

**SUBMISSION**

**Proposed Plan Change 19 to the Central Otago District Plan**

*Form 5, Clause 6 of the First Schedule, Resource Management Act 1991*

To: The Chief Executive  
Central Otago District Council  
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**By Email: [districtplan@codc.govt.nz](mailto:districtplan@codc.govt.nz)**

Submission by: Foodstuffs South Island Limited and Foodstuffs (South Island) Properties Limited

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**Submission 1: New World Cromwell**

- 1 This is a submission by Foodstuffs South Island Limited and Foodstuffs (South Island) Properties Limited (**Foodstuffs**) on Plan Change 19 (**PC19**) to the Central Otago District Plan (**CODP**) which the Central Otago District Council (**CODC**) notified for public consultation 9 July 2022.
- 2 Foodstuffs could not gain a trade competition advantage through this submission.
- 3 Foodstuffs' submission relates to PC19 in its entirety and in particular those provisions which directly apply and/or affect the following New World supermarket and associated activities owned or operated by Foodstuffs. This property consists of 2 Murray Terrace, 184 Waenga Drive<sup>1</sup> and Lot 1 DP 25860 as well as the portion of 182 Waenga Drive<sup>2</sup> which Foodstuffs holds consent RC2104193 over (**Foodstuffs Extension Area**, as shown in

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<sup>1</sup> Legally described as Lot 2 DP 25860 and Lot 23 DP 359519 respectively.

<sup>2</sup> Legally described as Lot 201 359519.

Image 1 below). These properties are collectively referred to as New World Cromwell (**NW Cromwell**).



- 6 NW Cromwell currently operates under resource consents RC040204 (as varied by RC040331 and RC050262) and RC210493.<sup>3</sup>
- 7 Foodstuffs has recently undergone an expansion into approximately 619m<sup>2</sup> of 182 Waenga Drive. RC210493 to enable the extension was granted on 1 August 2022 and the appeals period has passed with no appeals filed. RC210493 includes consent to extend the car parking and access area to the supermarket into the reserve area at 182 Waenga Drive. This was associated with a reserve revocation process undertaken in 2019-2021. The reserve revocation was recommended by CODC and is awaiting formal sign-off. Progress is also being made on the subdivision. That process is expected to be completed by the end of 2023.

### **Re-zoning a portion of 182 Waenga Drive**

- 8 182 Waenga Drive (Lot 201 DP 359519), also known as Waenga Reserve, is currently zoned Residential Resource Area (**RRA**) under the CODP. A portion of the Waenga Reserve (as shown on Image 1 above) is intended to be utilised as part of NW Cromwell in accordance with its authorisation once the reserve revocation process has been completed (**Foodstuffs Extension Area**). PC19 proposes to re-zone this property to the Medium Density Residential Zone (**MDRZ**).
- 9 NW Cromwell is surrounded to the north and the east by a mixture of industrial and commercial activities under the current Business Resource Area (**BRA**) zoning, and to the south and west as proposed MDRZ. Waenga Drive acts as a route between the Cromwell town centre to the east and a large portion of the Cromwell township.
- 10 This is demonstrated on the map below:

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<sup>3</sup> Granted 25 June 2004, 1 October 2004, 29 August 2005 and 1 August 2022 respectively.



Image 2: PC19 map NW Cromwell

- 11 Foodstuffs seeks to **amend** the proposed zoning of the Foodstuffs Extension Area, being approximately 619m<sup>2</sup> of land at 182 Waenga Drive subject to the reserve revocation and consenting process to be re-zoned to Business Resource Area in accordance with the rest of the NW Cromwell shown with the blue hatching above.

### Scope

- 12 Foodstuffs's submission is within scope as it meets the criteria applied in *Palmerston North City Council v Motor Machinists Limited*.<sup>4</sup> There, the High Court held:<sup>5</sup>

Incidental or consequent extensions of zoning changes proposed in a plan change are permissible, provided that no substantial further section 32 analysis is required to inform affected person of the comparative merits of that change.

- 13 The Foodstuffs Extension Area is already proposed to be re-zoned under PC19. This means any affected persons, such as neighbours, have been given notice that the site is subject to PC19 and that a re-zoning may occur.
- 14 Further, the Foodstuffs Extension Area has been subject to a public Reserve revocation process and a limited notified resource consent process. This means the Foodstuffs's submission to re-zone the Foodstuffs Residential Lots is far from coming out of "left field"<sup>6</sup>. Any potentially affected persons would have reasonably expected the Foodstuffs

<sup>4</sup> *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, [2014] NZRMA 519.

<sup>5</sup> At [81].

<sup>6</sup> *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187, at [58].

Residential Lots to have a commercial zoning to reflect the commercial character now lawfully established. It is clear the Foodstuffs Extension Area will not be used for MDRZ as it is now proposed to be rezoned.

15 Finally, Foodstuff's submission does not seek change of the objectives or policies of the BRA Zoning in the CODP<sup>7</sup> or the broader planning management regime.<sup>8</sup>

#### *Reasons for submission*

16 The reason for this submission is

- (a) the zoning of the Foodstuffs Extension Area should reflect the intended and consented commercial use;
- (b) a commercial supermarket activity has operated on the Site for many years;
- (c) It is highly unlikely the proposed MDRZ for 182 Waenga Road will be implemented within the Foodstuffs Extension Area; and
- (d) The Foodstuffs Expansion Area sit within a larger commercial area, all of which has a BRA zoning.

