**IN THE HIGH COURT OF NEW ZEALAND**
**BLENHEIM REGISTRY**

**CIV 2009-406-144**

| | |
|---|---|
| UNDER | Section 299 of the Resource Management Act 1991 |
| BETWEEN | OPTION 5 INCORPORATED<br>Appellant |
| AND | MARLBOROUGH DISTRICT COUNCIL<br>First Respondent |
| AND | STEVE BEZAR<br>Second Respondent |

Hearing: 21 September 2009

Counsel: D J Clark for Appellant
M J Radich for First Respondent
M J Hunt for Second Respondent

Judgment: 28 September 2009

---

**JUDGMENT OF RONALD YOUNG J**

---

## Introduction

[1] In 1997 the Marlborough District Council ("the Council") notified the Wairau-Awatere Resource Management Plan ("the Plan"). However, it is only been this year that the Plan became operative.

[2] Since 1997, with the passage of time, pressure grew to allow retail and commercial development in Marlborough. The Council therefore proposed to review the Central Business District ("CBD") in Blenheim with the object generally of making the CBD the place for future retail development in the area. This central city area was to become the Central Business Zone ("CBZ"). A proposed variation

(to the proposed plan), Variation 42, was notified in June 2007. Mr and Mrs McKendry made a submission to the Council about Variation 42 ("the McKendrys' submission"). They thought the Council's Plan could be improved by the addition of further land, some of which was zoned Urban Residential 1, being brought within the CBZ. The Council mostly agreed with the McKendrys' submission and amended and passed Variation 42 accordingly. Mr Bezar also made a submission on Variation 42.

[3] Some (including Mr Bezar) who were affected by the McKendrys' proposals appealed the Council's decision to the Environment Court. A preliminary issue arose and was heard by the Environment Court before the substantive appeal.

[4] This preliminary point was Mr Bezar's claim the McKendrys' submission to the Council was not "on" Variation 42 and therefore should have been ignored by the Council (Clause 6, Schedule 1, Resource Management Act 1991 ("the Act"). The Environment Court agreed. They said the McKendrys' submission was not "on" Variation 42 and therefore concluded it should not have been considered by the Council. This appeal challenges that decision as based on an error of law.

[5] The parties before the Court need some explanation. The appellant is a Society which seeks protection of the CBD from out of CBD retail development. As to the second respondent, Mr Bezar owned one of the urban residential zone properties affected by the McKendrys' submission and the Council's subsequent decision. He, together with other property owners affected by Variation 42, originally complained to the Council that they had not been properly notified by the Council of the proposed changes to Variation 42 arising from the McKendrys' submission. Ultimately they abandoned that complaint. Mr Bezar was one of the appellants in the Environment Court. Other property owners affected by the proposed zoning change joined the appeal as s 274 parties, as those who had an interest greater than the general public.

**Jurisdiction Issue**

[6] The first respondent in its submissions before me questioned the jurisdiction of the Environment Court to rule on Mr Bezar's claim that the McKendrys' submission was not "on" the variation. It is appropriate therefore to deal with this point before turning to the substance of the appellant's case.

[7] The right to appeal from a variation of a plan is provided through cl 14 of the First Schedule of the Act. This provides as relevant:

> **14 Appeals to Environment Court**
>
> (1) A person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of—
>
> (a) a provision included in the proposed policy statement or plan; or
>
> (b) a provision that the decision on submissions proposes to include in the policy statement or plan; or
>
> (c) a matter excluded from the proposed policy statement or plan; or
>
> (d) a provision that the decision on submissions proposes to exclude from the policy statement or plan.
>
> (2) However, a person may appeal under subclause (1) only if the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan.

[8] The first respondent's jurisdictional question can be expressed in this way:

a) only a person who made a submission on a provision or matter in a variation may appeal to the Environment Court against a decision on that provision or matter;

b) Mr Bezar made no submission on the McKendrys' submission to the District Council (although he did make a submission on Variation 42);

c) the Environment Court had no jurisdiction to consider Mr Bezar's appeal concerning the question of whether the McKendrys'

submission was on the variation because Mr Bezar did not make any submission to the Council on the relevant provision or matter; the proposal to expand the CBZ to include some urban residential properties.

