

### 3. PERIODIC DETENTION CENTRES IN THE BUSINESS 1 ZONE

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#### 1. Purpose of Report

At its February 2002 meeting the Council resolved the following:

*“That the Council urgently initiate a variation to the City Plan to make it clear that Periodic Detention Centres (including Community Work Centres as defined in the Sentencing and Parole Reform Bill) are not permitted activities in Business 1 Zones.*

*And that in particular:*

- (a) A new definition of the term ‘Community Facilities’ be inserted in the Plan including Periodic Detention Centres.*
- (b) A ‘critical standard’ rule be inserted in Volume 3, Part 3, Clause 3.6 of the Plan, to the effect that: ‘Periodic Detention Centres shall be a non-complying activity in any Business 1 Zone.’*
- (c) An explanation and reasons be written into the Plan citing issues of nature and scale of Periodic Detention Centres being inappropriate in smaller local business centres.*

*And that an assessment in terms of Section 32 of the Resource Management Act setting out the need for the new rule and what alternatives have been considered in order to achieve the purpose of the Act be prepared referring to earlier Environment Court and High Court decisions and obiter on this issue”.*

The purpose of this report is to provide an overview of the issues involved with proceeding with such a variation and accompanying Section 32 assessment.

#### 2. Executive Summary

- The Council resolved on 28 February 2002 to initiate a variation to the Plan seeking to make Periodic Detention Centres a non-complying activity in the Business 1 Zone.
- The Sentencing Act 2002 and the Parole Act 2002 introduced a number of changes with regards to the current sentencing and parole regimes, including the effects of community-based sentences.
- The Sentencing Act 2002 has relabelled Periodic Detention Centres as Community Work Centres.
- The Acts have resulted in a decrease in the number of group placements being undertaken from Community Work Centres and an increase in the number of individual placements which do not require attendance at Community Work Centres.
- The City Plan is an effects-based planning document, which does not seek to control activities per se but rather the effects thereof and more importantly, that activities with similar or same effects are treated consistently. The Plan seeks to enable or provide for a range of locations and types of business activity to establish within the City, however this is subject to the consideration of the adverse effects. The Business 1 Zone rules seek to balance the need for the efficient operation of business activities against the protection of amenity values at the residential/commercial interface.
- The Council's resolution, as currently worded, promotes an activities-based approach to resource management. Such an approach is not consistent with the purpose and principles of the Resource Management Act 1991, is not consistent with the effects-based Plan, is difficult to justify this form of regulation on the basis of perspective, perceptions and property values.
- Whilst the standards of the Business 1 Zone satisfactorily addresses the majority of adverse effects associated with business activities, it is apparent that the current parking and loading rules are deficient when considering Community Work Centres.

- Consequently, rather than Council Officers proceeding with a Section 32 assessment and variation to make Community Work Centres a non-complying activity in the Business 1 Zone, it is recommended Council Officers be instructed to consider the adequacy of the Business 1 Zone rules in respect to the parking and loading requirements for Community Work Centres.

### 3. **Consideration**

#### **What is a Community Work Centre?**

The Sentencing Act 2002 and Parole Act 2002 introduced a number of changes with regards to the current sentencing and parole regimes, including the effects of community-based sentences. The principles behind the new legislation include a need for greater clarity, consistency and transparency in sentencing; rationale community-based and other sentences; address inconsistencies in the proportion of a custodial sentence that must be served; and improved parole decision making structure. The Acts have replaced the term 'Periodic Detention Centre' with 'Community Work Centres'.

Periodic detention and community service are replaced by a sentence called 'community work' of between 40 and 400 hours. Community work is divided into two levels of work placement being individual placement and group placement. An individual placement does not require the offender to meet at the Community Work Centre but go directly to the place of appointment to complete the required number of community work hours.

Group placement involves offenders meeting at a Community Work Centre as part of a supervised work party and being transported to the approved organisation/destination to undertake their community work. It is common practice for offenders to report to the Community Work Centre early in the morning after which they are taken to the appointed place of work by vans/mini bus and then returned to the Community Work Centre at the end of the day. Discussions with Department of Corrections staff confirm that as a result of the legislative change, the Department has seen a decrease in the number of group placements being undertaken from Community Work Centres and an increase in the number of individual placements. Community Work Centres retain their administrative and office-based functions generally associated with the Department of Correction Operations.

