



---

In the matter of

Applications RC 225715 and RC 225716 to the Selwyn District Council by Kevler Developments limited to undertake a staged subdivision creating 266 fee simple residential allotments, roads and reserves, and to undertake earthworks, construct roading/access and establish residential dwellings, at Springston Rolleston Road, Rolleston.

---

**DECISION OF COMMISSIONER**

**GRAHAM TAYLOR**

**8 November 2023**

**Hearing:** 25 July 2023, Selwyn District Council Offices, Rolleston

**Site:** Springston Rolleston Road, Rolleston

Lot 2 DP 61162 being 15.9235ha in area more or less, as contained in Record of Title CB38C/605.

**Zoning:** Medium Density Residential – Partially Operative Selwyn District Plan

**Approvals Sought:** RC225715 – Subdivision consent to undertake a staged subdivision creating 266 fee simple residential allotments, roads and reserves.

RC225716 – Land use consent to undertake earthworks, construct roading/access and establish residential dwellings

**Decision:** Consent is **Granted** subject to conditions.

## INTRODUCTION AND PRELIMINARY MATTERS

1. I have been appointed by the Selwyn District Council (**SDC**) to determine applications RC225715 and RC225716 made by Kevler Developments Limited (**Applicant**) for subdivision and land use consents in respect of a 266 allotment residential subdivision and development in Rolleston.
2. A hearing was held at the SDC offices in Rolleston on 25 July 2023. Following the hearing adjournment, I issued minute #4 directing that the applicant file a written reply which I received on 31 July, and that the SDC and applicant planners liaise over draft conditions, which I received on 2 August. I did not close the hearing at that stage, as decisions on the Proposed District Plan were imminent, and would impact on the relevant zoning, rules and consent status before a decision was able to be issued.
3. On 19 August the SDC issued decisions on both its Partially Operative Proposed District Plan (**POPOPDP**) and Variation 1. The Variation 1 decisions confirmed new Medium Density Zoning (**MRZ**) and plan provisions modified by the Council's Intensification Planning Instrument to incorporate medium density residential standards under the Resource Management Act (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**RMA-EHS**). The Variation 1 provisions became operative on 28 August 2023, with no rights of appeal to the Environment Court. The application site was rezoned through that process.
4. This meant that the MRZ zoning and most objectives, policies and rules affecting the application and site were now treated as operative (and any previous rules treated as inoperative) under s86F(1) RMA. Other general provisions of the partially operative POPDP following decisions now also had legal effect, however, could still be appealed, meaning that the Operative District Plan (**ODP**) still required consideration in respect of those matters, and some provisions remained uncertain.
5. Because of this, I issued minute #5 on 30 August directing that Council s42A reporting officers submit supplementary evidence confirming the now relevant plan provisions and activity status, and advising of any consequential changes to their assessments, conclusions and recommendations presented in evidence to the original hearing. The directions provided a time frame for the applicant and any submitters to lodge supplementary evidence in response. I also extended the timeframe for completing the hearing under s103A(2) due to the need to now consider the POPDP and Variation 1 decisions, and to confirm what plan provisions may be still uncertain due to potential appeals. It would be premature to issue a decision without that certainty.
6. Due to the unavailability of the Council planner, the timeframes for supplementary evidence were extended further by minute #6.

7. I received supplementary evidence from the Council s42A officers on 20 September, and from the applicant on 28 September. I was advised on 12 October that none of the submitters had lodged supplementary evidence.
8. The supplementary evidence confirmed the changes to relevant provisions and application status arising from the POPDP and Variation 1 decisions, and confirmed the earlier advice and assessment of the respective experts in relation to the MRZ provisions. I had already heard evidence and questioned the experts on the MRZ provisions at the July hearing, and although I had signalled in Minute #5 the possibility of reconvening the hearing, I did not consider it necessary to hear further on those matters.
9. Appeals on the POPDP decisions closed on 6 October. I received confirmation from Council staff on 17 October that there were 25 appeals lodged, and of these only two concerned rules relevant to the application. The first<sup>1</sup> seeks a new rule in the subdivision chapter to require that *“All new allotments must have provision for telecommunications infrastructure.”*
10. The second<sup>2</sup> seeks amendments to rule NH-REQ7 relating to accessways in the GRUZ chapter. Whilst the appeal relates to the GRUZ chapter only, the relief sought includes amendment to TRANS-REQ7 relating to accessway design, therefore technically that rule is subject to appeal.
11. I note that the proposal will comply with the POPDP rules in relation to the above matters, irrespective of the outcome of the appeals.
12. Having reviewed the appeals lodged, I have confirmed that with the exception of the two matters identified above, all other POPDP provisions relevant to the applications are now operative under s86F RMA and the ODP provisions are deemed inoperative.
13. For the above reasons, I have not considered the ODP provisions further in this decision.
14. I closed the hearing on 18 October.

---

<sup>1</sup> Chorus, Spark and One NZ ENV-2023-CHC-092

<sup>2</sup> Horticulture NZ ENV-2023-CHC-102

## PROPOSAL

### Activities

15. The application seeks subdivision and land use consents in respect of a 266 lot subdivision of a 15.9235 ha site located at Springston Rolleston Road, in Rolleston. The application is described in full in the application and evidence therefore I do not repeat that detail. The latest version of the subdivision plan is Revision O which was attached as Attachment A to the evidence of Ms Aston.
16. The main elements as sought are:
  - 266 allotments ranging from 300m<sup>2</sup> – 1927m<sup>2</sup> in area with a net average area of 391.2m<sup>2</sup>.
  - Development in 25 stages with between 5 and 20 allotments in each stage.
  - A 2215m<sup>2</sup> Recreation Reserve, two small local purpose access reserves, and a local purpose utility reserve.
  - Road access to Springston Rolleston Road, Hungerford Drive and Adamite Drive to the north and east.
  - Provision for future roading connections to MRZ zoned land to the south and west.
  - Proposed consent notices addressing servicing of balance allotments.
  - The proposal is an integrated land use and subdivision consent. No vacant sites are to be created – the applicant confirmed in a further information request response on 10 February 2023 that *“as an integrated development with the one developer / builder, there will be no vacant lots as the proposal is to have one dwelling for each lot.”*
  - Land use consent is sought to enable erection of between 5 and 20 dwellings on any balance allotment prior to subdivision.
  - Land use conditions are proposed to require dwellings to comply with the MRZ standards.
  - Exemplar dwelling designs have been provided with the application to demonstrate potential built form in accordance with the MRZ provisions, however there is no design commitment to those plans.
  - No attached or semi-detached dwelling typologies are proposed, all future dwellings would be standalone typologies.
  - Land use consent to establish residential dwellings (in respect of ODP built-form noncompliance’s), new roading, vehicle access, and to undertake earthworks that will not comply with the relevant provisions of the Operative Plan (Rural Volume).
  - The earthworks will include approximately 10,000m<sup>3</sup> of cut to fill, and 30,000m<sup>3</sup> of topsoil stripped to stockpile.

