

BEFORE THE ENVIRONMENT COURT

Decision No. C **3** /2008

IN THE MATTER of the Resource Management Act 1991 (**the Act**)

AND

IN THE MATTER of appeals pursuant to Clause 14 of the First Schedule to the Act

BETWEEN P D SLOAN

(ENV-2007-CHC-22)

AND EMMA JANE LIMITED

(ENV-2007-CHC-25)

AND DAUBNEY TRUST

(ENV-2007-CHC-23)

Appellants

AND CHRISTCHURCH CITY COUNCIL

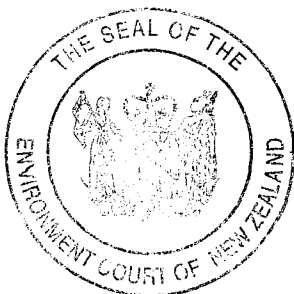
Respondent

Hearing: at Christchurch 5-9, 12-15, 19-20 November 2007

Court: Environment Judge J A Smith
Environment Commissioner A J Sutherland
Environment Commissioner S J Watson
Deputy Environment Commissioner K D F Fletcher

Appearances: Ms P A Steven and Ms R M Wolt for P D Sloan (**Sloan**) and Emma Jane Limited (**Emma Jane**)
Ms R M Wolt for Daubney Trust (**Daubney**)
Mr J J Hassan and Ms L L Sewell for the Christchurch City Council (**the City Council**)

Date of Decision: 2 \ January 2008



DECISION OF THE ENVIRONMENT COURT

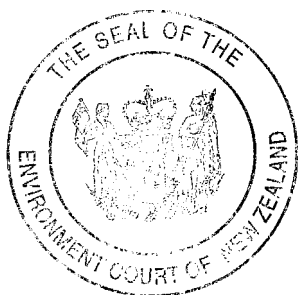
- A: Appeals allowed in part as outlined in this decision.
- B: Sloan and Daubney to provide draft outline development plans to other parties by 30 March 2008; the Council to respond by 30 April 2008. If no agreement, submissions to be tiled by the appellants by 23 May 2008. Reply by 9 June 2008.
- C: Emma Jane, Sloan and Daubney to provide draft changes to the Plan incorporating this decision by 30 March 2008. Council may comment by 23 April 2008, and appellants' final reply by 23 May 2008.
- D: Costs: any application to be filed by 30 April 2008; any response by 23 May 2008.

REASONS

Introduction

[1] These planning appeals seek business zonings different to those included in the Plan as part of Variation 86 as follows:

- (a) Sloan seeks B2 zoning rather than BRP zoning of land owned by them on Ferry Road, Ferrymead;
- (b) Emma Jane seeks a hybrid of B1 zoning rather than B4 zoning of land owned by them on Waterman Place, Ferrymead;
- (c) Daubney seeks BRP zoning rather than B3 zoning of a block of land including some owned by them on Moorhouse Avenue between Antigua and Selwyn Streets.



[2] These appeals are the only remaining zoning issues arising out of Variation 86. The majority were settled either prior to the commencement of this hearing or by Decision C152/2007 issued orally on 7 November and now subject to a written decision dated 26 November 2007.

[3] Accordingly, for the purposes of consideration of these particular zonings the objectives and policies of the Plan incorporating Variation 86 are now settled.

[4] The outcomes sought by the appellants has changed from that originally submitted and the zonings now sought represent those changes.

[5] The general zoning in the Plan can only be indicative of the type of activities permitted as many exceptions and additions are provided for in the various zoning provisions. It was accepted by all parties that, from the positions of the parties before it, the Court had a variety of options available.

Variation 86

[6] The purpose of Variation 86 as stated at page 2 of the original notified variation is to ensure the following:

- *consistency between.. overarching urban growth, city identity and transport policies; business objectives and policies; and the rules intended to implement these provisions,.*
- *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*
- *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 adhoc retail development outside of commercial centres to the degree that they can no longer maintain their function and amenity.*



[7] We conclude the purpose of the Variation is to establish a planning framework relating to those matters identified and to enable large format retail activities in a new zone, while providing for existing activities and consents that have already been granted. These stated purposes are unchanged as a result of the various appeals and submissions to the Variation.

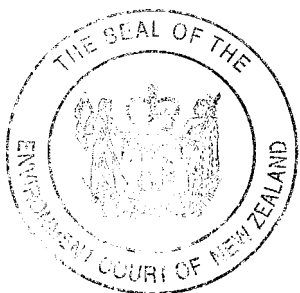
[8] This Court concluded at paragraphs [15] to [17] of decision C152/2007 that:

Overall we conclude that the provisions make it clear that the intent of Variation 86 is to allow for a forward-looking approach to planning for retail in Christchurch. The objectives and policies now clearly indicate that it is intended that change can occur and that new district or large format retail park areas might be established. However, the Plan as varied now envisages that change will occur through amendments to the Plan. In our view that is entirely consistent with the overall approach of the Plan towards the centres and business retail parks.

The practical difficulty we have seen is that, to date, retail growth planning has been retrospective. Essentially consents have been granted by the Council which allow the activity to establish (an example being the supermarket at Ferrymead). Thereafter plan changes have been sought to regularise that position and intensify activity.

As we understand Variation 86 as now worded it sets its face against such ad hoc development and seeks to take a predictive role in terms of planning. However, the Plan as varied achieves flexibility by providing criteria for consideration of new district centres and business retail parks. That, in our view, establishes a clear balance between the certainty necessary for ordered development and confidence and flexibility to allow for change and growth.

[9] Variation 86 itself indicates it does not consider the establishment of new centres. However, it is clear that Variation 86 favours a centres-based approach rather than a dispersed approach to business activity. It is also clear that by concentrating business activity into particular areas (described as district centres) the effect will be to



intensify traffic in those areas while reducing the traffic impact on other sections of the roading network.

[10] Extensive evidence in relation to the centres-based policy and its traffic effects was originally included within the evidence circulated to and read by the Court. Nevertheless, the centres-based policy was one of the issues resolved early in the proceedings and is now part of the Plan. Accordingly, the distribution of traffic caused by a centres-based approach must be considered as acceptable compared to the traffic distribution of a dispersal model.

[11] The practical consequence of such an approach however is that certain of the objectives and policies of the Plan are affected. Examples would be 6.2.2, (Volume 2, Section 6, Urban Growth) which notes:

This policy seeks to encourage a reduction in travel demand by private vehicles through encouraging a distribution of shopping centres that are conveniently located throughout the city . . .

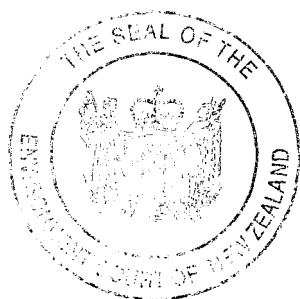
And later:

The emphasis on compact centres is to avoid unnecessary loss of local housing stock, to ensure that such centres do not create adverse traffic impacts on local streets, and to enable convenient pedestrian movement within them.

[12] It then goes on to note:

The expansion of existing centres, or the creation of new ones, should occur in locations and on routes that reinforce community density, minimise adverse effects on amenity, are served by public transport, and where the level of demand on the road network can be accommodated.

[13] Similarly, in the Transport section, policies 7.2.2 - 7.2.4 provide:



7.2.2 To protect the function of the road network and the environment of adjacent land uses from the adverse effects of high traffic generators.

...

7.2.4 To take account of social and environmental impacts as well as economic benefits when planning changes to the road network.

District centres and traffic effects

[14] Accordingly, it can be seen that Variation 86, by introducing district centres, will have an impact on roads and traffic in the vicinity of such a centre. That tension appears to be addressed in terms of the policies and objectives generally by seeking to ensure that such traffic can be accommodated within the roading system.

[15] Variation 86 essentially confirms that this concentration of traffic is an acceptable effect given the wider benefits to the entire roading system. The accommodation of such effects appears to be dealt with in the Plan by way of the high traffic generator rule [Volume 3, Part 13, Rule 2.3.8] which requires any business activity which may generate more than 250 vehicles per day to obtain a consent where consideration can be given to relevant matters.

[16] It was therefore particularly curious to this Court that, notwithstanding the clear emphasis upon concentrating traffic around district centres, extensive evidence was given for the City Council as to this very eventuality in relation to Ferrymead being zoned as a district centre.. It may be that as the case had developed quickly, with the majority of matters being settled within the first three days, it was not possible for the Council to give adequate thought to the scope of the evidence they were producing on this particular issue. Nevertheless, it appeared that the evidence the Council was giving was as to the particular consequences of the very variation they had introduced.

[17] For our part we cannot accept that the intention of Variation 86 is that every time a district centre is being considered, an increase in traffic levels will be seen as a basis on which to refuse to make any provision for such a centre. Given that the majority of time the Court sat on this matter was engaged with this issue, we consider the following points are clear from a reading of the Plan:

- (a) that district centres will generate localised high traffic demands around the centre;
- (b) that those should be accommodated wherever possible on arterial or minor arterial roads and should avoid local roads;
- (c) that (given that the network as a whole should have lower levels of demand) works and improvements to accommodate such extra traffic will be focussed around reducing (but not avoiding) those local impacts.

