

## 5. REPORT ON URBAN GROWTH ENVIRONMENT COURT DECISIONS

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| <b>Officer responsible</b><br>Environmental Services Manager | <b>Author</b><br>David Mountfort, DDI 941-8669 |
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The purpose of this report is to advise the Council of several very significant recent decisions of the Environment Court on urban growth and to agree on a suitable course of action.

### YALDHURST AND MASHAM, APPELLANTS ENVIRONMENT CANTERBURY AND APPLEFIELDS LTD

This case concerns land in the Yaldhurst/Masham area. There are five pieces of land, as follows:

| <b>Owner</b>                            | <b>Area (ha)</b> |
|---|------------------|
| Applefields                             | 33               |
| B E and A E George                      | 13.8             |
| J E Burrows and L L Green               | 15.7             |
| Enterprise Homes                        | 28.3             |
| Primary Producer's Co-op Society (PPCS) | 15.4             |
| <b>Total</b>                            | <b>106.2</b>     |

The sites are shown on the attached plan. The first four in the list above are along the southern side of Yaldhurst Road, just beyond the present urban boundary near Masham Road, with the PPCS land lying south of these off Gilberthorpe Road.

The Court has allowed Living 1 Zoning on the PPCS land but declined the Living 1A and Living 1A deferred zoning on the rest of the blocks. It has allowed the owners to apply under Section 293 of the RMA for a different form of Living Zoning, by 28 March 2003. Normally the Court is limited to the 'scope' of a reference. This is the relief sought in a reference and the original submission, in this case the suitability of the land for Living 1A Zoning. The Court held that L1A is not suitable. Normally that would be the end of the matter, but Section 293 allows the Court to consider ideas which are different from those raised before it by the references, such as a different form of residential zoning or controls which are not currently in the Plan. Under Section 293 new proposals are publicly notified again by the Council for public submissions, and the Court rehears the matter.

The Court has also allowed an appeal by ECAN against the Council's approval of a subdivision of the Enterprise Homes land.

In reaching these decisions the Court followed and applied the urban growth policies in the City Plan. These promote urban consolidation, good urban/rural transitions, greater population densities and reduced demand for car-based trips. The Court found that Living 1A Zonings of the land would do little to achieve most of these policies. It considered that the land could be developed for urban growth but only on a much more comprehensively planned basis, including greater residential density on at least part of the land, provision for a neighbourhood commercial centre, and some access to Yaldhurst Road (presently a Limited Access State Highway and therefore unavailable for access without consent of Transit New Zealand). The Court was influenced by the proximity of potential employment centres such as Hornby, the Airport, and University but considered access would have to be improved to take advantage of this without increasing car travel. Co-operation between landowners and agencies such as Council and Transit New Zealand would be necessary to achieve this vision.

The Court found some merit in the 'New Urbanist' concepts described by one of the witnesses for Applefields, Ms Wendy Morris, a planning consultant from Melbourne. This is best summarised in the following paragraph from Ms Morris' evidence.

*New Urbanism aims to produce walkable, mixed use communities. At the sub-regional scale, New Urbanism structures urban development into "town centres" with "walkable" neighbourhoods clustering around them to form catchments of people ranging ideally from 15,000 to 30,000 population....Walkable neighbourhoods generally cover about 50ha, an area of about 400m radius, which equates in walking time to about 5 minutes, regarded globally as a feasible distance for walking.*

*Such town and neighbourhood catchments, when structured with interconnecting streets, compatibly mixed uses, and adequate average densities, can support considerable local employment needs locally to reduce off-site travel demands, while being very supportive of public transport.*

The Court noted that approach seems similar to the objectives and policies of the City Plan. However, it considered that those objectives and policies are not well served by zoning large areas of peripheral land as Living 1 and Living 1A, which simply produces yet more conventional low-density suburban development.

