

12. PROPOSED CLEARWATER VARIATION TO THE CITY PLAN

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1. PURPOSE OF REPORT

The purpose of this report is to introduce a variation to the proposed City Plan as requested by Clearwater Land Holdings Limited. The variation has been prepared by Clearwater Limited following discussions with Council officers. This report is intended to bring the Council's attention to all the issues that surround the proposal, in particular its implications for the Plan's urban growth objectives and policies in order for the Council to be able to make a decision on whether or not to notify the variation.

2. EXECUTIVE SUMMARY

A privately initiated variation to the City Plan to enable the intensification of development at Clearwater Resort, establishment of a Conservation Park and extended quarrying on land adjacent to the existing Rural Quarry zone at Peacock Springs has been received by the Council. If notified, this variation will be a Council document and will be viewed as such in the community. While it has been initiated by a private party, to proceed any further through the statutory process it must be adopted by the Council as representing the Council's own policy on development at Clearwater and on the Isaac land. The proposed variation raises a number of issues which are discussed in this report.

The variation proposes expanded development at the Clearwater resort in a manner which would be contrary to some of the objectives and policies for urban growth in the City Plan. To overcome this, Clearwater offers a package of environmental mitigation to produce an overall net environmental benefit.

The Council essentially has two options in which to deal with the variation, both of which require as a prerequisite a position to be formulated on whether the environmental mitigation offered by Clearwater is sufficient to set aside the Plan's urban growth objectives and policies on the basis that Part II of the Act can still be met by the proposal. Once this decision is made, the Council can then choose whether to:

1. Accept the variation as modified by Council staff and publicly notify it; or
2. Reject the variation.

This report recommends that the variation be accepted and publicly notified.

3. FINANCIAL AND LEGAL CONSIDERATIONS

Publicly notifying a variation to the City Plan imposes costs on the Council, in terms of staff time and resources. It is noted that a considerable amount of staff time has been involved in progressing matters to this point over a period of 2-3 years, and this is an opportunity cost as it deflects staff from working on other projects that may be important to the city. There are also financial implications should the variation proceed to the Environment Court in terms of the cost of retaining legal counsel and expert witnesses.

In response to issues raised by solicitors for Clearwater concerning an independent peer review by Ken Tremaine, a legal opinion was sought from Simpson Grierson. The following points from the Executive summary of that opinion are relevant:

- *The Council has a discretion of whether it initiates the Variation. In reaching this decision, it is open to the Council to undertake an assessment of whether the Variation is the most appropriate way to achieve the purpose of the RMA. This implies an evaluative approach by the Council, and some form of assessment of the Variation against other methods. This is consistent with the conclusion of Mr Tremaine that the Council will need to decide whether it is appropriate for it to initiate the Variation.*

- *In undertaking a section 32 assessment, the Council is also entitled to take into account whether the Variation has a purpose of achieving the settled objectives and policies of the District Plan that are not being altered by the variation. It is these objectives and policies which can generally be said to reflect the purpose of the Act. Further, by looking at such objectives and policies, a coherency to the district plan will be ensured. This approach is in our view unaltered by the current version of section 32.*
- *While not expressly required to act in a manner consistent with the provisions of the proposed NRRP, the Council in having regard to the proposed plan may determine at its discretion that it will act in a manner consistent with it. Further, the NRRP expressly requires that the District Plan implement certain policies and methods in respect of the Water Recharge Zone. Accordingly, it is appropriate for the District Plan and the NRRP to be assessed holistically in determining whether to initiate a Variation.*
- *Given existing case law, the Council was entitled (if not required) to assess the nature and extent of environmental compensation.*

In addition, the opinion notes:

- *The discretion to initiate a variation must also be seen in the context of clauses 17 and 20 of Schedule 1 of the RMA. An approved policy statement or plan, including a variation under clause 16A of the Act, has effect immediately upon notification. This in itself is a factor for the Council to consider in terms of "backing" the proposed Variation.*

4. STAFF RECOMMENDATIONS

It is recommended that the Council:

- (a) Decide whether the mitigation package offered by Clearwater (excluding that to be offset against development contributions) is sufficient to offset the variation's conflict with the City Plan urban growth objectives and policies.
- (b) If it confirms the mitigation package, proceed with the notification of the proposed Clearwater variation.

5. BACKGROUND

In October 2002 the Council resolved to commence a process to consider a possible variation to the Proposed City Plan for Clearwater and the Isaac Wildlife Trust. The variation has been drafted by consultants for the two parties, in consultation with a staff level working party. The resolution specifically records that the Council gives no assurances about proceeding with the variation prior to the decision about whether or not to publicly notify it. A Clearwater Subcommittee (of the Strategy and Finance Committee) was established to provide guidance to the staff team on the strategic issues raised in the variation and to make a recommendation to that Committee. The Subcommittee met with Clearwater representatives and also with Christchurch International Airport Ltd.

A first draft of the variation was received on 15 October 2003. On 20 October 2003 the Clearwater Subcommittee met to discuss the receipt of the draft variation and resolved:

1. That the Variation not proceed in its present form prior to the resolution of the Environment Court references on Variation 52.
2. That the staff evaluate the proposed Variation in detail and provide comments to the applicants for their consideration.
3. That the staff in consultation with the applicants prepare a consultation programme with interested parties.
4. That the Council invite the applicants to discuss the issues relating to the Conservation Park separately from the issues relating to Clearwater in order to progress the Conservation Park.