[9] As to this appeal point I note the following:

a) the first respondent filed no notice of appeal raising this point (see HCR 20.9);

b) the first respondent filed a notice advising it wished to be heard on the appellant's appeal but gave no notice it wished to raise this new point at the appeal;

c) at the case management conference the first respondent gave no notice that it intended to raise this further challenge to the Environment Court's decision;

d) Wild J set the timetable for submissions. The appellants filed on 26 August 2009 and were one day late. The Council's submissions were due on 2 September 2009 and were filed on Friday, 11 September 2009. The hearing was to commence on 15 September 2009. The submissions were therefore seriously late. This was especially egregious given they contained what was a "new" challenge to the Environment Court's decision four days before the appeal was due to begin and some months after the appeal was filed.

[10] Mr Hunt, for the second respondent (particularly affected by the Council's late appeal point), despite limited time, was able to prepare submissions on the jurisdictional point. Before considering the merits of the appellant's appeal point one final matter.

[11] Counsel for the Council maintained in oral submissions before me that this jurisdictional point had been raised before the Environment Court but effectively

ignored by the Court when it came to deliver its reasons for judgment. Counsel for the second respondent maintained that this jurisdictional issue had never been raised before the Environment Court by the first respondent as preventing the Court from considering Mr Bezar's appeal.

[12] I have had an opportunity to read the first respondent's written submissions to the Environment Court and to read a transcript of submissions made by counsel for the Council before the Environment Court. While the existence of a jurisdiction to refuse to consider an appeal because the points raised on the appeal were not raised before the Council, was mentioned by counsel for the first respondent it was not raised as an issue requiring resolution by the Environment Court. It is therefore not correct to say that the first respondent raised the jurisdictional point before the Environment Court in a way, which required the Environment Court to resolve this question.

[13] I note the Environment Court in its decision said:

> [7] Ms Radich, counsel for the respondent, suggested that the correct legal issue for determination was whether the amendments made by the Council were either raised by or within the ambit of the McKendry submission. Mr Hunt, on behalf of his client, did not advance this argument and in our view he correctly identified the issue for determination as whether the decisions of the Marlborough District Council are 'on' the variation. It is also the interlocutory matter for determination recorded in the Minutes of the Pre-hearing Conference dated 8 December 2008. In the event Ms Radich addressed us on both issues.

[14] I am therefore satisfied that the first respondent is mistaken in its belief that it raised this jurisdiction point before the Environment Court. It is clearly a new appeal point, both in the sense of never being raised previously for resolution and in the sense that it was not part of the appeal filed in this case. However, I can deal relatively simply with the substance of the submission.

[15] Clause 14 of the First Schedule is designed to limit appeal rights from proposed plans (here a variation). Where the appellant has referred to the matter or provision in their submissions then they may challenge the Local Authority decision by appeal to the Environment Court but not otherwise. The words "provision or matter" should be given a liberal interpretation, and thus a narrow technical

interpretation of the words should be avoided. Commonly citizens affected by proposed planning changes covered by cl 14 will represent themselves when making submissions to their local authority. They will not be familiar with resource management "jargon". As long as it is clear the submitter has broadly referred to the provision or matter in issue this should be sufficient to give the Court jurisdiction to consider the appeal.

[16] Clause 14, however, is an awkward fit with the current facts. Mr Bezar made a submission on Variation 42 (part of the proposed plan). Subsequently, as a submitter, he was advised by the Council that others had made submissions and he could obtain a summary of those other submissions from the Council offices. These other submissions included the McKendrys' submission. Mr Bezar made no direct submission on the McKendrys' submission. Ultimately the substance of the McKendrys' submission was included in the new (varied) Variation 42.

[17] The Council's jurisdictional argument is that because Mr Bezar made no submissions on the McKendrys' submission, Mr Bezar cannot appeal the Council's new Variation 42 as it relates to the question of whether the McKendrys' submission was on the variation.

[18] When Mr Bezar received Variation 42 from the Council he had no idea what the McKendrys might say. At that point they had said nothing. Mr Bezar therefore could hardly have made a submission on the McKendrys' submission when Variation 42 was advertised.

[19] Clause 14(2) is concerned with submissions on proposed plans (or variations as here). It does not refer to submissions on submissions; that is Mr Bezar's submissions on the McKendrys' submission. The only proposed plan Mr Bezar could make submissions on was the initial proposed Variation 42. He made submissions on this plan. There was no other proposed plan until the Council gave notice that it had adopted the amended Variation 42. By then it was too late for Mr Bezar to make any submissions.

