



Christchurch City Council

REGULATORY AND PLANNING COMMITTEE AGENDA

THURSDAY 5 JUNE 2008

AT 9.30AM

IN THE NO 3 COMMITTEE ROOM, CIVIC OFFICES

Committee: Councillor Sue Wells (Chairman),
Councillors Helen Broughton, Sally Buck, Ngaire Button, Yani Johanson, Claudia Reid,
Bob Shearing, Mike Wall and Chrissie Williams.

Principal Adviser
Mike Theelen
Telephone: 941-8281

Committee Adviser
Warren Brixton
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1. APOLOGIES

2. DEPUTATIONS BY APPOINTMENT

Fairfield Avenue Residents – Housing Development Control

Alex Clark, Fairfield Avenue residents spokesperson presented a report to the Spreydon/Heathcote Community Board about the need for more adequate controls on housing development in the city and in particular in Fairfield Avenue.

The Board decided to request a Council staff report on the following matters:

- (a) An explanation of the means by which the Board and community groups could have meaningful input as the City Plan was reviewed, particularly in light of the Urban Development Strategy.
- (b) The status of the matters in the current work plan and the proposed work plan in Fairfield Avenue.
- (c) How an advisory group for Fairfield Avenue might be established with a view to developing more adequate controls on housing redevelopment, comprising representatives of the street, Community Board members, Council staff, an advisory planner and members of a professional planning organisation.

The Board further asked that an invitation be extended to representatives of Fairfield Avenue to present their material to a meeting of the Council's Regulatory and Planning Committee.

Mr Clark along with other residents have accepted the invitation to speak to the Committee.

SECTION 1 – REGULATORY AND PLANNING**3. CORRECTION OF MINOR ERRORS IN DISTRICT PLANS AND DELEGATION OF FUNCTION TO PLANNING AND REGULATORY COMMITTEE**

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	Team Leader City Plan
Author:	David Punselie, Planning Officer, City Plan

PURPOSE OF REPORT

1. The purpose of this report is to seek the Committee's recommendation that the Council:
 - (i) Correct minor errors in the Banks Peninsula Proposed District Plan;
 - (ii) Correct a minor error in the Christchurch City Plan; and
 - (ii) Delegate its functions under clauses 16(2) and 20A of the First Schedule to the Resource Management Act 1991 to the Committee.

EXECUTIVE SUMMARY

2. Two mapping errors involving inappropriate zonings have been identified in the proposed Banks Peninsula District Plan. These are as follows:
 - (i) On Planning Maps S18 and S19, Lot 18 DP 69197 at Wainui Main Road, Wainui was vested in the former Banks Peninsula District Council as Recreation Reserve in 1995. The zoning of this site should be Recreation Reserve rather than Rural.
 - (ii) On Planning Map R9 an area of privately owned land at Long Bay Road is incorrectly zoned as Recreation Reserve. The correct zoning is Rural.

In the Christchurch City Plan the zone description for the Living 1B zone includes reference to an area of land south of Prestons Road. This area of land was rezoned Rural 3 by a decision of the Environment Court. The deletion of the reference is required as a consequence of that decision.

Section 34(1) of the Act allows the Council to delegate any of its functions powers or duties under the Act to any Committee of the Council. The correction of minor errors in District Plans is a function that fits within the Committee's Terms of Reference in relation to the City Plan.

FINANCIAL IMPLICATIONS

3. There are no financial implications in correcting the minor errors identified.

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

4. Covered by existing unit budgets.

LEGAL CONSIDERATIONS

5. Correcting minor errors in District Plans is provided for in the Resource Management Act 1991. Clause 16(2) provides for alterations to, and the correction of minor errors in, Proposed District Plans while Clause 20A is a similar provision that applies to Operative District Plans. With regard to the errors in the Proposed Banks Peninsula District Plan a legal opinion by Buddle Findlay, Solicitors, on similar zoning issues that have previously been dealt with by the Council supports the use of these provisions to correct inappropriate zonings where the current zoning is clearly a mistake and there is no material difference in the uses permitted.

Legal advice has confirmed that the Council's powers under Clauses 16(2) and 20A of the Act could be delegated to the Committee.

3 Cont'd

Have you considered the legal implications of the issue under consideration?

6. Yes. See above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

7. Aligns with City Plan Activity Plan.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

8. Yes. Support the Maintenance and Review of the City Plan project.

ALIGNMENT WITH STRATEGIES

9. N/A

Do the recommendations align with the Council's strategies?