[18] We were told there were some eight district centres with the key ones being:

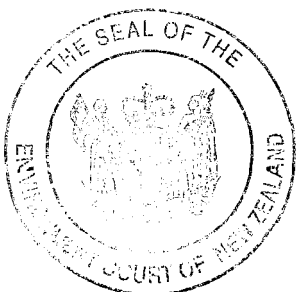
- (a) Westfield Mall between Riccarton Road and Blenheim Road;
- (b) Northlands Mall on Papanui Road;
- (c) Eastgate Mall off Aldwins Road and Linwood Avenue;
- (d) The Palms off Marshlands Road.

[19] In respect of the particular sites under consideration, two are off Ferry Road which has existing congestion issues. The Sloan site also adjoins Humphreys Drive. The Daubney property is situated on Moorhouse Avenue, an eight-lane road capable of carrying some 40,000 vehicles during the peak-hour compared with the current vehicle numbers of around 4,000 during the peak-hour.

The scope of the appeal

[20] In simple terms the question before this Court could be described as deciding which appropriate zone box these particular properties should be placed in. In reality, however, there is the prospect of a far more site-specific approach to be adopted for each of the three sites, given the scope of the appeal and the way in which the Plan operates.

[21] Matters have become further refined as the case has progressed, with the Council agreeing in its closing submissions that, subject to the Court adopting certain controls, a B2 Zone over the whole of the Sloan site could be appropriate. The issues then turned upon application of the traffic generation rules, areas provided for retail, commercial and residential activities, coverage controls and height controls.



[22] In respect of the Emma Jane site, the appellants did not pursue a B2 zoning but rather sought a B1 zoning with some particular controls in place. As it transpired, the controls essentially related to the amount of retail which could be provided on the site, whether commercial and residential could be provided as permitted, and the coverage and height rules which could operate whether the site was zoned B4 or B1.

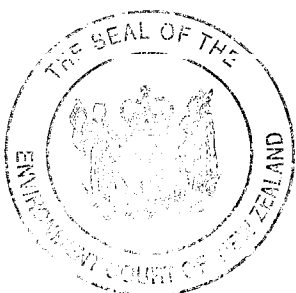
[23] In respect of the Daubney site, the situation was somewhat more simple. The appellants sought either a Business Retail Park Zone (**BRP**) in accordance with an outline development plan to be submitted, or a variation on the B3 Zone which would provide for a mix of commercial offices and retail facilities, again in accordance with an outline development plan.

[24] We shall move on to consider site-specific issues in due course. In the meantime we will identify the requirements of the Act.

The Court's approach

[25] The starting point for consideration of the approach to be adopted was agreed by all parties as being the Environment Court decision *Eldamos Investments Limited v Gisborne District Council*¹. The principles can be summarised as:

- (1) the Court does not start with any particular presumption as to the appropriate zone rule, policy or objective (*Eldamos* para [123], also *Wellington Club v Carson*²);
- (2) the Court is seeking to obtain the optimum planning solution within the scope of the appeal it has before it based on an evaluation of the totality of the evidence given in the hearing, without imposing a burden of proof on any other party (*Eldamos* para [129]);
- (3) in considering whether a policy, rule or method achieves the purpose of the Act, the purpose is generally found in the objectives and policies of a plan. There are exceptions where the objectives and policies are also challenged



¹ ENV W47/2005.

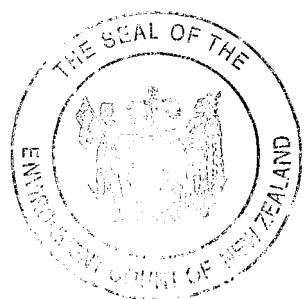
² [1972] NZLR 698 at page 702.

(which is no longer the case here) and also where the objectives and policies of a planning instrument fall far short of achieving the purpose of the Act. Again that was not argued in this case. Nevertheless, there are provisions in all plans which do not always fit neatly together and we should regard the policies and objectives of a plan through the filter of Part 2 of the RMA where necessary;

- (4) a policy, rule or other method in a plan is to be evaluated by whether:
- (i) it is the most appropriate way to achieve the policies and objectives of the plan (section 32(3)(b)). To this we would add that in a case such as this it is the more appropriate or better way. We cannot exclude that there may be further ways which are appropriate but not within the scope of the particular appeal we are hearing;
 - (ii) it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (section 72);
 - (iii) it is in accordance with the provisions of Part 2 (section 74(1));
 - (iv) if a rule, it achieves the objectives and policies of the Plan (section 76(1)(b)).

[26] For current purposes we did not understand there to be any serious argument before this Court that any of the available zones would not achieve the policies and objectives of the Plan or not meet Part 2 of the Act. Even in respect of assisting the territorial authority to carry out its functions, the parties accepted that, depending on the levels of controls, any particular zone in prospect could achieve that. The real issue and argument between the parties was which was the more appropriate or better method of achieving the objectives and policies of the Plan. Thus the Court's attention was drawn particularly to factors such as:

- (a) with BRP zoning on the Daubney site, landscaping would be a requirement of development which it was not within the B3 Zone;
- (b) on the Sloan and Emma Jane sites, a zoning that enabled residential and commercial offices is more likely to achieve a mixed diversity outcome and thus higher amenity than would a more retail focussed zone;
- (c) providing for commercial offices on the Daubney site would better provide for the needs of the community by providing for a diversity of activities.



[27] We now turn to examine in more detail the issue on which much of the evidence before the Court was addressed, being traffic effects.

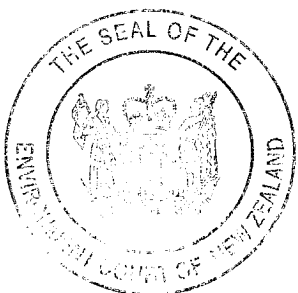
Traffic effects (General)

[28] We have already identified that Variation 86 occasions a localised concentration of activity around district centres with avoidance of traffic movements in other sections of the roading network. This is based upon modelling undertaken by the Council's transport witnesses using a well-developed model known as Christchurch Transport Study Traffic Model. This is a macro-model which has, over the years, been developed to a high level of usefulness for predicting major changes within the roading network.

[29] The Council's evidence, accepted by the appellants in this case, is that the district centre model leads to some overall reductions in traffic movements but does increase localised traffic around the district centres. Although the model is not able to provide predictions in respect of individual sites, it appears to be accepted by the appellants and particularly their traffic engineer, Mr G Smith, that similar effects would be caused by business retail parks, although to a lesser level.

[30] Put another way, it was also common evidence that the greater the number of square metres of retail space, the greater the number of vehicle movements associated with peak hour traffic. However, the type of retail activity had a significant effect on the amount of traffic being generated, with facilities such as supermarkets and fast food outlets having significant generation per hour (say 15-20 vehicles per hour per 100 m²) compared with some of the larger do-it-yourself home building suppliers such as the Mitre 10 Megastore with around 6-9 vehicles per hour per 100 m². Residential properties and commercial offices were agreed to be low generators of 1-2 vehicles per 100 m² per hour at peak times (Mr Abley's Figure 2).

[31] As we have already identified, the Plan recognises this variability of traffic generation by a particular rule (Volume 3, Part 13). It is known as the *High Traffic Generator Rule* which provides:



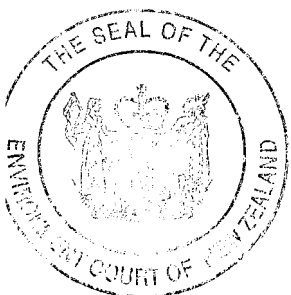
2.3.8 *High traffic generators.*

- (a) *Any activity on a site which is not in the Central City Zone which generates more than 250 vehicle trips per day and/or provides more than 25 parking spaces shall be a discretionary activity with the Councils discretion limited as follows.*
- *retail activities in the B3, B3B, B4, BRP, Central City Edge, and Special Purpose (Wigram), (Areas B and B1) zones: matters associated with any traffic effects of the activity.*
 - *other activities and other zones: matters associated with vehicular access.*
- (b) *Any activity on a site in the Central City Zone which generates more than 250 trips per day and/or provides more than 25 parking spaces shall be a controlled activity with the exercise of the Council's discretion limited to vehicular access.*

[32] The distinctions between the consideration of matters associated with the traffic effects of the activity generally and vehicular access only are not so clear when one comes to examine the relevant criteria listed in Volume 3, Part 13, 3.2.14 and annexed hereto marked “A”. Importantly, it includes new provisions inserted by Variation 86 including:

- (b) *The extent to which the traffic using the access either alone or in association with other nearby activities, will adversely affect the traffic function and/or safety of the surrounding road network.,*
- ...
- (j) *The proximity of the access to other high traffic generating landuse access points and intersections.*

[33] Accordingly the distinctions between the two provisions in 2.3.8(a) may be more apparent than real given the breadth of the criteria relevant for consideration of the limited discretion in either case. Whether the Sloan site was zoned B2, B4 or BRP, commercial and residential activities would fall to be considered in respect of access requirements only. This is because it is only retail activities which are covered within



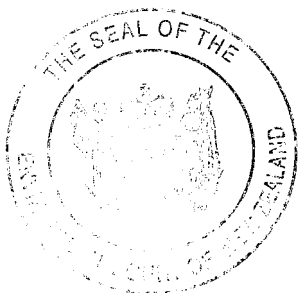
Zones B4 and BRP while other activities in all zones are to be considered in respect of access requirements only.

[34] Similarly in respect of the Daubney site, whether the site was zoned B3 or BRP, all traffic effects would be relevant under either zoning.