[20] The Council's real complaint, is that Mr Bezar did not make submissions on the McKendrys' submission and his failure to do so meant that he had no appeal rights which respect to the amended Variation 42. However as I have identified, cl 14 is not concerned with submissions on submissions but submissions on the proposed variation.

[21] In this case it is not necessary for me to resolve this apparent difficulty with clause 14 and its compatibility with the variation process. Suffice to say it is difficult to see how this process can easily fit within the structure of clause 14.

[22] I am satisfied that Mr Bezar's submissions to the Council on Variation 42 did in fact refer to the very issues in the proposed plan which were the subject of challenge to the Environment Court. I note the appellant accepted that Mr Bezar had brought himself within clause 14 and that the Environment Court did have jurisdiction to hear his appeal.

[23] Mr Bezar's submissions to the Council made it clear he wanted to protect the adjacent residential zones. His submission proceeded on the basis that the boundaries of the CBZ were settled and that residential properties in the immediate area would and should, in his view, be protected from the CBZ.

[24] Mr Bezar's submissions therefore clearly referred to the relevant "provision or matter" being the CBZ and the question of whether the adjacent residential area was vulnerable to a change of zone. This was ultimately the question in the appeal to the Environment Court; whether the McKendrys' submission expanding the CBZ into residential areas was "on" Variation 42. I therefore reject the first respondent's jurisdictional point.

**The Appellant's Appeal**

[25] To return to the appellant's case. The appellant says that the essence of the error of law by the Environment Court can be expressed in this way:

a) in Variation 42 the Council proposed extending the area of the CBZ, any submission therefore which advocated the extension of the CBZ into the immediate contiguous area of the Blenheim township would be "on" Variation 42;

b) the Court in ruling the McKendrys' submission was not "on" Variation 42 therefore adopted too narrow a test and therefore erred in law.

[26] Clause 6 of Part 1 of the First Schedule of the Act provides as follows:

> **6 Making submissions**
>
> Any person, including the local authority in its own area, may, in the prescribed form, make a submission to the relevant local authority **on** a proposed policy statement or plan that is publicly notified under clause 5 (emphasis added).

[27] As William Young J said in *Clearwater Resort Limited* and *Canterbury Golf International* v *Christchurch City Council* (HC CHCH, AP 34/02, 14 March 2003) at [56]:

> [56] Whether a submission is "on" a variation poses a question of apparently irreducible simplicity but which may not necessarily be easy to answer in a specific case.

[28] He identified two considerations, which he thought might assist in the analysis of whether or not a submission was "on" a variation. He said:

> [66] On my preferred approach:-
>
> 1. A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.
>
> 2. But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation.

[29] I agree with the approach of William Young J in *Clearwater*. I accept that his first point may not be of particular assistance in many cases. His second point

will be of vital importance in many cases and may be the determining factor in some cases. As the Environment Court said in this case so much will depend upon scale and degree.

[30] The analysis of what is "on" and what is not will depend, in part, on what perspective is brought to the proposed variation and the submission. This point is illustrated in the respective parties arguments.

[31] The appellant says once a variation proposes to expand a zone, any submission that advocates an expansion of the same zoning must be "on" the variation. On the other hand the respondent submits that the land the Council propose to rezone CBZ (and thus expand the zone) did not alter the fundamental point that Variation 42 was about how to better use the existing land within the CBZ rather than a long term look at the need for expansion of the CBD. They emphasise the only land rezoned CBZ was Council owned vacant land. This limited rezoning could not be used as a trigger for a wholesale reconsideration of the extent of the CBZ.

[32] Both assessments are as far as they go are correct. However, I consider the Environment Court adopted the correct approach to cl 14. Firstly, it considered the policy behind Variation 42. It said:

> [36] Unlike Variations 49 and 50 it is not concerned with the expansion of the CBZ. The purpose of the variation is clear from its policies and objectives:
>
> ***11.3.1.4 Objectives and Policies***
>
> *Objective 1* *Establishment of a retail hierarchy to ensure that commercial development is concentrated in appropriate locations and zones.*
>
> *Policy 1.1* *Require a sequential approach to managing the location of commercial activity within Blenheim, using a retail hierarchy.*
>
> *Policy 1.2* *Require justification of, the need for and the impact on the Central Business Zone from commercial development located outside the Primary Shopping Area and Central Business Zone.*

*Policy 1.3* *Provide for appropriate commercial activity in rural areas where directly related to rural industries.*

[33] And as to the purpose of the variation the Court said:

> [32] The purpose of the variation is to be apprehended from its provisions and not from the content of its public notification. The Council's explanation of the variation may be a relevant consideration but only in respect of whether there has been any prejudice to any person who might have made a submission but did not do so.
>
> [33] The variation seeks to consolidate and strengthen the function of the Central Business Zone. The variation affirms that the Central Business Zone, and in particular the Primary Shopping Area within the Central Business Zone, is the principal business and retail area within the Wairau/Awatere area and Marlborough at large.
>
> [34] Issues arising in response to retail pressure outside the CBZ are identified in the variation as follows:
>
> ***11.3.1.5 Issue***
>
> ***Managing the vulnerability of the Central Business Zone from commercial activities outside the Central Business Zone.***
>
> - *Ensuring that the Primary Shopping Area and Central Business Zone remain the regional focus of commercial activity.*
> - *The need for redevelopment of the Primary Shopping Area, to improve its attractiveness and to ensure that sites meet modern retailer requirements.*
> - *The continued need to identify suitable sites in the Central Business Zone for larger-scale retail development, while ensuring parking and access to service both these sites and the Primary Shopping Area.*
> - *The pressure for sites outside the Primary Shopping Area/Central Business Zone, balanced with the need to protect the surrounding amenity and to safeguard the local service function of the Neighbourhood Business Zones.*
> - *The need to limit commercial activity outside of the Central Business Zone to ensure the vitality and vibrancy of the Blenheim town centre and Neighbourhood Business Zones are not impacted on, yet allowing commercial activity where appropriate and ancillary to rural activities.*

[34] I consider the appellant's suggested approach ([25]) to assessing whether a submission is on a variation is too crude and fails to appreciate the importance of this jurisdictional gate. Simply because there may be an adjustment to a zone boundary in a proposed variation does not mean any submission that advocates expansion of a zone must be on the variation. So much will depend upon the particular

circumstances of the case. In considering the particular circumstances it will be highly relevant to consider whether, as William Young J identified in *Clearwater*, that if the result of accepting a submission as on (a variation) would be to significantly change a proposed plan without a real opportunity for participation by those affected then that would be a powerful argument against the submission as being "on".

[35] In this case the amended Variation 42 would change the zoning of at least fifty primarily Urban Residential 1 properties to CBZ. Some of these properties already had a partial CBD zoning but most did not. These properties will have their zoning fundamentally changed therefore without any direct notification to the property owners and therefore without any real chance to participate in the process by which their zoning will be changed.

[36] When the Council received the submissions from the McKendrys, Mr Bezar and others on Variation 42, their statutory obligation was to do no more than send a summary of the submitters own submission to the submitter and advise the submitters they could obtain a summary of other submissions from the Council should they choose to do so. The only advice to those who were not submitters to the original Variation 42 but whose properties were in danger of a change of zone (as a result of the McKendrys' submission) was public notification in local Marlborough media outlets that they could obtain summaries of the submissions made to the Council regarding Variation 42. There was nothing to advise potentially affected property owners that the McKendrys' submission could affect the property interests of those in the Urban Residential 1 zone. There was nothing to indicate to the more than fifty house owners that the zoning of their properties might change.

[37] This conclusion strongly favours the conclusion that the submission by the McKendrys' was not on the variation. Given the Council favoured the McKendrys' suggestions it could have concluded the appropriate course of action was a further variation, to encompass the McKendry changes. Such a further variation would have ensured all those affected (including the Urban Residential 1 property owners) by the McKendrys' proposal were notified and had the chance to directly respond.

[38] It is no answer as the appellant submitted, to say that the substance of Variation 42 can still be challenged in the Environment Court when most of those vitally affected by the change will have no standing to do so (clause 14).

[39] The Environment Court's approach cannot be properly criticised. I see no error of law in it. It firstly identified what Variation 42 was about. It detailed the extent of the McKendrys' submission. It acknowledged and applied the considerations suggested by William Young J in *Clearwater* and it said:

> [26] Subject to considerations of fairness and reasonableness a submission may seek extensions to a notified variation or plan change: *Naturally Best New Zealand Limited* v *Queenstown Lakes District Council*. While the Courts have articulated considerations of fairness and reasonableness in different ways, beyond a general formula of fairness and reasonableness no single criterion is correct and each case must be determined on its facts. What is fair and reasonable is usually a question of degree and should be approached in a realistic, workable fashion rather than from the perspective of legal nicety: *Royal Forest & Bird Protection Society* v *Southland District Council* [1997] NZRMA 408, 413.

