

**Subject to legal privilege**

Justine Ashley  
Selwyn District Council  
ROLLESTON

**Your reference**  
191742

**Our reference**  
1035366

12 June 2023

**By email**

Dear Justine

**Scope to recommend rezoning of 157 Levi Road, Rolleston****Introduction**

- 1 On 31 May 2023, the Independent Hearings Panel (**IHP**) issued Minute 14, requesting legal advice on whether there is scope for the IHP to recommend rezoning of 157 Levi Road, Rolleston (**site**) to commercial zoning in Variation 1 to the Proposed District Plan (**IPI**). This has been sought in a submission by Foodstuffs South Island Limited and Foodstuffs (South Island) Properties Limited (**Foodstuffs**).
- 2 Foodstuffs has provided a legal memorandum setting out why it considers the IHP has scope to recommend this rezoning, which we have reviewed.

**Overview**

- 3 In summary, our views are that:
  - 3.1 The rezoning of the site to Large Format Retail (**LFRZ**), as specifically sought by Foodstuffs, is not "on" the IPI.
  - 3.2 Accordingly, there is no scope for the IHP to recommend this change. This is due to the residential focus of the IPI, with only very limited commercial rezoning. Given this focus, our view is that a person reviewing the IPI would not have appreciated that commercial or LFRZ zoning of the site was a potential outcome.
  - 3.3 This scope issue cannot be overcome by clause 99 of the First Schedule to the RMA because this is an issue of scope of the Variation and whether the submission is "on" the Variation/IPI, not scope of the submission itself.

**Site**

- 4 157 Levi Road is a 7ha site in Rolleston. Under the Operative District Plan (**ODP**), the site is zoned Living Z. Under the PDP, the site was proposed to be a General Residential Zone (**GRZ**), with further GRZ to the north, south and west, and General Rural Zone (**GRUZ**) to the east.
- 5 Foodstuffs holds a resource consent to construct a Pak'nSave for the northern 4ha of the site, which we understand is currently being implemented. The residual 3ha of the site remains vacant.

- 6 Under the IPI it is proposed the site is Medium Density Residential Zone (**MRZ**). The GRUZ to the east is pushed back to the east slightly and the site would be surrounded by MRZ. It is also subject to a Development Area DEV-RO1.
- 7 Maps identifying this zoning in the PDP and IPI are included in Appendices 1 and 2 to this advice.

## Background

- 8 On 20 August 2022 Selwyn District Council (**Council**) notified the IPI to incorporate mandatory Medium Density Residential Standards. It did this primarily through the introduction of the MRZ, with the associated rules and standards.

- 9 In terms of commercial zoning, the IPI included the following amendments:

- 9.1 The Prebbleton Local Centre Zone (**LCZ**) was proposed to be rezoned to Town Centre Zone (**TCZ**).<sup>1</sup> The TCZ is described in the PDP as follows:

The Town Centre Zone encompasses the District's main commercial centres and provides a focal point for communities. As such, this zone will have a wide range of commercial activities. Within this zone, the Rolleston Town Centre Zone is the primary focus of the District's retail and commercial activity, followed by the Lincoln Town Centre.

- 9.2 Given this, Rule TCZ-R1 (in relation to buildings which are not residential units, allowing for establishment of buildings, and addition or modifications to an existing building, and the conversion of a residential unit for non-residential use), Rule TCZ-R6 (in relation to food and beverage activities), and Rule TCZ-R15 (for educational facilities) were expanded to include Prebbleton, as was Rule Requirement TCZ-REQ2-, (which provides for maximum height for buildings (12m), and structures which are not buildings (25m)). These amended provisions are identified in Appendix 4.

- 9.3 There were also new Neighbourhood Centre Zones (**NCZ**) provided for. The NCZ is described in the PDP as follows:<sup>2</sup>

The Neighbourhood Centre Zone (NCZ) encompasses small areas of commercial development that are located within a predominantly residential area. The purpose of the Neighbourhood Centre Zone is to provide primarily for small-scale commercial activities and community activities that directly support the immediate residential neighbourhood. It is important that the type and scale of activity within these zones is managed so that it supports the wider activity centre network in providing for the District's commercial needs, but does not detract from the broader function of the Town Centre Zone as the focal point for commercial activities and community activities.