[35] It is only in respect of the Emma Jane site that there is a different approach potentially. However, given that the evidence before this Court was that it was the localised effect on the network (particularly the Ferry Road/Waterman Place intersection) which caused difficulties, this would be picked up whether the site was within the B4 Zone or the B1 Zone provided matters associated with vehicle access are considered to include problems at the intersection of Ferry Road and Waterman Place. Given this intersection lies on the only means of access to the site (i.e. from Waterman Place) and the intersection touches one corner of the site the Court sees this as an appropriate interpretation in this case.

[36] For all practical purposes, we have concluded that there is no particular distinction between how traffic effects will be considered for each of the various zones available for these sites. In either event the question of traffic effects on the local road network is a matter which can properly be had regard to. Given the breadth of the Traffic Generator Rule, it is clear that it would apply to most activities that might establish on any of these three sites. It is intended to give an opportunity for the Council to ensure that there is an adequate consideration of the impact upon the local traffic network.

[37] It was suggested by Mr Hassan in closing that there should be some further opportunity or general discretionary status for these sites to enable traffic effects to be examined separately. Given that these matters are addressed in terms of the Plan in any event, we can see no added purpose in doing so. It would merely add a further layer to those already included within the Plan, with no particular purpose or end in sight. It would create a discretion in circumstances where no criteria were set out (unless there was a specific reference to 3.2.14, which are the same criteria that would be referred to in any event).



[38] Accordingly, we have concluded that the most appropriate way to deal with traffic generation issues within these zones and on these three particular sites is through the application of the Plan provisions, particularly 2.3.8 and the criteria listed in 3.2.14 (Annexure “A”).

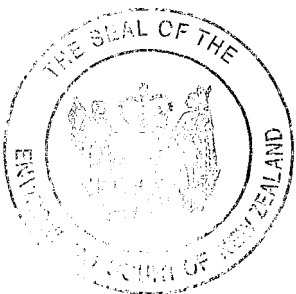
Traffic effects (Ferryhead sites)

[39] There was extremely long and complicated evidence involving micro modelling in respect of potential traffic effects from the Sloan site. There was some minor discussion relating to the Emma Jane site and also to the Daubney site. We have undertaken an analysis of this evidence. However, while it appears to have been overtaken by the concessions made at the end of the hearing, nevertheless we include our commentary in this area for the sake of completeness.

[40] Council’s assessment of possible traffic effects resulting from granting the appellants’ relief was based on the output of two numerical models: a macro model and a micro model. Mr J A Falconer, a senior transportation modeller with Beta Infrastructure, described the models in his evidence and was responsible for running them. Input data and the evaluation of outputs was the responsibility of Mr S J Abley, a director of Steve Abley Transportation Engineering.

[41] The Christchurch Transport Study Traffic Model (**the CTS model**) was used as the macro or large scale model. This is a well established model that the Council uses to forecast traffic conditions for the Christchurch area as a whole. It is essentially a strategic model and thus cannot produce results on a fine or local scale. That is the role of a micro model such as was used to predict details of traffic movement in the Ferryhead area.

[42] Mr Abley presented evidence based on outputs from the CTS model that predicted traffic conditions for Christchurch in 2026: firstly under the assumption that Variation 86 was introduced with the approach of the Greater Christchurch Urban Development Strategy (**UDS**) being followed, and secondly, that Variation 86 was not



introduced. The former is essentially a *retail centres based approach* while the latter reflects a *retail dispersed model*.

[43] This Court has confirmed (by Decision C152/2007) the introduction of Variation 86, with some amendments to wording but without specifying the zoning to be applied to the three sites presently under consideration. Accordingly the results of the CTS modelling for 2026 are of little relevance for this decision as the Plan now adopts a centres-based approach.

[44] The CTS model was also used, assuming Variation 86 was in place, to predict traffic conditions in 2011. These predictions were used to generate the required inputs to the micro model which covered the Ferrymead area including the Sloan and Emma Jane sites.

[45] The micro or small scale model was developed by Council specifically to aid its evaluation of Variation 86 as it applied to the Ferrymead area. The modelled area extended from Aldwins Road in the west across the causeway to Beachville Road in the east. On the north and south it was bounded by Humphreys Drive and Ferry Road respectively. All roads that join these roads from outside the area are included in the model together with links between Ferry Road and Humphreys Drive which allow simulation of traffic flows between these major routes.

[46] Mr Falconer informed us that the model conformed to the relevant Council guidelines³ and had recently been peer reviewed. A letter from Mr S Hardcastle, managing director of Base Plus, dated 2 November 2007 confirmed this and concluded that Mr Falconer had adhered to *prescribed good practice*. In cross-examination Mr Falconer averred Mr Hardcastle was appropriately qualified to do such a review. In cross-examination Mr Smith, director of Gabites Porter Consultants Limited and a traffic witness for the appellants, agreed with this assessment. Mr Falconer also noted the model was still undergoing development, an issue that subsequently assumed some importance as we discuss below.

³ *Guide to Christchurch City Council S-Paramics Modelling (Issue 2.0, 6 July 2007).*



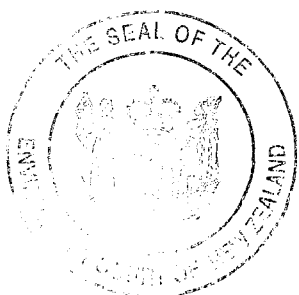
[47] Traffic data taken in 2006 was used to calibrate and then validate the micro model. This included traffic flows, intersection turning movements, travel times and queue lengths. We observe that the intersection turning movement data was used both to calibrate and to validate the micro model. This is not standard practice. Mr Falconer's conclusion is that the model shows a *good level of correlation* with observed traffic counts and travel times while reasonably reflecting the CTS model traffic demands. Data presented in an attachment to his evidence⁴ supports this conclusion which we accept, but note that it applies to data taken in 2006.

[48] Four micro model simulations were done for 2011. This year was chosen by Mr Abley because there are committed traffic improvement projects in the Long Term Community Consultation Plan that will provide benefits to the Ferrymead area by 2011. Specifically the Ferrymead bridge over the Heathcote River will be widened to six lanes (one being a turning lane going east) and the Humphreys Drive/Ferry Road intersection will be signalised. Both these changes were included in each micro model simulation.

[49] The focus of the micro modelling was to quantify the effects of possible retail developments on the Sloan and Emma Jane sites with regard to private motor vehicles on the surrounding road network. No consideration was given to public transport, cyclists or pedestrians. The possibility of people switching between these transport modes was also not taken into account.

[50] The first simulation for 2011 is referred to as the base model. It included anticipated traffic growth to 2011, implementation of all resource consents currently granted, development of vacant commercial land, further residential development in accord with the UDS and the programmed infrastructure improvements mentioned above.

[51] Three further simulations (Scenarios A, B and C) assumed the following:



⁴ *Ferrymead Retail Study – Base Model Specification Calibration and Validation, a report to the Christchurch City Council by Beca Infrastructure, September 2007.*

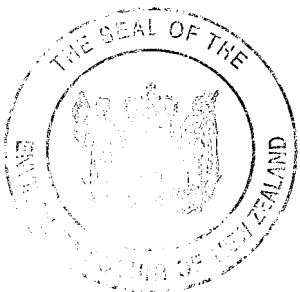
- Scenario A: assumed the Sloan site was developed with half under BRP zoning (9,700 m² gross floor area (**gfa**)) and half under B2 zoning (29,000 m² gfa). The Emma Jane site was assumed unchanged from the base model.
- Scenario B: assumed the Sloan site was developed fully under a B2 zoning (60,000 m² gfa). The Emma Jane site was assumed unchanged from the base model.
- Scenario C: assumed both the Sloan and Emma Jane sites were fully developed under B2 zonings with 60,000 m² gfa and 6,400 m² gfa respectively.

[52] Emma Jane is no longer seeking a B2 zoning thus Scenario C is not relevant for our considerations. Both Scenarios A and B retained the base model development on the Emma Jane site. As a result possible effects of development beyond that presently consented on the Emma Jane site were not considered by Mr Abley.

[53] Results from these three simulations were compared with those of the base model to estimate the traffic effects that may arise from the assumed developments on the two sites.

[54] Model outputs included traffic volumes, delays and queues on each link and with each turning movement, total vehicle travel time and distance and journey times along key routes through the modelled network. The period studied was 1530 to 1830 hours on a weekday, with results being presented for the peak traffic hour within that period. Mr Abley's evidence dated 1 October 2007 details these results, presents a discussion of them and draws conclusions based upon the results.

[55] Supplementary questions from Mr Hassan of Mr Abley revealed that after writing his 1 October evidence Mr Abley obtained measurements, taken on 4 October 2007, of traffic flows in the Ferrymead area. In particular he received counts of traffic entering and leaving the Sloan site which were higher than those being predicted by the micro model. Accordingly some model parameters were changed in order to obtain a better fit for traffic volumes. This recalibrated model was then used to re-evaluate Scenarios A, B and C. It was Mr Abley's contention that although the numerical values



of the outputs from the recalibrated model differed from those given in his 1 October evidence, the changes were not sufficient for him to alter his conclusions as to the effects resulting from the various scenarios.

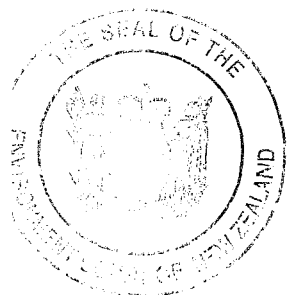
[56] We pause to note that a set of measurements made on one day is simply a snapshot of conditions that may or may not reflect longer term averages. This is so even if great care is taken in selecting the day for the measurements. That such data has been used to recalibrate the model is disturbing.

