

## PUBLIC EXCLUDED REPORT

**TO:** Chief Executive Officer

**FOR:** Council Meeting – 23 February 2022

**FROM:** Robert Love – Team Leader Strategy and Policy

**DATE:** 11 February 2022

**SUBJECT:** **PROPOSED SELWYN DISTRICT PLAN VARIATION IN RESPONSE TO THE RESOURCE MANAGEMENT (ENABLING HOUSING SUPPLY AND OTHER MATTERS) AMENDMENT ACT**

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### RECOMMENDATION

*‘That the Council:*

- a) Receives the Public Excluded Report on the Proposed Selwyn District Plan Variation in response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act;*
- b) Approves the development of an Intensification Planning Instrument/Variation of the Proposed Selwyn District Plan in response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021;*
- c) Endorses the scope of the Intensification Planning Instrument/Variation to include the relevant residential zones in the townships of Rolleston, Lincoln, and Prebbleton;*
- d) Approves the inclusion of the Future Urban Development Areas to the south of Lincoln Rolleston Road to be re-zoned as part of the Variation of the Proposed Selwyn District Plan;*
- e) Approves the inclusion of the Housing Accords and Special Housing Areas Act areas to be re-zoned as part of the Variation of the Proposed Selwyn District Plan;*
- f) Notes the need for Council to vary Private Plan Changes (PPC’s) that are subject to Clause 34 of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act and approves their inclusion into the Council’s Variation where the Private Plan Change has a decision to be approved under Clause 10, Schedule 1 of the Resource Management Act 1991;*
- g) Delegates to the Team Leader Strategy and Policy to take the necessary steps to include, or exclude, to the Variation relevant Private Plan Changes that are required to be varied by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act;*
- h) Resolves that the report can be made public following a decision on the above recommended resolutions.’*

### 1. PUBLIC EXCLUDED REASONING

Overall clause – section 48 of LGOIMA – right of local authorities to exclude public

Sections 6 & 7 of LGOIMA – specific reasons to exclude the public

7(2)(b)(ii)	The withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.	Commercial sensitivity
7(2)(g)	The withholding of the information is necessary to maintain legal professional privilege	To protect all communications between a legal adviser and clients from being disclosed without the permission of the client.
7(2)(j)	The withholding of the information is necessary to prevent the disclosure or use of official information for improper gain or improper advantage.	To prevent use of the information for improper gain or advantage

## 2. PURPOSE

The purpose of this report is to receive approval from Council to prepare a Variation to the Proposed Selwyn District Plan (PDP) to respond to the requirements of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (Amendment Act). This report only seeks approval for the inception of this work programme and spatial extent, rather than seeking a decision on the details and content of the Variation, which will be brought to Council at a later date.

The key directions sought from this report are:

- a. Formal approval to proceed with undertaking a Variation to the PDP and existing zones. This is required to be done to give effect to the Amendment Act.
- b. Confirmation of the geo-spatial scope for which the Variation will cover. Rolleston and Lincoln must be included. However, there is a choice in including Prebbleton or West Melton as they contain relevant residential zones under the PDP. Springston and Tai Tapu do not contain relevant residential zones.
- c. Approval to include additional areas beyond the existing zoning in parts of the Future Development Areas (FUDA) in Rolleston, including the Housing Accords and Special Housing Areas. This will enable investigation of these areas, but their final inclusion will be depend on more detailed analysis through the development of the Variation.
- d. Approval to include relevant Private Plan Changes into Council's Variation and delegation to the Team Leader of Strategy and Policy to include PPCs if they are recommended for approval. This is important as decision on PPCs will occur at different times and the development of Council's Variation will need to respond quickly to these.

The final draft of the Variation will need to come back to Council for approval prior to notification, where the final areas of inclusion can be considered. Again, the primary purpose of this report is to get approval to begin the work and get direction on the scope of the geo-spatial extent in which to apply it.

### **3. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT**

The proposed Variation will be significant and will require engagement pursuant to the Amendment Act.

### **4. HISTORY/BACKGROUND**

On 20 December 2021 royal assent was given to the Amendment Act, which then triggered a requirement for Selwyn to prepare and notify a variation to either its Operative District Plan (ODP) or PDP on or before 20 August 2022.

The purpose of the Amendment Act is to enable additional housing supply by way of introducing mandatory medium density residential standards (MDRS) for certain relevant residential zones.

Selwyn is classified as a Tier 1 Local Authority, and as such the requirements to insert MDRS into relevant residential zones applies to the PDP.

Generally, MDRS will enable the development of three houses on one site up to three stories in height, subject to various requirements such as setbacks, height in relation to boundary, etc. Council can also investigate and identify areas with 'qualifying matters' that would make applying MDRS, or full MDRS, inappropriate. This is discussed later in the report.

Notably, the Amendment Act does reintroduce the ability for councils to charge financial contributions on permitted activities. How financial contributions will be applied will be subject to further work that will be brought back to Council.

The Variation will be required to follow an intensification streamlined planning process (ISSP), which will not have any right of appeal.

