
PREFERRED OPTION REPORT TO DISTRICT PLAN COMMITTEE

DATE: 25 July 2018, Agenda DPC Meeting

TOPIC NAME: Business, BS201 Small Settlements

SCOPE DESCRIPTION: Business in Small Settlements – Preferred Options Report

TOPIC LEAD: Jessica Tuilaepa

PREPARED BY: Matt Bonis (Planz Consultants Ltd)

EXECUTIVE SUMMARY

<i>Issue(s)</i>	<p><i>Selwyn's small settlements contain a number of legacy business activities (commercial and industrial) that are zoned residential (Living 1). That approach makes it difficult to recognise and provide for employment and commercial wellbeing in small settlements, manage adverse effects at the interface with residential activity, and provide for enablement as required by the Canterbury Regional Policy Statement (2013). The approach undertaken in this report has been to:</i></p> <ol style="list-style-type: none"><i>1. Identify (survey) the range of existing business activities undertaken within small settlements.</i><i>2. Identify the statutory approach (CRPS2013, Selwyn 2031 and Area Plans) as to the enablement of economic activity within small settlements.</i><i>3. Recognise that proposed District Plan will be more directive compared to the operative plan regarding business activity in smaller settlements (as zoned Living 1).</i><i>4. Recognise and provide for surveyed business in small settlements, and consider options for recognition (from reliance on s10 existing use rights to zoning).</i><i>5. Provide a framework (Objectives, policies, rules and methods (as an overlay)) for the recognition and provision of existing business activities in small settlements.</i>
<i>Preferred Option</i>	<p><i>That business activities (industry and commercial activities) are identified as an 'overlay' for small settlements, with a clear framework to enable activities and manage adverse effects.</i></p>
<i>DPC Decision</i>	<p><i>That the Preferred Option for Business activities in small settlements is endorsed, as subject to iterations to ensure consistency with overall proposed Plan framework and related provisions.</i></p>

1.0 Introduction

The Small Settlement Business Activity Report (BS001) sought to identify (through surveying and mapping) within Selwyn's small settlements the existing range of activities that had a business (commercial or industrial) component. These activities have an underlying Living 1 zone under the operative District Plan. The small settlements are:

Arthurs Pass	Doyleston	Glentunnel
Hororata	Kirwee	Sheffield / Waddington
Springston	Tai Tapu	Springfield

The business activities surveyed represent considerable investment and physical infrastructure associated with non-residential activities in these small settlements. Typically, they provide employment and social well-being to their communities of interest, as well as goods and services to passing trade.

BS001 reviewed the higher order planning documents for the District including the Canterbury Regional Policy Statement (**CRPS2013**), the Selwyn Growth Management Strategy - 2031 (**Selwyn2031**) and the Ellesmere and Malvern Area Plans (2016) (**Area Plans**). The provisions of these documents seek to provide for business activities as appropriate. Small settlements should provide economic diversity and opportunity, subject to the scale and limited growth of small settlements.

The operative Selwyn District Plan provides an inconsistent picture in terms of the provisions of these activities. At a policy level the Plan seeks to be relatively enabling of business activities, but the rule provisions restrict business opportunities, even at modest levels, such as those surveyed. This creates uncertainty for those existing businesses, adjoining residential landowners, and results in an operative District Plan where the rule provisions do not consistently *implement* the relevant policies and objectives, or indeed the operative Canterbury Regional Policy Statement (2013).

The approach renders the activities surveyed in BS001 as non-compliant and reliant on establishing s10 existing use rights.

BS001 recommended the application of a plan overlay (or notation) to relevant surveyed business activities to recognise and enable these activities, subject to provisions to manage adverse effects.

BS201 provides a more detailed analysis of the sites surveyed, including cross referencing to the Council's resource consent and rating database. BS201 sets out a preferred option for overlays to be applied to legacy business activities for the recognition and management of activities and provides some potential indicative provisions and a structure. The approach also finds support within the draft National Planning Standards which identifies 'overlays' as a preferable planning mechanism to recognise and provide for distinguishable land use activities located within a more cohesive zone.

2.0 Statement of Operative District Plan approach

The current plan provisions were notified in the Township Volume of the operative District Plan (**the operative plan**) in 2001.

The operative plan largely directs commercial activities to the Business 1 (town centre) zonings, and Industrial activities to the Business 2 zoning, or its variants.

Neighbourhood and Local Centres are enabled in the District Plan to provide for convenience shopping in discrete greenfield locations in Rolleston and Lincoln. These commercial developments retain a Living Z zoning but are subject to the Business 1 zone provisions of the District Plan.

