

9. CITY PLAN DEVELOPMENT RULES IN LIVING 1A ZONE

General Manager responsible:	General Manager Regulation & Democracy Services
Officer responsible:	Environmental Services Manager
Author:	Scott Blair, 941-6205

PURPOSE OF REPORT

1. The purpose of this report is to recommend that a City Plan variation be publicly notified to overcome difficulties identified by the Environment Court in relation to a reference to the Proposed City Plan by Suburban Estates Ltd.

EXECUTIVE SUMMARY

2. The Living 1A zone in the City Plan zone prohibits the building of houses on lots of less than 1500m² where those lots are adjacent to rural zones. Similar rules in the subdivision chapter prevent the creation of such allotments. Suburban Estates Ltd (SEL) opposed the subdivision rules but omitted to oppose the Living zone rules, which are now deemed to be operative. There have been complications in the original hearing of the submission and with the subsequent Environment Court reference. The City Plan References Subcommittee has supported the position of SEL that both Living 1A and subdivision rules should be amended. An attempt to get the Environment Court to extend the scope of the reference to include the L1A zone using s293 of the Resource Management Act was unsuccessful. SEL has requested the City Council to prepare a variation to the City Plan to change the status of the Living 1A lot size rule to non-complying, to enable resource consents to be applied for. The City Plan References Subcommittee has considered the matter on 20 June 2005 and resolved to support this request. The Council resolved on 30 June 2005 to consider and if appropriate publicly notify a variation to the City Plan prepared at the expense of SEL.
3. The Variation has now been prepared, and circulated amongst probable affected land owners for consultation purposes. However a small part of the proposed variation must be processed as a plan change. The proposed Variation and Plan Change and Section 32 analysis are set out in Appendix 1 (attached). A number of letters were received as well as a number of phone calls. Details of the circulation letter and responses are set out in Appendix 2 (attached).

FINANCIAL AND LEGAL CONSIDERATIONS

4. SEL has offered to fund the preparation of the variation. Consequently the financial costs to the Council will be minor, comprising limited staff time to review SEL's work and process the notification and hearing of the variation. SEL will pay for the notification costs. Introducing a variation could be the best way to resolve legal proceedings that are becoming very complex and protracted. The variation affects very discrete areas of the plan so the Council could continue to make the balance of the City Plan operative in part. (The plan may well be operative in part by the time that this report is considered by the Council.)

STAFF RECOMMENDATION

It is recommended that the Council agree to publicly notify Proposed Variation 95 and adopt Plan Change 1 for public notification – Subdivision and Residential Use of Allotments Less than 1500m² on the Rural Boundary of the Living 1a Zone.

BACKGROUND ON CITY PLAN DEVELOPMENT RULES IN LIVING 1A ZONE

5. When the City Plan was prepared in 1995 it contained several zones designed to provide a transition between Living, Rural zones, the airport and the Port Hills. Subdivision and building of new homes were prohibited in these zones where the allotments exceeded certain rules, notably minimum lot sizes. The submission related to prohibited activity rules in the Living 1A Living 1C Living HA and Living HB zones. These rules were contained in both the Living zones, which regulated building of houses and the subdivision rules, which regulate subdivision of allotments. Suburban Estates Ltd intended to oppose these provisions but lodged a submission only in respect of the subdivision rules. This submission is yet to be finally resolved as the Hearings Panel considering the submission only made a decision in relation to the Living 1C part of the submission. The Living zone rules have passed beyond the point of challenge and are deemed to be operative by the Resource Management Act.
6. The Hearings Panel declined the submission in relation to the Living 1C zone. SEL made a reference against the decision – but included those parts of the submission that the Panel had not made a decision on – Living 1A, Living HA and Living HB.
7. The policy underpinning this approach is Policy 6.3.12, as follows:

