

## 2. UPDATE WITH CITY PLAN REFERENCES AND VARIATIONS – JULY 2001

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The purpose of this report is to advise the Committee of progress with City Plan references and variations since the last update report in March.

### REFERENCES

As at July 2001, 122 references (approximately 31% of the total) had been heard, withdrawn, or resolved by consent. A number of the latter had been forwarded to the Environment Court for final resolution.

The first actual Environment Court decision on a City Plan reference (C79/2001) has been resolved in the Council's favour. It concerned the retention of a 30 metre setback between dwellings and plantation forests. Although not an issue of fundamental importance, it is an encouraging start.

Since the hearing of the general urban growth cases presented by ECAN, the City Council and the developer groups early this year, the following specific zoning references have been heard by Judge Jackson's Court;

- Muir Park (Halswell)
- Rural 2A Zone (Halswell)
- Horticultural Subzones
- Gilbertthorpes Road
- Masham (Enterprise Homes/Applefields & Others)
- Styx Mill Basin (includes Ilam Park)
- Kainga (M R Carter)
- Fire Hazard setback (with Kainga)
- Burwood
- Early Valley (Flanagan)

References relating to Brooklands (Barker Estate) were resolved by consent prior to hearings.

The court has indicated that further hearings on urban growth rezonings are to be deferred to the last quarter of the year.

The hearing of the references on Taylors Mistake have been set down for August.

Meanwhile pre-hearing conferences have been set down for a variety of (non urban growth) references in July, indicative of a subsequent hearing at a reasonably early stage. Numerous references are also being called over on 25-27 July.

### COUNCIL HEARINGS

Council hearings on submissions seeking rezoning of land in the Cashmere Valley/Worsleys area (McVicar/Christ's College) were heard between 2 and 11 July. These submissions had to be renotified following a Court ruling that the original summary of submissions was deficient. References are highly likely on this matter, regardless of the Council's decision.

Hearings of a small number of submissions on Variation 53 (zoning a number of parks and amending rules relating to Open Space zones) took place on 19 June.

Hearing of submissions on Variation 54 (zone boundary adjustment – Scarborough) took place on 24 May. There is a likelihood of an appeal by the affected landowner.

A hearing date of 13 August has been set for the hearing of submissions on Variation 51 (overhead transmission lines).

Finally, the closing date for references on Variation 52 (Airport Noise Controls) was 19 June. The four references arising from this Commissioner recommendation and Councillor decision will be heard with those already lodged on earlier City Plan decisions concerning rezoning proposals near the airport.

## PROPOSED VARIATIONS

### 1. Minimum Floor Levels – Draft Variation 48

Very extensive work and consultation has been undertaken on the matter of minimum floor levels, associated with the protection of land and buildings from flooding. Part of this draft Variation arises from the need to replace provisions originally incorporated into the City Plan as notified, and subsequently abandoned. It raises potentially controversial issues of;

- Sea level rise and assumptions about global warming
- Filling/floor levels in other areas, and legal issues associated with the Building Act and recent case law.

Because of the likelihood of ideological, technical and legal challenges, it has been decided to undertake substantially more work on the draft Variation, and not proceed with it until the new Council is in place (probably February 2002). Another factor is the Resource Management Amendment Bill, which if passed late this year, could allow for Variations to be notified without having immediate legal effect.

### 2. Ferrymead Special Purpose Zone (Variation 37)

The Commissioner's recommendation on this Variation was rejected by the Council and the Variation withdrawn on 24 August 2000.

As a result of a subsequent High Court action by the Lyttelton Port Company, it is proposed following negotiations and advice from the Office Solicitor to reinstate the Variation and Commissioner's recommendation. This would be subject to a legal agreement that the high density Living 3 zoning accepted in the Commissioner's recommendation not be given effect to over the Port Company's land. Following a meeting with the Port Company it has been agreed to pursue a site specific Living zoning tailored to the circumstances of this land. Just over half of the Port Company's land may be vested in the Council as reserve (Conservation 1 zone).

## POTENTIAL VARIATIONS

### 1. Purchas Street – Living 3 zoning (St Albans Residents' Association)

A further request has been made by a local residents group to reconsider the Living 3 zoning in the vicinity of Purchas Street, St Albans. There is merit in revisiting the zoning of all or part of this area, subject to discussion with residents and the original submitter, the Property Investors Association. Details were set out in a report presented to the Resource Management Committee on 8 June (Juliet Hickford). Consultation with affected parties will take place in due course, although this is not a priority issue.

### 2. Design Issues Associated with Suburban Shopping Centres

Recent decisions from the Environment Court have provided strong support for the need for adequate design control over large commercial developments, an issue which has arisen in Christchurch (eg the Warehouse/Eastgate and other developments).

In ***Westfield NZ Ltd and Others vs Upper Hutt City Council*** (W44/2001) a case involving a major retail development the Court stated that:

*“Nevertheless in relation to the evidence of both Ms Popova and Ms Lucas, we agree that the particular proposal has paid little or no regard to the environment in which it is to be situated and that environmental treatment of the site has only been attempted where the commercial aspirations of Valley Plaza in respect of building and parking cease to have relevance”. (para 129)*

and in its conclusions:

*“When we add to that the negative environmental effects which flow from this inelegant structure surrounded by large areas of sealed carpark, our conclusion becomes inevitable in terms of the Act notwithstanding the benefits the proponents seek to espouse on behalf of Upper Hutt residents”. (para 306).*

In the case of **Boons Action Group vs Christchurch City Council** (C71/01), the Court observed that:-

*“This Court was invited by the parties to undertake site inspections of not only this site but other malls and supermarkets in the Christchurch area. It is appropriate for the Court to take into account those inspections, and form some view as to the importance of the issues raised in this case in the more general context of Christchurch supermarkets.*

*We note in particular that there are a number of examples of supermarkets and malls where the buildings have been built close to the boundaries of the property with minimal landscaping provided. There were several examples including the Palms and the new construction commenced at St Martins New World which is opposite residential homes. In one case the landscaping strip was in the order of 400 millimetres with low growing plants and a total wall distance of some 150 metres plus and a height in excess of 8 metres. Many of the sites indicate an amenity level significantly less than that proposed in this application. In other cases e.g. Barrington Mall, landscaping strips in the order of three metres had been established, including large trees. These again appeared not to be to the same standard as proposed in this application, but they provided a significant level of amelioration of the effect of the building frontage. In those cases the frontage height was in excess of eight metres. In the majority of examples parking was provided in large asphalt areas screened by landscaping strips with some large trees. In all of those cases vehicles moving within the parking area were clearly visible from the street scene and from residential properties”. (Paras 198, 199.)*

It is apparent that the Proposed City Plan provides inadequate controls over the design quality and landscaping of suburban shopping centres. These decisions, and public concern about such development, provide ample justification for carefully drafted, but more demanding controls over major retail developments of this nature. There is also a link to issues of design controls in the central city and “character groups” therein, which are subject to reference by the Carter Group (ironically to extend character groups over all Business Zones!). The “Rebel Sports” development which was not subject to design controls in the Central City, is an example of the lack of design control over parts of the Central City.

It is proposed that an options paper be put before the Committee by its September meeting.

3. Riccarton Bush – Tree protection

A request has been made by the Riccarton Bush Trust for a variation to provide additional protection for trees in Deans Bush through a Variation. Some work has already been done on behalf of the Trust by planning consultants. This would provide a useful platform for further work, including consultation with affected residents and then a report back to this Committee. However, given existing development, and the small number of properties that would be usefully “constrained”, the justification for a Variation is not yet clearly established.

**Chairman’s**

**Recommendation:** That the information be received.