Development within the Neighbourhood Centre Zone is expected to be attractive, meet the principles of good urban design, and be compatible with its residential surroundings.

- 9.4 The section 32 Report states that there is no requirement in the Resource Management Act 1991 (**RMA**) intensification provisions to make amendments to

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<sup>1</sup> [Section 32 Variation \(selwyn.govt.nz\)](#) at page 46.

<sup>2</sup> NCZ-Overview.

Commercial and Mixed Use Zones, but that for specific sites (Acland Park, Faringdon South, South East and South West) there are residential subdivisions which contain consented commercial areas, and the RMA provides a pathway to align the underlying zone with the consented commercial activities that do or will occur within those areas. It was proposed to rezone those areas to NCZ.<sup>3</sup> There was no rezoning to LFRZ or LCZ's proposed in the IPI.

- 9.5 These new NCZ areas are on the southern side of Rolleston, some distance from the site. A map identifying the land proposed to be zoned NCZ in relation to the site is included as Appendix 3.
- 9.6 The NCZ provisions were also amended in the IPI, specifically standard NCZ-REQ2, which related to the maximum height for any building or structure (which changes from 8 m to 11m plus 1m for a gable). This standard is triggered by buildings that are not residential units,<sup>4</sup> structures,<sup>5</sup> residential units,<sup>6</sup> and commercial activities not otherwise listed<sup>7</sup>. The section 32 Report confirmed that this change was to reflect the increased height in the MRZ, so a Commercial and Mixed Use Zone space is not dominated by residential development.<sup>8</sup>
- 10 On 16 September 2022, Foodstuffs filed its submission on the IPI.<sup>9</sup> In relation to this site, Foodstuffs' submission stated that:<sup>10</sup>

Foodstuffs intends to establish a PnS within the proposed PnS Rolleston site on Levi Road and Lincoln Rolleston Road. MRZ does not reflect the intended and future use of this site, and as such Foodstuffs considers it should be rezoned to an appropriate commercial zoning.
- 11 The relief sought by Foodstuffs (in relation to this site) was:

.. the removal of the proposed PnS Rolleston site from MRZ, and the rezoning of this site to an appropriate commercial zone to reflect the intended and future use, and such further consequential amendments as may be required by the rezoning.
- 12 We understand that no similar submission was made on the PDP by Foodstuffs.
- 13 On 30 May 2023, Foodstuffs filed a legal memorandum, outlining its submissions on the scope to rezone 157 Levi Road from MRZ to LFRZ. The PDP states that:<sup>11</sup>

The Large Format Retail Zone is located adjacent to the Industrial Zone and Special Purpose Port Zone in Rolleston, north of State Highway One and the main trunk railway line. The purpose of the Large Format Retail Zone is to provide primarily for retail activities that require a large floor area, providing a location where many of these types of activities can be located together and

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<sup>3</sup> [Section 32 Variation \(selwyn.govt.nz\)](#) at page 45.

<sup>4</sup> NCZ-R1.

<sup>5</sup> NCZ-R2.

<sup>6</sup> NCZ-R3.

<sup>7</sup> NCZ-R5.

<sup>8</sup> [Section 32 Variation \(selwyn.govt.nz\)](#) at page 46.

<sup>9</sup> [V1-0111 Foodstuffs South Island Limited and Foodstuffs \(South Island\) Properties Limited.pdf \(selwyn.govt.nz\)](#).

<sup>10</sup> [V1-0111 Foodstuffs South Island Limited and Foodstuffs \(South Island\) Properties Limited.pdf \(selwyn.govt.nz\)](#) at [33] and [34(c)].

<sup>11</sup> LFRZ-Overview.

developed as an integrated area. The Large Format Retail Zone is intended to support the overall retail offering within the district, without detracting from the core commercial activities located within the Rolleston Town Centre.

