearings Panel
appointed by Selwyn District Council

Under the Resource Management Act 1991

In the matter of a hearing on submissions to the Plan Change 19 to the Central
Otago District Plan

Hearing Stage 2: Rezoning

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

Submitter ID: 61 and 62

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

16 May 2023

Submitter's solicitors:

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May it please the Commissioners

- 1 These submissions are provided on behalf of Foodstuffs (South Island) Properties Limited (Submitter ID: 61 and 62, referred to collectively as **Foodstuffs**), on Plan Change 19 (**PC19**) to the Central Otago District Plan (**CODP**). Foodstuffs has made two submissions on PC19, one relating to New World Cromwell (**NW Cromwell**)¹ and one relating to New World Alexandra (**NW Alexandra**).² Foodstuffs' submissions sought re-zonings to reflect the current use of these sites and to include policy recognition of the nature of the existing commercial uses. The policy recognition aspect of Foodstuffs' submissions has been heard as part of the Stage 1 hearings, so these legal submissions only address the rezoning requests.
- 2 Foodstuffs opposed the notified zonings at two areas and requested the following rezonings in their submissions:
 - (a) To extend the Business Resource Area (**BRA**) applying to the NW Cromwell site to a small area of Waenga Reserve where an extension of the supermarket will be built in accordance with resource consent RC210493; and
 - (b) To rezone 32 and 34 Kenmare Street (the **Kenmare Site**) to BRA in line with the remainder of NW Alexandra.
- 3 The s42A Officer's Report recommends the NW Cromwell BRA zoning extension be approved because it is a discrete area and the change has effectively been considered through the resource consent process. Foodstuffs supports this recommendation, and does not address this further in these submissions.
- 4 The Officer's Report recommends Foodstuffs' rezoning request for the Kenmare Site be declined, but that it should be zoned Medium Density Residential (**MRZ**) instead of Low Density Residential as notified. It is my submission that BRA is the appropriate zoning for the Kenmare Site as it reflects the current and long-term use of the NW Alexandra site and will contribute to the effective and efficient management of the environment.
- 5 Company evidence has been provided by Ms Rebecca Parish to illustrate the importance of the Kenmare Site to NW Alexandra and Foodstuffs' use of the wider site.³ Planning evidence has been provided by Mr Mark Allan which demonstrates

¹ Legally described as Lots 1 and 2 DP 25860, Lot 23 DP 359519 and part of Lot 201 DP 359519.

² Legally described as Part Lot 3 DP 5440, Lots 1, 2, 9 and 10 DP 5158, Lots 1 and 2 DP 23152 and Lots 1 and 2 DP 11799.

³ Statement of Evidence of Rebecca Parish – dated 16 May 2023.

the BRA provisions are the more appropriate provisions and will not enable wholesale changes to the supermarket activity without a consenting process.

- 6 For completeness the statutory tests for changing a district plan, which will be well known by the Hearings Panel, are summarised in **Appendix 1**.

Structure of submissions

- 7 These submissions will:

- (a) provide a response to the section 42A report;
- (b) confirm the integrated nature of the Kenmare Site with the NW Alexandra operations;
- (c) discuss how the rezoning implements PC19; and
- (d) conclude why the Panel can and should grant the relief sought.

Section 42A Officer Report

- 8 The section 42A report recommends rejecting Foodstuffs' relief sought of a BRA zoning for the following reasons:⁴

- (a) Rezoning to BRA would enable changes to activities beyond those assessed through the resource consent process;
- (b) Safeguards established through the resource consent process for the Kenmare Site could be circumvented by the BRA provisions; and
- (c) A non-residential activities policy in the MRZ chapter would provide direction for changes to the current supermarket activity.

- 9 The first two of these reasons are addressed in the planning evidence of Mr Allan. Mr Allan also notes that an extension to NW Alexandra would require resource consent under the BRA provisions. Mr Allan also notes that a consequential variation to the existing consent would also be followed pursuant to s127 of the Resource Management Act 1991 (**RMA**). This means that there will be the appropriate scrutiny of effects of a change in activity by the Council and any affected parties.