[57] Comparisons between results from the different simulations showed that as retail activity increases from the base model through Scenario A to Scenario C more adverse effects appear. The Court has no difficulty accepting this. However the reliance that can be placed on the predicted increases is of concern and we return to this later. The Court observes that in introducing Variation 86 with its centres-based approach the City Plan must anticipate traffic conditions will deteriorate around retail centres as they expand. It follows Council is prepared to accept increases in traffic and will presumably plan mitigation measures appropriately.

[58] Mr Abley's assessment with respect to the Sloan site is that the adverse effects would be significant under Scenarios B and C. He concedes that although the adverse effects may also be significant under Scenario A, an amount of B2 zoning less than the 60,000 m² contemplated in Scenario B could be acceptable on the Sloan site. However it would need to be in conjunction with more integrated development to provide permeability and site legibility before Mr Abley would see it as appropriate.

[59] With respect to the Emma Jane site, Mr Abley records that traffic effects have not been tested explicitly but that in his view with the existing resource consents it is very likely that the associated increase in retailing would result in significant traffic effects.

[60] Correctly Mr Falconer drew our attention to the limitations of traffic modelling. He stated in evidence that a transport model is a simplified representation of reality, the accuracy of which as a forecasting tool is particularly dependent upon the accuracy of



the forecast scenario inputs with the other major determinant being an accurate representation of the road network.

[61] Mr M G Smith, a traffic engineer called for Sloan, strongly criticised the appropriateness of the models and the ways in which they were used. He concluded:

No confidence can be placed in either of the models and as a consequence no conclusions can be drawn from any of the results produced by the models. Essentially almost all of the conclusions drawn by Mr Abley have no foundation.

The Court is not prepared to go this far but it does have particular concerns, which are shared with Mr Smith, namely:

- the feasibility of the developments assumed for the Sloan site in 2011 under Scenario B

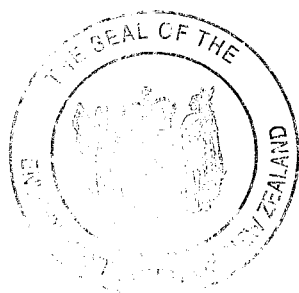
The assumption of 60,000 m² gfa carries a requirement for parking of 2,150 spaces (Plan Volume 3, Part 13, Table 1b) or some 58,050 m². On the 58,440 m² site multi-level retail and parking will be required within the 1.5 plot ratio of the B2 Zone. Given the present buildings on the site we see this as unlikely.

- the use of gfa to determine the trip rate to be used in the model

Mr Abley notes *there is significant variation in the vehicle trip generation characteristics of retail land use*. This is well illustrated in his Figure 2 which also shows that even within a given category of land use there is wide variation, e.g. shops show a range of from 3 to 22 vehicle movements per 100 m² gfa while the figures for large format retail are 4.5 to 8.2.

- values for gfa and trip rate for the Sloan site are the *only* differences between the base model and Scenario B. Given the uncertainty in each described above, we must treat the results and their interpretation with caution.

[62] Interestingly, Mr Abley's analysis is based upon an assumption that the area will be used for retail only and it does not appear to include any assumptions based upon



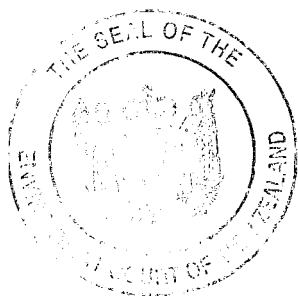
commercial, business or residential uses. It was accepted in cross-examination that these had minimal effects in terms of peak hour traffic. Thus of the 60,000 m² modelled, if some 50,000 m² of that was residential, it would comprise less contribution to the traffic generation than the 4,000 m² of the supermarket.

[63] When considering the Sloan site it can therefore be concluded that the potential adverse effect on peak hour traffic derives from the retail area which is permitted. As discussions progressed, it became clear that the applicant was content with a control that only ground floor level be used for retail and also accepted that some upper limit on the retail area be imposed.

[64] Mr Abley for the City Council accepted that at some 30,000 m² of retail area the traffic generated would be at an acceptable level. He agreed that added areas of residential or commercial office space would not significantly alter traffic generation figures so as to compromise the acceptability of the traffic effect. If, accordingly, we assume that the coverage ratio for the B2 Zone of 1.5 was achieved, this would enable approximately nine hectares coverage. If 30,000 m² (3 ha) was retail and the balance residential and commercial, this would generate traffic at levels which we understood Mr Abley to agree were acceptable in terms of the operational configuration envisaged for 2011.

[65] There was also a high level of agreement in respect of the Emma Jane site. It was Mr Abley's view, supported by Mr Smith for the appellants, that there would be significant traffic effects from the development currently consented to. Without signalisation of the corner of Ferry Road and Waterman Place, there would be significant reduction in traffic function for vehicles making a right turn into Waterman Place or for vehicles turning right out of Waterman Place. Waterman Place is a dead-end street, with little prospect of further development. A former through road has subsequently been closed and the area modified.

[66] We annex hereto and mark “**B**” a copy of a plan of Ferrymead showing the Sloan and Emma Jane sites. We also annex and mark “**C**” a plan of the Daubney site on Moorhouse Avenue.



Traffic effects at the Daubney block

[67] The Daubney appeal seeks rezoning of an entire block bounded by Moorhouse Avenue, Antigua Street, Selwyn Street and the Railway corridor (**Daubney block**). The land is zoned B3 under the Operative Plan but the variation has restricted the scope of development in that zone. Daubney own only a small central piece of land in the block.

[68] No specific traffic modelling was conducted for the Daubney block and there was a difference between Mr Abley and Mr Smith as to the impact its proposed zoning could have on traffic. Where there is a difference between Mr Abley and Mr Smith, we prefer the evidence of Mr Smith. Although we acknowledge that the zoning of the Daubney block as BRP would increase the traffic over current use, we are not satisfied that it would make any significant impact upon this area. Nor are we satisfied it would increase traffic over B3 zoning which contemplates significant traffic impacts.

[69] Moorhouse Avenue in this area is a broad road with signalised intersections. Mr Smith indicates that it is designed for a peak capacity of around 40,000 vehicles per hour and currently carries around 4,000. There is no evidence before us that suggests that the road itself would not be able to cater for traffic generated from the Daubney block with properly designed and integrated entries and exits whether zoned B3 or BRP.

[70] In particular, the Daubney block has a rear right-of-way parallel to the railway line through the site connecting with Stewart Mill Road which could provide both an entry and egress point from the site. Side entries onto Selwyn and Antigua Streets could also be constructed. Accordingly, an integrated development of the whole site, whatever the zoning, would have the significant advantage of avoiding traffic movements onto each particular site by implementing a centralised traffic system. Given its current zoning as B3, it was not suggested to us by any party that such a requirement could be imposed by the Court if we retained the B3 zoning. However, it was accepted by both parties that, should we be minded to move to a BRP zoning, an outline development plan could be required. This would then have the advantage of establishing a plan for the integrated development of the whole site and include traffic management.



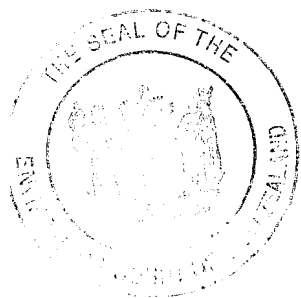
[71] In respect of the Daubney block, there is currently a BRP Zone to the immediate east on the same side of Moorhouse Avenue. Further to the west, an extension of Moorhouse Avenue connecting to Blenheim Road has now been constructed, which makes the BRP Zone at Tower Junction close by. Accordingly, either a B3 or a BRP Zone for the Daubney block could integrate well with the existing activities in the area, including those at Tower Junction.

[72] The Council was particularly concerned that there are currently around nine owners of the properties contained in the Daubney block, and there is no assurance that all or any of the other owners would necessarily agree to an integrated development. However, the planner appearing for Daubney, Mr K P McCracken, was of the view that a requirement for an outline development plan should be incorporated within the Plan if the zoning was to change to BRP. This was confirmed by the counsel for Daubney in opening. Thus it will become clear before the Court approves any outline development plan whether the property owners in the Daubney block can reach any level of agreement. If provisions are included in the Plan, any agreement affecting a particular landowner would be necessary for development to occur pursuant to the outline development plan.

The differences between Business zones

[73] The differences between the Business Zones are not as clear as the City Council would like. The B2 Zone is intended to encapsulate district centres and the B1 Zone local centres. However, from perusal of the Plan it can be seen that B1 has been widely utilised to deal with areas of business activity throughout the city. This covers areas such as corner dairies, small incongruent buildings and the like. Even B2 has been used more widely than is suggested, in part based upon a reflection of historical activities. Within the B2 Zone site density is set at a plot ratio of 1.5 and height controls are set on a case by case basis. Height controls vary between 12 and 20 metres (Volume 3, Part 3, 3.5.2 and 3.5.1).

[74] The zone description at Volume 3, Part 3, 1.5 shows that the Business 2 Zone has three main purposes:



- (a) building development of significant scale and intensity appropriate for a large district centre and to the amenities of living environments adjoining;
- (b) it identifies the core of business activity within a district centre, particularly with regard to retailing, often in association with a Business 1 component;
- (c) these centres usually contain important community facilities.