- The applicant has agreed to conditions of consent concerning firefighting water supply and distance of dwellings from hard stand areas used for fire appliances, in respect of the submission by Fire and Emergency NZ (**FENZ**).
  - The applicant has agreed to conditions of consent concerning construction effects, Construction Management and Erosion and Sediment Control plans, and a Traffic Management Plan in respect of the submission by the Ministry of Education (**MoE**).
  - The applicant provided proposed draft conditions prior to the hearing however these were circulated on 20 July therefore were not able to be considered in the SDC S42A reports.
17. I note that the required consents as described and reported on to the initial hearing are now changed due to the operative status of the POPDP MRZ zoning and rules under Variation 1, meaning that the ODP Rural Inner Plains zoning and rules are now inoperative and no longer have effect. I discuss the implications of that later in this decision.

## **EXISTING AND FUTURE ENVIRONMENT**

### **Existing Environment**

18. The existing environment is described fully in the application and in the evidence of Mr Bigsby, and I adopt those descriptions, noting that the site and surrounding zonings have now changed as a consequence of plan decisions. Key elements include:
- The 15.9235 ha site is vacant former pastoral farm land.
  - The site is generally flat, with an approximate 2m fall across the site.
  - Main frontage and access is to Springston Rolleston, which is a formed and sealed arterial road with a 60kph posted speed limit.
  - Road access is also proposed to Hungerford Drive and Adamite Drive, within the Faringdon residential subdivision to the north.
  - Land opposite the site comprises the Acland Park residential subdivision.
  - Land directly to the north comprises part of the Faringdon residential subdivision, which has been developed and built on in accordance with the ODP Living Z provisions, but is now zoned MRZ.
  - Land directly to the south and west comprises vacant former pastoral land, which had a Rural-Inner Plains zone in the ODP at the time of the hearing, however is now also included in the MRZ.

- There is an existing water race on the Springston Rolleston road frontage which is to be filled in and piped (if necessary).

### **Future Environment**

19. Although the application site had a Rural-Inner Plains zoning under the ODP at the time of the hearing, it is located on a pocket of rural land surrounded by urban development, is in a Future Development Area in the Canterbury Regional Policy Statement (**CRPS**), and was identified as being within an Urban Growth Overlay in the notified POPDP. At the time of the hearing it was also proposed to be zoned MRZ under Variation 1.
20. The planners for the SDC and applicant both agreed that the rural zoning was an anomaly and that due to the higher order direction in the CRPS and notified POPDP it was appropriate to assess the proposal as being in a future urban environment. They differed in that the Council planner Mr Bigsby did not consider at that time that weight should be placed on the MRZ provisions including the zoning and subdivision rules, as they were still uncertain. He preferred to apply the ODP Living Z zone provisions under which adjoining land has been developed as an appropriate reference point for the future environment. Ms Aston for the applicant considered that the proposed MRZ provisions should be applied as they were mandated and imminent and must therefore be the point of reference for future residential effects in Rolleston.
21. As matters have now transpired, the release of decisions on the POPDP and Variation 1, and the closing of appeals on the POPDP decisions has now removed the remaining uncertainty expressed by Mr Bigsby as to the future of the MRZ provisions. The MRZ zoning and the relevant objectives, policies and rules<sup>3</sup> for subdivision and land use are now operative under s86F, therefore I have considered the future environment applicable to the site to be that anticipated by the MRZ provisions, and have determined the application on that basis.

### **RESOURCE CONSENTS REQUIRED**

22. At the time of lodgement and notification, and in evidence prepared for the July hearing, the ODP rules still applied to the site, and none of the POPDP or Variation 1 provisions had legal effect. Under the Rural Inner Plains zoning and district rules both the subdivision and land use required resource consent as a non-complying activity.
23. The now operative MRZ zoning and provisions now means that the ODP rules under which non-complying activity consent was required at the time of lodgement and the

---

<sup>3</sup> With the exception of the two appeals identified – neither of which will impact on compliance.

July hearing, are no longer operative. Accordingly, the need for consents under the ODP, and the ensuing non-complying activity status under that plan have ceased to exist.

24. I note that Mr Bigsby has acknowledged that under s88A, where the type of activity changes as a result of decisions on a proposed plan, an application continues to be considered and decided as an application for the type of activity that it was at the time the application was lodged. However, he agrees that as the new provisions are less restrictive than the inoperative ODP provisions, it is appropriate that the applicant receive the benefit of that less restrictive status. The applicant's planner Ms Aston also agrees with that approach.
25. I agree that it is no longer appropriate to apply non-complying activity status to the proposal, and that the POPDP and Variation 1 decisions rules should instead be applied. I have not considered the ODP provisions further in this decision, as under s86F they are inoperative, therefore to do so would be moot.
26. The supplementary evidence of Mr Bigsby contains an assessment of the consents now required under the POPDP MRZ provisions. Under these provisions the site is also identified as being subject to overlays relating to:
  - Development Area: DEV-RO14
  - Plains Flood Management Overlay
  - Liquefaction Damage Unlikely Overlay.
27. I note that Ms Aston's supplementary evidence agreed with this assessment. Further, since the provision of the supplementary evidence, the appeal period for decisions on the POPDP has closed, meaning that POPDP rules that were still subject to potential appeal as identified in Mr Bigsby's supplementary evidence are now settled and deemed operative also.
28. The subdivision consent requires consideration as a restricted discretionary activity under the following rules:

RULE	TOPIC	COMPLIANCE	STATUS
<b>SUB-R1.5</b>	Subdivision in the Residential Zones (MRZ)	The proposal does not include the creation of any vacant residential allotments.	Controlled (SUB-R1.5)
<b>SUB-R1/ SUB-REQ6</b>	Access	The proposal includes the creation of sites which have legal access to Springston Rolleston Road. This road is an arterial classification road, with a currently posted speed limit of 60km/hr (per NZTA NSLR).	Restricted Discretionary (SUB-REQ6.7)

<b>RULE</b>	<b>TOPIC</b>	<b>COMPLIANCE</b>	<b>STATUS</b>
<b>SUB-R17</b>	Subdivision and Natural Hazards (Plains Flood Management Overlay)	The application site is located within the Plains Flood Management Overlay.	Restricted Discretionary (SUB-R17.4)

29. I note that as the proposal is to erect dwellings under the land use consent prior to the issue of title for each allotment, no vacant residential allotments will be created, meaning that the dimension requirements of rule SUB-R1 do not apply. I do however also note that this is not presently reflected in draft conditions, which do not require erection of dwellings or any other building commitment prior to s224 certification, I consider that a condition to this effect should be included in the event that consent is granted to ensure that the development proceeds as per the applicant's stated intention.
30. As a restricted discretionary, consideration under s104C is limited to the matters over which the exercise of discretion is restricted.
31. The land use consent requires consideration as a discretionary activity under the following rules:

<b>RULE</b>	<b>TOPIC</b>	<b>COMPLIANCE</b>	<b>STATUS</b>
<b>NH-R.2</b>	New Buildings and Structures in Natural Hazard Overlays (Plains Flood Management Overlay)	The applicant has not supplied a flood assessment certificate to confirm what the necessary minimum building finished floor level will be per NH-R2.3 c.	Restricted Discretionary (NH-R2.5)
<b>EW-R5A</b>	Earthworks for Subdivision	The proposal includes earthworks that will be undertaken on an area exceeding 1000m <sup>2</sup> .	Restricted Discretionary (EW-R5A.2)
<b>MRZ-R2/ MRZ-REQ2</b>	Number of Residential Units per Site	The number of residential units per site (prior to subdivision of individual allotments) will vary between 5-20.	Restricted Discretionary (MRZ-REQ2.2)
<b>TRAN-R2/ TRAN-REQ18</b>	Land transport corridor creation standards	Road 1 has a formed width partially exceeding the maximum permitted width of 9m and a legal width exceeding 20m. Road 2 complies with the width requirements, although it does not include a pedestrian path on both sides of the road, which is required. Roads 3-8 require a Local (MRZ) standard. Roads 3-6 all exceed the maximum permitted legal width of 17m. Roads 3-8 exceed the maximum formed width of 8m.	Discretionary (TRAN-REQ18.2)
<b>TRAN-R4/ TRAN-REQ2</b>	Access restrictions	The proposal will result in the establishment of vehicle crossings to an Arterial road with a posted speed limit of 60km/hr.	Restricted Discretionary (TRAN-REQ2.1)