[40] It identified the purpose of the variation from its provisions. It concluded:

> [41] The submission to rezone four blocks of land in order *to prepare for long term town expansion* deals with a different and much wider issue than that sought to be addressed in the variation which concerns *managing the vulnerability of the Central Business Zone from commercial activities outside the Central Business Zone*.
>
> [42] As a matter of fact the variation did not rezone land outside the existing urban area, as submitted by Ms Radich. The changes summarised in the public notice did not say that the variation was to rezone land outside the existing zone. While the demand for increased retail space may have been the impetus for change, the purpose of the variation was to consolidate and strengthen the function of the Central Business Zone.
>
> [43] We consider the relief sought under the McKendry submission could not have been fairly or reasonably anticipated by landowners/occupiers in the adjacent residential neighbourhood. Variation 42 was notified together with Variations 49 and 50. In contrast with Variations 49 and 50, the public notice does not state that the variation will rezone land or expand an existing zone boundary in the way that the public notice of the latter variation does.
>
> …
>
> [45] We accept Mr Clarke's submission that a broad view should be taken of the McKendry's submissions: substance is to be preferred over form. Their submission was not prepared by a lawyer. Mr Clarke referred us to the High Court decision of *Taylor* v *Manukau City* in support of his submission that the Court should take a broad view of the variation and not

> to confine the same to the particular boundary lines. This case does not assist Mr Clarke as it is dealing with the issue on whether a right to make a submission arose under the Town and Planning Act 1953. Furthermore, is not authority for the proposition that the Court may take a wider view about the extent or scope of the relevant policy than that which is publicly notified in the variation.
>
> [46] Subject to considerations of fairness and reasonableness (and any other relevant matter), we agree with Mr Clarke that a submitter may seek to change a zone boundary. See, for example, *Naturally Best New Zealand Limited* where the Court upheld a submission made by a neighbouring landowner to extend a proposed new zone to their property. In contrast in *P D Sloan et al* v *Christchurch City Council* the Court struck out part of a reference by Emma Jane Limited to rezone land which it did not own and which affected the rights held by a large number of owners/occupiers of properties.
>
> …
>
> [49] Ultimately it is a question of scale and degree as to when submission can no longer be said to be on the Plan. We find that the submission to rezone four blocks of Urban Residential 1 land was insufficiently connected to the variation. The purpose of the variation was not to review the boundaries of the existing CBZ Zone in order to address long term town expansion. We find that is so notwithstanding that the variation did rezones two discrete parcels of Industrial One land, CBZ.

[41] To return again to the appellant's case. The alleged error of law was that contrary to the conclusion of the Court in [49] the question of whether the submission was on the variation was not, in this case, a question of scale and degree. As the appellant maintained once any land was added to the CBZ any submission proposed to add land directly to the CBZ was on the variation. For reasons that I have given I reject this is the appropriate approach to an assessment of whether in this case the submissions were on the variation. The Court correctly took into account when assessing whether the submission was on the variation:

a) the policy behind the variation;

b) the purpose of the variation;

c) whether a finding that the submissions were on the variation would deprive interested parties of the opportunity for participation.

[42] An example will illustrate the point further. A submission advocating the rezoning of hundreds of properties when a proposed variation added a small area to an existing zone could hardly be said to be "on" a variation. If the appellants' submissions are correct then it must logically follow that such a submission is on the variation. I reject this "absolute" test proposed by the appellant. While less certain, the "scale and degree" approach is much more likely to provide justice in individual cases.

[43] Nor do I think it correct to say as the appellant did (citing *Clearwater* in support) that it is only those submissions that are out of "left field" or "completely novel" that are likely to be considered not "on" a variation. A left field submission is likely to be clearly not "on" the variation. But where the position is not so clear the two factors identified by William Young J will become especially important together with the scale and degree of difference. Scale and degree will also be important when considering the extent to which affected property owners are shut out of the consultation process for the purpose of determining whether the submission is on a variation.

[44] The appellant's submitted that the Environment Court underplayed the fact that land had been rezoned as CBZ in the original Variation 42. However, the Environment Court were correct to look at the relevant circumstances of this rezoned land. Here, the land to be rezoned was unoccupied Council owned land. This was in quite a different category than Urban Residential 1 land proposed to be rezoned in the amended variation. There was therefore a sensible and logical basis to distinguish between these two situations.