[75] The Plan then goes on to identify a group of smaller district centres, 17 in total. It also identifies some 11 major centres, including Barrington, New Brighton and Church Corner. Importantly, B2 recognises in environmental results anticipated:

- (b) *Relatively high levels of traffic generation and particularly in the case of the larger district centres, provision of extensive off-street car parking areas with standards on landscaping, access, parking and manoeuvring to mitigate adverse visual and traffic effects.*

Importantly, currently the B2 Zone does not include either Northwood or Ferrymead.

[76] The B3 Zone is described as the Inner City Industrial Zone and states:

The Business 3 Zone covers the older industrial areas near the central city which are dominated by light industry, warehousing and service industries, and includes a range of long established industries often on small sites. There are also some heavier manufacturing industries which have significant nuisance effects such as noise. Building densities are generally higher than suburban industrial areas, and the extent of landscaping is generally considerably lower.

[77] It goes on to note with particular reference to the Daubney area:

Part of the Business 3 Zone is also adjacent to an area of Retail Park Zone which together form an area of approximately 11 hectares comprising land formerly occupied by the railway station and associated marshalling yards. This area is located south of Moorhouse Avenue and north of Carlyle Street, and between the Waltham Road overbridge and the Colombo Street overbridge.



This area has been comprehensively developed for large scale space extensive commercial buildings in an inner city location.

[78] It also notes:

. . . the Business 3 Zone allows significant impacts in terms of noise, traffic, building scale and permitted hazardous substances. Activities generating multiple visits from the general public are therefore not generally appropriate, given the character of the zone.

[79] Industrial activity is defined in the Plan as:

means the manufacturing, assembly, packaging, wholesaling or storage of products or the processing of raw materials and other ancillary activities.

[80] The B4 Zone is described in Volume 3, Part 3, 1.10 as:

The Business 4 (Suburban Industrial) Zone includes a number of light industrial and servicing areas in the city generally located within or adjoining suburban living areas. It also includes light industrial areas intended to serve as buffer zones between living zones and the Business 5 (General Industrial) Zone, and servicing areas adjoining some large suburban centres. The zone's purpose is to provide for light industry, warehousing and service industries, and some commercial activities such as offices. Some retailing is provided for in these areas, with an emphasis on retail activities of a nature and scale that do not lead to significant adverse effects on the function and amenity of the central city and district centres.

[81] The Business Retail Park Zone (Volume 3, Part 3, 1.7):

... recognises the market trend toward large format retail and trade supply outlets, that has accelerated during and since the 1990's.

It goes on to say:



The locational characteristics of these sites is either through.

- *a grouping of large format retail on the edge of existing centres, e.g. Chapple Place and at central Moorhouse; or*
- *a freestanding cluster of mainly large retail activities that are predominantly accessed by private motor car, e.g. The Belfast Supa Centa, Ferrymead, and the site at Tower Junction.*

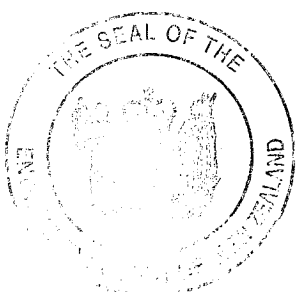
[82] It continues:

It is acknowledged that the Ferrymead BRP has a limited number of existing specialty shops. However, the limited residential catchment and commercial backdrop of large format retailing from this area make this a suitable area for the application of the zone.

[83] As with much of the Christchurch City Plan, the zone statements are not particularly informative in identifying the distinctions between the areas. The various zones provide different coverage rates, with 1.5 to 1 being permitted in the B2 Zone, 1 to 1 in the B4 and BRP Zones. We include in annexure “D” the various key standards for B4, BRP, B1, B2 and B3 Zones and comment that we have had to add the B3 provisions from our own analysis as this, for reasons unknown to us, was not provided to us. Importantly, B3 does not permit either residential or offices as permitted activities and B4 and BRP do not permit residences except in relation to the management or control of a business and only one per business.

[84] It became clear through the course of the hearing that the major concern of the appellants related to the ability to have flexibility in the type of activity conducted on a site. In particular, both Mr Sloan and Mr Carter were seeking flexibility to be able to construct commercial offices and/or residential and/or retail space.

[85] The requirements for parking relate to the type of activity rather than the zoning *per se* and accordingly remain relatively constant whatever the zone. Although there



are distinctions between permitted site coverage (i.e. 0.5 on BRP compared with 1.5 in B2), that appeared to be a secondary concern to the question of the range of activities that can be conducted.

[86] There also appeared to be clear agreement that the provisions could be arranged hierarchically from the most liberal to the most restrictive, as follows:

- (a) B2
- (b) B1
- (c) BRF^J
- (d) B3 or B4

[87] We did not have any specific evidence on the hierarchical situation as between B3 and B4 zonings, nor is it relevant for our decision. We merely recognise that the provision for heavier industrial activities may have a benefit in certain areas, whereas the wider range of activities which could be conducted on B4 may have benefits in others.

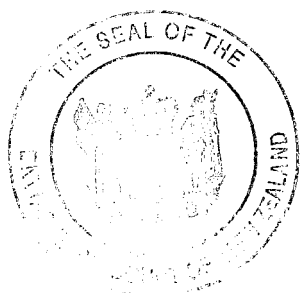
[88] Having set the scene for the Plan approach, we now deal with each particular appeal.

The Sloan site

[89] This site is situated near the junction of Humpreys Drive and Ferry Road. It seems to be widely accepted as the only large area of land east of the city and near Sumner which would be capable of supporting a district centre.

[90] Although strenuously opposing B2 zoning over the entire site at the commencement of the case, the Council's position changed. The essential concern of the Council related to the scale of activity on the site rather than its zoning *per se*. The Council's end position was:

- (a) the site may be B2;
- (b) there be an outline development plan;



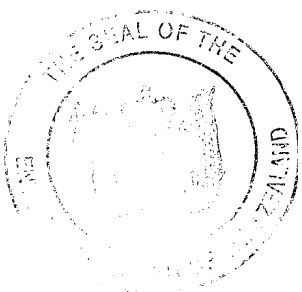
- (c) there be a scale constraint, say plot ratio of 0.5;
- (d) that there be modification of the high traffic generator rule to apply to the zone in a way that recognises the network effects issues;
- (e) that there be a height limit of 12 metres.

[91] In further submissions the Council accepted that the scale could be addressed by 30,000 m² of gfa retail across the whole site. The Council did not seek any special controls in respect of residential or commercial activity. We understand that the Council therefore accepts this should become a district centre but with some overall controls on retail coverage. We have reached this conclusion.

[92] However, the Council was concerned to import a further high traffic generator rule to address network effects. The Court has already discussed this matter in some detail and concluded that the existing rule is sufficient to address the potential traffic effects. To the extent that there may be some remaining questions in respect of the traffic generation, we prefer the evidence of Mr Smith on this matter. We conclude that effects can be addressed if and when necessary in terms of the rule and criteria set out in the Plan.

[93] For the sake of clarity, it is not our view that there must be no adverse effects from a district centre on the roading network. We consider it inevitable that there will be some increase in traffic due to natural growth and the development of the district centre. The impact on the roading network will depend on the level of increase and mitigation measures adopted. Our understanding is that the mitigation measures are intended to maintain these effects at an acceptable level. Given that Ferry Road is a minor arterial road and Humphreys Drive a major arterial, we would have thought that the long-term future of Ferry Road may mean a lowering of its service for through-road purposes and it becoming more of a service road for the Ferrymead area.

[94] Mr Hassan suggests that there should be an avoidance of network effects. We disagree entirely with this approach and, for the reasons we have set out in this decision, believe that is not a proper or appropriate approach in this case. Quite clearly the Plan envisaged a local impact on roads as a result of district centres, and the objectives are to mitigate these effects rather than avoid them. Perpetuation of this type of approach by



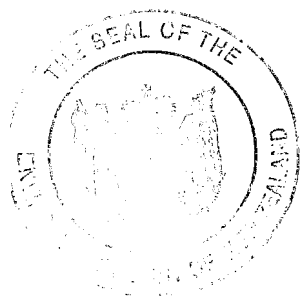
the Council in the future will be the antithesis of the objectives and policies of the Plan. Adoption of Variation 86 imposes a requirement to consider how centralisation of traffic patterns around district centres is going to be dealt with in terms of the roading network. That is a proactive not a reactive approach.

[95] We agree that all retail at the Sloan site should be at ground level. This is an important control to avoid the potential for over-intensification. The appellants' own evidence supported a town centre approach and Mr M J Cullen, an urban planner from Australia, gave a compelling thesis on the advantages of a town centre approach compared to the more traditional retail mall approach. All the witnesses appearing for the Council agreed in general terms with Mr Cullen's approach, and so do we.

[96] We have perhaps somewhat less confidence in an approach which locate all the buildings facing Ferry Road. Nevertheless, we consider that the Sloan site at Ferrymead does have the potential to develop mixed uses and thus provide an active and vibrant heart to this area. We agree that this should involve elements of community, commercial and residential uses, to which retail areas are complementary.

