

1. MAKING THE PROPOSED CITY PLAN OPERATIVE IN PART

Officer responsible Environmental Services Manager	Author David Mountfort, DDI 941-8669
--	--

The purpose of this report is to advise the Council on the state of completion of the Proposed City Plan and to seek approval to apply to the Environment Court to make the City Plan operative in part by 1 July 2004.

SUMMARY

The Proposed City Plan was publicly notified in 1995. Submissions were heard over the next few years and decisions released in 1999. The Council has not yet determined a few submissions. The Environment Court received approximately 400 references. The great majority of these have now been either settled by consent following negotiations, or heard and decided by the Court.

The Proposed City Plan is also affected by a number of Variations which are in progress, some of which overlap with the remaining references.

Until the Proposed City Plan is made operative the provisions of the older district plans (transitional plans) remain in force. These must be referred to in resource consent applications, by the Council and those who advise the public, and by those who process and consider such applications.

Although there is a process in the Resource Management Act (s.19) under which provisions of the plan that are beyond the point of challenge are to be treated as if operative, in practice this is complex and difficult to work with. Therefore it is strongly in the interests of all parties and the Council that the Proposed City Plan be completed and made operative as soon as possible.

A small number of matters will not be completed for up to three years. A process also exists in the Resource Management Act under which the completed parts of a plan may be made operative. The Environment Court is required to give its consent on this matter. This would dispose of the transitional plans except for the small number of provisions not yet completed.

If the Proposed City Plan is made operative in part, the next steps will be to complete the remaining matters, research and investigate a wide range of matters that have arisen during the process, and prepare changes to the plan. In addition, as soon as the plan is made operative in part, people are able to apply for plan changes. The Council must process these except in a limited range of circumstances.

SUBMISSIONS YET TO BE DETERMINED BY THE COUNCIL

Road Widening Designation for Opawa Road

Opawa Road is a State Highway and Transit NZ has requested a 2.5 metre wide extension to the designation. This has not been determined because the Council has decided to carry out a much more extensive 4-lane widening of the road, at its own expense. Most of the property required has been purchased and the work is scheduled to be carried out in 2004/05. There were a large number of submissions on this designation, which need resolving to enable construction to commence.

Financial Contributions

The objectives, policies and rules relating to financial contributions within the Proposed City Plan were also subject to submissions. A related submission by McDonald's seeks that internal playgrounds be excluded from the definition of gross floor area for the purpose of calculating reserves contributions.

A decision on these submissions was deferred because it was considered that a variation was required to amend the provisions of the plan.

Since then the new Local Government Act 2002 has made it possible to deal with most financial contributions matters under that Act rather than the RMA. If the Council is to take advantage of this, it needs to adopt a policy on financial contributions as part of the Long Term Council Community Plan. Work is under way on this.

It is also possible that a variation may be needed to deal with residual matters that are not able to be dealt with under the Local Government Act 2002.

Outstanding References

Over 80% of references have now been resolved. There are about 80 references remaining, covering 16 topic areas. Some matters have been heard and decisions are awaited. Two cases are waiting for hearings in the High Court.

The topics remaining to be resolved include:

- Airport zoning and designation
- Airport noise
- Airport-related urban growth
- Urban growth at:
 - Cashmere
 - Belfast
 - Mairehau
 - Yaldhurst
 - Halswell
 - Kennedy's Bush
 - Wigram
- 3 living zone rules on minimum lot size
- Retail distribution
- Miscellaneous business zonings
- Carrs Road Speedway
- Flooding and ponding areas
- South Brighton hazard zones

The details of the remaining references are outlined in Attachment 1. It will be apparent that many of these will not be resolved in the near future, and it is difficult to predict when they will be resolved. Some will be affected by forthcoming variations, eg retail distribution and floodplains, which may take up to three years to resolve. The airport references may take a similar period. Some of the urban growth matters are subject to RMA s.293 processes through the Environment Court, which are likely to be protracted.

All these references are either site or topic specific. The Proposed City Plan could be made operative in part without waiting for all of these matters to be finalised.

VARIATIONS

The Council has been limiting variations to the Proposed City Plan in order to get the plan operative as soon as possible. In 1999, the Council adopted a list of 14 priority variations, some of which have been completed, while others are in preparation and some, with the benefit of hindsight do not seem to have merited the priority they were given. A number of major and minor variations have been processed.

The group of 14 Priority Variations is attached (Attachment 2).

Other variations, both major and minor have been commenced and in many cases completed, for various reasons since 1999. The Council is up to Variation 86. While most of these have been completed, a few are in process and a small number are yet to be notified. Most are relatively minor but some, such as airport noise, floodplains, and retail distribution are significant issues.

The Council has recently introduced a policy under which private requests may be made for variations to be introduced, under limited circumstances. There are currently three of these being prepared, and several other enquiries.

The Council has adopted a policy outlining a number of criteria for dealing with these private requests for variations. Any such variations are prepared by the applicants, at their expense and in consultation with Council officers.

Provisions affected by variations cannot be made operative until the variation is complete, including any appeals.

