

# Our Community Plan Submission Form

## Instructions

### Please read before completing your submission

It will help us process your submission if you clearly state the issue you want the Council to consider, what specific action you think the Council should take, and why that should be done.

If you wish, you can present your submission at a hearing. (If that is the case, please tick the box). The hearings will be held between Thursday 25 May and Wednesday 7 June 2006. Generally, 10 minutes are allocated for hearing each submission, including time for questions.

It will help us if your submission also refers to the page of either the full version or the summary version.

Please note: We are legally required to make all written or electronic submissions available to Councillors and to the public. This includes the name and address of the submitter. All submissions will be published on the Council's website from 10 May 2006.

No anonymous submissions will be accepted.

You may send us your submission:

#### By mail

Please mail your submission (no stamp is required) to:

Freepost 178  
Our Community Plan  
Christchurch City Council  
PO Box 237  
Christchurch 8003

#### By email

Please email your submission to:

ccc-plan@ccc.govt.nz

Please make sure that your full name and address is included with your submission.

#### On the internet

You may enter your submission using the form

provided on the Council's web site at

<http://www.ccc.govt.nz>

Please follow all the instructions on the web site.

Please remember to indicate if you wish to present your submission in person at one of the hearings.

Please ensure your submission arrives no later than Friday 5 May 2006.

## Your submission

You may use this form for your submission on our draft Community Plan if you wish. Whether you use this form or not, please include your name, address and contact telephone number with your submission.

Tick one  I do NOT wish to present my submission at the hearing, and ask that this written submission be considered  
OR  
 I wish to talk to the main points in my written submission at the hearings to be held between Thursday 25 May and Wednesday 7 June 2006

Are you completing this submission:  For yourself  On behalf of a group or organisation

If you are representing a group or organisation, how many people do you represent? approx. 500

My submission refers to:  Full version  Summary version  Page No. 72

Do you also want to respond to:  Development Contributions  Aquatic Facilities  Other

Contact Name EMERITUS PROFESSOR D. C. STEVENSON

Organisation name (if applicable) CRACROFT RESIDENTS ASSOCIATION INC.

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Signature [Signature] Date 2nd May 2006



# Our Community Plan Submission Form

Please be as specific as possible to help us understand your views

## Questions

See list of major projects in the summary document

1 Do you have any comments on the major projects in our draft Community Plan? page number **71**

In general agreement with "Essential Capital Projects" and "Discretionary projects: priority" (p.72) especially "Strategic land purchases."

2 Do you have any comments on groups of activities (the activities and services that Council provides)? page number **71**

In full version we support: in overview,

- (a) Environment Today p36 pp 36-38
- (b) Strategic Directions pp 49-57

In rest of text of full version:

- (c) Parks, Open Spaces and waterways pp121-127
- (d) Recreation and Leisure pp 128-135
- (e) The sound financial planning evident throughout the full version.

3 Do you have any other comments or suggestions you want to make? page number **71**

Attached is an appeal for help in preserving the scenic nature of the Port Hills (See Section 6b of the Resource Management Act - "The protection of natural features and landscapes ...")

Also supporting this is the City Plan (Vol.2).

- (a) Maintaining the green edge to the city (Sections 2.4.7, 2.7, 2.8 & 2.9)
- (b) Natural Environment "Maintaining & enhancing the dominant open space character (4.1.6)
- (c) Promoting the garden city Identity (4.2.2)
- (d) Peripheral Urban Growth (6.3)

You may add more pages if you wish. Thank you for your submission.

- (e) Recreation and Open Space (14)

For office use only

Submission #:

Referred to:

Date referred:

Date required:

Heard:  Yes  No

## APPEAL FROM CRACROFT RESIDENTS ASSOCIATION

For the past 9 years our Association has been trying to prevent inappropriate development of housing in the Cashmere and Worsleys Valleys and the spur between them. (The McVicar and Christ's College development) There is also the possibility the land above and up to the Summit Drive could also become a recreation area.

With limited funds we have presented our vision for this area at two Council hearings, two Environment Court hearings and two High Court hearings. It is to go back to the High Court on May 16<sup>th</sup> as the result of an appeal by the developers and also back to the Environment Court later this year as a result of the failure between the parties to reach agreement on matters as recommended by the Environment Court decision.

The first decision of the Environment Court (C116/2003) was, in effect a compromise allowing housing on the top of the spur, in Worsleys Valley and a limited area of Cashmere Valley. This was appealed by the Christchurch City Council on legal grounds and sent back to the Environment Court. As a result, the limited amount of development in Cashmere Valley was reduced further (Decision C144/2005) and confined to the hatched area shown in plan B of the decision which is attached to this appeal.

Even so, the remaining housing will ruin the view of the open space of Cashmere Valley and is contrary to the "Green Edge" policy 2.4.7 of the City Council. The photograph on page 196 of the full version of the plan is Cashmere Valley as seen from above.

The vision of our forefathers gave our city Hagley Park.

We have the unique opportunity of giving future generations a rural park that is only 6 kilometers by road from the city centre. There are immense possibilities for recreation. Already Worsleys road and Shalamar Drive, which surround the area, are extensively used by walkers, cyclists, joggers and sightseers. A model farm? Regenerate native trees and shrubs (help stop erosion and encourage native birds)? It may also help a little with flood control of the area (policy 2.5.7).

We implore our City Council to purchase this area (hatched in plan B of the Environment Court decision C144/2005) and also attached to this page.

