

4. UPDATE WITH CITY PLAN REFERENCES AND VARIATIONS – APRIL 2002

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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 October 2001. Any further developments will be reported on verbally at the meeting.

REFERENCES

General

As of late March, 157 references (approximately 40% of the total) had been heard, withdrawn, or resolved by consent, with preparation of evidence underway for another 18 references. In October 2001 the figures were 138 and 35.5% respectively. A number of these are draft consent orders before the Court for final approval.

In December the Council received the Environment Court's interim decision (C217/01) on urban growth references (general evidence). The findings of this have already been reported to this Committee, and also to the Urban Planning and Growth Special Committee. At the time of writing the Council was awaiting decisions relating to the 13 specific urban growth references heard by the Court last year in the western and northern parts of the City.

No decision has yet been issued on the Taylors Mistake references, but it is expected shortly.

We now have a situation where often **two** Environment Court judges are presiding over City Plan references. While this is most welcome in the sense of accelerating the decision making process, it is periodically putting severe strain on staff resources as well as legal counsel. It has also stymied progress with variations and option papers.

Port Hills

The Court has begun the process of hearing the Port Hills references. General planning and landscape evidence was heard in the week of 11 March, and that concerning the Rutherford (and Campbell Family Trust) references was heard in the week of 18 March.

Evidence in respect of the Montgomery Spur references was exchanged on 28 March, with a possible hearing date in the middle of May.

The references in respect to Richmond Hill, Bryce & Ors (Moncks Spur) and Scott/Campbell/CRC/Forrester (Upper Worsleys) have been resolved by consent, as members of the Committee will be aware. Chrystal Holdings reference (Moncks Spur) has been withdrawn.

Other Port Hills references yet to be resolved are V Campbell (Moncks Spur), McVicar and others (Lower Worsleys), Van Asch (Cashmere Road) and Deaker and Ors (Glovers Road, Kennedy's Bush). The Van Asch references may yet be resolved by consent, but this was uncertain at the time of writing.

In addition, there is a reference by Kennedy's Bush Developments Ltd in respect to a Living HB zoning sought south of Kennedy's Bush in conjunction with "environmental compensation" – the vesting of a large area of Upper Port Hills land in the CCC. At a jurisdictional hearing the Court agreed with the Council that this reference was expressed in such a vague manner that the relief sought would not have been clear to affected persons (eg Kennedy's Bush residents). However the Court took the unusual step of proposing that the submission be renotified by the Council, but then heard directly by the Court.

Other References

Evidence is to be exchanged on the reference by the Avonmore Tertiary Institute (Cowlshaw Street) on 26 April with the hearing date still to be set.

Hearings relating to the Plan's provisions for Esplanade Reserves were heard in the week of 8 April.

Hearing of jurisdictional issues associated with the large group of airport related references is to take place in the week of 8 April along with jurisdictional issues on electromagnetic radiation rules in the Proposed Plan.

The former concerned the issue of whether it was open to referrers to challenge the accuracy and actual position of the airport noise contours and the latter the applicability of NZS 2772/99 on emissions. Depending on the outcome of this, the hearing of policies and rules on airport related matters and EMR may take place after mid-year.

Evidence in respect to references on the Coastal Hazard area in South New Brighton was exchanged on 28 March, with the hearing likely to be scheduled in June.

An updated summary of references is attached for the Committee's information.

VARIATIONS

Work on variations has been seriously affected by the demands of the City Plan references process.

Variation 53 (Zoning of Parks and Reserves)

This was subject to a Council decision on 23 August 2001, with no references being received.

Variation 54 (zone boundary adjustment – Scarborough)

A reference was received on the Council's decision by the affected landowner (G Kendall), which resulted in two S 271 notices in opposition from nearby residents. Mr Kendall has been in discussion with these parties (but so far to no avail).

Variation 51 (Overhead Lines)

Two references have been received against the Council's decision, although the decision may in fact assist with, and enable, withdrawal of several other references.

Variation 55 (Outdoor Advertising)

Hearing of the 15 submissions on this variation are planned to take place about 16/17 May. Progress to date has been delayed by commitments associated with reference hearings.