<b>RULE</b>	<b>TOPIC</b>	<b>COMPLIANCE</b>	<b>STATUS</b>
<b>TRAN-R4/TRAN-REQ3</b>	Number of vehicle crossings	The development approach of establishing 5-20 residential units within a single site (balance lot) prior to subdivision would result in the establishment of more than 3 vehicle crossings per site.	Restricted Discretionary (TRAN-REQ3.2)
<b>TRAN-R4/TRAN-REQ4</b>	Siting of vehicle crossings	The vehicle crossings for access Lots 503 & 505 will not achieve a 20m intersection separation distance.	Restricted Discretionary (TRAN-REQ4.2)
<b>TRAN-R5/TRAN-REQ7</b>	Accessway design, formation and use	The access for Lots 28, 60, 121, 187, 216 & 230 will not achieve a minimum legal width of 4.5m.	Restricted Discretionary (TRAN-REQ7.2 & TRAN-REQ7.16C)

32. Due to the non-compliance with rules TRAN-R2/TRAN-REQ18, I agree that the overall bundled proposal requires consent as a discretionary activity.
33. A full compliance assessment which identifies all relevant rules is attached to the supplementary evidence of Mr Bigsby, and I adopt that assessment.
34. I note that no resource consents are required under the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health.

## **NOTIFICATION AND SUBMISSIONS**

35. The applications were publicly notified and notice served on 10 affected parties. Five submissions were received including a late submission from Canterbury Regional Council, which I accepted by way of a minute on 19 June 2023.
36. The submissions and their reasons are summarised in the evidence of Mr Bigsby, therefore I will not repeat that detail here. I have read and taken into account all submissions in making this decision.
37. Prior to the hearing I received statements tabled in relation to the submissions by FENZ and MoE, confirming agreements reached with the applicant that have been incorporated into the proposal which I have recorded in paragraph 16 of this decision. On that basis they no longer wished to be heard. Those agreements were included in the draft conditions circulated prior to the hearing.
38. No other submitters appeared at the hearing.

## **HEARING / POST HEARING SUPPLEMENTARY EVIDENCE**

### **Evidence Considered**

39. A s42A report and statements of evidence for the applicant were pre-circulated, and evidence summaries provided by SDC s42A officers and the applicant's experts at the hearing. Legal submissions were also presented on behalf of the applicant.
40. As those statements were prepared prior to the issue of decisions on the POPDP and Variation 1, they contained substantial detail and discussion on matters concerning ODP objectives, policies and rules, and differing opinions as to what the appropriate future environment was under which the proposals should be considered. Mr Bigsby preferred to apply the ODP Living Z provisions as an indicator of the likely environment, as they reflected the existing development of adjoining land, and the MRZ provisions were at that stage undetermined, and had no immediate legal effect. Ms Aston preferred to apply the MRZ provisions.
41. Due to the MRZ provisions subsequently becoming operative, it is no longer necessary for me to resolve that conflict – the rules and anticipated environment under which the proposal is to be assessed are the now operative MRZ provisions.
42. For this reason, I have not recorded the hearing evidence, legal submissions and discussion relating to the ODP provisions and anticipated future environment in significant detail in this decision, as this evidence is no longer relevant.
43. Although they did not have legal effect at that time, the hearing evidence did address the relevant objectives, policies and rules under the POPDP MRZ and general provisions as amended by Variation 1, therefore it was not necessary for me to hear further on those matters, other than to confirm the post decision status and provisions and any changes to recommendations as contained in supplementary evidence. The opinions expressed by the experts in relation to those matters had not significantly changed.

### **Pre-Hearing Direction – Additional Transportation Evidence**

44. Prior to the hearing, additional transport evidence was lodged by the applicant's traffic engineer, Mr Metherrall, following discussions between himself and the Council's Transportation s42A report writer, Mr Collins. I accepted the inclusion of this late evidence under s37(1) and directed Mr Collins to provide a supplementary written statement in response to be tabled at the hearing.
45. The result of this was that Mr Collins and Mr Metherrall now agreed that effects would be less than minor or would be mitigated by factors including timing of development and planned intersection safety improvements in relation to:

- a) Safety effects at the Selwyn Road/Lincoln Rolleston Road and Selwyn Road/Weedons Road intersections; and
  - b) Safety effects at the Selwyn Road/Springston Rolleston Road intersection
46. Other than Mr Metherall expressing reservations as to a proposed monitoring condition, both traffic experts now agreed as to transportation effects.

### **Applicant**

47. **Gerald Cleary** provided legal submissions on behalf of the applicant. He outlined the statutory framework and s104D threshold, which applied to the non-complying activity status of the proposal at that time. He submitted that the mandatory MDRS provisions as contained in the RMA-EHS must logically be considered as achieving the purpose of the Act in Part 2.
48. Mr Cleary discussed relevant caselaw in the *Hawthorn* and *Queenstown Central* cases relating to the future environment, and submitted that in a real-world environment, there is no prospect that the land would remain rural, and on the balance of probabilities MRZ zoning was likely to be confirmed. I note that this has now occurred, and the proposal falls for consideration in terms of the anticipated MRZ environment, therefore I no longer need to resolve this matter.
49. The balance of Mr Cleary's submissions primarily concerned s104D threshold tests, and plan weighting issues, which are no longer relevant to this decision.
50. Mr Cleary noted that draft conditions had been circulated, and that these included the additional conditions agreed to with FENZ and MoE.
51. **Andrew Metherall** provided a summary statement of his transport evidence. Mr Metherall's evidence discussed the effects of the proposal on the wider transportation network, with emphasis on effects on the safety and performance of the three intersections at:
- a) Springston Rolleston Road / Selwyn Road
  - b) Lincoln Rolleston Road / Selwyn Road
  - c) Selwyn Road / Weedons Road
52. He noted that the Council has programmed upgrades to these intersections over the next five years. He considered that in the interim period, any incremental change in

the performance of the intersections due to the Kevler proposal would be negligible from both a safety and capacity perspective. Forecasting out five years until the upgrades are planned, he still considered that the intersections would be operating at a level that is acceptable for the short period that the incremental increase in vehicle numbers would occur.