6.3.12 To reinforce the consolidation of the urban area by:

 - (a) improving the landscape quality of the rural-urban interface;*
 - (b) establishing a transition of low density housing, open space or esplanade reserves, adjacent to the urban boundary, particularly where no clear physical boundary to urban growth exists; and*
 - (c) encouraging the planting of suitably located trees on the urban-rural interface, to create a high standard of amenity, and to better define and improve the quality of the urban edge of the City.*
8. The only zone remaining in contention for SEL is the Living 1A zone. In the L1A zone subdivision and building of new homes are both prohibited activities where the lots concerned would be less than 1500m². The rule currently provides:
 - (b) Notwithstanding (a) above, a residential activity shall be a prohibited activity for which no resource consent shall be granted in the following circumstances:*
 - (i) in the Living 1A Zone:*
 - (a).....*
 - (b) on all other sites in the Living 1A Zone where the site adjoins the Rural 2, Rural 3, Rural 5 or Cultural 3 (McKenzie School) Zones, or the site is opposite and separated from these zones by having frontage to a road or waterway, and where the net area of any site for a residential unit is less than 1500m².*
9. The effect is that even if the company succeeds in its submissions against the subdivision rules, it could gain no benefit as it would be able to subdivide lots of less than 1500m² on the rural edge but the resulting allotments could not be built on. It would not be possible to apply for resource consents.
10. As noted above, to complicate the issue the company's submissions were not fully dealt with by the Council. Although there was a hearing and decision and a reference to the Environment Court, it has been discovered since the Court hearing that the only part of the original submission dealt with by the Council was the Living 1C zone¹. SEL's reference in respect of the other zones is therefore invalid. The Council can and should hear and decide the remainder of the submission but this would address only the subdivision rules not the living zone rules. Prior to the discovery about the lack of a Council decision, the City Plan References Subcommittee had resolved to settle the reference in respect of the subdivision rules by consent, by changing the prohibited activity to non-complying for the other zones in the submission, including the Living HA and HB zones. It also resolved to join with the applicant in applying to the Environment Court to use its powers under s293 to extend the scope of the matter to include the Living zone rules. However, due to developing case-law on s293 the Court was unable to exercise that power and has declined to do so.

¹ It is noted that the because of Environment Court decisions on other references the Living 1C zone no longer exists.

11. The case is now hopelessly mired in the Environment Court and there is no clear way forward. SEL has indicated that it may seek leave to lodge a late appeal in the High Court or reopen the case in the Environment Court. The Council could apply to have the case struck out on several technical grounds. If that succeeded it would get the case disposed of but certainly not solve the problem with the City Plan.
12. SEL has recently requested the Council to urgently prepare a variation to the City Plan to address the issue, so that it can incorporate this into a subdivision it wishes to apply for land at Templeton. The City Plan References Subcommittee has considered the matter on 20 June 2005 and resolved to support this request. The Council resolved on 30 June 2005 to consider and if appropriate publicly notify a variation to the City Plan prepared at the expense of SEL.
13. By the time that this proposal is publicly notified the City Plan will be operative in part. Parts of the City Plan affected by the proposal have been 'held back' from being operative. These parts of the plan can be changed by variation. However the proposed changes include an amendment to an explanation of a policy (see Appendix 1) that will be operative. The change can only be by way of a Plan Change. This then would be Plan Change 1.
14. The Environment Court has commented in previous cases that it does not see the current L1A zoning as an effective technique for achieving a good urban-rural transition. Although it would create a row of larger lots at the boundary, these are often fenced with 2 metre paling fences, so the more open landscape being sought is completely lost. Retaining Policy 6.3.12 but allowing for resource consent applications would allow developers to come up with alternative ways of achieving a better transition, such as tree planting or more open fencing styles, so may better meet the policy than the present rules.
15. The matter affects only a small part of the Living zone rules and there are only a few undeveloped L1A sites affected by the rule, including the SEL site at Templeton. Therefore there would be minimal impact on making the City Plan operative in part – which it may well be by the time that the Council considers this report. The relevant rules will simply not be or have not been made operative.
16. SEL's planning consultants have drafted a Proposed Variation and Section 32 analysis. This has been circulated to identified directly affected land owners and other parties that Council officers would normally send draft variations to for consultation purposes. The written responses are set out in Appendix 2. In that period the writer received eight telephone calls. Some of these calls resulted in the letters set out in Appendix 2. Some calls were enquiries from adjacent rural land owners as to whether the variation would allow them to subdivide their properties.
17. The responses are a mixture of support and opposition to the proposed Variation. Of note are the responses from owners of properties within or adjacent to the Living 1A zones at Higham Lane and Cavendish Road/Regents Park. They suggest that they purchased their properties with the expectation that their and their neighbouring properties could not be further developed. It is noted that while the proposed Variation is changing the status of the subdivision of these lots from Prohibited to Non-Complying this is a difficult consent to obtain. Any applicant would need to show that their proposal was somehow unique and that granting approval would not undermine the consistent administration of the plan or public confidence in the administration of the plan. This should be a very difficult consent to obtain.
18. Also of note is the response from the representatives of the Campbell Family Trust. The Trust are section 274 parties to the reference as described above. Their particular area of interest is the changing of the prohibited activity status to non-complying for the subdivision of transitional lots in the Living HA and HB zones. They have asked that the proposed Variation extend to the Living HA and HB zones. As noted above the Council's Hearings Panel has not made a decision on this part of the SEL's submission therefore, technically, there can be no reference against which the Campbell Family Trust can be section 274 parties. The Campbell Family Trust has other options to pursue their interests in the Living HA and HB zones. They can shortly, or even now, if the plan is operative in part, apply for a private plan change to change the prohibited activity status of the subdivision of the lots that concern them.

