


5. **PROPOSED PLAN CHANGE 22 – PRIVATE PLAN CHANGE APPLICATION FOR THE REZONING OF LAND AT THE CORNER OF RADCLIFFE ROAD AND MAIN NORTH ROAD BELFAST FROM RURAL 3 TO BUSINESS 2**



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PURPOSE OF REPORT

1. This report describes an application to the Council for a change to the City Plan and the process which must be followed under the Resource Management Act 1991 (RMA).

EXECUTIVE SUMMARY

2. The application is to rezone approximately 9.21ha of land at the south east corner of Main North Road and Radcliffe Road from Rural 3 to Business 2.
3. The purpose of this report is not to consider the application on its merits. Rather, it is to recommend which of several options under the RMA is to be used in processing the application.
4. The Council has the option of:
 - (a) Accepting the application as a private application and publicly notifying it for submission and hearing at the cost of the applicant.
 - (b) Adopting the change as the Council's own change and accepting the responsibility and costs of processing it.
 - (c) Rejecting the application.
 - (d) Processing the application as though it were a resource consent application.
5. The Council is obliged to consider this request under the due process set out in the RMA.

FINANCIAL IMPLICATIONS

6. The financial considerations will differ depending on how the Council chooses to handle this application. Should it reject the application it is possible (and considered likely) that the applicant would challenge this decision in the Environment Court, which would be a costly process for the Council regardless of the outcome. Costs cannot be predicted accurately but could be in the vicinity of \$20,000 for this preliminary step.
7. Should the Council accept and notify the change at the expense of the applicant there will be no direct costs to the Council as the Council's costs would be recovered. However there would be an impost on staff time.
8. Should the Council adopt the change as its own then the Council will need to absorb all the costs, likely to run to at least \$15,000.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

9. Yes.

LEGAL CONSIDERATIONS

10. There is a legal process of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed set out in the RMA.
11. The process, mentioned above, is very familiar to Council and should create no particular risks or liabilities if followed correctly.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

12. Page 145 City Development ongoing programme of improvements to enhance the planning documents of the city, to ensure an attractive built environment and minimise adverse effects on the environment.

ALIGNMENT WITH STRATEGIES

13. No – the proposed private Plan Change conflicts with proposed residential urban growth areas in the UDS. Further the Council has made a submission on Proposed Change 1 to the Regional Policy Statement supporting residential urban development on the subject site.

CONSULTATION FULFILMENT

14. The applicant has carried out some public consultation with Council officers, Transit New Zealand, the MFE and some members of the public. A copy of the applicant's consultation record is attached.

STAFF RECOMMENDATION

It is recommended that the Regulatory and Planning Committee recommend to the Council to:

- (a) Agree to accept the private plan change request pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly.
- (b) That in accordance with Council policy the cost of processing the private plan change be at the applicant's expense.

BACKGROUND AND DISCUSSION

The application

16. This application seeks to rezone the subject site from Rural 3 to Business 2 (District Centre), introduce a new set of rules and an outline development plan for development of the site.

RMA Timeframes

17. The application was formally received on 23 October 2007. Further information was requested on traffic, stormwater engineering, retail distribution, section 32 matters, rules format and effects on the Styx River on 22 November. A response to the information request was received on 22 April 2008. Under the RMA the Council is due to make a decision whether to adopt, accept, or reject the application by 4 July 2008. (The 30 working day period specified in Clause 25 of the RMA has been extended to 60 working days pursuant to Section 37 of the RMA.)