It will be costly to develop this area on the flood plain for housing as it has to be built up considerably (up to 3m of fill) to avoid flooding before roads can be constructed, In addition the 12 to 15 (detailed plans not yet available) building sites possible will not be all that desirable. Attached are three photos of the area taken from Worsleys Road. The one taken 10/7/05 at 4-45 pm shows this area in shadow from the small Bengal Drive Spur. Clearly, as the major Cashmere Hill Spur is to the North, it does not get any morning sun. Both the Worsley and Cashmere Valleys often have fog in the winter mornings as shown in the other two photos attached to this appeal. The price of this undeveloped area will be very negotiable but could probably be of the order of 1.0 to 1.5 million dollars.

Although this is a considerable sum it is well within the limits of the budget for "Strategic Land Purchases" of \$37.6 million (page 72 of the full version). Clearly once houses are present then this golden opportunity is lost – probably forever.

Decision No. C 144/2005

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of references pursuant to Clause 14 of the  
First Schedule of the Act

BETWEEN G A AND J Y McVICAR AND CHRIST'S  
COLLEGE CANTERBURY

(RMA 1019/01)

AND P A MEMON AND OTHERS

(RMA 1009/01)

AND CRACROFT RESIDENTS ASSOCIATION  
INCORPORATED

(RMA 1015/01)

Referrers

AND CHRISTCHURCH CITY COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson (presiding)  
Deputy Environment Commissioner R Grigg

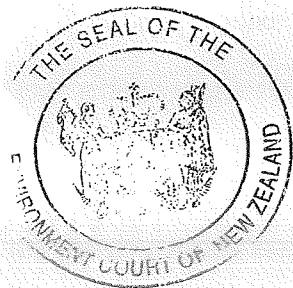
Hearing at CHRISTCHURCH on 29, 30, 31 August and 1 September 2005  
(Site inspection on 1 September 2005)

Appearances

Ewan Chapman and Erin Woolley for G A and J Y McVicar and Christ's College  
John Hardie for the Christchurch City Council

Kris Wooles for himself, A and W Laryn, C Lawn, R and Y Bennett, G and P Martin, J  
L Hoare and other individuals

Professor Cliff Stevenson for Cracroft Residents Association Incorporated and others



## SECOND INTERIM DECISION

### *Introduction*

[1] This case is primarily about whether 5.43 hectares of farm land on the edge of the Port Hills in Christchurch City should continue to be zoned Rural 2 or should be rezoned as a Living 1 zone within the proposed district plan (“the City Plan”) of the Christchurch City Council. The issue arises in an application under section 293 of the Resource Management Act 1991 (“the RMA” or “the Act”).

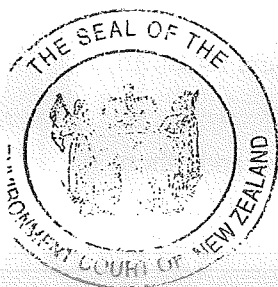
[2] The background to the proceeding is that the Court had to consider the rural/urban interface of the two valleys between the Cashmere and Worsley Spurs in a set of references of the City Plan heard in 2002 and 2003 – see *Memon and others v Christchurch City Council*<sup>1</sup>. The Court considered a number of matters under the Act and the objectives and policies of the City Plan. The most important factors were:

- the national importance of maintaining the outstanding natural landscape of the rural Port Hills;
- the importance of maintaining a green edge to the City running from the crest of the Port Hills down through the Cashmere Valley to the Heathcote River and its flood plains beyond;
- the need for the Council to build FLOOD retention ponds to reduce flooding in the Heathcote River catchment;
- the active and passive recreational needs and other amenities of both the local community and the citizens of Christchurch.

[3] The Court’s First Interim Decision<sup>2</sup> dated 15 August 2003 conditionally rezoned as Living various areas between the Cashmere and Worsley spurs. The proposed living zones were identified on plan B annexed to the First Interim Decision. The balance of the 142 hectare McVicar/Christ’s College block was to remain zoned as Rural 2 or Rural Hills (if located on the Port Hills). A considerable proportion of the flat land in the Rural 2 zone was proposed to be vested in the Council for a flood retention pond as

<sup>1</sup> Decision C116/2003.

<sup>2</sup> Decision C116/2003.



environmental compensation for the proposed development, if the landowners wished to have the Living zonings. In default, the entire 142 hectares was to remain zoned as Rural 2 or Rural Hills as appropriate.

*The section 293 application*

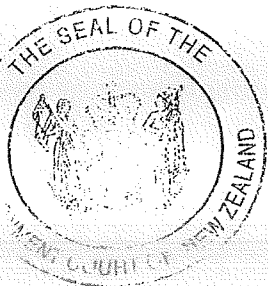
[4] The issue for this proceeding arose out of the Court's direction in the First Interim Decision that an area it identified as 'JJ', on the eastern side of the Cashmere Valley should be rezoned not 'Living' but as 'Living Hills'. In *Christchurch City Council v McVicar et al*<sup>3</sup> the High Court confirmed that the Environment Court had no jurisdiction to do that, because a Living Hills zone had never been sought for any of the referrers' land. Indeed area 'JJ' is not on the Port Hills, but is mainly flat land on the edge of the Hills. The High Court directed that the Environment Court had power to consider an application under section 293 of the Act to rezone area 'JJ' to anything for which a reasonable case had been presented.