53. He considered that a staged monitoring review condition, with any new fatal or serious crash triggering a further assessment of mitigation, as recommended by My Collins was unnecessary, as the assessed level of effects does not justify that approach. Any review of crashes would come up with a very small apportionment of risk to the Kevler development, and may result in false conclusions. He considered it a Council function to implement safety measures as it sees fit.
54. **David Compton-Moen** referred to the evidence summary contained in section 4 of his pre-circulated Urban Design evidence.
55. He considered that the development is a mid-sized development with 266 lots proposed with a range of sizes from 300-1927m<sup>2</sup>, with an average lot size of 391m<sup>2</sup>. He did not consider it necessary to provide individual house plans for all lots as the exemplar housing plans showed it was demonstrably possible to design complying dwellings complying with the MRZ framework without creating adverse effects for future residents.
56. Given the scale of the development he did not consider it necessary to specify that some of the housing needs to be duplex or terrace housing, and he considered that diversity will still be achieved with the current lot layout and density.
57. He considered that variation and diversity were likely to occur as the subdivision is built out, due to staging and changes to the development market over time.
58. Mr Compton-Moen considered that effects on adjoining residential properties were not unknown. They would be in accordance with the density and built form standards contained in the MRZ rules.
59. He advised that density itself was not an effect – however a sense of spaciousness is able to be achieved through numerous aspects including street widths, provision of (public) open space, building setbacks (front, side and rear yards), fencing controls and height limits and recession planes.
60. He considered that the development would achieve a well-functioning urban environment consistent with the Policy 1 of the National Policy Statement on Urban Development (**NPS-UD**), in that it is consistent with a consolidated urban form pattern for Rolleston, the receiving environment is suburban, accessibility and connectivity

have been well considered and there are no existing features of note on the site.

61. **Fiona Aston** a consultant planner provided a summary of her evidence, and also tabled additional draft conditions.
62. She discussed the future planning status of the site and proposal, and considered that it should be examined against the imminent MRZ objectives, policies and standards, rather than the Living Z provisions referred to by Mr Bigsby.
63. She noted that there was now an agreed position between experts as to transportation safety effects, which will result in less than minor effects in the period prior to planned intersection upgrades. Like Mr Metherall she disagreed with the monitoring and review condition suggested by Mr Collins which she thought unworkable, would result in additional costs, and was unjustified. In any case, she considered that s128 RMA provides for review of conditions where there is a material change in assessed effects.
64. She noted that with agreement between traffic experts, the only remaining area of concern contributing to the SDC planner recommendation to decline related to character and amenity effects. Ms Aston considered that the evidence of Mr Compton-Moen confirmed that the development will result in a high-quality residential environment sitting squarely with the policies of the NPS-UD, and the MRZ as was then proposed by Variation 1.
65. She disagreed with the opinions of Mr Bigsby and Ms Wolfer that suggested that the proposal was contrary to MRZ Policy P2. She did not consider this to be the case, as the proposal will comply with MRZ rules, which implement the MRZ objectives and policies.
66. She disagreed that the lack of building commitment for all individual sites would lead to uncertain design and appearance – as the proposed conditions would require compliance with the MRZ standards, thereby providing certainty.

#### **Council Staff**

67. **Mathew Collins** provided a supplementary transport statement, as directed my minute #3, in response to the additional evidence of Mr Metherall. He confirmed that he was now satisfied that safety effects at the Selwyn Road/Lincoln Rolleston Road and Selwyn Road/Weedons Road intersections would be less than minor.
68. He considered that safety effects at the Selwyn Road/Springston Rolleston Road intersection were mitigated by minor safety improvements carried out at the intersection, timing and staging of the Kevler development, and the intersection upgrade to a roundabout planned between 2023-2027.

69. He recommended a monitoring condition that would remain active until the intersection upgrades are completed, that would require reassessment of safety effects with each stage of the development, in relation to crash history.
70. **Gabi Wolfer** provided a summary of her urban design evidence. She focused on the urban design effects in the context of:
- a) the Small-Lot Living Z environment, as per operative Selwyn District Plan (District Plan); and
  - b) an anticipated Medium Density Zone (MRZ) living environment as per RMA- EHS Amendment Act Schedule 3A (EHS Act), enabled through Variation 1 to the Plan.
71. She considered residential landuse in principle to be coherent with the receiving residential environment, and that the proposal provided an adequate level of accessibility to public and community services and adjacent neighbourhoods. The development would however be of a more urbanised character than the existing suburban areas to the north due to higher density and increased built form.
72. She expressed concern in relation to several issues.
73. Ms Wolfer was concerned that the proposal would adversely affect existing lower density lots located along the northern boundary due to uncertainty as to scale and built form of future buildings. She considered that larger sites should be created around the site periphery and higher densities located towards the centre of the site. She advised that having heard evidence at the hearing, she now agreed that greater emphasis should be places on the MRZ provisions, however regard still needed to be had to the density and effect on the existing adjacent Living Z density receiving environment.
74. She did not consider that the proposal achieved an appropriate level of spaciousness when considered in the context of ODP Policy B3.4.3 and the 400m<sup>2</sup> lot size in the Living Z zone which she considered indicated an acceptable level for standalone typologies.
75. Ms Wolfer considered that comprehensive building / architectural plans were required to adequately assess the effects of development of the 138 lots that fell below 400m<sup>2</sup> in area, and considered the three exemplar plans provided were insufficient to show compliance on sites below this area. 102 sites would not meet the POPDP threshold of a 16m x 23m shape, therefore would require further resource consent if the MRZ provisions were not met.
76. She did not consider that the proposed linear lot distribution in the context of a single typology met the objectives of the ODP policy B3.4.3 to provide a diversity of living

environments and housing types. She considered the ODP objective and policies to be directive in terms of placement of increased densities.

77. In relation to the then proposed MRZ provisions, she noted that the objectives and policies specific to the proposed zone enable a variety of housing types with a mix of densities within the zone, including 3-storey housing types and high-quality outcomes.
78. She considered that the issues identified in her assessment in terms of lack of density distribution, lack of variety in density and housing typologies and the lack of strategic placement and offset of increase form with open space remained under the MRZ framework. On this basis the single typology across the site would not be in accordance with the objectives and policies of the MRZ zone to enable a variety of housing types with a mix of densities.
79. **Richard Bigsby** provided a summary of his planning evidence and commented on matters arising in the course of the hearing.
80. His overall s42A report described the application and the relevant rules, higher order documents and statutory provisions as they applied to the proposal at that time. He included advice from other Council officers and assessments in relation to:
  - Character and amenity & Urban design;
  - Transportation;
  - Ecology;
  - Education;
  - Economic/retail effects;
  - Construction effects;
  - Reverse sensitivity;
  - Servicing & Subdivision; and
  - Natural hazards.
81. He considered that with the exception of Character and Amenity and Transport matters, and subject to appropriate conditions, all other effects of the proposal were acceptable, and adverse effects would be less than minor.
82. He now also considered that on the basis of the additional evidence of Mr Metherall and Mr Collins, that transportation effects would also be less than minor, and he no longer considered the proposal contrary to the transportation related objectives and policies in the ODP and POPDP. He also advised that he disagreed with the monitoring condition proposed by Mr Collins as it would result in uncertainty.
83. This meant that the only outstanding area of concern, on which he based his

recommendation to decline the application related to Character and Amenity and Urban Design issues.

