

5. ENVIRONMENT COURT DECISIONS

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The purpose of this report is to advise the Committee of a number of recent decisions of the Environment Court relating to the City Plan, since the last report in May 2003.

C44/2003 (interim) 11 April 2003 Wilson/Cracroft Residents' Association Rezoning - Worsleys Road/Cashmere Stream

C165/2003 (final) 16 December 2003

The interim decision zoned 5.7 hectares of land adjacent to the Cashmere Stream (shown on the attached plans marked "A" and "B") as Living 1 and Rural 2. Local residents sought that it all remain Rural 2. A 3.4 hectare reserve which will serve as a flood ponding area will be vested in the Council, as well as a 20 metre esplanade reserve along the stream. The Court's interim decision upheld the Council's position at the hearing. However, this decision left some details to be resolved between the parties, which were dealt with in the final ruling.

C60/2003 10 May 2003 Simpson/NZ Cashflow Control South Brighton Spit

This decision relates to the Erosion Hazard Lines on the City Plan at South Brighton Spit. The decision generally confirmed the hazard lines but altered their location slightly. The Council was to prepare amended rules implementing the Courts decision and circulate these to the other parties.

10 June 2004 NZ Cashflow Control - South Brighton Spit (High Court decision)

Some of the referrers took this matter to the High Court, which upheld the Environment Court's decision, except for one matter. The question of whether subdivision seaward of the hazard line should be a prohibited or non-complying activity has been referred back to the Environment Court, which has yet to schedule another hearing. The Environment Court has also yet to finalize the rules unfinished after its first hearing, and therefore this matter is not concluded.

C98/2003 18 July 2003 Progressive Enterprises Limited Business zoning - Stanmore Road Supermarket

The referrer sought Business 1 Zoning for the Stanmore Road supermarket, (which is run by a competitor) in lieu of the Business 2 Zoning in the plan. This would have restricted development opportunities. The referrer did not produce compelling reasons to support their case and the Court disallowed the reference. As this appeared to be a case of trade competition with little real merit, the Council sought and obtained costs against the referrer.

C99/2003 25 July 2003 Kendall Rezoning - Scarborough

This case concerned the zoning of land at Scarborough, as shown in the attached plan marked "Kendall". The Council had refused to allow some of the proposed Living Hills Zoning, which was also opposed by local residents. Based on legal and planning advice that the Council's decision could not be supported, the City Plan References Subcommittee resolved not to defend the decision, and instead to support the referrer. The reference was allowed.

C100/2003 25 July 2003 Thacker Waterway Setbacks

In this case the referrer opposed the waterway setback required on a property adjacent to the Avon River at Clyde Road. The University of Canterbury is on the opposite bank of the stream. The Council's decision imposing a 10 metre setback was upheld by the Court.

C116/2003 15 August 2003 McVicar/Christ's College Cashmere/Worsleys Valleys

This case concerned the zoning of a large area of land in the Cashmere Valley. The Council had zoned a combination of land on the flats and on the Port Hills Living 1 and Living Hills. This was opposed by local residents, and the landowners also appealed against aspects of the Council decision. This was an environmental compensation case and has previously been reported to both the Regulatory and Consents, and Parks Gardens and Waterways Committees. Under the decision a large area of land was to be provided to the Council as a ponding basin and reserve. The Environment Court's decision allowing part of the zoning was different to the Council decision and was of concern to the Council in two ways, which were the subject of an appeal to the High Court:

1. The Environment Court's environmental compensation proposal was different to that previously accepted by the Council. The Court assumed it had the power to order the Council to accept land as environmental compensation. It is considered that owning and managing land and operating it as a reserve raises issues, particularly financial ones, that are outside the Resource Management Act 1991. Therefore, the appeal sought clarification that the Council cannot be required to accept environmental compensation land unless it is willing to do so. When the Council later decided to accept the package anyway, that part of the appeal became abstract to the case. Legal advice was received that the High Court would not want to deal with an abstract issue. However, this issue is still unresolved and can be dealt with in subsequent cases if necessary.
2. The Court zoned part of the land Living Hills. This land was previously Rural and no party had asked for it to be zoned Living Hills. The Court did not appear to have the jurisdiction to do this. At the time this report was drafted the case was about to go before the High Court. All parties, including the Environment Court itself, have now accepted that the Court made an error in rezoning this area Living Hills. It is unclear whether either the High Court or the Environment Court could now order that this be renotified under section 293 of the Resource Management Act or whether the land must remain Rural.

