DOUBLE SIDED ORIGINAL

Decision No. C 130 /2003

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

AND

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

BETWEEN **RANGI RURU GIRLS SCHOOL BOARD OF GOVERNORS AND OTHERS**

(RMA 392/99)

AND **MINISTRY OF EDUCATION**

(RMA 391A/99)

Referrers

AND **CHRISTCHURCH CITY COUNCIL**

Respondent

AND **CHRISTCHURCH CITY COUNCIL**

(RMA 247/00)

Referrer

AND **MINISTRY OF EDUCATION**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith (presiding)
Alternate Environment Judge C J Thompson
Environment Commissioner D H Menzies
Environment Commissioner S J Watson

HEARING at **CHRISTCHURCH** on 28 and 29 July 2003

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

APPEARANCES

Mr D A Kirkpatrick for the Christchurch City Council **(the Council)**

Ms A C Dewar and Mr G J Cleary for the Minister of Education **(the Minister)**

Ms A M Douglas for Rangi Ruru Girls School Board of Governors **(Rangi Ruru)**, The St Andrews College **(St Andrews)**, St Bedes College Trust Board Incorporated **(St Bedes)**, Medbury School **(Medbury)** (collectively known as **the schools**)

DECISION

Introduction

[1] These references deal with two loosely connected issues, namely:

(1) Should Ministry of Education schools be designated as in the past or rely entirely on Cultural 3 zoning under the proposed Christchurch City plan? (the **Proposed Plan**) (RMA 247/00)

(2) Should Rule 3.4.1 in the Cultural 3 zone provisions to the Proposed Plan controlling the hours of operation be retained, modified or deleted? (RMA 392/99 and 391A/99).

[2] The matters are connected to the extent that they relate to educational matters within the plan (primary and secondary) and as they relate to the applicability of the Cultural 3 zone provisions, policies and objectives. The matters have been dealt with by the parties at the same hearing and the Court intends to deal with these matters in one decision, although the issues are quite separate.

Common background

[3] The Ministry of Education schools have been designated for many years under all Christchurch City plans with the vast majority in existence for many years prior to the introduction of planning documents. Within Christchurch City area there are currently some 110 State schools (excluding special schools, designated character schools and integrated schools). There were some 14,247 secondary students and

28,151 primary and intermediate students as at 1 July 2002. Ninety-one of the designated sites were roll-overs from the various sections of the transitional city plan. There were 17 further sites where minor modifications were sought to the existing designation, also to be included pursuant to clause 4 of the First Schedule to the Act. There were two new designations sought under section 168 of the Act for the existing Hagley Community College and the Central New Brighton School. Of the 110 sites, 16 were secondary schools, 11 intermediate and 83 primary schools.

[4] In addition the private sector has a significant number of schools which are established outside the designation process. The development of those schools is in part dependant upon consents from various local authorities, depending on when the particular portion of the school was constructed and in latter years is dependant upon the overlay of various plan provisions. Although the evidence was not clear on this issue, school activities appear to have been permitted with minimal controls. After some 100 years of development, the outcomes achieved under both the Ministry and private systems are broadly similar in planning terms and have the following features:

(a) Large buildings, often multi-storey; some with historical value. A number of the buildings are over 9 metres in height which is the relevant height control (critical standard) in the Residential zones;
(b) The schools display high density of building development in parts including areas of impervious surfaces;
(c) The schools display significant open areas with trees which provide considerable amenity value to not only the locality but the general area;
(d) They have operated as part of the community, largely subject to internal management rather than regulatory control;
(e) They have generally been good neighbours with a low complaint rate, generally with prompt response to complaints and a broad and responsive management structure.

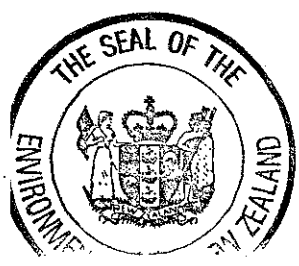
[5] In short, it was not the case of the Christchurch City Council that the schools represent a problem in planning terms. Rather it was the Council case that the Proposed Plan provisions would prevent any potential problems in the future by

minimising the prospect of conflict between the school and surrounding residential areas.

[6] The witnesses for the Minister were quick to note there was one major distinction between State and private schools which is not highlighted by the foregoing analysis. In short, the Minister has an obligation under the Education Act to accept all enrolments within zone. Demographic evidence was given to the Court by Mr K F Beardsley, Manager of Network Provision for the Southern Region for the Ministry, that satisfies us that there are national, district and local factors which influence student numbers. Mr Beardsley explains that although population projections for the various age groups are able to be relatively accurately predicted on a national level, it becomes more difficult to make those predictions within a particular local area.

[7] There are clear national trends for medium to long-term population decline in the primary age 5 – 12 years which is relatively well predicted for the Christchurch City territorial authority area. It is not possible, however, to ascertain where that decline may actually occur in terms of individual schools. Also, the level of prediction is somewhat coarse, i.e. between 2,000 and 9,500 fewer 5 – 12 year pupils in Christchurch between 2003 and 2021. A number of examples were given where schools have declined in numbers and then experienced regrowth. Several examples suffice – Mairehau High experienced decline to 1996 and growth to 2002. On the other hand, Linwood Avenue School grew from 1992 to 1996 and then declined to 2002.

[8] We accept the evidence of the Minister's witnesses that the Tomorrows School emphasis on individual boards has exacerbated these types of trends. The range of effects influencing school numbers include private schools and their influence on student numbers in a particular area. There is a link with the popularity of a particular area for homes, quality of education and the like.



[9] In short, we accept that the Minister has an obligation to provide enrolment for children within zone but is not able to accurately estimate from year to year the numbers of pupils and demand for classrooms and other facilities. We accept that it is

not possible for the Minister to be sure of requirements in a particular area 5 to 10 years in advance, the horizon for the current plan.

[10] Accordingly we accept that it is essential for the Minister to have flexibility in the operation of the schools with the need from time to time for the numbers of classrooms and other facilities to be increased or reduced depending on demand.

The approach of the proposed plan

[11] The proposed plan creates a Cultural 3 zone which covers primary and secondary schools. Tertiary institutions are covered under a further zone, Cultural 4. The Cultural 3 zoning provides for education activities as a permitted activity provided they meet certain development, community and critical standards. Annexed hereto and marked **"A"** is a copy of the development, community and critical standards applying to schools. Included in these controls are ones over open space, sunlighting, setback, separation from neighbours, hours of operation and building height.

[12] In respect of activities that are not education activities, these are governed by an underlying zone which is included in a list at 3.61 of the plan (annexed as part of A).