[97] Given the position of this site in close proximity to the sea, a conservation area, and the existing commercial and retail areas, we believe there is the potential to create a diverse mixed-use district centre on the Sloan site. In fact, elements of this mixed use can already be seen on nearby sites, The hope is that by zoning this area B2 it will give an anchor point for a wider re-evaluation of Ferrymead to see if a diverse town centre can be created. To do this we have concluded that there should be a mix of activities on the site which encourages the establishment of commercial and residential areas above ground level.

[98] To that extent we have concluded that a 1.5 to 1 plot ratio should apply and that the retail area be limited to 30,000 m², all on the ground floor. This would mean that up to 50,000 m² of residential and commercial uses could be developed in the medium to long term depending on parking requirements. This zoning leads to the possibility of activities such as hotels, apartment complexes, and commercial office space being established. We say long term because there are already a significant number of buildings on the site, which probably have not been designed to be multi-storied.



[99] If retail is permitted only on the ground floor this means that the upper floors would be utilised for other activities - residential, commercial, offices or parking.

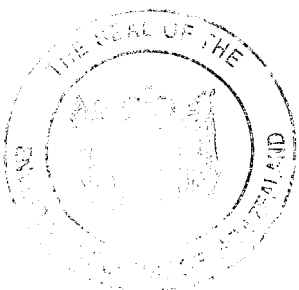
[100] When considering the issue of height, we are concerned to encourage outcomes that would lead to a diverse mixed use on this site. The imposition of significant height controls would limit options. We also keep in mind that there is already a 20 to 22 metre residential building on a nearby property to the east.

[101] Overall we have concluded that it should be the possible to have a reasonable building height on the Sloan site to allow the diversity of mixed uses to develop. We have concluded that the 20 metre height sought by Ms Robson for the appellants is reasonable, is in keeping with the existing nearby structures and would provide significant flexibility in the type of activity that could be established on the site. It is better than a lower height control, which would reduce the number of storeys to something in the order of three at 12 metres and four at 15 metres.

Future planning

[102] We keep in mind that this zoning is for the life of the Plan. The Council is undertaking further investigation and is likely to have a further view on this area in the next five or so years. For our part, we would anticipate that there is likely to be a wider Ferrymead zone with a general outline development plan for the entire area. Although much of it has already been built upon, there is the likelihood of further changes of use over time.

[103] We note that in respect of the retail area some 22,000 m² is already consented to. We also recognise that a B2 zoning would enable smaller tenancies, at least in some of the areas, than if the area was zoned BRP. However, as the appellant made clear, the consents do not currently restrict the use of the site to tenancies of more than 450 m². Accordingly the increase in the number of further small tenancies is a maximum of 8,000 m² (30,000 m² less 22,000 m² already consented).



[104] Otherwise we would consider the general B2 controls as being appropriate, permitting a wide range of activities and imposing minimal controls. In addition, further controls such as setback from Ferry Road were promoted by the appellant. We understand these would be incorporated in the Plan provisions.

[105] We have considered this outcome under the Plan and the Act. We conclude it constitutes a better outcome in terms of the Plan, recognising as it does the existing nature of the area. In addition, however, it also enables the very matters identified by Variation 86 and the creation of a vibrant area. We are satisfied that the significant distribution effects of such a district centre have already occurred as a result of the establishment of the supermarket and the subsequent establishment of the Mitre 10 Megastore. Accordingly, the benefits of co-location in this area greatly outweigh any other effects which might be recognised in terms of the Plan provided the maximum size of retail development is controlled.

[106] Under Part 2 of the Act the outcomes sought in respect of achieving amenity and community benefits are better recognised by creating a mixed and diverse town centre rather than the more monocultural outcome achieved through the BRP Zone.

[107] The added advantage of requiring an outline development plan is that some thought needs to be given to the mix of activities, where they will occur on the site and the associated public aspects (i.e. access, gathering areas, landscaping). The intention of such an outline development plan is to give an outline in general terms of what type of development will occur, not when the particular development will occur. We recognise that development of a site like this will be market-led and that demand does vary between retail, commercial and residential purposes. Nevertheless, over a period of time an outline development plan should be able to be achieved in stages.

[108] The creation of a complete town centre will be made more likely if the outline development plan for this site can be placed in the context of a future 'Ferryroad Zone' and an outline development plan covering the wider area. The sooner the Council can commence the proposed review of the wider Ferryroad area, the more likely this site is to be able to contribute to the development of a fully-fledged district centre at Ferryroad.



The Emma Jane site

[109] The Emma Jane site is approximately 100 metres from the Sloan site along Ferry Road. The site in between (the Tumblar site) is an industrial site and we were advised that further developments are likely to be undertaken on this site in the near future. If physical connection between the Emma Jane site and the Sloan site which included the Tumblar site was currently possible, we would have been minded to zone the entire area as B2, if it had been within jurisdiction.

[110] In the absence of jurisdiction and the physical connection, we recognise that there are currently some significant limitations in respect of the Emma Jane site. At present the only access to and from the site is via Waterman Place. In the long term some physical connection with the wider area and possibly the Sloan site with access points to Humphreys Drive could be of significant benefit to this site. Such connections would need to be made through the Tumblar site also. In any event the whole area would need to be incorporated as part of the long term strategy for the area.

[111] An overall study of this area is to be undertaken by the City Council. Although there is a strong argument for an integrated approach for this area and for the rest of the frontage on Ferry Road to be B2, we recognise there would be a particular need to address traffic issues. Waterman Place has significant issues with access to and from Ferry Road.

[112] Given those constraints and the proposed re-assessment by the Council, we have concluded that it is appropriate to retain a zoning of B4 but to look at some of the particular controls on the site to enable development which will be able to be integrated with any long term development of this area.

[113] We should note in this regard that we do not feel particularly wedded to the contents of the zone statement. A procrustean *one size fits all* is not appropriate for particular growth areas of the city. This approach has led, in Christchurch at least, to change by resource consent, with the retail areas in Ferry Road, in particular Waterman Place, being examples of this. Recently the Court commented at some length on this



tendency in relation to motels within residential areas (*see Ahn and Lim v Christchurch City Council*⁵)

[114] Looking at the matter in broad terms, we consider that there could be around 50% coverage of the Emma Jane site area for retail (i.e. ground floor retail of up to 6,500 m²). There could also be further commercial and residential use up to a combined 1 to 1 ratio (i.e. a further 6,500 m²). We recognise however that commercial offices and residential uses are much lower traffic generators and therefore their incorporation in the same area would not lead to the same traffic generation issues which would arise for additional retail.

[115] We point out that currently the site has a consent for either 3,200 or 5,500 m² of retail floor area. The parties are in dispute as to which of these two figures is correct. By having a condition providing for up to 6,500 m² of retail, this would leave only the issue of high traffic generation to be dealt with. Beyond that, it appears to us that there should be an appropriate height control similar to B4, namely 11 metres as a development standard and 15 metres as a critical standard. Those figures were inserted by a change to the Plan notified just prior to the commencement of this hearing and appear generally appropriate here. The height limits for B4 may be subject to significant change through the variation hearing process and this site would merely become one of those affected by this change in due course.

The Daubney block

[116] We refer to all that land between Antigua and Selwyn Streets, Moorhouse Avenue and the Railway line as the Daubney block. There are nine owners of the land parcels in this block. Sylvester Motors to the east has around one third of the block, there are seven owners of the middle section around Stewart Mill, and the Nelson Diocese owns another third of the block.

[117] We recognise that many of the buildings are at, or near, the end of their useful life. Many of them appear to have been used in the past as storage or warehouse



⁵ C99/2007.

buildings for the railway to the rear. There is a small group of retail shops but they are not a cohesive group. There is one large commercial office next to Stewart Mill Street formerly occupied by the Inland Revenue Department but which is now vacant. This is one of the more modern buildings in the area.

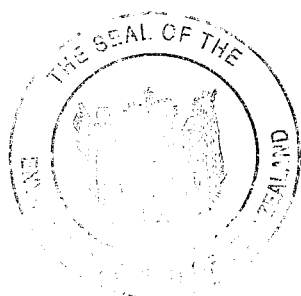
[118] We have concluded that this area is ripe for redevelopment. It is near the central city, is easily accessible by several roads, and has a clear visual and physical relationship with Moorhouse Avenue itself. Given that there is a BRP zoning to the east on Moorhouse Avenue and the block is near the beginning of Blenheim Road to the west, this is an area which could appropriately deal with larger scale retail or trading activities. To that end it would suit activities which required vehicular access and which involved dealing with large items.

[119] We recognise that the B3 Zone (although arcanelly worded) does provide for some retail activities. Essentially trade supplies includes the general sale of retail items within a number of categories. Although this would include items such as plumbing supplies and car parts, it is more problematic as to whether it would include activities such as the Kitchen' Things business currently operating on the site.

[120] We consider that this area would suit a diversity of activities rather than a single type. The presence of the existing commercial offices should be encouraged and this may be an area suited to further commercial activity, particularly that which might involve a high level of vehicular access and need proximity to the centre of the city.

[121] We agree that Residential zoning is not appropriate in this area, wedged as it is between a major arterial and the railway.

[122] However, a mix of vehicle-focussed larger retail, trade supplies, commercial offices, home building suppliers, furniture retail and the like would be suitable uses for this area. It is on a main arterial road and its activities would be complementary to those of the CBD and the activities to the east (BRP zoned) and west (B3 zoned) on Moorhouse Avenue.



