

2. HIGH DENSITY DEVELOPMENT IN NEW BRIGHTON

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The purpose of this report is to seek the Committee's direction regarding the most appropriate process for considering the merits of high density residential development in parts of New Brighton. This report addresses briefly the background to the proposed high density development of New Brighton and sets out the various procedural options for how best to consider the potential issues, environmental effects, community views, and any potential amendments to the proposed City Plan.

BACKGROUND

In 2002 a Council sponsored working party investigated how best to encourage the revitalisation of New Brighton. This process involved a considerable degree of public consultation and resulted in a non-statutory Master Plan being developed by the Working Party. The Master Plan proposed a range of measures to promote the revitalisation of New Brighton, including *"that residential development on the beachfront be limited to developments in the order of 5 to 7 story apartment style buildings and that such developments occur close to the commercial area."* The Master Plan recognised the need for a variation to the City Plan to enable this scale of development to occur. The current Living 3 Residential Zoning along Marine Parade has a height limit of 11m which effectively limits development to three stories. Since the Master Plan was formulated, interest in the concept of high density residential development near the Mall has increased, to the point where Council Officers are currently aware of two proposals for high density residential developments in Marine Parade south of the Mall.

One of these developers, the Taylors, approached the City Plan Team on 27 April 2004 to discuss a proposed 8 storey residential development on a site fronting both Marine Parade and Oram Avenue between the Mall and Hood Street. The developer recognised that the scale of the proposed development was considerably greater than that currently permitted by the existing Plan provisions and that given the degree of non-compliance a resource consent would be difficult to achieve. It was felt by Council Officers that an application for a private variation that sought high density rezoning for only the applicant's site would be difficult to support, given that the issue of high density development in New Brighton needs to be addressed in a comprehensive and coordinated manner.

An application from the developer for a privately initiated variation was received on 24 May 2004, for a site larger than the site controlled by the developer. Once this application was received, it became apparent that it did not comply with the private variations policy, in that the developer did not own or control all the land proposed to be rezoned. The application was subsequently declined at Officer level under delegated authority on 5 June 2004.

Before the applicant was able to confirm some form of agreement over the rest of the land in the affected blocks, the Council resolved to receive no further privately requested variations after 31 May 2004. In retrospect, the requirement in the private variation policy that all the land subject to the variation needed to be under the applicant's control could have been more clearly articulated to the developer.

The Taylors still wish to proceed with a private variation and are of the view that an exception should be made to the Council's decision to accept no further private variation on the grounds that they were not made aware sooner of the policy criteria that they control all the land subject to the proposed variation.

THE ISSUES

There is growing development pressure for high density residential development in parts of New Brighton. The New Brighton Master Plan process identified that higher density residential development near the Mall could contribute towards the revitalisation of New Brighton and that there was a degree of community acceptance of such higher density development. The views of the wider Christchurch community on this matter have, however, yet to be tested through a formal statutory consultation process. From an integrated planning perspective it is desirable that any potential changes in zoning in New Brighton are made in a coordinated manner rather than being pre-empted by a series of ad hoc resource consent applications. The developers behind the specific proposal referred to above are also seeking some direction as to how to progress consideration of the issues and any consequent amendments to the Plan to enable high density development to occur.

The Committee will be aware that neither Council officers nor the Council itself can commit to a variation or plan change making specific changes to the Plan until it has considered a section 32 analysis. At this early stage it is envisaged that as a minimum a section 32 analysis would need to consider two strips of residential land with an existing L3 Zoning fronting onto Marine Parade both north and south of the Mall, and running from Rawhiti Park south to Shackleton Street. To enable high density development of the sort proposed by the developer, the blocks would need to be rezoned from L3 to L4B, with several consequential amendments likely to be necessary to the L4B provisions such as the height and residential floor area ratio standards. An assessment of the environmental effects of such a change in zoning would need to consider landscape and visual impact, traffic, shading, wind funnelling, and infrastructural capacity and be accompanied by a rigorous public consultation exercise that includes an opportunity for participation by the relevant Community Boards.

Although the likely study area is wider than the developer's site, because the issues and potential environmental effects are similar, the developer has confirmed that they would be willing to fund the Section 32 studies, preparation of documents and consultation. The Council's City Plan Team would be involved in an oversight and review role and would coordinate consultation with other Council units.

