

Proposed District Plan Change 8 – Sites in the Central Commercial Activity Area adjacent to residential areas

Section 32 Report

1. Introduction

Proposed Plan Change 8 – Sites in the Central Commercial Activity Area adjacent to residential areas, introduces to Chapter 5A Central Commercial Activity Area, provisions and a rule to control the height of buildings and structures.

2. Current Provisions

The District Plan includes provisions in Chapter 5A which place a height restriction, among other controls, on sites in the Central Commercial Activity Area which “abut” residential or recreation activity areas. These provisions are reproduced below:

5A 1.2.5 Sites Abutting Residential or Recreation Activity Areas

Issue

It is important that the amenity values of residential or recreation activity areas abutting properties in the Central Commercial Activity Area are protected.

Objective

Where sites in the Central Commercial Activity Area abut residential or recreation activity areas adverse effects on these latter areas are avoided, remedied or mitigated.

Policy

(a) To ensure that where sites in the Central Commercial Activity Area abut residential or recreation activity areas, there are special controls relating to height, yards, landscaping, screening, access, servicing, signage and lighting to protect amenity values.

5A 2.1.1 Permitted Activities – Conditions

(g) Sites Abutting Residential or Recreation Activity Areas:

Where a site abuts a residential or recreation activity area, the following conditions shall apply:

(i) The maximum building height is 12 metres. All buildings and structures shall comply with the recession plane requirements of abutting residential or recreation activity areas.

- (ii) Side yard - minimum depth of 3 metres where the site abuts a residential or recreation activity area.
Rear Yard - minimum depth of 8 metres where the site abuts a residential or recreation activity area. This may be reduced if there is a service lane to the rear of the site and sufficient provision has been made for loading/unloading operations.
- (iii) Where a site abuts a residential or recreation activity area all outdoor storage and servicing areas must be screened by a close-boarded fence or a fence made of solid material with a minimum height of 1.5m and a maximum height of 1.8m.
- (iv) All car parking areas, not contained within buildings, which abut a residential or recreation activity area shall be screened by a close-boarded fence or a fence made of solid material with a minimum height of 1.2m and a maximum height of 1.8m.
- (v) At least 5% of car parking areas not contained within buildings must be landscaped. Areas within the parking area and areas adjoining or fronting roads must be landscaped.
- (vi) Where a site abuts a residential or recreation activity area, servicing of activities must not occur between the hours of 10.00pm and 7.00am.

The purpose of these provisions is to ensure that amenity values of residential activity areas abutting the Central Commercial Activity Area are not adversely affected by the use of land for commercial purposes.

3. Background

Concern has been raised that some sites in the Central Commercial Activity Area that are adjacent to residential activity areas may be redeveloped in a manner that the amenity values of the adjacent residential activity areas may be adversely affected as the current rules in the District Plan are inadequate. The current rules in the District Plan only apply to sites in the Central Commercial Activity Area that abut residential activity areas. Case law suggests that the word “abut” requires physical contact between sites or sites having the same common boundaries. Proposed Plan Change 8 is aimed at providing more certainty and greater protection to residential properties adjacent to the Central Commercial Activity Area from the effects of development in the Central Business District.

4. Evaluation

Section 32 of the Resource Management Act 1991 requires an evaluation to be carried out before a proposed District Plan Change is publicly notified. The requirements of that evaluation are –

- (3) *An evaluation must examine-*
 - (a) *the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*

(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

(4) For the purposes of [[the examinations referred to in subsections (3) and (3A)], an evaluation must take into account –

(a) the benefits and costs of policies, rules, or other methods; and

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

(a) Achieving the purpose of the Resource Management Act 1991

Achieving the purpose of the Act requires that the use and development of land to avoid, remedy or mitigate any adverse effects on the environment. To this end, the District Plan contains an objective and policy which is specified in 5A 1.2.5 and given effect to in Rule 5A 2.1.1(g). As mentioned above, concerns have been raised that the current provisions in the District Plan are inadequate to serve their intended purpose – the avoidance and mitigation of adverse effects on the amenity values of adjacent residential properties.