This resolution has been implemented as follows:

The Environment Court has since made its decision on Variation 52 and confirmed that the threshold for new residential development is to be at the 50 dBA contour. The only part of the new Clearwater residential proposal within the 50 dBA contour are the approximately 42 units proposed to be erected in lieu of erecting them on the Isaac land in the Rural 4 zone. Prior to notification of Variation 90 the units could have been erected as of right there in a rural cluster and would have been even more affected by airport noise. The process of uplifting the rights from one piece of land and transferring them to another is described as "transfer of development rights (TDR)". Christchurch International Airport Ltd has accepted this arrangement. There is also existing residential development inside the 50 dBA contour under existing approvals. In addition, some existing and proposed resort hotel development is inside the 50dBA contour (a total of 260 hotel bedrooms).

Council staff provided feedback on the draft in a letter dated 1 December 2003. A revised version of the variation was supplied at the end of April 2004, followed by various meetings and consultation with affected parties in May. The section 32 assessment was provided in mid-May. In early June, Council staff again raised the issues still outstanding with the variation and the s32 assessment, including the issue of the then soon-to-be-notified Environment Canterbury Natural Resources Regional Plan chapters. The final version of the variation was lodged on 28 June 2004, but further minor amendments were made as a result of discussions with staff up to October 2004.

Consultation took place during 2004 with ECan, Department of Conservation, Fish and Game, CIAL, Transit NZ, surrounding landowners, and existing Clearwater owners. Council staff were present at most of these meetings to verify the process.

Discussions from late 2004 onwards have centred around possible environmental compensation or mitigation measures as well as changes made to the variation by Council staff. An independent review of the policy issues and environmental compensation, funded by the Council was undertaken by Ken Tremaine, of Ken Tremaine Consulting Ltd over January and February 2005 with Mr Tremaine's report received in March.

As a result of Clearwater being aware of the outcome of that review, which was not favourable to the proposal, in May 2005 they revisited the level of development sought and the compensation package offered.

6. NEED FOR VARIATION

If the City Plan remains in its present form and the proposals proceed then without a Council variation the processing of major resource consent applications (which have already been lodged) will be required. These will be difficult, costly and time consuming for both the Council and the applicants, although it is recognised that there is the ability to recover costs through the resource consent process. The costs in money and time could equal or exceed the costs of varying the Plan. The variation proposal enables comprehensive assessment of the overall development plans for Clearwater and the Isaac Conservation Park by the Council (and the community, should the variation proceed) which is generally more difficult through an application-by-application resource consent process. An alternative is for Clearwater and the Isaac Trust to wait until the City Plan is operative in part and lodge a private plan change.

7. PROPOSED VARIATION

The proposed variation, s32 assessment and assessment against the proposed City Plan objectives and policies are attached to this report. These documents were prepared by Clearwater's consultants based on the earlier enlarged proposal. The variation has subsequently been amended to reflect the reduction in development rights sought, and also modified by Council staff to address some detail concerns. The following comments are intended to outline the main features of the proposed variation, as amended by Council staff.

The variation allows for the expansion and amendment of the existing Open Space 3D zone through the creation of a Conservation Park on the lands owned by the Isaac Wildlife Trust and the expansion of the Clearwater Resort. The large Isaac landholdings between McLean's Island Road and Clearwater are proposed to be included as a new Open Space 3D (Isaac Conservation Park) zone, with additional lands to the south and east of the existing Open Space zone included within an enlarged Open Space 3D (Clearwater) zone. Altogether about 1400 ha is included. Two outline development plans indicate in very general terms how the land in the zone will be used.

Main features include additional land for residential housing and enlargement of the hotel complex at Clearwater, with provision for extended quarrying within the conservation park.

Additional housing is proposed within the 50 dBA airport noise contours at Clearwater. Part of this is proposed to be in effect compensated for by a "transfer of development rights". A certificate of compliance has been issued for 42 residential units at a density of 1 per 20 hectares on the Isaac land, between Clearwater and McLean's Island Rd, zoned Rural 4 and 5. A separate application was also lodged to show these houses clustered together on small sites in an urban village, with each house site being amalgamated with a 20-hectare parcel elsewhere on the property. The village is closer to the airport than Clearwater and within the 55-dBA contour. This application was lodged prior to the notification of Variation 90 to the proposed plan, which has since closed this loophole. The proposal is to transfer this development opportunity to the Clearwater site, thus producing a development less affected by airport noise than a comparable development elsewhere on the land, and to provide 'no complaint' covenants on the titles to the allotments. In all it is proposed to enlarge the resort hotel function to 350 bedrooms and erect a total of 111 residential units (150 more hotel rooms and 80 more residential units than allowed for under the existing Open Space 3D Plan provisions and existing resource consents). Part of the housing and resort hotel development is proposed to be within the 50-dBA contour, although the proposal for some housing within the 55dBA noise contour has been removed by Council staff.

8. PROPOSED VARIATION - KEY ISSUES

The main issues arising from the proposed variation are discussed below. The key issue for this report is the effect of the proposal on the urban growth objectives and policies, and the possibility that this effect can be compensated for by the package offered by Clearwater and the Isaac Trust. The determination of a position on this issue is essentially a pre-requisite to considering all the other issues that arise from the variation.

Urban growth

The proposal for additional housing is contrary to those objectives and policies in the City Plan that promote a compact city form, expansion only adjacent to existing development, and reducing car journeys. These objectives and policies are included within Clearwater's assessment, attached to this report. The implementation of these urban growth objectives and policies is intended to result in a sustainable form of urban growth through the consolidation of the urban area, which will assist in reducing private car-borne trips and hence contribute towards the efficiency of the end use of energy, reduction of congestion and will also enable the efficient use of existing infrastructure and community facilities. It can therefore be concluded that development that does not achieve these objectives and policies is less sustainable than development that does.

