7. REFERENCE TO THE ENVIRONMENT COURT ON THE MINISTER OF EDUCATION'S DECISION ON DESIGNATIONS IN THE PROPOSED CITY PLAN

Officer responsible Jane Donaldson	**Author** Peter Eman
Corporate Plan Output: City Plan	

The purpose of this report is to recommend that the Council lodge a reference with the Environment Court opposing the decision of the Minister of Education to designate Ministry of Education school sites in the Proposed City Plan.

As part of the hearings on the Proposed City Plan the Council made recommendations (Council Recommendation No. 196) on the requirements of the Minister of Education to designate all state school sites in the Christchurch district. That recommendation was that the Minister withdraw the requirements. The Minister has now made a decision on that recommendation, which is to reject that recommendation in whole. Clause 14(3) of the First Schedule of the Resource Management Act 1991 provides that the Council may refer any aspect of a requiring authority's decision to the Environment Court.

The Council recommendation to the Minister of Education to withdraw the requirements was based largely on the conclusion that, in terms of the criteria of the Act, the designations are not "reasonably necessary" to achieve the objectives of the public work (i.e. to provide for the schools). The main reason for coming to this conclusion was that the Plan specifically provides for schools through the Cultural 3 Zone. This zoning limits the effects of schools in a way that reflects the different environments in which they are located. Other general Plan rules would also apply, such as those designed to protect heritage items, reflecting the significance of those sites to the community. If the sites are designated none of the Plan rules will apply. It should be noted that all private schools, the polytechnic and the university all operate under the Cultural 3 zone without a designation.

As the Minister's decision is that the sites be designated without any conditions, any effects of developments at the schools could only be controlled to the extent provided through the outline plan process. That process allows the Council to request "changes" to any works proposed. The Minister does not have to accept those requests, although the Council can appeal the Minister's decision. As the requests are limited to "changes", it is unlikely that this would allow the Council to request that a proposal not proceed at all, even if significant adverse effects would occur. The outline plan process also does not allow any other persons to have input, even if the proposal would have significant adverse effects on a neighbour. For these reasons the purpose of the Act may not be achieved by the Minister's decision, and the alternative of providing for schools through the Plan provisions is considered to be more appropriate.

It is acknowledged that the Minister does have a large network of sites throughout the country, and that the designation process may simplify, to some degree, the management of that network. It appears that the primary reason the Minister seeks to designate the school sites is to have a consistent resource management mechanism throughout the country. However, despite the management advantages to the Minister, it is still concluded that the purpose of the Act would be better achieved if the sites were not designated, and that the designations are not reasonably necessary for achieving the objective of the work.

A legal opinion has also been obtained from Tony Hearn as to whether the Council's position is sustainable. He concludes that it is entirely appropriate in the circumstances that the Council should take the position that it opposes the Minister's view. His opinion is that the Council should file a reference against the decision of the Minister and that the Council has a reasonable prospect of success.

Recommendation: That the Council lodge a reference with the Environment Court, pursuant to Clause 14(3) of the First Schedule of the Resource Management Act 1991, seeking the withdrawal of the requirements of the Minister of Education for the reasons contained in this report and the Council's recommendation to the Minister.

Chairman's Recommendation: That the officer's recommendation be approved.