Given the current planning situation in Selwyn, namely that we have a notified PDP in place, we are not required to make an amendment to the ODP.

However, the Amendment Act also requires Council to vary Private Plan Changes (PPC) that were notified prior to the Commencement date of the Amendment Act (December 20, 2021). Council must do this and must notify these variations to the PPCs at the same time it notifies its own variation to the PDP. In the current situation Council finds itself in, with a PDP well underway and a number of PPCs at different stages, this creates logistical and procedural issues that the Amendment Act itself is not clear on addressing. Legal advice has been received on how to interpret the Amendment Act, including on how to address this procedural issue with PPCs.

The position on addressing the PPCs in light of the Amendment Act is outlined below. This is a complex issue and one that is likely to be fluid as more information and views surface.

**Attachment A** to this report includes a flow chart that attempts to work through the steps of the Amendment Act.

## Private Plan Change Applications

For reference the Private Plan Change (PPC) applications will be treated in one of the following ways depending on what stage in the process they are, where they are located, and what they are seeking.

### 1: Where a PPC has not been notified (clause 35 of the Amendment Act)

- a) The PCC proponent amends their application to align with the MDRS:
  - The application follows the normal process set out in the Schedule 1 of the Resource Management Act (RMA)
  -
- b) The PCC proponent does not amend their application:
  - The application will be considered through the assessment of the matters set out in Schedule 1 Clause 25 (RMA), which potentially could see the application rejected on sound resource management grounds; and
  - Make a decision in regard to c35(2) Schedule 3 of the Amendment Act as to if SDC want to incorporate the land into the Variation.
  -
- c) The PCC proponent does not amend their application and provide qualifying matters to justify this position.

Council can either:

- Assess the qualifying matters and agree. This then would trigger the application following the Schedule 1 process set out in the RMA; or
- Assess the qualifying matters and disagree that they are relevant, which could see the application being rejected on sound resource management grounds pursuant to Schedule 1 Clause 25.

Where an application progresses through the process set out in Schedule 1 of the RMA under either the scenarios set out in (a) or (c), the Applicant will need to ensure that they make a submission on the Variation to ensure the land is included in the PDP. It should be noted that SDC does have the ability to incorporate the land subject to the application into the Variation if it wishes, but it is recommended that this only occur if it is within a Future Urban Development Area.

### 2: Where a PPC has been notified prior to the commencement date of the Amendment Act but no decision made prior to that date (clause 34 of the Amendment Act)

- a) If the application includes land that is outside of the geo-spatial extent (relevant townships/ zones, discussed further on in this report) of the Council's Variation it progresses along the Schedule 1 of the RMA process.
- b) If the application includes land that is inside of the geo-spatial extent, then it will progress along the Schedule 1 of the RMA process to a point. Council's legal advice is that these PPCs should not proceed past the clause 17 and 20 stages, which is where Council makes the PPC operative, post either the appeal period closing or the resolution of an appeal. Council can still make a decision on a Commissioner's recommendation and notify that decision. This decision of Council will dictate if the PPC is included or not into the Variation in the following two ways:

- I. If it is recommended that the PCC should be approved by the Commissioner then the PPC needs to be varied and incorporated into the SDC Variation; or
- II. If it is recommended that the PCC should be declined by the Commissioner then the PPC is not varied and not incorporated into the SDC Variation, and it will then up to the Applicant to submit on the Variation to seek its inclusion.

The chief reason for the 'holding' of the PPC at the Clause 17 stage and not reaching the final approval stage, is that Council is required to notify a variation to the applications captured by clause 34 at the same time Council notifies the variation to the PDP. Post the clause 17 stage, there is no ability to 'vary' the application, hence the need to 'hold' it at this stage. Effectively the PCC application would progress through to that stage (post-appeals), they are then held until the Variation is made operative, and the ODP is withdrawn making the PPC redundant.

In regard to the above, the Amendment Act does not provide clear guidance on how to treat applications on the ODP when a PDP is progressing through the Schedule 1 of the RMA. Council's legal advice is that under these circumstances the purpose or intent of the Amendment Act needs to be considered. Clearly this purpose is to enable housing supply by applying the MDRS where possible. While there is no provision that says these applications should be placed on 'hold', meaning that they should progress entirely through the typical Schedule 1 process, legal advice recommends that they should not be approved under Clause 17 Schedule 1, or made operative under Clause 20 Schedule 1. To do so would mean the application could no longer be varied, which would mean the purpose of the Act was not being achieved as a MDRS has not been applied to a relevant residential zone.

In addition to the above discussion on the Amendment Act, there is further uncertainty as to how a PPC application on the ODP is incorporated into a variation on the PDP. By not including the PPCs into the variation on the PDP, it could lead to a perverse outcome where the ODP could be amended to include the land, and this is not being followed through in the PDP, meaning the 're-zoning' would fall away once the PDP variation was made operative. Council's legal advice suggests a solution to this issue is through the use of s77G(4) of the Amendment Act which allows SDC to create new residential zones, or amend existing zones.

