

## 1. PERIODIC DETENTION CENTRES IN THE BUSINESS 1 ZONE

<b>Officer responsible</b> Environmental Services Manager	<b>Author</b> Sean Elvines, DDI 941-8295
--	---

The purpose of this report is to provide an overview of the estimated costs of proceeding with an urgent variation to the City Plan as resolved at the Council meeting of 28 February 2002 and possible alternative approaches to relocation of the Community Work Centre at Stanmore Road.

### BACKGROUND

At its 4 October 2002 meeting the Regulatory and Consents Committee resolved:

1. *That the report on Periodic Detention Centres in Business 1 Zone lie on the table. (Copy attached).*
2. *That officers prepare a report for the 29 November 2002 meeting of Regulatory and Consents Committee on the estimated costs of proceeding with an urgent variation to the City Plan as resolved at the Council meeting of 28 February 2002.*
3. *That the report include an estimate on the costs of the variation (including staff and consultant time), the opportunity costs associated with delays in the plan becoming operative, and possible alternative approaches to relocation of the Community Work Centre (eg non-complying use fund, a site specific variation, covenants and a lease buy-out).*

This is a report back to the Committee on items 2 and 3 of that resolution.

### CONSIDERATION

#### Cost of Proceeding with Variation

Although difficult to identify the exact costs to the Council in initiating this variation, a number of recent examples can be used to give the Committee an indication of the potential costs in this process. The cost of proceeding with a variation can be broken into five distinct stages being: the cost of preparing a variation; the cost of advertising a variation; the cost of hearing a variation; the cost in defending Council's decision in the Environment Court and the cost in time to making the City Plan operative.

The numbers, times and costs identified are estimates only to assist the Committee in its understanding of the potential costs of proceeding with a variation.

#### 1. Cost of Preparing a Variation

The variation is usually prepared by a planner in the City Plan section of the Council. However, as staff have already indicated, they cannot support a variation of this nature, the Council will require the services of an external planning consultant, if one can be found. Once found, the consultant planner will be required to undertake the following tasks: consultation; a Section 32 analysis; drafting of suitable objectives, policies and rules.

An estimated time to undertake this work is between two–three weeks. The hourly rate of a consultant planner is approximately \$100.00/hour. The approximate cost of undertaking this stage is between **\$8,000.00 and \$12,000.00**.

#### 2. Cost of Advertising a Variation

Once the variation is prepared, it is ready for public notification where members of the public are able to make submissions and further submissions. The following steps are identified:

<b>PROCESS</b>	<b>ACTIONS REQUIRED</b>	<b>COST (low end – high end)</b>
Public notification of variation.	<ul style="list-style-type: none"> <li>- Advertisements in Press and Christchurch Star</li> <li>- Postage*</li> <li>- Photocopying*</li> <li>- Planning Assistant Time*</li> </ul> <p>* (Dependant on size/bulk of document, number of parties to be notified.)</p>	\$700.00 \$90.00 - \$180.00 \$200.00 - \$600.00 \$800.00 - \$1,200.00
Prepare Summary of Submissions.	<ul style="list-style-type: none"> <li>- Advertisements in Press and Christchurch Star</li> <li>- Postage*</li> <li>- Photocopying*</li> <li>- Planning Assistant Time*</li> </ul> <p>* (Dependant on size/bulk of document, number of parties to be notified.)</p>	\$700.00 \$90.00 - \$180.00 \$200.00 - \$600.00 \$800.00 - \$1,200.00

An estimated time to undertake this work is between two–three weeks. The approximate cost of undertaking this stage is between **\$3,500.00 and \$5,300.00.**

### 3. Cost of Hearing a Variation

Once the notification process has been completed, the Council will hold a hearing on the variation and the submissions and further submissions thereon.