### Legal principles on scope

- 14 As the IHP is aware, the IPI process differs from the standard Schedule 1 plan making process. Clause 95(2) of Schedule 1 sets out which parts of the standard Schedule 1 process apply. Part 6 of Schedule 1 sets out the balance of the IPI process. Relevant to the question of scope, clause 6 of the First Schedule applies to submissions on IPIs.
- 15 Clause 6 of Schedule 1 sets out the submission process, and specifies (emphasis added):
- Once a proposed policy statement or plan is publicly notified under clause 5, the persons described in subclauses (2) to (4) may make a submission **on** it to the relevant local authority.
- 16 The legal principles relevant to determining whether a submission is "on" a plan change, in accordance with Schedule 1, clause 6 are well-settled.<sup>12</sup> It is submitted that the caselaw that applies to that clause when part of a normal First Schedule process, equally applies when that clause applies to an IPI process.
- 17 The legal principles relevant to determining whether a submission is "on" a variation are also well-settled.<sup>13</sup> The High Court confirmed in *Palmerston North City Council v Motor Machinists Limited*<sup>14</sup> that a two-limbed test must be satisfied:
- 17.1 The submission must address the proposed plan change itself, that is it must address the extent of the alteration to the status quo which the change entails; and
- 17.2 The Council must consider whether there is a real risk that any person who may be directly affected by the decision sought in the submission has been denied an effective opportunity to respond to what the submission seeks.
- 18 The rationale behind this approach relates to procedural fairness. Adequate notice and opportunity must be given to those who might seek to take an active part in the hearing if the proposed changes would not have been within the reasonable contemplation of the original reference.<sup>15</sup>
- 19 In considering the first limb, the High Court held in the *Motor Machinists* decision that whether the submission falls within the ambit of the plan change may be analysed by asking whether it raises matters that should be addressed in the section 32 report, or whether the management regime in the plan for a particular resource is altered by the plan change. Submissions seeking relief beyond that ambit are unlikely to be "on" the plan change. However, some extensions to a plan change are not excluded: incidental or consequential extensions are permissible if they require no substantial section 32 analysis.

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<sup>12</sup> These were considered by the Environment Court in *Te Tumi Kaituna 14 Trust v Tauranga City Council* [2018] NZEnvC 21.

<sup>13</sup> Considered more recently by the Environment Court in *Te Tumi Kaituna 14 Trust v Tauranga City Council* [2018] NZEnvC 21.

<sup>14</sup> *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC1290 at [80]-[82].

<sup>15</sup> *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556 at [74].

*Motor Machinists* is still good law and was recently applied by the Environment Court in *Meridian Energy Ltd v Mackenzie District Council*,<sup>16</sup> which concerned the district council's scope to make a number of amendments to the decisions version provisions of Plan Change 18 to the proposed Mackenzie District Plan.<sup>17</sup> In that case, the Environment Court noted the general principle that, once a territorial authority notifies a proposed plan change, it must notify a variation if it seeks to substantially change its ambit.<sup>18</sup>

- 20 The High Court in *Albany North Landowners v Auckland Council*<sup>19</sup> dealt with a mix of appeals and applications for judicial review in relation to the then Proposed Auckland Unitary Plan. The proceedings challenged a number of recommendations made by the Panel on the Proposed Plan. In summary, the High Court accepted that, in the context of a whole of plan review, the scope for a submission being "on" the plan was very wide. As the Proposed Plan process encompassed the entire region and purported to affect the framework for resource management for the next 30 years, it effectively addressed every aspect of the status quo in planning terms.<sup>20</sup> This is obviously quite a different situation from the relatively narrow scope of the SDC Variation/IPI.
- 21 More recently, the Environment Court found in *Bluehaven Management Limited v Western Bay of Plenty District Council*<sup>21</sup> that a submission which went beyond an alteration to the status quo as entailed in a plan change might still be in scope provided that:
  - 21.1 The plan change proposed some change to the management regime for the relevant activity; and
  - 21.2 The evaluation report prepared for the plan change addresses, or should have addressed, the matter raised in the submission.
- 22 *Calcutta Farms v Matamata-Piako District Council*<sup>22</sup> considered whether a submission seeking an extension of zoning is "on" a plan change. In *Calcutta Farms*, the plan change was PC47, which was part of a rolling District Plan review process, designed to address the planning controls and extent of zoning for Matamata, Morrinsville and Te Aroha. The land which was sought to be included was not identified in the original notified plan change. In its assessment, the Court focused on the purpose of the plan change, stating that:<sup>23</sup>

Whilst the scale and degree of a proposal can assist in determining whether a submission is "on a plan change", I do not read the Option 5 decision as indicating that it is determinative. Much will depend on the nature of the plan change which can assist to determine its scope, (whether it is a review or a variation for example) and what the purpose of it is.

