

7. ENVIRONMENT COURT DECISIONS RELATING TO URBAN GROWTH

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The purpose of this report is to advise the Committee of three decisions of the Environment Court relating to Urban Growth and to seek direction for further actions required by the Court.

1. **Maurice Carter Limited v Christchurch City Council**

This reference sought an extension of the Living (Rural Village) zone at Riverlea, Kainga Rd, over a 9 hectare site as shown on the attached plan, Appendix 1. The request was declined and the Council's decision upheld. The Court found that it would not comply with City Plan objectives and policies for urban consolidation, compact urban form and restricting urban development detached from existing urban boundaries. The Court was also concerned with the distance from community facilities such as shops and schools, and the lack of public transport.

Riverlea is a historic settlement, originally fishing or holiday baches, which the City Plan recognises but does not permit to grow.

2. **Applefields Ltd and Canterbury Regional Council v Christchurch City Council**

This interim decision concerns 93 ha of land at Main North Rd and Johns Rd in Belfast. It is separated from the Main North Rd by a strip of housing. To the north is a stopbank of the Waimakariri River and a walkway to the Groyne. The land is shown on the attached plan, Appendix 2.

The Council had allowed a zoning of Rural 3A (Intensive Farming), which permits subdivision down to a minimum of 2 ha. Although it is described as a zone for intensive farming the various witnesses and the Court itself all seemed to accept that this would in reality be used for rural-residential use rather than genuine rural production. In addition the witnesses for both the Council and Environment Canterbury seem to have conceded that the land could ultimately be suitable for full residential purposes. The Council is reluctant to see it zoned that way immediately because of difficulties with infrastructure, particularly sewerage.

The Court has rejected the 2 ha Rural 3A concept promoted by Applefields and the Council. This is because it believes that development to that density could make it difficult to eventually develop to full residential densities. The Court considers that fragmentation of ownership and the position of houses could make it difficult to achieve an efficient layout of roading, services, reserves, walkways and cycleways. This is not an unreasonable conclusion. The Court states that instead the choice should be between Rural 3 (4 ha minimum) and a Living zoning. The Court has asked for further submissions on this question. If it considers there is a case for Living zoning it could publicly notify the proposal using its powers under section 293 of the Resource Management Act. This is an unusual step for the Court to take, given that no party has actually asked for a Living zoning. However it appears to be within the Courts powers.

Rural 3 zoning at 4 ha would allow for 23 dwellings on the land. There are already 7. The proposed Rural 3A with its 2 ha minimum would have allowed for 45. On the other hand full Living zoning could allow for approximately 1100 houses serving a population of about 3300.

The Policy Planning Team is currently preparing an Area Plan for the area, which will include infrastructure, open space, roading and other issues. It is considered that there should be no move to a Living zone until that Area Plan has been completed and satisfactory provision made for the resolution of any issues identified. This means that submissions should be made to the Court asking it to confirm the Rural 3 zoning until at least such time as the Council has completed the Area Plan and made satisfactory provision for any issues identified.

The Court may not be prepared to wait for this study, likely to be 6-12 months. A fall-back position would be to ask the Court that if it proceeds immediately to Living zoning, then the zoning rules be modified to require the owners to carry out a binding development plan exercise in consultation with the Council and Environment Canterbury that identifies all issues arising out of conversion to residential use and makes satisfactory provision for the resolution of such issues. There have been examples in the past where developers have produced indicative proposals to support zoning requests, but these have not been made binding and not followed through when development occurred.

The intentions of the landowners in the block are not known.

3. Muir Park Corporation and Canterbury Regional Council v Christchurch City Council

This is a block of 103 ha in the block enclosed by Sabys, Halswell Junction, Quaifes and Murphy's Rd at Halswell. It is shown on Appendix 3. Following submissions the Council zoned the land Rural 2A, with a 2 ha minimum lot size. Environment Canterbury lodged a reference seeking Rural 2 (4 ha minimum). Muir Park Corporation (MPC) sought Living 1A zoning over 13 ha in the north-east corner of the block.

Similarly to the Belfast decision, the Court did not like the Rural 2A zoning with its 2 ha minimum and zoned the majority of the block Rural 2, with a 4 ha minimum. It also granted the MPC request for Living 1A. It then did two rather surprising things, not asked for by any party.

- It stated that it did not see why the MPC land should not receive the full Living 1 zoning and gave any party leave to apply to it for that.
- It made a recommendation to the Council to urgently reconsider its zoning strategy for the block.

LIVING 1 OR 1A?