[13] The City did not provide any analysis of the Ministry's or private schools' existing compliance or otherwise with the development, community or critical standards of the Cultural 3 zone. It is clear to us however, and accepted by the parties, that at least certain of the Minister's education buildings in Christchurch could not comply with various of the standards. The most obvious of these is the critical height standard of 9 metres. Many secondary school buildings, i.e. Boys High School main block, would be in excess of 9 metres and such activities would then rely on existing use rights.

[14] We accept as a fact that the Cultural 3 zone does not permit every activity currently conducted on the school properties. The intention of the Proposed Plan provisions is to provide some constraint upon the activities which have been

conducted on the site to date, at least in respect of new activities on those sites. It immediately gives rise to questions relating to the extent of existing use rights and the effect of the proposed plan upon those.

[15] In the zone description to 1.4 Cultural 3 (Schools) zone (Volume 3, page 7/3) it is noted:

> *Zone description and purpose*
> *This zone includes primary, intermediate, secondary, and composite schools in Christchurch, both public or private. State schools have traditionally been designated and currently remain so. The Council does not support the continued designation of state schools and considers that the Cultural 3 Zone makes adequate provision for such schools. Having regard to the effects of school activities, no distinction is made in the Plan between the rules applicable to either state or private schools. ...*
>
> *Although designated schools are subject to the ongoing transitional provisions of the Act, the rules provide a framework for assessment of building proposals (through outline plans in the case of designated schools) on school sites. Only a small number of new public schools are envisaged which will be designated; the emphasis is expected to be on redevelopment or improvement of existing schools, or the creation of new private schools.*

[16] Particular effects considered in the plan are building, scale, parking (high school only), the amenity value of certain schools and their grounds, and the compatibility of other activities undertaken within schools, outside school hours, with the amenity of surrounding area.

[17] The hours of operation rule in 3.4.1 (Volume 3, Part 7, page 7/10) reads as follows:

> *3.4.1 Hours of operation*
> *The hours of operation for any education activities shall be limited to between 0700 to 2300 Monday to Sunday, except those schools subject to Living 5 zone,*

cultural zones, rural zones and Business 3 Zone provisions in Clauses 3.6.1 and 3.6.2.

[18] Education activity (Definitions, Volume 3, Part 1, page 1/3) is defined as:

means the use of land and/or buildings for the provision of regular instruction or training in accordance with a systematic curriculum by suitably qualified instructors and includes their ancillary administrative, boarding/residential accommodation, religious, sporting, cultural and communal facilities, and also includes pre-schools. For the purpose of calculating the parking requirement it shall also be deemed to include any auditorium used, at least in part, for the education activity. Educational facility has the same meaning.

[19] From this definition it can be seen that activities which lie outside education activity are controlled by the underlying zoning.

[20] Several of the schools involved in this hearing have an underlying zoning of open space which does not control hours of operation for non-education activities. Those within Living zones would have controls over any activity which is not a residential activity or an education activity. It is also accepted that, on current wording, boarding hostels would have no right to operate under the Proposed Plan but could rely only on existing use rights. There was significant debate between the witnesses as to the further extent of the restrictions that may apply as a result of these controls.

Designation issue

[21] The procedure for designating these sites can be gathered from the First Schedule to the Act and is not in dispute between the parties. The Council called for the Minister to notify the sites the Minister wished to designate, which consisted of three categories:

(a) Roll-over designations being those designations which were to be included without modification;

(b) Modifications being those existing designations to which change was sought; and

(c) New designations.

[22] In clause 4(5) to the First Schedule the territorial authority is obliged to include within its proposed plan any designation it receives notice of being both roll-over and modified designations. The City subsequently submitted against its own Proposed Plan insofar as these designations were concerned. On that basis, clause 9(3) of the First Schedule did not apply. This states:

> *Nothing in this clause shall require the territorial authority to make a recommendation or decision in respect of any existing designations or heritage orders that are included without modification under which no submissions are received.*

[23] Without the Council's submission, the 83 roll-over designations would have been confirmed without recommendation or decision. In the event the Council decided against recommending confirmation of the designations. The Minister then confirmed the designations and the Council took this reference as a result.

The Court's approach

[24] It is common ground that the rules of the Proposed Plan must achieve and implement the policies and objectives of that plan. Those policies and objectives were not in dispute. The relevant policy is 9.2.2 (Volume 2, page 9/7) which reads:

> *9.2.2 To recognise and provide for the operation and growth of educational facilities at a primary, secondary and tertiary level in the City.*

The Proposed Plan has accompanying the various objectives and policies, explanation and reasons and this policy is no exception. Although the exact status of these explanations is unclear, they do form a clear linkage to the policy and its implementation and assist the clarification of meaning of the policy. For practical

purposes, we shall regard them as part of the policy except to the extent that there is any conflict between them and the policy itself.

[25] In this case there is no such conflict and the relevant portions of the Explanation and Reasons (Volume 2, page 9/7) are as follows:

> *... State schools have traditionally been designated and remain so in this Plan. Nevertheless, having regard to the effects of school activities, no distinction is made in the Plan between the controls applicable to state and private schools. ... The policy aims to enable all these facilities to develop to meet an ongoing need for education and training, meet community and business needs, and provide environments which are an asset to the amenities of the City and surrounding areas. Controls in the Plan are primarily confined to ensuring any adverse effects of educational facilities and their use are controlled at the boundary of the site, having regard to the nature of the surrounding environment. In most instances the surrounding environment will be dominated by residential activity.*

[26] We conclude that the policy is clear. It is intended that the Minister's schools will continue to be designated in this plan. Appearing as a planner for the Council, Mr P N Eman's critical evidence before this Court was:

> *The statement that State schools remain designated in this plan is more an expression of the fact that the Ministers had sought to designate State schools again in the plan when it was originally publicly notified.*

He relies upon the statement in the zone description (Volume 3, Part 7, page 7/3) as evincing a different intention on the part of the Council. The zone description bears repeating and relevantly states:

> *State schools have traditionally been designated and currently remain so. The council does not support the continued designation of state schools and considers that the Cultural 3 Zone makes adequate provision for such schools.*

> *Having regard to the effects of school activities, no distinction is made in the Plan between the rules applicable to either state or private schools.*
>
> ...
>
> *Although designated schools are subject to the ongoing transitional provisions of the Act, the rules provide a framework for assessment of building proposals (through outline plans in the case of designated schools) on school sites. Only a small number of new public schools are envisaged which will be designated*
>
> ...
>
> (emphasis added)

Mr Eman relies on the statement that the rules provide a framework for assessment of building proposals for designated schools, and notes in his evidence:

> *I assume that the intention of this statement was to indicate that the rules would provide a framework for assessment while the existing designation remained, recognising that it would take time to get them removed.*

[27] We have concluded that Mr Eman goes significantly too far in drawing conclusions as to the meaning of the policy from the zone description. He effectively qualifies the Policy 9.2.2 (Educational facilities) Explanation and Reasons by reference to other provisions which are not rules themselves in the rule sections of the plan. At best, the zone statement to which Mr Eman refers is a statement of desire for the future, and can be read as relevant to a future plan. We note that the zone statement goes on to discuss future designations during the life of the plan. This statement could not align with an intent that this plan has no school designations.

