

Decision of majority of Commissioners

194. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104 and 104B and Part 2 of the RMA, the majority of the Commissioners grant the resource consent subject to the conditions in Appendix 1.
195. The reasons for our decision are set out in our findings and final assessment above.



K R M Littlejohn
Chairperson
(for the majority of Commissioners)

13 January 2017

Decision of Commissioner Serjeant

196. The decision above represents the majority view of the three Commissioners. The following section sets out my dissenting view.
197. At the outset, it needs to be clear that the area of dissention lies only in relation to the bulk, location and design of the buildings, and even then only Buildings 2, 3 and 4. I consider that the adverse effects of these buildings and their inconsistency with the objectives and policies for the Devonport Peninsula Precinct are such that the application should be declined. The Precinct objectives, policies and related assessment criteria focus on both intensification and a quality built environment, and I consider that to fail in either of these matters is to fail overall.
198. If a partial consent was an option (i.e. consent only to Stage 1, comprising Buildings 1 and 5, and to Building 6), then I would have granted that consent. However, as such a partial consent is not an option, my decision is to decline the application in total.
199. The reasons for my alternative view are set out below.

The Planning Provisions

200. The Mixed Housing Suburban zone and Devonport Peninsula Precinct provisions must give effect to the objectives and policies in Regional Policy Statement (RPS) Chapter B2.2 Urban growth and form, B2.3 A quality built environment, and B2.4 Residential growth, as referred to us by Dr Mitchell and Mr Dales. The RPS chapters refer to optimising “the efficient use of the urban area”, enabling “the efficient supply of land for residential ... and social facilities”, providing “choices that meet the needs of people and communities for a range of housing types”. The intensity of the proposed development achieves all of these outcomes, as enabled by the Devonport Peninsula Precinct provisions, and is supported. The RPS chapters also refer to a “higher-quality urban environment”, with objectives that development responds “to the intrinsic qualities and physical characteristics of the site and area, including its setting”,

encourages “innovative design to address environmental effects”, promotes the “health and safety of people and communities”.

201. Further, “residential intensification [that] supports a quality compact urban form”, “residential areas [that] are attractive, healthy and safe with quality development that is in keeping with the planned built character of the area”. These objectives are to be achieved by managing “the form and design of ... development so that it ... supports the planned future environment, including its shape, landform, outlook, location and relationship to its surroundings, including landscape and heritage” and “meets the functional, and operational needs of the intended use”. Specific reference to the precinct approach is found in the policy to “recognise and provide for existing and planned neighbourhood character through the use of place-based planning tools” and managing “built form, design and development” to achieve the descriptions set out in those placed-base plan provisions.
202. The relevant provisions of the MHS zone and DPP against which to assess the application are set out above. We received very little in the way of analysis from the parties of the place-based DPP provisions and the ‘description’ of what the “built form, design and development” is to achieve. However, I508.1 Precinct description states that the precinct enables additional building height and increased intensity as a consequence, however “provisions are designed to ensure that the effects generated as a result of the additional height [up to five storeys] and intensity are mitigated”. This achieved in a number of ways:
- By providing for variability in building height across each sub-precinct, responding to the unique characteristics of each site and surrounds;
 - By ensuring a mix of building heights across Areas 1 and 2 (the Wakakura Sub-precinct only has Area 1 within it, being the 16m/17m height maximum area);
 - By specifying that development that exceeds the MHS zone height limits, but not the DPP height limits, is a restricted discretionary activity, to be processed by way of non-notification;
 - Including assessment criteria for such a restricted discretionary activity.
203. We did not receive any analysis from the parties on these criteria, despite their relevance to a full discretionary application. The assessment criteria (I508.8.2.1.1 to 3) provide guidance as to the manner in which the additional height and intensity within the site is to be mitigated. As set out at the beginning of this dissenting view, the focus is on the bulk and location and design of buildings, so criteria I508.8.2.1.2 on transport matters is not considered further. In relation to I508.8.2.1.3, it is considered that the proposal performs acceptably in relation to open space, tree retention and access along the coast, despite criticism in relation to sunlight access to some of the buildings. However, the critical issue in this dissenting view is the performance of the application against the matters raised in I508.8.2.1.1. In particular:
- Wider dominance and visual effects;
 - The mix of building heights across Area 1 such that views of higher buildings should be broken up by buildings of lesser height to reduce dominance and bulk;

- The variation of built form when viewed from streets, public open space and residentially zoned areas.