Under the status quo, the provisions only apply to a fraction of those residential properties potentially affected by their proximity to the Central Commercial Activity Area. The District Plan could potentially permit residential properties separated from the Central Commercial Activity Area by a road to be subject to much greater effects than those residential properties separated by a property boundary. While the separation distance of a road does provide some mitigation against effects such as noise, odour, and light spill, given the height of buildings currently permitted in the Central Commercial Activity Area, it provides little mitigation against effects such as visual dominance, shading and loss of privacy. For these reasons it is proposed that the objective and ensuing policies and methods be amended. A height restriction of 12 metres is to apply to buildings and structures within 30 metres of a residential activity area, while those buildings and structures more than 30 metres from a residential activity area must comply with the residential recession plans measured from the nearest residential boundary. The proposed new provisions are as follows:

Changes to Chapter 5A – Central Commercial Activity Area

1. **Add new 5A 1.2.6 “Heading”, “Issue”, “Objective”, “Policy” and “Explanation and Reasons” to 5A 1.2 Site Development Issues as follows:**

“5A 1.2.6 Sites that do not abut residential activity areas but are adjacent to residential activity areas

Issue

It is important that adverse effects of buildings and structures in the Central Commercial Activity Area on adjacent residential activity areas are mitigated.

Objective

To mitigate adverse effects caused by buildings and structures in the Central Commercial Activity Area on the amenity values of adjacent residential activity areas.

Policy

(a) To ensure that where buildings and structures in the Central Commercial Activity Area are within 30 metres of a residential activity area, adverse effects on amenity values of adjacent residential activity areas are mitigated.

(b) To ensure that buildings and structures in the Central Commercial Activity Area comply with the recession plane requirements of the General Residential Activity Area, which will be measured from the natural ground level of the nearest residential activity area boundaries so that adverse effects of buildings and structures on adjacent residential amenity values are mitigated.

Explanation and Reasons

Buildings and structures in the Central Commercial Activity Area may adversely affect amenity values of adjacent residential activity areas. Examples of such adverse effects on residential amenity values can include visual dominance and possible overshadowing. Placing a height restriction on buildings and structures within 30 metres of a residential activity area will ensure that such adverse effects are mitigated. In addition, complying with the recession plane requirements of the General Residential Activity Area (measured from the natural ground level at the nearest residential activity area boundaries) for buildings and structures more than 30 metres from a residential activity area will provide for a transition in the height of buildings between commercial and adjacent residential activity areas, thereby protecting residents from the impact of buildings and structures.

2. **Add new Rule** to 5A 2.1.1 “Permitted Activities – Conditions” as follows:

“(h) Sites that do not abut residential activity areas:

Where a site does not abut a residential activity area, the following conditions shall apply:

- (i) The maximum building height for buildings and structures within 30 metres of a residential activity area shall be 12 metres.
- (ii) Buildings and structures more than 30 metres from a residential activity area shall comply with the recession plane requirements of the General Residential Activity Area. This shall be measured from the natural ground level at the nearest residential activity area boundaries adjacent to the site.

And renumber **(h)** Building Frontages and Display Windows and **(i)** General Rules as **(i)** and **(j)** respectively.

(b) Appropriateness of parameters

The parameters of the provisions were determined using comparative analysis of the rules applying to abutting sites and GIS information. A maximum height of 12 metres is permitted on sites in the Central Commercial Activity Area abutting residential properties. It is considered that the maximum height permitted where sites would be abutting but for the presence of a road should also be 12 metres.