The supporting documentation argues that the distance to Clearwater from the City centre is similar to that of Belfast, but this is not an appropriate comparison to draw given Belfast's connectivity with the rest of Christchurch, which is not shared by Clearwater. If this argument was accepted it would also justify any isolated urban development within several kilometres of the existing urban fringe, which is clearly not the intention of the City Plan for peripheral urban growth.

The variation and its supporting documents do not address the issue of the demand for development between the city boundaries and Clearwater that may be stimulated by the proposal (i.e the "filling in" of the rural land that currently separates Clearwater from the city). This rural area is covered by the Belfast Area Plan, currently being developed by the Council.

Clearwater have stated that their resort community activity areas are intended to contain a mixture of resort hotel rooms and residential units, and have verbally advised that their concept of the 'resort community' is such that some people may choose to stay in the hotel units for extended periods of time, while other residential unit owners may choose to make their homes available for short or longer term leases, blurring the distinction between the hotel activity and the residential unit. The resort hotel units are also marketed as residential units with an option to lease back to the resort company, and are rated as residential, rather than commercial, activities.

A legal opinion, obtained by the Environmental Services Unit, relating to the definition of resort hotel suggests that the existing City Plan definition of resort hotel (that relates solely to Clearwater) is ambiguous, does not appear to cover the form of the activity that has been undertaken at Clearwater and requires strengthening. In light of the legal opinion, and reinforced by Clearwater's explanation of how the resort community is intended to be managed, the actual effects of the scale of both hotel and residential development proposed at Clearwater have to be considered. The variation alters the definition of resort hotel to highlight the hotel lease requirements and dissuade residential occupation of these units. Under the variation, an additional 150 resort hotel bedrooms can be provided, bringing the total in the Open Space 3D (Clearwater) zone to 350 bedrooms, plus a total of 111 residential units. Assuming that at least part of the time some of the resort hotel units will be housing longer stay visitors or owner-occupiers, the 'urban' nature of the resort is self-evident.

Clearwater's own assessment documents concede that the proposal does not implement and achieve the peripheral and consolidated urban growth policies, but argue that there is scope to consider the development as an exception, given its "unique" features and the benefits that it represents.

Isaac Conservation Park

The vision for the park, as expressed through the variation is of a development over many years (up to 60) with farming and quarrying gradually being replaced by a park with some public access (pedestrian and cycle only), with some areas comparable to the existing Peacock Springs development where public access is restricted.

A "green belt" barrier to further urban expansion would still exist without the conservation park, but with the transfer of development rights, as no further residential units could be erected on the land, provided that a robust legal mechanism can 'sterilise' the contributing land from development. The land is held by two trusts, with the Christchurch City Council identified as the beneficiary of the trusts at a future date. Part of the land is subject to a conservation covenant in favour of the Council with another part earmarked for a similar arrangement.

Lady Isaac's proposal that a 1200 hectare site be established for the benefit of future generations of Christchurch residents is to be commended, but it must also be recognised that Isaac Construction Limited will benefit from the extension of quarrying beyond the current zoned areas. While there are other Rural Q zoned sites within the City, these are largely held by other mineral excavation companies and therefore may not be available to Isaac Construction. The income derived from the extended quarrying is to be used to fund the Isaac Conservation Park. Some of this income will be required to be used to rehabilitate quarried areas to a standard consistent with the use of the land as a conservation park (note, this standard is presently unknown but may be able to be legally defined through the conservation covenant process).

Concerns in relation to quarrying and groundwater quality impacts are outlined in the discussion of the NRRP later in this report. The overall objectives for the Conservation Park, its management both while quarrying is being undertaken and post-quarrying, and the recreation benefits to Christchurch city residents are presently unknown. The management issues, including quarry operation and rehabilitation are proposed to be the subject of a management plan, triggered by any extension of quarrying beyond the current Rural Q zone boundaries. This potentially allows the creation of a new zone on trust, without full prior knowledge of the benefits or costs of its establishment – unless these outcomes can be secured through the conservation covenant process.

During consultation, the Department of Conservation pointed out that it would be easier to restore the land for 'conservation' purposes without first quarrying it. The extended quarrying will have environmental effects, that in terms of landscape values at least, are potentially irreversible. If the sole reason for allowing quarrying is to provide an income source for the park, then it would have been useful to know the extent of that income source and the costs in establishing the park. This would have then been able to be compared with the income from farming available for the creation of the park without quarrying. This lack of information, and the reliance on a future management plan to address the issues in relation to the park is unfortunate. Section 32 of the RMA requires council to take into account 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". In the absence of extended quarrying, the conservation park could be achieved under the existing zoning.

Environmental Mitigation

The Clearwater s32 assessment and assessment against objectives and policies (attached) emphasise the uniqueness of the Clearwater/Isaac Conservation Park proposal and the public and private benefits that will accrue from it. In particular, the following matters are highlighted in the Clearwater reports:

- There is a much wider public benefit than simple expansion of urban activity – 95% of the Clearwater zone will remain as open space, with a maximum of 200 (now 111) dwellings, and 98% of the total land area represented by both Clearwater and the Isaac Conservation Park
- Clearwater is an exception in terms of the policies on peripheral growth and the urban boundary – it is a very different urban and living environment to anything else provided by the City Plan, the variation will sterilise 1200ha of land against any future urban land use and will provide an "outstanding" barrier and amenity to future urban growth
- Benefits include an increase in the City's recreation infrastructure through the development at Clearwater of an enlarged golf course and playing fields
- Increase in public access and walkways linking Clearwater and the Groynes
- Creation of a "future opportunity" for vastly increased public recreation opportunity by way of an expanded walkway system, access to the Waimakariri river, streams and the conservation park
- The provision of more than 1000ha of land as part of a future metropolitan open space, augmenting the open space framework identified by the Council for a regional park in this location
- Will "set up an opportunity" for substantial revegetation and "provide a framework" for a public walkway network and passive recreation resource at no cost to the community
- The development rights sought at Clearwater are therefore compensated in part by the transfer of development rights enabling the location of the built activity as part of a community, and the gradual transition of a significant area of land from a farming use to open space, which will improve groundwater management, pest bird control and facilitation of a regional conservation environment and outstanding landscape/open space buffer on the north boundary of the city.