10. N/A

CONSULTATION FULFILMENT

11. Consultation is not necessary. The relevant provisions in the Resource Management Act allow the Council to make corrections to its District Plans without further formality. The delegation of functions to a lawfully established committee is a discretionary matter for the Council for which public consultation is not required.

STAFF RECOMMENDATION

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

- (a) Without further formality, and pursuant to clause 16(2) of the First Schedule to the Resource Management Act 1991, correct errors in the Banks Peninsula Proposed District Plan by making the following amendments:
 - (i) On Planning Maps S18 and S19 amend the zoning of Lot 18 DP 69197 from Rural to Recreation Reserve.
 - (ii) On Planning Map R9 amend the zoning of that part of Part Lot 3 DP 6152 (1230 Long Bay Road) that is currently zoned Recreation Reserve to Rural.
- (b) Without further formality, and pursuant to clause 20A of the First Schedule to the Resource Management Act 1991, correct an error in the Christchurch City Plan by deleting the words *"land immediately south of Prestons Road between Marshland Road and Burwood,"* from clause 1.2.2 Living 1B (Rural – Living) Zone in Part 2 of Volume 3 of the Plan.
- (c) Delegate to the Regulatory and Planning Committee its functions under clauses 16(2) and 20A of the Resource Management Act 1991.

4. DISCUSSION DOCUMENT ON THE EVALUATION OF THE FENCING OF SWIMMING POOLS ACT 1987

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officers responsible:	Legal Services Manager & Inspections and Enforcement Manager
Authors:	Judith Cheyne and Stuart Gray

PURPOSE OF REPORT

1. The purpose of this report is to report to the Committee on the Discussion Document on the Evaluation of the Fencing of Swimming Pools Act 1987 and the proposed submission for the Council to make on that discussion document.

EXECUTIVE SUMMARY

2. This discussion document has been published by the Department of Building and Housing (DBH) with the aim of gaining feedback to assist the DBH with its evaluation of the Act. Submissions are due by 30 June 2008. A second paper is planned in early 2009 to seek views on the proposals developed from the consultation
3. The purpose of the document is to:

“...further reduce drownings by improving compliance and enforcement of the Act and also to:

 - assess the current risks posed to young children under the existing provisions of the Act.
 - improve uniformity in the interpretation and application of the Act by territorial authorities across New Zealand.
 - provide more certainty to pool owners and territorial authorities on their responsibilities and obligations under the Act.
 - increase public awareness of pool owners’ responsibilities under the Act.”
4. There have been considerable difficulties for territorial authorities in interpreting and enforcing the Act. The lack of clarity in the Act, and its relationship with the Building Act, has been the subject of judicial comment on the need for amendment some time ago. This review is long overdue. The DBH knows there are a number of issues with the Act, but before they make proposals addressing the issues, they want to be sure they have understood them fully and identified the different options for resolving them. The discussion document “describes and seeks ...feedback on:
 - the issues and whether they have been accurately defined.
 - options to resolve the issues.
 - the impact of the options on pool owners, territorial authorities and the public as a whole.
 - any other issues affecting compliance with, or enforcement of, the Act.”
5. The discussion document outlines the DBH’s proposals and can be viewed at <http://www.dbh.govt.nz/fospa-consultation>. The draft submission attached is being made on the form provided by the DBH.

FINANCIAL IMPLICATIONS

6. No financial implications in making this submission, but some of the options identified in the discussion document or proposed by the Council, if proceeded with by way of an amendment to the legislation, could have financial implications for the Council

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

7. Not applicable.

4 Cont'd

LEGAL CONSIDERATIONS

Have you considered the legal implications of the issue under consideration?

8. Legal considerations have been taken into account in drafting this submission, but at this stage there is no detail as to the extent and content of possible future amendments to the Act.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

9. Not applicable.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

10. No.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

11. The current Council policy aims for the Council to inspect all known pools biannually. Inspection requirements at this level have not been achieved due to the high levels of non-compliance found upon re-inspections (50%) and the current in-effective and time consuming enforcement tool available, namely prosecution with a maximum penalty of \$500. The Christchurch City Council is currently considering amending its policy and related KPI to one that requires the inspection of 15% of all known pools annually. This level of inspections allows for a annual inspection of a good percentage of known pools, provides for a education focussed approach whilst ensuring targeted prosecutions are pursued for those who ignore Council warnings/corrective action advice.

