

V1 PART A: COMMERCIAL AND MIXED USE ZONES

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1 Scope of Report

- [1] This Recommendation Report prepared by the Independent Hearing Panel (IHP) relates to submissions and further submissions that were received on the Commercial and Mixed use (CMUZ) chapter of Part A of the SDC's Intensification Planning Instrument (IPI), which is otherwise known as Variation 1 to the PDP.
- [2] The IHP members were:
- Andrew Willis
 - Raewyn Solomon
 - Rob van Voorthuysen (Chair)
- [3] The Section 42A Reports¹ were:
- Section 42A Report, Part A of Intensification Planning Instrument – Variation 1 to the Proposed District Plan, Report on submissions and further submissions, Commercial and Mixed Use Zones, Jessica Tuilaepa, 3 April 2023.
- [4] Our recommended amendments to the notified IPI provisions are set out in Appendix 1.

2 Our Approach

- [5] The Section 42A Report helpfully outlined relevant background information on a number of matters:
- Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021;
 - Resource Management Act 1991;
 - The Medium Density Residential Standards (MDRS) contained within a new Medium Density Residential Zone (MRZ) in the PDP;
 - The areas in Rolleston, Lincoln and Prebbleton that have been zoned MRZ, including existing residential areas (where the MRZ has immediate legal effect) and new areas zoned MRZ (where the proposed MRZ does not have legal effect);
 - National Policy Statement on Urban Development (NPS-UD);
 - National Policy Statement on Highly Productive Land (NPS-HPL); and
 - National Planning Standards.
- [6] We adopt that background information without repeating it here.
- [7] Ms Tuilaepa provided a description of each submitter's request. We adopt those descriptions without repeating them here. It is therefore imperative that readers of this Recommendation Report also read Ms Tuilaepa's Section 42A Report.
- [8] Further submitters are not generally referred to in this Recommendation Report, because further submissions are either accepted or rejected in conformance with our recommendations on the primary submissions to which they relate.

¹ No Section 42A Reply Reports were provided for the Variation 1 hearings.

3 Hearing and Parties Heard

- [9] The hearing was held on 9 May and 10 May 2023. The parties who wished to be heard and who appeared at the hearing were:

Sub #	Name
V1-0077	Ryman
V1-0079	RVA
V1-0113	Kāinga Ora

- [10] The witnesses and counsel we heard from are listed in Appendix 1. A copy of their legal submissions and evidence is held by the Council. We do not separately summarise that material here but we refer to or quote from some of it in the remainder of this Recommendation Report. We record that we considered all submissions and further submissions, regardless of whether the submitter or further submitter appeared at the hearing and whether or not they were represented by counsel or expert witnesses.
- [11] Cross examination is allowed through the intensification streamlined planning process (ISPP)². No submitter requested to cross-examine the witnesses of any other submitter.³

4 Supportive and Unclear Submissions

- [12] For the following submissions we adopt the reasons and recommendations of the Section 42A Reporting officer. This results in no change to the notified IPI. The following submissions either:
- requested that provisions be retained as notified; or
 - did not specify any relief; or
 - neither supported nor opposed a provision and did not specify any relief.

Sub #	Submitter	Submission Points
V1-0010	Woolworths	002, 003, 005
V1-0029	Gary and Lynda Burgess	019, 044, 045, 046, 047
V1-0032	Eliot Sinclair Limited	044, 048, 059, 060, 089
V1-0058	Jocelyn Humphreys	003
V1-0083	Waka Kotahi	013
V1-0107	CRC	021
V1-0113	Kāinga Ora	002
V1-0114	CSI and RWRL	038
V1-0115	RIDL	030

5 General Submissions

- [13] For the following submissions we adopt the reasons and recommendations of the Section 42A Reporting officer. This results in no change to the notified IPI.

Sub #	Submitter	Submission Points
V1-0010	Woolworths	004
V1-0013	J Dhakal	002

² RMA s98(4).

³ Our IPI Minute 1 required notice of a wish to cross-examine to be lodged with the SDC Hearing Secretary FIVE working days prior to the hearing.

