

4. VARIATION 86 - RETAIL DISTRIBUTION

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The purpose of this report is to outline the nature and content of Variation 86 - Retail Distribution, and its accompanying Section 32 evaluation, and to seek approval to publicly notify the Variation.

INTRODUCTION

As a result of City Plan references and the receipt of additional expert reports, the Council decided in late 2001 to resile its decision relating to retail activity in industrial zones and to pursue a more centres-based approach to the distribution of retail activity. Subsequently it became apparent that comprehensive amendments to the City Plan would be beyond the scope of the original submissions and references, and that a Variation should be prepared.

The Variation is deliberately limited in scope to matters pertaining to the distribution of business, particularly retail, activity. Other matters such as the distribution of office activity, retail proposals outside of light industrial zones, amenity in suburban centres, height limits in business zones will be picked up by other processes, including the Commercial Strategy and other separate Variations.

BACKGROUND

The Plan as notified in 1995 contained a policy framework addressing the importance of providing opportunities to enable new and different forms of commercial development to occur. It also explained that existing centres serve community and social functions as well as providing retail opportunities and that it is important that decay or loss of confidence in existing centres does not have adverse effects extending over wider areas of the City, or on the availability and accessibility of facilities.

These references within the notified plan to limiting effects on existing centres, and the associated rule framework restricting retailing within the Business 3B and Business 4 Zones were deleted in 1999, in light of submissions seeking more market led provisions. The current Proposed City Plan permits retail activities, without significant limitation as to size or nature, in the Central City, Business 1, Business 2, Business 3B and Business 4 Zones. The City Plan does not distinguish between any of these zones in its regulations regarding retail activity. The concept of the distribution of suburban centres to provide for the needs of the City and its communities exists in the policies reflecting the urban growth strategy of the Plan, but this has not been carried through into the rules.

A consequence of the liberalisation of the policy and rule framework concerning retail activity is the emergence of retail businesses in the Business 3B and Business 4 Zones, which are anticipated by the Plan to have a distinctly industrial environment. Enabling such centres to establish as of right fails to recognise the 'distributional effects' of diluted retail activity throughout these zones, in which significant adverse economic impacts on existing centres may cause a decline in their function and amenity, and result in adverse effects upon the wellbeing of people and communities who rely upon those centres.

Effects on:

- the classified road network,
- public transport provision,
- the long term sustainability of social and community facilities, and
- the physical infrastructure represented by existing centres also cannot be addressed.

In addition, the liberal approach to retail activity is not consistent with the existing urban growth policies of the Plan which identify appropriate and sustainable patterns of land use, particularly those which encourage connections between commercial centres, higher density housing and alternative modes of transport.

As a result of the liberal regulatory framework and an absence of clear policy direction for the distribution of business activity, there is very little opportunity to consider and debate this significant urban resource management issue through the current resource consent process.

RECENT TRENDS

At present Christchurch is experiencing rapid retail growth, of both new retail 'nodes' and the expansion of existing centres. These trends include:

1. The establishment of both large-format and mixed large/smaller-format retail activities in Industrial Zones (primarily the B4 Zone);
2. Dilution of retail activity across the City as a factor of the City's form and topography. Christchurch is a compact city with minimal topographical constraints to act as limitations on the shopping desires and motivations of its residents;
3. A shift towards major expansion of the larger retail centres (Northlands, Westfields Riccarton, The Palms Shirley and Eastgate Linwood) with a related increase of metropolitan catchment; and
4. A resultant stable or even negative growth in many established (generally smaller) centres and strip shopping.

Both New Zealand and Christchurch have experienced an unprecedented lift in communal spending power, as well as strong household growth. This has helped to assimilate significant new retail initiatives but may not continue, at least not to the same combined extent. Even given this buoyant urban situation (with tourism growth an added bonus), some Christchurch centres have declined in retail influence.

INTERVENTION

The Planning argument for managing the distributional effects of diluted retail activity throughout the City is based upon the following:

1. That new retail players can affect the viability of trading organisations of the same type; and therefore:
2. Key business in an existing centre can be affected to such a degree that the centre's viability will be eroded; and as a result:
3. The community may be disenabled in relation to providing for their social and economic wellbeing in this locality.

The issue is not that new retail activity will affect the trading circumstances of organisations of the same type, as these are purely trade competition considerations that the Council cannot consider under Section 74(3) of the Act. However, recent Environment Court decisions have stated that territorial authorities should intervene where the economic impacts of a proposed activity on similar activities in the market place, would result in impairment that could lead to a significant decline in existing physical resources, amenity, efficiency and community enablement.