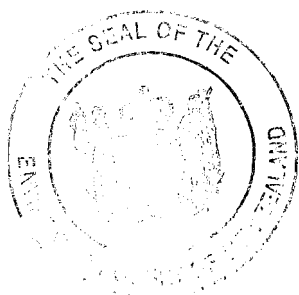
[123] We conclude that this area needs to be developed cohesively and thus needs to be attractive as a development proposition. Our view is that B3 zoning has an emphasis on industrial activities. Although it does provide for retail activities in part, the range of these is so limited an investor may be unwilling to look at a comprehensive redevelopment of the entire block.

[124] Overall we consider that the better fit is the Business Retail Park (**BRP**). It has the advantage that it enables the Court to require an outline development plan and provisions to address amenity issues. The zoning is also of sufficient value that it is likely to generate the type of income to warrant a comprehensive development of the entire block. Although BRP does not represent the optimum range of diverse uses, we recognise there are particular constraints with this site, given its site depth, proximity to the railway and general traffic patterns.

[125] Overall we consider that it is appropriate to rezone the block given the relative success of the other redevelopment further to the east and the potential for redevelopment of the Daubney block to incorporate some of the elements of existing buildings. We also keep in mind that, physically, there is currently room at the rear of the block for a two-way road to be established, which could connect to Stewart Mill Street, although there may be other alternatives overall. No-one suggested any other particular controls to this Court, nor are we able to see any which would be necessary.

[126] Overall we consider that the zoning as B3 does not effectively reflect the appropriate role of this land within the Plan. While it is adjacent to the Business 3 land to the south side of the railway, in physical terms there is no real or physical interconnection between these two areas. Our conclusion is that this area is oriented towards Moorhouse Avenue and the railway has become a backdrop rather than an integral feature of the site.

[127] Considering the issue under Part 2 we have concluded that the better zoning for this land is BRP. We acknowledge that the north side of Moorhouse Avenue is zoned B3 as is the block immediately west of the Daubney block. However, we did not see this as reason to change our conclusion to zone the Daubney block BRP. We conclude BRP zoning would better enable both the owners and purposes of the Plan.



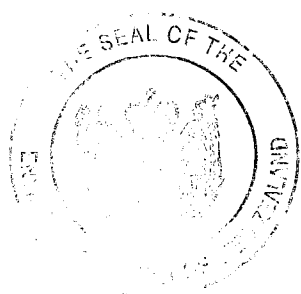
[128] For the sake of clarity, we repeat that we do not envisage any traffic problems arising. We note that BRP is itself not intended to generate significant amounts of traffic and, in fact, on the face of it less than would be anticipated in the B3 Zone. For example, we note that the B3 Zone anticipates significant traffic impacts, whereas BRP does not.

General comments

[129] It is now a matter of some urgency for the Council to investigate whether there are any appropriate new district centres and to adopt some leadership in terms of retailing within the Plan. To date the actions have largely been retrospective, based upon the Council granting consents and then seeking to change the Plan at the next opportunity. It would be helpful to utilise outline development plans for new district centres. From the understanding we have from reading all the evidence in this case, the Plan's approach of setting up B2 Zones to cover both local centres and district centres does not recognise those areas where there is real pressure for retail growth. In particular, the district centres could easily justify centre-specific rules, identifying common themes, and the reasons differences exist. This has been done for the central city and appears to us to be justifiable for the other major centres, particularly Westfield, Northlands, Merivale, Eastgate, Ferrymead and Hornby.

[130] We conclude there has been an over-focus on retailing in Variation 86, without a clear vision for a mix of uses to occur within the Business Zones and how these will be accommodated. Variation 86 now incorporated into the Plan envisages that district centres will be planned in the future and, accordingly, that there is less prospect of consent being granted outside the planned areas. To enable that to be achieved, however, the Council will need to become pro-active in ensuring there is sufficient provision to meet demands for commercial and retail space. We strongly commend to the Council their further examination of the evidence of Mr Cullen, who we understand has been involved in preparation of the urban development strategy.

[131] There is a strong argument for the development of town centres, namely a mix of commercial, residential and retail activity, in each of the district centres, and issues as to



how this can be complementary to the central business district and be responsive to the needs of the local community must be addressed. In our view the zoning review of the Ferrymead area that the Council indicated that it is proposing to undertake is now due if not overdue. We would encourage the Council to commence this review as soon as practical.

Conclusion

[132] We have concluded that the appeals should all succeed to some extent. It appears to us that there may be some consequential amendments necessary within the Plan, particularly in respect of the Sloan site rezoning. In respect of both the Sloan site and Daubney site an outline development plan is required.


[133] We direct that P D Sloan and the Daubney Trust each prepare a draft outline development plan for their sites and forward them to the City Council by 30 March 2008. The Council is to respond by 30 April 2008. If matters cannot be agreed, the appellants are to file submissions with the Court by 28 May 2008. Any response from the Council is to be filed by 9 June 2008 and the Court would then go on to consider the final terms of the outline development plans.

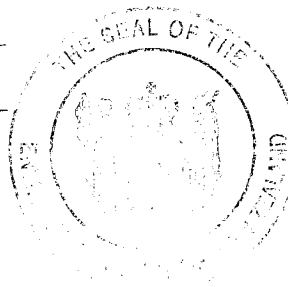
[134] In addition to the outline development plan for Sloan and Daubney, the final wording for inclusion in the Plan in respect of each zone, namely Sloan, Emma Jane and Daubney, is to be filed by 30 March 2008. If these cannot be agreed then the Council is to file its comments on that wording also by 30 April 2008. The appellants may respond by 23 May 2008 and the Court will then consider the matter.

[135] Any issues as to costs are reserved. Any applications are to be made by 30 April 2008 and responded to by 23 May 2008. We remind the parties that applications for costs are generally not appropriate on plan appeals.

DATED at CHRISTCHURCH this 21ST day of **January** 2008

For the Court:


J A Smith
Environment Judge



Issued⁶: **21 JAN 2008**

A

3.2.14 High traffic generators:

Updated 1 December 2006:

(a) The actual or potential level of vehicle, cycle, and pedestrian traffic likely to be generated from, and moving past, the proposed access point(s):

~~(b) The extent to which the benefits of the access, either alone or in association with other nearby activities, will adversely affect the traffic function and/or the safety of the surrounding road network. (Variation 86)~~

(c) Whether the present and projected vehicle, cycle and pedestrian flows along the frontage road will exacerbate any adverse effects created by extra on-street parking and manoeuvring associated with the site.

(d) The ability to gain access to an alternative road which has a lesser traffic function and the environmental impacts on that alternative road in respect of residential amenities where relevant.

(e) The extent to which the noise, vibration and fumes of vehicles using the access would affect surrounding activities, particularly residences.

(f) The adverse effects of extra traffic, particularly heavy vehicles, generated by the development on the amenity and safety of surrounding residential streets.

(g) The extent to which the physical form of the frontage road may mitigate the adverse effects of the extra vehicle movements generated for example, the presence of a solid median to stop right hand turns.

(h) Any cumulative effects of traffic generation from the activity in conjunction with traffic generation from other activities in the vicinity.

(i) Whether the speed of vehicles travelling on the frontage road is likely to exacerbate the adverse effects of the access on the safety of road users.

~~(j) The proximity of the access to other high traffic generating and/or busy access points and water crossings. (Variation 86)~~

(k) The extent to which any extra conflict may be created by vehicles queuing on the frontage road past the vehicle crossing.

(l) The extent to which the traffic generated by the site will adversely affect the frontage road, particularly at times of peak traffic flows on the road.

(m) Whether the adverse effects of the traffic could be minimised/mitigated by on-street traffic management measures including the installation of signals or pedestrian refuges or deceleration and acceleration lanes.

(n) The actual or potential effects on the safety and efficiency of the state highway.

(o) Whether the sight distances at the access are adequate to provide safe access/egress with reference to "Road and Traffic Standards Guidelines for Visibility at Driveways".

~~(p) For retail activity in the B3, B3C, B3C and B3E zones, the relationship between access and manoeuvring areas, including front driveways, in respect to the safety of pedestrians. (Variation 86)~~