This allows for the inclusion of the PPCs into Council's Variation. The Amendment Act would otherwise, in the circumstances Selwyn faces, have the Council varying its PDP, while also varying PPCs to the Operative District Plan. These multiple processes would have the same outcome at the same time but would have the perverse outcome, as mentioned above, of the Council's variation on the PDP overriding any PPC variations and making them redundant. To have any relevance these PCC's should be included into the Council Variation. It is on this basis, and following legal advice, that it is recommended that Council varies PPCs via the variation to the PDP but clearly identifies them as separate aspects of the Variation. These are considered to be separate (and identified as such in separate sections of the Variation), but are notified at the same time, and will run under the same ISPP process, and will be heard by the same Panel.

3: Where a recommendation/decision has been made on the PPC prior to the commencement date of the Amendment Act (clause 37)

- All progress along a Schedule 1 process, and;

- a) If approved by the end of May 2022 Council will incorporate it into the Variation and apply MDRS (unless qualifying matters apply); or
- b) If approved after the end of May 2022, the proponent or Council (if it deems it appropriate) will need to submit on the Variation to include the PPC area. Council also has the option of varying the Variation if need be; or
- c) If declined, the proponent will need to submit on the Variation to include the land subject to the PPC application.

Please see **Attachment B** for a Table showing the status of each PPC application.

### **Qualifying Matters (section 77I)**

Qualifying matters can affect the extent and scope of the application of the MDRS. They can limit the implementation of the MDRS which may see them not applied at all, or to a lesser degree as required by the Amendment Act. Work is currently underway to identify these, and the response required to them. This will involve stakeholder engagement.

Potential qualifying matters could include, but not limited to:

- Matters of national importance identified in s6 of the RMA;
- Matters required for the purpose of ensuring safe or efficient operation of national significant infrastructure;
- Open space provided for public use;
- The need to give effect to a designation or heritage order;
- A specific characteristic that makes that level of development inappropriate (s77L).

## **5. PROPOSAL**

Given the requirements of the Amendment Act, Council is required to prepare a Variation to the PDP to give effect to the Amendment Act.

### **Timeframes**

The indicative timeframe for the development of the Variation will see a final version brought in front of Council for its recommendation to notify in July 2022.

The Variation will need to be prepared and notified in or before 20 August 2022. The drafting of the proposed Variation will be along the below approximate timeline:

Task	Timeline
Scoping and drafting	January - April
Consultation with PCC Applicants	March
Consultation with land owners in the FUDA but not incorporated into a PPC application	March
Consultation with Iwi/MKT	February – March
Consultation with GCP	February, April, and June
Schedule 1 Consultation	May- June
Council signoff	July

The main chapters of the PDP subject to variation will be the residential, and subdivision chapters, with minor consequential amendments throughout the plan to

ensure clarity and consistency is maintained. Additionally, there will be some implications for land subject to PPC applications (dependant on where they are in the process, and the decisions made on them).

### **Influence on the PDP process**

In regard to the PDP, all topics except residential, subdivision, and re-zoning submissions will continue as currently planned. However, a decision will be delayed on the PDP to enable the variation process to be completed, which will be subject to a hearing in early to mid-2023. Ultimately this means that the PDP process, which was expected to have decisions released by the end of 2022, will now be delayed until late 2023 – early 2024.

### **Geo-spatial extent of the MDRS**

In incorporating MDRS the Amendment Act requires that it is applied to relevant residential zones in the 'Urban Environment' as defined by the Amendment Act and to townships with a population of over 5000 people as at the 2018 Census. The 'Urban Environment' for Selwyn is the Greater Christchurch Area on the basis of the two qualifiers above the townships that the variation must apply to include Rolleston and Lincoln. The requirements do not apply to Large Lot Residential or Settlement Zones.

Regarding Prebbleton and West Melton, both are considered to be part of the 'Urban Environment' as defined by the Amendment Act but as at 2018 had a population under 5000 people and as such there is discretion to include them or not. It is recommended that Prebbleton should be included into the Variation's scope and West Melton is not for the following reasons:

- While at the 2018 census Prebbleton did not exceed the 5000 person threshold (4680 population at 2018), it currently has a population of over 5000 as it was at an estimated 5020 at June 2021. By including it as part of this Variation, it only pre-empts work that would have to be completed post the next census;
- Prebbleton, when compared to West Melton, has a far greater proximity to Christchurch;
- The urban form of Prebbleton would lend itself to a greater degree of intensification, when compared to West Melton which has a significant amount of 'large lot' type development;
- Public transport routes, and future development better aligns with the location of Prebbleton than West Melton.

Furthermore, the land subject to a Future Urban Development Area (FUDA) (excluding land on the north side of Lincoln Rolleston Road) classification is recommended to be included into the land to be re-zoned and have the MDRS applied to it as part of the Variation. The majority of this land is either subject to PPC applications, or Housing Accords and Special Housing Areas Act (HASHA) development.