PURPOSE OF AMENDMENTS

Consequently, the Variation amends Volume 1 information, trends and issues, Volume 2 objectives, policies and explanation and reasons, and Volume 3 definitions, zone statements, rules, assessment matters, reasons for rules and planning maps. These amendments seek to ensure the following:

1. Consistency between: Overarching urban growth, city identity and transport policies; business objectives and policies; and the rules intended to implement these provisions; and
2. The ability, in the case of large retail scale proposals outside of the Central City, B1 and B2 Zones, to consider and assess all relevant adverse effects; and
3. That those existing commercial centres which are relied upon by people and communities for their social and economic wellbeing and which enable ease of access by a variety of transport modes are not undermined by ad hoc retail development outside of commercial centres to the degree that they can no longer maintain their function and amenity.

The Variation establishes the planning framework relating to these matters; other matters (such as rezoning proposals) will be dealt with subsequent to the content of the Variation being finalised. In particular, establishment of objectives, policies and rules for a new zone enabling large format retail activities, provides for existing activities and consents that have already been granted, but does not provide for new areas at this stage.

CONTENT OF AMENDMENTS

In summary, the Variation comprises the following amendments to the Proposed City Plan:

Volume 1

1. Update of the statistical background and **business trends** and an update and rephrasing of the **business issues** to incorporate additional issues related to out-of-centre retail development.

Volume 2

1. Establishment of a new subsection within Section 12 (Business), comprising an objective and policies for Business Activity that apply to all business activity within the city (whether or not it is located within an identified business zone). The subsection incorporates a new objective (12.1 Distribution of Business Activity), new policies (concerning management of business activity, distribution of commercial and of industrial activity, and a temporary policy deferring rezoning proposals), and rewords and relocates existing policies (concerning cumulative effects, new commercial centres and expansion of centres).
2. Matters addressed within the new objective 12.1 include seeking a distribution, scale and form of business activity which meets needs of both businesses and the community, and
 - 2.1 Which is located appropriately in terms of infrastructure, and
 - 2.2 Which is consistent with other policies relating to community facilities, residential consolidation and accessibility considerations, and
 - 2.3 Which addresses adverse effects (including those associated with transport, amenity, distributional effects on existing centres, and environmental nuisance). The associated policies address aspects of the objective in more detail.
3. Establishment of a new subsection within Section 12 (Business), comprising an objective and related policies for a Business Zone which enables the large format retailing trend and provides some recognition to recent retail developments located outside of centre. The new objective (12.9 Role of Retail Parks) and policies ensure that any further growth of the Retail Park areas is subject to consideration of the transport network and any 'distributional effects' on district centres and the central city.
4. Associated text amendments to these two new subsections include paragraphs detailing: Explanation and Reasons; Environmental Results anticipated; and Implementation methods.
5. Other amendments to existing objectives and policies ensure consistency with the new framework.

Volume 3

1. Amendments to the **contents page** to reflect renumbering and the introduction of a new Retail Park section.
2. Establishment of a number of additional **definitions** in order to narrow the focus of the new rules for B3, B3B and B4 Zones to those retail activities that are likely to give rise to distributional effects, and thus eliminating the need for activities such as trade suppliers to be considered under the new rule. In addition, amendments to existing definitions provide for greater consistency and clarity.
3. Amendments to the **zone descriptions** and **environmental results anticipated**. These principally affect the existing B3, B3B and B4 Zones and implement provisions for the new Business Retail Park (BRP) Zone. However, minor amendments have also been made to the B1 and B2 Zones to clarify the meaning of a 'district centre'. All amendments provide consistency with Volume 2 provisions.

4. Amendments throughout Volume 3 to amend 'retail services' to '**commercial services**', to provide greater clarity in applying the term 'retailing' (which includes both retail activities and retail/commercial services).
5. Amendments to the **Central City Edge Zone** to apply a modified version of the new retail rule for Business 3 Zones.
6. Introduction of a new subsection with rules and associated provisions for the **Business Retail Park Zone**, with consequential amendments to: rules in the Heritage and Amenities, Health and Safety, and Subdivision sections; and to certain Business 4 Zone rules and a Development Plan in areas now partly rezoned to Business RP.
7. Amendments to rules and associated provisions for retail activity within the **Business 3 Zone**, including the replacement of the Appendix 2 and Appendix 8 lists with a list which is consistent with amended rules for the 3B and 4 Zones and does not permit activities with potential to generate distributional effects to establish as-of-right.
8. Amendments to rules for retail activity within **Business 3B and 4 Zones** involving floor space thresholds for those types of retail activities which, if featured singly or collectively in a new development or developments, are capable of significantly undermining the function, efficiency of use and amenity values of existing centres. The existing rule concerning development and redevelopment of retail space has been deleted because the new floor space thresholds for consent are lower than those applying in this rule. Associated amendments are made to the assessment matters for resource consents and the reasons for rules.
9. Minor amendments to rules for retail activity in **B4P, 5 and 6 Zones** to provide consistency with amendments to other retail rules in industrial zones.
10. Amendments to the rule for retail activities in the **Special Purpose (Wigram) Zone** to continue to provide consistency with the relevant rule in Business 3 Zones.
11. Amendments to the rule concerning access for **high traffic generators** to widen the discretion of assessment for retail activities in those zones which have been substantially amended through this variation. Currently regard is to be had to matters of 'access'; this has been widened to 'any traffic effects', thus providing clear reference to effects on the wider transport network. Associated amendments are made to the reasons for rules.
12. Deletion of existing **Appendix 2 list of activities** in Part 3 of Volume 3, and its replacement with a diagram to assist interpretation of the cumulative floor space threshold of new rule 5.3.1.
13. **Consequential amendments**, including to Part 13, Rule 2.2.1, Table 1b (Minimum parking requirements).
14. Amendments to **Planning Maps** to show areas now zoned as Business Retail Park (BRP) Zone.