84. He considered that, at that time, the Living Z provisions should be used for assessment as the receiving environment is entirely comprised of Living Z built form at present. They were also subject to consent notices requiring development in accordance with Living Z provisions, which would continue to apply to that land if the MRZ provisions became operative. The MRZ provisions were still not confirmed in relation to the subject site, and he identified submissions on Variation 1 that could result in a different zoning outcome. The site was not in a relevant residential zone therefore the mandatory application of the MDRS provisions did not apply. I note that this situation has since changed with the MRZ provisions becoming operative.
85. Mr Bigsby discussed character, amenity and urban design with reference to the evidence of Ms Wolfer. He considered that in the event that the MRZ zoning was confirmed, the areas of concern raised by Ms Wolfer would still remain.
86. He noted that the MRZ provisions did not include a minimum lots size, shape factor or other size related control for existing residential units or where an accompanying land use consent demonstrates it is practicable to erect a permitted residential unit on every allotment. However, he did not consider that the three exemplar designs provided demonstrated that this was met. Additionally, he noted that the proposal to erect 5 – 20 dwellings on balance allotments prior to subdivision required consent as a restricted discretionary activity, which required assessment of effects, and could be declined. He considered building designs were necessary to show compliance for sites under 400m<sup>2</sup>.
87. Mr Bigsby agreed with Ms Wolfer's concern at the lack of building designs and variation in typology, noting Ms Astons evidence that it was challenging to ensure that all nine mandated design standards would work on each individual lot for each of the exemplar dwellings. He had concern that determination of final lot sizes prior to building design would provide little resilience for the consented lots to respond to the variety of building designs and individual site conditions. He was unconvinced that variety would result to the degree proposed by the applicants.

### **Post Hearing Submission in Reply and Directions**

88. Following the adjournment of the hearing, I issued minute #4 relating to the applicants written reply and provision of draft conditions recording remaining areas of agreement and disagreement between the applicant and Council staff.



89. The written reply from Mr Cleary discussed the proposed objectives and policies relating to the MRZ as notified in Variation 1. He questioned the interpretation of Ms Wolfer and Mr. Bigsby that irrespective of compliance with MDRS standards, individual developments such as Kevler's must actually incorporate a variety of densities or typologies including three storeys, attached or detached.
90. He submitted that this interpretation was incorrect, and that the provisions are not directive. The only direction was that the local authorities include the policies in the plan. The wording in Policy 1(a) relating to housing types was enabling rather than being directive.
91. He submitted that there were no further submissions in opposition, nor was evidence presented to the Variation 1 hearing in relation to the site rezoning, therefore the possibility of decisions providing for anything other than MRZ zoning was remote.
92. He submitted that demonstrating compliance of an exemplar house design on a 300m<sup>2</sup> site corresponding to the smallest lot size demonstrated that compliance could be achieved on all allotments, and individual house designs were not necessary to show this.
93. Mr Cleary noted that Ms Wolfer had applied a 400m<sup>2</sup> yardstick for acceptable activity based on the ODP Living Z provisions, but also acknowledged that other development in Rolleston below 400m<sup>2</sup> was not unusual. He submitted that the proposed development with an average lot area of 390.8m<sup>2</sup> was only a minimal departure from Ms Wolfer's yardstick.

#### **POPDP / Variation 1 Decisions – Supplementary Evidence**

94. I received supplementary evidence from s42A officers and the applicant's experts following the issue of minutes #5 and #6, arising from the 19 August release of decisions on POPDP and Variation 1.
95. **Ms Wolfer** provided a supplementary assessment which was appended to the statement of Mr Bigsby. The assessment included an evaluation against the relevant objectives & policies of the POPDP on matters related to Urban Design, and against the relevant matters of control or discretion in MRZ-REQ2.2 for Residential Design and Additional Residential Unit.
96. She considered that the issues identified in her evidence in chief remained in a Medium Density Residential Zone context, being that the proposal does not meet the intent of the MRZ zoning.
97. From an Urban Design perspective, she was unable to support:

- The lack of variation in density and the proposed distribution within the development and the effects on creating a distinct neighbourhood and visual variety within a high amenity residential environment.
  - The single typology approach across the site and the lack of housing choice provided.
  - The uncertainty in terms of built form and subsequent effects on the quality of life and day to day needs for future residents on sites less than 400m<sup>2</sup>.
  - The 'no-building design' commitment instead of a 'comprehensive' approach for sites below 400m<sup>2</sup> which allows to address development in context at a block, street and site scale.
98. **Mr Bigsby** provided an updated table showing the Partially Operative District Plan rules that now had legal effect following decisions, highlighting those that were now operative under Clause 103 schedule 1 of the RMA-EHS, and s86F of the RMA. I note that since then, the non-highlighted provisions in his table are also now operative under s86F following the closing of appeals, as I have discussed previously. Mr Bigsby has now also confirmed that he agrees that s86F applies in relation to all relevant POPDP provisions, therefore there are no remaining relevant ODP provisions requiring consideration.
99. He provided a full compliance assessment against the decisions version of the POPDP, which identified the non-compliances set out in paragraphs 28 – 33 of this decision.
100. Mr Bigsby provided assessment limited to the objectives and policies and rules required as a consequence of the relevant new provisions, and specific matters that remained of concern. He noted that the activity status of the proposal under the POPDP is fully discretionary and the Council's discretion is unrestricted. Notwithstanding, he considered that the POPDP provisions provide a relevant framework for assessment.
101. The application site is now located within the Plains Flood Management Overlay (PFMO), and the subdivision requires resource consent under Rule SUB-R17 as a restricted discretionary activity. The proposal includes bulk earthworks that will change existing ground levels, and the roading network will be designed to assist in managing stormwater disposal in the 200-year modelled flood event. His conclusions on the risk of flood hazard remained unchanged.
102. He noted that a Flood Assessment Certificate for new residential units and principal buildings within the PFMO was now required under Rule NH-R2. The subdivision assessment matters include consideration of any additional information required to

enable a Flood Assessment Certificate to be issued for every site created in accordance with NH-SCHED1 Flood Assessment Certificates. He considered that this required consequential changes to proposed conditions.

103. Mr Bigsby now agreed that the MRZ zoning now established the correct framework to examine the effects of the proposal within the application site.
104. He referred to the revised assessment of Ms Wolfer. He noted that the proposal does not comply with MRZ-R2/MRZ-REQ2, which permits no more than 3 residential units per site. He understood that this threshold on the number of permitted units is to ensure that new development occurs in a planned and integrated manner, and that where the permitted threshold is exceeded, each proposal can be assessed on its own merits as a restricted discretionary activity. Discretion is restricted to those matters contained in RESZ-MAT1 Residential Design, and RESZ-MAT8 Additional Residential Unit.
105. Mr Bigsby noted that Ms. Wolfer considered that the issues identified in her evidence in chief remained in the context of the operative MRZ provisions and effective assessment matters, being that the proposal does not meet the intent of the MRZ zoning, including the planned urban character. There were three key themes that he identified in Ms. Wolfer's evidence, being:
- The lack of density distribution and variation within the development;
  - The single housing typology proposed, and lack of housing choices enabled; and
  - The uncertainty of on-site amenity effects for small sites in the absence of a building design commitment and the applicant's 'whitebox' approach for residential unit designs.
106. He noted that the site is located within Development Area: DEV-RO14, which includes an operative development plan and corresponding text. The land use text for this development area states that it envisages residential unit typologies including stand-alone, duplex, terrace, and apartment buildings. MRZ-01 & MRZ-P1 are now operative and he considered they also direct that the MRZ provides for a variety of housing types and sizes that need to respond to both the housing needs and demands, and the neighbourhood's planned urban built character.
107. He agreed with Ms. Wolfer's assessment that the proposal would not enable or provide the envisaged built-form for the development area, delivering only one of the four anticipated housing typologies (standalone). Overall, he considered the proposed development contrary to the planned urban form for this development area.