[5] In 2004 McVicar applied to the Environment Court seeking that an area adjacent to Shalamar Drive of 5.43 hectares ("the Shalamar site") which it identified as area 'JJ' – although there is a small difference which will be referred to later – be rezoned as Living 1. The Court found that a reasonable case justifying the use of section 293 had been presented and granted the application<sup>4</sup>. Public notification of the application occurred in 'The Press' on 29 January 2005.

[6] The Cracroft Residents' Association and over 90 other submitters lodged submissions opposing the application on a multiplicity of grounds. The important grounds almost all related to the effect of rezoning the Shalamar site as Living 1 on landscape and amenity issues. The exception was an objection by Mr A and Mrs W Laryn who own a vineyard immediately upstream of the Shalamar site in the Cashmere Valley. They were concerned about the effects of raising the Shalamar site, and of buildings and trees on the Shalamar site on their vineyard. They were also concerned with the effects of a causeway proposed by McVicar on, or close to, the alignment for a road given by the Court in the First Interim Decision.

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<sup>3</sup> [2005] NZRMA 221.  
<sup>4</sup> Decision C135/2004.



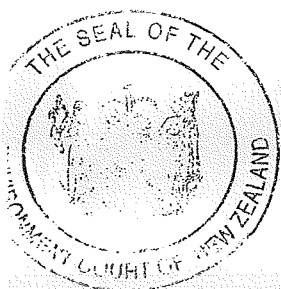
[7] In order for the reader of this decision to understand the application we attach, marked "A", a copy of the revised development plan produced by the applicants' surveyor, Mr B E Sinclair, with his rebuttal evidence.

[8] Under section 74 of the Act the proposed zoning of the Shalamar site has to be considered in accordance with<sup>5</sup> the functions of the City Council under section 31 of the Act, the provisions of Part 2, and the duty to consider alternatives, benefits and costs under section 32 of the Act. There are no relevant documents under section 74(2) of the Act to be had regard to in this case.

[9] One of the functions of the Council is to achieve integrated management of the effects of the use, development and protection of land<sup>6</sup> so the possible zonings of the Shalamar site, and the uses permissible under each zoning, come within that function. As for section 32 of the Act we read little evidence, and heard no cross-examination about that. The alternatives to be considered are:

- (1) to rezone most of the Shalamar site as a Living zone with a buffer reserve at the southern end;
- (2) to rezone part of the Shalamar site; or
- (3) to rezone none of it.

Obviously, if the benefits given in the First Interim Decision are considered, and a yield of 42 residential sections – if most of the Shalamar site is rezoned as Living in accordance with Plan A attached to this decision – is added to those benefits that will provide a significant net benefit to both Mr and Mrs McVicar and a consumer surplus for Christchurch. Against that we have to weigh various unquantified benefits. That task is best performed in the context of the objectives and policies of the City Plan (which will also largely take care of our duty to assess the proposal under Part 2 of the Act).



<sup>5</sup> Section 74(1) of the Act.

<sup>6</sup> Section 31(1)(a).

*The objectives and policies of the City Plan*

[10] We will not add to the length of this decision by repeating all the relevant objectives and policies. It appears they were all identified and the most relevant ones quoted in part [B] of the First Interim Decision. We have read them all again and considered them in the light of both the evidence of the landscape architects and of the resource managers – Mr K P McCracken for the applicants and Mr P N Eman for the Council – and of the submissions of counsel.

[11] Most of the objectives and policies are relatively neutral on the rural or living zoning issue or even favour a buffered and managed Living zoning of the Shalamar site. The important exception is the set of policies as to:

- maintaining the green edge<sup>7</sup> to the city;
- maintaining and enhancing the dominant open space character of the rural plains<sup>8</sup>; and
- promoting the Garden City Identity<sup>9</sup>.

The weight to be given to those policies is at the heart of this case.

[12] Before we turn to consider the landscape aspects of the case we record that the Cracroft Residents Association called evidence from Mr K R Stevenson as to the value of the Shalamar site (inter alia) for horticulture. We find that the area is too small, wet and shady – based on the evidence of Mr A W Smith and Mr R Brooks – to be useful for horticulture or any agriculture except perhaps for the grazing of horses.

*The landscape considerations*

[13] The Shalamar site is tucked in under the curve in the foot of Bengal Drive Spur of the Cashmere Ridge, so that the site generally faces east-south-east<sup>10</sup>. The site is generally flat, although in places it is on the first rising ground of the instep of that foot.

<sup>7</sup> Policy 2.4.7 [City Plan Vol. 2, p. 2/18].  
<sup>8</sup> Policy 4.1.6 [City Plan Vol. 2, p. 4/5].  
<sup>9</sup> Policy 4.2.2 [City Plan Vol. 2 Section 4].  
<sup>10</sup> Approximately 250° North.





In winter the Shalamar site is rather shaded and cold, although it is protected from the prevailing north-easterly winds.