19. It is also noted that the unheard/decided parts of the original SEL submission (those that relate to the Living HA and Living HA subdivision rules) and any further submissions, could be reported on with a recommendation at the same time that any submissions and further submissions are considered. While this could in theory lead to the situation where the subdivision rule is amended while the living zone rule remains the same – the Council must make a decision on the submission (unless SEL withdraws the submission). It is suggested that the Campbell Family Trust be informed that the best way for them to address their concerns about the prohibited activity status is to seek a private plan change.
20. The Campbell Family Trust may have some concern that the Council will elect to defer consideration of any privately initiated plan change within the two year period from the date the plan becomes operative. However, taking into account the private plan change policy recently adopted by the Council (and set out below), and not wishing to prejudge the matter, it is considered that this may not be likely.
21. The proposed Variation was also circulated amongst other Council officers and other organisations.
22. Other organisations included:
 - Transit New Zealand
 - Christchurch International Airport Limited
23. Other Council units consulted were:
 - City Streets
 - City water and Waste
 - Greenspace
24. Transit and CIAL did not have any comments to make on the proposed Variation. Comments to Davie Lovell Smith from ECan, City Water and Waste and City Streets are set out in Appendix 2. A meeting was held with Christine Heremaia of Greenspace in relation to the L1A areas adjacent to the Styx River. Ms Heremaia had indicated that she would have some comments to make.
25. At the time of writing no comments had been received. Any subsequent comments will be made available to the Council at the time that it considers this report.
26. The proposed Variation 95 and Plan Change 1 has been sent to Ngai Tahu and the Ministry for the Environment for comment. Any feedback will be reported to the Council at the time of consideration of this report.

Plan Change Policy and the First Schedule of the Resource Management Act 1991.