108. He did not consider that the 'white box' approach provided site specific detail for assessment as anticipated by assessment matters RESZ-MAT1 - Residential Design and RESZ-MAT8 - Additional Residential Unit.
109. Mr Bigsby agreed with Ms. Wolfer that retrospectively enabling different housing types via individual resource consents may result in sub-standard outcomes, in comparison to comprehensively designed and integrated developments, where site design responds to the planned and anticipated built-form.
110. He considered that those operative MRZ provisions including the development area plan explicitly direct that provision is to be made for a variety of housing types and sizes, reflecting the neighbourhoods planned urban built character. There remains opportunity for a condition of consent to secure design variety, and the applicant could attempt to accommodate more than one housing typology.
111. Based on his prior assessment, he concluded that the single residential unit typology proposed, and lack of required design variety may result in potentially significant adverse residential character and amenity effects, as the proposal will not enable the neighbourhood's planned urban built character. In his view, the proposal was inconsistent with those related operative objectives and policies for the MRZ.
112. He maintained his recommendation that the applications be refused.
113. **David Compton-Moen** provided a supplementary urban design statement. His statement included a series of illustrations showing development potential under the MRZ rules compared to the Harrow Green proposal, and showing how he considered the proposed dwellings would relate in a positive manner to the street and meet all MRZ rules.
114. He considered that a high-quality residential development would result due to Kevlers total control over the development, density and type being consistent with the MRZ zone, and a level of residential amenity consistent with the MRZ standards.
115. He assessed the proposal against the POPDP residential objectives and policies, and considered the proposal consistent with RES-03, RES-05 and RES-08, in providing housing on sites of 300-400m<sup>2</sup> in area which are smaller than existing residential properties in the area which tend to be larger. This would add significant housing stock and cater for an aging population. He considered that on-site residential amenity would be of high quality. All sites would comply with the required District Plan standards meaning that the needs of residents would be met in a manner anticipated by the zoning and rules.
116. Mr Compton-Moen considered that the proposal would be consistent with the specific

MRZ objectives and policies, in providing housing supply to meet market demand and needs. He considered it clear that the MRZ is intended to enable or facilitate, as opposed to specifically require, a variety of housing types.

117. He assessed the proposal against the 6 relevant matters of discretion under RESZ-MAT1. He considered the proposal consistent with the planned urban form for the MRZ and that it met all MRZ requirements.
118. **Fiona Aston** provided a supplementary planning statement. She agreed with the identification of relevant MRZ objectives, policies and rules which now had legal effect, as contained in Mr Bigsby's supplementary statement, and that the applications now fell for consideration as a discretionary activity.
119. She agreed with Mr Bigsby's assessment of subdivision rules relating to restricted discretionary matters concerning flood certification and arterial road access. As she read Mr. Bigsby's assessment, the subdivision non-compliances had been addressed by conditions and the proposed subdivision is consistent with the subdivision objectives and policies. As such, in her opinion there was no basis why the subdivision consent cannot be granted on its merits notwithstanding the proposal relies on combined subdivision/land use package to determine the appropriate subdivision standards.
120. She noted that in relation to the land use consent, it is only a transport matters TRAN-R2/TRAN-REQ18 (land transport corridor creation standards) that is fully discretionary. This matter concerns road widths and has very specific matters of discretion under TRAN-REQ18. These matters were not focussed on urban design / amenity matters but on the safety of road users. Council reporting officers had not raised any issue with this in their assessments. Fundamentally, the applicant was choosing to use the public domain including wider road corridors to provide a sense of space and a source of amenity.
121. Ms Aston discussed the requirement for land use consent for more than 3 units on a site. This arose due to the staged approach taken by the applicant, as no stage is proposed to be limited to 3 residential units which would otherwise be a permitted activity.
122. The agreed draft conditions provided for staging. This meant that there would be a period of time when potentially more than 3 units would be established on a balance title, requiring resource consent. She considered this a timing issue – which led to a technical non-compliance driven off the need for scale within stages.
123. She noted that the applicant would control all elements of the development, where

units are only sold and occupied when the complete house and site development is complete. This was different to the normal subdivision pattern of new houses on bare and unfinished sites.

124. She questioned the merit of a full urban design analysis on the basis of a technical noncompliance created by the timing of stages, particularly when the end point is a fully finished residential package that is a permitted activity.
125. Ms Aston discussed the effect of the operative MRZ provisions. She considered they reflect the Hearing Panel's decision to closely align the MRZ provisions with the mandated provisions from the RMAA-EHS. The objectives and policies for the MRZ are those contained in the Enabling Act. The rule requirements for the residential activity are based on those mandated in Schedule 3A of that Act.
126. She did not support the continued concern by the reporting officers that in the absence of specific designs for each lot it is not possible to assess overall compliance, nor establish how the proposal complies with the Objectives and Policies. The dwellings will comply with MRZ Rule Requirements. They will be permitted activities.
127. She considered that if all dwellings comply with the land use rule requirements for the MRZ for permitted activities, it follows that the development must be consistent with the Objectives and Policies of the MRZ.
128. Ms Aston discussed the shift in policy brought about by the RMAA-EHS and considered that Policy 6 of the NPS-UD specifically recognises the fundamental shift in the planned urban built form created by RMA planning documents to accommodate the MDRS. It recognises that while some people may view significant changes to, amongst others, greater density of development, as impacting on amenity, these impacts are not to be regarded as an adverse effect. She did not consider that Ms Wolfer had acknowledged these shifts in her assessment, where she considered the development out of character for Selwyn.
129. She considered the Enabling Act and the NPS-UD together are setting a foundation for re-casting the urban character or planned urban form of Selwyn consistent with the direction set by Parliament. This had a narrow and specific purpose of addressing issues around housing supply, and demanded a change from what was seen as unnecessary intervention. Ms Aston considered that the application was being tested against an approach that had already been considered and rejected by the POPDP hearings panel as not being consistent with the RMAA-EHS.
130. Ms Aston did not agree with the approach taken by Mr Bigsby in relation to assessment against the Development Area provisions of DEV-RO14. She considered

that the provisions of the development area provisions of the POPDP are to be read as rules implementing the MRZ objectives and policies in the same way as all other rules. These objectives and policies give effect to the RMAA-EHS and had been imported into the POPDP without amendment. She considered them to be deliberately drafted in non-directive terms, consistent with the overall approach in the Enabling Act.

131. In this respect she considered that Mr Bigsby overreached in his assessment of the DEV-RO14 description of development “envisaging” different housing typologies. She did not consider that this statement directs that all four housing types had to be provided. She considered this supported by the MRZ Overview which includes that a range of housing types be “provided for”, which is an enabling rather than a directive term. She viewed the DEV-RO14 text as only describing what was possible – but not to direct a specific outcome.
132. Ms Aston agreed with Mr Bigsby that the MRZ as a whole should provide for a variety of housing types and sizes, however this is to be achieved at a zone level – and not at an individual development level. At a zone level she noted that the MRZ has been applied across existing and developed residential areas, therefore a zone wide diversity of typology is already partly achieved.
133. She also regarded the “planned urban form” as being the sum of all relevant planning provisions – and not just a reference to housing typologies.
134. She disagreed with Mr Bigsby’s contention that the lack of variety in the proposal would reduce housing choice – the proposal was providing for three bedroom family housing on smaller sites, which was not well provided for in the existing market. She considered this to be aimed at a wide demographic consistent with the demographic attracted to Rolleston generally. She considered his suggestion that a “single design typology” will adversely affect character and amenity of the locality ignored the reality of a developed and maturing/mature residential neighbourhood.
135. Ms Aston provided further comments on draft conditions relating to fencing, flood certification and building typology.