[28] We are unable to see any basis upon which a general zone description statement contained in the rules section of the Proposed Plan can qualify or negate the clear wording in the policy and objectives part of the plan. We conclude as a matter of fact that the zone description does not do so.

[29] In our view the issue is quite simple. Policy 9.2.2 and, particularly, the explanation as to designation must be implemented by the rules and other provisions

of the plan. In this case the clear intent of the policy, when reference is had to the explanation, is that the Minister's schools will continue to be designated. There is no doubt as to the meaning of that wording and accordingly no need to seek other guides to interpretation. Quite clearly the comment made in the zone statement does not achieve Policy 9.2.2 particularly the Explanation and Reasons. Rather, it is either:

(a) Superfluous, being a council view expressed notwithstanding the continued designation of the sites (which we believe is most likely); or

(b) Seeks a different outcome to that in the policies and objectives of the plan and is therefore ultra vires.

[30] In either event it cannot stand unless the primary policy provision 9.2.2 is changed. Neither party attacked the policies and objectives of the plan. The question arises as to whether or not some indirect attack upon the policy provision can be implied from the reference – see ***Shaw v Selwyn District Council***[1]. The reference by the Council does not lend itself to such an interpretation. It sought only that the Minister withdraws all requirements for designations as contained in the Council recommendation of 22 December 1999 and costs.

There is no direct or indirect attack on the plan provisions at all in the reference. In fact the reference says:

> *"[The Minister's schools] are appropriately provided for by the Cultural 3 zones and the other provisions of the proposed Plan."*

We conclude that the deletion of designations would run contrary to Policy 9.2.2 (and the zone statement). The designations could not be removed without alteration to the plan which is not sought or open to the parties or the Court.

Accordingly reference 247/00 fails at this initial hurdle.

[1] [2001] NZRMA 399 at para 31.

Designation as a method

[31] Out of an abundance of caution we consider the wider issue. The wider issue is whether, if the Proposed Plan policies supported deletion of the designations, designation remains an appropriate method for inclusion of schools within the plan. If we concluded that designation was not an appropriate method it would be necessary for the Court to consider retro-fitting the policy and zone description provisions. As we will be examining this matter out of an abundance of caution we do not want anything we say in this regard to be taken as an acceptance that it is possible in this case for the policies to be changed by this reference. If the Court reached this view, issues arise as to the wider policy issues. In particular, whether or not designation was in fact an appropriate method in respect of a significant number of other sites within the area which have both a designation and zoning. Several examples spring to mind immediately, including special purpose rail, special purpose road and Christchurch International Airport special purpose airport zone. All of these have designations with a special zoning as well. For the reasons we will explain shortly, we have concluded that a designation is appropriate in any event. Therefore the significantly wider issue as to whether or not a reference of this sort may seek to unsettle the wider policy provisions of the plan does not need to be addressed. However, we sound a clear note of caution that we consider that ***Shaw v Selwyn District Council*** does not go so far as to authorise a reference of this sort to unsettle wide areas of policy within a plan which are not in dispute before the Court or on reference.

Section 171

[32] It was not in contention that even roll-over designations are subject to scrutiny under section 171 of the Act. The parties then turned their attention to the various provisions of section 171. It was clear that there was no issue by the Council that educational institutions and the Minister's schools are *necessary*. The argument for the Council was significantly more subtle, namely whether a designation was a *necessary* method as opposed to planning provisions. Mr Kirkpatrick for the Council argued that designation was not an appropriate method in this case. This is an argument that is raised in many contexts before the Court. Often opponents of a

project argue that it should have proceeded as a designation when a consent is sought, or, vice versa, that a consent should be obtained when a designation is sought.

[33] Here the Council is essentially arguing that they, not the designating authority, should determine when designation is the appropriate method. It appears that the Council intends that all the various designating authorities will give notice of designations under Clause 4 and that the Council will then decide which of those designations should be retained through to the final plan and which should be deleted. So, for example, although the Minister along with Tranz Rail, Transit and Christchurch International Airport Limited gave notice of designation, it is intended that the Council is able to remove these by making submissions to its own plan, in which case the designating authority should then accept such recommendations the Council makes and remove the designation.

[34] We note particularly that Clause 4(5) of the First Schedule to the Act makes it mandatory to include in the Proposed Plan a pre-existing designation notified by the requiring authority, with or without modification. The plan is silent as to whether a Council can make submissions to its own plan and thereby seek to make a recommendation that the designation be removed. We suspect it was not contemplated when the Act was promulgated that this would take place. Some support is gained from this by reference to clause 9(3) which indicates that if it is a roll-over designation and no submission is received, then no decision of the Council is necessary. It is only the submission of the Council to its own plan seeking the deletion of the designation which gave the Council jurisdiction to make the recommendation to the Minister. However there is no doubt that the Council can submit on its own plan in the manner it has.

[35] We conclude that the Council has an immediate problem in submitting to this Court that the Minister has a choice as to whether to seek a designation. Clearly at the time of the Proposed Plan, the Minister has no knowledge as to what the provisions of the plan may be, and the Act and the First Schedule clearly contemplates the Minister will give notice of designation prior to the plan being notified. The Council must make provision within the plan forthwith without significant further investigation or consideration by the Council under section 32. This is limited to pre-existing

designations with or without modification. We accept the Minister has a choice whether to abandon the designation at the time of receiving notice under Clause 4. However that decision is made without foreknowledge of the content of the plan.

[36] Sections 171 and 174 clearly apply. The extent to which section 171 may apply in respect of existing designations which are rolled over unmodified is unclear. However, we accept that section 171 needs to be considered by the Council and the Court in the event that there is a submission which does not allow section 9(3) to operate. Section 174(4) requires the Environment Court, having regard to the matters under section 171, to confirm or cancel the requirement or to modify it in such a way as the Court thinks fit.