Clearwater contend that the Clearwater resort is itself a unique development that provides a living environment not enabled elsewhere through the City Plan living zones. The emphasis is on the high quality open space environment at Clearwater and the provision of recreational facilities within the resort that can be utilised by both resort property owners and guests and the wider public. They also emphasise the creation of an opportunity for a park that may form part of a wider regional park network and the immediate guarantee through the transfer of development rights that this land will form a barrier to any further urban growth in this part of the city.

The argument regarding the uniqueness of Clearwater is not in itself considered satisfactory for allowing further development at Clearwater that clearly is contrary to the urban growth objectives and policies. The likelihood of other rural golf courses seeking to establish housing and associated facilities is high, and it is entirely conceivable that they too could achieve a high quality built environment within an open space matrix. While precedent is not a consideration for variations to the Plan, Clearwater have placed a degree of emphasis on the uniqueness of their proposal, so this must be evaluated. One aspect of the difference between development at Clearwater and "traditional" residential subdivisions appears to be the nature of the occupation of the land. Information provided by Clearwater indicates that traffic generation at the resort is lower than anticipated and much lower than comparable residential development in a traditional subdivision. This may be one argument for reduced policy conflict with the urban growth and transport policies that would be the case with a more traditional, detached urban subdivision. However it is not known if this existing situation, which is based on the existing 20-odd residential units and up to 100 resort hotel bedrooms, will still hold true with the higher levels of development proposed.

Given the existence of the Trusts and Trust deeds, Council Legal Services Unit advise that the Conservation Park concept is largely established and will be implemented regardless of whether development takes place at Clearwater. As such, the park cannot be considered as any sort of 'extra' mitigation for development at Clearwater.

Clearwater and the Trust's have put together a 'mitigation' package that is proposed to be partially offset against the required development contributions for development at Clearwater.

This package includes:

- an option for Clearwater to assign the lease of the Environment Canterbury land at Clearwater, to allow a possible Groyne extension and relocation of the Groyne maintenance area, with approximately 85% subleased back to Clearwater;
- the construction of a new access road and bridge to the Groyne from Clearwater Avenue;
- the construction of a new access road from Clearwater Avenue to close to the Isaac Conservation Park boundary over the Environment Canterbury land;
- riparian planting on the south bank of the waterway that runs through the Environment Canterbury land;
- accelerated development of a small part of the conservation park adjacent to the Environment Canterbury land that contains waterways;
- Works within the Groyne reserve in the form of planting and waterway enhancement;
- an option for Clearwater to transfer an 8m wide 'buffer' area of land to be planted in screening vegetation between the Groyne and the proposed "East Peninsula" residential and resort hotel development to the Council;

The City Plan contains an urban growth policy for "environmental compensation" (6.3.14) which allows the consideration of proposals that may otherwise offend key Plan provisions, where land of high landscape or natural value is protected or made available for public use and/or significant public benefit will be gained from hazard mitigation measures which would substantially enhance amenity values. The policy requires that any such development still be sustainable and environmentally acceptable.

The mitigation package involves land that is not considered to have high landscape or natural values, and there are no associated hazard mitigation benefits accruing from the proposal. As such, it cannot be considered as 'environmental compensation' under policy 6.3.14.

However, the Environment Court has said in an interim decision (*Memon and Others v CCC C116/03*):

"[94] If environmental compensation is conceived of as adequate net conservation benefit as discussed in *Baker Boys* then there may be no need for specific policies about it in a district plan. It may simply be the outcome suggested by the operation of sections 5(2)(a), (b) and especially (c), section 6; and sometimes sections 7 or 8 of the RMA"

The sections of the Act referred to are the sustainability provisions of Part II, the purpose and principles of the Act. The *Baker Boys* case referred to (C060/98) included a discussion on the appropriateness of weighing the adverse effects of a proposal against its positive effects. The Court said (my emphasis):

"[98]Where, as in this case, no issue arises under section 5(2)(a) or (b) and there are no matters of national importance under section 6, it may be proper to **weigh positive effects against adverse**. However, we are not to be taken as accepting that it is proper to do so where such issues do arise. Parliament has given consent authorities (and this Court) the power to make an assessment of the value to place on, for example, the matters of national importance in section 6, so that a **net conservation benefit** is achieved, notwithstanding that on a strict accounting basis the capital benefits from a proposal might outweigh the conservation losses..."

In the *Rutherford Family Trust* decision, the Court further discussed the concept of environmental compensation (C026/03):

[48] ... The concept - and we consider it is a very helpful one - applies where some development cannot otherwise take place because, when an overall judgement is made under the RMA (and the City Plan) as to whether it achieves sustainable management, the proposed zoning fails to provide for (say) a matter of national importance. In that situation, if a developer can provide adequate compensation, so that there is a net conservation benefit as the Environment Court briefly described it in *Baker Boys Ltd v Christchurch City Council*, then the development may, after all, represent sustainable management.

Therefore it does appear possible to evaluate the mitigation offered by Clearwater and the Isaac trusts in the form of the mitigation package even though it is not strictly "environmental compensation" as envisaged by Policy 6.3.14.