For small settlements, there are neither Business 1 or Business 2 zonings (except for two spot B2 zonings in Doyleston). A Living 1 zoning is applied, inclusive of legacy business activities operating within these townships.

The operative plan policies (but not the rules) generally recognise and provide for any activities in the Living 1 zone where these retain residential character. However, the rules themselves largely render the activities identified in the BS001 survey as non-compliant.

Based on the surveys undertaken, the key provisions that restrict such business activities relate to the scale of the activity¹, particularly the limitation above two full time equivalent staff and limitations on vehicle movements generated from the activity. Based on the survey it is important to acknowledge that there is a wide range of activities that are undertaken within the small settlements from an underlying residential zone ranging from Public Houses, to General Stores & Cafes, to Service Stations, to Industrial workshops.

Accordingly, the provision of Business activities in the small settlements are beset with considerable uncertainty. Whilst the operative plan provisions on their face seek to provide for any activity in the Living 1 zone based on their effects (Policy B3.4.2), remaining policies and the rules essentially require that business activities rely on existing use rights or resource consents.

In other words, the operative plan neither provides for such uses with any degree of protection, nor provides flexibility in terms of enabling these activities outside of their section 10 existing use rights (where these could be established). Another workstream is considering the extent by which the residential zoning provisions should be flexible in providing for ancillary activities, such as home occupations.

BS001 considered as an option a more permissive residential zoned approach (policies, rules and methods for a range of business activities) for a zone regime that would both recognise, and provide for business activities in the small settlement, that is extending beyond existing legacy business activities. The report concluded that:

¹ Rule CZ10.8.1.1 and CZ10.8.1.3

“Striking a balance between enabling business activities and retaining amenity controls across the residential zone is fraught where applied to all business activities. Resultant provisions would tend to be complex in order to ensure appropriate activities are enabled, and yet environmental effects managed”.

3.0 Summary of relevant statutory and/or policy context and other background information

There is no specific legislation that relates to these matters. Aspects associated with specific nuisance provisions (such as noise (NZS6802:2008), light (AS1997:4282), signage (advertising standards authority) or transport (LTMA2003) are discussed within those relevant Preferred Option Reports, and will be utilised in cementing final provisions.

Accordingly, the legal tests for establishing plan provisions for business activities in small settlements are as set out in *Colonial Vineyard vs Marlborough District Council*² and can be summarised as follows:

Where the provisions:

- (i) Accord and assist the Council in carrying out its functions and achieve the purpose of the RMA (s74(1));*
- (ii) Accord with Part 2 of the RMA (s74(1)(b));*
- (iii) Give effect to the regional policy statement (s75(3)(c));*
- (iv) Give effect to a national policy statement (s75(3)(a));*
- (v) Have regard to the actual or potential effects on the environment, including in particular any adverse effect (s76(3));*
- (vi) Are the most appropriate method for achieving the objectives and policies of the plan, having regard to their efficiency and effectiveness and taking into account:*
 - (a) The benefits and costs of the proposed policies and methods, including rules;*
 - (b) The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods (s32(4)).*

In this instance:

National Policy Statements (s75(3)(a)): None are directly relevant to this topic.

National Environmental Standards (s43B): None are directly relevant to this topic.

Canterbury Regional Policy Statement (s75(3)(c)): The small settlements are split between Greater Christchurch (Chapter 6) and the remainder of the Canterbury Region (Chapter 5). Regardless, the outcomes sought for smaller settlements is to provide for economic diversity and opportunity as commensurate to the scale and limited growth of small settlements and

² [204] NZEnvC, 55, at paragraph [17]

surrounding character, whilst maintaining compact settlement patterns and avoiding conflicts between incompatible activities.

Other Management Plans and Strategies (s74(2)(b)): The Long Term Plan, Selwyn 2031 Growth Strategy and Ellesmere and Malvern Area Plans - Seek the longevity of the small settlements, including economic growth and management, and the ability to sustain some services to the surrounding rural area.

Mahaanui Iwi Management Plan 2013 (s74)(2A): Does not include any directive guidance on business activities in small settlements.

Section 18A of the RMA 1991 (inserted through the RMA Amendment Act 2017) is important in this matter. It requires that district plan processes (and provisions that drive processes) are to be timely, efficient and cost effective and proportionate to the functions being performed, and that plan drafting is clear and concise.