[37] We are satisfied that section 171 identifies a number of matters to be considered by the Court in exercising the discretion under section 174(4). In ***Bungalo Holdings Limited v North Shore City Council***[2] the Court at clause 122 noted:

> *Although the questions set out in 171(1) are not conditions of confirming a requirement for a designation, Parliament has directed decision-makers to have particular regard to them.*

[38] The Privy Council in ***McGuire v Hastings District Council***[3] noted:

> *By section 171 particular regard is to be had to various matters, including (b) Whether adequate consideration has been given to alternative routes and (c) Whether it would be unreasonable to expect the authority to use an alternative route. ...*
>
> *... s 171 is expressly made subject to Part II which includes ss 6, 7 and 8. This means that the directions in the latter sections have to be considered as well as those in s 171 and indeed override them in the event of conflict.*

2 Decision A052/01 at para [122].
3 [2001] NZRMA 557 at para 22.

In short as with sections 104 and 32 of the Act, the particular matters to be had regard to under section 171 must meet the single broad purpose of the Act and Part II.

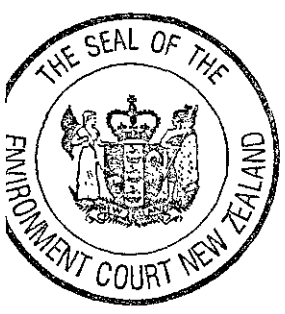
[39] The argument for the Council was that considerations under section 171 and Part II included which method, i.e. designation or planning controls, better met the provisions of the Act and managed the effects on the environment in a more coherent and consistent manner. We turn now to have regard to the provisions of section 171.

Section 171(a), (b), (c) – whether the designation is necessary

[40] The way in which the designation versus plan provision argument was addressed to this Court could equally be addressed under section 171(b) or (c) as an alternative method. Mr Kirkpatrick for the Council argues that the wording of these sections includes the question of whether the designation is the appropriate method as opposed to relying on plan provisions. Unfortunately the cases cited by him do not support the proposition. In particular both ***Bungalo Holdings Limited***[4] and ***Norwest Community Action Group Inc v Transpower New Zealand Limited***[5] do not support the proposition that there is an issue before the Court of the appropriate method. In ***Beadle v Minister of Corrections***[6] the Court noted:

> *The issue in section 171(1)(a) is whether the designation is reasonably necessary for achieving the objectives of the public work for which the designation is sought. That issue is not whether the technique of designation is reasonably necessary, but whether the project or work is reasonably necessary.*

We endorse that comment. In ***Te Runanga O Ati Awa ki Whakarongotai Inc v Kapiti District Council (Takamore Trustees)***[7] the Court went further and said:



4 Decision A052/01.
5 Decision A113/01 at para 61.
6 Decision A074/02 at para 841.
7 Decision W23/02 at paras 142-143. [These conclusions were not overturned on appeal in High Court AP 191/02].

We are therefore perfectly satisfied that the provisions of the district plan concerning controlled activities are no substitute for a designation.

(143) ... Although s171(1)(a) refers to "the objectives of the public work" which appears to refer to the work itself rather than the requirement, we are satisfied that a designation is reasonably necessary for achieving that ultimate objective without disruption to community standards and expectations as envisaged by Part II of the Act.

[41] For our part we conclude that section 171(1)(a), (b) and (c) are concerned with methods in the sense of physical means of achieving the public work, not whether designation as opposed to plan provisions or a resource consent is the appropriate method of achieving the work. In the context of section 171(1)(c) the High Court in ***Takamore Trustees v Kapiti Coast District Council***[8] when discussing the unreasonableness of an alternative route said:

The unreasonableness relates not to the process that may have to be gone through to gain approval for the alternative route, but to the expectation of an alternative route because of the nature of the public work.

We conclude that the word *"method"* also refers to the nature of the public work not the planning process.

[42] We have concluded that to read into sections 171(1)(a), (b) and (c) an argument as to the planning method to be utilised to achieve the public work creates uncertainty for all parties for no resource management gain. We are unable to see how sustainable management would be advanced by parties being required to obtain a resource consent rather than a designation when they had the option to seek either. Similarly there would be no advantage in requiring them to seek both when only one is required, even where the activity is permitted or controlled. We have concluded that the Act clearly contemplates that a party may seek designation for the perceived

[8] Decision AP 191/02 (HC) at para 101.

advantages which flow from that designation. These perceived advantages are more fully explained in the decision of the Court in ***Takamore Trustees***[9].

[43] Furthermore we conclude that to allow a party to go through an entire procedure, say a designation, and then determine that it should have instead sought either a resource consent or relied on other planning provisions would be against the public and participatory thrust of the Act. We have concluded that such an interpretation of the Act would give rise to significant uncertainty and hardship for all parties in respect of resource management matters. It cannot be the intent of the Act that parties can always argue that an alternative planning method should have been utilised. The designation option is one for the requiring authority and the Act sets up parallel and largely mirror procedures. Although we accept the tests are somewhat different under a designation as opposed to consent or plan provisions, the outcome sought under each is always subject to the object of sustainable management under Part II and accordingly the outcomes are governed by that overall objective. Furthermore, the designation procedure is also public and participatory.

[44] Again out of an abundance of caution, in the event we are wrong in this interpretation, we conclude that designation holds a significant number of benefits for the Minister in this case and that it is the preferable planning method to be utilised for the reasons set out in the decision of the Court in ***Takamore Trustees***[10] paragraphs 140-143 and in particular:

(a) It signals the potential for future changes on the site;
(b) It provides a clear methodology for such changes to occur (the outline plan procedure);
(c) It provides a uniform approach throughout many different districts, particularly for the Minister;
(d) That the existing uses are well established;
(e) That the necessity for change is unequivocal. It is clear that both educational requirements and student numbers change regularly;

9 W23/02 at paras 141-143.
10 W23/02.

(f) It is not possible to freeze the existing position in terms of plan provisions.

Section 171(d)

[45] The Court is required to have regard to the policies, objectives, rules and other provisions of the Act. We have already discussed these in general terms. A significant number of other provisions were also cited to the Court and we have considered these. It is accepted that the plan provisions in seeking to control the activity are seeking to control potential effects on nearby residential neighbours. To that extent the plan provisions seek to protect the residential amenity, although the rules require greater open space and setbacks than do the residential provisions.