The Clearwater proposal fails to achieve the urban growth objectives and policies relating to consolidation and peripheral urban growth, and therefore must be assessed as to whether, despite this, it represents sustainable management of the rural/open space land resource and better achieves the settled objectives and policies of the Plan than the status quo. The Court suggests that if it can be demonstrated that a net conservation benefit will result, then there may be scope to conclude that this is the case. However, some issues with this approach have been identified:

[49] Of course the concept is not without problems. Questions arise as to whether a zoning or resource consent can be purchased on one site, by supplying land elsewhere. It is also important to note that the compensation must be 'environmental'. We take that word to be the adjective of 'environment' as defined widely in section 2 of the RMA. One effect of that is that 'environmental compensation' could be read as meaning 'Compensation pertaining to economic conditions which affect people and communities'. We do not decide it here but it may be that a payment of money to the Council could qualify as 'environmental compensation', although we doubt if that was intended.

[50] In our view environment compensation can only be distinguished from financial contributions - which are in effect a specific type of tax - if there is a net conservation benefit with a link to the proposal which gives rise to the need for it."

This latter point is important for two reasons. The first is that environmental compensation is separate from financial contributions. While the Clearwater development will set up an opportunity for the Council to levy development contributions under the LTCCP policy, (and it is recognised that the value of these contributions is likely to be high given the land values at Clearwater), these development contributions cannot be confused with environmental compensation. The development contributions are payable on all development, regardless of location. For something to be considered as environmental compensation, there has to be a net conservation benefit with a link between the proposal and the environmental compensation.

This issue of linkage is the second point. The Court has considered this issue of linkage, but only in relation to proposals giving rise to clear cut physical environmental issues and with commensurately clear cut compensation offers, for example, cases where development of the outstanding landscape of the Port Hills, compensated for by vesting a large area of land with these landscape values in the Council. It is therefore difficult to apply the tests that have been discussed in case law²⁰ for assessing the linkage of compensation offered to a particular development proposal, when the matter at issue is more general, i.e the impact of a proposal on the urban growth objectives and policies.

The benefits accruing to the Council and the community from the proposed compensation package are as follows:

- opportunities provided by control of part of the Environment Canterbury lease land will increase options for a Groynes extension and creating an attractive alternative entranceway to the Groynes (subject to Environment Canterbury approval).
- provision of an alternative Groynes access will solve the traffic safety issue created by the route of the proposed Western Belfast Bypass in relation to the existing Groynes access.
- enhancement of waterways on the Environment Canterbury lease land and on the Isaac trust land will improve ecological values and enhance the habitat of trout (s7 RMA). Those waterways with public access (Environment Canterbury land) will provide an attractive passive recreation environment for members of the public that will link through to the existing Groynes walkways and Waimairi walkway as well as walkways within Clearwater.
- vesting of a planted 8m strip of land adjacent to the Groynes in close proximity to the proposed East Peninsula development will enable Council control of the screening vegetation proposed in this location, to ensure visual effects of the development on users of the Groynes are minimised.

While considering these benefits, the following is also relevant:

- Taking over the Environment Canterbury lease land will impose a financial cost on the Council, as will any enhancement works on this land, other than those proposed in the compensation package. The rental is in the order of \$29,000.00 per annum, of which approximately 85% would be recovered through the sublease to Clearwater.
- It is understood Clearwater have an existing arrangement with Environment Canterbury that requires the formation of a right of way access to the Groynes in this location.
- Waterway enhancement on the Isaac Trust land will have intrinsic value only, until such time as public access to these areas is enabled.
- The 8m strip of land to be vested is required to mitigate the specific effects of development in close proximity to the Groynes. If the development was more sensitively located toward the interior of the resort, this mitigation strip would not be required. In addition, such a planted strip may create a 'wall' between Clearwater and the Groynes that does not enhance the 'open space' character of the zones. The labelling of this strip as 'compensation' for urban growth policy conflict could legitimately be questioned by submitters when it is designed to mitigate the specific adverse visual effects of the development proposed in this location.

The question of the adequacy of the compensation offered must relate to the degree of conflict with the urban growth and transport objectives and policies. Thirty-one residential units are already provided for at Clearwater under the existing City Plan provisions and through resource consent. The Isaac land contributes 42 residential units which could have been located on the land proposed for conservation park as of right, at densities of 1 house per 20ha. Essentially then, the policy conflict arises out of the clustering of the 42 houses at an urban rather than rural density, and the 38 additional residential units sought, and is potentially enlarged through residential use of the resort hotel bedrooms, unless the variation can ensure that this does not occur through strengthened provisions. Assuming this is the case, the Council must be satisfied that the mitigation offered, combined with the overall benefits of the proposal, is enough to offset the challenge to the settled City Plan objectives and policies (and any other adverse effects of the proposal).

²⁰ see Par 89 of Memon et al vs CCC (C116/03)

Given the scale of greenfield development in the City, thirty-eight houses is not a significant number. The proposed Johns Road rezoning (Variation 92) yet to be heard by the Council provides for a deferred Living 1 zoning for an area of under 4ha, with a similar number of residential units able to be provided for. In comparison, the s293 proposals at Masham and Belfast are for approximately 2400 residential units in total.

Given the relatively small scale of the development, the benefits that accrue from it, and the ability to internalise the majority of the environmental effects that arise from it, I am satisfied that the compensation offered is sufficient, when considered as part of an overall assessment of costs and benefits of the proposal, to warrant proceeding with the variation. Although there may be an opinion that the value of the compensation package when offset against financial contributions is not sufficient to counter the urban growth policy conflict, I consider that even with the offset, the net value of the mitigation package amounts to \$500,000. This will enhance the area and be of considerable benefit to the Council, and is sufficient to mitigate the effects of the limited additional development now proposed, being 38 additional houses over and above what could have been erected in the vicinity as of right plus the clustering of the transferred development right houses with an urban, rather than rural, form.