The Committee will be aware of the Council's desire to make substantial parts of the proposed City Plan, including the Living Zones, operative later this year. The Environment Court has also indicated that it wishes to see the Plan made operative. The desire to make the Plan operative, and accordingly to limit the extent of the Plan provisions that are subject to change or challenge, is the primary reason why the Council formally resolved not to accept any additional private variations. It should be noted that the desire to make as much of the Plan operative as possible has also meant that the Council is endeavouring to limit its own Council initiated variations.

The acceptance of a private variation at this stage is problematic in that, as noted above, an investigation should look wider than the proposed development site (and therefore will involve land outside the developer's control, in conflict with the private variations policy), and secondly the Council would need to resolve to make an exception to its cancellation of the private variation policy. Staff consider that the Council should not make an exception to the private variation policy in this case, for the reasons outlined above.

If the Council wishes to proceed by way of a variation, this needs to be noted in the application which is to go shortly to the Environment Court to make the plan operative in part.

An alternative process is that the developer undertake the section 32 analysis now, and then apply to the Council for a privately requested plan change as soon as the City Plan becomes operative. Due to the amount of work involved in preparing the Section 32 analysis, consultation, and drafting potential amendments, little if any time would be lost. The developer is, however, reluctant to pursue this route for two reasons. The first reason is that there is uncertainty over exactly when the City Plan will become operative, given that the timing and final approval rest with the Environment Court. The second reason is that Clause 25 of the first Schedule of the Resource Management Act 1991 enables the Council to refuse to accept applications for private plan changes for the first two years after the Plan becomes operative. The Council would, however, need to clearly justify any such refusals, with that decision able to be appealed to the Environment Court. These situations present a worst-case scenario, but could occur, resulting in significant delays to amendments to the proposed City Plan.

It should also be noted that due to pressure on the City Plan team there are insufficient resources to progress a section 32 analysis on the proposed development at New Brighton urgently, and that this would be likely to commence in early 2005. Various technical studies are required and funding for this would be dependent on other priorities.

CONCLUSION

There is increasing development pressure for high density residential development in New Brighton. There is considerable benefit in examining the merits and potential effects of such high density development in a co-ordinated manner rather than as a series of ad hoc resource consent applications. The need to consider amendments to the Plan in a comprehensive manner has been made more urgent by several current high density proposals being put forward. Given that the review of high density development in New Brighton is necessarily wider than the Taylor's proposed development site, and given that the Council has formally resolved not to accept any more private variations, it is not felt that the private variation process is appropriate. It is, however, recommended that the Council undertake, with considerable input from the Taylors, a Section 32 analysis of high density residential development in the Living 3 Zoned blocks fronting Marine Parade and extending from Rawhiti Park south to Shackleton Street.

The Committee will be aware that neither Council officers nor the Council itself can commit to a variation or plan change making specific changes to the Plan until it has considered a section 32 analysis. To do so would be an unlawful fetter of the Council's discretion to make a decision once submissions have been received and the section 32 analysis is at hand.

The Section 32 analysis could form the basis of either a Council Variation or a Plan Change. If the Council wished to preserve the flexibility to proceed by way of variation, the affected land should be excluded from the parts of the City Plan being made operative.

It is not possible to say at this stage exactly which, if any, parts of the proposed City Plan would need to be altered. In theory the Council could hold back certain provisions from being made operative, but until the section analysis has been completed to anticipate which Plan provisions would be affected would be speculation.

At the Regulatory and Consents Committee meeting a motion was moved as recommendation 3:

"That the New Brighton Master Plan section 32 analysis begin immediately, in advance of the City Plan work programme to be reported to the incoming Council."

(Note: The above recommendation on being put to the meeting was declared **lost** on Division No 1 by six votes to two, the voting being as follows:

Against (6): Councillors Cox, Evans, Ganda, Rutland, Wells and Withers.

For (2): Councillors Broughton and Sheriff.)

Committee:

Recommendation: 1. That the Council prepare a section 32 analysis covering the areas as defined in the New Brighton Master Plan (see attached map).

(Note: Councillors Broughton, Cox, Megan Evans, Ganda, Sheriff, Wells and Withers voted in support of this recommendation and Councillor Rutland voted against this recommendation).

2. That officers report back to the February 2005 Council meeting with a comprehensive City Plan work programme for adoption by the Council.

(Note: This recommendation was passed unanimously by those Committee members present being Councillors Broughton, Cox, Megan Evans, Ganda, Rutland, Sheriff, Wells and Withers).