

10. AVONSIDE DRIVE

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Corporate Plan Output: Transport Planning	

The purpose of this report is to inform the Committee about the resource consent for the required works along Avonside Drive and to obtain a decision regarding these works.

BACKGROUND

At the May meeting of Council permission was sought and obtained to proceed with the resource consent application required for the proposed maintenance work needed along Avonside Drive. The application was changed from that initially notified to exclude 23 trees which had originally been proposed to be removed. The consent hearing took place in July before an independent commissioner and consent was granted subject to a number of conditions. The conditions (tabled) were placed to provide protection to the Avon River and its environs. The Englefield Residents Association, which submitted against the initial application, have subsequently appealed the decision to the Environment Court.

DISCUSSION

Avonside Drive requires some maintenance work to be undertaken as outlined in the resource consent application. This work includes the retention of the river bank where some slumping has occurred and for a short length where road widening is required, the construction of a safety fence and some widening and narrowing of the road to obtain a uniform road 9 metre width. The need for the bank retention work was identified in a report by Soils and Foundations Limited which is an engineering company which specialises in soil stability work. The construction of a safety fence and need for a uniform road width were identified in a pre-construction safety audit undertaken for City Streets by Opus.

The May meeting of the City Services Committee recommended that: the application for consent proceed; options for reducing traffic along Avonside Drive between Linwood Avenue and Fitzgerald Avenue be investigated; and that when the maintenance work is completed a landscape plan be prepared in conjunction with members of the local community. Whilst there seemed to be some acceptance of this process by the community at the time the recommendations were made the residents groups have continued to oppose the resource consent throughout the process.

The Englefield Residents Association have appealed the consent on a number of issues which they feel were not adequately taken into account by the Commissioner. The grounds for the appeal are:

1. Formal procedures under the Resource Management Act were not followed. Inadequate time was given to respond to detailed submissions from Christchurch City Council.
2. Failure to take key arguments into consideration e.g. harms of new fencing, environment and water disturbance (vibration, flooding, slumping, heritage etc.)
3. The Commissioner did not address all the concerns of the residents e.g. impact of traffic on the area.
4. Inaccurate interpretation of understanding of how many accidents had been in the river.
5. Decision based on prejudicial statements from Council staff e.g. health status of trees without key expert arborist report.
6. Issues of Maoritanga e.g. traditional food gathering spot not taken into consideration.
7. Not enough adequate protection provided for trees during proposed works.
8. Scope of Commissioner too narrow. Not inclusive of heritage and river park concept which came into the issue as a direct result of consultation with residents after the original proposal by Christchurch City Council.
9. The relief the appellant seeks is for the Court to decline the resource consent application requested by the Christchurch City Council for works on Avonside Drive and river. Instead request a realistic alternative plan for the area incorporating the idea of a future river park with a commitment to take traffic off and away from Avonside Drive in the meantime as the width of the road does not fit the legal requirements for minor arterial designation.

Preliminary discussions have been held with representatives from the Englefield Residents Association and other interested parties to try to resolve some of the issues, which are the grounds for the appeal. Other than agreement that the first issue listed has no basis in law the remainder of the issues remain unresolved. Although these groups would still like to see Avonside Drive stopped it is still considered that the retention and maintenance of this road to be the most appropriate course for the Council to follow at this time.

Notice has also been received from the Environment Court where a judge has reviewed the notice of appeal from the Englefield Residents Association and considers that that the issue may be resolved by negotiation or mediation, rather than by a full hearing and a decision of the Court. Mediation is an informal process where the parties agree to have an independent person (in this case an Environment Court Commissioner) meet with them to help the parties reach agreement on some, or all, of the issues. If agreement cannot be reached the appeal then continues to the Environment Court for a full hearing.

Council staff do not agree with any of the issues raised in the appeal and a reply to the appeal by Environment Canterbury's solicitor has also been received which replies to each of the points raised as follows (numbering as above):

1. The appellants contention that the formal procedures under the Resource Management Act were not followed has no basis in fact and the appellants were given every opportunity to present submissions;
2. Appropriate consideration was given by the Commissioner to all relevant effects in deciding the application;
3. Proper consideration was given to all relevant traffic impacts of the consent applications, including the incidence of vehicle accidents involving the river. It is immaterial to the decisions that the appellants called for statistics of accidents in the river and it is not the Commissioner's job to provide such evidence;
4. The appellants understanding of how many accidents there have been in the river is of no relevance;
5. The contention that the decisions were based on prejudicial statements by City Council staff is unfounded and lacking substance or fact;
6. There is no evidence that the works authorised will have adverse effect on Maoritanga;
7. The conditions imposed provide adequate protection of trees from construction work damage;
8. The Commissioner was appointed with the full powers of a consent authority to decide the application. All relevant issues under Section 104 and Part II of the Act were considered in deciding the applications.

The Council solicitor has also studied the appeal and agrees with the basis of Environment Canterbury's reply.

The work which is proposed is relatively minor in nature and is proposed as a result of recommendations included in an independent Safety Audit and a soil stability report undertaken by independent consultants for the Council. It is considered that the Council could be seen as negligent in its duties if it were to ignore the advice received and public injury or death were to occur as a result. The work does not pre-empt the investigation of ways to reduce traffic along Avonside Drive as requested by the Committee and reiterated in the appeal. It does however ensure that public safety is protected by the stabilisation of the bank, provision of a uniform road width and the installation of a safety fence.

CONCLUSIONS

The resource consent for the work along Avonside Drive was approved by an independent commissioner acting on behalf of the Christchurch City Council and Environment Canterbury. This consent has subsequently been appealed by Englefield Residents Association on a number of issues.

Initial discussions with representatives of the Englefield Residents Association have not resulted in agreement regarding the most appropriate course of action for the Council to follow. The residents would like to see no work undertaken whilst staff see the necessity to undertake all the work approved in the consent to provide a safe road environment.

The Environment Court has offered mediation through the Court to try to resolve the issues and if this does not result in agreement between the parties the Court will arrange a fixture for a full court hearing.

Recommendation:

1. That the Council support the works on Avonside Drive as proposed.
2. That in view of:
 - (a) the very comprehensive degree of consultation including the work of a Councillor Subcommittee, lead by the Chairman, which worked over several months to reach substantial consensus with residents, as well as many months of consultation by staff and consultants;
 - (b) the urgent nature of the work to prevent damage to the river environment by bank slumping, and to improve traffic safety (including cyclists);
 - (c) the legal advice to the City Council and Environment Canterbury that the appeal has no substance;
 - (d) the thrust of the objections being to have Avonside Drive closed to traffic when that issue is:
 1. not relevant to the proposed maintenance work;
 2. to be investigated in the long term as part of the Metropolitan Transport Strategy;
 3. could not be undertaken without taking very widespread traffic implications into account, which would take some years of consultation, thus delaying urgent maintenance work beyond what is feasible or acceptable;
 - (e) the importance of this arterial road for traffic from the exit of the city;

the Council decline further mediation and apply for an urgent hearing in the Environment Court to have the matter finally determined.