Finally the Court repeated something it mentioned in the earlier Sabys Road decision, the need for a permanent 'City Edge' or buffer, consisting of a planted strip perhaps 50 metres wide and containing a walkway. It considered this could be provided by developers as environmental compensation (not reserve contributions).

**Comment:** Fifty metres seems small to achieve what the Court seems to be hoping for. It is based on evidence it received about desirable separation between residences and productive agricultural use, to mitigate noise, odour, dust, spray drift etc. Fifty metres may be insufficient for some of these purposes.

The parties now have until 28 March 2003 to show that a case has been made for the Court to exercise its discretion under s 293. If they do not, the land will revert to Rural 5. The owners have advised the Council of their wish to proceed and suggested that as it was the Council's decision to zone the land in the first place, the Council should take the lead in asking the Court to proceed. Staff have advised the owners that it would be preferable for the owners to make the initial application to the Court. That is because the Council generally opposes the use of s 293 and may not wish to set a precedent in this regard. On this occasion, the Court is likely to grant such a request and there may be advantages to the Council in seeing this particular case proceed. It may serve as a useful test case for applying the City Plan objectives and policies and achieving good comprehensive development.

#### **STYX MILL (HIGHSTEAD), APPELLANTS ENVIRONMENT CANTERBURY AND VARIOUS LANDOWNERS**

The land is to the south of Styx Mill Road and west of the Regent's Park subdivision. It is bounded by Styx Mill, Cavendish, Grampian, Claridges and Gardiners Roads and is shown on the attached plan. There is about 110ha of land in the block. The Council had zoned 17.4ha of land Living 1A in the southeast corner of the block and the rest as Rural 3. ECAN sought Rural 3 for the whole block. The owners sought various Living 1, 1A or 1B and 2 Zones for their land.

The Court's analysis of the issues was very similar to that described above, except that it did not discuss 'New Urbanism' at all. It found that the proposed low-density zonings of Living 1A and 1B and even Living 1 would do little to meet the objective of increasing population density. There would be small but cumulatively significant traffic effects. Large areas would need to be set aside for stormwater retention. There were potential problems with upgrading the sewage systems. There was a potential for adverse effects on the ecology of the Styx river.

The Court considered these problems could be overcome with comprehensive design and co-operation amongst landowners. It considered whether to allow the owners to apply under s 293 but concluded that there was far too much work required to make a manageable s 293 process. Further, it considered that other lands in the vicinity should also be considered.

The Court therefore cancelled the existing 17.4ha of Living 1A Zoning and refused any other alterations. The entire block is to remain zoned Rural 3, but the Court has not ruled out eventual urban growth for the area, although on a much more comprehensively planned basis.

#### **BURWOOD, APPELLANT ENVIRONMENT CANTERBURY**

The land concerned is south of Prestons Road between Marshlands Road and Burwood Road. It is shown on the attached plan. It contains 49ha. The owners are L R and C D Trott, P G and S A Moore, and J Law. The Council zoned this area Living 1B in response to submissions on the Plan and Environment Canterbury appealed.

Living 1B is a very low-density residential zone with a minimum lot size of 2,000m<sup>2</sup>.

The Court found the following problems with the zoning:

- It would not achieve the strategic objective of consolidation.
- Private car trips could not be shortened, and access off Prestons Road actually faces away from the city, thus increasing trip distances.
- There are no safe and convenient pedestrian or cycling links.

- The site is not close to shopping centres, community facilities or business and employment areas.
- There is no provision for linkage to other rural land to the south that would inevitably be urbanised as well in response to this.
- Low-density living development is likely to be resubdivided in future but by then the basic infrastructure would be set in a car-dependent form which cannot efficiently be redesigned.

As against those disadvantages the Court accepted that the land would provide people with a choice of residential lifestyles, but this was not enough to outweigh the disadvantages.

The land is therefore to revert to Rural 3 Zoning.

As with most of the other urban growth decisions to date the Court saw some urban growth potential eventually, along with other land in the vicinity. It would need to either provide a greater density and better transport linkages or else a means by which the low-density sections would be maintained in perpetuity.

