

4. **SECTION 293 OF THE RESOURCE MANAGEMENT ACT 1991  
ENVIRONMENT COURT ORDER - RMA 515/99 KENNEDYS BUSH DEVELOPMENTS LTD V CCC**

**Officer responsible**  
Environmental Services Manager

**Author**  
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#### **PURPOSE OF REPORT**

On 18 June 2002, the Environment Court issued orders that a proposed alteration to the Proposed Plan be publicly notified under section 293 of the RMA. This order came about as a result of a legal challenge to the scope of the original submission by Kennedys Bush Development Ltd (KBD).

The proposed alteration seeks to rezone approximately 42 hectares of land owned by KBD from Rural Hills to a Living Hills A type zone and approximately 194.2 hectares from Rural Hills to Conservation 1 Zone in the form of environmental compensation.

At the last pre-hearing conference held on 4 February 2003 the Environment Court set down a timetable for the exchange of evidence (8 August 2003) and a fixture date being (October 2003).

Before Environment Court evidence can be prepared by Officers, the Council must make a decision whether to support or oppose the proposed alteration. Consequently, this reports covers a number of matters to assist the Council in decision making including a general assessment of the proposed alteration, covering submissions and further submissions, identification of key environmental issues, Council officer reports and a brief consideration of relevant objectives and policies of the Proposed City Plan.

#### **PROPOSAL**

The proposed alteration (tabled as Appendix 1) relates to a site comprising of 236 hectares of land situated at the end of Kennedys Bush Road and proceeding up to the Summit Road and Kennedys Bush Reserve.

The proposed alteration seeks the rezoning of approximately 42 hectares of land owned by KBD from Rural Hills to a Living Hills A type zone with design and control guidelines. Features of the proposed alteration include:

- Eighty-one allotments are proposed with a minimum allotment size of 1,500m<sup>2</sup>.
- The highest point at which development will occur is at the 185m contour.
- Of the 42 hectares proposed for development, residential allotments and associated roading will occupy some 18 hectares of this land whilst the remaining 24 hectares is proposed to be vested in the Council as reserve contribution.
- The balance of the land on the upper slopes, being some 194 hectares, is being offered as environmental compensation and proposed to be rezoned from Rural Hills to Conservation 1.
- Design and appearance controls generally comprising of colour and reflectivity of structures and types and numbers of trees are proposed as a measure to avoid adverse visual effects on the environment.

#### **SUBMISSIONS**

Sixteen submissions and four late submissions were received to the proposed alteration. Of these submissions, four were in support and sixteen were in opposition. There were a further sixteen submissions.

A summary of the submissions and further submissions is tabled as Appendix 2.

#### **THE SITE AND LOCALITY**

The site is located southwest of Christchurch at the end of Kennedys Bush Road on the southwest side of a spur just below the Kennedys Bush ridgeline (tabled as Appendix 3). The slope of the spur starts as a relatively gentle plateau at the point where urban development is proposed and then rises steeply into adjoining gullies rising up just short of Summit Road.

In summary, the features of the site and locality include:

- The land is predominantly pastoral with a number of gullies which are generally dominated by scrub and weeds running off the main ridgelines. There are a few silver tussocks present and some scattered native rushes.
- Prominent landforms include several volcanic cones, a prominent knoll, a popular mountain-bike and walking track runs parallel along the site boundary, power pylons bisect midway up the spur.
- There is currently only one dwelling and associated accessory buildings.
- Adjoining zonings include Living Hills A, Living Hills B, Conservation 1 and Reserves.
- Subject site is located 2.5km south of Halswell proper, 11km 'as the crow flies' from Cathedral Square, 4.5km from nearest shopping centre, 3km from nearest school.

#### IDENTIFICATION OF ISSUES

The central matter to be considered in this hearing is the extent of peripheral urban rezoning to be given effect to through the Proposed Plan. Consequently, the following issues which need to be addressed in the context of the objectives and policies of the Proposed Plan are:

- Urban consolidation and the extent of appropriate peripheral urban growth (Part 6);
- Overall city identity (Part 4);
- Natural resource values for the city (Part 2);
- Effects transport networks (Part 7); and
- Other physical constraints, including significant landscape and ecological values, and infrastructure;
- Environmental Compensation.

Consequently, a **balanced judgement** under the relevant considerations of Part II of the RMA is required in terms of the relative weight to be given to these issues when considering this request for the rezoning of rural land for urban purposes. This is particularly so given the Council Officers reports and the offer of environmental compensation as part of this proposal.