[46] However, we are satisfied that the reality of such provisions, that is the operations of the proposed Cultural 3 zone, would be to create considerable and ongoing conflict between the Minister and the Council and the residents as to the application of those provisions. Put simply, the existing use provisions of section 10 permit activities which were existing at the commencement of the plan to continue even when classrooms are rebuilt or changes made. That would be an overlying requirement under the Act which may affect various other provisions, for example hours of operation. The plan provision would however apply to buildings which did not have existing use rights. Questions would then arise where there was a replacement of an existing activity; i.e. a replacement science block, as to whether the activity could be conducted in accordance with the existing use right or not. It is inevitable that issues such as parking, noise and density would very quickly have the parties ensnared in ongoing applications to the Court for declarations and/or other litigation. We conclude that the plan provisions would inevitably lead to fruitful areas of argument in the future in relation to existing schools of the Minister.

Part II

[47] Accordingly, we are not satisfied that the plan provisions in question will lead to greater clarity or application of the sustainable management purpose of the Act. We see no evidence they will lead to any improvement in residential amenity. It is

necessary for the Court to look at all of the provisions of section 171 in the context of Part II of the Act and section 5 in particular. We accept that the provisions need to further the sustainable management purpose of the Act in a coherent and consistent manner. We are satisfied that the confirmation of the designation in this case will give certainty to all parties in respect of those sites that are designated and will better meet the sustainable management purpose of the Act. The plan provisions, although still relevant, assume less importance in this context.

Conclusion as to designation

[48] Accordingly we conclude that the designation of these sites is anticipated in terms of Policy 9.2.2 of the plan and its Explanation and Reasons. In the alternative, designation better meets the sustainable management purpose of the Act. Accordingly we confirm the designation of all of the Minister's sites and disallow the reference of the Christchurch City Council.

Hours of operation

[49] The hours of operation provisions are but one example of the problems that can occur with the imposition of controls over activities which have been occurring for such a long period of time. It is accepted that the purpose of the rule is to maintain residential amenity. We have already cited the relevant rule at para [17]. This is supported by Proposed Plan provision 6.3.1 (Volume 3, Chapter 7, page 7/21) which states that the rules:

> *... intention being to strike a balance between protecting residential amenities, while recognising a need for some flexibility in redevelopment of schools, their generally larger site sizes, and their ability to meet a variety of community needs.*

[50] Plan provision 6.3.6 (Volume 3, Chapter 7, page 7/22) reads:

> *While the provision of school activities (eg adult classes) during the evenings fulfils a necessary and valuable community need, a rule is imposed to protect*

adjoining residents from excessive nuisance effects associated with traffic movement, particularly later in the evening. Location of buildings, the number of persons involved and access arrangements are seen as important determinants of impacts on adjoining properties.

[51] We note that provision 6.3.6 makes it clear that the purpose for the rule relates to excessive nuisance effects associated with traffic movement. It does not specify what those nuisance effects are or whether these are related to effects from the vehicles being on the school land or on the general roading network.

[52] Rule 3.4.1 (Volume 3, Chapter 7, page 7/10) gives rise to a number of immediate problems:

(1) Education activities only are controlled. Education activities include such things as hostel boarding, cleaning, caretakers duties (i.e. lighting fires) committee Board of Trustee meetings, teacher preparation and marking, evening classes, school drama productions, cultural events (i.e. dawn powhiri) fundraisers, socials and sleepovers. It is conceded by the Council that the definition of education activities would need to be amended to take into account this range of activities;

(2) Existing use rights generally. Most schools have not identified the range of activities currently conducted. From the evidence before us the exact nature and usage of the schools on a long-term basis was less than clear. We conclude there would be significant arguments to the scope of existing use rights if this provision was put in place;

(3) Issues arise as to underlying zoning. Some of the parties who gave evidence before this Court (St Andrew's) have an underlying zoning different to a Living zone. In the case of St Andrew's College, the underlying zoning is open space. It was conceded by all parties that there were no hours of operation controls for non-education activities in respect of that school. The rule itself exempts Living 5 zone, cultural zones, rural zones and Business 3 zones from the hours of operation rule. Accordingly in respect of some schools with underlying zonings such as open space non-education activities could

operate without any controls in the plan, whereas education activities could not;

(4) There are general issues of consistency arising relating to the fact that activities such as meetings have no control in the Residential zone whereas they would in a Cultural 3 zone. A meeting held in a private home by the board members would be uncontrolled, whereas one held in the school grounds would be caught by the hours of operation rule.

The Proposed Plan provisions

[53] There is no question that the policies and objectives of the Proposed Plan in this regard are settled. The relevant objectives and policies are found in Volume 2 of the City plan, Part 9 *Community Facilities and Identity* and Part 11 *Living*. We have already cited earlier in this decision the relevant portions of the rules section (Volume 3, Part 7 Cultural zones) and in particular the zone description 1.4 for the Cultural 3 zone. That of course is neither a policy nor an objective, but does assist us in understanding the context in which the rules are advanced.

[54] The overall objectives are contained in 9.1 and 9.2 which provide:

9.1 Provision for accessible community facilities to meet educational, spiritual, health and other local needs.

9.2 The provision of community facilities which serve metropolitan needs for educational, cultural and specialised services.

[55] We have already cited Policy 9.2.2. The overall objective of Chapter 9 is cited as: *Facilities which meet community needs and enhance opportunities for community participation.*

[56] We conclude that the clear objective of this policy is to utilise facilities for community benefit. The Explanation to Policy 9.2.2 adds:

Explanation and Reasons

... Controls in the Plan are primarily confined to ensuring any adverse effects of educational facilities and their use are controlled at the boundary of the site, having regard to the nature of the surrounding environment. In most instances the surrounding environment will be dominated by residential activity.

As a result we conclude that the overall thrust of the objectives and policies is to provide for community and educational facilities and their community use. Any controls seek to manage adverse effects at the boundary of the site.

[57] We have already cited the reason for the rule from provision 6.36 (Volume 3, page 7/22) as being to control nuisance effects associated with traffic. It was accepted by the Council witnesses that there was no evidence of a serious concern as to adverse effects relating to such traffic movements associated with the operation of educational facilities. In fact Ms J Carter, the planner called by the Council, in her evidence went so far as to say:

> 69. *Discussions with the Council's Environmental Health Officer lead me to understand that it is current practice to approach schools directly when a complaint is received relating to noise. The Council Officers are then able to develop site specific solutions to any problems as they arise with the potential to use the enforcement procedures in Part XII if necessary.*
>
> 70. *Consequently, in terms of current practice the imposition of an hours of operation rule is seen as unnecessary. It is my understanding that the Council's Environmental Health Officers consider that good results are achieved in this manner and that a relationship based on co-operation is well established. They also note that relatively few complaints are received.*

Section 32

[58] The core issue for this Court is to determine whether

(a) the existence of Rule 3.4.1 (Volume 3, Part 7, page 7/10) or
(b) some modification of that rule; or
(c) no rule

better meets the single broad purpose of the Act of sustainable management as described in section 5.