Natural Resources Regional Plan

Variation 1 to the Proposed Natural Resources Regional Plan (NRRP) was publicly notified on 3 July 2004. Chapter 4: water quality contains objectives for ensuring the quality of community drinking water supplies in Canterbury. Associated policies seek to achieve these objectives by prohibiting from July 2004 'the subdivision of land for residential, commercial or industrial purposes' as well as 'any increase in the existing area of land authorised under a district plan for mineral extraction activity or activities dependent upon mineral extraction' and 'any excavation that would result in groundwater being permanently exposed' (Policy WQL12) in Zone 1 of the Groundwater Recharge area – which includes the subject site. The methods for implementing this policy include WQL12(k) that requires territorial authorities to prohibit the above activities in Zone 1 of the groundwater recharge zone (which encompasses the variation site) in the preparation, variation, change or review of their district plans. The NRRP also contains rules to prohibit mineral extraction in areas outside of the existing quarry zones within the groundwater recharge zone 1. Section 74 of the RMA requires that the Council 'have regard' to any proposed regional plan in preparing a variation to the Plan. Once the regional plan is operative, the City Plan cannot be inconsistent with it.

Obviously the provisions of the variation in terms of extended quarrying, lake creation and further residential and commercial development are inconsistent with the direction given to the Council by the Regional Council in the NRRP. However, the variation has incorporated provisions that require the consideration of groundwater quality when development is proposed within the zone, so therefore the key question is whether the environmental outcomes sought by the NRRP can be achieved by the variation. The NRRP takes a risk-averse approach to development in the groundwater recharge zone, whereas the variation is based on the premise that risks can be managed through appropriate design. This is likely to be a key issue traversed through the submissions process on the NRRP. The Council's submission to the NRRP queries the basis for the restriction on residential development above the unconfined aquifer, but did not challenge this approach to commercial development. It is understood Environment Canterbury are considering a Variation 3 to the NRRP to take over the control of the use of land for groundwater protection in the recharge zone 1. Such a variation would be subject to the full submission and hearing process.

The legal requirement for Council at this stage is to "have regard to" the NRRP not to implement it in full. After the NRRP is operative, the City Plan must not be inconsistent with it and may require amendment. At this stage enough has been included to address the issues to satisfy the "have regard to" test.

Airport Noise

The proposal to erect further housing inside the noise contour conflicts with the present City Plan policies. Environment Court hearings on this issue are almost complete. In an interim decision the Court has upheld the use of the 50-dBA contour as a policy limit to further development of noise sensitive activities, which suggests that the residential development beyond the 50-dBA contour should not be proceeding. The variation attempts to overcome this by way of a site-specific exception to the existing policy.

Christchurch International Airport Limited (CIAL) have provided their conditional approval to the proposal, without restricting their rights to participate in any statutory process. While their approval does represent the removal of a significant obstacle to the development on airport noise grounds, it does not remove the amenity issues identified by the Court associated with allowing residential (and other noise sensitive) development within the noise contours. While the Council can be satisfied that a potential 'reverse sensitivity' effect in relation to the airport's operations has been removed via an arrangement between Clearwater and CIAL for covenants on property titles, this does not remove the effects on the future occupiers of any residential unit within the noise contours. The Council must be satisfied that allowing residential units to be constructed where they will be affected by airport noise, notwithstanding any non-complaint covenants, is in accordance with the purpose of the Act as provided for in the objectives of the Plan.

The Council's resource management solicitor, Barbara Read advises as follows:

[Policy] 6.3.7 is located in our Urban Growth policy and therefore forms part of the City's strategy to manage this.

The wording of Policy 6.3.7 itself indicates an intention to balance, on the one hand, protection of the airport as a "facility of major importance to the regional economy" against, on the other hand, residential amenities. At p. 6/12, this is neatly summarised as:

"This policy is intended to ensure that the operation of Christchurch International Airport can continue without undue restriction and that residential amenities and the quality of life for people living around the airport are safeguarded."

Also, of Environmental Results anticipated from the Urban Growth policy, ensuring the continued unrestricted operation and growth of the airport is only one of 10 anticipated, and in the very wording of that particular anticipated result, is also expressed the "...protection of future residents from noise impacts."

It is recognised that the transfer of development rights proposal results in an outcome better than that which was provided for in the Plan even with some housing located within the 50-dBA contour. That is because an equivalent number of houses could have been erected as of right either scattered across the Isaac land or in an urban cluster closer to the airport and even more affected by airport noise. Proposed Variation 90 to the Plan notified in September 2004 and yet to be heard, seeks to correct this anomaly by removing the ability to cluster development as of right. Clearwater has acquired additional land outside the 50-dBA contour sufficient for them to proceed with part of their development without infringing the noise policies. In discussions, Council staff suggested that the variation allow for housing in respect of those lands only, but this was not supported by Clearwater. It is understood that the land within the 50-dBA contour is cheaper to develop as it is at a relatively higher elevation, which means that less earthworks are required to achieve floor levels above flood levels.

Urban Design

The proposed variation is very permissive in terms of the standards used to avoid, remedy or mitigate adverse environmental effects. In terms of the built development within the Clearwater zone, the use of the Clearwater design guidelines is relied upon to achieve a high standard of amenity at the resort. The design guidelines do not form part of the variation, and the Council has no way of influencing the content, administration or enforcement of these guidelines. While it is evident from the development at Clearwater to date that a high standard of built environment has been achieved, there are no guarantees that should the ownership of the resort, or the constitution of the residents association change, that these standards will be maintained. In the living zones in the City the Plan rules provide minimum standards for development, ensuring that such things as privacy, access to sun and daylight, density of development, outlook and private outdoor living spaces are provided on every site to the Plan's standards for that zone, or else the requirement for resource consent is triggered whereby the effects of any non-compliances with the standards can be identified and evaluated. Within Clearwater, the only equivalent standards relate to setback from road or property boundaries, recession planes (for residential activity areas only); height standards and site coverage (up to 100% for sites of 150m² or smaller). There are no density controls within the seven resort community areas.