#### **Residential Intensification**

17 Foodstuffs **supports** the intensification provisions, and recognises the need for intensification to be located around commercial centres. To ensure future compatibility between activities, Foodstuffs seeks appropriate recognition for existing commercial activities (such as supermarkets) and associated effects through the objectives and policies framework.

18 There is a large commercial-residential interface within the Cromwell township, concentrated around the northern and southern BRAs. The BRA in these areas include retailers, public facilities, sports facilities, service stations, 24/7 services, cafes and restaurants, short-term accommodation and vehicle services. Within this wide variety of activities, there are a range of operating requirements. Some will operate 24 hours a day and others will have particularly busy peak periods. The effects from such activities are

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<sup>7</sup> *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [37].

<sup>8</sup> *Mackenzie v Tasman District Council* [2018] NZHC 2304 at [103].

likely to include noise, light, traffic and other amenity effects. Appropriately, these activities occur within the BRA.

19 PC19 as notified, will enable residential activities to move even closer to the commercial-residential interface. The table below shows how significantly the MDRS will impact this interface.

Permitted standard	Operative CODP	PC19 MDRS
Height	7.5 m	11 m
Yard setbacks	Front: 4.5 m Side and rear: 3 m	Front: 1.5 m Side and rear: 1 m
Unit density	One per site	Three per site
Site coverage	40%	50%

20 The reduction in setbacks and increased density in adjacent residential areas was not anticipated when commercial activities were established in the BRA. Yet activities that were previously operating safely within district plan rules, resource consent conditions and the Resource Management Act 1991 (RMA), may now find themselves in situations where breaches occur, without any change to their activity.

21 These concerns have also been recognised in the s32 Report evaluation of PC19 (**s32 Report**) as follows:

- (a) The Officer<sup>9</sup> notes that "*the effects of development of residential areas impact directly on those landowners with properties adjoining residential zones*". CODC has recognised reverse sensitivity as a consequence of residential intensification;
- (b) The officer goes onto state "*[t]he outcomes sought for the Medium Density Residential Zone, in particular, reflect that the amenity values within this zone will develop and change over time*".<sup>10</sup> The Officer therefore acknowledges that amenity values within the MDRZ may be affected in many ways. One such way is increased noise, lighting, traffic and other potentially adverse effects due to greater density. More compact living

<sup>9</sup> Plan Change 19 – Residential Chapter Provisions - Section 32 Evaluation Report at [74]

<sup>10</sup> Plan Change 19 – Residential Chapter Provisions – Section 32 Evaluation Report at [78]

closer to non-residential activities will similarly enhance the possible impacts of activities such as supermarkets on residential properties; and

- (c) The officer's cost/benefit analysis states that the MDRZ provisions have "*the potential to adversely affect the surrounding areas, for example in terms of building dominance.*"<sup>11</sup>

#### *Reasons for submission*

22 Foodstuffs consider appropriate recognition for existing adjacent activities and their interaction with the MDRZ has not been properly evaluated in the s32 Report (in particular the apparent conflict between more dense housing development and large-form retailing such as supermarkets) and appropriately provided for in MDRZ provisions to ensure future compatibility as discussed below:

- (a) The introduction to the MDRZ chapter states:

...buildings within this zone are expected to be well designed to ensure that they integrate with the surrounding area, minimise the effects of development on adjoining sites and still provide a good quality living environment for residents.

Foodstuffs submits that this intention is not reflected in the objectives and policies of the MDRZ.

- (b) Objective MRZ-O2(3) provides that the MDRZ is "*responsive to and well connected into the surrounding area. Developments within the MDRZ should fit within the existing surrounding environment to be "connected".*"
- (c) Objective MRZ-O2(5) states the MDRZ "*provides good quality on-site amenity and maintains the anticipated amenity values of adjacent sites.*"

23 Foodstuffs considers there should be express policy recognition in PC19 of the effects of residential intensification in close proximity to existing commercial activities. For example it should be recognised that:

*Where residential activity in the MDRZ locates in close proximity to commercial activities it is recognised that this may detract from amenity values appreciated by some people*

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<sup>11</sup> Plan Change 19 – Residential Chapter Provisions – Section 32 Evaluation Report at [92]

*(due to hours of operation, noise, lighting, traffic from commercial activities) but this is not to be considered an adverse effect.*

24 Foodstuffs is concerned that increased residential density and the larger number of residents residing in close proximity to existing lawfully established activities may result in concerns being raised about those activities and their effects. This may result in additional compliance costs to the CODC, despite the existing activity being authorised and may impact on the ability of many operators, including Foodstuffs, to undertake their authorised and long-established activities on their sites.

*Relief sought*

25 Foodstuffs seek the following decision in relation to the proposals

- (a) That PC19 be amended to reflect the issues raised in this submission; and/or
- (b) Such further or other consequential relief as may be required to give effect to this submission, including consequential amendments to PC19 that address the matters raised by Foodstuffs.

26 Foodstuffs wishes to be heard in support of this submission.

27 Foodstuffs would be happy to meet and discuss any matters raised in this submission.

Date: 1 September 2022



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