<b>PROCESS</b>	<b>ACTION REQUIRED</b>	<b>COST(low end – high end)</b>
Prepare Council's Report	<ul style="list-style-type: none"> <li>- Report prepared by Consultant Planner, between one–two weeks</li> </ul>	\$4,000.00 - \$8,000.00
Organise Council Hearing	<ul style="list-style-type: none"> <li>- Organise venue, Council Hearings Panel – Planning Assistants time.</li> <li>- Photocopy Consultants report.*</li> <li>- Postage*</li> </ul> <p>* (Dependant on size/bulk of document, number of parties to be notified.)</p>	\$600.00 \$200.00 - \$600.00 \$90.00 - \$180.00
The Hearing	In attendance* are: <ul style="list-style-type: none"> <li>- The Consultant Planner</li> <li>- The Second Planner</li> <li>- 3 Councillors</li> <li>- Catering</li> </ul> <p>* (Dependent on the number of submitters and further submitters who wish to be heard, between 1 and 5 days)</p>	\$800.00 - \$4,000.00 \$1,000.00 - \$5,000.00
Decision Writing	<ul style="list-style-type: none"> <li>- The Second Planner prepares decision* in consultation/deliberations with Council Panel.</li> </ul> <p>* (Depending on number of issues, submitters, furthers; this can take between 1 and 2 weeks to complete.)</p>	\$3,200.00 - \$6,400.00

Public Notification of Decision	<ul style="list-style-type: none"> <li>- Advertisements in Press and Christchurch Star</li> <li>- Postage*</li> <li>- Photocopying*</li> <li>- Planning Assistant Time*</li> </ul> <p>* (Dependant on size/bulk of document, number of parties to be notified.)</p>	<p>\$700.00 \$90.00 - \$180.00 \$200.00 - \$600.00 \$800.00 - \$1,200.00</p>
---------------------------------	---	--

An estimated time to undertake this work is between four–six weeks. The approximate cost of undertaking this stage is between **\$11,680.00 and \$27,460.00.**

4. Cost of Defending the Council’s Decision

Regardless of the Council’s decision, it can be anticipated that it will be appealed to the Environment Court. For the Department of Corrections, any decision which effectively prohibits the establishment of community work centres will have nationwide consequences and therefore will be vigorously challenged. Conversely, residents’ groups and public supporters show equal determination in this regard and if the Council’s decision is not in their favour will also choose to be involved in the appeal process, particularly now that environmental legal assistance is available through the Ministry for the Environment.

At this stage, the Council must instruct legal counsel to defend the Council’s decision. On average, the hourly rate for legal counsel is \$300.00/hour. However, this can vary in accordance with who the Council chooses to instruct under negotiated terms. As part of this stage, the following actions are required:

PROCESS	ACTION REQUIRED	COST (low end – high end)
Prepare Council Evidence	<ul style="list-style-type: none"> <li>- Consultant Planner prepares evidence – between one and two weeks.</li> <li>- Legal Counsel provides legal check – 1 day @ \$300.00/hr.</li> </ul>	<p>\$4,000.00 - \$8,000.00 \$2,400.00</p>
Evidence Circulated	<ul style="list-style-type: none"> <li>- Planning Assistant photocopies evidence for all referrers, copies for the Environment Court, delivers/post.</li> </ul>	<p>\$600.00 - \$1,000.00</p>
Council’s Decision Defended in Environment Court	<ul style="list-style-type: none"> <li>- Consultant Planner presents evidence before Environment Court – between one and two days.</li> <li>- Legal Counsel provides*</li> <li>• Legal opening, Court attendance for examination, cross examination, Legal closing.</li> </ul> <p>* (This can take anything between one–three weeks)</p>	<p>\$800.00 - \$1,600.00 \$24,000 - \$70,000</p>

An estimated time to complete this stage is between one–three weeks. The approximate cost of completing this stage is between **\$31,800.00 and \$83,000.00.**

Recent examples of legal counsel accounts received include: Montgomery Spur reference – approximately \$35,000.00; Taylor’s Mistake reference – approximately \$70,000.