SECTION 32 EVALUATION

The Resource Management Act 1991 requires that an evaluation be undertaken to examine the appropriateness of the chosen objectives, policies, rules and other methods. In order to inform this process, the following experts have prepared reports, which are attached as appendices to the Section 32 report:

- Mark Tansley, Retail expert, Marketplace NZ Ltd
- Tim Heath, Retail expert, Propertyeconomics
- James Baines, Social Analyst, Taylor Baines Ltd
- Mike Calvert, Transport Planner, Transport and City Streets Unit
- Andrew Craig, Urban Design Landscape Architect, Planning Strategy Unit

The Section 32 assessment (including expert opinions attached as appendices) can be viewed in the Councillor's Lounge prior to the Council meeting; however, as it is many hundreds of pages in length, a summary of the assessment is attached. This essentially describes the reasons for the proposed amendments to the City Plan and should be read in conjunction with the proposed Variation. The Variation can also be viewed in the Councillor's Lounge.

CONSULTATION

A copy of the information pertaining to the proposed Retail Park Zones was made available to owners and occupiers of all land affected by the proposed rezoning in two letters, sent on 10 December 2003 and 9 January 2004, with comments received until 15 February. A draft of the entire Variation was subsequently made available for public comment from 1 March to 23 April. As a consequence of this informal submission process, several changes were made to the draft Variation.

A further report outlining details of correspondence and officer decisions pertaining to one particular piece of land which was originally proposed to form part of a new Retail Park Zone is discussed in a separate report to the Regulatory and Consents Committee.

LEGAL REVIEW

The Council has engaged Trevor Gould (QC) to provide a legal review of the Variation. The review has been completed and several amendments has been made to the content of the Variation as a result of this. Mr Gould will be acting for the Council at the Environment Court.

Mr Gould has also provided significant legal advice as to how to lessen the potential for submissions and subsequent litigation seeking site specific rezoning. The purpose and scope of the Variation is to ensure that an appropriate 'framework' for managing retailing activity is established through the Court system, prior to any attempts to assess and analyse the rezoning of areas for significant retail developments. Mr Gould's concern is that given Judge Jackson's recent decision in *Naturally Best New Zealand Limited & Ors vs Queenstown District Council (C49/2004)*, the Environment Court may entertain submissions and subsequent references outside of the scope of the variation, where these relate to the establishment of new centres. This is likely delay the date for making the variation operative, and lead to pressure on the Council to disprove or otherwise such submissions or references. Mr Gould has advised that any mention of 'new centres' or 'opportunities for commercial development', either as policies, methods or regulation, be deleted from the Variation.

From a legal perspective, given the recent decision from Judge Jackson, such an approach represents a carefully calculated approach to reduce the likelihood of such challenges being successful. However, from a planning perspective this amounts to the litigation "tail wagging the dog". The Variation, as it has been drafted, represents a well constructed and comprehensive framework for managing and evaluating retail developments throughout the City for the life of the Plan. The removal and postponed notification of those more strategic elements of the Variation could simply delay such a debate, and furthermore lead to re-litigation of those elements that have already settled.

On this basis, and following discussions with the General Manager Regulation and Democracy Services, the Variation has been strengthened to provide as robust a platform as possible for Mr Gould to argue that submissions seeking rezoning are outside of the scope of the Variation. This will be done without removing those policies that provide for a strategic and long term analysis of commercial activity within the City.

PROCESS FROM HERE

Once the application is notified, it will have immediate effect. There is an opportunity for submissions, and for 'further submissions' (in support or opposition to the initial round of submissions). All submissions will be considered at hearings, anticipated to be held in 2005. Any appeals to the Environment Court will probably be heard the following year.

Committee

- Recommendation:**
1. That Variation 86 - Retail Distribution and its accompanying Section 32 evaluation be approved for public notification.
 2. That the Council express its appreciation of the work undertaken on the Retail Variation by staff.

(Note: These recommendations were passed unanimously by the Committee members present, being Councillors Cox, Ganda, Keast, Sheriff, Wells and Withers.)