The reason for leaving out the land to the north of Lincoln Rolleston Road is that this land is not subject to any PPC application, it is significant in size which would require a significant amount of work to re-zone it, and capacity shortfalls are well addressed by the remaining areas sought to be re-zoned.

In addition to the FUDA to be included as part of the Variation, this proposal also seeks to include the HASHA areas given they have either been largely built on and no longer

need their associated consent to develop or their inclusion into this Variation will be in line with purpose of the HASHA, principally to provide for more affordable housing.

Finally, it is proposed incorporating PPCs that have been recommended for approval by Council provided these PPCs have that decision in time to be included in the Variation. This would include placing PPCs into the Variation before the resolution of any Appeal on those PPCs.

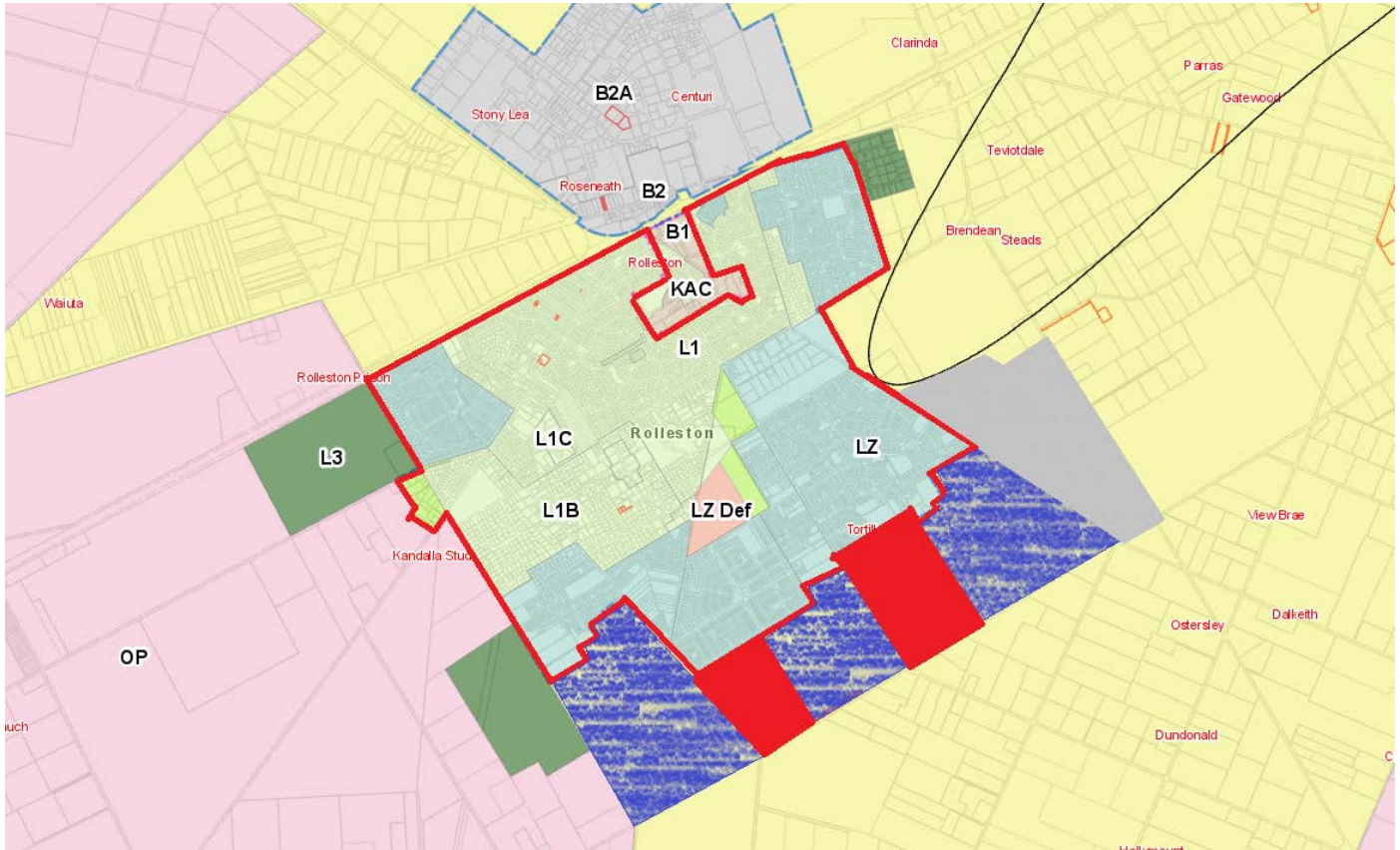


Figure 1: Rolleston

**Legend:**

Red Boundary – Existing relevant residential zoning

Blue Area – Future Urban Development Area to be included

Grey Area – Future Urban Development Area no to be included

Red Area – Housing Accords and Special Housing Areas Act area to be included



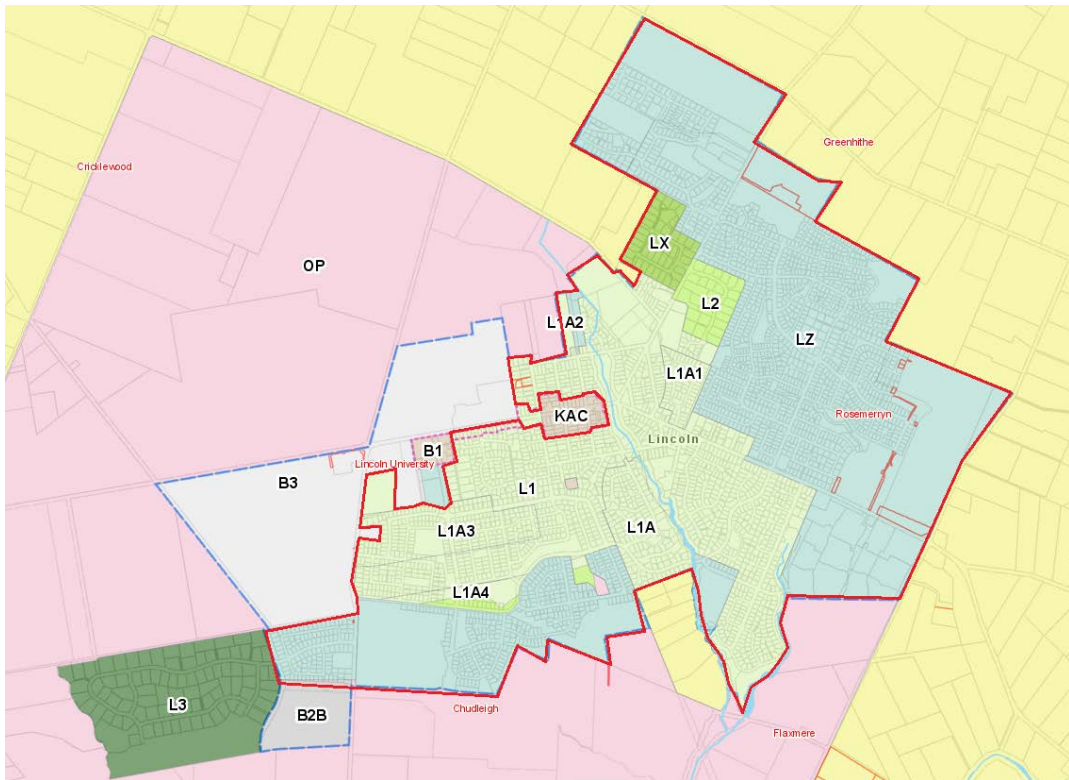


Figure 2: Lincoln

Legend:  
Red boundary - existing relevant residential zoning

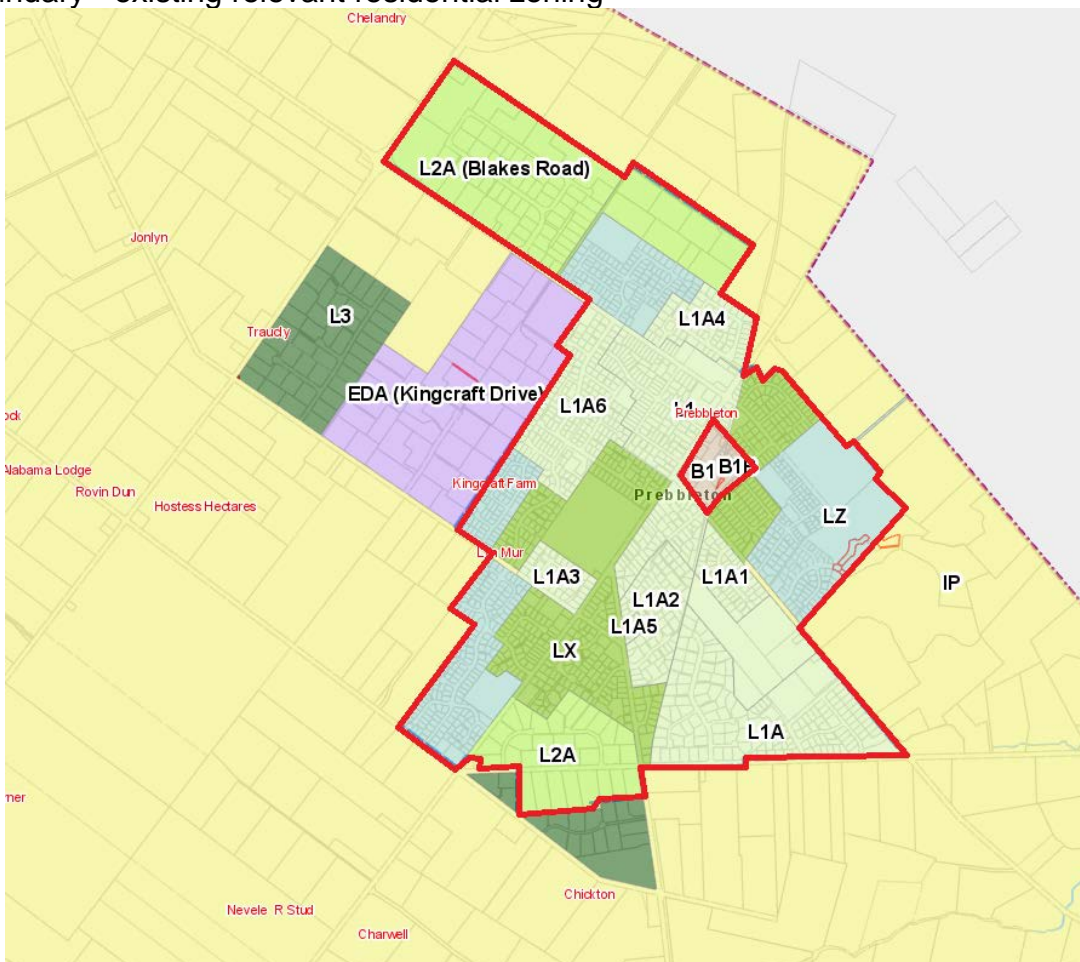


Figure 3: Prebbleton

Legend:  
Red Boundary - existing relevant residential zoning

## **6. OPTIONS**

Council must undertake a Variation to give effect to the Amendment Act. Options are limited to the scope of the Variation.

### **Option 1 - Recommended**

Approve the preparation of a Variation that includes;

- Rolleston, Lincoln and Prebbleton
- the FUDA areas to the south of Lincoln Rolleston Road
- The HASHA areas
- PPCs that have a decision recommending approval within Rolleston, Lincoln and Prebbleton

### **Option 2**

Approve the preparation of a Variation but with amendments to the recommendation (Option 1). There are several potential amendments that could occur these being in regard to the geo-spatial extent of the Variation:

- To include West Melton;
- To remove Prebbleton;
- To remove the FUDA areas;
- To include all FUDA areas;
- To remove all HASHA areas;
- To only include one or the other of the HASHA areas
- To exclude PPCs from the Council variation.

Given the numerous versions of amendments that could be made it is suggested that if Council is of view to amend the recommendations that this is documented and recorded on the day.

### **Option 3**

Not approve the preparation of a Variation. This option is not recommended as the Amendment Act is requiring Council to give effect to it, by not allowing the development of a Variation, Council would not be adhering to the Amendment Act.

## **7. VIEWS OF THOSE AFFECTED / CONSULTATION**

### **(a) Views of those affected**

The variation will be subject to a full public participatory process post notification, where all parties will have an opportunity to submit on the Proposed Variation.

### **(b) Consultation**

As stated above, the process will allow for the public to submit on the Proposed Variation, and for further submissions to be received post that. Additionally, there will be a hearing which will allow an additional opportunity for the public to be heard.

Prior to notification, consultation will occur with our partners, and key stakeholders such as plan change proponents on the ODP, and landowners within the FUDAs.

It is relevant to note that the Property and Infrastructure Sections are aware of the proposed Variations, the Amendment Act, and the implications of it via our monthly meetings.

### **(c) Māori implications**

The process requires consultation with Mana Whenua via iwi authorities, which will occur prior to notification of the Proposed Variation, with a requirement on Council to have particular regard to any advice received.

### **(d) Climate Change considerations**

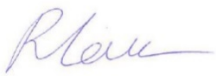
This is a procedural matter and as such there are no climate change considerations as part of this recommendation.