Variations currently notified and being worked on include the following:

Variation 2	Wigram, appealed (included in references above)
Variation 81	Continuous building length, publicly notified, due for hearing
Variation 82	Worcester Street closure, publicly notified
Variation 78	Business zonings, Linwood, heard, decision pending
Variation 83	Central City Edge Turners and Growers site

Variations under preparation by Council but not yet notified:

Variation 48	Floodplains and ponding areas
Variation 49	Future zoning Awatea
Variation 86	Retail distribution
	Financial contributions (post Local Government Act)

Private Variations in preparation:

Variation 84	Stonehurst Accommodation
Variation 85	Cashmere Lakes
	Clearwater and Isaac Wildlife Trust

As with the remaining references, the variations in progress relate to distinct sites or provisions of the plan and do not affect the majority of the plan.

MAKING THE PLAN OPERATIVE IN PART

The Council is close to a position where it could consider making the Proposed City Plan operative in part which requires the consent of the Environment Court. Some parts of the plan would be left out, and remain proposed, and would be made operative as and when they are completed.

It will be desirable to avoid the number of times that the Council goes back to the Court. Because it will be a reasonably significant logistical exercise, at least the first time, it will need to be planned for several months in advance. The timing of the exercise should be as soon as possible, while still allowing for as many of the references and variations to be incorporated as possible.

There are three major matters which will remain outstanding for some time to come, possibly up to three years. These will have to be excluded from the first application to the Court. These are:

1. The floodplains variation, likely to be notified in November 2003.
2. The retail distribution variation, which may be notified in February or March 2004.
3. The airport noise and zoning issues, which are a combination of existing references and variations.

It would be desirable to have all the provisions made operative except for these three, but it is proving difficult to predict when all other issues will be concluded. The Council may eventually have to make a relatively arbitrary decision about which matters to wait for and which to exclude.

It is recommended that the Council now select a target date for making the application to Court, which is flexible enough to enable the inclusion or exclusion of various matters closer to the time. At this stage, it is suggested that the target date for an application to Court be around June 2004. At that time it is estimated that the great majority of existing references and variations will be complete.

PREPARATIONS FOR MAKING PLAN OPERATIVE IN PART

The opportunity should be taken to consider the publishing format of the Proposed City Plan. The Council is looking for more suitable software to produce and update both hard copies and electronic copies and to publish the document on the Internet. It is expected that the need for hard copies may be able to be considerably reduced, which should produce substantial cost savings for the Council and users. The cost of the updating service should also be reduced.

It is proposed to conduct a survey of users to find out user needs and preferences before making final decisions on this. Progress on this will affect the operative date, and is another reason why a firm date cannot yet be selected.

CITY PLAN WORKLOAD BEYOND THE OPERATIVE DATE

As well as the major on-going matters already described, there is a large list of investigations and plan changes awaiting attention. These have been identified in various ways, sometimes through the submission and reference process, and sometimes out of experience with using the plan. It is important to realise that because the plan process has been so protracted, that some of the provisions were written in the 1980s and early 1990s and are quite dated. Significant issues include:

- Review Living 3 and 4 zone rules, arising out of references and identified shortcomings.
- Review of controls over Greenfields subdivision.
- Urban growth objectives and policies review, in the light of a series of Environment Court decisions.
- Design and appearance provisions for business zones.
- Hazardous substances.
- Heritage buildings and character groups, review of Plan provisions.
- Protected trees.
- South-west Christchurch Area Plan Study }
- Russley Area Plan Study } Together with Area Plans Team
- Cranford Basin/Burwood Area Plans }
- Other Area Plans }
- Prostitution Law Reform - any needs to amend the plan in the light of legislative reform.
- Wigram zoning.
- Ferrymead Special Purpose Zone - needs to be introduced within two years of the Proposed City Plan becoming operative pursuant to an Environment Court negotiated settlement.

Other Changes

There is the balance of the group of 14 priority variations to be attended to. In addition, the City Plan Team holds a list of approximately 375 matters, some of them minor, which require investigation and probable correction, by way of plan change after the Proposed City Plan becomes operative.

With reference being resolved, officers are more able to begin work on other issues. To avoid complications with the process of making the plan operative, it would be preferable if the outcomes took the form of plan changes after the operative date rather than variations before it. This means that there may be a number of plan changes ready to be commenced as soon as the plan becomes operative in part in 2004.

Privately Requested Plan Changes

Once the Proposed City Plan becomes operative, any person has the right to request plan changes to be made. Except in limited circumstances the Council must process and publicly notify such requests. The Council would have the right to refuse any such requests within the first two years but does not have to.

There are likely to be many such requests. Approaches are regularly made to the Council by rural landowners seeking advice about the possibility of rezoning. A number of these are in areas such as Burwood or Harewood where the Environment Court has already declined rezoning but indicated the land may be suitable for rezoning in the medium term and subject to alternative design concepts. It is likely that some of these approaches will turn into privately requested plan changes.

It is partly because of the likelihood of such requests that it is important that the Council review the effectiveness of the urban growth objectives and policies, and also the provisions for Greenfields Subdivisions.

FUTURE RESOURCING NEEDS

It is anticipated that if the Council continues to deal with all the issues outlined above, the level of activity would be similar to present levels for at least the next three years. However, with the reduction in references it should be possible to reduce the reliance on external consultants and external legal advisers.

Recommendation: That the Council aim to apply to the Environment Court to make the City Plan operative in part by 1 July 2004, the exact timing to be dependent on the completion of current references and progress on preparing the printed and electronic versions.

(Note: Councillor Broughton requested that her vote against the foregoing recommendation be recorded).