## **SOME IMPLICATIONS OF THESE DECISIONS**

There have now been six site specific urban growth decisions, and some trends are emerging.

### **1. Consistency with City Plan**

The Court's conclusions are based on the objectives and policies of the City Plan, even when the Court does not uphold the Council's own zoning decisions. The Court is carefully analysing and applying the objectives and policies, especially those on Urban Growth and Transport. Its conclusions about the need for greater densities, reduced car trips, and proximity to employment, shopping and community facilities are based firmly on objectives and policies in the Plan, not attitudes that the Court generates for itself. Obviously the Court considers some of Council's own zoning decisions have not been in accordance with the Plan.

### **2. Urban Consolidation**

The Court clarified this key City Plan objective. It includes:

- Shortening or reducing numbers of private car trips,
- Safe and convenient pedestrian and cycling links,
- Greater overall population density,
- Proximity and accessibility to businesses and employment needs,
- Compact urban form.

### **3. Living 1A and 1B Zones**

The Court is showing that it is very unimpressed with the lower density Living 1A and 1B Zones. These zones are meant to apply at the fringes of the urban area and provide a transition to the rural zones. This is backed up by an objective and policy, but the Court considers this contradicts other objectives and policies relating to consolidation, increasing population densities, reducing car-dependence and others. The Court considers these zones should not be used unless they can be guaranteed to remain at the rural-urban interface and not be leapfrogged. The Court also considers that the Living 1B Zone, with its minimum 2,000m<sup>2</sup> lot size could create later difficulties with resubdivision. There are even hints that the Court considers the basic Living 1 Zone does not meet the objectives and policies of the plan particularly well, as it has no maximum lot size. The Court has to date struck down these L1A and L1B Zonings wherever it could (Yaldhurst, Styx Mill, Burwood, or criticised them when it did not have jurisdiction to strike them down (Sabys Road)).

### **4. Higher Density Development**

Significant new development areas should contain at least some higher density areas, in accordance with the objectives and policies. It has proved difficult to achieve this in some areas, eg Aidanfield and the Plan rules may need strengthening in this regard.

**Comment:** It is not clear that there is much demand at present for higher density housing in these peripheral locations. This may be something that is worth discussing with major developers in the light of experience at Aidanfields/Northwood.

## 5. **Community Facilities, Employment Opportunities**

Significant new development areas should contain or be close to shops, schools, recreation areas, public transport and employment opportunities. This is to provide convenience for residents and reduce car trips and traffic congestion.

## 6. **Comprehensive Development**

Development areas should be large enough for a range of facilities such as shopping, recreation and community facilities, as well as a range of housing densities. Where there are multiple landowners then these will need to co-operate to ensure comprehensive development. Regulatory mechanisms such as outline development plans will be required to ensure comprehensive development takes place.

**Comment:** There will be a need for mechanisms to share the costs and benefits within a larger development area. For example some owners will be more affected than others by having to provide their land for recreation, stormwater retention or roading while others' land is available for profitable development (the 'windfalls and wipe-outs' scenario).

Arranging co-ordinated development has been difficult in the past, eg the Deaker situation at Glovers Road. There are two reasons for this: Firstly, owners are sometimes not willing or ready to proceed with land development when others are, and secondly on other occasions there is little incentive for landowners to proceed because of lack of profit in it for them. The Glovers Road situation illustrates both problems.

Two possible responses include introduction of 'rationing', ie restricting the release of land for development to create some real economic incentives in the market, and cost-sharing schemes to even out imbalances in returns. On several occasions the Court has now invoked Section 293 of the RMA to require developers to produce comprehensive and binding outline plans for their developments incorporating these matters. Examples include the Belfast and Yaldhurst decisions, while on other occasions (Styx Mill and Burwood) the Court has given broad hints that urban growth would be acceptable in such areas if planned more comprehensively to achieve these objectives and policies.