## **8. FUNDING IMPLICATIONS**

There will be funding implications on the Council in regard to the development of the Proposed Variation which will require staff time, external consultants to fill resourcing shortages, and through the notification process.

While the extent of the work required to complete this project is still being assessed, it is estimated that the Variation will cost in the vicinity of \$200,000. This cost is catered for in existing budgets for the 21/22 and 22/23 financial years.

It is relevant to note that some aspects of the Proposed District Plan process, and their associated costs have been deferred to be run as part of the Variation process. Overall, the expenditure required for this Variation is within expected budgets over the next two years, as a Variation was expected to occur irrespective of this Act's requirements. Nevertheless, these estimates are very approximate especially given that many elements of the process described above could be subject to legal challenge.



Robert Love  
**TEAM LEADER – STRATEGY AND POLICY**

***Endorsed For Agenda***



Tim Harris  
**GROUP MANAGER ENVIRONMENTAL AND REGULATORY MANAGER**

**ATTACHMENT A: FLOW CHART**

Prepare timeline with milestones for preparation of IPI,<sup>1</sup> working backwards from 20 August 2022.

Seek advice from Commissioner's hearing PPCs on when they are likely to issue decisions. Incorporate those dates into the timeline in box one.

Prepare communication strategy for key stakeholders (including Council) and the community on IPI and the ISPP<sup>2</sup> (as it relates to both PPC and PDP) process including timing and submission.

Report to Council

Contact infrastructure providers to identify any restrictions on capacity that might be qualifying matters

PDP

Identify within notified PDP:

- a. Every relevant residential zone in which to incorporate MDRS
- b. Any urban environment in which policy 3 will be given effect to.
- c. Any areas where Council wishes to create a new residential zone or amend an existing residential zone.