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<sup>16</sup> *Meridian Energy Ltd v Mackenzie District Council* [2022] NZEnvC 105.

<sup>17</sup> The *Motor Machinists* decision was also applied by the Environment Court in *Re Otago Regional Council* [2021] NZEnvC 164.

<sup>18</sup> *Ibid* at [25].

<sup>19</sup> *Albany North Landowners v Auckland Council* [2017] NZHC 138.

<sup>20</sup> *Ibid* at [129] to [136].

<sup>21</sup> *Bluehaven Management Limited v Western Bay of Plenty District Council* [2016] NZEnvC 191 at [58]-[60].

<sup>22</sup> *Calcutta Farms Limited v Matamata-Piako District Council* [2018] NZEnvC 187.

<sup>23</sup> At [87].

## Assessment

- 23 After considering the caselaw set out above, the IPI itself, the section 32 report and the legal memorandum from Foodstuffs our view is that the rezoning of the site to LFRZ is not within scope of the IPI because:
- 23.1 The IPI is a focussed variation to the PDP, both geographically, in that it is focussed on the townships, rather than the entire district, and that it is not considering the appropriateness of all existing zoning across the district, including the locations of LFRZ. The IPI is not as wide as a full plan review. It is focussed on residential development, with very limited commercial changes proposed (as set out above). Accordingly, it is not sufficiently wide for the arguments made in *Albany North Landowners v Auckland Council*<sup>24</sup> (or other following cases) to be comparable – the IPI is not sufficiently wide to allow for essentially any submission to be "on" the IPI.
- 23.2 As set out above, the commercial rezoning in the IPI is highly specific, to include Prebbleton as a TCZ, and the inclusion of new NCZ's in Rolleston. Those were the only changes to the status quo. The section 32 Report does not contemplate any further commercial zoning other than these very specific locations, for very specific reasons. The section 32 assessment is referred to as important in the cases above, and it is clear that the IPI section 32 assessment did not contemplate commercial rezoning outside those specific locations. Those specific locations were the only zoning changes to the status quo for commercial activities.
- 23.3 The site does not appear to reflect the description of a NCZ, which is to allow for small-scale commercial activities and community activities that directly support the immediate residential neighbourhood. In contrast, what is proposed for this site is large format retail, with a consented Pak'n'Save and presumably further large format retail proposed.
- 23.4 This is not an extension to an existing proposed zoning – there is no nearby LRFZ (or general commercial zone) for this site to join to. Nor is this an alternative site for such zoning.
- 23.5 The LFRZ is a very specific zone only in one location in Selwyn and it is provided for a specific purpose. The IPI does not include the rezoning of any site to LFRZ, or to any commercial zoning other than one area to TCZ (being the upzoning of the existing LCZ in Prebbleton to TCZ, with no changes to the boundaries of this area) and 3 sites to NCZ (and this is reflected again in the section 32 report). The NCZ is to acknowledge existing underlying or consented land use. Again, this demonstrates that there was no intention (or scope) for the IPI to deal with any rezoning to LFRZ.
- 23.6 The caselaw is clear that a section 32 assessment is persuasive on assessing scope, and that if a submission is "on" a variation, it would be expected that there either was (or should be) a section 32 assessment touching on the proposal. A proposal which would require a further substantial section 32 assessment is unlikely to be within scope. As discussed above, there is no section 32 assessment of the rezoning of the site to LFRZ, nor should there have been, given the rezoning was not contemplated in the IPI. Further, such a rezoning would require a further comprehensive section 32

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<sup>24</sup> *Albany North Landowners v Auckland Council* [2017] NZHC 138.

assessment (see as an example the detailed section 32 assessment completed by Ms Collie)<sup>25</sup>, confirming whether such a rezoning is appropriate.