It is important to note the potential cost to the Council if the Council loses its case before the Environment Court. A recent example is the declaration proceedings with regards to underlying zoning of the airport designation extension, where costs in excess of \$30,000 were awarded against the Council. Given the contentious nature of the proposed variation and the manner in which it has been promulgated, it is suggested that if costs were awarded against the Council in relation to the proposed variation, they would be at the upper end. (Please note that this potential cost has **not** been added to the total costs below.)

5. Cost in Time to Making the City Plan Operative

Any variation has the potential to extend the date by which the City Plan can become operative. Given the contentious nature of this proposal it can be assumed with some certainty that it will be appealed to the Environment Court and those appeals will be added to their already high case load. The Environment Court endeavours to hear appeals as quickly as possible, although, it is important to note that the Environment Court has been hearing references to the City Plan since November 2000. Currently, some 50 – 60% of appeals to the Environment Court have either been heard or resolved by way of consent order.

Cases are usually heard in the order lodged, as the most recent case this would be the last to be heard. Conversely if other variations are prepared and generate appeals, they would be heard later but this one would delay the hearing of any later cases. It is therefore highly likely that this case would delay the plan becoming operative. It is hard to estimate how long, but this could be several months depending on how long it took the Court to dispose of the case.

6. Cost Summary of Stages

A table summarising the above stages and their respective costs are as follows:

<b>STAGES</b>	<b>COST (LOW END – HIGH END)</b>
Cost of Preparing a Variation	\$8,000.00 - \$12,000.00
Cost of Advertising a Variation	\$3,500.00 - \$5,300.00
Cost of Hearing a Variation	\$11,680.00 - \$27,460.00.
Cost of Defending Council's Decision	\$31,800.00 - \$83,000.00.
<b>Total Cost</b>	<b>\$54,980.00 - \$127,760.00</b>

**Alternative Approaches**

1. Non-Conforming Uses Fund

The purpose of this fund is to enable the Council to purchase properties containing non-conforming uses, causing nuisance to surrounding residential area and inhibiting investment and redevelopment for residential purposes. The intention is to remove the buildings and to extinguish the activities causing the nuisance.

There are two assessment criteria which must be satisfied before this fund can be considered being:

- (a) The activity or land use on the site must be non-conforming with the rules of the City Plan;
- (b) That the subject site is zoned for living (residential) purposes.

The current use of the site is as a probation office. This activity was legally established in 1995 being deemed a permitted activity not requiring a resource consent, on the basis of the activity being carried out in accordance with plans submitted at the time.

The current zoning of the Community Work Centre at Stanmore Road is Business 1 and is part of an establish 'strip' shopping block.

In light of the assessment criteria identified above, the consideration of the non-conforming use fund for the purchase of the site at Stanmore Road is not appropriate in this circumstance.

## 2. Covenants on Land Title

Covenants can be placed on (registered against) land titles by the land owner, effectively restricting or controlling the type and nature of activities occurring on sites. A restrictive covenant could be placed on the land title prohibiting the establishment of a Community Work Centre at Stanmore Road however, this is entirely dependent upon the agreement and support of the landowner. Although support for and agreement to the registration of such a covenant may be obtained from the landowner, this may lead to other difficulties with existing lease agreements between owner and tenant which may be inconsistent or incompatible with the covenant's restrictive nature. A lease agreement does not automatically change with the imposition of a restrictive covenant. A lease agreement can only be changed or cancelled when in default, by agreement, or at the end of the lease with no right of renewal.

## 3. Lease Buy-out

A lease buy-out can only occur if both the lessee and the lessor are willing in the first instance and can reach agreement. For such an alternative to be possible it is anticipated that the Council would act as a broker or facilitator in this regard. However, such an alternative raises a number of difficult issues and could result in significant cost on the Council. Depending on the nature of the lease agreement, possible right of renewal, and the time remaining on the current lease, the cost of such a buy-out could be considerable and no such monies have been budgeted to date. There is also the potential cost to the lessee who must also find and establish new premises.