In brief the following is a summary of the Council Officers reports and recommendations:

#### Water Supply

Mr Eric Van Toor - Team Leader, Water Supply - City Water and Waste, has considered this proposal with regards to water supply and identifies that there are two alternative routes to supply water to the KBD land being; (a) that suggested in KBD's Impact of Servicing and Stability Report of a reservoir at 170m on adjoining land; and (b) an alternative supply route along Kennedys Bush Road.

Mr Van Toor identifies a number of constraints with KBD's water supply option being:

- Supply to the van Asch Development is currently from temporary tanks, with a consent condition requiring a 200m<sup>3</sup> reservoir only (not the 430m<sup>3</sup> stated in the Impact of Servicing and Stability Report).
- It is likely that the permanent reservoir will need to be constructed before the outcome of the proceedings in Environment Court under Section 293 of the Act is known; the City Council's Water and Waste Unit have discussed the construction of a 400 cu.m reservoir on a cost sharing basis but is not in a position to contribute funds or establish a Cost Share Area unless the proposed zoning is approved.
- As for the neighbouring van Asch Development land, the water is only able to provide sufficient pressure up to 140m (not 150m stated in the Impact of Servicing and Stability Report).
- The reticulation within the van Asch Development is unable to support the demand from both the van Asch Development and the proposed development; it would be much preferred to negotiate a 100m long easement from the reservoir site to Kennedys Bush Developments land than replace existing new reticulation within the van Asch Development.
- The (approximately) thirty-five properties above 140 metres would require an additional reservoir approximately 30 metres higher than the highest connection. At least \$300,000 of infrastructure will be required with ongoing depreciation, maintenance and monitoring costs, which for 30 to 40 dwellings is not an efficient extension of the water supply network.

In light of these constraints, Mr Van Toor considers such an option will result in an inefficient extension of the water supply infrastructure. Instead, Mr Van Toor supports a second option which involves the upgrading of the existing main and the provision of pump stations. This, in his option, is a more effective and sustainable option to service the water supply needs of the proposed site.

## **Sewer**

Mr Mike Berry, Planning Engineer - City Water and Waste, has considered this proposal regarding sewer provision and identifies that there are two practical sewer outfall options available to service this proposal being; a pump station option and a gravity solution option. Mr Berry notes that the gravity solution is the favoured option however, the pump station option is considered reasonable given the size of the proposal. Mr Berry also considered any possible downstream effect on the sewer system and concluded that there was no concern in this regard.

## **Stormwater**

Mr Roy Eastman, Team Leader, Water/Environmental Design - City Water and Waste, has considered this proposal with regards to storm water discharge. Mr Eastman notes that no detailed assessment has been made by KBD to qualify the stormwater effects. However, Mr Eastman has made a preliminary assessment on the basis of a similar project and reaches the following conclusions:

- The subject land lies outside the Council drainage district and discharges to the sensitive Halswell River. A high level of water quality and water quantity treatment of stormwater discharges from any development will therefore be required.
- Adequate gully waterway corridors will be required with any development.
- Stormwater quantity and quality mitigation measures are possible with development of the catchment, but these should be centralised, accessible and not be attempted within the sites gullies. It is recommended that additional flat land be provided for this purpose and a greater range of waterway values "off site" to the west.
- Discharge consents should be a prerequisite of any further zoning approval, to ensure all matters are independently considered, and to better ensure good Resource Management outcomes for the catchment.
- An approved stormwater treatment stormwater system should be 'in place' before any start to the sites development.

## **Ecological Values**

Ms Kate McCombs, Planner - Parks and Waterways, has considered this proposal in terms of the botanical values associated with the site. Ms McCombs concludes from a botanical point of view that the proposed development of the lower slopes will cause minimal loss of botanical value. Further, Ms McCombs considers that a proposed Conservation 1 zoning with an accompanying change of ownership for land on the upper slopes is likely to benefit the sites botanical value overall.

## **Public Open Space**

Mr Kelvin McMillan, Planner - Parks and Waterways, has considered this proposal in terms of the recreational values the site offers and concludes that the public open space benefit derived from the overall proposal is very high and identifies the main benefits as being:

- Permanent unencumbered public access provided to an important part of the upper Port Hills.
- Permanent restriction on further urban expansion into a high value Port Hills recreation area (a final upper urban boundary set).
- Complete management control by Council to enhance environmental objectives; ie waterway management and ability to retire land for native forest restoration, pest management, and increased connection with other natural areas.
- Strategically situated in an area with high potential for restoration of native forest.
- Increases potential for recreation and environmental links into the lower Landsdowne Valley.
- Port Hills Regional Park objective brought closer to fulfillment.