It is noted that the draft National Planning Standards (**the planning standards**) were released in June 2018.

Of relevance to this report, there is no specified approach to the recognition and enablement of business activities within Small Settlements. The approach, is not an easy fit to either application of a 'Low-Density Residential Zone', 'Rural Settlement Zone', 'Neighbourhood Commercial Zone' or 'Light Industrial zone' within the array of zoning options provided at Part 5 – Area Specific Matters of the planning standards.

The planning standards recognise that there are a range of tools that are available to provide for distinctive qualities associated with specific activities which require specific management. Table 24 of the planning standards - 'District plan components of combined plans and district plan spatial planning tools' recognises 'Overlays' as an appropriate mechanism to manage specific attributes within the context of a broadly applied zone³.

Name	Function	Represented by	Location of associated provisions within district plan structure
Overlays	An overlay spatially identifies an area, feature or item that following a district wide assessment has been determined to have distinctive values, environmental risks or factors that require management in a different manner from the underlying zone provisions	Polygons or point data [cc cross reference Mapping Standard]	District wide chapters and may be supported by an associated schedule in schedules chapter

³ Draft National Planning Standards. MfE (June 2018). Page 60.

4.0 Summary of alternative management responses – Other Districts

This is an unorthodox issue; the proposed District Plan is faced with providing an appropriate mechanism for recognising and providing for a range of disparate business (commercial and industrial) activities that are dispersed throughout the small settlements and are subject to a Living 1 zoning. Different approaches are taken within the Region, and further afield.

In Waimakariri District, areas where there are substantial commercial resources are zoned Business 1 (town centre); there are small pockets of shops which are zoned Business 4, but this approach is not applied consistently. Individual commercial activities located in residential areas retain a residential zoning and rely on existing use rights. Industrial areas where agglomerated are zoned Business 2, or where isolated retain their Rural or Residential zoning.

In Hurunui District, larger clusters of commercial activity are zoned Business 1 where an agglomerated pattern of business activities are present (such as Amberley, Cheviot, and Hawarden). Rules in the residential zone, especially as these relate to smaller settlements limit the establishment (or recognition) of business activities.

The Westland District Plan enables commercial activities within the Commercial Core zone, which relates to the town centre of Hokitika. However, existing legacy business activities in the smaller settlements (Kumara, Ross and Haast) are not recognised within the underlying small settlement zone. A tourist zone however provides for commercial infrastructure within settlements such as Franz Josef.

In Taupo District, a recent suite of Plan Changes (2014) applied a policy overlay to local shops, which retain an underlying Residential Environmental zone, and removed restrictions on scale and employees on site. The Plan also introduced a schedule of legacy sites with business or visitor accommodation in the Residential High-Density Environment adjoining the town centre.

5.0 Summary of Options to address Issues

5.1 OPTION 1 – MAINTAIN STATUS QUO

Under this option, the existing provisions and Living 1 zoning would be retained for business activities in the small settlements.

There is no true 'status quo' option, as such. The proposed Selwyn District Plan will be more directive as to the provision of business activities. There will be measurable change in the proposed District Plan in terms of greater limitations on non-residential activities in Living zones.

Effectiveness in Addressing Issue:

The approach would not be effective as the higher order statutory documents seek to enable and facilitate commensurate opportunities for employment and business growth in the District's small settlements. The residential topic is identifying the future zoning of these towns and their

likely provisions, albeit it is likely that these will retain the focus on residential amenity and management and avoidance of incompatible effects. Regardless, the National Planning Standards will mean that the current Living 1 zone provisions will not be retained.

Risks:

The Council could be challenged as to whether reliance on s10 rights are the most appropriate method for recognising existing business resources in small settlements, given the statutory requirements to provide for economic diversity and opportunity.

The Environment Court has expressed some disquiet as to the reliance on existing use rights in setting District Plan provisions:

Arguments about the sameness or similarity of ... character, intensity and scale... can be almost endless, and then there is the equally arguable stipulation that an existing use will not survive if it has been discontinued for a continuous period of more than 12 months after the rule became operative or the proposed plan was notified. [66]⁴

In particular, enquiries into the presence or otherwise of existing use rights can be notoriously complicated and expensive.[44].⁵

Reliance on s10 rights would not be forward looking, and encourage incremental development and uncertainty where existing businesses seek to adapt to changing market conditions.

Budget or Time Implications:

Not adequately recognising and providing for existing small-scale business activities could increase litigation through the notification and submission phase of the District Plan process. It could also result in a more incrementalist approach to management (some activities would be recognised, some would rely on s10 rights), which would increase district plan administration costs.