- 23.7 In our view, any person reviewing the IPI would not have anticipated that the site would be rezoned LFRZ (or that any site could be zoned LFRZ) as part of the IPI process. There is no indication in the IPI or the section 32 report that such a rezoning was contemplated or expected.
- 24 While the existing consent demonstrates some similarities with the other NCZ rezoning proposed, in the sense that the rezoning may reflect some of the future development of the site, this is only the case for part of the site, not the entire site. Further, this may be a reason for a substantive rezoning, but it is not relevant for scope because in our view, the fundamental problem is that a person reading the plan would not necessarily be aware of the resource consent, or what works have been (or are going to be) completed on the site.
- 25 Accordingly, our view is that the LFRZ rezoning sought by Foodstuffs is not "on" the Variation and therefore, it is out of scope for what the IHP can recommend. The very specific nature of the IPI in relation to commercial rezoning, and the more limited focus (than a full plan review) of the IPI in terms of implementing residential development all support the argument that a potential submitter would not have appreciated the potential commercial rezoning of this site, unrelated to any of the sites assessed in the section 32 report.
- 26 Given this, there is no need to consider whether the rezoning is within scope of the submission, or whether the rezoning is available under the IPI.
- 27 For completeness, we note that this issue of scope is different to the scope referred to in clause 99 of the First Schedule to the RMA. Clause 99 allows the IHP to make recommendations that are outside "scope of submissions made on the IPI", as long as the matter is raised at the hearing. The issue here is the scope of the Variation and whether the submission is "on" the Variation. Accordingly, clause 99 of the First Schedule does not overcome the scope issue we have identified above.
- 28 We also observe that there is some reliance placed on Policy 3(d) of the NPS-UD for the rezoning by Foodstuffs.<sup>26</sup> Policy 3(d) of the NPS-UD deals with sites which are "within and adjacent to" neighbourhood centre zones, local centre zones, and town centre zones, or equivalent. Foodstuffs asserts that LFRZ is such an equivalent zone, without any analysis in the legal submissions.<sup>27</sup>
- 29 Under clause 1.4(4) of the NPS-UD a reference to a zone is as described in the National Planning Standards, or the nearest equivalent (if the Council hasn't implemented the Standards). In our view, there are two issues with the submission by Foodstuffs:
- 29.1 The site is not "within and adjacent to" any of the relevant zones – it is adjacent to MRZ on one side and GRUZ on the other and some distance from any zoning referenced in Policy 3(d), so does not meet the "within and adjacent to" test.

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<sup>25</sup> [V1-0111 Foodstuffs - Anita Collie \(Planning\).pdf \(selwyn.govt.nz\)](#)

<sup>26</sup> [V1-0111 Foodstuffs South Island Ltd & Foodstuffs \(South Island\) Properties Ltd - Legal Submission.pdf \(selwyn.govt.nz\)](#) at [20]

<sup>27</sup> [V1-0111 Foodstuffs South Island Ltd & Foodstuffs \(South Island\) Properties Ltd - Legal Submission.pdf \(selwyn.govt.nz\)](#) at [20]

- 29.2 LFRZ is not an "equivalent" zone under Policy 3(d) to Neighbourhood Centre, Local Centre or Town Centre Zones. These are 4 different zone types under the National Planning Standards and LFRZ is different to the other 3 zones, not equivalent to them.

### **Conclusion**

- 30 Our conclusions are set out in the Overview above.