This report will be considered by the Parks, Gardens and Waterways Committee at its meeting on Wednesday 7 May 2003.

## **Traffic Effects**

Mr Paul Roberts, Transport Planning Engineer - City Streets has provided a detailed report assessing potential adverse effects with respect to traffic related issues and concludes that there is potential for some adverse traffic effects principally in terms of effect on amenity of existing residents and additional delay at nearby intersections. However, Mr Roberts believes, on balance, that the scale of these effects will be no more than minor when set against a baseline of the current Proposed Plan. Mr Roberts also confirms that the anticipated volume of traffic on Kennedys Bush Road between Hyndhope Road and the Quarry (2,300 –2,800 vpd) is well within the actual traffic carrying capacity of the road.

## **Landscape Values**

Mr Andrew Craig, Landscape Architect - City Development Group, has considered this proposal in terms of landscape values on the Port Hills. Mr Craig identifies the landscape significance and prominence of a knoll to the north of the proposed development and recommends that development be restricted to the 160m contour to avoid and mitigate against any adverse visual effect structures would have on this significant landform. Further, Mr Craig suggests that the zoning pattern be amended to better maintain and ensure a consistent landscape character with adjoining land and its respective zoning. Having considered the proposal, Mr Craig concludes that without environmental compensation this proposal would not, in landscaping terms, be the best means of achieving and implementing the policies of the Proposed Plan. However, given the mitigating factors of the proposal as identified in his conclusion, the amendments to the form and layout of the zoning pattern he proposes, and the offer of environmental compensation, it is Mr Craig's opinion that the benefits offered by environmental compensation add significant weight to the stock of benefits on one side relative to the costs on the other. On this basis, Mr Craig is in support of this proposal.

## **Proposed Design Criteria and Proposed Plan Rules**

As part of the S293 notice, KBD have suggested a number of controls or rules be incorporated in the Proposed Plan as a means of ensuring that resultant development will avoid or mitigate any adverse effects on the environment. In summary, KBD propose a number of rules that seek to control the colour of buildings and the number and type of trees and plantings on the sites.

Council Officers are not convinced that the rules proposed are necessary to satisfactorily achieve the level of visual and amenity mitigation envisaged by the KBD. It is noted that the Proposed Plan through its objectives and policies has limited its use of design controls to Special Amenity Areas only and as such, proposed design controls for this site would not achieve the objectives and policies of the Proposed Plan. It is considered that the visual benefit from such rules to be relatively small, in light of the above discussion, and the costs high. Consequently, Council Officers do not consider such rules appropriate, efficient or effective and as such these proposed design controls would be unsatisfactory in terms of Section 32 of the RMA.

## **Environmental Compensation**

At the heart of this proposal is the offer of some 194 hectares of land on the upper slopes of the overall site as environmental protection. When considering this proposal in light of Policy 6.3.14, evidence previously prepared by Mr R Nixon for earlier Environment Court hearings is noted which details the basis for this policy and why it was incorporated into the Proposed City Plan (tabled as Appendix 4).

The correct manner to consider the issue of environmental compensation is upon concluding an assessment of the proposal against the objectives and policies of the Proposed Plan as part of the overall weighting exercise. The consideration of the proposal against the individual objectives and policies of the Proposed Plan must take place as if the environment compensation were **not** being offered and a conclusion, on this basis, being reached. That is to say, consideration must be had to the proposal without amendment or environmental compensation. The next step is then to reach one final overall conclusion having weighed the negatives aspects or costs of the proposal against the benefits that can be derived from the offer of environmental compensation to determine, as Mr Nixon puts it, if a shift in the 'threshold of acceptance' has occurred.

## **OBJECTIVES AND POLICIES OF THE PROPOSED PLAN**

Generally, relevant objectives and policies can be broken down to matters relating to urban consolidation, peripheral urban growth, overall city identity, natural resource values, transport, utilities and environmental compensation.

### **Urban Consolidation**

- Objective 6.1: Urban Consolidation
- Policy 6.1.1: Population Densities

The proposed development is tenuously linked to existing urban development at a relatively small point and will appear to 'balloon out' away from existing urban development. It is also located some distance from employment, facilities and business areas and will result in increase car trip lengths and not be energy efficient. Further, as this proposal will not result in increasing densities it is considered that the form of development is dispersed, as opposed to a compact form of development as is encouraged by consolidation. It is concluded that this proposal without compensation will not achieve or implement the Urban Consolidation objective and policy.