## **DISCUSSION**

### **Relevant Assessment Matters for Consideration**

136. The bundled applications require resource consent as a full discretionary activity, due to the land use not complying with TRAN-R2/TRAN-REQ18 relating to land transport corridor creation standards. This means that all effects are to be considered.

However, I also note that the matter triggering this status relates to a discrete issue, that as pointed out by Ms Aston, is focussed on matters concerning traffic safety. I agree that there is no relationship between the traffic safety matters subject to that rule, and the other subdivision and land use matters that would otherwise fall to be considered as controlled or restricted discretionary activities. I also note Mr Bigsby's supplementary evidence, which considers that the POPDP provisions provide a relevant framework for assessment, and note that Ms Wolfer has assessed the proposed residential units in relation to rule MRZ-REQ2.2 against the matters for discretion under RESZ-MAT1.

137. I agree with that approach – I consider that the matters for control under the POPDP rules fully cover the range of relevant effects pertaining to the applications, and have therefore applied them as a guide to my assessment and decision.

138. I have referred to the rules and matters for control or discretion relating to the following rules:

#### Subdivision

- SUB-R1.5 Subdivision in the Residential Zones (MRZ)
- SUB-R1/ SUB-REQ6 Access
- SUB-R17 Subdivision and Natural Hazards (Plains Flood Management Overlay)

#### Land Use

- NH-R.2 New Buildings and Structures in Natural Hazard Overlays
- EW-R5A Earthworks for Subdivision
- MRZ-R2/ MRZ-REQ2 Number of Residential Units per Site
- TRAN-R2/TRAN-REQ18 Land transport corridor creation standards
- TRAN-R4/TRAN-REQ2 Access restrictions
- TRAN-R4/TRAN-REQ3 Number of vehicle crossings
- TRAN-R4/TRAN-REQ4 Siting of vehicle crossings
- TRAN-R5/ TRAN-REQ7 Accessway design, formation and use

#### **Matters Agreed and Adopted**

139. As noted in the preceding sections of this decision there was agreement in relation to most matters pertaining to the applications, including effects on:

- Ecology;
- Education;



- Economic/retail effects;
- Construction effects;
- Reverse sensitivity;
- Earthworks;
- Servicing;
- Natural hazards

140. I adopt the advice of Mr Bigsby and the contributing s42A authors in relation to those matters.
141. I also note that there is now agreement between traffic engineers as to transportation related effects, and I am satisfied that the transportation related matters for control and discretion contained in subdivision rule SUB-R1/ SUB-REQ6, and in the five Transport rules identified above have been adequately addressed, and will result in minor or less than minor effects. I note that there was one remaining area of disagreement between Mr Collins and Mr Metherrall relating to the need for a monitoring condition. Neither Mr Bigsby nor Ms Aston support the inclusion of such a condition, and I agree that it would create unnecessary uncertainty.
142. I have also recorded the agreements met with two submitters, FENZ and MoE, as reflected in draft conditions.
143. Given the above matters of agreement, the remaining unresolved areas of concern relate to the issues of residential character and amenity, and urban design issues.

#### **Anticipated MRZ Environment**

144. I note that all experts now agree that the MRZ zoning is now operative, and the environment anticipated by those provisions provides the correct basis for effects assessment. There was however a remaining matter of disagreement that flavoured the assessment of Ms Wolfer, and that related to effects on adjacent properties in the Faringdon development to the north that had been developed under the Living Z provisions in the ODP. She was concerned with the effects of higher density development on those sites and favoured an approach with larger sites located on the periphery of the site.
145. I disagree with this concern. The adjacent former Living Z zoned sites have now also been rezoned to MRZ, therefore share the same objectives, policies and rules, and anticipated environmental outcomes as the application site. The rule framework does not distinguish between existing developed and undeveloped areas, nor does it require any 'transitional' treatment where they meet. In support of this I note that policy

RESZ – PC is to *“Apply the Medium Density Residential Standards across all relevant residential zones in the district plan...”*

146. I note that a complying controlled activity subdivision with vacant lots and subsequent land use under the MRZ rules could result in higher density and built form, and more significant ensuing effects in relation to the adjacent former Living Z sites than what is proposed here. There is no minimum allotment area in the MRZ, and provided the shape factor is met, vacant allotments can be created, and have up to three units built on each subject to compliance with built form standards.
147. By contrast, whilst some of the sites in the proposed subdivision do not meet the shape factor requirement, they will be required to contain complying single dwellings, and will not be created as vacant sites. I find that this will result in less density related effects on the adjacent land compared to other potential complying scenarios.

### **Building Typology / Planned Urban Form**

148. One of the core concerns of Ms Wolfer was the fact that only one building typology is proposed, being single stand alone dwellings. She considered that this did not fit with what she saw as a direction in the POPDP to require a variety of building typologies. She considered that this would be contrary to the objectives and policies of the POPDP and would not meet the planned urban form for the MRZ and DEV-RO14. This concern was shared by Mr Bigsby. I have assessed this issue against the relevant RES and MRZ objectives and policies and provisions and find as follows.

### Residential Objectives and Policies

149. Objective RESZ-O3 reads *“A wide range of housing typologies and densities are provided for to ensure choice for the community and to cater for population growth and changing demographics, including an ageing population.”*
150. The related policies concerning housing typology and planned form are in:
- RESZ-P1: *Enable a range of housing types and densities that achieve the planned urban form for each zone”; and*
  - RESZ-P3: *Achieve the planned urban form of residential zones while ensuring that all new buildings are:*
    1. *of a scale appropriate to the locality;*
    2. *sited in a location to enable privacy and retain open space and access to sunlight and daylight;*
    3. *designed to enable ancillary activities such as accessory buildings,*

*manoeuvring, and landscaping to be accommodated on the site.*

151. The above objective is that a wide range of typologies be “*provided for*”. I consider this to be an enabling rather than a directive wording – ie the objective is that the plan provides opportunities for a range of typologies. It does not say that a range of typologies is required in all instances. This is supported by the wording of policy RESZ – P1 which uses the word enable.
152. Policy RESZ-P3 then goes on to refer to achieving a planned urban form, I agree that this is a more directive wording, as it requires that something be achieved rather than enabled. This therefore requires an understanding of what the “*planned urban form*” relevant to the proposal is. Mr Bigsby has related this to the descriptions in DEV-RO14.