#### **The Proposed City Plan (the Plan)**

The Plan does not specifically identify or restrict any form or location of individual business activity in any of its Business Zones. Consequently, the Plan does not restrict the location of Community Work Centres other than being subject to the standard bulk and location standards that would apply to any other business and/or service related activity. All business and/or service related activities are considered appropriate activities to establish in Business Zones provided the relevant development, community and critical standards (rules in the Plan) are satisfied. This is consistent with the effects-based philosophy of the Plan which does not seek to control activities per se but rather the effects thereof and, more importantly, that activities with similar or same effects are treated consistently.

#### **The Business 1 Zone**

Business 1 (Local Centre) Zone recognises suburban centres are generally dominated by small scale retail and service activities characterised by 'strip' development immediately adjoining road frontages. The Business 1 Zone's purpose is to provide for local opportunities for employment, community activities and convenient (often pedestrian) access to goods and services. There are up to 100 Business 1 Zone sites that are scattered predominately through suburban living areas offering both convenience and accessibility to surrounding residents. Although acknowledging that no further strip development will be provided for in the Plan, this zone will continue to accommodate predominately business activities of a modest scale.

The standards of the Business 1 Zone control activities where the levels of activity would unduly impact on the amenities, particularly immediately adjoining residential areas. It is recognised that many of these centres have poor physical layout and parking arrangements, or are located

## **Objectives and Policies**

The overall Business Objective for the Business Section of the Plan as identified in Volume 2, page 12/3 is *'To provide opportunities for a diverse and prosperous business environment, while avoiding, remedying or mitigating the adverse effects of business activities'*. As such, the Plan seeks to enable or provide for a range of locations and types of business activity to establish within the City, however this is subject to the consideration of the adverse effects thereof.

Objective 12.4 relates specifically to suburban centres and promotes *'suburban centres which satisfy the requirements of people and communities within the City for goods and services, recreation, and opportunities for interaction.'* The associated policies encourage focussed, comprehensive and consolidated development of suburban centres to achieve improved layouts and avoid, remedy and mitigate adverse effects on surrounding environs. This is supported by Objective 12.5 which promotes *'A high standard of amenity, design and layout in suburban centres, whilst minimising adverse effects resulting from their development and activities'* and further supported in policies 12.5.5 – Daylight and sunlight, 12.5.6 – Building appearance, 12.5.10 – Residential amenity, 12.5.11 – Buffers, 12.5.12 – Residential streets and 12.5.13 – Effects on amenity, which highlight the need for activities in business zones to *'respect the amenity of surrounding living areas'* and to *'ensure effective buffers between living areas'*. The specific zone rules for the Business 1 Zone balance the need for the efficient operation of business activities against the protection of amenity values at the residential/commercial interface.

## **Issues With Making Community Work Centres A Non-Complying Activity In The Plan**

There are a number of issues that need to be carefully considered when determining the appropriateness of initiating a variation to make Community Work Centres a non-complying activity in the Business 1 zone.

## **Consistency with the Resource Management Act 1991**

The Resource Management Act 1991 (The Act) is the guiding legislation with regard to the use and development of the natural and physical resources. The Act is based on the concept of promoting sustainable management of natural and physical resources and the ways in which it can be practically implemented. The Act places emphasis on effects and results rather than on the control of specific activities. Consequently, the focus has moved away from prescriptive planning controls which, under the previous Town and Country Planning Act 1977, sought to direct and control development activities. The principle now is that regulations must be focussed on the effects of activities and people should be able to do what they want, provided any damaging effects on the environment are avoided or minimised to levels determined by the community.

As the focus of The Act is on controlling the adverse effects of activities to achieve sustainable management, the endorsement of a particular activity or to advocate one sectoral interest over another, as is being promoted by the Council's resolution, is not consistent with the purpose and principles of The Act.

## **Effects-Based Plan**

As identified above, the Plan is an effects-based document that works to ensure that all activities with similar or the same adverse environmental effects are treated consistently. The zone rules in the Plan do not list or prescribe acceptable (or not) individual or specific land uses. Rather, the key elements of the zone rules are:

- Rules that may relate to all activities in a zone (eg with business zones); or
- Rules that may relate to generic categories of activities in a zone (eg in living zones – 'residential' activities or 'other' activities); or
- Rules that may relate to a specific category of activity (eg 'tertiary education' activity in the Cultural 4 Zone); or
- In the case of city rules, relate to particular effects (eg noise, sunlight, etc).

Consequently the focus of the Plan is on controlling the effects of activities not controlling activities per se. A proposal to make Community Work Centres a non-complying activity is not consistent with an effects-based approach to Plan rules. Such an approach seeks to control the activity of Community Work Centres as opposed to controlling the effects of the activity. For this reason there are a number of resource management difficulties in amending the Plan to support an 'activities-based' approach.