The submission (in relation to the inspections section of the discussion document), supports legislative change to require territorial authorities to undertake re-inspections and that a re-inspection regime of once every five years would be appropriate and achievable provided this requirement was implemented with other initiatives that would increase compliance and assist the inspection and enforcement process. The initiatives recommended include:

- Nationally funded education campaign;
- Mandatory supplier/installer pool notification to council;
- Supplier/installer offences for failing to notify or failing to advise purchasers of fencing requirements;
- Stand alone legislation and simplified definitions;
- Increased fines and an infringement notice regime.

CONSULTATION FULFILMENT

12. Internal consultation has been carried out between the Inspections and Enforcement Unit, Environmental Policy and Approvals (Building Act), and the Legal Services Unit.

STAFF RECOMMENDATION

It is recommended that the Committee recommend to the Council that it approve the draft submission.

4 Cont'd

BACKGROUND

13. DBH discussion document can be found at:

<http://www.dbh.govt.nz/fospa-consultation>

The draft submission is attached.

THE OBJECTIVES

14. To make a submission on this discussion document that will put forward the Council's current issues with the Fencing of Swimming Pools Act 1987, and provide feedback on the options suggested by the DBH.

THE OPTIONS

15. The Council can make a submission or not, or could make a submission in respect of only some of the matters raised in the discussion document.

THE PREFERRED OPTION

16. The preferred option is for the Council to make a submission, as the enforcement of this Act is an important function for the Council, and the ability to have some input on how the Act should be improved is reasonably significant for the Council.

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

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	City Plan Team Leader
Author:	Scott Blair, Senior Planner

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.

5 Cont'd

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.

5 Cont'd

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.

5 Cont'd

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.

5 Cont'd

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.

5 Cont'd

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.

6. PROPOSED PLAN CHANGE: PRIVATE PLAN CHANGE TO AMEND L3 PROVISIONS, AND INTRODUCE A B1 ZONED AREA AND OUTLINE DEVELOPMENT PLAN FOR THE CITY BLOCK BOUNDED BY PACKE STREET, PURCHAS STREET, MADRAS STREET AND CANON STREET ('THE ORION BLOCK')

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	City Plan Team Leader
Author:	Matt Bonis, Consultant Planner

PURPOSE OF REPORT

1. The purpose of this report is to seek a resolution on how to proceed with a private plan change application relating to residential and commercial zoning at the former Orion site at Packe Street, St Albans.

EXECUTIVE SUMMARY

2. The application is to amend a number of provisions within the City Plan as these relate to the Orion Block, to: provide for higher density residential development; introduce a Business 1 zoned area on the south-western quadrant of the block; and provide linkages throughout the site through the application of an Outline Development Plan ('ODP'). The documentation attached to the Plan Change request refers to this as introducing a 'Traditional Neighbourhood Development'.
3. The purpose of this report is to:
 - generically outline the proposed Plan Change;
 - provide some detail as to the private Plan Change process; and finally
 - to seek a resolution of Council on whether or not to proceed with public notification of proposed Plan Change 31.
4. In terms of process, the Council is obliged to consider the request for a Plan Change under the due process set out in the RMA. The Council has the option of:
 - accepting the application as a private application and publicly notifying it for submission and hearing at the cost of the applicant; or
 - of adopting the change as the Council's own change and accepting the responsibility and costs of processing it.

It is noted that declining this application on the grounds that the City Plan has not been operative for two years is no longer a valid option, given that both the existing zoning, and Living 3 ('L3') and Business 1 ('B1') provisions have been operative for a period exceeding two years. Where the Council has concerns about the merits of a private Plan Change, the only statutory recourse that the Council has to debate the merits at a hearing and seek amendments to the Plan Change is to make a submission on the Plan Change to ensure that the Council's concerns are within the scope of submissions.

5. It is noted that there are some issues of concern with this application. Some issues have been resolved by agreement but the applicant is unwilling to make further changes at this stage. The Council can make a submission on the plan change and staff will report to the Committee with any recommended submissions at as future meeting.

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 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 \$50,000 for this preliminary step.
7. Should the Council accept and notify the change at the expense of the applicant there will be a 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 \$50,000.