The essential difference between the two zones is that Living 1A requires 1500m² sections along any boundary with a rural zone, to allow for a transition or buffer of lower density, largely for visual reasons. As the Court does not see this as a permanent boundary it sees this transition as unnecessary. Staff do not agree and suggest submissions be made to the Court on that point. It is likely that the boundary will remain in this vicinity for some time because it will not be as easy as the Court implies to create a physical boundary, and in any case the question arises as to whether that should be done in this block at all or even further to the west. The City Plan allows for alternatives to the 1500m² lots to create the transition, eg planting and fencing and this has been done in other locations. This requires a resource consent and enables detailed consideration to be given to alternatives. This is a matter which requires discussion with the developer.

ZONING STRATEGY FOR THE HALSWELL BLOCK

The Court did not see the MPC land as providing a suitable long-term urban/rural boundary. It considered that there needed to be a better edge to the urban area. It did not favour roads as the boundary, because it is more efficient to use both sides of a road. It did not like abrupt urban/rural boundaries where houses abut rural land, It considered Council should look for a physical boundary and suggested Council consider creating a waterway feature, cycleway and walkway along one of the stream tributaries further to the west in the block.

Prior to the City Plan being notified, and before the hearings of submissions, Council carried out extensive investigations into urban growth in Halswell. As notified Policy 6.3.16 of the Plan identified the Wigram Halswell Kennedy's Bush area as the preferred area for the City's long-term expansion, subject to investigations into matters such as infrastructure, transport, open space and drainage and stormwater implications for the Heathcote and Halswell rivers. During the Plan process other growth areas such as Yaldhurst-Masham and Belfast-Styx were nominated by submitters and the policy was modified to be more inclusive of these as well. It now reads;

3.16 To investigate and assess future growth options for the city's long term urban development.

A report prepared in 2000 showed that if the entire area between Hoon Hay and the City boundary was used for eventual urban expansion this could accommodate up to 63,000 people, as well as business, industry, recreation and open space¹. This is clearly well beyond any likely growth in the foreseeable future. Current predictions see the population of the entire City growing by about 42,000 in the next 20 years and not all of this will be housed in the south-west.

The report therefore showed how the south-west sector could be divided into three stages. Areas already committed to urban growth such as Wigram, Awatea, and Aidenfield were put into Stage 1, and zoned for urban development in the City Plan. This is sufficient to accommodate 23,000 people, although current proposals for Awatea include more business and less housing and will reduce that total. The Saby's Rd area was put into Stage 2.

These stages are not in the City Plan and have no formal status. They are simply a strategy to allow progressive development outwards from the existing urban area without creating excessive demands for extension of infrastructure, transport, open space and other facilities.

¹ South-West Christchurch (Halswell-Wigram) Planning Study, Technical report 004, Environmental Planning and Policy Unit, November 2000

The Muir Park land contains only 13 ha, sufficient for 130-150 sections, It is adjacent to existing Living zones. It is not a serious problem that the Court has advanced it into Stage 1. The rest of the 103 ha block remains Rural. However the Court indicated that it saw this as interim, pending the review of the rest of the block. It has not required the Council to review the zoning, or the urban boundary. It has only suggested it. However the Council needs to take such a suggestion from the Court seriously. The subject is bound to arise in the Court again at some stage and the Court would be antagonised if it had been ignored. The Court has also raised expectations among other landowners in the block, some of whom have already contacted the Council.

The problem the Court has created for the Council is how far out should such a review extend? Clearly the Court was looking only to the Council to create some sort of physical urban boundary within the 103 ha block. It was not concerned with the whole of the 3 stage south-west strategy. But if expansion were to eventually grow beyond this particular block, which is likely, it would be pointless and wasteful to put too much effort into establishing a permanent physical boundary now.

A possible interim solution would be to investigate whether there is some sort of open space or waterway feature that could be created in the block that would be useful in both the short and long term. This would need to be cost-effective, and fair to landowners in the vicinity, and not provide a barrier to eventual urban expansion in the rest of the area.

A full review of zoning strategy for the entire south-west sector would be a very large drain on resources at present. It cannot be justified at this time given the amount of residential land likely to be available for development by the conclusion of all the urban growth references and the Wigram/Awatea variations which Council is already committed to. It would also be unlikely to be productive unless conducted jointly with Environment Canterbury and the Selwyn District Council.

Meetings with the developer indicate that he is keen to proceed with subdivision of the block in the near future and is keen that his development be compatible with future plans for integrated development of the rest of the area. However this development is likely to be occurring before plans for the rest of the area are developed to any level of detail.

Recommendation: That the information be received.

Chairman's

- Recommendation:**
1. That the information be received.
 2. That when a draft is ready, the Belfast Structure Plan be brought to the Urban Growth Special Committee for its consideration.