- [14] We agree with Ms Tuilaepa that the activity status of supermarkets was previously considered through the PDP CMUZ hearing. In the Joint Witness Statement prepared with the supermarket companies in response to a similar submission on the PDP, amendments have been recommended by the Hearing 23 Panel to better provide for supermarkets across the CMUZ.

6 Building Height

- [15] For the following submissions we generally adopt the reasons and recommendations of the Section 42A Reporting officer, other than as discussed below in response to an issue raised by Kāinga Ora.

Sub #	Submitter	Submission Points
V1-0056	Ara Poutama	025
V1-0074	Jeremy Alsop	023
V1-0083	Waka Kotahi	002
V1-0113	Kāinga Ora	083

- [16] We agree with Ms Tuilaepa that:

- a TCZ 15m height limit is appropriate in Rolleston and a 12m maximum limit is appropriate in Lincoln, and neither height is inconsistent with the MRZ height limit of 12m⁴; and
- the TCZ building height provisions as notified are consistent with Policy 3(d) of the NPS-UD, insofar as those building heights and resulting density of urban form are commensurate with the level of commercial activity and community services in those TCZs. As noted by counsel⁵ for Kāinga Ora “... the fact that there are no four, five, or six storey commercial developments in Rolleston, Selwyn’s “town centre”, is undoubtedly linked to commercial demand and feasibility ...”. We are not persuaded that a restricted discretionary status height limit rule would be as limiting of development as suggested by Kāinga Ora.

- [17] However, we accept the evidence of Joe Jefferies for Kāinga Ora that commercial buildings typically have a greater floor to ceiling height than residential buildings (generally in order to fit in the air conditioning ducting and other requirements), especially on the ground floor. We also agree that gable roofs are not overly common on commercial buildings. Consequently, we recommend that the ‘11m plus a 1m gable’ standard in NCZ-REQ2 is amended to 12m as sought by Kāinga Ora.

- [18] We record that in making the above findings we have also considered the 21 April 2023 economic evidence of Philip Osborne who appeared for Kāinga Ora at this hearing. He advised⁶ that the relief sought by Kāinga Ora now includes a building height within the Rolleston town centre of 24.5m (up to seven storeys). Counsel for Kāinga Ora acknowledged⁷

⁴ 11m plus a 1m gable.

⁵ Paragraph 2.4(e).

⁶ Paragraph 6.6.

⁷ Paragraph 2.6.

that this goes beyond the height sought in its original submission. Mr Jeffries⁸ supported a building height of 21m in the TCZ but also considered a 24.5m height to be appropriate.

[19] We are not persuaded by the Kāinga Ora evidence and find the amended relief to be inappropriate and out of context with the level of commercial development in the Rolleston TCZ. In particular we note the Rolleston TCZ is primarily comprised of ‘new builds’ that are generally one and two storey structures. It is arguably fanciful to contemplate those ‘new builds’ being replaced by seven storey buildings during the life of the PDP.

[20] We considered that same issue in the Variation 1 Hearing 01 that dealt with the RESZ provisions. In the Recommendation Report for that hearing we said:

- *The commercial activity within the Rolleston town centre comprises predominantly very recent ‘new builds’ which are no more than two storeys high, apart from the civic library (a community service) which is around two and a half storeys high;*
- *Mr Ligget advised that Kāinga Ora expected its new builds to have a viable life of 60 to 80 years. We consider that the same longevity expectation would not be unreasonable for the Rolleston town centre commercial ‘new builds’;*
- *Mr Matheson conceded that the Rolleston town centre ‘new builds’ would not ‘get knocked down’ within the next 15 years. We note the life of the District Plan is ten years;*
- *Mr Matheson also submitted that there was no point in enabling residential development adjacent to the Rolleston town centre to be six storeys high if the IHP declined Kāinga Ora’s request to enable commercial buildings to be up to 24.5m high in that town centre. In his words it was inappropriate to have residential buildings taller than the town centre’s commercial buildings. We agree with counsel and we would add that enabling adjacent residential buildings to be significantly taller than the commercial and community service buildings in the town centre would not promote a well-functioning urban environment.*

[21] Counsel for Kāinga Ora conceded that a 24.5m height limit in the Rolleston TCZ was sought as a means of justifying a 19m height limit for ‘adjacent’ residential buildings⁹. We do not find either of those outcomes to be appropriate. In terms of ensuring a well-functioning urban environment we consider it is sufficient, for the life of the PDP, to enable three storey residential buildings adjacent to the Rolleston town centre, as results from the mandatory MDRS.