[45] At [41] the Court said the McKendrys' submission to rezone four blocks of land was "to prepare for long term expansion" of the CBZ. This submission was, the Court said, to be contrasted with the more modest intention of Variation 42 which was to support the central Blenheim CBD and to avoid commercial developments outside the CBZ.

[46] The appellants correctly note that the only part of the McKendrys' submission which directly mentions "long term town expansion" was the claim that dedicated set backs for road widening would ultimately be required.

[47] The long term expansion suggested by the McKendrys was to widen what they identified as the ring roads. These ring roads would define the boundary of the new CBZ. These ring roads were adopted by the Council as the boundary of the CBZ subsequent to the McKendrys' submission. These ring roads encompass the urban/residential properties whose zoning may change. While widening these ring roads would facilitate increased traffic flows, the widening would hardly "prepare for long term town expansion" as the McKendrys claim.

[48] The expansion of the CBZ as proposed results from including the urban residential properties within the ring road and therefore within the new zone. In this sense, therefore, the Environment Court were correct to observe that in part the McKendrys' plan was a long term plan for Blenheim CBZ expansion. I also acknowledge, however, that in part the McKendrys' submission was designed to "replace" land lost through loss of car parking and a "loss" of land if, as they suggested, the vacant land the Council proposed to rezone as CBZ was removed from CBZ rezoning.

[49] I note that the Council ruled the proposed widening of the ring roads by the McKendrys was not "on" the variation.

[50] The appellant submitted the rezoning of the land within the CBZ was ignored in the Environment Court's decision. While there was rezoning within the CBZ it was more a case of renaming zones than any fundamental change, for example, of the type of change between Urban Residential 1 and CBZ. I cannot see this internal CBZ rezoning had any relevance to the Environment Court's decision.

[51] Finally the appellant criticises the Environment Court's decision where the Court observed the Council did not give reasons for its decision. The appellant points to the Council's Notice of Decision of 22 May 2008 and says that it did give reasons.

[52] Clause 10 of the First Schedule to the Act provides as follows:

> **10 Decision of local authority**
>
> (1) Subject to clause 9, whether or not a hearing is held on a proposed policy statement or plan, the local authority shall give its decisions, which **shall include <u>the reasons</u> for accepting or rejecting any submissions** (grouped by subject-matter or individually).
>
> [[(2) The decisions of the local authority may include any consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.]]
>
> [[(3) If a local authority publicly notifies a proposed policy statement or plan under clause 5, it must, not later that 2 years after giving that notice, make its decisions under subclause (1) and publicly notify that fact.]]
>
> [[(4) On and from the date of the public notice given under subclause (3), the proposed plan is amended in accordance with the decisions of the local authority given under subclause (1).]]

[53] The Council's decision of 22 May 2008 sets out, in summary form, what the McKendrys and others submitters sought. It then follows a description of what the Council decided in relation to each of those submissions.

[54] Although some reasons are given for some decisions in the Council's Notice of Decision document of 22 May 2008 there was no reason given for the approval of the rezoning sought by the McKendrys. What was sought is set out in paragraph 3 of the Council's Notice as follows:

> 3. All of the land within the extended ring road (via Henry Street) not already zoned Commercial or Retail, be zoned Commercial with Retail a permitted activity. Seymour Square and the block bounded by High, Seymour, Charles and Henry Street excluded.

[55] The Council's decision is as follows:

> 3) Accept – the Council has made the decision to rezone all Urban Residential 1 zoned land Central Business Zone within the extended ring road.

[56] It is clear, therefore, that no reasons were given by the Council for accepting the McKendrys' submission. This was by far the most important decision reached by the Council, which made a substantial change to Variation 42. It was a serious failure for the Council not to comply with clause 10 of the First Schedule and provide some reasoning for its decision.

[57] The appeal is dismissed.

[58] The second respondent is entitled to costs against both the first respondent and the appellant. It should file memoranda within fourteen days and the first respondent and appellant in reply within a further fourteen days.

Ronald Young J

Solicitors:
D J Clark, Wisheart Macnab & Partners, PO Box 138, 73 Alfred Street, Blenheim 7201
email: david@wmp.co.nz
M J Radich, Radich Law, PO Box 842, Blenheim 7240, email: miriam@radichlaw.co.nz
M J Hunt, Hardy-Jones Clark, PO Box 646, Blenheim 7240, email: murray@hjc.co.nz