Stakeholder and Community Interests:

All business developments within small settlements and their associated communities. NZTA for activities fronting the State Highway.

Recommendation:

Do not maintain the status quo.

5.2 OPTION 2 – Scheduling

Scheduling consists of listing the existing business activities in small settlements, and providing for those activities to continue indefinitely.

⁴ Advance Properties Group Ltd et al vs Taupo District Council. NZENVC126.

⁵ Kamo Veterinary Holdings Ltd vs Whangarei DC (A161/2003).

Scheduling can be a legitimate approach in plan drafting but is better utilised where there is either a limited frequency of non-residential activities, or alternatively a limited type of activity which is unlikely to change (i.e. taverns or service stations) that are distributed around a district.

Effectiveness in Addressing Issue:

The approach is partially effective. Scheduling would implement in part the higher order statutory requirements to provide for economic diversity in small settlements. Scheduling would not be applied to business activities that are relatively benign in terms of their environmental effects, and hence would not provide complete coverage of non-residential activities.

Scheduling provides for recognition of existing activities and their environmental effects but does not extend to the future enablement or adaption of business activities on the site.

Risks:

Incomplete coverage of activities to be included in the schedule, and the establishment of criteria as to those that are scheduled.

Budget or Time Implications:

There is a high administration cost to the Council in terms of establishing a complex and prescriptive suite of plan provisions, schedules and policy. Additional costs would be incurred through having to regularly update the schedule to introduce new or amended business activities.

Stakeholder and Community Interests:

As above.

Recommendation:

Do not schedule activities.

5.3 OPTION 3 – Zoning

This approach would apply a base Business zoning to business activities surveyed in BS001. That is a Business 1 zone to commercial activities, and a Business 2 zone to industrial activities. A variant considered in BS001 was the application of a 'Small Settlement' Business zone to recognise application to smaller settlements, the likely scale of such activities and proximity to residential activities.

Effectiveness in Addressing Issue:

The approach is partially effective. A business zoning would implement in part the higher order statutory requirements to provide for economic diversity in small settlements.

The approach would be inefficient as business activities within smaller settlements are highly dispersed and interspaced with residential activity; effectively the method would provide a series

of 'spot zones' throughout the small settlements. Application of micro level zoning would also be difficult given the range of business activities undertaken.

Two sites which are already subject to a Business 2 (industrial) zoning should retain that Business 2 (or equivalent in the proposed District Plan) zoning.

Address	Current Zoning
447 Drain Road: Leech Wood Product and Sawmill, Doyleston	Business 2
8, 10, 12 Railway Terrace: Craigs Seeds, Doyleston	Business 2

Risks:

Incomplete coverage of activities to be included in the zoning, and micro-level spot zoning. Also inconsistent with the National Planning Standards which seek a more uniform and coherent approach to the application of zones.

Budget or Time Implications:

There is a high administration cost to the Council in terms of establishing a complex and prescriptive suite of plan provisions, zones and policy.

Stakeholder and Community Interests:

As above.

Recommendation:

Do not spot zone activities, recognising the application of the more uniform Business 2 (or equivalent provisions) to the two isolated sites identified above.

5.4 OPTION 4 – Policy Overlay

This approach provides a policy overlay (planning map notation) for established business sites identified in BS001 and refined in BS201, whilst retaining a Living 1 zone. Specific policy and rules acknowledge the role and function of the notated business sites in the narrative of the Selwyn 2031 and Area Plans; that is to provide for economic diversity, commensurate to growth and residential amenity.

Effectiveness in Addressing Issue:

The approach is effective. The method implements the higher order statutory documents, and provides certainty to both the landowner and adjacent properties as to the recognition and provision of business activity on the site. Amenity is managed, specifically on adjoining residential

properties through retention of those rules relating to built form and nuisance, but relaxing provisions relating to business activities and scale.

Risks:

Incomplete coverage of activities to be included in the overlay. Reliance on s10 rights retained for the more incongruous effects of existing activities, such as noise and specific landscape provision.

Required consistency and clarity as to the appropriate balance between enabling business activities in the overlay and maintaining amenity.

These risks can be managed through both careful plan drafting and the robustness and opportunity for community feedback provided through public consultation and/or the statutory plan submission and hearings process.

Budget or Time Implications:

This option will incur some time and cost to Council in preparation of an updated set of provisions (as provided through BS201), but will reduce the cost of any confusion to plan users caused by the current provisions and will provide greater certainty and community expectations regarding outcomes associated with business activities in small settlements.