[14] Mr D J Miskell, the landscape architect called for the applicants, identified the key landscape aspects of the Shalamar site as<sup>11</sup>:

1. The site is not part of the Port Hills landscape or the city backdrop.
2. The site is relatively enclosed by landforms and existing vegetation to the north and east and is not widely visible from public viewpoints.
3. The site is visible from a few points on the Harry Ell track and from neighbouring properties immediately to the east and from some properties on the eastern side of Worsleys Spur.
4. The site has no significant areas of indigenous vegetation and has low levels of biodiversity.
5. The natural character of the existing waterways is low because they look like, and function as, farm drains.
6. The site possesses a pleasant, open, rural character which is most apparent from Shalamar Drive at the south end of the road and from the small number of residences immediately above [the Shalamar site].
7. The site has the potential for development while maintaining a readable green edge to the city in the form of the retention ponds and the proposed surrounding landscaping.
8. There are no significant geological features on the site.
9. The site has the potential to accommodate a walkway linking Shalamar Drive to the upper parts of the Port Hills and the retention pond area.
10. [The Shalamar site] has potential to accommodate residential development and still retain a distinctive urban/rural boundary because the site is located on the valley floor between the newly approved access road and the base of the relatively steep side slopes of the Cashmere Valley. The ponding area will have a rural character and will be a visual link from the plains to the Port Hills.
11. The site is relatively compact and adjoins existing living zones – L1 and Living Hills A (“LHA”).
12. The site is contained by topography to the east, the proposed ponding area to the west and a vineyard to the south. The retention pond, the new road and the slope of the Cashmere Spur form well-defined barriers to further outward extension for urban development.

<sup>11</sup> D J Miskell, evidence-in-chief para 21.



We have some difficulty with points 1, 2, 3, 7, 11, and 12 in the light of the evidence of the other two landscape architects called – Mr A W Craig for the Council and Mr G H Densem for the Cracroft Residents. Mr Miskell is nowhere plainly wrong but he is not particularly correct either.

1. *The site is not part of the Port Hills landscape or the city backdrop*

[15] Strictly Mr Miskell is correct, but the Court pointed out the special, nearly unique, features of the Cashmere Valley in its First Interim Decision. The most relevant of the Court's findings to the Shalamar site are these<sup>12</sup>:

- (1) The McVicar/Christ's College flats are a very important feature in the City – linking the plains via the Cashmere Stream to the Port Hills ...
- ...
- (3) The flats add to the open space character of the rural Plains;
- (4) The flats have high, even outstanding, landscape quality ...
- ...
- (9) Worsleys Road and the flats (which are prone to flooding) are a well defined barrier to further outward extension of development.

2, 3. *The site is relatively enclosed by landforms ... and is not widely visible from public viewpoints*

[16] The first part of the sentence is correct, but the site is very visible from the public part of Shalamar Drive, and visible at greater distances from parts of Worsleys Road, and from various public places on the Port Hills, particularly from Dyers Pass Road, and from the Harry Ell Track and from the public land above it. We find that it is quite widely visible.

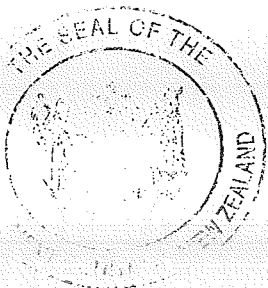
7. *The site... maintain[s] a ... green edge*

[17] This is indeed an important issue in this case. Mr Craig wrote<sup>13</sup>:

Natural environment Policy 2.4.7 concerning the "Green" corridor is perhaps the key one in this case since it will influence the extent of [development on the Shalamar site]. All of the [other] relevant policies are generic, but Policy 2.4.7 is specific to the application site in that it aims to establish a "green edge" from the Hoon Hay and Cashmere valleys northwards toward the

<sup>12</sup> At para [49].

<sup>13</sup> A W Craig, evidence-in-chief para 34.



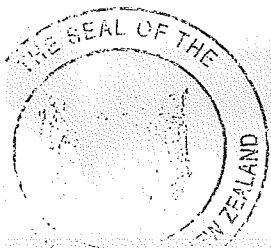
airport. Implementation of this policy relies on the sufficient provision of green open space to connect the rural Port Hills with the rural land of the plains. In this regard the policy is achievable, but only if [the Shalamar site] is reconfigured at the point where [it] adjoins the Laryn's land. This is because there is a 'pinch point' where [the Shalamar site] closes in on area CC, and as a result significantly erodes the efficacy of the green edge. There is a way of overcoming this, which involves the creation of an open space between [the Shalamar site] and the Laryn's land.

I would recommend that a **minimum** width dimension for this open space would be 50 metres at the Shalamar Drive end to 100 metres at the western end. The map in Appendix 2 shows where the open space should be. The primary reason for this width would be to achieve Policy 2.4.7 concerning the 'green corridor'. These dimensions are determined because this is what is needed to compensate for the incursion of area 'CC' which at the pinch point with [the Shalamar site] is roughly the same dimension. The dimension of the open space also enables visual access into the head of the valley while providing opportunities for landscaping which would be prescribed should rezoning proceed. This I will describe later. Anything smaller will seriously erode the ability to achieve Policy 2.4.7 in addition to achieving the purpose of Policy 6.3.10. The open space also assists in achieving Policy 6.3.12 which I discuss later. [Our emphasis]

In fact Mr Craig considered that policy 2.4.7 would be better achieved if the amount of Living land on the Shalamar site was reduced as shown on his Appendix 2 (a copy of which we attach to this decision as plan B). His evidence-in-chief does not elaborate further on that proposition.