Description of proposal and site

18. The subject site is located on the south eastern corner of the intersection of Radcliffe Road. It is bounded by Radcliffe Road to the north, Main North Road to the west, a railway line to the east and the Styx River to the south. It is approximately 9.21 ha in area. It is currently in pasture and orchard with a number of shelter belts – some of which screen the site from Radcliffe and Main North Road. It is occupied by three residential dwellings and building associated with the orchard activity. The existing Supa Centre lies across Radcliffe Road to the north.
19. The private plan change application seeks to rezone the land from Rural 3 to Business 2 (District Centre). The development of the site would include retail, office and community facilities associated with the role of a District Centre, and the existing Business 2 zone is the most appropriate District Plan zoning to apply in the circumstances. The Plan Change request seeks to apply the existing Business 2 Zone provisions. However, the applicant is proposing additional site specific rules and assessment matters which they say are designed to “direct” a form of development. These matters include the following:
 - (a) The introduction of a north-south main street;
 - (b) The introduction of view shaft protection areas;
 - (c) The provision of underground parking;
 - (d) 20m maximum height limit;
 - (e) A riparian buffer setback from the Styx River centreline, and planting with native species;
 - (f) 3m minimum landscape strip along Main North and Radcliffe Roads;
 - (g) The partial retention of the poplar shelterbelt along Main North and Radcliffe Roads, where the continued tree health and site layout considerations permit;
 - (h) 16m building setback along Radcliffe Road; and
 - (i) The enhancement of community linkages.
20. The Plan Change provides a landscape buffer and associated indigenous planting for the Styx River corridor, public access to the River.
21. The Plan Change adopts the existing provisions of the Business 2 zoning including density, setbacks, landscaping, recession planes, screening, and tree planting requirements. Under the City Plan the maximum permitted height within the existing Business 2 zones ranges between 12-20m, depending on the specific centre. In this case the applicant has applied a 20 m maximum height to the subject site. In addition site specific rules and assessment criteria have been introduced which the applicants say address key features and issues for the site and surrounding neighbourhood.

Description of Issues

22. Amongst other issues the plan change raises issues of:
- (a) Potential retail distribution effects – primarily questions of whether the quantum of floor area ‘fits’ with the retail distribution related objectives and policies in the City Plan recently introduced through the now mostly settled Variation 86.
 - (b) Potential traffic effects on Main North Road. Vehicle movements have the potential to affect the safety and efficiency of traffic flows on Main North Road and the surrounding road network. There are important traffic related objectives and policies in the City Plan that will require consideration.
 - (c) Potential effects from and off stormwater from the site – especially on the Styx River.
 - (d) Potential amenity effects on the Styx River.
 - (e) Potential conflicts with the UDS and Change 1 to the Regional Policy Statement. Both documents provide for residential development on the site in future years.
 - (f) Potential Urban Design issues including the way in which the site relates to the greater Belfast area.

Processing of Private Plan Changes

23. The processing of private plan changes is set out in Clauses 21-29 of the 1st Schedule to the RMA. In summary this provides:
- (a) Clause 21: Any person may make an application for a change to an operative district plan. The City Plan is operative.
 - (b) Clause 22: Request to be in writing, with reasons, Assessment of Environmental Effects and assessment under section 32 of the RMA.
 - (c) Clause 23: Further information may be required. The Council has done this in this case.
 - (d) Clause 24: The Council may modify the proposal but only with the consent of the applicant.
 - (e) Clause 25: The Council must consider the request, and make a decision to either:
 - (i) “Accept” it and proceed to public notification; or
 - (ii) “Adopt” it as if it were its own proposal, and publicly notify it; or
 - (iii) Reject it; or
 - (iv) Treat it as if it were a resource consent; or
 - Clause 26: Where Council accepts the change it must publicly notify it within four months
 - Clause 27: The applicant may appeal the decision under clause 26
 - Clause 28: Applications may be withdrawn
 - Clause 29: Unless rejected, the application is put through the standard process of public notification, submission, hearing, decision, and appeal (if any).

THE OPTIONS

24. The Council's options are:
- (a) Accept the application, proceed to publicly notify and decide the application at the expense of the applicant.
 - (b) Adopt the change at its own and assume the responsibility for putting it through the process outlined in the RMA including all costs.
 - (c) Reject the application.
 - (d) Treat the plan change as a resource consent.