The character of the existing zone will change significantly to accommodate the extra development. While the overall 'zone' density will be very low, there are potential for clusters of high density development within the various activity areas. The applicant's consultants (Boffa Miskell Ltd Landscape Assessment) concede that a mechanism to ensure the sensitive siting of development into discrete nodes rather than a large aggregation would be appropriate, but this was not provided for in the variation document. In order to address these concerns Council staff have inserted the requirement for an 'concept plan' approval process prior to the development of the resort community areas.

Traffic & Transport

The variation recognises that an upgrade of the intersection of Johns Road and Clearwater Avenue will be required once a certain development threshold is reached, and provides for this via a rule restricting all further built development until the intersection is upgraded. Transit New Zealand have provided initial comments on the proposal. These can be summarised as follows:

- Major concern is with the growth and development of urban land use to the north west of Johns Rd, which will result in the further development and consolidation of a community whose linkages and communication are adversely affected by the presence of a major arterial;
- Cumulative effects of this and other proposed development on Johns Rd on the functioning of Johns Rd;
- Support the location of the primary access to the zone from Clearwater Avenue, and the proposed upgrading of the intersection;
- Recommend that other access options be considered (i.e. Sawyers Arms Road with internal local road linkage) although recognise this may be beyond the scope of the variation;
- Concerned that integration of transport between Clearwater and Christchurch City has not been sufficiently addressed;
- Concerned that a greater intensity of development without consideration of cross traffic options across Johns Road will adversely affect its safe and efficient use for through traffic;
- Recreation options within Isaac Conservation Park mean that pedestrian and cycle access to the park from the City need to be considered – and the effect of these on the functioning of Johns Rd as a through route;

Some of these concerns cannot be effectively dealt with through the variation as proposed, due to its site-specific nature. The South Waimakariri and Belfast Area Plans provide the opportunity for the Council to consider wider issues of transport linkages in the area. Other issues remain outstanding. Transit staff have advised in relation to the 200-residential unit variation that they would probably recommend to the Transit Board that the variation be opposed.

Bird Strike

The creation of new water bodies at Clearwater and within the Isaac Conservation Park is provided for as a discretionary activity. The supporting documents to the variation include a summary report of the existing management undertaken at Clearwater. The Ecosure report commissioned by Council in its consideration of the separate 'Lake Isaac' rowing lake included reference to overseas standards that require that no new water bodies be created within 8km of an airport. The implementation of such a standard in Christchurch is supported by Council's park ranger and resident bird expert Andrew Crossland, who is concerned about the potential adverse effects on bird populations of new lakes in this area, and the ineffectiveness of management techniques on transitory bird species. He also highlights the potential biodiversity impacts of culling bird species that are otherwise protected (black backed gulls etc). In his opinion, it is not sustainable to create a water body that will be investigated by birds, to then have to scare off or destroy these birds. He also emphasises the wider effects of bird-scaring techniques that potentially send disoriented, alarmed birds into the flight path of aircraft. CIAL have formally indicated their opposition to the creation of waterbodies within the vicinity of the airport and advise that they would vigorously oppose any application for this activity.

Flooding

The variation notes that the site is between the primary and secondary stopbanks for the Waimakariri River and that there are opportunities for alternative secondary or tertiary protection from those currently being developed by ECan. The intense development proposed at Clearwater is capable of being protected from flooding by raised floor levels. A rule is provided in the Open Space 3D zone to ensure this.

Environment Canterbury have commented that "While the probability of flooding for Clearwater is relatively low and the buildings will be sited above flood levels it makes it difficult to decline future requests for development of other land at McLeans or Coutts Island, is likely to lead to demands for improved flood protection by those residents between the two banks and in the event of a flood breakout, may result in residents trapped on islands surrounded by floodwaters". ECan also raise concerns with the effects of extended quarrying on floodwaters.

The City Plan's policies on management of the flood hazard have been refined through Variation 48, which has been the subject of submissions and further submissions but has yet to proceed to a hearing. Policy 2.5.2 "Limitations on development" as varied by Variation 48 states:

To avoid any increased risk of adverse effects on property, wellbeing and safety from natural hazards by limiting the scale and density of development, which:

- (a) is within an area subject to moderate to high risk of damage from natural hazards;*
- or*
- (b) would result in an increased risk of damage from natural hazards elsewhere.*

The explanation to this policy includes the following paragraph:

"... it is justified to impose some measure of control over the density of development because this is an effective means of allowing some scope for development of land (for example on flood plains south of the Waimakariri River), while ensuring that the resultant intensity of building development is sufficiently low to minimise exposure to damage ~~and loss~~ and unacceptable risk to life and safety should a major flood occur." (strikethrough and underlining indicate changes due to variation 48.)

The variation also includes a new policy 2.5.12 to "avoid new high risk development in the overflow flood channels of the Waimakariri river". "High risk development" is not defined, but the intention is to target critical facilities such as hospitals, technology industries and those activities involving the use and storage of large quantities of hazardous substances. The residential and accommodation activities while concentrating people in an at-risk area, do not necessarily represent 'high risk development' as flagged in the variation. It is noted that Clearwater and ECan (among others) have made submissions to these provisions in Variation 48.