C130/2003 19 September 2003 Rangī Ruru and others and Ministry of Education, Hours of Operations - Cultural 3 Zone/Schools Designation Issues

In these cases the Council was defending an hours of operation rule that would affect schools in the Cultural 3 Zone, and also attempting to challenge the necessity for State Schools to be designated as public works, given that they would be provided for in the Cultural 3 Zone. The Council was unsuccessful on both counts. The hours of operation rule was deleted and the designations were upheld.

C151/2003 16 November 2003 Glendore (New Zealand) Limited Character Groups

This case was about the provisions in the City Plan which related to "character groups". Character building groups and buildings and areas adjacent to important public open spaces within the central city were identified:

- Because they have significance as architectural groups, or
- Due to their streetscape quality, or
- Because they adjoin key open spaces which have a high public profile and contribute strongly to the character and appeal of the city.

Erection or alteration of buildings in these defined areas was to be a limited discretionary activity. The Environment Court did not consider the character groups identified for their architectural qualities had been sufficiently well-defined or were sufficiently different from other buildings to be justified, and therefore deleted the rules. However, the Court upheld the rules relating to building character adjacent to significant open spaces.

C164/2003 16 December 2003 Campbell Design Controls - Moncks Spur

This case originally challenged the Living Hills B Zoning of properties at the upper levels of Moncks Spur and Mount Pleasant. By the time of the hearing the referrer modified the relief sought to request discretionary design controls for buildings in these visually prominent locations, and controls on the type of vegetation to be planted. The Council opposed this on the grounds of:

- Impracticality and unenforceability, and
- Lack of consistency with other equally sensitive parts of the Port Hills, and
- Lack of policy justification.

The City Plan objectives and policies actually promote a “contrast” model between the Living Hills and Rural Hills Zone rather than the referrer’s preferred model which tries to soften and obscure housing at this zone boundary. The Council’s position was upheld.

C171/2003 19 December 2003 ICON Victoria Square

In this case ICON (The Inner City West Residents Association) sought low height limits (14 metres) on buildings facing onto Victoria Square, in lieu of the 60 metres allowed for in the City Plan. The decision was something of a compromise, with the Court adopting a system that sees height limits progressively lowered from Armagh Street, where it would be 50 metres for most sites, downwards towards the north and the Avon River, where it would be 15 metres at the ‘Oxford on Avon’ site.

C55/2004 7 May 2004 Kennedy’s Bush Developments - Rezoning

This was another environmental compensation case in which the developer offered to vest 194 hectares of land on the upper slopes of the Port Hills in the Council as a reserve in exchange for 26 hectares of Living Hills 1A Zoning just above the existing Living Zoning at Kennedy’s Bush Road. The Council had originally declined the zoning and the developer later offered the compensation package. The Regulatory and Consents, and the Parks Gardens and Waterways Committees decided to accept the package and supported the developer in the Court. Local residents and the Selwyn District Council opposed the development. The Court turned down the proposal. Although it had no objections to the proposal itself, it was concerned about the boundary with rural land adjacent in the Tai Tapu Valley. It found this boundary arbitrary and considered it would create hope and expectation amongst neighbouring landowners. The Court advised that the Council consider rezoning the area out to the middle of the Landsdowne Valley, perhaps using a line of pylons there as a final urban boundary. There are a number of problems associated with the Courts reasoning and propositions:

1. If the Court was concerned about the integrity of zone boundaries, it has concentrated too much on the lower slopes and ignored the far more important upper slope boundaries where there was the opportunity to provide a final boundary through the environmental compensation offer.
2. Although the Court criticised the Council for creating hope and expectation amongst neighbouring owners, the Court has managed to do this itself, over a much wider area, with its comments about rezoning to the middle of the Landsdowne Valley. Several owners have already been in touch, while others are known to be totally opposed.
3. The Court has ignored the fact that the Landsdowne Valley issue could have been resolved at a later date.
4. The Court has made too much of the requirement in the Resource Management Act to achieve integrated management of the effects of land use. In fact there is no compelling reason why development in the Landsdowne Valley needs to be linked in with Kennedy’s Bush or should take place at the same time. Each could take place independently of the other or be integrated whenever they occur with no particular disadvantages. Integrated management is important, but the issue does not arise in this case to the extent the Court suggested.
5. Creating hope and expectation amongst neighbouring landowners is inevitably going to occur whenever a Plan is changed in a way that allows for more intensive land use. It is unrealistic to expect a defensible boundary to be found on every occasion.
6. The suggested rezoning out to the middle of the valley may be undesirable for many reasons, including landscape, transport and flooding issues. The line of pylons proposed by the Court could never be a realistic boundary. In any case this land was not part of the case and should not have been mentioned at all. In fact the Court seems to have been more concerned with land which was not part of the case before it than with the land that actually was.