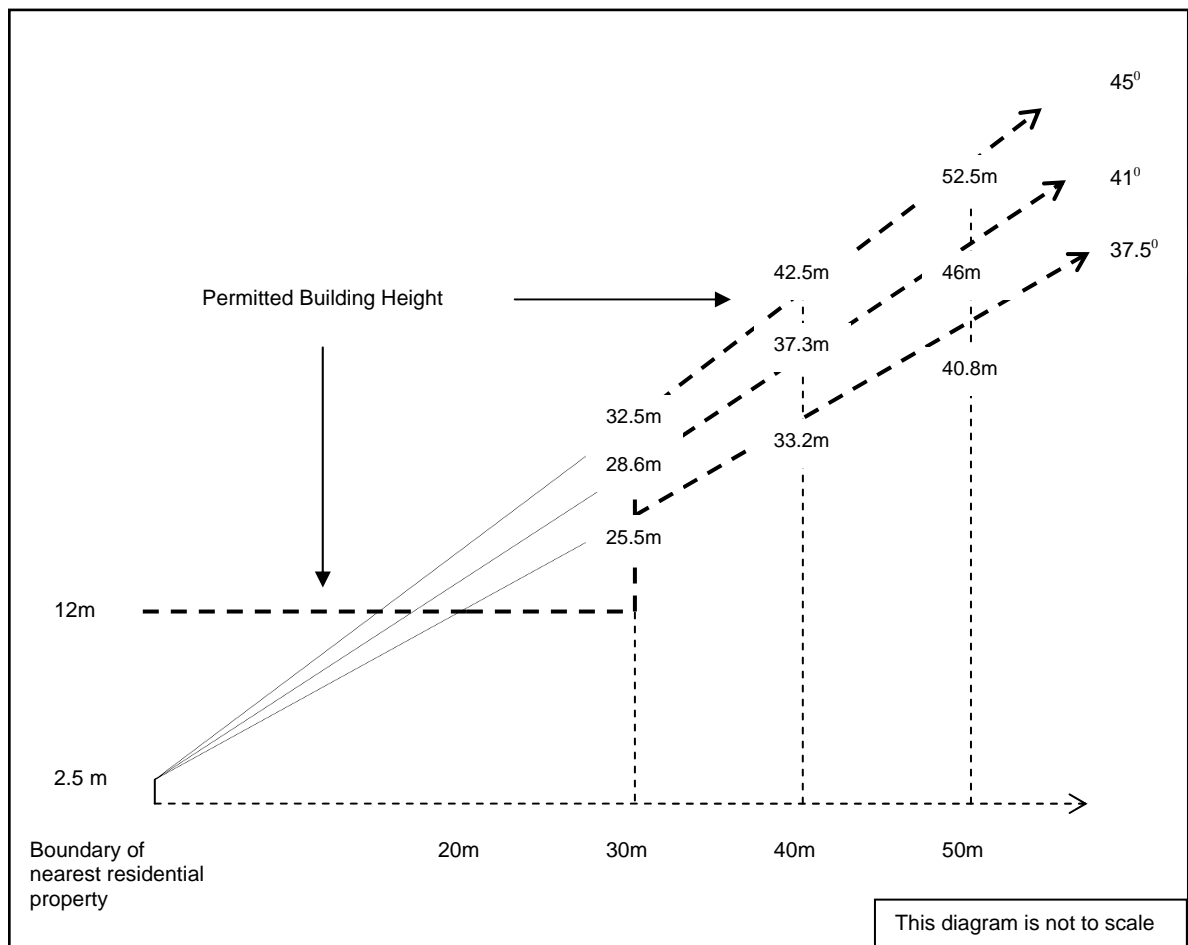
GIS analysis identified 30 metres as the minimal distance required to include all buildings and structures on the opposite side of the road to a residential activity area, given the width of some intersections. Framing the provisions in terms of distance is clearer and less ambiguous than referring to sites opposite or across the road from residential activity areas.

Holding the height limit constant for the first 30 metres from a residential boundary, rather than applying a recession plane from the nearest residential boundary, is considered the most appropriate approach to the issue because of the potential for visual dominance and adverse effects on aesthetic coherence and character. While the application of a recession plane would address effects on daylight/sunlight access, it would not adequately address the other aforementioned effects.