The Council needs to be satisfied that requiring residential units and resort hotel buildings to be constructed above the 10,000 year flood level, and the creation of raised building platforms designed in such a way to prevent floodwaters from being diverted on to neighbouring properties, will implement and achieve the natural hazards policies of the Plan.

Servicing

The additional development at Clearwater will require upgrades and extensions to Council reticulated water supply and sewerage network, and relies upon the Council to undertake the necessary work to divert all wastewater flows from the Belfast wastewater treatment plant to the City wastewater system. A rule has been inserted in the variation to prevent development beyond that already provided for in the existing open space 3D zone from occurring until the required infrastructure can be provided.

Consultation

There have been a series of workshops at Clearwater over the last 3 years at which the proposals have been discussed by many parties in general terms. Parties who have seen the documents in draft form include Christchurch International Airport Ltd (CIAL), Canterbury Regional Council (ECan), Transit NZ, Department of Conservation and Fish and Game. Neighbours and owners of the affected lands have had the opportunity to attend meetings at Clearwater where the proposal was outlined. A consultation report accompanies the variation and summarises the issues raised in consultation. After the receipt of the consultation report, finalised comments were received from ECan and Transit, both who raise concerns with various aspects of the proposal. More recently representatives of CIAL, ECan and Transit were approached for any update on their comments.

Section 32

A section 32 report has been prepared to accompany the draft variation. The report finds that the proposed variation is efficient and effective at achieving all but the urban growth objectives of the Plan. The section 32 report includes economic analysis of the benefits of the development, but this has not considered whether the investment proposed at Clearwater could be replicated elsewhere in Christchurch (i.e. high quality homes built in existing Living zones rather than at Clearwater). However, it is accepted that the development will provide economic benefits to Christchurch. The section 32 report considers that, subject to a range of mitigation measures the expanded resort community would give effect to recreation and open space policies. The Council's decision on the acceptability or otherwise of the mitigation package for Clearwater and whether or not to proceed with the variation will form part of the overall section 32 consideration, as will the changes made to the variation by Council staff and the independent review of the larger proposal by Ken Tremaine.

9. OPTIONS

The Council has two options in relation to the proposed variation. The first of these is to accept the variation as modified by Council staff, adopt it as a Council variation and proceed with public notification. This is the option sought by Clearwater (although they do not necessarily support some of the modified provisions). This option would rely on the submission process to address the issues raised in this report.

The second option is to reject the variation. This option will not quash the aspirations of Clearwater and Lady Isaac and therefore the many resource consent applications that have been lodged are likely to be quickly reactivated, with the associated time, cost and resourcing issues. Alternatively, Clearwater could lodge the proposal as a privately initiated plan change once the City Plan becomes operative.

10. PREFERRED OPTION

It is recommended that the first option be pursued.

ASSESSMENT OF OPTIONS

11. Notify the variation

| | Benefits (current and future) | Costs (current and future) |
|--|--|--|
| Social | Increased choice of housing type at 'higher end' of market for Christchurch residents | Creation of isolated residential community with few community facilities in this location |
| Cultural | No cultural issues have been identified | No cultural issues have been identified |
| Environmental | Sets up opportunity for large conservation park Waterway enhancement on Environment Canterbury land and parts of Isaac Conservation Park Safe access to Groynes guaranteed | Development will not contribute to a consolidated city, with associated sustainability implications. Threats to groundwater quality through extended quarrying and development over recharge zone Impacts on residential amenities associated with development within airport noise contours |
| Economic | Spinoff effects of development, increased rates revenue | Cost of promoting and defending variation through hearings process and possibly to Environment Court |
| <p>Extent to which community outcomes are achieved: Alignment with community outcome a City with a sustainable and natural environment dependent upon acceptability of compensation package.</p> <p>Impact on Council's capacity and responsibilities: Will require ongoing input from Council staff and consultants through notification and hearing process, potentially through to the Environment Court.</p> <p>Effects on Maori: None identified</p> <p>Consistency with existing Council policies: Does not implement or achieve City Plan policies in relation to urban growth and the achievement of a consolidated city.</p> <p>Views and preferences of persons affected or likely to have an interest: Consultation indicates mixed views of affected/interested parties, reflecting complex nature of proposal.</p> <p>Other relevant matters:</p> | | |

12. Reject the variation

| | Benefits (current and future) | Costs (current and future) |
|--|--|--|
| Social | Avoids creation of isolated residential community with few community facilities in this location | Removes opportunity for this particular choice of housing type within Christchurch.. |
| Cultural | No cultural issues have been identified. | No cultural issues have been identified. |
| Environmental | Maintains consolidated urban form. Does not presuppose outcomes of UDS. Groundwater quality protected through existing plan provisions for rural area. Avoids traffic effects of increased development on Johns Road. Avoids amenity effects of development subject to airport noise Avoids adverse effects associated with quarrying. | Loss of benefits of waterway margin enhancement planting on ECan land and part of Conservation Park. |
| Economic | No further expenditure of ratepayers money on evaluation and consultants reports or legal services. | Loss of spinoff effects of development to construction industries, rates base, development contributions etc |
| <p>Extent to which community outcomes are achieved: Primary alignment with community outcome a City with a sustainable and natural environment</p> <p>Impact on Council's capacity and responsibilities: Will free up capacity for other projects in City Plan team. May impact on capacity within Planning Administration team should resource consents be progressed as an alternative.</p> <p>Effects on Maori: None identified</p> <p>Consistency with existing Council policies: Will ensure Council is seen to be consistent in administering and considering changes to its existing City Plan. Outcome consistent with existing City Plan urban growth objectives and policies.</p> <p>Views and preferences of persons affected or likely to have an interest: Consultation indicates mixed views of affected/interested parties, reflecting complex nature of proposal.</p> <p>Other relevant matters: None identified</p> | | |