

4 April 2014

Trents Road Developments Limited
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Dear Sir

SDC RURAL RESIDENTIAL STRATEGY: POLICY 6.3.9(7) OF THE CANTERBURY REGIONAL POLICY STATEMENT

1. You have asked for our opinion on whether Policy 6.3.9(7) in Chapter 6 of the Canterbury Regional Policy Statement (CRPS)¹ could exclude the Trents Road Developments Ltd (TRDL) land from the Selwyn Rural Residential Strategy (*the strategy*) by virtue of the land being identified as part of the area for eventual urban growth for Prebbleton.
2. Based on the discussion below, it is our opinion that:
 - 2.1. Policy 6.3.9(7) does not prevent a request for the inclusion of the TRDL land in the strategy;
 - 2.2. In addition it does not suggest that 'future proofing' any development for eventual conversion to urban is inappropriate, particularly in an area that may be contemplated for such development in the future; and
 - 2.3. However, with policy 6.3.9(7) in place there can be no expectation of an ability to develop to urban densities.

Background

3. The Selwyn District Council has released a draft Rural Residential Strategy in accordance with the requirement under Chapter 6, policy 6.3.9 to the CRPS. This policy was part of the LURP² and provides (relevantly):

Policy 6.3.9 - Rural residential development

¹ Which was inserted by the Land Use Recovery Plan (LURP).

² And previously part of Change 1 to the CRPS that was superseded by the LURP.

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In Greater Christchurch, rural residential development further to areas already zoned in district plans as at 1st January 2013 can only be provided for by territorial authorities in accordance with an adopted rural residential development strategy prepared in accordance with the Local Government Act 2002, subject to the following:

...

- (7) A rural residential development area shall not be regarded as in transition to full urban development.

[underlining added]

4. TRDL owns land at Trents Road that has been included within an area that is identified as the preferred urban form for Prebbleton. However, the TRDL land has not been included within any zone providing for development, let alone development for urban densities, nor has it been identified as a greenfield urban development area. This means that any such zoning is unlikely to occur prior to 2028 pending monitoring and review by Environment Canterbury, which is the time period for which sufficient urban land has been identified under and according to the LURP.
5. As a result of this 'time-lag' for (possible) urban development and a desire to develop its land productively, TRDL is proposing to have its land included in the strategy as available for rural residential development. However, in light of its location and the indication that it is included in the preferred eventual urban form for Prebbleton, TRDL intends 'future proofing' any rural residential development so that the capacity is provided for an increase in density to urban levels, should that eventuate.
6. As part of discussions on submissions on the strategy, it has been suggested that policy 6.3.9(7) could be interpreted as meaning that the process of 'future proofing' means that the land is "being regarded as in transition to full urban development". If so then the request for inclusion in the strategy could be declined at the outset.
7. The question is whether this is the proper interpretation of policy 6.3.9(7).

Discussion

8. Provisions in policy statements are interpreted in accordance with the Interpretation Act 1999 meaning that you must consider the words used in light of the purpose of the provision, in context.
9. As an initial observation we note the use of the words "be regarded" (future tense) suggests that the policy is intended to be applied to rural residential development areas once they are in existence. In other words the policy will be applied to such areas but is not necessarily of relevance to their identification.

10. This interpretation is supported by the discussion of the policy³ in the decision on the Waimakariri District Council's PC10 (*Waikiwi*) in which the Commissioner commented that the policy was "virtually meaningless" when considering further rural residential areas in the absence of any proposal for urban zoning.
11. However, the policy uses mandatory language ("shall be regarded") and as District Plans "must give effect" to Regional Policy Statements⁴ its influence can not be underestimated.
12. As to the purpose of the policy, it seems that that this may be less clearcut. In the same *Waikiwi* decision the planning manager for the Waimakariri District Council, which, like the Selwyn District Council is an Urban Development Strategy (*UDS*) partner, noted that the original wording of the policy seemed aimed at avoiding rural residential areas in greenfields areas, which by definition were inside the urban limits, while the eventual wording – as found in the LURP – applies outside the urban limits, and that:

...she could not see... how Rural Residential [areas] could end up as full urban without a change to the urban boundaries.
13. Those urban boundaries have effectively been translated through the LURP as priority greenfield areas and existing urban area and the TRDL land is not included in the current priority greenfield residential or urban areas for Prebbleton. Nor is it included within the projected infrastructure boundary for Prebbleton.
14. The purpose of the policy must, in our view, relate to removing any expectation that an area identified for rural residential development *will* in time be developed at urban densities. This could obviously have an impact on the TRDL land and the proposed future proofing but to what extent?
15. To answer this question it is necessary to be clear about the intention of the future proofing. If it is intended to provide the future proofing to avoid the situation that happened at Rolleston, where there are large rural residential sections, which are unable to be simply 'converted' for urban development and have been stranded within the urban boundary, then that would seem acceptable⁵. But, if the intention is to provide a near term opportunity for re-development then that would be likely to offend the policy.
16. The situation is that future proofing is best seen as a minimum requirement for being considered for rural residential development in an area that might, one day, become an urban area. In doing so that possible future growth path is effectively protected. But being accepted as a rural residential area cannot, while policy 6.3.9(7) remains operative, create an expectation that urban development is inevitable.
17. Such development would require further changes to the District Plan, which is required to give effect to the CPRS. Therefore, while policy 6.3.9(7) exists in its

³ Or rather its equivalent under Change 1, which had identical wording.

⁴ Section 75(3), RMA.

⁵ We understand that this situation was one of the reasons for the original policy.

current form, rural residential areas shall not transition to urban areas with urban densities.

18. This could mean that any rural residential status for the TRDL could remain in force for a significant time into the future. Equally, changes after 2028, which is the time period that is meant to be catered for by the current urban greenfields development areas (though this situation is subject to review), may mean that policy 6.3.9(7) is revisited, or the urban boundaries in the CPRS are reviewed, which could change the prospects for the land.

Conclusions

19. The existence of policy 6.3.9(7) is, on closer inspection, compatible with the inclusion of the TRDL land in the rural residential strategy. While the land has been included inside an indicative preferred urban boundary for Prebbleton, there is no indication of when or how that boundary will be established. In the meantime this is rural land outside the urban limits so it must be eligible for consideration for rural residential development on its merits.
20. Please advise if you require any further information.

Yours faithfully



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