The Evidence

204. The evidence on these matters is recorded above. The applicant's design and visual assessment evidence was provided by Mr Allison and Assoc Prof Bird. As the planning and design of the proposal had commenced well before the relevant criteria were known, and had not changed in any significant way, by reason of simple chronology, it had not specifically responded to it. In any event, Mr Allison did not refer to the criteria as guiding principles in the design and Assoc Prof Bird did not refer to them as components of his assessment methodology (for example, his 19 key design objectives).
205. Mr Allison is clearly very experienced in designing Ryman villages. He also considered that the design blended in with the existing architecture of the area and adjacent sites. However, in response to a question from the Commissioners he did not identify any specific ways in which the design had responded to the locality, beyond a general compliance with the height limits within the three areas of the sub-precinct and large building setbacks. Whereas the criteria in I508.8.2.1.1(b) envisage a mix of building heights within Area 1, and some building heights being lesser than the 16m height limit so as to reduce dominance and bulk, the entire development (Building 6 excepted) is contained within five large buildings which have little variation in built form.
206. At this point it must be acknowledged that Building 1 contains the administration, communal facilities, hospital, dementia unit, rest home and assisted living suites, all of which support the integrated levels of care needed for increased levels of dependency amongst the occupants. Whilst many submitters, and the expert evidence of Richard Reid is critical of the size of Building 1, my view is that for Building 1, 'function' needs to determine 'form' and all these facilities need to be in one building. However, that argument does not stand for the buildings containing independent apartments, where Ryman's choice of large buildings must be seen as driven mainly by cost, at the expense of responding to the precinct 'description'. It is also noted, as it was during the hearing, that the Narrow Neck buildings are the same as those for the proposed Ryman retirement village in Blockhouse Bay. Consequently, the extent to which the design responds to the locality, and the criteria, must be doubted.
207. Assoc Prof Bird was engaged as an independent urban design and visual assessment expert following the design process. His assessment utilised photo montages of the proposed development, and illustrations of "buildings built to the Proposed Auckland Unitary Plan decision [representing] the additional height permitted, enabled by the Devonport Peninsula Precinct". The applicant's evidence was that the proposed development had similar effects as to 'permitted' buildings. My view is that the images of the PAUP buildings cannot be relied on for a comparative assessment as the only buildings that are permitted on the site are those complying with the MHS height limit, with all buildings taking advantage of the DPP height limits requiring assessment under the criteria. As such it is not realistic to suggest that 'complying' buildings would look anything like what was depicted in terms of probable bulk and location (see for example the higher buildings in Drawing RC40A).