DEV-RO14 / Planned Urban Form

153. The land use description in DEV-RO14 states (underlining added):
- “The area is to achieve a minimum of 15 households per hectare, unless there are demonstrated constraints in which case a minimum net density of no less than 12 households per hectare shall be achieved.*
- Envisaged typologies include stand-alone, duplex, terrace, and apartment buildings.”*
154. I agree that the proposal will achieve a minimum of 15 houses per hectare. Mr Bigsby and Ms Wolfer have referred to the second sentence of the statement as being directive, and requiring the provision of all four typologies,
155. I have considered this, and the contrary opinion of Ms Aston, and find that the description is not directive. I consider the word *envisage* to be aspirational and enabling rather than directive. The word *include* also does not direct that all four typologies must be provided. The statement is simply descriptive and says that the listed typologies may occur. It is not a rule and it has no directive effect.
156. The proposal is also in consistent with other matters described in DEV-RO14 relating to Access and Transport, and to Open Space, Recreation and Community Facilities. The overall physical layout is in accordance with that shown in the outline development plan.
157. I further note that Mr Bigsby’s compliance assessment in his supplementary evidence states that the proposal is in accordance with the outline development plan, and complies with the requirements of rule SUB-R1/ SUB-REQ3 which sets out standards to be met where an area is subject to an outline development plan.

158. I therefore find that the proposal is in accordance with the planned urban form within area DEV-RO14.
159. Planned urban form is also influenced by what is permitted by the relevant rules. Given that the proposed dwellings will be required to comply with the MRZ permitted activity standards I agree that the built form of dwellings will be consistent with the planned MRZ outcomes. There are no rules requiring a variety of typologies, and I note that in the case of a complying subdivision creating vacant lots (meeting the 16m x 23m shape factor), there would be no compulsion to provide a variety of typologies.

#### MRZ Objectives and Policies

160. Objective MRZ-O1 reads:
- The Medium Density Residential Zone provides for a variety of housing types and sizes that respond to:*
- 1. housing needs and demands; and*
  - 2. the neighbourhood's planned urban built character, including 3-storey buildings.*
161. The related policy MRZ-P1 is to:
- Enable a variety of housing types with a mix of densities within the zone, including 3-storey attached and detached residential units, and low-rise apartments.*
162. The objective uses the wording *provides for*, which like the similar RES policy discussed above, I do not consider to be directive, Had it been intended to be directive it would have used stronger language such as to *require*... That is not the case here.
163. I have found that the proposal is in accordance with planned built form within DEV-RO14. I also agree with the evidence of Ms Aston that the proposal responds to an existing under-met need for smaller affordable allotments for family dwellings, rather than the larger single dwelling sites typical of Rolleston as developed under the former Living Z provisions. It seems to me that this is responding to housing needs and demands in accordance with the policy, and the purpose of the RMAA-EHS.
164. Again, as with the similar RES policy, I find that the word *enable* in policy MRZ-P1 has an enabling meaning, and does not direct that all types and densities be provided in all instances. I agree with Ms Aston that this has a broader application across the MRZ zone, and should not be interpreted as requiring mixed typologies and densities at a micro-level.
165. I therefore find the proposal to be consistent with the POPDP objectives and policies relating to building typologies and densities and planned urban form, and not contrary

to them.

### **Exemplar Designs / Lack of Building Designs**

166. Ms Wolfer considered that the lack of specific building designs for all sites created uncertainty as to on-site amenity effects for small sites in the absence of a building design commitment and the applicant's 'whitebox' approach for residential unit designs. She did not consider that the exemplar designs provided adequate assurance that all sites, particularly those under 400m<sup>2</sup> could be built on as permitted activities.
167. I note that the basis for her 400m<sup>2</sup> benchmark was based on the comparisons in her original evidence with the former Living Z zone minimum lot area, which she at that time considered to be an appropriate measure of acceptable density. Given that the MRZ zoning is now in force, I do not consider that the comparison with 400m<sup>2</sup> sites remains relevant. There is no minimum allotment area for subdivision in the MRZ, nor is there a minimum site area for residential units.
168. There is a 16m x 23m shape factor requirement for vacant allotments in the subdivision rules – this corresponds to an area of 368m<sup>2</sup> site size – not 400m<sup>2</sup>. It is therefore possible to carry out a subdivision with vacant 368m<sup>2</sup> allotments, with no commitment to building, and no requirement for mixed typologies, as a controlled activity. This is less than the average site area in the application. From this I must assume that the MRZ rules accept that permitted dwellings can be erected on vacant sites of this area.
169. The subdivision rules also anticipate that complying dwellings can be erected on smaller allotments, by providing for an exemption from the shape factor requirement. I agree that the exemplar plans provided by Mr Compton-Moen show that a permitted dwelling can be erected on the smallest 300m<sup>2</sup> site. The example used has a typical conventional site layout, and I am satisfied that this or similar complying designs are possible on all other sites. None of the allotments in the subdivision have unusual or difficult shape characteristics.
170. In this case, although building plans have not been provided for all sites, it is also not proposed to create vacant allotments prior to the issue of titles. The applicant has confirmed that the intention is to erect complying dwellings prior to subdivision, and in this respect I agree with Ms Aston that this merely creates a timing issue.
171. Provided that conditions of consent require dwellings to be erected to a certain finished condition prior to the issue of a s224 certificate for each stage, then the

uncertainty cited by Ms Wolfer cannot occur. Accordingly, whilst complying dwelling designs have not been provided at this stage, they will be necessary in order for the developer to complete the subdivision. I note that the present draft subdivision conditions do not include this, and I consider that an additional condition to this effect is necessary to ensure that the development occurs in the manner as stated by the applicant. The outcome will be permitted dwellings on complying subdivided MRZ sites.

172. For these reasons, I do not consider that the lack of exemplar designs for all sites will lead to uncertain outcomes or result in environmental outcomes that are not anticipated in the MRZ.

### **RESZ-MAT1 Residential Design Matters of Discretion**

173. Both Ms Wolfer and Mr Compton-Moen have carried out assessments against the matters of discretion contained in RESZ-MAT1.
174. Ms Wolfer considers the proposal inconsistent with matter 1, in that the lack of variation in typology is inconsistent with planned urban form. For reasons stated earlier in this decision, I do not agree that the MRZ provisions direct or otherwise require that a full variety of all typologies be provided in all cases, nor do the rules require this.
175. She does not consider that the remaining assessment matters in 2 – 6 can be properly addressed due to the lack of building designs for all sites.
176. Mr Compton-Moen has provided additional assessment and illustrations in his supplementary statement in relation to the matters in RESZ-MAT1 2 – 6, that respond to some of the concerns raised by Ms Wolfer, including demonstrating how the proposed development will be able to engage with the adjoining streets and open spaces, and achieve appropriate on site amenity, and variation in design and appearance.
177. I am satisfied that the proposal will be able to achieve outcomes consistent with that anticipated by the MRZ zoning.

### **CONCLUSIONS**

178. Based on my findings in the preceding sections, I find that the proposed subdivision and land use consents are consistent with the relevant objectives and policies of the POPDP, and that the environmental effects will be consistent with those anticipated by the now operative MRZ zoning.

179. Accordingly, I consider that consents can be granted subject to appropriate conditions, based on the draft conditions discussed between the applicant and Council staff, and the amendments following supplementary evidence, and further amendments as discussed in the body of this decision.

## DECISION

180. For the reasons detailed in this decision resource consent applications RC225715 and RC225716 are **granted** under sections 104, 104B, 104C, 108 and 220 of the Resource Management Act 1991 subject to the conditions contained in Annexure One.



Graham R Taylor

Hearing Commissioner

8 November 2023