The tests have been variously described as which provision is better, or whether the provision put to the Court is desirable or expedient. In ***Dickson v North Shore City Council***[11] the Court noted:

> *Although there is no formal proof in these cases if the Court decides on the totality of the evidence that a proposed rule is not necessary, does not assist those functions, is not the most appropriate means, and does not have the stipulated purpose, then the tests have not been met and the proposed rule has to be discarded.*

[59] We adopt this restatement of section 32 and now deal with the various provisions of that section in assessing the merit of this proposed rule and alternatives.

Section 32(1)(a) – Necessity

[60] It is clear that the rule must serve some resource management purpose in advancing the prospect of sustainable management. In this context, the only justification given for the rule is excessive nuisance effects associated with traffic movements, particularly later in the evening. There was no evidence advanced to this Court at all by the Council that there was excessive nuisance effects from traffic movements. Ms Carter suggested that these nuisance effects related to headlights,

11 Decision A109/2002 at para 30.

general disturbance from people talking before entering their cars, car doors slamming and other departure related vehicular noise. Her evidence was in the context of theory only and she gave no evidence of a history of complaints relating to this, or that such was an excessive nuisance effect. In fact, she accepted that much of the noise generated may take place on public roads and is therefore not controlled as part of this activity.

[61] We are bereft of any evidence which would indicate that there is excessive nuisance effects from traffic movements. Ms Carter herself acknowledges that the rule would not apply to traffic noise on roads (Volume 3, Part 11, 1.2.3, page 11/4) and cites Volume 3, page 11/11. This gives as reasons for the exclusion of road noise the impracticality of setting standards. She then says that part of the justification for the hours of operation rule is to overcome the shortcomings in the plan in this regard, even though controlling an off-site effect.

[62] As a matter of fact we have concluded that there is no evidence of adverse effects. We go so far as to note the Council Environmental Health Officer is reported to accept that any noise effects are addressed directly with the schools. There is no suggestion that there has been any evidence to satisfy the Council of excessive nuisance effects related to traffic movement. Accordingly the rule does not pass the evidential threshold to establish that there is a need for any rule.

[63] We also record that the Council conceded that certain activities conducted at schools would require modification of the rule. This includes boarding houses and caretaking and cleaning functions. As the hearing progressed, it became clear that further categories may need to be included – early departure and arrival of school trips, early Saturday sports, gym operations. We are so concerned at the level of exceptions that would be required that it brings into question the fundamental purpose of the rule relating to the amenity of residential neighbours.

[64] It is also quite clear that any concern with excessive nuisance effects can be addressed by non-regulatory methods. In fact the Environmental Health Officer appears to have indicated to Ms Carter who gave evidence for the Council that that is their preferred approach.

[65] We were impressed with the evidence of the various schools that gave evidence to the Court. These schools had contingency plans in respect of complaints and we were satisfied that they treated them very seriously indeed. This is not surprising given their close relationship with the surrounding community and the desire of all these schools to impress as responsible and model good behaviour. The Board members are generally elected from the local community. We are satisfied that any concerns will be addressed nearly immediately by the schools. It is difficult to see what advantage a regulatory environment would give. In fact the potential concentration of schools on protecting their existing use rights may very well derogate from the co-operative relationship which currently exists and has enured for up to 100 years.

[66] In short we conclude that the rule does not avoid, remedy or mitigate any adverse effects on the environment for educational activities and to the extent there are any adverse effects (which we do not accept as being proven), these are better addressed through non-regulatory methods. We are particularly satisfied that the schools and boards accountability to the community better achieves the sustainable management objective of the Act. To put the matter another way, a non-regulatory method enables the community to provide for their cultural and social wellbeing better than would a rule.

Does the rule assist the Council to carry out its functions?

[67] Section 72 and section 76(1) make it clear that a district rule is to assist the territorial authority in carrying out its functions to achieve the purpose of the Act. In this case the excessive nuisance effects from traffic movements need to fall within section 31(b):

> *The control of any actual or potential effects of the use, development, or protection of land. ...*

[68] The question is whether a rule compared with the non-regulatory co-operative method currently utilised will assist the local authority in achieving the purposes of

the Act. In the particular circumstances of this case, we accept that the position would not be clarified by the imposition of the rule, but significantly confused. Areas of conflict can be quickly summarised as follows:

(a) The confusion of school activities and general activities. Depending on the underlying zoning different provisions may apply, leading to confusion by members of the public, Council and the schools as to whether the particular activity is an educational activity or a general activity and whether there is any hours of operation rule

(b) The confusion between different underlying zonings. Many schools have an underlying residential zoning. Others have an open space underlying zoning. This will mean that general activities could be conducted at all hours at some schools but not at others. This is likely to lead to confusion by members of the public, in particular, as to why some schools can operate all hours for non-educational activities and others cannot.

[69] It is conceded by the Council that some activities that span the hours of operation will need to be exempted. There appears to be a significant area for argument as to whether particular activities fall within or without those exempted activities. For example:

- to what extent does hostel boarding include functions associated with the operation of the hostel?
- how far do cleaning and caretaking activities go? Would it extend to including a cleanup after a drama production or school fair?

There is no evidence that satisfies us that such a rule would assist the Council in meeting its statutory functions.

The most appropriate means of exercising that function

[70] There is a degree of inter-connection between these various issues. Much of our earlier comment can also be applicable. There is a general thrust in respect of land use activities towards the most liberal provision necessary to achieve the purpose of the Act[12].

[71] In this case the situation is very clear. Ms Carter's evidence for the Council is that the Environmental Health Officer believes that the co-operative method used at the current time is the most appropriate method. Notwithstanding Ms Carter's opinions to the contrary, there is no evidence before us that satisfies us that a rule is the most appropriate means of exercising the Council's function.

[72] We have concluded that the accountability of the educational institutions to their local community through the Boards, parents and their desire to attract and retain students is a far more effective method of achieving the sustainable management purpose of the Act. Further, when we address in detail what is meant by excessive nuisance effects from traffic movements, these are identified by the witnesses as noise and glare in particular. Both of these matters are controlled by separate provisions of the Plan, which would equally apply to the educational facilities as any other activity within the district.

[73] Furthermore, we note that for both designated and non-designated schools there is a general requirement under section 17 of the Act to avoid, remedy or mitigate adverse effects[13]. We are satisfied that these requirements, in conjunction with the responsibility of the Boards and operators of schools, is more than sufficient to ensure the outcomes of the Act are met. Furthermore, we are concerned that the imposition of such a rule may restrain the growth or utilisation of these important community facilities.