NB: Council can (within IPI) create new residential zones or amend existing residential zones, provided it is for the above purposes

Identify any qualifying matter that results in reducing MDRS and Policy 3, including section 32 report documenting the same.

PPC

Identify PCC's which satisfy clause 34:

- a. Notified before 20 December 2021
- b. No decisions (under clause 10, Schedule 1) made
- c. Not withdrawn
- d. Does not incorporate MDRS into rule
- e. Proposing or requesting changes to a relevant residential zone
- f. Proposing or requesting changes to a new residential zone.

On submissions have been notified, the plan change has not been withdrawn, and MDRS is not already incorporated

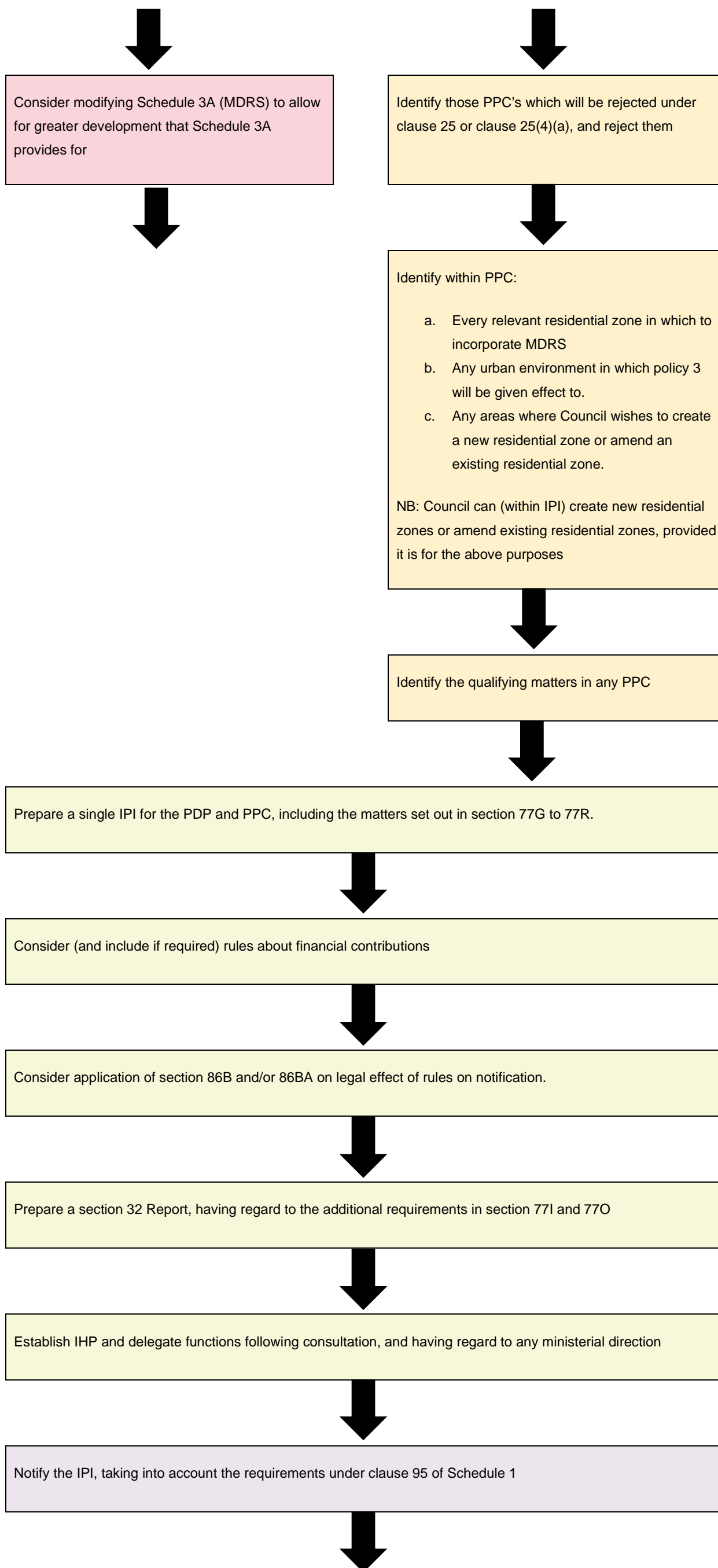
Identify PCC's which satisfy clause 35<sup>3</sup>