6 Cont'd

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

9. The recommendation to the Council will have no cost to the Council and therefore will not impose on the LTCCP budget.

LEGAL CONSIDERATIONS

10. There is a legal process set out in the RMA which must be followed. It includes initial consideration of what process to follow, then notification, submissions, reporting, hearings, decisions and possible appeals.

Have you considered the legal implications of the issue under consideration?

11. The process mentioned above is very familiar to the Council and should create no particular risks or liabilities if followed correctly.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

12. Regulatory Services' ongoing programme of improvements (pages 145 and 146 of the LTCCP) to enhance the City Plan includes plan changes, as part of planning and providing for the sustainable management, development and protection of natural and physical resources of the city, as required by section 5 of the Resource Management Act 1991. Also Economic Development (p117 and 118 of the LTCCP) seeks to promote and manage regional economic development.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

13. Yes

ALIGNMENT WITH STRATEGIES

14. The Plan Change is aligned with the Greater Christchurch Urban Development Strategy that seeks to manage metropolitan urban growth through consolidation and intensification.

Do the recommendations align with the Council's strategies?

15. Yes.

CONSULTATION FULFILMENT

16. The applicant has consulted with City Council officers, and some Community Board members and Councillors in early 2007. A further briefing of the Community Board is to take place on 18 June 2008. Under the RMA, consultation with parties affected by a private plan change is not mandatory.
17. In this instance, the applicant has considered that the requirement under Clause 5 of the First Schedule to, upon public notification, send a copy of the public notice and further information on the plan change to all parties considered to be directly affected by the plan change, would serve as adequate notice of the application.
18. It is anticipated that the applicant will arrange meetings with affected landowners once the application is notified, if they are so requested.

STAFF RECOMMENDATION

It is recommended to the Council that it:

- (a) Agree to accept the plan change application as a private plan change application 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 plan change be at the applicant's expense.

6 Cont'd

BACKGROUND AND DISCUSSION**The Application**

19. A copy of the Plan Change is attached. The purpose of the Plan Change is to provide for residential development of greater height than permitted and an associated Business area for that block bounded by Packe Street, Madras Street, Purchase Street and Canon Street. The imposition of an Outline Development Plan, and the mixed zoning proposed, is suggested by the applicant's consultants to represent a Traditional Neighbourhood Development '(TND)', which it is suggested, forms a more sustainable and integrated land use for the area than its current Living 3 zoning.
20. The site is a combination of some 43 separate titles, all of which are zoned Living 3 within the City Plan. The total land area is approximately some 4.326 ha. The site was previously a MED depot and then an Orion works depot. These activities vacated the site some years ago, and the associated buildings were demolished.
21. There is a small cluster of Living 3-type residential units to the south-west of the site which will retain their un-amended Living 3 zone provisions, as will the Orion substation and the church at the south eastern corner of the block. These properties are not owned by the applicant and are outside the area covered by the Plan Change.
22. The proposal intends to retain a Living 3 zoning for the majority of the site (some 3.1 hectares). The Plan Change will not affect the zone provisions for this area, apart from an increase to the permitted height limits, and an exemption from the rules relating to continuous building length. The increased height provisions would only relate to the central 'spine' area of the block and would allow a total height of 14m, and hence some effects from the increased height of buildings, compared to the current permitted maximum height of 9m with a flat roof or 11m with a pitched roof.
23. The proposal also intends to introduce a 1.08 ha Business 1 zoning on the south-western central quadrant of the block. The information accompanying the application indicates that this zoning would be used to facilitate the development of a 'small' supermarket, approximately the size of the Richmond New World on Stanmore Road, of some 1,600m² GLFA (1,740m² GFA), and up to 15 small shops, so as to meet demand from the residential development generated from the remainder of the Plan Change.
24. A number of miscellaneous aspects of the Plan Change request include the provision of shared open space, tennis courts and a swimming pool, the latter two "*would be available for residents and guests*". The tennis courts and swimming pool would be identified in the ODP as 'Area C – Recreational Activities' but would retain an underlying L3 zoning.

Resource Management Act Timeframes

25. The application was initially received on 10 August, 2007. Further information was requested on 25 September 2007 and the revised change was received on 14 December 2007. Additional information as subsequently requested in relation to amendments made, together with Transport Modelling was received on 24 April 2008. The RMA timeframe for requesting additional information had been extended under S.37. Under the RMA, the Council is required to make a decision on whether or not to accept the application for notification by 20 June 2008.