### **Peripheral Urban Growth**

- Objective 6.3: Peripheral Urban Growth
- Policy 6.3.1: Urban Boundary
- Policy 6.3.2: Infrastructure Costs
- Policy 6.3.3: Community Facilities
- Policy 6.3.5: Natural Values
- Policy 6.3.6: Hazards
- Policy 6.3.9: Urban Extensions
- Policy 6.3.10: Boundaries of Urban Extensions
- Policy 6.3.12: Rural-Urban Interface

In light of the dispersed pattern of development away from existing urban areas and into open, unbuilt rural land and the impact such development will have on infrastructure, in particular water supply and drainage, it is considered that the proposal without compensation will not achieve or implement the Peripheral Urban Growth objective and policies

### **Natural Values**

- Objective 2.4: Natural Features and Habitats
- Policy 2.4.3: Enhancement
  
- Objective 2.7: Port Hills
- Policy 2.7.1: Structures and Development
- Policy 2.7.2: Rural/Urban Boundary
- Policy 2.7.5: Recreational Activity
- Policy 2.7.7: Acquisition and covenants

Mr Craig has identified the impact the development will have on the prominent landforms and the natural environment given that proposed development will be dispersing out into open, rural, unbuilt farm land. It is recognised that such development will not maintain or enhance the distinctive landscape nor maintain the position and distinctiveness between the rural and urban areas. Consequently, it is considered that the proposal without compensation will not achieve or implement the Natural Values objectives and policies

### **Overall City Identity**

- Objective 4.1: Form
- Policy 4.1.1: The Rural Port Hills

As the proposal will not maintain or enhance the city form and will have a significant effect on prominent landforms as the development extends into open, rural land. Consequently, it is considered that the proposal without compensation will not achieve or implement the Overall City Identity objective and policy.

## **Transport**

- Objective 7.1: A Sustainable Transport System
- Policies 7.1.1: Minimising adverse effects
- Policy 7.1.7: Amenity
  
- Objective 7.2: Road network
- Policy 7.2.4: Planning the network
- Policy 7.2 5: Land use control

In light of the conclusions reached by Mr Roberts that the proposal will not have a no more than minor effect on the safe and efficient functioning of the road network, has capacity to cope with the anticipated increase in traffic and will have only a minor effect on amenity, it is considered that the proposal without compensation will achieve or implement the Transport objectives and policies.

## **Utilities**

- Objective 8.1: Provision of Utilities
- Policy 8.1.1: Areas for New Development
- Policy 8.1.4: Cost of Servicing
  
- Objective 8.2: Efficient Utilities
- Policy 8.2.1: Development and Redevelopment

Council Officers have expressed some concern at the proposals ability to provided efficient, effective and sustainable infrastructure, particularly with regards to water supply and drainage. In light of these constraints, it is considered that the proposal without compensation will not achieve or implement the Utilities objectives and policies.

## **Environmental Compensation**

- Policy 6.3.14

On its own, the proposal without compensation would fail a number of important objectives and policies of the Proposed Plan, particularly those relating to urban consolidation, sustainable infrastructure provision and the natural environment and could not be said to achieve the objectives and policies of Proposed Plan and therefore the purpose of the RMA. However, in this instance, KBD have offered environmental compensation as part of an overall proposal which must be weighed up against the 'costs' of the proposed development whereby an informed (albeit subjective) judgement is required to be made.

The significant value or benefit of this land in terms of visual, landscape amenity, recreation, and ecology have been identified and discussed by reporting officers. To use Mr Nixon's terminology, the environmental compensation offered does, in my opinion, extend the "threshold of acceptance" when making this judgement. In this particular proposal, significant community/Council gains are achieved in terms of wider public benefits and certainty and there are significant public/Council gains in terms of land purchase costs. Further, the offered environment compensation can be said to be a useful 'other method' for achieving the objectives and policies of the Proposed Plan. On the basis of the environmental compensation being offered, it is considered that this proposal will achieve and promote this policy.

## **PART II MATTERS**

### **Section 6**

Section 6 contains matters of national importance and the Port Hills are recognised as such therefore development that is "inappropriate" is to be avoided. With regards to the proposal without compensation, the adverse visual effects from this urban development can not be satisfactorily avoided, or mitigated by the measures proposed by KBD. It is considered that the proposal without compensation to be an "inappropriate" form of subdivision, use, and development of the land and contrary to the intent of Section 6(b). However, if KBD were to amend the proposal in accordance with the suggestions of Council officers, and upon consideration of environmental compensation, it is believed that these would be grounds for reconsidering the proposal in light of Section 6.

