

## 8. CITY PLAN DEVELOPMENT RULES IN LIVING 1A ZONE

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### PURPOSE OF REPORT

1. The purpose of this report is to advise the Council of the outcome of Environment Court proceedings and to recommend that a City Plan variation be prepared to overcome difficulties identified by the Court.

### EXECUTIVE SUMMARY

2. The Living 1A zone in the City Plan zone prohibits the building of houses on lots of less than 1500m<sup>2</sup> where those lots are adjacent to rural zones. Similar rules in the subdivision chapter prevent the creation of such allotments. Suburban Estates Ltd (SEL) opposed the subdivision rules but omitted to oppose the Living zone rules, which are now deemed to be operative. There have been complications in the original hearing of the submission and with the subsequent Environment Court reference. The City Plan References Subcommittee has supported the position of SEL that both Living 1A and subdivision rules should be amended. An attempt to get the Environment Court to extend the scope of the reference to include the L1A zone using s293 of the Resource Management Act was unsuccessful. SEL has requested the City Council to prepare a variation to the City Plan to change the status of the Living 1A lot size rule to non-complying, to enable resource consents to be applied for. The City Plan References Subcommittee has considered the matter on 20 June 2005 and resolved to support this request.

### FINANCIAL AND LEGAL CONSIDERATIONS

3. SEL has offered to fund the preparation of a variation (refer attached letter). Consequently the financial costs to the Council will be minor, consisting only of limited staff time to review SEL's work and process the notification and hearing of the variation. Introducing a variation could be the best way to resolve legal proceedings that are becoming very complex and protracted. The variation would affect only one specific rule so the Council could continue to make the balance of the City Plan operative in part.

### STAFF RECOMMENDATIONS

It is recommended that the Council agree to consider and if appropriate publicly notify a variation to the City Plan prepared at the expense of SEL to change the prohibited activity status of certain subdivisions in the Living 1A zone from prohibited to non-complying.

## BACKGROUND ON CITY PLAN DEVELOPMENT RULES IN LIVING 1A ZONE

4. When the City Plan was prepared in 1995 it contained several zones designed to provide a transition between Living, Rural zones, the Airport and the Port Hills. Subdivision and building of new homes were prohibited in these zones where the allotments exceeded certain rules, notably minimum lot sizes. These rules were contained in both the Living zones, which regulated building of houses and the subdivision rules, which regulate subdivision of allotments. Suburban Estates Ltd intended to oppose these provisions but lodged a submission only in respect of the subdivision rules. This submission is yet to be finally resolved. The Living zone rules have passed beyond the point of challenge and are deemed to be operative by the Resource Management Act.
5. The policy underpinning this approach is Policy 6.3.12, as follows:

*6.3.12 To reinforce the consolidation of the urban area by:*

  - (a) improving the landscape quality of the rural-urban interface;*
  - (b) establishing a transition of low density housing, open space or esplanade reserves, adjacent to the urban boundary, particularly where no clear physical boundary to urban growth exists; and*
  - (c) encouraging the planting of suitably located trees on the urban-rural interface, to create a high standard of amenity, and to better define and improve the quality of the urban edge of the city.*
6. The only zone remaining in contention is the Living 1A zone. In the L1A zone subdivision and building of new homes are both prohibited activities where the lots concerned would be less than 1500m<sup>2</sup>. The rule currently provides:
  - (b) Notwithstanding (a) above, a residential activity shall be a prohibited activity for which no resource consent shall be granted in the following circumstances:*
    - (i) in the Living 1A Zone:*
      - (a).....*
      - (b) on all other sites in the Living 1A Zone where the site adjoins the Rural 2, Rural 3, Rural 5 or Cultural 3 (McKenzie School) Zones, or the site is opposite and separated from these zones by having frontage to a road or waterway, and where the net area of any site for a residential unit is less than 1500m<sup>2</sup>.*
7. The effect is that even if the company succeeds in its submissions against the subdivision rules, it could gain no benefit as it would be able to subdivide lots of less than 1500m<sup>2</sup> on the rural edge but the resulting allotments could not be built on. It would not be possible to apply for resource consents.
8. To complicate the issue the company's submissions were not fully dealt with by the Council. Although there was a hearing and decision and a reference to the Environment Court, it has been discovered since the Court hearing that the only part of the original submission dealt with by the Council was the Living 1C zone. The Environment Court reference in respect of the other zones is therefore invalid. The Council can and should hear and decide the remainder of the submission but this would address only the subdivision rules not the living zone rules. Prior to the discovery about the lack of a Council decision, the City Plan References Subcommittee had resolved to settle the reference in respect of the subdivision rules by consent, by changing the prohibited activity to non-complying. It also resolved to join with the applicant in applying to the Environment Court to use its powers under s293 to extend the scope of the matter to include the Living zone rules. However, due to developing case law on s293 the Court was unable to exercise that power and has declined to do so.
9. The case is now hopelessly mired in the Environment Court and there is no clear way forward. SEL has indicated that it may seek leave to lodge a late appeal in the High Court or reopen the case in the Environment Court. The Council could apply to have the case struck out on several technical grounds. If that succeeded it would get the case disposed of but certainly not solve the problem with the City Plan.