## 4. Variation to Existing Lease

A variation to the lease buy-out option above, where the lessee and the lessor agree to limit the nature or type of activities that can be undertaken on the property. As with the option above, the Council could act as a broker or facilitator to assist in working toward some agreement between lessee and lessor. In this instance, a clause could be written into the lease prohibiting the use of the property as a community work centre. However, as with the option above, much is dependent upon obtaining agreement between the two parties and, further, how this will affect or impact upon the current lease agreement.

## 5. Site Specific Variation

A site specific variation or 'spot zoning' of the Stanmore Road site suggests changing the zoning for only that site to one which would specifically exclude a Community Work Centre from establishing on the site as of right, such as a living zone. Such a 'spot zoning' would have to be justified and supported by a Section 32 analysis in which the costs and benefits of the proposal are weighed up objectively.

An exercise of this nature has previously been undertaken as part of the City Plan process. A submission was made to the City Plan seeking the rezoning of the Stanmore Road site as Living 3. The decision of Council was to reject the submission on the basis that the site had a history of commercial use; this section of Stanmore Road is characterised by small clusters of commercial uses along both sides of the road; a Business 1 zoning was not out of place or appropriate for the area; and finally it was noted that even if the site was rezoned the uses would not be likely to cease. This decision was appealed to the Environment Court. However, upon setting a hearing date, the referrer (submitter) failed to exchange evidence and subsequently withdrew their appeal.

Before a site specific variation could proceed, a Section 32 analysis would have to be undertaken identifying alternative options and costs and benefits thereof. Given that the question as to what is the most appropriate zoning for the site has already been considered by the City Plan process, there appears little merit in considering this alternative.

## 6. Negotiate/Find a New Site

Discussions have been held with staff of the Property Unit of Council as to the availability of suitable Council owned property. A suitable site for a community work centre has a number of locality requirements such as accessibility to Police and social welfare services, availability of public transportation, and relationship to where people live. Such requirements place limits on identifying suitable sites currently owned by the Council. In light of these requirements, the Property Unit is unable to identify a suitable site. However, it must be recognised that for any site potentially identified as a suitable site for a community work centre, there will inevitably be opposition (whether justified or not) from landowners.

### **DEPARTMENT OF CORRECTIONS OFFICES – STANMORE ROAD**

Given that the Department of Corrections offices on Stanmore Road was specifically raised in discussion at the last Committee meeting, the opportunity is taken to advise the Committee of how the Department of Corrections proposes to alter the use of its offices.

The Department is seeking to establish an increased emphasis on its educational role at this site and proposes to convert part of the existing building for this activity. As the activity is considered a non-complying activity under the Transitional Plan and a limited discretionary activity under the Proposed Plan, resource consent would first need to be obtained to enable this change.

### **BACKGROUND**

The current use of the site is as a probation office. At the time of establishment in 1995 it was deemed not to require any resource consent on the basis of the activity being carried out was in accordance with plans submitted at the time. This included the rear of the building being used as a garage, and complying landscaping and complying parking for eight cars being provided on site. Recent site visits and the information provided to the Council by the Department appears to indicate that the facility was not established in accordance with those plans.

Therefore, technically, a resource consent should have been sought for the activity as it failed to be established in accordance with the Transitional Plan rules. It would have also required resource consent under the Proposed Plan, which would have been subsequently publicly notified. This situation can be dealt with retrospectively via the upcoming resource consent application, or via a separate application if the application for the proposed training programmes does not proceed.

### **CURRENT OPERATIONS**

The office currently functions as a standard probation office but excludes community work. The Department of Corrections explains that community work is the new sentence which includes periodic detention and community service. Staff are informed that the community probation service supervises both 'parole' and 'supervision'. (Parole is a sentence following a prison term. Supervision is a sentence straight from the courts). Court proceedings, following the establishment of the departmental offices on the site in 1995, established that Periodic Detention could not be established at the site without a resource consent. Although a notified application was applied for in early 2000, it was withdrawn at the hearing.