Buildings and structures not immediately opposite residential activity areas may still have similar adverse effects on adjacent residential activity areas depending on their bulk and location. To mitigate these effects the proposed plan change requires the application of the General Residential Activity Area recession planes, measured from the nearest residential activity area boundary.

The application of the residential activity area recession plane requirements is considered the most effective means by which to mitigate potential adverse effects and achieve a transition in height and bulk from residential activity areas to the Central Commercial Activity Area for a number of reasons.

Firstly, it achieves consistency between the permitted baseline on adjacent sites and the permitted baseline on abutting sites as specified in rule 5A 2.1.1(g) (i). Secondly, the General Residential Activity Area recession plane provisions have been in place since the District Plan was publicly notified in 1995. Their application over the last ten years has proved an effective means of controlling the bulk and location of residential buildings and structures so as to maintain residential amenity values. On this basis, the residential recession planes are considered an appropriate mechanism to mitigate the potential adverse effects of the bulk and location of commercial buildings on those residential properties adjacent to the Central Commercial Activity Area. The application of the rule is illustrated in the diagram below.



(c) Analysis of Benefits and Costs of Alternatives

The main advantage or benefit of the proposed plan change is that it mitigates the effects of building height in the Central Commercial Activity Area on adjacent residential activity areas by providing for a gradual height transition. It also provides for greater consistency between what is permitted on sites abutting and sites adjacent to residential activity areas.

The main disadvantage or cost of the proposed plan change is the potential for additional time and resources to be incurred due to the resource consent process, where proposals do not comply with the rule.

The main advantage or benefit of retaining the status quo is that there is no need to obtain resource consent for developments adjacent to residential activity areas that are over 12 metres in height or outside of the recession plane.

The main disadvantage or cost of retaining the status quo is that there is potential for sites in the Central Commercial Activity Area that are adjacent to residential activity areas to redevelop in a manner that adversely affects the amenity values of adjacent residential activity areas.

On balance, the benefits of the proposed plan change outweigh the costs. The proposed plan change promotes the progressive reduction of building height in the Central Commercial Activity Area as it nears residential activity areas. It is considered that this approach allows for the continued development of the Central Commercial Activity Area in a manner that mitigates potential effects on the amenity values of adjacent residential properties.

(d) Efficiency and Effectiveness

Proposed Plan Change 8 represents an efficient and effective means by which to achieve the desired outcome of protecting residential amenity values in areas adjacent to the Central Commercial Activity Area as:

- The new provisions are clear, unambiguous, simple to understand and administer.
- It allows reasonable development to occur on Central Commercial Activity Area sites adjacent to residential areas by allowing buildings that comply with the height controls as permitted activities.
- It does not prevent buildings exceeding the height controls from being built where it can be shown that the amenity values of adjacent residential areas are not adversely affected and where development can be harmoniously integrated into the existing context.

It is considered that if there were no controls on sites in the Central Commercial Activity Area adjacent to residential areas, there will be instances where development will have adverse effects and new development may not be appropriately integrated into the existing environment.

Taking all matters into account it is considered that Proposed Plan Change 8 achieves an appropriate balance between development and the protection of amenity values.

5. Conclusion

Proposed Plan Change 8 - Sites in the Central Commercial Activity Area adjacent to residential areas, introduces to Chapter 5A Central Commercial Activity Area, provisions and a rule to control the height of buildings and structures. The purpose of this proposed plan change is to mitigate the adverse effects of development in the Central Commercial Activity Area on adjacent residential activity areas. It is considered that the proposed plan change achieves an equitable balance of values and interests given the potential conflicts involved. It maintains the integrity of the Central Business District as a whole by continuing to allow high rise development, albeit in a graduated manner, while mitigating adverse effects on the amenity values of neighbouring residential properties.