Option 1. Accept the Plan Change

25. Under this scenario the private plan change is notified in the form prepared by the applicant. The Council processes the plan change proposal in much the same way as a resource consent application. The applicant bears all of the costs. Accepting the plan change proposal means:
- (i) The applicant decides what is notified and if changes to the proposal are considered necessary it is likely the Council will need to make a submission in opposition to the plan change.
 - (ii) Implies the Council is taking a neutral position in the proposal. The public should perceive that the Council neither supports or opposes the proposal.
 - (iii) Implies the applicants will bear the cost of the complete plan change process (including costs associated with the resolution of appeals).
26. There are potential reasons why the Council may wish to make a submission in opposition to the plan. For example Change 1 to the Regional Policy Statement has identified this land for higher density residential development (a minimum of 15 houses a hectare). The Council has made a submission on Change 1 in support of this. The applicants have submitted in opposition to residential development on the land, and are seeking that the land be identified as a key activity centre (RPS Change 1 submission 6). There are also potential retail distribution, traffic, stormwater, urban design and effects on the Styx River issues that the Council may wish to make submissions on.

Option 2. Adopt the Plan Change

27. Under this scenario the plan change becomes a public plan change. It is notified, heard and decided the same way as plan change prepared by the Council. The Council bears all of the associated costs. Adopting the plan change proposal would mean:
- (i) The Council can control the proposal that is publicly notified.
 - (ii) It can be interpreted that the Council generally supports the proposal.
 - (iii) The Council bears the costs of managing and processing the plan change.
28. In regard to this last point, there is the potential that more officer time and Council financial resources are spent in the plan change adoption process than in the accepted process. These would be resources that are diverted from the investigation and plan change matters that the Council has directed are a priority for the City Plan team. While processing privately requested plan changes are a priority for City Plan a rezoning of the land from Rural 3 to Business 2 is not one of the priorities for the team. If the Council is concerned about significant aspects of the proposal, this would not be an appropriate course of action.

Option 3. Reject the Plan Change

29. There are very limited grounds in the Act for rejecting an application. A Plan Change can be rejected if:
- (a) It is frivolous or vexatious.
 - (b) The substance of the change has been dealt with by the Council or the Environment Court in the last two years.
 - (c) The change is not in accordance with sound resource management practice.
 - (d) The change would make the District Plan inconsistent with Part V of the Act (other policies or plans, such as Regional Policies or Plans).
 - (e) The District Plan has not been operative for more than two years.

30. The privately requested plan change cannot be said to be frivolous or vexatious. The applicants have made a case for the plan change that warrants consideration in the plan change process. While retail distribution matters have been dealt with by both the Council and the Environment Court within the last two years (Variation 86) a rezoning of this land has not. The retail distribution regime in the City Plan gives a City Plan Policy context for the application and it is not considered necessary to allow time for the regime to 'bed in' before plan changes are considered.
31. While submissions and further submissions on Change 1 to the Regional Policy Statement have closed they have not been heard by the Regional Council – hearings of the submissions are expected in August or September of 2008. It is considered that the Change 1 RPS process is not sufficiently advanced for this to be a critical matter in determining whether the requested plan change should be rejected. However consideration should be given to this matter when determining whether the application should be adopted or accepted.
32. The City Plan has been operative for more than two years. Therefore this can not be considered as grounds to reject the application.

Option 4. Treat the Plan Change as a Resource Consent

33. Under this scenario the Plan Change is converted to a resource consent application and is processed by the Council as such. The applicant bears all of the associated costs. In this case the application relates to the amendment of the planning maps and the imposition of a set of site specific rules which the applicant envisages will allow some flexibility in the management and development of the site should it be rezoned. It is considered, given the nature of the application that it is best addressed as a plan change than a resource consent application.

THE PREFERRED OPTION

34. The preferred option is Option 1. There is no status quo, ie do nothing option. The application must be considered and either accepted, adopted, rejected or processed as a resource consent. It is not a matter the Council has identified as a priority it wishes to pursue for itself. The Council has an adopted City Plan programme and this item is not on it. There is no reason known for the Council to adopt it as its own priority. There do not appear to be valid reasons for rejecting it. Therefore the application should be accepted and considered on its merits, following public notification and the receipt of submissions.