The rules relating to Fortified Sites in Part 10, Heritage and Amenities of the Plan provide an example of how the effects-based approach has been applied to control the effects of activities as opposed to controlling the actual activity per se. The fortified sites rules were prompted by community concerns about gang activities in the City. As a result of investigations it was not appropriate to single out gang activities, however it was identified that there were particular effects not provided for in the Plan. Consequently, variation 3 to the Plan was publicly notified and adopted to ensure that the adverse visual and privacy effects of fortified sites were appropriately avoided, remedied or mitigated. Consistent with the effects-based approach, the Plan does not seek to specifically control gang activities but rather the effects thereof. Of particular note is the fact that the fortified sites rules are in no way targeted to the activities of gangs, but capture any activity that results in the adverse effects associated with fortified sites.

### **Safety, Security And Property Values Perceptions**

Similar to the fortified sites above, certain land use activities, such as Community Work Centres, often attract community concern due to perceived security effects on the surrounding environment. Public perceptions and any associated NIMBY (not in my backyard) concerns are not considered valid resource management effects. With regard to Council's motion, I consider there is insufficient resource management justification for regulating such activities in business areas, particularly where the purpose of the zone is to provide for a range of retail and service related activities. A Community Work Centre clearly provides a service and provides for the needs of the surrounding community.

The Environment Court commented on security and safety concerns in the *Department of Corrections vs Dunedin City Council C131/97*, a case involving a resource consent application for a Community Work Centre. In this particular case the Court indicated that there were unlikely to be any adverse effects resulting from anti-social behaviour for the following reasons;

- Individuals sentenced to community work are already in the community, and have been assessed as being suitable to remain in the community.
- There was no evidence that those subject to community work had or would cause disturbances.
- Due to the nature of the activity detainees would not be at the centre for any length of time.
- The appeal site was visible to the surrounding environment, therefore resulting in a positive effect on security.

The Court referred to *Ammon and others vs New Plymouth District Council and Te Ihi Tu Trust W27/97* a case relating to the establishment of a rehabilitation centre and highlighted that;

*'for psychological fear to be relevant, there must be the opportunity to prevent the advent of the activity into the community either in scattered or concentrated forms and this court has no power to prevent the advent of parolees or released prisoners into the community in scattered form. Therefore the danger of re-offending is ever present' (pg 20).*

The above case law highlights that it is difficult to determine the level of effect on safety and security from activities such as Community Work Centres. For this reason it is difficult to justify the regulation of such activities in the business zones from this perspective alone.

Relevant case law has confirmed that property valuation is not a relevant effect under the Resource Management Act. However property values can often be an indicator of the influence of other effects, such as amenity values. In regard to this issue the Plan provides adequate 'buffer' controls, through the imposition of amenity based rules in the Business 1 Zone ensuring that the effects on the surrounding residential environment are appropriately avoided, remedied or mitigated.

## **Ability to Designate Land**

Regardless of what rules are in the Plan it must be acknowledged that the Department of Corrections has the status of a requiring authority under Section 166 of the Act and as such the ability to designate land for a specified purpose pursuant to Section 176A of the Act. A designation is not subject to zone rules in the Plan but subject to the outline plan provisions of Section 176A of the Act. This provision enables the Council to only request changes to all or parts of proposed outline plans relating to the height, shape and bulk of a work, its location on the site, the likely finished contour of the site, vehicle access, circulation, provision for carparking, landscaping, and any other matters to avoid, remedy, or mitigate any adverse effects on the environment. Further, procedures under Section 176A do not provide any submission rights for other (third) parties.

## **4. Potential Adverse Effects Of Community Work Centres**

When considering the appropriateness of the motion of Council, it is proper to identify the potential for adverse effects on the environment with regard to Community Work Centres and, in particular, determine how the Plan currently deals (or not) with those effects. Please note these effects relate to all business and community activities and are not unique to Community Work Centres. The potential effects associated with Community Work Centres can be categorised into the following broad areas;

- Visual effects of the development, including built form.
- Noise effects associated with the use of the site.
- Effects relating to access, traffic safety and generation and parking and loading.
- Potential effects on the amenity of adjoining/ more sensitive land-uses, including residential areas.

The Business 1 Zone includes a number of zone rules that seek to address the adverse effects of business activities on the surrounding environment. These zone rules also capture the adverse effects of Community Work Centres as listed above.