[22] We are similarly not persuaded by the Kāinga Ora evidence that the Lincoln TCZ should have a height limit of 18m (up to 5 storeys) or that a building height to 12m should apply in all other town centres including Darfield and Leeston¹⁰. Those increased building heights and resulting urban form would not be commensurate with the level of commercial activity and community services in those locations (NPS-UD Policy 3(d)).

[23] Regarding the submission of Waka Kotahi, we note no evidence was provided by them in support of their submission on building heights and density within and around the TCZ.

⁸ Paragraph 3.40.

⁹ Paragraph 2.3

¹⁰ Assuming the MDRS even applies to these town centres, which is unclear to us because those townships do not meet the definition of a ‘relevant residential zone’ insofar as they have less than a 5000 resident population.

[24] We recommend:

Sub #	Submitter	Submission Point	Recommendation
V1-0113	Kāinga Ora	081	Accept

7 Retirement Villages

[25] For the following submissions we adopt the reasons and recommendations of the Section 42A Reporting officer.

Sub #	Submitter	Submission Points
V1-0077	Ryman	060, 061, 062, 063, 064, 065, 066, 067, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 080
V1-0079	RVA	060, 061, 062, 063, 064, 065, 066, 067, 068, 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 080

[26] Counsel for Ryman and RVA submitted¹¹ that *“The proposed retirement village regime sought by Ryman and the RVA across multiple zones ‘supports’ and is ‘consequential on’ the MDRS and/or gives effect to or ‘supports’ and is ‘consequential on’ Policy 3 of the NPSUD.”* We were not persuaded by that submission. We see no ‘merits based’ reason why retirement village proposals in the CMUZ should be subject to specific provisions.

[27] We received planning evidence from Philip Mitchell¹² for Ryman and RVA. He recommended making retirement villages a *“legitimate use of commercial and mixed use zoned land, by including them, as a permitted activity, with their construction being managed through a restricted discretionary activity”*. Dr Mitchell sought permitted activity ‘use of land’ rules for retirement villages that would not have any rule requirements (REQs), along with a RDIS rule for the construction of retirement village buildings. We are not persuaded that approach is either necessary or appropriate, as was discussed in our Recommendation Report for the Variation 1 Hearing 01: Residential.

[28] Dr Mitchell sought new policies and a bespoke matter of discretion for retirement villages in the CMUZ. We note the CMUZ chapter does not form part of Variation 1; only the NCZ and TCZ provisions were amended by Variation 1 and so that is arguably an ‘out of scope’ request. Similarly, requests to amend the LCZ and LFRZ chapters are arguably out of scope as Variation 1 did not amend those chapters either. In that regard we are not persuaded by the submissions of counsel¹³ for Ryman and RVA who suggested that because commercial and mixed-use zones provided opportunities for retirement villages, then Policy 3(d) of the NPSUD required amendments to those zone’s provisions to provide for retirement villages and such amendments were within the scope of section 80E of the RMA-EHS.

[29] By way of a Memorandum dated 10 May 2023 counsel for Ryman and RVA advised that they were no longer pursuing their relief in respect of the LFRZ. Regarding the LCZ, counsel’s Memorandum advised that they relied on the planning evidence presented by Richard Turner to the CMUZ PDP Hearing Panel. We note that the PDP Panel did not recommend any amendments to the LCZ objectives, policies or rules in response to Mr Turner’s evidence.

¹¹ Paragraph 17.2.

¹² Nicole Williams appeared for Ryman and RVA and adopted Dr Mitchell’s evidence as her own as he could not attend the hearing.