[18] However, the point was picked up by the last landscape witness, Mr Densem, the landscape architect called for the Residents' Association. He wrote<sup>14</sup>:

I do not dispute Mr Craig's view that some development can be accommodated in the valley floor, but believe that from the point of view of an effective corridor he has taken his 'what should be sufficient' limit too far. In my opinion the 2<sup>nd</sup> boundary on Mr Craig's plan (his line on [plan B] 'where policy 2.4.7 is better achieved' (para. 17, end)) is the maximum limit of development which I believe would retain a green corridor to the hills sufficient for long term needs of the City. In my view the linkage needs to be of sufficient scale to fulfil its major function.



Mr Craig's logic for establishing a buffer area between the Living zone and the vineyard is noted (his paragraph 34). While this is accepted, my opinion is that the primary open space concern is the width of the 'pinch point' between [areas] JJ and CC. The priority I believe should be to maintain an open corridor up the Cashmere valley, not to compensate for its removal by setting land aside elsewhere.

Of Mr Craig's two options, I thus regard his 'second boundary' as the absolute limit of a development in [the Shalamar site] that would ensure a sufficient green corridor is retained in the valley (shown on [plan B]).

[19] When asked by Mr Chapman to identify a pinch point elsewhere in Christchurch, Mr Densem could not at first<sup>15</sup>. However, when the Court suggested he look at his own Figure 2, Mr Densem identified another pinch point where the Heathcote Stream is encroached on by houses along Cashmere Stream which come close to the urban development at the foot and on the side of Worsleys spur. Our understanding is that the corridor sought by the City Plan is adversely affected if development comes too close at either side.

[20] Mr Miskell's evidence-in-chief, in particular, was rather perfunctory. In this case we clearly prefer the landscape evidence of Messrs Craig and Densem. We find that there is a real danger that if the Shalamar site is rezoned as suggested in Mr Craig's second-best scenario, or in Mr Miskell's evidence, then there will indeed be a pinch point between the Shalamar site and area 'CC' at which buildings on both sides of the Cashmere valley will substantially cut off the corridor in a visual sense.

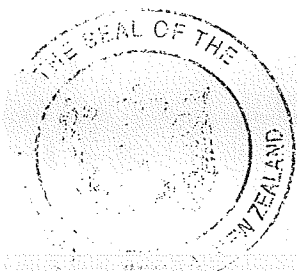
11. *The site is relatively compact*

[21] This is clearly wrong. If plan A<sup>16</sup> is examined it will be seen that half of the Shalamar site protrudes into two rural zones on three sides. It is a peninsula surrounded by rural land – Rural Hills zone to the east, Rural 2 zone to the south and west, as Mr Miskell conceded on cross-examination<sup>17</sup>.

<sup>15</sup> Notes of evidence p. 218.

<sup>16</sup> Mr B E Sinclair's "Revised Development Plan".

<sup>17</sup> Notes of evidence p. 77.



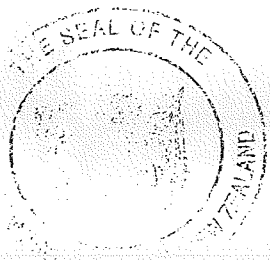
*The Laryn vineyard*

[22] Mr and Mrs Laryn own a vineyard on a property of 9.3 hectares south of the Shalamar site. The Laryns also reside and make wine – a pinot gris – on their property. Since the valley floor is nearly flat in this vicinity the Laryns are concerned about possible adverse effects of residential development on their vineyard. Specifically they are concerned that:

- (a) cold air from the Cashmere hillside (above and to the east of the Shalamar site) will be halted by a wall of houses, trees and fences and will drain around those obstructions southwards on to the vineyard;
- (b) trees on the Shalamar site will cause turbulence – especially when a norwester is blowing – that will damage the vines; and
- (c) raising the Shalamar site and the adjacent proposed road to a height two metres above the bottom of the Laryn vineyard will dam cold air which will overflow onto the vineyard and cause frosts on a site that has been largely free of damaging frosts.

[23] The applicants recognise in the amended plan attached to Mr B E Sinclair's rebuttal evidence that there should be a buffer between any residential development on the Shalamar site and the Laryn vineyard. Mr Sinclair's proposed buffer is a strip 50 metres wide at right angles to the valley (and therefore parallel with the Laryns' northern boundary). We are satisfied that concerns (a) and (b) in the previous paragraph can be met by a buffer. Since cold air tends to flow to, and through, the lowest lines, any cold air that would be forced south towards the Laryn land by a barrier of houses and trees on the Shalamar site, could turn and flow across the buffer strip provided it was appropriately designed and landscaped.

[24] As for turbulence effects on the vines caused by wind passing through and over trees on the Shalamar site, those could be reduced by rules controlling the height and density of trees in any buffer strip, so we consider that problem too is manageable.



[25] The third problem is more difficult. The lowest point in the Laryn vineyard is 17.9 metres above sea level ("masl"). The engineering plan produced by Mr M Sinclair<sup>18</sup> shows a causeway running across the valley at a height about two metres above the existing valley floor, which would put the causeway at about 20.0 masl. All of the viticulturalists called in this proceeding – Dr D T Jordan, for the applicant, Mr D Richardson for the Laryns and others, and Mr Laryn himself agreed that the causeway would dam cold air, and that could have an effect on the vineyard unless large culverts were installed and possibly the height of the causeway lowered.