The Business 1 Zone standards include controls to mitigate the effects of business activities particularly at Living Zone boundaries; these being the properties most susceptible to the potential adverse effects of commercial activities. Specifically there are rules relating to sunlight and outlook (Rule 3.4.1), setback and separation (Rule 3.4.2), and visual amenity (landscape and screening) controls (Rule 3.4.3). Noise standards and glare standards are also imposed with stricter noise standards on business sites that adjoin a Living zone boundary (Part 11, Health and Safety). Further, Rule 3.4.4 makes all developments over 4000m<sup>2</sup> a controlled activity, however, this is unlikely to be triggered by Community Work Centres which are generally of a smaller scale. With the inclusion of these specific character and amenity based rules, the Plan ensures that the adverse effects of all business activities, including Community Work Centres, on surrounding environments are satisfactorily avoided, remedied, or mitigated. Failing to comply with any of the above zone standards would trigger the need for a resource consent application.

Part 13 - Transport Section of the Plan includes rules to control the effects of traffic generation, access, parking and loading. The parking and loading requirements of the Plan are not determined by zone but by the nature of activity and its potential to generate an adverse effect. The traffic generator rule is based on vehicle movements and/or number of parking spaces. Currently Community Work Centres are not listed in the parking standards as this particular type of activity is relatively uncommon throughout the City. As such, when considering the adverse effects thereof, the parking and loading requirements of the nearest, most similar activity is applied. In this particular case, the parking and loading requirements for an office would be applied.

However, Community Work Centres function and operate in a particular way resulting in potentially different traffic related effects on the surrounding environment than traditional office activities. Often there are large numbers of people using the site over small and intermittent periods of time as individuals met on site in the morning and are taken by vans to their place of work. This process is then reversed in the evening when individuals are returned to the site. Whilst there remains a significantly smaller number of people on site during the day, the adverse traffic related effects associated with Community Work Centres are often intensified during the 'pick up' and 'drop-off' periods. Consequently, the size of the office space, which is used to determine parking and loading requirements for the site as a whole, may not be consistent with the actual use and consequential parking and loading demands of the site. The 'under-provision' of parking and loading that may occur can potentially result in adverse effects on the surrounding environment. This assessment identifies a shortcoming or failing with the Plan when considering the traffic related effects on the environment with regards to Community Work Centres.

## 5. **A Way Forward**

The Plan controls the effects of activities as opposed to taking an 'activities-based' approach which seeks to limit or control activities, irrespective of its effects. Any attempt to 'single out' Community Work Centres or otherwise to control their perceived social effects is likely to be challenged and unlikely to succeed any legal proceedings. It is important to note that a variation to make Community Work Centres a non-complying activity would also require a thorough Section 32 assessment. Section 32 of the Act requires Council to consider the costs and benefits of the possible options involved and adopt the most efficient and effective method. Considering this process and the above issues identified, it is unlikely that such an 'activities-based' approach will survive the Section 32 process.

In light of the issues discussed above, it is appropriate, in resource management and legal terms, to assess whether the standards in the Business 1 Zone adequately address the effects associated with Community Work Centres. There appears some merit in investigating the relevance and suitability of current parking and loading requirements in the Transport Section of the Plan to consider if they appropriately and satisfactorily avoid, remedy or mitigate the effects of Community Work Centres.

As has been previously reported to this Committee, there are a number of priority variations that the Council is currently committed to progressing. Furthermore, City Plan staff resources are currently devoted to resolving references on the Plan. Consequently, any variation that promotes an 'activities-based' approach to make Community Work Centres a non-complying activity would need to be undertaken by an external consultant as it is unlikely that staff will support such a proposal given the controversial nature of such an approach. This raises further funding issues.

If an alternative option of progressing a variation to deal with the parking and loading requirements of the Plan is considered an acceptable solution this may be progressed by Council staff in time. However, in saying this, adequate consultation would be required with both the community and the Department of Corrections and consideration would also have to be given to the effects of a variation on the current outstanding references to the parking requirements in the Plan. This issue is not considered a priority at present and could be dealt with other amendments/variations to the Plan.

## 6. **Conclusion**

It is considered appropriate that the Council not proceed with a variation and Section 32 assessment to make Community Work Centres a non-complying activity in Business 1 Zone. Instead there may be a need to investigate whether the effects associated with Community Work Centres and other similar activities are adequately addressed in the Business Zone rules. In particular, consideration should be given to the parking and loading requirements as they relate to Community Work Centres. However, this is not considered a priority issue for the City Plan Team at present owing to the current focus on resolving references and current priority variations.

**Staff**

**Recommendation:** That Council Officers not proceed with further investigations into a Section 32 assessment to make Community Work Centres a non-complying activity in the Business 1 Zone, and rather alternatively that officers be instructed to consider the adequacy of the Business 1 zone rules in respect to the parking and loading requirements.

**Chairman's**

**Recommendation:** That the above recommendation be adopted.