12 See ***Otago Presbyterian Girls College Board of Governors Incorporated (Columba College) v Dunedin City Council*** C128/2001 para [36].

13 See the 2003 Amendment Act which clarifies the position in respect of designations.

[74] The overall objective of the plan in this regard includes enhancing opportunities for community participation. To that end greater use of these facilities is to be encouraged rather than discouraged. In that regard we note particularly section 32(1)(c)(ii) which requires the Court to have regard to the efficiency and effectiveness of this rule relative to other means. We are unable to see how an hours of operations rule could provide for greater efficiencies in the utilisation of these important physical resources. We go further and conclude that such a rule is likely to be confusing and argumentative rather than purposive. The concerns in relation to effects are adequately addressed through other plan provisions. It has not been found necessary by the Council to have hours of operation rules generally in other zones of the plan. Accordingly we cannot conclude that it is an essential mechanism for the operation of the other plan provisions, particularly the objectives and policies.

Part II and section 5

[75] In the end, the single broad purpose of the Act is sustainable management of natural and physical resources as that term is described in section 5. In this case there are important physical resources which should be utilised in a way that enables the Christchurch community to provide for their social and cultural wellbeing. We are not satisfied that this rule is necessary to achieve the purpose of the Act, there being more effective and efficient means elsewhere in the plan of avoiding or mitigating any potential adverse effects on adjoining Living zones from education or indeed any other activities in Cultural 3 zones.

[76] We have concluded that amenity matters – section 7(c) and (f) – are better addressed through non-regulatory methods and other Proposed Plan provisions. Furthermore we conclude that the efficient use of these physical resources and the enabling of the local community is properly recognised in the objective to Chapter 9 of Volume 2 to the plan. That seeks to enhance opportunities for community participation in these physical resources.

[77] Accordingly we see any rule that seeks to derogate from the hours of operation as being contrary to the general objective of this portion of the Proposed Plan unless it

directly addresses an adverse effect. In this case there is no evidence to satisfy us that there is such an effect or that it is not addressed by other provisions of the plan.

Outcomes

[78] We direct:

(1) The Christchurch City's reference against the designation of the Minister's 110 schools throughout Christchurch is disallowed;

(2) Rule 3.4.1 is to be removed.

We are satisfied that this can be done without impacting on the rest of the Proposed Plan and in fact makes the plan more consistent with the policies and objectives.

[79] It will be clear from this decision that the Court has concluded neither of the Council's positions on these two matters had any merit. Having considered the provisions of the Proposed Plan and the evidence of the parties carefully, we are still at something of a loss to understand the reasons for the Council's position on either of these references. It is important that Councils have clearly in mind the objectives and policies of their plan when they advance positions on reference to this Court. It is not the role of an expert witness before this Court to advise the Court the intention of the Council underlying particular provisions in that plan. The Proposed Plan is a culmination of Council's views and must speak for itself.

Costs

[80] Any application for costs is to be filed within 15 working days, any replies within 10 working days thereafter, and a final reply within 5 working days of that.

DATED at CHRISTCHURCH this 19th day of **September** 2003.

J A Smith
Environment Judge

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3. Rules – Cultural 3 (Schools) Zone

Guide to using these rules

Step 1: Determine whether the activity is an education activity. If not, it will be subject to the rules for the school and the zoning identified for that school as listed in Clause 3.6.1.

Example: If part of Aranui High School were to be used for an activity not defined as an Education activity, or part of the site were disposed of, the rules applicable to the site would be those for the Living 1 Zone (see Aranui High, Clause 3.6.1).

If the activity is an education activity:

Step 2: Check whether the education activity complies with all of the development standards. If not, application will need to be made for a resource consent, assessed as a discretionary activity with the exercise of the Council's discretion limited to the matter(s) subject to that standard.

Step 3: Check whether the education activity complies with all of the community standards. If not, application will need to be made for a resource consent assessed as a discretionary activity.

Step 4: Check whether the education activity complies with all of the critical standards. If not, application will need to be made for a resource consent, assessed as a non-complying activity.

Step 5: Check any relevant city rules (cross referenced in the zone standards) that may apply to the proposed education activity. If any one or more of these rules are not met, the activity will require consent in respect of those rules.

If the education activity complies with all of the zone rules and city rules it shall be a permitted activity.

3.1 Activities not defined as education activities

Any activities not ~~**defined as**~~ **within the definition of** an education activity **or any activities on a site which the school has disposed of,** shall be subject to those rules applicable in the zones listed in Column B of Clauses 3.6.1 and 3.6.2.

(*Example - an activity on the site of Aranui School which is not* ~~***defined as***~~ ***within the definition of an*** *education activity,* ***or is on a site which that school has disposed of,*** *shall be subject to the standards applicable in the Living 1 Zone.*)

3.2 Categories of activities

3.2.1 Education activities

(a) Any education activity which complies with:

- all of the development standards under Clause 3.3;
- all of the community standards under Clause 3.4;
- all of the critical standards under Clause 3.5

shall be a **permitted activity**.

(b) Any education activity which complies with all of the community standards and critical standards, but does not comply with any one or more of the development standards under Clause 3.3, shall be a **discretionary activity** with the exercise of the Council's discretion limited to the matter(s) subject to that standard.

(c) Any education activity which complies with all of the critical standards, but does not comply with any one or more of the community standards under Clause 3.4 shall be a **discretionary activity.**

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(d) Any education activity which does not comply with any one or more of the critical standards under Clause 3.5, shall be a **non complying activity.**

Reference to City Rules

Attention is drawn to the provisions of the city rules (cross referenced in these zone rules) which may separately specify, or result in, an activity being prohibited, non-complying, discretionary, controlled, or permitted, notwithstanding the provisions of these zone rules.

3.3 Development standards

3.3.1 Open space

The maximum percentage of the site area to be covered by buildings shall be as follows:

(a) On school sites subject to Living 1, H, 2, rural or open space zone provisions in Clauses 3.6.1 and 3.6.2, **with the exception of (d) below** 25%

(b) On school sites subject to Living 3, 4A, 4B, 4C, 5 and cultural zone provisions in Clauses 3.6.1 and 3.6.2 40%

(c) On school sites subject to Business 3 zone provisions in Clauses 3.6.1 and 3.6.2 60%

(d) On Lots 17-20 DP 6620 (inclusive) fronting Merivale Lane 40%

3.3.2 Sunlight and outlook for neighbours

(a) No building shall project beyond a building envelope constructed by recession planes from points 2.3m above the boundary with a living zone as shown in Appendix 1, Part 2.