## Section 32

Section 32 of the RMA concerns the Council's duty to consider alternatives, assess benefits and costs, etc, of adopting, in this case, proposed rural and urban zonings. Consequently, the question before Council is a more restrictive zoning (ie Rural Hills Zone) in contrast to a more permissive zoning (ie a low density Living Hills type Zone) necessary to achieve the purpose of the RMA in this particular case?

There are, in fact, three options the Council must consider in terms of Section 32 being:

- i) The proposal with no amendments and no environmental compensation.
- ii) The proposal with no amendment and with environmental compensation.
- iii) The proposal with amendment and with environmental compensation.

To (i), the answer to the above question is "yes". In light of conclusions reached by Council officers and having assessed the relevant objectives and policies, it is my opinion, on balance, that such a proposal would not give effect or achieve them. Consequently, a Rural Hills zoning would be the best means of the two zonings, in terms of efficiency, effectiveness and necessity, for the Council to carry out its function of control of actual and potential adverse effects of the use and development in order to achieve the purpose of the RMA.

To (ii), the Consultant Planner considers the answer to the above question again is "yes". Whilst the environmental compensation could be said to be of such sufficient size, location and quality to tip the scales in terms of weighing up the positive and negative aspects of the proposal, one must give due consideration for the requirement that *"any such arrangement must still require permitted development to be sustainable and environmentally acceptable."* Without amendments, as suggested by Council officers, the proposal will result in infrastructure that is inefficient and unsustainable and will have an adverse effect on a significant and prominent landform. Whilst shifting the "threshold of acceptance" back toward the proposal, this option will not do enough to best achieve the purpose of the RMA. It is not considered that this option with environmental compensation, while achieving a number of the objectives and policies of the Proposed Plan, will ultimately achieve more, particularly in terms of efficiency, effectiveness and necessity, than if the Rural Hill zoning were retained.

To (iii), it is considered that the answer to the above question can be a "no". Whilst still having an effect on the overall environment and not achieving or implementing all of the objectives and policies of the Proposed Plan, amendments to the proposal as suggested by Council Officers will result in an outcome that would be sustainable and environmentally acceptable when considered in conjunction with environmental compensation. In my opinion, while a Rural Hills zoning of the land does achieve a number of the objectives and policies of the Proposed Plan, an amended proposal with substantial environmental compensation achieves the same, if not more and is thus more necessary in terms of Section 32. Consequently an amended option in conjunction with environmental compensation is likely to shift the "threshold of acceptance" in favour of supporting such a proposal.

## CONCLUSION

Having considered the relevant objectives and policies concerning the effects of urban rezoning and on the advice of Council Officers, it is considered that **any proposed alteration to the zoning without environmental compensation** will not give effect to or achieve them, particularly those objectives and policies concerning urban consolidation, outstanding landscape values, City identity, natural environment and sustainability of infrastructure. In this regard, such a proposal is therefore considered 'inappropriate' and is contrary to the intent of Section 6(b) of the RMA. This conclusion provides a 'bench mark' or starting point for the consideration of environmental compensation.

On balance, I consider that the **proposed alteration to the zoning without amendment and with environmental compensation** will not achieve, implement or promote the objectives and policies of the Proposed Plan to the same extent as a Rural Hills zoning given the impact such a proposal will have regarding urban consolidation, outstanding landscape values, city identity, natural environment and sustainability of infrastructure. I consider the offer of environmental compensation will not satisfactorily shift the 'threshold of acceptance' in favour of such a proposal. In this regard, such a proposal is therefore considered 'inappropriate' and is contrary to the intent of Section 6(b) of the RMA.

On balance, I consider that the **proposed alteration to the zoning with amendment as suggested by Council officers and environmental compensation** will achieve, implement and promote the objectives and policies to the same, if not better, extent as a Rural Hills zoning. Such amendments will, to a significant degree, avoid, remedy and mitigate adverse effects on natural and landscape values and infrastructure. Although this proposal will not achieve or promote urban consolidation, I consider the offer of environmental compensation will satisfactorily shift the 'threshold of acceptance' in favour of such a proposal and therefore be 'appropriate' and consistent with the intent of Section 6(b) of the RMA.

**Staff**

**Recommendation:** That Council support the proposal put forward by KBD **in principle and conditional** upon KBD amending their proposal in accordance with the Council officer suggestions relating to landscape (zoning), water supply and stormwater provision.

**Chairman's**

**Recommendation:** That the views of the Parks, Gardens and Waterways Committee be sought on the appropriateness of the Council accepting the 194 ha block of land as environmental compensation prior to the decision being made.