208. In terms of the visual effects of the proposed buildings in the wider landscape, Assoc Prof Bird came to the overall conclusion that the visual effects were no more than minor. I accept that such an overall conclusion is necessarily a combination of assessments from the various viewpoints, and in relation to the more distant viewpoints from North Head and Mount Victoria, it is agreed that the proposed development, although clearly visible and differentiated from the residential areas surrounding the site, is a small part of a large view. That is not the case with closer views from the south, in particular from Ngataringa Park. As noted previously in the decision, the Commissioners conducted a second site visit, taking in Viewpoints 7 and 8 at the park. Irrespective of the confirmation that the visual montages prepared according to the NZILA Best Practice Guide: Visual Simulations were to be taken as an accurate representation of the buildings in the landscape, it was the view of all Commissioners that these did not match the human eye. In terms of Viewpoints 7 and 8, it is the 'close up' versions of these viewpoints as shown on Drawing RC38 (which are similar to Assoc Prof Bird's base photos in Figures 16 and 17 in his original assessment), not the NZILA montages on Drawings RC38B, that are more real. These viewpoints are particularly important, as viewpoints from public open space are an essential part of the criteria. Assoc Prof Bird came to the conclusion that the proposal will have 'less than minor' adverse visual, dominance or overlooking effects on its various receiving environments. That is clearly not the case from Viewpoints 7 and 8 in particular, and likely other viewpoints from the south such as Viewpoint 17 on Lake Road where the buildings appear as a continuous line of multi-storey buildings, which is not the outcome sought by the criteria.
209. The evidence of Richard Reid, and the statements by other architects referred to above, albeit not appearing as independent experts, came to different conclusions to Assoc Prof Bird on matters of design and visual assessment. My view is confined to the public aspects of this assessment (as opposed to the internal design matters such as shading). Collectively, the aspects of the various evidence and presentations that are preferred as they respond more adequately to the assessment criteria are:
- The development requires greater porosity in order to respond to the surrounding built fabric, a point made by Mr Richards. This need not include the Regent Street 'viewshaft' component favoured by Mr Reid, as I consider this to be unrealistic, but it should include a finer grained approach to the development, apart from Building 1 as noted above. While Assoc Prof Bird emphasised the discrete viewshafts along the Ngataringa Road frontage, I consider that the bulk of buildings prevents the emulation of that aspect of neighbourhood character.
 - The development does not respond to the elevated topography on the western slope, which, unlike the eastern part of the site, does not drop steeply away from Ngataringa Road and so enables smaller scale apartment buildings, as in other Ryman villages, as Mr Reid stated. The design response has instead been to excavate the site in this area, and so enable larger floor plate buildings within the western slope. I consider that the western part of the development should be designed to engage with the neighbourhood in a more graduated way than Buildings 2, 3 and 4 currently do.

- Visual assessment from the southern side of the site is an important aspect of the overall wider dominance and visual assessment, and the criteria. From some of these viewpoints the development has adverse visual and dominance effects that are significant (Mr Reid).
- Elements of visual assessment against which the overall development fail (with reference to Mr Reid's factors) are the bulk and scale of individual buildings in relation to the surrounding built and natural environment, the uninterrupted length of the overall development, the degree of integration with the housing grain of the neighbourhood, and the solidity and massing of the building.

Conclusion

210. My conclusion is that the application should be declined. Unlike the majority decision, my finding is that the application fails on the facts in terms of its ability to meet the assessment criteria, and this failure is sufficient to decline that application given the strong focus on design issues in order to meet the DPP description. This application is the first to be tested against the provisions of the DPP that provide for the intensification of six areas, beyond that otherwise provided for by the underlying zoning. This intensification will generate significant change in each of these areas, subject to the assessment criteria referred to above (and likely no public input, given the non-notification provision). While acknowledging that this application is for a retirement village, and not a typical apartment development, it would be unfortunate if the interpretation of the DPP provisions were seen to support the proliferation of large bulky buildings that have little or no variation in built form and adopt an undifferentiated 16m height limit within Area 1. While the achievement of greater intensity is supported, this does not have to be at the expense of the existing environment or a quality outcome. As noted at the beginning of this dissenting view, the RPS provisions of the Unitary Plan envisage both increased intensity and a high quality built environment, the two goals are not mutually exclusive, as set out in the Auckland Plan.
211. Finally, to articulate an outcome which I would have supported, this would include Building 1 and potentially Building 5, being lower within the site, as proposed, but the reconfiguration of Buildings 2, 3 and 4 to smaller apartment blocks (with variably 8, 12 or 16 apartments in each) of varying design still achieving the 132 apartments contained by the existing proposed buildings, but with a finer grain and greater porosity, that provided a better transition into the Ngataringa Road neighbourhood, and a differentiated visual effect on the open space to the south.



Dave Serjeant
Commissioner

13 January 2017