27. The Council has now adopted a policy in relation to proposed plan changes. Consideration as to whether to notify the Plan Change part of this proposal must take into account this policy. The policy is as follows:
 1. *Applications for changes to the Christchurch City Plan may be made in the manner set out in Part 2 of the First Schedule to the Resource Management Act. A flowchart outlining the City Plan Variation Application Procedure is attached.*
 2. *The Council will consider any applications in the manner set out in the First Schedule.*
 3. *The Council will recover its costs relating to such applications, as set out in Section 36 of the Resource Management Act 1991.*
 4. *Pursuant to Clause 25(4)(e) of the First Schedule the Council may reject applications for plan changes within two years of the City Plan becoming operative. In considering whether to do this the Council will have regard to whether any of the following matters apply:*

- (a) *The subject matter of the application affects an important strategic or policy issue the Council is currently investigating and may preclude options being considered.*
 - (b) *The proposal is for rezoning of a significant amount of land for urban growth and would pre-empt options for urban growth, being considered under the Metropolitan Christchurch Urban Development Strategy.*
 - (c) *The proposal is for rezoning of land for urban growth and the site is within a Priority 1 Area Plan currently under investigation by the Council. As at August 2005 Priority 1 Area Plans include Belfast, Memorial-Russley-Hawthornden, Southwest and Upper Styx-Harewood.*
5. *This policy will cease to have effect in regard to any provision of the City Plan which has been operative for two years or more.*
28. Also for the purposes of this assessment the Council must consider Clause 25 of the First Schedule of the RMA:
- 25. Local authority to consider request -*
- (1) *A local authority shall, within 30 working days of-*
 - (a) *Receiving a request under clause 21; or*
 - (b) *Receiving all required information or any report which was commissioned under clause 23; or*
 - (c) *Modifying the request under clause 24 -*
whichever is the latest, decide under which of subclauses (2), (3), and (4), or a combination of subclauses (2) and (4), the request shall be dealt with.
 - [(2) *The local authority may either -*
 - (a) *Adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, if it does so, -*
 - (i) *The request must be notified in accordance with clause 5 of this Schedule within 4 months of the local authority adopting the request; and*
 - (ii) *The provisions of Part I of this Schedule must apply; and*
 - (iii) *The request has effect once publicly notified; or*
 - (b) *Accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26.]*
 - (3) *The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part VI shall apply accordingly.*
 - (4) *The local authority may reject the request in whole or in part, but only on the grounds that -*
 - (a) *The request or part of the request is frivolous or vexatious; or*
 - (b) *The substance of the request or part of the request has been considered and given effect to or rejected by the local authority or Environment Court within the last 2 years; or*
 - (c) *The request or part of the request is not in accordance with sound resource management practice; or*
 - (d) *The request or part of the request would make the policy statement or plan inconsistent with Part V; or*
 - (e) *In the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.*
 - (5) *The local authority shall notify the person who made the request, within 10 working days, of its decision under this clause, and the reasons for that decision.*
29. Accordingly it is noted:
- A) The Council has received a request in accordance with Part 2 of the First Schedule of the RMA.

- B) The draft Plan Change has been sent to the Minister for the Environment and Ngai Tahu for comment in accordance with the consultation requirements of Clause 3 of Part 1 of the First Schedule of the RMA². (Clause 25(2)(II) of the First Schedule of the RMA notes that Part 1 of the First Schedule of the RMA applies.)
- C) The applicants have agreed to pay the Council's costs in processing the application.
- D) There are no matters under Part 4 of the Privately Requested Plan Change Policy that would warrant the Council rejecting the application because it is within the two year period. I have discussed the proposals with the various Priority 1 area plan project leaders and they have not raised any issues of concern.
- E) There is no need to modify the request in accordance with Clause 25(1)(C) of Part II of the First Schedule of the RMA.
- F) There are no grounds under Clause 25(3) of Part II of the First Schedule of the RMA to consider the matter as a resource consent.
- G) There are no grounds under Clause 25(4) of Part II of the First Schedule of the RMA to reject the proposed plan change.

OPTIONS

30. The options are as follows:

- a. Agree to publicly notify Variation 95 and adopt Plan Change 1 for Public Notification. The preferred option.
- b. Not agree to publicly notify Variation 95 and Adopt Plan Change 1 for Public Notification. Maintaining the Status Quo.
- c. Amend Variation 95 and Plan Change 1 to accommodate matters raised in consultation prior to public notification of the Variation and adoption of Plan Change 1 for public notification.