Stakeholder and Community Interests:

As above.

Recommendation:

This orthodox approach to plan drafting achieves similar outcomes to scheduling and spot zoning, but is typically more flexible and concise to include in district plans. Recommendation is to adopt this approach or similar.

Due to the wide range of business activities that would be provided for by any Overlay or similar mechanism, the proposed controls would seek to manage the impact of business activities on adjoining Living zone properties. For example, this could be achieved largely through retaining the underlying residential zone provisions, as they relate to matters of **Built Form** (height and recession planes) and **Amenity** (hours of operation, landscaping, outdoor storage and light); but providing for greater flexibility with regard to the following types of matters:

Built Form (site coverage, setbacks);

Scale (removing requirements for employees to be resident on site and scale of non-residential activities, and greater propensity for vehicle generation); and

Amenity (signage, noise)

6.0 Summary of stakeholder engagement

Stakeholder engagement was not undertaken as part of the Baseline Report as it was difficult to identify a manageable number of particular stakeholders and not exclude others who may have an interest, and therefore it was considered more efficient and effective to proceed with public consultation as part of the next phase.

Specific feedback has been received from the Canterbury Regional Council in support of either Option 3 (Zoning) or Option 4 (Policy Overlay).

General feedback has been received from Mahaanui Kurataiao Ltd (MKT) which identifies that they have no issues with the approach recommended.

7.0 Conclusion

There are many legacy business activities that are zoned Living 1 within the District's smaller settlements.

These activities represent considerable investment and physical infrastructure associated with non-residential activities. Typically, they provide employment and social well-being to their communities of interest, as well as goods and services to passing trade.

The operative Selwyn District Plan provides an inconsistent picture in terms of the provisions of these activities. Whilst **Policy B3.4.2** would seek to provide for any activity in the Living zone; the underlying Living 1 zoning coupled with provisions such as Rule 10.8.1 would render the activities surveyed as needing consent. Furthermore, the relevant plan rules would likely restrict any new business activity, despite a policy approach that seeks to enable business activities.

Review of the Selwyn District Council's resource consent database identifies that a number of the surveyed activities have resource consents for specific aspects (such as signage, or extensions of activities). However, most activities are historic and would therefore rely on existing use rights in terms of establishing that they are both lawfully established, and furthermore could be (re)developed in a similar, scale and character to the activities present.

The Environment Court has identified issues as to the reliance on existing use rights, specifically that such endeavours are notoriously complicated and expensive.

The higher order planning hierarchy has changed since the Selwyn Township Volume was notified in 2001. Provisions in the CRPS2013, Selwyn 2031 and the Areas Plans are directive, but also seek to provide for business activities as appropriate, and that for the small settlements, economic diversity and opportunity should be provided commensurate to the scale and limited growth of small settlements.

The proposed Selwyn District Plan will be more directive as to the provision of business activities and limitation of non-residential activities in Living zones. The following consequences in terms of the purpose of BS201 were identified:

- There will be measurable change in the proposed District Plan in terms of greater limitations of non-residential activities in Living zones.
- The higher order statutory documents seek to enable and facilitate commensurate opportunities for employment and business growth in the District's small settlements.
- Therefore, there is a need to provide policy to recognise and provide for business activities within the District's small settlements.
- On the basis that the proposed District Plan will have an 'activities-based' structure, provisions are necessary which provide for the enablement and management of business activities, as related to management of adverse effects at the interface with adjoining properties, at a community level in terms of impacts to a settlement character, and lastly wider strategic effects.

The indicative provisions proposed in BS201 would address the issue of how to recognise and provide for existing business activities within the small settlement Living 1 zones, but similar mechanisms may also be looked at.

Any proposed controls would need to seek to manage the impact of business activities on adjoining Living zone properties.

8.0 Preferred Option for further engagement

The Project Team recommends that Option 4 as outlined in Section 5.4 above is endorsed by Council for further development, recognising that the provisions in the baseline report are indicative-only, rule thresholds will require adjustment, and that similar mechanisms may also be considered.

Appendix 1. Small Settlement Business Overlay (Example Springfield)



Appendix 2. Baseline Reports BS001 & BS201

Link to Baseline report below:

[Existing Out of Centre Business Activities in Small Rural Towns \[PDF, 5618 KB\]](#)

November 2017

[Business Activities in Small Settlements \[PDF, 1403 KB\]](#) May 2018