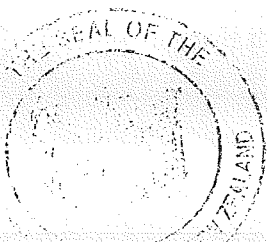
[26] Dr Jordan also pointed out that for flood retention purposes the true left hand side of the Cashmere valley is to be lowered by 0.3/0.6 metres so that there will usually be a larger pond for cold air to drain into. To the extent that might be insufficient he was sure that culverts could be installed under the causeway which would drain all cold air flowing down the Cashmere Valley. Mr Richardson was not so sanguine and considered the causeway should be lowered.

[27] For the Council, Mr P N Eman, the Council's planner, made inquiries and advised us<sup>19</sup> first that there are no requirements in the City Plan as to the height of any road above a stream; but secondly the City Engineer would require culverts at least 50 cms in diameter and a 40 cm basecourse of gravel above that, so that the minimum height of the causeway above the valley floor would be 0.9 metres.

[28] Counsel for the Council and for the applicant both object to us taking into account any effects of the proposed causeway on the Laryn vineyard. Their grounds are first that the line of the road extending from the Shalamar site to the mid-valley spur was fixed by the Court's Interim Decision and thus cannot be challenged now by any party, let alone by the Laryns who were not a party to these proceedings until they joined the section 293 application.

<sup>18</sup> Evidence-in-chief of Mr M D Sinclair, attachment "A".

<sup>19</sup> Notes of evidence p. 189.



[29] We consider the position is more complex than that because the First Interim Decision was just that – an interim decision. We accept that the general location of the Living zones and the environmental compensation land was resolved by that decision. However, the Court merely stated<sup>20</sup>:

Roads in the vicinity of the orange lines on plan B are suggested as appropriate.

We consider that important aspects such as the location of tracks and roads still have to be the subject of agreement between the parties, or failing that of further evidence and submissions<sup>21</sup>. The parties now include Mr and Mrs Laryn and so they may be heard on the location of the road giving access to the proposed hilltop zone.

*Outcome*

[30] We need to bear in mind that a matter of national importance (the spur top) has been substantially compromised in order to achieve the net environmental compensation benefit of the overall development plan for the McVicar/Christ's College land. That means we should be careful not to compromise further the landscape qualities of the Cashmere and Worsley valleys without being satisfied there are strong countervailing benefits under the Act and the City Plan.

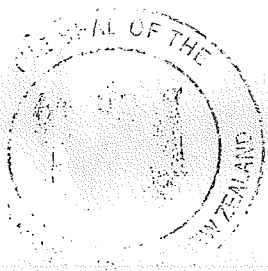
[31] We hold that:

- (1) the need to retain an open corridor to make a meaningful green edge to the City;
- (2) the need to define a barrier by creation of a reserve to further outward extension;
- (3) to improve the landscape quality of the rural-urban interface

– all entail that the limit to a Living 1 zone on the Shalamar site should be on Mr Craig's dashed line which we have identified as X-Y (see plan B attached to this decision). Any more residential land creeping up the valley will block the corridor so that from

<sup>20</sup> Interim Decision para [108](4).

<sup>21</sup> Interim Decision para [113](2).



some angles the green edge to Christchurch may not be seen as such. Instead the houses in area CC and on the Shalamar site would look connected (especially if there is a road between them) thus spoiling the green effect sought by the plan. In all this we must remember that the corridor has already been narrowed by the First Interim Decision and by the decision of the Court in *Wilson v Christchurch City Council*<sup>22</sup>.

[32] We consider that Mr Craig, and Mr Densem supporting him, has found the best line for limiting development. Two features of the line are important. First at the Port Hills (south-eastern end) the line starts close to the Living Hills/Rural Hills boundary, so pressure to rezone the latter will be greatly reduced. Secondly Mr Craig's dashed line runs north-west from that point rather than across the valley. That is significant because, as Mr Densem pointed out under cross-examination, the Cashmere Stream Valley, as perceived from within, turns a corner about this point. From the head of the valley it runs north until the Shalamar site is reached, and then the Bengal Drive subspur puts its foot down and pushes the valley in a north-west direction. Consequently Mr Craig's line reinforces that curve rather than contradicts it. That is important because it is the north-westerly line that carries the eye out on the plains.

[33] Houses along the line X-Y will be quite conspicuous in our assessment from the Harry Ell track and the land above it. Trees will need to be planted and maintained fairly close to the line so that over time the trees both obscure the houses and lead the eye through to the rural plains.

[34] Mr Eman conceded<sup>23</sup> that Mr Craig's "better solution" provided less incentive for an owner of the Rural Hills zoned land on the Cashmere hillside to seek a Living Hills zone for that land. By contrast the applicants' proposal would entail that a block of Rural Hills land was surrounded on three sides by Living zones.

[35] Mr Eman and Mr McCracken and counsel all emphasised that if all or part of the Shalamar site is left as Rural 2 then it becomes difficult to utilise. That is especially so if Mr Craig's "better option" is adopted because then the balance of Rural 2 land in the



<sup>22</sup> Decision C165/2003.

<sup>23</sup> P N Eman, evidence-in-chief para 77.

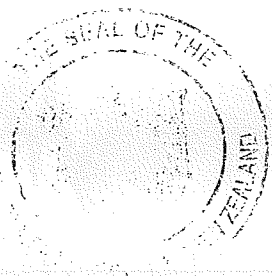


Shalamar site would be less than four hectares and thus a house could not be built as of right.