## 7. **Permanent Rural/Urban Buffer**

The objectives and policies favour using permanent features, preferably natural, to establish a permanent boundary to the urban area. There is also a need for a buffer between urban and rural activities. In many places features such as rivers or streams, the coastline or the Port Hills provide this.

The airport and its noise contours play a similar role but there is an area in the South-west of the city from Yaldhurst around to Cashmere where such natural or built features can be hard to find, and here the Court has been urging the creation of such buffers through provision of walkways, planted strips, and naturalised waterways.

**Comment:** A difficulty here is the potential to provide such features in areas where they may be quickly 'leap-frogged'. Establishing a permanent urban boundary would require an agreed growth strategy with neighbouring District Councils and ECAN. If operating in the absence of such a joint strategy the Council would need to ensure any such buffers remained useful if and when development occurs beyond them.

## 8. **Walkways and Cycleways, Reduced Car Trips, Public Transport**

New development areas should incorporate and encourage walking and cycling, reduce car dependence and be compatible with extending the public transport network. Proximity to employment opportunities will be an important factor.

## 9. **New Urbanism**

As discussed in the Yaldhurst and Masham, Appellants Environment Canterbury and Applefields Ltd section above, the Court has expressed some enthusiasm for the concept known as 'New Urbanism'. Some of the principles of New Urbanism correspond reasonably closely with the package of urban growth objectives and policies in the City Plan.

## 10. **Versatile Soils**

The versatile soils issue has not been completely abandoned, but to date has not been a major factor in any of the decisions released. The Court stated in its first 'General Urban Growth' decision that it found this objective difficult to understand and apply. It did restate the objective and has been considering it in its decisions. There may be merit in changing this objective to match the Court's interpretation. Recent comments in the media about this issue may be drawing conclusions that are not supported by a close reading of the decisions.

### **IMPLICATIONS FOR CITY PLAN**

#### **1. Consolidation and Increased Density Versus Low-Density Transitional Zones**

There is a need to reconsider the contradiction between these policies which is troubling the Court. A solution may lie in the technique the Court suggests for permanent urban-rural buffers, provided at developer cost as environmental compensation.

#### **2. Comprehensive Development**

The City Plan contains some outline development plans, but these are not very detailed. Subdivision is a controlled activity, ie must be granted. An alternative would be to make subdivision discretionary or restricted discretionary and require the preparation and approval of a detailed outline development plan before subdivision proceeds.

#### **3. Staging of Development**

Consideration should be given whether to introduce a form of staging the release of land for subdivision. This could have the effect of providing new infrastructure more efficiently, and also creating some energy in the subdivision field which would enable development to be completed in given areas more quickly and encourage participation by all relevant landowners. It could also defer development proposals altogether in areas where further study is required, eg the balance of the Halswell River Catchment not already committed to development at Sabys Road and Awatea.

Although these areas are not currently zoned or under reference, the opportunity for privately-requested plan changes will arise after the Plan becomes operative and clear urban growth policy needs to be in place by that time to guide any such applications.

#### **4 Other Issues**

There are several issues not mentioned by the Court but which could usefully be considered in any review of Greenfields subdivision policy. These include:

- Layouts for passive solar energy,
- Naturalised waterways,
- Use of the provisions of the new Local Government Act relating to financial contributions and cost-sharing schemes.

### **CONCLUSION**

The recent Environment Court decisions have highlighted a number of issues that Council and staff have been aware of for some time. The Council has already decided to prepare a Variation to the City Plan to deal better with Greenfields subdivisions. This work has commenced and the views of the Court can be considered and incorporated into that work as appropriate.

- Recommendation:**
1. That staff continue to develop an issues and options paper relating to the control of Greenfields subdivisions.
  2. That if the owners of the Yaldhurst Block proceed with an application under s 293 of the Resource Management Act, the Council not oppose the application and reserve its position until a more detailed concept is prepared.