Draft Variation 48 ("Minimum Floor Levels")

This Variation has had a somewhat tortuous history, work beginning in 2000 but being deferred in August 2001. As the Committee will be aware, a response to the Council's letter to the Minister for the Environment on the issue of sea level rise was received last December. The Minister affirmed that the Government's view was that "sea level rise is not a myth" and that "I (the Minister) would be surprised if you had any difficulty defending the proposition that there are justifiable reasons to consider responses to the effects of climate change".

Unfortunately, this did not address the Council's primary concern, which is not whether it **can** prove there is climate change and sea level rise, but rather whether it **should** have to prove it in light of potential challenges from the climate sceptics lobby. These matters are of national significance and need to be addressed adequately at national policy level. Policies at both a national level (the NZ Coastal Policy Statement) and the Regional level are anaemic, and of the type castigated by the Environment Court in recent urban growth cases. The view that national policy guidance is required is increasingly shared by other Councils. One possible alternative is to provide information (not rules) on potential sea level rise in the draft variation.

In the meantime it is intended to proceed with that part of Variation 48 dealing with river flood plains (Heathcote/Avon). There is a long-standing Council commitment to address this issue, and work on finalising this variation is to start in April, with approval for notification from this Committee to be sought in June.

Ferrymead Special Purpose Zone (Variation 56)

Ongoing discussions are being held with the landowner in respect to his land west of the Tunnel Road, with a view to having a mixed zoning of Conservation and Business.

Depending on progress, this may proceed to notification of a separate earlier variation and a later one for the balance of the Ferrymead area. The land west of the Tunnel Road has a stronger association with the Woolston area rather than with Ferrymead.

A working party is considering planning issues associated with the balance of the Ferrymead area between the Tunnel Road and Port Hills Road. Much of this land is now owned by the Council. Key issues to be resolved include the future use of public open space, Ferrymead Historic Park development, and the Tamaki Brothers proposal. It is hoped to finalise these matters later this year and proceed with a variation to be notified before the end of 2002.

St Margaret's College Rezoning (Variation 57)

The Committee will recall a report by Juliet Hickford to its 15 February meeting, where approval was given to a variation to add a small number of residential properties (owned by St Margaret's) to the Cultural 3 Zone. Submissions on this closed on 17 April. This will hopefully resolve a reference by St Margaret's on the Plan.

Site Exemption (Variation 58)

This is essentially a "mechanical" variation to remove an anomaly applying to a small group of subdivisions approved between 1995 and 1999. It is expected to be publicly notified in late April.

DESIGNATIONS

Blenheim Road Deviation

Altogether a total of 21 submissions were received on the designation. Hearings are scheduled for 17-19 April, before Commissioner R W Batty.

Kingslea Designation

Submissions on the "new" designation closed on 22 March.

THE COST OF THE REFERENCES PROCESS – TAYLORS MISTAKE REFERENCE HEARINGS

It may be helpful to illustrate the costs associated with the City Plan process (and planning processes generally) by reference to the Taylors Mistake reference hearings which concluded in November last year. The cost of legal counsel and consultant witnesses has been approximately \$120,000, in addition to \$50,000 spent on the Commissioner hearings at the submission stage. Both of these figures are **exclusive** of staff costs. Some observations can be made in respect of this:

- Where references involve the Council as the "meat in the sandwich" between two polarised groups (as in this case) the chances of reaching a settlement are usually much lower than where the issue is simply between the Council and a referrer.
- In this case the Council had, over many years, attempted to broker a solution, without success. There was little more it could possibly have done.
- The issue, while major locally, was **not** of strategic significance to the city.
- There is a direct relationship between the degree of controversy and conflict involved in submission/reference hearings, and the cost to Council in staff and financial resources.

With regard to the Taylors Mistake example, it is not suggested that the Council avoid initiating variations or plan changes that are controversial because of the cost – if so, it would not be doing its job. It does however illustrate that if contentious provisions are proposed to be incorporated in the Plan, that the resourcing implications of this are appreciated by other units in the Council, both for City Plan, and for themselves.

RESOURCE MANAGEMENT ACT AMENDMENT BILL

This "Bill" has now been around for five years! Recent advice from the Ministry for the Environment suggests that while an accommodation has been reached (at officials level) between the findings of the Select Committee (restrictive) and that of the Compliance Costs Working Party of Minister Paul Swain (liberal), there is little apparent effort at present to have the Amendment Bill enacted.

Recommendation: That the information be received.

Recommendation

from the Chair:

1. That the information be received.
2. That the Council note the costs associated with the reference process.