[36] It appears to us that there may be another solution to the problem of any rump area. It is that the balance of the Shalamar site be vested in the Council as a reserve (financial contribution) calculated on the basis that the balance is zoned Rural 2, flood prone, and contains no right to a building platform. A reserve would comply with policy 6.3.10 (by creating a physical barrier to further development) and enable an extension to the flood retention area, and ensure the development of public open space (policy 4.2.4). We appreciate that for good reasons the Council did not want Mr Sinclair's or Mr Craig's suggested buffer as a financial contribution. However, the balance of the Shalamar lot is a significantly larger area which may be of use to the council for flood retention purposes. One of the reasons that this decision is interim is so that we may hear submissions, or if necessary further evidence on that issue.

[37] Weighing all the factors we have identified we hold that part of the Shalamar site should be rezoned to a variety of Living 1 zone provided some extra rules are introduced to the plan to protect the amenities of the surrounding land. In particular:

- (1) the upstream boundary should be the dashed line (roughly north-west/south) as marked X-Y on plan B annexed to this decision;
- (2) tall tree species should be planted along the southern side of the boundary X-Y and maintained by covenant (to protect views from public lands uphill);
- (3) access by right of way in gross should be provided from Shalamar Drive to the flood retention area somewhere along the narrow strip (one lot wide) as shown on plan A;
- (4) that the Living zone require a minimum site size of no less than 1,000 m<sup>2</sup> and have a maximum site coverage of 35%;
- (5) that the new road adjoining the block and the environmental compensation land be planted in accordance with a landscape plan approved by the relevant Council officer prior to approval of any subdivision plan for the Shalamar site by the Council, all at the applicants' expense;



- (6) that the land rezoned Living is to be filled to a level sufficient to ensure that houses on it will not be flooded in a one in 500 year storm event;
- (7) that the provisions required by the First Interim Decision also apply to the Shalamar site. They include, in case there is doubt, that the bank at the boundary of the environmental compensation land does not exceed slope of one in five and that it be re-vegetated at the applicants' expense.

[38] This decision is final in respect of the area to be rezoned. It is interim in all other respects including the vesting of the balance of the Shalamar site in the Council as a reserve. The orders in this decision should be merged with the First Interim Decision so that the original concept of a comprehensive development plan for the whole of the Christ's College/McVicar land can still be achieved.

[39] Costs are reserved, to be costs in the substantive proceeding.

*Other issues*

*Area CC*

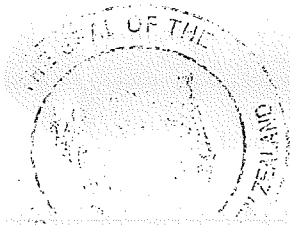
[40] Strictly speaking area CC is not part of the subject of this section 293 proceeding. However since its extent and location are important to deciding whether residential development should occur on the Shalamar site we make some observations on area CC for the benefit of the parties when trying to reach agreement on zone rules for the whole of the McVicar/Christ's College land.

[41] The parties pointed out that there is a discrepancy between the words used in the First Interim Decision and the map – Plan “B” – attached to it. The First Interim Decision defines<sup>24</sup> the Homestead Block as:

A small living 1 enclave based on the curtilage of Mr and Mrs McVicar's house (but not extending north or east of existing buildings and not including either of the current drives) and around the farm buildings as a cluster at the foot of the spur.

[42] The map – plan “B” attached to the First Interim Decision shows a small (hand-drawn) boomerang of land which in fact does not include all of the McVicar house and

<sup>24</sup> Decision C116/2003 at para [105](c).

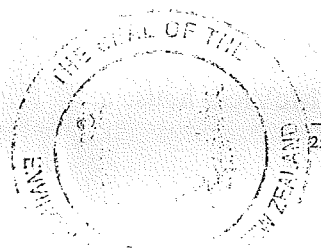


farmyard buildings. Mr B E Sinclair in his proposed concept plan has drawn a (longer) area CC which includes the curtilage for the McVicar house, as well as the farm buildings which straddle the access track to the hilltop block. His area CC is shown on plan "A" annexed to this decision. More controversially he has also added to the Court's proposed area CC enough land so that there can be a row of sections on the south side of the access road (i.e. where the southern line of sheds is at present). Our preliminary view is that Mr Sinclair's extension is neither in the spirit of the First Interim Decision, nor satisfactory in landscape terms and that area CC should not extend more than a metre beyond the side (eastern) and back (southern) walls of the sheds that currently line the access track behind the McVicar house.

*The road to the Spurtop block*

[43] The First Interim Decision drew this road, without the benefit of any evidence focussed on this issue, as following the outside (western) boundary of what is now the Shalamar site by following Mr Craig's hand-drawn line denoting the outer limit of residential development in the Cashmere Valley, and then running across the valley to connect to the access track at the point where it runs between the McVicar sheds. There is nothing in the First Interim Decision as to the height of the proposed road above the surrounding land, so that must be regarded as an issue still to be resolved.

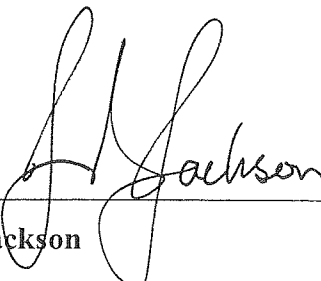
[44] Since, as we currently consider without the benefit of thorough legal argument as to why the principle in *Queenstown Lakes District Council v J F Investments Limited*<sup>25</sup> should not apply, the location of any access road is not fixed, we ask the parties carefully to consider the evidence of Mr Densem that the access road for the Spurtop block should come from the Worsleys Valley side and run around in front of the McVicar house (presumably on the area CC Living zone boundary) and then, to give a bigger turning radius, through the line of the southern sheds in the McVicar yard. If agreement cannot be reached on that the parties can bring this issue also back to the Court to resolve. However, any plans for a causeway and pipes will need to be detailed enough so that its cold air damming effects can be calculated with accuracy by Mr and Mrs Laryn and their advisors.