Processing of Private Plan Changes

26. The decision to publicly notify a private plan change application does not signal whether or not the Council agrees with the merits of the Plan Change or the likely effects that may be generated as a consequence of the Plan Change. The decision on whether or not to publicly notify a private plan change application simply rests on the Council being sure that it considers that it, and the public, would have sufficient information so as to determine whether they consider themselves to be affected by the proposal so that such parties can decide whether to participate in the subsequent statutory submission and hearings process.

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27. There is no suggestion from the applicant that the Council should “adopt” the Plan Change as its own.
28. Pursuant to Clause 6 of the First Schedule, the Council may make a submission on the Plan Change to ensure that its position with regard to any matters raised are considered at the subsequent hearing to determine the outcome of the Plan Change request. The decision on whether or not to make a submission is based on the merits of the Plan Change and is quite different from the decision to notify a Plan Change which rests simply on the applicant having provided sufficient information to enable the Plan Change to be understood. A further report on a possible Council submission will be made at a later date.
29. It is noted that unlike a Council adopted Plan Change, a privately requested change to the City Plan has no statutory effect until the decision on the merits of the Change has been released by the Council and any subsequent Environment Court references have been resolved.
30. The processing of private plan changes is set out in Clauses 21-29 of the 1st Schedule to the RMA, with these clauses summarised below:

Clause 21	Any person may make an application for a change to an operative district plan. The City Plan is operative.
Clause 22	Request to be in writing, with reasons, Assessment of Environmental Effects and assessment under section 32 of the RMA.
Clause 23	Further information may be required. The Council has requested further information in this case.
Clause 24	The Council may modify the proposal but only with the consent of the applicant.
Clause 25	The Council must consider the request, and make a decision to either: <ul style="list-style-type: none"> • “accept” it and proceed to public notification; or • “adopt” it as if it were its own proposal, and publicly notify it; or • treat it as if it were a resource consent; or • reject it.
Clause 26	Where the 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).

31. There are very narrow grounds in the Act for rejecting an application. Clause 25 of the 1st Schedule (Attachment 1) identifies grounds by which the Council may reject a Plan Change request, on the basis that the request:
- Is frivolous or vexatious;
 - Considers matters that have been considered by the local authority within the last two years;
 - Is not in accordance with sound resource management practice;
 - Would make the plan inconsistent with Part 5; or that
 - The relevant provisions of the Plan have been operative for less than two years.

THE OPTIONS

32. The options that will be presented to the full Council with regard to this Plan Change are:
- Reject the application.
 - Accept the application, proceed to publicly notify and decide the application at the expense of the applicant.
 - Council adopt the change as its own and assume the responsibility for putting it through the process outlined in the RMA including all costs.

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THE PREFERRED OPTION

33. The recommended option is Option (b); there do not appear to be valid reasons for rejecting the plan change in terms of a decision on notification.
34. Overall, the ability for a comprehensive land development in association with an ODP that could ensure internal pedestrian and cycle permeability and provide for some level of mixed use within what is considered a large urban block would have some merit. This would, of course, need to be tempered by a number of caveats as to the acceptability or otherwise of the potential traffic, retail and urban design impacts that could occur as a consequence of the proposal could be raised in a submission by the Council. Also of relevance is the ability for the planning mechanism as put forward to provide sufficient certainty that an integrated development will actually be delivered as a consequence of the Plan Change.
35. The application should be accepted for notification and considered on its merits, following public notification and the receipt of submissions.

7. PROGRESS REPORT ON CITY PLAN PROGRAMME 2006-2007 AND PROPOSED PROGRAMME FOR 2007/2008

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8281
Officer responsible:	City Plan Team Leader
Author:	David Mountfort, City Plan Team Leader

PURPOSE OF REPORT

1. The purpose of this report is to provide a report on progress against the City Plan work programme approved by the Council on 17 May 2007.

EXECUTIVE SUMMARY

2. This report reviews progress on the City Plan programme approved by the Council last year. The Council requested that quarterly updates be provided. The report briefly describes the more significant matters that have been worked on in the last year and provides a detailed schedule of the entire programme.

FINANCIAL AND LEGAL CONSIDERATIONS

3. Programme is being delivered in terms of the budget. Legal implications are meeting Environment Court requirements for progressing cases before the Court, and meeting the requirements of the Resource Management Act for the preparation and processing of changes and variations to the City Plan.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Receive this report.
- (b) Agree to the inclusion of a new project in the programme for the modification of the airport noise contours.