Yours sincerely



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**DLA Piper New Zealand**

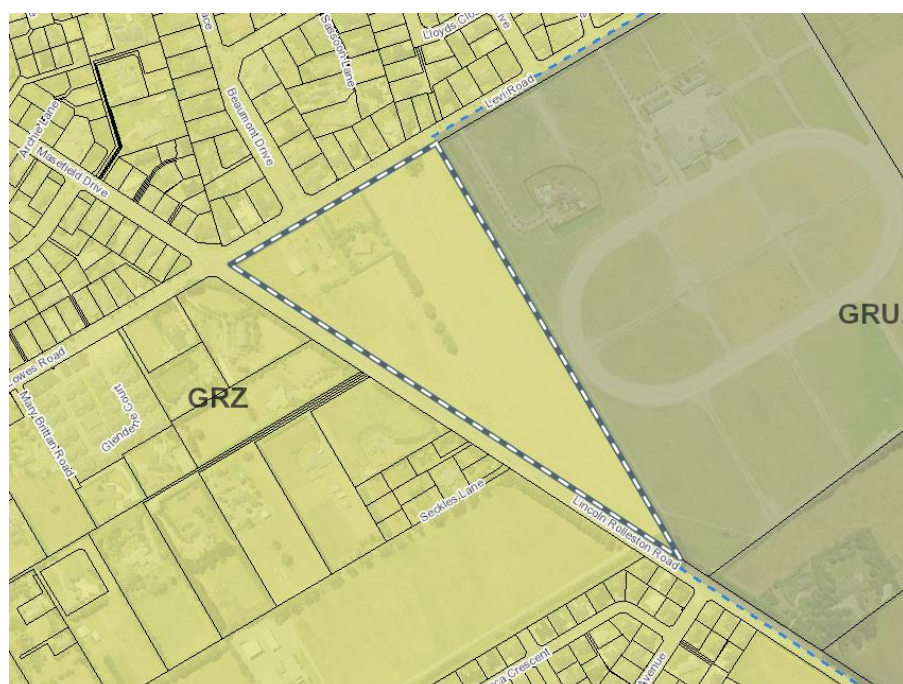
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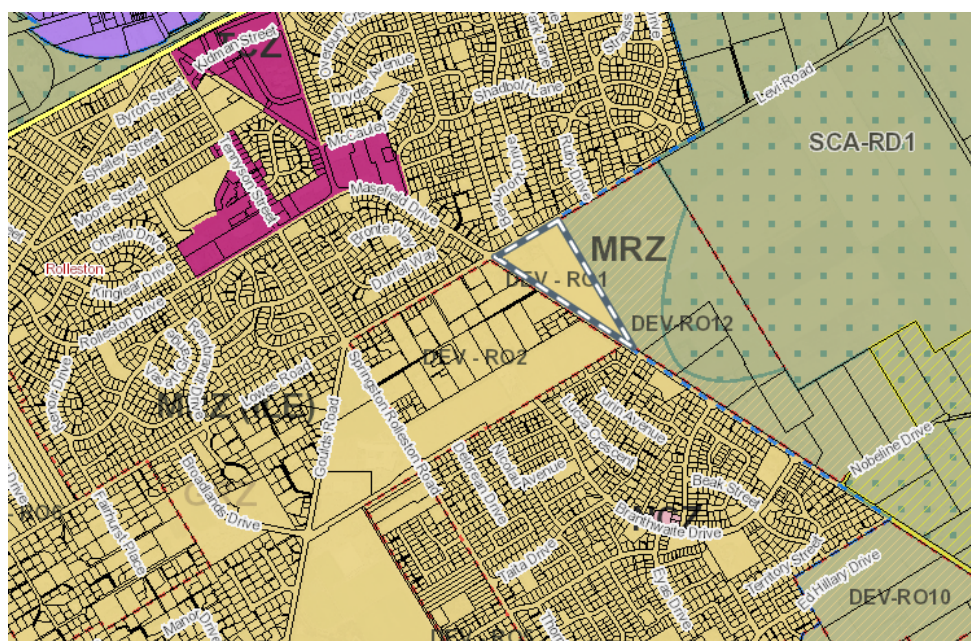
**DLA Piper New Zealand**



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## Appendix 4: Tracked changes version of the Plan

Red text indicated IPI amendments to commercial rules

PDP		
NCZ-REQ2	Height	
	The maximum height of any building or structure shall be <del>8m</del> <b>11m plus 1m for a gable.</b>	<b>Activity status when compliance not achieved:</b> When compliance with any of NCZ-REQ2.1. not achieved: RDIS <b>Matters for discretion:</b> The exercise of discretion in relation to NCZ-REQ2.2. is restricted to the following matters: CMUZ-MAT4 Height
TCZ-R1	Any buildings that are not otherwise listed in TCZ-R3 (subject to cl16(2) amendment)	
TCZ (Darfield, <b>Prebbleton</b> and Leeston)	<b>Activity Status: PER</b> The establishment of one of more buildings; The conversion of all or part of an existing residential unit for non-residential use; Any addition or modification to an existing building. <b>Where:</b> The development has a total gross floor area of less than 450m <sup>2</sup> . And the activity complied with the following rule requirements: TCZ-REQ1 Servicing TCZ-REQ2 Height TCZ-REQ3 Height in relation to boundary TCZ-REQ4 Setbacks TCZ-REQ5 Fencing and outdoor storage areas TCZ-REQ7 Landscaping TCZ-REQ8 Active frontage TCZ-REQ9 Location of car parking	<b>Activity status when compliance not achieved:</b> When compliance with any of TCZ-R1.1a., TCZ-R1.2a., or of TCZ-R1.3a., is not achieved; RDIS When compliance with any rule requirement listed in this rule is not achieved: Refer to TCZ-Rule Requirements <b>Matters for discretion:</b> The exercise of discretion in relation to TCZ-R1.4. is restricted to the following matters: CMUZ-MAT3 Urban Design <b>Notification:</b> Any application arising from TCZ-R1.4. shall not be subject to public or limited notification and shall be processed on a non-notified basis.
TCZ-R6	Food and Beverage Activities	
Leeston, Darfield, <b>PREC2, PREC5 and Prebbleton</b>	<b>Activity Status: PER</b> Any food and beverage activity. <b>Where this activity complies with the following rule requirements:</b>	<b>Activity status when compliance not achieved:</b>