PREFERRED OPTION

31. There is no "do nothing" option. Option (a) is the preferred option because it allows SEL and the Council a way forward in reaching an amendment to both the Living Zone rules and the Subdivision rules, in accordance with previous City Plan References Subcommittee resolutions. This option would also aid the Council in addressing a submission on the City Plan that has not previously been addressed (that part of the SEL submission relating the Living HA and Living HB. Option b) would not enable the resolution of a protracted Environment Court reference which the City Plan References Subcommittee has previously agreed to accede to. Option c) could see the Variation and Plan Change amended to accommodate matters raised in the feedback on the proposed Variation and Plan Change. Some feedback was in support some in opposition. It is not considered necessary to amend the Variation and Plan Change at this stage. These matters can best be considered and dealt with through any future formal submissions. There were no matters raised which would give the Council reason to consider not publicly notifying the Variation and Plan Change. In regard to the Campbell Family Trust and the Living HA and Living HB zones, the resolution of this matter through the private plan change process available after the City Plan becomes operative is a better mechanism by which to address this issue (either way the Campbell Family Trust would need to meet the costs of developing the plan change and notification).

² 3. Consultation

(1) *During the preparation of a proposed policy statement or plan, the local authority concerned shall consult*

(a) *The Minister for the Environment; and*

(b) *Those other Ministers of the Crown who may be affected by the policy statement or plan; and*

(c) *Local authorities who may be so affected; and*

(d) *The tangata whenua of the area who may be so affected, through iwi authorities and tribal runanga.*

(2) *A local authority may consult anyone else during the preparation of a proposed policy statement or plan.*

ASSESSMENT OF OPTIONS

The Preferred Option

	Benefits (current and future)	Costs (current and future)
Social		
Cultural		
Environmental	Improves the opportunity for transitional landscapes to be developed between residential and rural areas.	
Economic	Enables greater use of residential land	Minor costs to the Council for reviewing and processing a variation.
<p>Extent to which community outcomes are achieved: Primary alignment with community outcome "A Liveable City" Also contributes to "A Prosperous City"</p> <p>Impact on Council's capacity and responsibilities:</p> <p>Effects on Maori: None known</p> <p>Consistency with existing Council policies: No known inconsistency</p> <p>Views and preferences of persons affected or likely to have an interest: Likely to be favoured by property developers. Notification process will further discover views of neighbours and community groups.</p> <p>Other relevant matters:</p>		

Maintain The Status Quo (If Not Preferred Option)

This would mean completing only the existing unheard submission on the subdivisional rules.

	Benefits (current and future)	Costs (current and future)
Social		
Cultural		
Environmental		Maintains an existing anomaly in the plan
Economic		Likely to increase legal costs and complexities with completing City Plan.
Extent to which community outcomes are achieved: Poor alignment with liveable city and prosperous city outcomes		
Impact on Council's capacity and responsibilities:		
Effects on Maori: None known		
Consistency with existing Council policies: No inconsistency known		
Views and preferences of persons affected or likely to have an interest: Would not be favoured by developers. This process would not discover attitude of residents, neighbours, and community groups.		
Other relevant matters:		

Option 3 Amend Variation 95 to accommodate matters raised in consultation prior to public notification.

	Benefits (current and future)	Costs (current and future)
Social		
Cultural		
Environmental	Improve the opportunity for transitional landscapes to be developed between residential and rural areas.	
Economic	Enables greater use of residential land	Minor costs to the Council for reviewing and processing a variation.
<p>Extent to which community outcomes are achieved: Primary alignment with community outcome "A Liveable City" Also contributes to "A Prosperity City"</p> <p>Impact on Council's capacity and responsibilities:</p> <p>Effects on Maori: None known</p> <p>Consistency with existing Council policies: No known inconsistency</p> <p>Views and preferences of persons affected or likely to have an interest: Likely to be favoured by property developers. Notification process will further discover views of neighbours and community groups.</p> <p>Other relevant matters:</p>		