- 10 On the third reason, it is submitted that one clause in one policy is an inefficient method of managing the effects of a supermarket activity, particularly in the context

⁴ Section 42A report of Liz White for Plan Change 19 – Residential Chapter Provisions dated 24 March 2023 at [40]-[41].

of the nature and extent of established commercial activity on the Kenmare Site. This has also been addressed in the evidence of Mr Allan.⁵

NW Alexandra – an integrated activity across multiple sites

- 11 A BRA zoning will more appropriately reflect the existing environment. Foodstuffs has operated NW Alexandra at this location since 1983 and has operated a supermarket across the Kenmare Site since 2016.⁶ Foodstuffs have also recently invested in significant renovations of NW Alexandra which has extended its life by 30 years.⁷
- 12 NW Alexandra is a lawfully established activity, with effects considered as part of the resource consent process to establish the activity. There will be no impact on MRZ availability as the Kenmare Site is already developed and used for commercial purposes. Ms Parish has confirmed the Kenmare Site will not be used for residential activity as it is essential to the NW Alexandra supermarket operations.
- 13 Further, use of the Kenmare Site is also limited by a s75(2) notice under the Building Act 2004 and Foodstuffs' investment and intended use of the NW Alexandra site:
 - (a) A certificate imposed under ss75(2) and 77 of the Building Act exists across the Kenmare Site and four lots of the NW Alexandra site outside of the Kenmare Site (see mapping in **Appendix 2**). The effect of this notice is that the allotments contained in the certificate must not be transferred or leased except in conjunction with each other.
 - (b) The NW Alexandra building and associated facilities cross the lot boundaries of the nine lots that make up NW Alexandra. In particular, the bulk storage warehouse and loading facility crosses the boundary between the Kenmare Site and the balance of NW Alexandra. This includes structural elements of the NW Alexandra building as well as the ventilation system.
- 14 A BRA zoning will provide the most efficient, effective and appropriate provisions to achieve the objectives of the District Plan, and the purpose of the RMA.

⁵ Statement of Evidence of Mark Allan, at [42].

⁶ Statement of Evidence of Rebecca Parish at [8].

⁷ Statement of Evidence of Rebecca Parish at [13].

PC19

- 15 According to the s32 evaluation report for PC19, the plan change has been driven by and is intended to implement the direction set out in the Vincent and Cromwell Spatial Plans.⁸ This purpose includes amending the planning maps in general accordance with what has been identified in the Spatial Plans.⁹
- 16 The full NW Alexandra site, including the Kenmare Site, is identified for retail activity in the Vincent Spatial Plan.¹⁰ It would be unusual to continue to retain a residential zoning across part of a retail activity site, in the context of this spatial plan which enables a clear delineation between the residential and non-residential urban zones so that the appropriate activities are enabled in each.

Conclusion

- 17 The proposed rezoning of 32 and 34 Kenmare Street (the **Kenmare Site**) to BRA in line with the remainder of NW Alexandra is more appropriate than the existing zone. It will be a beneficial amendment to the CODP and will promote the purpose of the Act.
- 18 The rezoning will assist CODC in carrying out its functions by:
- (a) Integrating the management of the commercial activity being the NW Alexandra operation. A single sub-policy in the MRZ provisions is insufficient to manage the commercial activity; and
 - (b) Controlling the actual and potential effects of NW Alexandra through a suite of provisions which will still generally require a resource consent process to assess any changes to NW Alexandra.

Dated this 19th May 2023



Alex Booker
Counsel for Foodstuffs (South Island) Properties Limited

⁸ Section 32 Report, at [4].

⁹ Section 32 Report, at [3].

¹⁰ Figure 4 – Alexandra Spatial Plan.

Appendix 1 - statutory tests

The statutory tests when preparing and changing a district plan are as set out in *Colonial Vineyard Ltd v Marlborough District Council*,¹¹ applied and summarised in subsequent decisions.¹² In summary, these require that the rezoning of the Kenmare Site through PC19:

- (c) Accord with and assist Council in carrying out its functions, including:
 - (i) Achieving integrated management of effects of the use, development and protection of land and associated natural and physical resources;
 - (ii) Ensuring that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district; and
 - (iii) Controlling any actual or potential effects of the use, development, or protection of land, including for the purposes of the avoidance of natural hazards;
- (d) Have regard to the actual and potential effects on the environment, including in particular any adverse effect;
- (e) Accord with Part 2 of the Act;
- (f) In respect of the existing statutory documents:
 - (i) Give effect to any national policy statement or operative regional policy statement;
 - (ii) Have regard to any proposed regional policy statement, and management plans and strategies prepared under any other Acts;
 - (iii) Have regard to the extent to which the plan is consistent with the plans of adjacent territorial authorities; and
 - (iv) Establish the most appropriate method for achieving the objectives and policies of the District Plan, undertaking the assessment detailed in section 32.

¹¹ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] onwards.

¹² See also *Adams and Others v Auckland Council* [2018] NZEnvC8 at [53]; and more recently in *Trojan Holdings Limited and Skyline Enterprises Limited v Queenstown Lakes District Council* [2020] NZEnvC 79 at [23]; *Edens v Thames-Coromandel District Council* [2020] NZEnvC 13 at [10].

Appendix 2 – location of s75(2) notice

Note – Kenmare Site outlined in red.