PDP		
	TCN-REQ1 Servicing TCN-REQ5 Fencing and outdoor storage areas TCN-REQ8 Active frontage	When compliance with any rule requirement is listed in this rule is not achieved: Refer to TCZ – Rule Requirements.
<b>PREC1</b>	<b>Activity Status:</b> PER Any food and beverage activity. <b>Where this activity complies with the following rule requirements:</b> The activity is not a drive-through activity.	<b>Activity status when compliance not achieved:</b> When compliance with any of TCZ-R6.3.a. is not achieved: DIS When compliance with any rule requirement is listed in this rule is not achieved: Refer to TCZ-Rule Requirements.
<b>TCZ-R15</b>	<b>Education Facilities</b>	
<b>TCZ (Darfield, Prebbleton and Leeston)</b>	<b>Activity Status:</b> PER Any education facility. <b>Where:</b> TCZ-REQ1 Servicing TCZ-REQ5 Fencing and outdoor storage areas TCZ-REQ8 Active frontage	<b>Activity status when compliance not achieved:</b> Activity status when compliance with any rule requirement listed in this rule is not achieved: Refer to RCZ Rule Requirements
<b>TCZ (Lincoln and Rolleston)</b>	<b>Activity Status:</b> PER Any education facility. <b>Where:</b> The education facility (excluding any associated access and foyer) is not located on the Ground Floor. <b>And the activity complies with the following rule requirements:</b> TCZ-REQ1 Servicing TCZ-REQ5 Fencing and outdoor storage areas TCZ-REQ8 Active frontage	<b>Activity status when compliance not achieved:</b> When compliance with any of TCZ-R15.3.a. is not achieved: DIS Activity status when compliance with any rule requirement listed in this rule is not achieved: Refer to TCZ-Rule Requirements.
<b>TCZ-R24</b>	<b>Waste and Diverted Material Facility ("subject to cl16(2) amendment")</b>	
	<b>Activity Status:</b> NC Any waste and diverted material facility.	<b>Activity status when compliance not achieved:</b> N/A
<b>TCZ-REQ2</b>	<b>Height</b>	
<b>Any Town Centre Zone except as specified below</b>	The maximum height of any building shall be 10m. The maximum height of any structure that is not a building shall be 25m.	<b>Activity status when compliance not achieved:</b> When compliance with any of TCZ-REQ2.1. or TCZ-REQ2.2 is not achieved: RDIS

PDP		
		<b>Matters for discretion:</b> The exercise of discretion in relation to TCZ-REQ2.3. is restricted to the following matters: CMUZ-MAT4 Height
<b>PREC1</b>	The maximum height of any building shall be 15m.  The maximum height of any structure that is not a building shall be 25m.	<b>Activity status when compliance not achieved:</b> When compliance with any of TCZ-REQ2.5. or TCZ-REQ2.6 is not achieved: RDIS  <b>Matters for discretion:</b> The exercise of discretion in relation to TCZ-REQ2.7. is restricted to the following matters: CMUZ-MAT4 Height in Relation to Boundary
<b>PREC2, PREC4, PREC5 and Prebbleton</b>	The maximum height of any building shall be 12m.  The maximum height of any structure that is not a building shall be 25m.	<b>Activity status when compliance not achieved:</b> When compliance with any of TCZ-REQ2.9. or TCZ-REQ2.10 is not achieved: RDIS  <b>Matters for discretion:</b> The exercise of discretion in relation to TCZ-REQ2.11. is restricted to the following matters: CMUZ-MAT4 Height