B

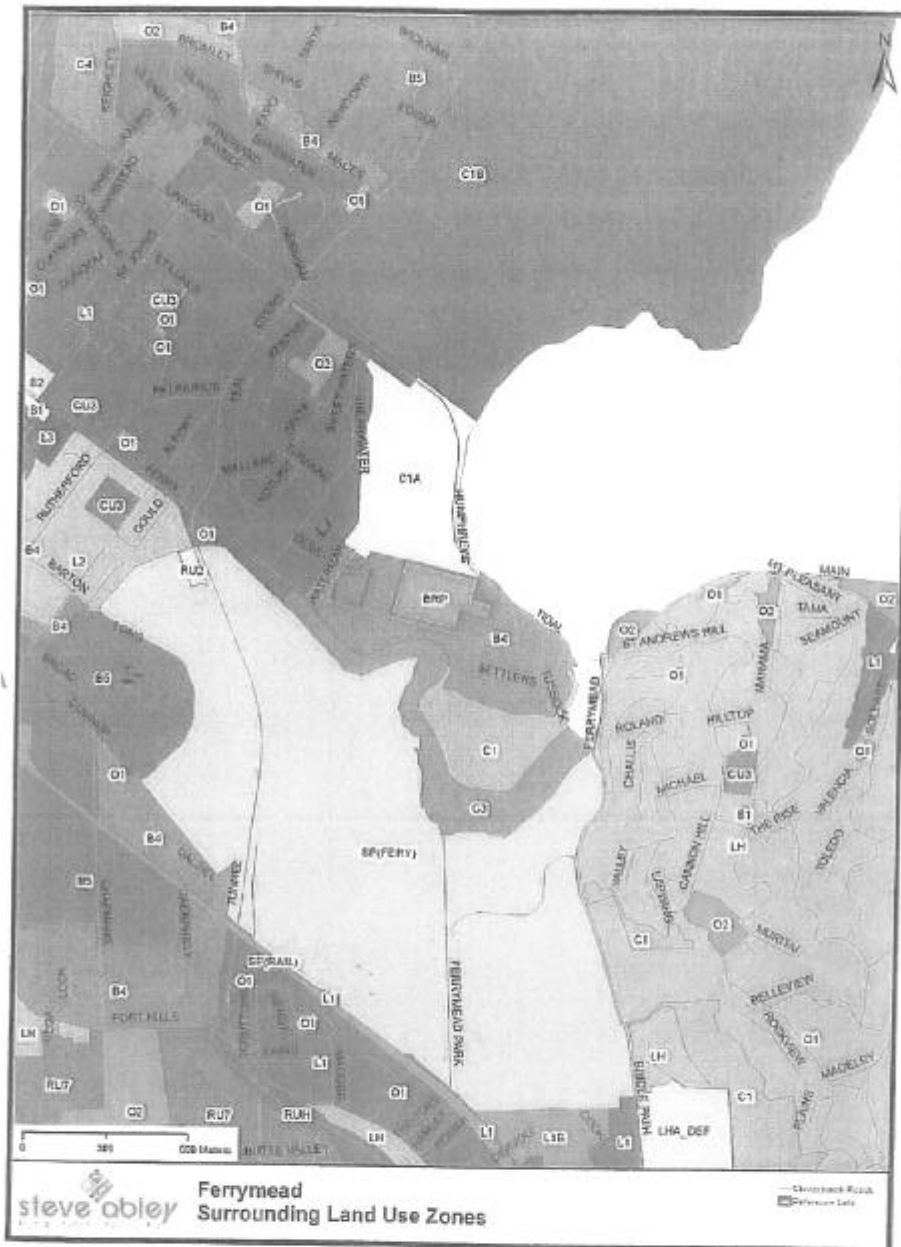


Figure 7 Ferrymead Surrounding Land Use Zones



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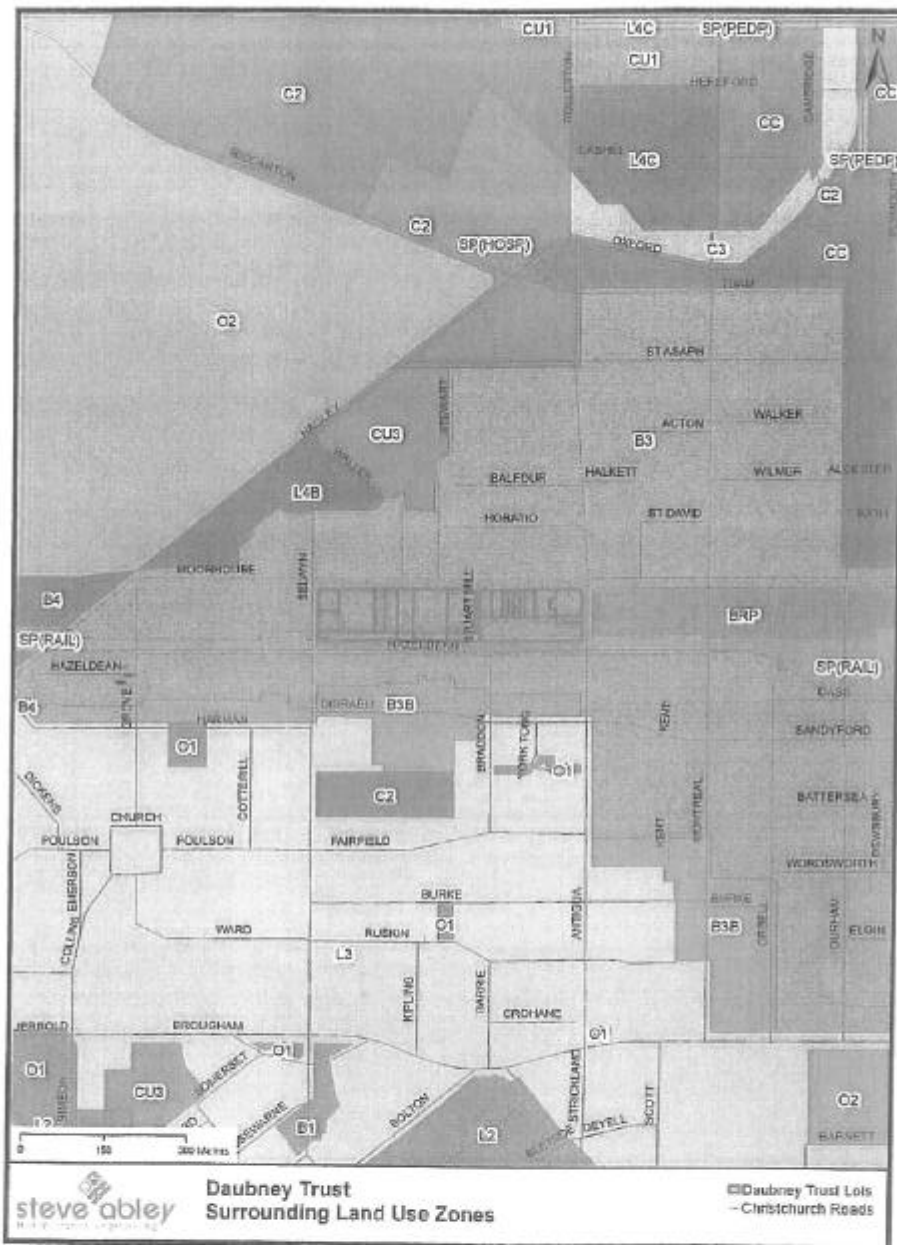
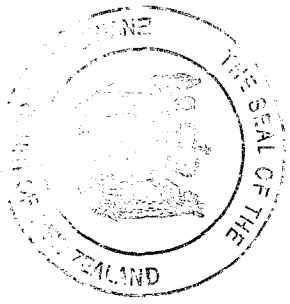


Figure 4 Daubney Trust Surrounding Land Use Zones

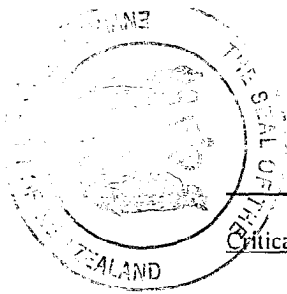




KEY STANDARDS FOR B1, B2, B3, B4 AND BRP ZONES

Criteria	B1	B2	BRP	B3	B4
<u>Development standards</u>					
Street setback	3 m	3 m	6 m (4.2.1) Ferry Road 10 m Moorhouse Ave 3 m	3 m or 6 m	6 m
Building setback	3 m If display widens at ground level then 0 m	3 m	3 m (4.2.2)	Nil	3 m
Landscaping	Carpark and frontage tree requirements	Carpark and frontage tree requirements	10% of site and carpark, tree planting (4.2.5)	Nil	10% of site and carpark, tree planting
<u>Community standards</u>					
Plot ratio	1.0	1.5	0.5 (4.3.1) Moorhouse Central 1.0	1.5 (development standard) 5.2.1	1.0 (development standard) 5.2.1
Height	8 m	12 m, 16 m, 20 m depending on centre	Was nil. Now 11 m development 15 m critical	No Change	Change Development 11 m Critical 15 m
Residential	Permitted	Permitted	1 residential unit per business (4.3.2)	1 residential unit per business	1 residential unit per business
Offices	Permitted	Permitted	Permitted	Ancillary to business activity (5.3.3)	Permitted

10



Critical Standards	General only	General only	Minimum gfa 450 m ² subject to exception for 4.4.1	Limited	Limited but wider than B3
Retail floor area	Nil	Nil	See below	See discussion below Limited	

Relevant Special Standards

B2	Development standards	Linwood (Eastgate) any increase over 40,000 m ² gfa. Restricted discretionary as to traffic effects (Vol 3, Part 3, 3.4.6)
BRP	Setback	2 lanes not arterial opposite Living – 10 m subject to reduction if two frontages
BRP & B4	Development Plan	for Deans Avenue, Whiteleigh, Blenheim and railway area. Any non-compliance is controlled activity.
BRP	Retail critical standard	Exception to minimum floor area. 4.4.1 – (i) goods produced, processed or stored on site – 20% of area (ii) yard based suppliers (iii) trade suppliers (see discussion) (iv) second hand goods (v) food and beverage outlets (vi) pharmacies with health facility (20% net floor area)
B4	Development standard	For identified area on Halswell Junction Road setback to Living Zone 50 m Area identified (South Island Dairy Farms) setback 20 m
B4	Retail	As for BRP and adds retail activities which are no greater than 2,000 m ² of gfa Has total over 300 m ² gfa within 200 m of the new site (5.3.1(b) and (c)). Extremely difficult to follow exact requirements
B3	Retail	BRP less pharmacies plus service stations.

Essentially the retail exception criteria in 5.3.1 are virtually impenetrable – no witness could explain them to us and the language and qualifications to exceptions within exceptions are such that we have concerns as to the meaning and effect of the provisions.