Kennedy’s Bush Developments Ltd has appealed this decision to the High Court. It is suggested that the Council should generally support them at the High Court hearing. The Council should, however, conduct its own case. Although the Council generally supports the outcome the developers want, there are some important differences of opinion between the Council and the developers about the interpretation of the City Plan. The reasons for supporting the appeal would be that the reserve land, and the opportunity to achieve a final Port Hills boundary in this location are both important and worth pursuing, and it is also considered that the Court created some very significant difficulties in the way urban growth planning exercises should be carried out.

C60/04 13 May 2004 Airport - 50 v 55 Issue (Interim decision)

This was a hearing of references against Variation 52 to the City Plan. The basic issue was whether the limit to noise sensitive activities in the vicinity of Christchurch Airport should be set at the 50 or 55 decibel noise contour. This Council had previously set the limit at 50, contrary to widespread international practice which sets it at 55. Various landowners opposed the Council position, while Christchurch International Airport Ltd (CIAL) supported the Council. At the hearing the Council and CIAL were able to share a number of technical witnesses. The Court decided to adopt the 50 contour. It accepted evidence that there can be significant health effects arising at the 50 contour, and also that in the Christchurch situation there is no pragmatic reason for adopting 55, which is the case at many other airports where significant development has already occurred close to the airports. The decision is interim because the Court wishes to impose some consequential amendments to the relevant Plan provisions, and also because some related issues are still to be heard. Now that this case has been heard, the Court will be able to commence hearing other airport cases, including a number of site specific rezoning requests in the vicinity of the airport.

Remaining City Plan cases in the Environment Court

Airport References

These are cases on various airport matters, concerning details of the Airport designation, the Special Purpose (Airport) Zone, the Living 1C Zone, various rezoning requests near the airport and building restrictions in nearby Rural Zones. The Court has indicated that it wishes to resolve these cases rapidly, preferably by the end of the year. This seems largely achievable, apart from a case involving a large block of land at the corner of Memorial Avenue and Russley Road which may take longer to resolve.

Floodplains Issues

These cases involve various references by Environment Canterbury and others on the provisions of the City Plan relating to flooding. These have been deferred to enable progress to be made on Variation 48 which addresses these issues.

Retail Issues

These are various references relating to the control of retailing in Business Zones. These have been adjourned to enable the Council to introduce a variation relating to the same issues. The variation is expected to be put before the Council in late July 2004.

Business Zonings, Saleyards Site

This reference has been adjourned to be dealt with after the hearing of appeals against the Blenheim Realignment Road Designation.

Living 4 Zone References

Hearings have commenced on these references, with the first reference being heard relating to a jurisdictional issue. The Court's decision on this issue is sought before hearings on more substantive issues commence.

Meadow Mushrooms Site

A reference is about to be heard on the zoning of this site within the Awatea Block.

Miscellaneous Living Zones References

These concern minimum lot size rules in the Living 1A, Living Hills A and Living Hills B Zones. Agreement has largely been reached, but the agreed solution needs to be publicly advertised through the section 293 process under the Resource Management Act.

Section 293 Cases

Two cases, at Yaldhurst/Masham, and at Belfast are still to be notified for submissions under the section 293 process, after interim decisions by the Court. Both are expected to be presented to the Court within the next month by the landowners with a request to the Court that it notify them. Council staff have been working closely with consultants for the Yaldhurst owners and have reached a good deal of agreement on the development of the area. There has also been contact with the Belfast owners, but far less agreement has been achieved in this case and there are still significant areas of contention between the owners, Council staff and Transit New Zealand. However, the owners have still requested that this application be publicly notified. Both cases will shortly be subject to Environment Canterbury's Natural Resources Regional Plan, under which both will be zoned in an area where urban development is prohibited. The Natural Resources Regional Plan is to be notified shortly, although the prohibition will not come into effect until submissions or references have been resolved.

Staff

- Recommendation:**
1. That the report be received.
 2. That the Council be represented at the appeal to the High Court by Kennedy's Bush Developments Ltd on Decision C55/2004 and generally support the case as outlined in the report.

Chairman's

- Recommendation:** That reports on Environment Court decisions are brought before the appropriate Committee(s) of the Council following the release of the Court's decision.