(b) The level of internal boundaries shall be measured from filled ground level except where the site on the other side of the internal boundary is at a lower level, then that lower level shall be adopted.

3.3.3 Street scene

(a) The minimum building setback from road boundaries shall be:

(i) ~~(a)~~ On school sites subject to Living 1, H, 2, open space and rural zone provisions in Clauses 3.6.1 and 3.6.2, **with the exception of (c) below** 10m

(ii) ~~(b)~~ On school sites subject to Living 3, 4A, 4B, 4C, 5, Business 3, and cultural zone provisions in Clauses 3.6.1 or 3.6.2 3m

except

that Lots 1 and 2 DP6620 and Lots 7, 8, 9 and 10 DP6620 on Rossall Street shall be 2010m

(iii) ~~(c)~~ **On Lots 17-20 DP 6620 (inclusive) fronting Merivale Lane** 4.5m

(b) On Lots 2, 3, 4 and 6 DP 44078, Pt Lot 18 DP 1921 and Lot 5 DP 45882 on Winchester Street, where 3m street scene setback is required this shall be landscaped along road boundaries, excluding that part of a road boundary used as a vehicle crossing, for a minimum depth of 2m.

3.3.4 Separation from neighbours

The minimum building setback from the boundary with any other zone shall be 6m, **except that:**

(a) accessory buildings the use of which are for caretaker sheds and/or storage sheds may be located within 6 m of the boundary with any other zone where the total length of walls of such accessory buildings facing and located within 6 m of each such boundary does not exceed 9 m in length.

(b) where the boundary is with the Cultural 1 zone, the minimum building setback from that boundary shall be 1.8 m.

3.3.5 Noise from pre-schools

Any pre-school which adjoins or has a common boundary with a living zone shall be a discretionary activity with the exercise of the Council's discretion limited to the location of outdoor activities and facilities.

Reference to other development standards

Clarification of rules
(refer Part 9, Clause 2)

Excavation and filling of land
(refer Part 9, Clause 5)

Building adjacent to waterways and the coastline
(refer Part 9, Clause 5)

Financial contributions on land use activities
(refer Part 9, Clause 7)

Protected buildings, places and objects
(refer Part 10, Clause 1)

Protected trees
(refer Part 10, Clause 2)

Outdoor advertising
(refer Part 10, Clause 3)

Sale of liquor
(refer Part 10, Clause 4)

Relocated buildings
(refer Part 10, Clause 6)

Hazardous substances
(refer Part 11, Clause 3)

Transport (Parking, access and manoeuvring)
(refer Part 13)

Subdivision
(refer Part 14)

3.4 Community standards

3.4.1 Hours of operation

The hours of operation for any education activities shall be limited to between 0700 - ~~2200~~ 2300 Monday to Sunday, except those schools subject to **Living 5 Zone,** cultural zones, **rural zones** and Business 3 Zone provisions in Clauses 3.6.1 and 3.6.2.

Reference to other community standards

Protected buildings, places and objects
(refer Part 10, Clause 1)

Protected trees
(refer Part 10, Clause 2)

Noise
(refer Part 11, Clause 1)

Glare
(refer Part 11, Clause 2)

Hazardous substances
(refer Part 11, Clause 3)

~~Location of processes causing airborne emissions (refer Part 11, Clause 4)~~

Transport (Parking, access and manoeuvring)
(refer Part 13)

3.5 Critical standards

3.5.1 Building height

The maximum height of any building shall be as specified below:

(a) On school sites subject to Living 1, H, 2, open space, and rural zone provisions in Clause 3.6.1 and 3.6.2 — 9m

(b) On school sites subject to Living 3, 5, Business 3 and Cultural 1 Zone provisions in Clauses 3.6.1 and 3.6.2 — 12m
except
that the maximum height of any building on Lot 7, DP 45882 on Andover Street shall be 8 metres, when located within 10 metres of the road boundary.

(c) On school sites subject to Living 4A, 4B and 4C Zone rules, in Clauses 3.6.1 and 3.6.2, refer ~~Part 2, Appendix 1, (Living Zones) for~~ to Planning Maps 39B and 39D maximum height controls.

Reference to other critical standards

Excavation and filling of land
(refer Part 9, Clause 5)

Protected buildings, places and objects
(refer Part 10, Clause 1

Protected trees
(refer Part 10, Clause 2)

Outdoor advertising
(refer Part 10, Clause 3)

Fortified sites
(refer Part 10, Clause 5)

Noise
(refer Part 11, Clause 1)

~~Glare (refer Part 11, Clause 2)~~

Hazardous substances
(refer Part 11, Clause 3)

~~Location of processes causing airborne emissions (refer Part 11, Clause 4)~~

Subdivision
(refer Part 14)

3.6 List of schools

Any activities not within the definition of an education activity, or any activities on a site which the school has disposed of, shall be subject to those rules listed in Column B of Clauses 3.6.1 and 3.6.2 (refer Clause 3.1).

3.6.1 Secondary or composite

Schools Column A	~~Zone rules applicable to activities other than education activities~~ Column B
Aranui High	Living 1
Avonside Girls' High	Open Space 2
Burnside High	Living 1
Cashmere High	Living 1
Catholic Cathedral College (RC)	Cultural 1
Sports Ground	Open Space 2
Christchurch Boys' High	Open Space 2
Christchurch Girls' High	Open Space 2
Christ's College	Cultural 1
Hagley Community College (Hagley Avenue)	Living 4B
Hagley Community College (Champion Street)	Living 2
Hillmorton High	Open Space 2
Hohepa	Living 1
Hornby High	Living 1
Kingslea	Living 1
Linwood High	Living 2
Linwood High Lower Fields	Open Space 2
Mairehau High	Living 1
Marian College	Living 1
Middleton Grange	Living 1
Papanui High	Living 2(1)
Rangi Ruru Girls	**Living 3, Living 2(2)** ~~Open Space 2~~
Riccarton High	Living 2
Rudolf Steiner	Living 1
St Andrew's College	Open Space 2
St Bede's College	Open Space 2
St Margaret's College	**Living 3** ~~Open Space 2~~ **except for a depth of 95m from Papanui Road which is Living 5**
St Thomas of Canterbury (R.C.)	Living 1
Seventh Day Adventists	Living 2
Shirley Boys' High	Living 1
Te Waipounamu Maori Girls' College	Open Space 2
Van Asch College	Open Space 2
Villa Maria College (R.C.)	Living 1
Windermere Christian College	Living 1
Youth Education Centre	Living 2

(1) except that in relation to the land indicated on the map shown in Appendix 1 to this section, the zone rules applicable to activities other than education activities, shall be those applying to the Business 2 Zones.

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