10. SEL has recently requested the Council to urgently prepare a variation to the City Plan to address the issue, so that it can incorporate this into a subdivision it wishes to apply for land at Templeton. However such a variation would fail to qualify for high priority under the Council's recently adopted priorities for City Plan workload. This was explained to SEL, who have therefore offered to fund the preparation of the variation.
11. The City Plan References Subcommittee has considered the matter on 20 June 2005 and resolved to support this request.
12. The Environment Court has commented in previous cases that it does not see the current L1A zoning as an effective technique for achieving a good urban-rural transition. Although it would create a row of larger lots at the boundary, these are often fenced with 2 metre paling fences, so the more open landscape being sought is completely lost. Retaining Policy 6.3.12 but allowing for resource consent applications would allow developers to come up with alternative ways of achieving a better transition, such as tree planting or more open fencing styles, so may better meet the policy than the present rules.
13. The matter affects only a small part of the Living zone rules and there are only a few undeveloped L1A sites affected by the rule, including the SEL site at Templeton. Therefore there would be minimal impact on making the City Plan operative in part. The relevant rules will simply not be made operative.

#### **OPTIONS**

14. The options are as follows:
  - (a) Deal only with the outstanding submission on the subdivision rules. This is a statutory obligation and must be carried out. This would not resolve SEL's difficulties.
  - (b) As for (a) and also vary the City Plan to change the prohibited activity status of certain subdivisions in the L1A zone to non-complying.
  - (c) As for (a) but change the City Plan after the Plan is made operative.
  - (d) As for (a) but allow SEL to make a privately requested plan change after the City Plan becomes operative.

#### **PREFERRED OPTION**

15. There is no "do nothing" option. Option (a) is the minimum that can be done but does not improve the plan in a way that seems desirable or resolve SEL's issues. The preferred option is (b). This is because it is desirable to resolve this issue promptly and at the same time as the existing submissions and Environment Court references are dealt with. If this is not done then dealing with the existing submissions and references would be difficult. SEL has indicated it may seek leave to take the matter to the High Court. Option (a) by itself would not resolve SEL's issues or implement the City Plan References Subcommittee's previous resolutions. Options (c) and (d) would resolve the issues and improve the plan, eventually. They are uncertain as to timing. The matter would not qualify for priority as a Council-prepared plan change in the foreseeable future. It is not known when the plan actually will become operative and SEL does not know whether the Council would allow a privately-requested plan change to be brought within the first two years anyway. The Council has yet to adopt an approach to private plan changes and the two-year rule.
16. In conclusion, this variation is being proposed to remedy a situation which has developed a long and complicated history through the City Plan process to date. Were it a new matter arising it would not be recommended at this time. It will have only a minor impact on the Council's finances and will not delay making the bulk of the City Plan operative.

## ASSESSMENT OF OPTIONS

### The Preferred Option

	Benefits (current and future)	Costs (current and future)
<b>Social</b>		
<b>Cultural</b>		
<b>Environmental</b>	Improve the opportunity for transitional landscapes to be developed between residential and rural areas.	
<b>Economic</b>	Enables greater use of residential land	Minor costs to the Council for reviewing and processing a variation.
<p><b>Extent to which community outcomes are achieved:</b>                      Primary alignment with community outcome "A Liveable City"                      Also contributes to "A Prosperity City"</p> <p><b>Impact on Council's capacity and responsibilities:</b></p> <p><b>Effects on Maori:</b>                      None known</p> <p><b>Consistency with existing Council policies:</b>                      No known inconsistency</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b>                      Likely to be favoured by property developers. Variation process will discover views of neighbours and community groups.</p> <p><b>Other relevant matters:</b></p>		

### Maintain The Status Quo (If Not Preferred Option)

This would mean completing only the existing unheard submission on the subdivisional rules

	Benefits (current and future)	Costs (current and future)
<b>Social</b>		
<b>Cultural</b>		
<b>Environmental</b>		Maintains an existing anomaly in the plan
<b>Economic</b>		Likely to increase legal costs and complexities with completing City Plan.
<p><b>Extent to which community outcomes are achieved:</b>                      Poor alignment with liveable city and prosperous city outcomes</p> <p><b>Impact on Council's capacity and responsibilities:</b></p> <p><b>Effects on Maori:</b>                      None known</p> <p><b>Consistency with existing Council policies:</b>                      No inconsistency known</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b>                      Would not be favoured by developers. This process would not discover attitude of residents, neighbours, and community groups.</p> <p><b>Other relevant matters:</b></p>		

**Option 3 Change to City Plan after it is made operative (Private or Council-initiated)**

	<b>Benefits (current and future)</b>	<b>Costs (current and future)</b>
<b>Social</b>		
<b>Cultural</b>		
<b>Environmental</b>		
<b>Economic</b>		
<p><b>Extent to which community outcomes are achieved:</b> Primary alignment with community outcome Liveable City Also contributes to a Prosperous City</p> <p><b>Impact on Council's capacity and responsibilities:</b></p> <p><b>Effects on Maori:</b> None known</p> <p><b>Consistency with existing Council policies:</b> No inconsistency known</p> <p><b>Views and preferences of persons affected or likely to have an interest:</b> Not likely to be favoured by property developers because of delays. Variation process will discover views of neighbours and community groups.</p> <p><b>Other relevant matters:</b></p>		