The staff working at the facility write reports for courts and the boards, and supervise people on parole after a prison sentence or who are subject to supervision as ordered by the courts. Staff also conduct staff meetings there, and have two groups a year for a 9 week period on programmes relating to their parole.

Council staff have been informed that these programmes are run by probation officers and are as a result of a probation order, being either parole or supervision. The offenders are not detained, as is the case with periodic detention workers who come under the 'custody' of the Department when they report for community work. (For the avoidance of doubt, Council staff are instructed that periodic detention does not occur on site).

Persons attending such programmes may choose not to attend, although if they do not, they can be fined, given periodic detention, recalled to prison or have their conditions of parole varied.

## **THE PROPOSAL**

The Department wants to place a greater emphasis on these group work programmes in the future. The proposal is to increase the frequency of such programmes. Similar courses are run at their Sydenham and Papanui offices and are proposed at the new Pages Road facility.

The Council has been advised that the Department wishes to convert the area approved as the garage area into a meeting room in which to run programmes for offenders on site. Each programme would accommodate up to 12 people at a time, in two groups per day with sessions running approximately 2.5 hours each, up to four days a week.

The Council has been provided with a plan of the internal alterations proposed to the building but has not yet received any application for resource consent for this proposal. The Department has sought some feedback on how the proposed facility would be assessed under the plans, as they anticipate undertaking pre-application consultation with the local community over their plans. The Council is required to determine how such a facility would be defined for the purposes of assessing car parking requirements.

## **WHAT RESOURCE CONSENTS ARE NEEDED?**

A legal opinion was obtained that concluded the change in emphasis was such that the new activity could not be assessed as 'office' use under either the Transitional or Proposed Plans.

If it had been deemed an 'office' use, a resource consent would have been required for the existing aspects of the activity that were not lawfully established and for a new non-compliance that resulted from the change of part of the building to office. This is because this change means an additional parking space would be required, namely the consent would need to address the following non-compliances:

- 9 complying parking spaces required to be laid out on site
- 2 metre landscaping strip not provided adjoining Swanns Road
- 1.5 metre wide landscaping strip not provided adjoining the residential zone boundaries

The legal opinion obtained advised that the converted part of the building should be assessed as an 'educational facility' and more specifically as a 'tertiary education facility' under the Proposed Plan. It considered the use of part of the building for this educational use would be non-complying under the Transitional Plan.

This interpretation has additional implications given the parking requirements under the Proposed Plan, as the parking requirement for the activity becomes 14 overall and 14 spaces cannot be provided on site without reverse manoeuvring onto the street. Ray Edwards, Senior Traffic Planner has assessed the proposal and suggested this non-compliance may lead to the need for affected party approvals at resource consent stage. This may be the case, but it is difficult to make firm judgements in this regard without an application to consider.

Under the Proposed Plan the two issues relating to landscaping are no longer non-compliances as fencing is accepted as a valid alternative to landscaping along the zone boundary, and tree planting along the road frontage is accepted as a valid alternative to landscaping of a particular width. The non-compliances with the Plan relate to:

- Overall parking space numbers,
- Staff parking being marked on site,
- Provision of cycle parking,
- Queuing space, and
- Parking layout.

- Recommendation:**
1. That Council officers not proceed with further investigations into a Section 32 assessment to make Community Work Centres a non-complying activity in the Business 1 zone and that the Council resolution of 28 February 2002 on this matter be rescinded.
  2. That officers prepare a Section 32 assessment on the parking and loading requirements for the Business 1 Zone with a view to proceeding with a variation after the Proposed City Plan becomes operative.

(Councillor Megan Evans requested that her vote against recommendation 1 be recorded).