

10. THE OUTSTANDING PORT HILLS

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The purpose of this report is to inform the Committee of the main findings of a recent Environment Court decision (Flanagan vs CCC; RMA 520/99, Decision No. C222/01), which found that the whole of the Port Hills is an “outstanding natural feature and landscape” under Section 6(b) of the RMA 1991. The report will also summarise the implications this has for policies and plans relating to the Port Hills.

CONTEXT

Mr Flanagan lodged a reference seeking to rezone part of a spur in the Lansdowne Valley from Rural Hills zoning to Rural 2 zoning, to allow subdivision of the land into nine lots, with a minimum lot size of 4 hectares. The total area of the Flanagan holding is 38.1 hectares. The minimum subdivision size in the Rural Hills is 100 hectares.

The location of the site is shown on Attachment 1. It is situated on the lower flanks of a sub-spur, that descends from the side of the Kennedys Bush Spur at a point about 320 metres above sea level. The highest part of the Flanagan land is approximately on the 160 metre contour line, with the lowest part below the 20 metre contour line, on the valley floor.

THE MAIN ISSUES BEFORE THE COURT

The two main issues that are placed before the Court can be summarised as:

- (a) whether the **whole** of the Port Hills could be deemed an “outstanding natural feature and landscape” under Section 6(b) of the RMA (this was the case proposed by the City Council), **or** whether only the upper “undeveloped” portions of the Hills warranted this status (the case proposed on behalf of Mr Flanagan);
- (b) whether the boundary for the Rural Hills Zone, which in this case, ran along the base of the Port Hills, was in the right place.

THE MAIN FINDINGS IN THE DECISION

The main findings of Judge J Allin, the Chief Environment Court Judge, can be summarised as follows:

- (i) That the whole of the Port Hills is “an outstanding natural feature and landscape”. [Sect 6[b] of the RMA].
- (ii) The fact that parts of the Port Hills are not visible from Christchurch City, or have been modified by residential or rural-residential development, does not detract from this status.
- (iii) The location of the Rural Hills boundary, separating the valley floor from the slopes of the Port Hills, is both rational and practical in this case.
- (iv) The proposed subdivision of part of the Rural Hills Zone would constitute an “inappropriate” subdivision of an “outstanding natural feature and landscape.”

THE IMPLICATIONS FOR POLICIES AND PLANS ON THE PORT HILLS

The main implications would seem to be:

- (i) This ruling gives the whole of the Port Hills status, as a matter of national importance, under Section 6(b) of the RMA 1991
- (ii) This is the position being taken in the Council’s general evidence on the Port Hills urban growth references, to be heard by Judge Jackson starting on 11 March 2002
- (iii) This decision does not mean that any further urban development on the Port Hills should be declined, but that the Port Hills should be protected from “inappropriate” subdivision, use and development.

Some suggested criteria for assessment are set out in the general evidence to be presented by Liz Briggs, Policy Leader for Open Space and Water, on 11 March. This evidence includes the criteria in the following statement:

*“6.4 **In conclusion**, as already stated in paragraph 2.4 above, I consider that the factors to have regard to when deciding whether a rezoning is appropriate and achieves the Port Hills objectives and policies are the following:*

1. *The rezoning will involve a minor amendment and be contiguous to the existing urban boundary*
 2. *It will be on the lower slopes*
 3. *It will most likely involve some acquisition or covenanting of uphill land so as to provide a physical and permanent barrier to further peripheral expansion. Preferably this would involve acquisition of land for reserve purposes to promote recreational activities and protect natural values on the Port Hills.*
 4. *Any development is controlled so that building appearances do not detract from the outstanding landscape qualities*
 5. *It will not increase or exacerbate the possibility of natural hazards occurring. In particular erosion, rock fall, fire or flooding.*
 6. *It will not result in the modification or destruction of indigenous vegetation or ecological heritage sites.*
- 6.5 *I emphasise my view, however, that even if these factors are achieved, the values of the outstanding natural character and features of the land at issue may nonetheless be such that, on balance, rezoning will still not achieve the primary Port Hills objective."*
- (iv) The main objective in the City Plan for the Port Hills is Objective 2.7. It states:

Objective: Port Hills

2.7 Maintenance and enhancement of the distinctive landscape and natural characteristics of the Port Hills

In the "reasons" for this objective, the statement is made that "The Port Hills are considered an outstanding natural feature and landscape of national importance". This statement, and the associated objective, have had the status confirmed by the "Flanagan" decision. By implication, the policies associated with this objective, in particular Policies 2.7.1, 2.7.2 and 2.7.3, as quoted in the judge's decision, have been confirmed as supporting the main objective, and therefore being relevant and necessary in future decision-making.

CONCLUSION

The policies and objectives in the Proposed City Plan have stated and assumed that the Port Hills was "an outstanding natural feature and landscape" and therefore afforded the protection and status granted under Section 6(b) of the RMA 1991. However, this had never been fully tested in the Environment Court.

This decision confirms that status, along with the relevance of the associated policies and objectives, and the justification for the extent and present boundary of the Rural Hills Zone, and the rules associated with the protection of the outstanding landscape. This zoning is shown on a map entitled "Christchurch City - Port Hills Zoning" which is included as Attachment 2.

These matters will be tested further in the upcoming hearings on the Port Hills Urban Growth references, but this decision provides the Council with a firm basis and clear direction for its general evidence, when considering future land uses on the Port Hills.

Recommendation

from Chair: That the information be received.