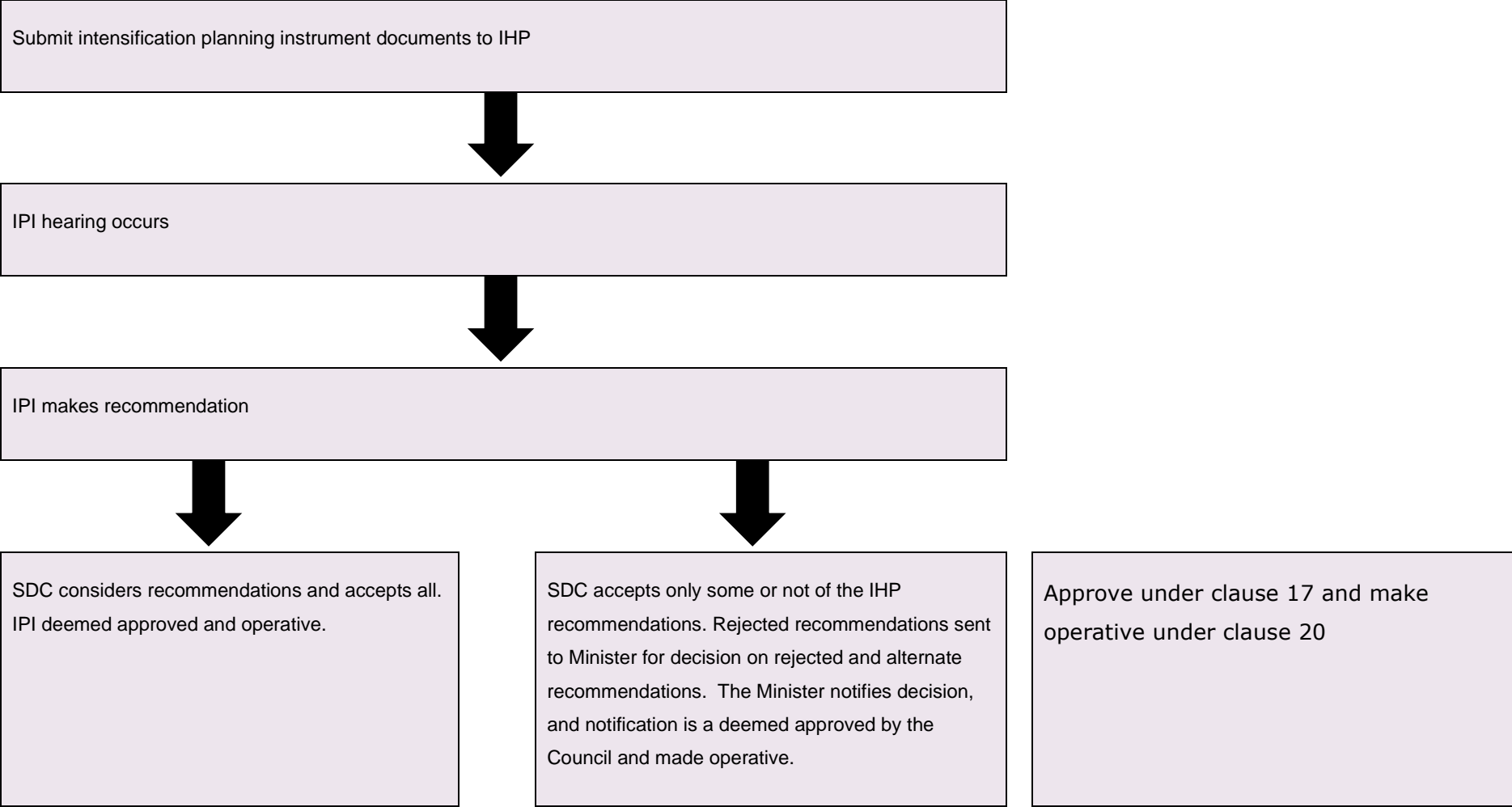
- a. <sup>1</sup> Made to SDC under clause 21, Schedule 1 before SDC has notified its IPI
- b. Clause 34 does not apply
- c. Requests the creation of a new residential zone that proposes to adopt (but not amend) all of the provisions of a relevant residential zone

Identify those parts of a PPC which are not included in the IPI and continue Schedule 1 process to clause 10 decision making on plan provisions and submissions. Do not approve under clause 17 or make operative under clause 20

<sup>1</sup> Intensification Planning Instrument

<sup>2</sup> Intensification Streamline Planning Process





## ATTACHMENT B: PLAN CHANGE STATUS

Plan Change	Location	Status	Relevant Clause
67	West Melton	Council decision made	N/A – outside of geo scope
68	Prebbleton	Hearing – March	Cl.34
69	Lincoln	Waiting for recommendation	Cl.34
70	Rolleston	Pre-notification (subject to COVID fast track)	Cl.35
71	Rolleston	Waiting for recommendation	Cl.34
72	Prebbleton	Waiting for recommendation	Cl.34
73	Rolleston	Waiting for recommendation	Cl.34
74	West Melton	Pre-notification	N/A – outside of geo scope
75	Rolleston	Waiting for recommendation	Cl.34
76	Rolleston	Waiting for recommendation	Cl.34
77	West Melton	Pre-notification	N/A – outside of geo scope
78	Rolleston	Waiting for recommendation	Cl.34
79	Prebbleton	Pre-notification	Cl.35
80	Rolleston	Pre-notification	N/A – Industrial Zone
81	Rolleston	Pre-notification	Cl.35
82	Rolleston	Pre-notification	Cl.35