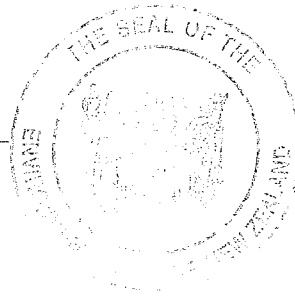


[45] Finally we have noted that there are four lots shown on plan A which fall into a zoning hole. That is because they are, first arguably not within area AA as defined in the First Interim Decision; and secondly, not in the Shalamar site. We consider that small area should be rezoned under section 292 of the Act as Living 1 in the same way as we have decided for part of the Shalamar site below.

DATED at CHRISTCHURCH

5 October 2005

  
\_\_\_\_\_  
**J R Jackson**  
**Environment Judge**



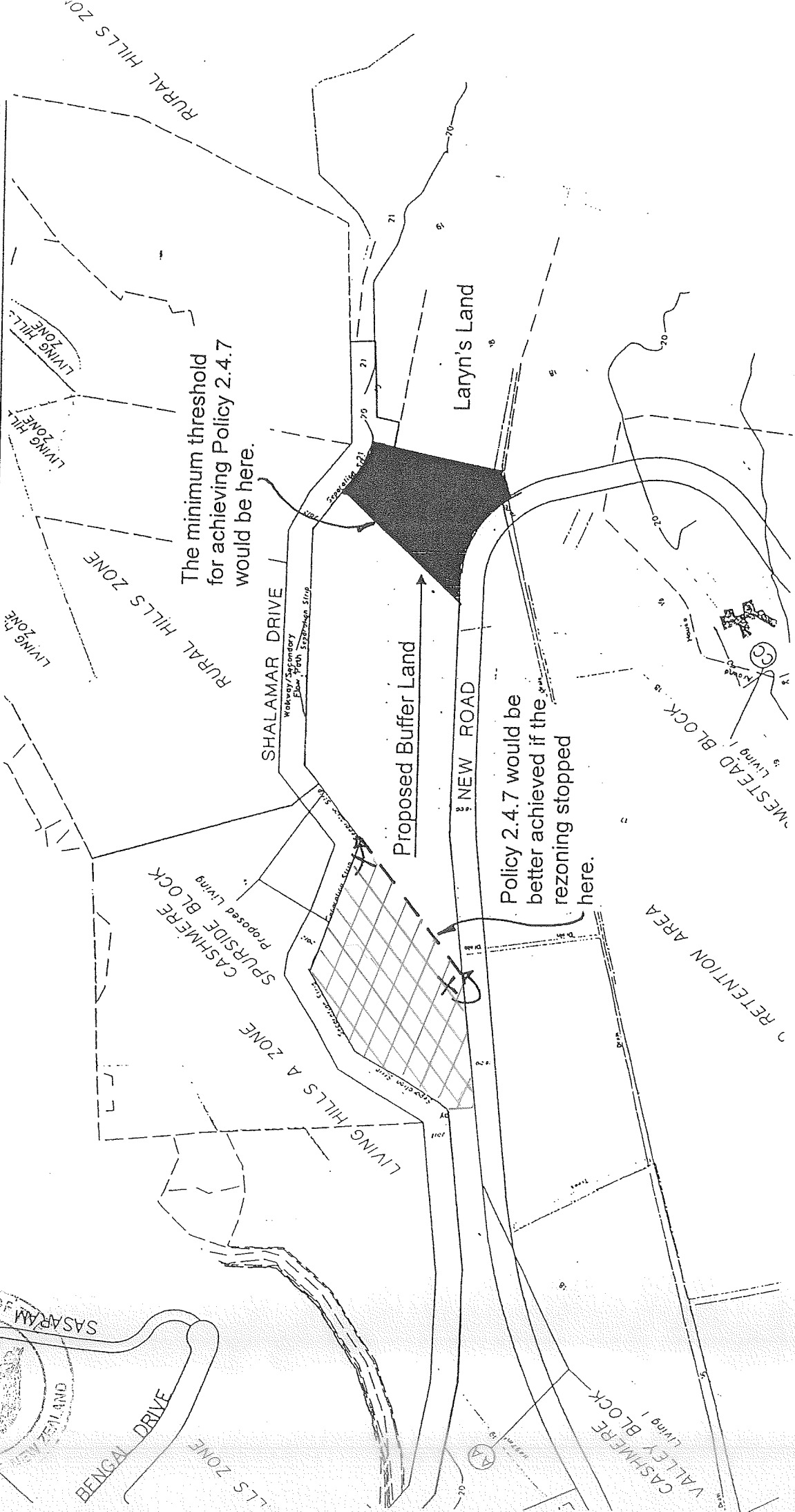
Attachments:

- A – Revised Development Plan (prepared by Mr B E Sinclair)
- B – Copy of Mr Craig's Plan

Issued<sup>26</sup>: - 6 OCT 2005



APPENDIX 2



Map: showing the extent and location of the recommended open space buffer between Laryn's land and Block 5.43