¹³ Paragraph 46.

[30] While acknowledging counsel's 10 May 2023 Memorandum, we fail to see how amending the provisions of zones that are not primarily intended for residential use (Ryman and RVA's submission now being limited to the NCZ, TCZ and LCZ) to enable the establishment of retirement villages can reasonably be said to be necessary to support the MDRS or be consequential to the imposition of the MDRS in the new MRZ. Nor are we persuaded that these changes are required to give effect to NPS-UD Policy 3(d) which is concerned with building height and density, but not activities.

[31] Regarding the matter of the 'out of scope' requests, we refer to the submission of counsel¹⁴ for Ryman and RVA who said that a submission can only be fairly regarded as being 'on' a plan change (and we say by implication a variation) to the extent to which the change amends the pre-existing status quo. Variation 1 did not amend the 'status quo' for retirement villages in the CMUZ, NCZ, LCZ or TCZ.

[32] Dr Mitchell also sought enabling policies for retirement villages (couched in terms of 'provision of housing for an ageing population', 'changing communities' and 'larger sites') in the NCZ, LCZ and TCZ. Putting to one side the issue of scope for any such amendments in the LCZ, we find 'on the merits' that those new policies would not give effect to the objectives of those zones (NCZ-O1, LCZ-O1 and TCZ-O1). In particular the objectives for the NCZ and TCZ zones (neither of which were amended by Variation 1) are respectively:

The Neighbourhood Centre Zone provides for small-scale commercial activities and community activities that service needs of residents in the surrounding area.

The Town Centre Zone is the primary focus for commercial activities within the District and provides a diverse range of commercial activities, along with recreation, cultural and community activities and civic services, with associated residential activity.

[33] We prefer the planning evidence of Ms Tuilaepa who considered that:

- retirement villages tend to occupy large areas of land and are predominantly residential in nature, so they are more appropriately located in a RESZ; and
- the DIS status provided by NCZ-R24 and TCZ-R24 allows SDC to consider the impact of a retirement village that would occupy land zoned for commercial development and consider how to best manage any potential reverse sensitivity issues.

[34] Having said that, we note that the IHP for Variation 1 Hearing 01 that dealt with the RESZ provisions recommended the insertion of a new RDIS rule for the MRZ (MRZ-R9A Retirement Village) to expressly recognise and provide for retirement villages, in a manner that was consistent with both the recommendations of the PDP Hearing 22: Residential Zones Hearing Panel for the LRZ, GRZ, and SETZ and with the density standards applicable to activities within the MRZ.

8 Other Matters

[35] No other matters were brought to our attention.

¹⁴ Paragraph 49.

Appendix 1: Recommended amendments

Note to readers: The text of these provisions is based on the recommendations of the PDP TRAN Hearings Panel. Text proposed in Variation 1 is in blue font. Recommended amendments are shown with insertions underlined and deletions struck through, with further or different amendments recommended by the Hearing Panel shown in red font.

Amendments to the PDP Maps

There are no amendments recommended to PDP Planning Maps arising from our recommendations on the submissions and further submissions covered by this Recommendation Report.

Amendments to the PDP Text

Part 3 – Area Specific Matters

Zones

Commercial and Mixed Use Zones

NCZ – Neighbourhood Centre Zone

NCZ-Rule Requirements

NCZ-REQ2	Height	
	1. The maximum height of any building or structure shall be 12m <u>11m plus 1m for a gable</u> . ¹⁵	Activity Status when compliance not achieved: ...

¹⁵ V1-0113.081 Kāinga Ora

Appendix 2: List of Appearances and Tabled Evidence

Hearing Appearances

Sub #	Submitter	Author	Role
V1-0077	Ryman	Luke Hinchey	Counsel
V1-0079	RVA	Philip Mitchell ¹⁶	Planning
V1-0113	Kainga Ora	Bal Matheson Brendon Liggett Philip Osborne Joe Jeffries	Counsel Representative Economics Planning

¹⁶ Nicole Williams appeared for Ryman and RVA and adopted Dr Mitchell's evidence as her own as he could not attend the hearing.