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BACKGROUND

4. In May 2007 the Council adopted a programme of work for the City Plan Team to carry out to progress the reviews of the Christchurch City and Banks Peninsula District Plans. Of necessity this is a rolling programme looking ahead several years and is to be reviewed annually, with progress to be reported to the Council periodically. This was the third such programme since the Council adopted this arrangement.
5. A copy of the schedule presented in 2007 is attached. This has been modified to include comments on progress on each project during 2007-08. The most significant items on the programme are briefly outlined below. Comments and additions to the programme are shown as tracked changes format for ease of comparison. A number of private plan changes received during the year have been added to the programme.

MAIN FEATURES OF 2007-2008 PROGRESS

6. Urban Development Strategy

There has been significant involvement by City Plan staff in the UDS, particularly with drafting the Regional Policy Statement Change, and considering and preparing officer reports reporting on submissions. Adoption of the RPS change will lead to City Plan changes, some of which have commenced already, notably the Awatea and Wigram rezonings and the Belfast section 293 case.

7. Area Plans

The Strategy and Planning Group has made significant progress on the South-West Area Plan, to the point where decisions will soon become possible on the zoning and timing of development in places such as Wigram, Awatea and South Halswell. City Plan staff are regularly involved commenting on proposals, attending workshops and liaising with landowners. These will also be required as part of the implementation of the Urban Development Strategy. Timing of development in these areas will depend on the timing of upgrades to the roading, sewer and stormwater networks.

9. Airport Noise Contours

A new set of draft airport noise contours has been produced. This arose out of Environment Court hearings on the Selwyn District Plan. Experts representing a wide range of parties, from CIAL, landowners and Councils, met following the hearing and agreed upon a new set of inputs for modelling the contours. These were then mapped and have resulted in a set of contours that is different from the previous version in the three district plans. Broadly speaking, the new contours are shorter and wider than the existing version, freeing up land at Rolleston but affecting new areas at Kaiapoi and along a strip of Christchurch from Belfast to Templeton. Approximately 2,000 of the households anticipated in the UDS in this strip will have to be reallocate elsewhere. CIAL has commenced the statutory process to have these new contours included in the RMA plans, starting with the Regional Policy Statement. Because of the broad range of expertise, and the range of parties represented, it is considered that these new contours will be very authoritative and difficult to challenge technically. What will be able to be challenged, however, is the policy response, in particular whether the threshold for land use restrictions should be on the 50 or the 55 dBA contour. Although this was settled by the Environment Court recently for the Christchurch Plan, it appears that some parties will be attempting to relitigate this issue. As the issue has become caught up in the Regional Policy Statement it is inevitable that the Council will have to become involved in it again. Following the Regional Policy Statement Change 1 hearings, it is recommended that a plan change be introduced to the City Plan.

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10. **Belfast Urban Growth Case**

This is a 93 ha site and is proposed to be developed to achieve high quality development at a higher than traditional density, in the manner required by the RPS Change 1. The major issue at Belfast has been the effect on the traffic network, with Main North Road and Johns Road already severely congested. The solution developed between the major landowners, Transit NZ, Council and Environment Canterbury, has been for the major landowners to build an interim Belfast bypass, and for this Council to collect financial contributions from later developers to fund their share of this work, which will be refunded to the developers. This arrangement has recently been approved by the Environment Court in an interim decision. Many details of the zoning package remain to be worked out.

11. **Floodplains Variation 48 & City Plan References on Floodplains**

The Council decision on Variation 48 was issued in 2006/07 and appeals were lodged. Discussions have taken place with appellants. Additional computer modelling work has been carried out, the results analysed, and Environment Court evidence prepared. The hearing in the Environment Court will take place shortly. Progress has been made on a further variation to deal with the land between the Waimakariri primary and secondary stopbanks.

12. **Retail Distribution Variation 86**

The great majority of the appeals against Variation 86 were settled by consent, including all appeals against the framework of objectives and policies, and the rules. In the end the Environment Court hearing was confined to cases involving zoning at two sites in Ferrymead and one at Moorhouse Avenue. The Environment Court decision largely favoured the appellants, leaving considerable concerns about the traffic impacts, and a concern about height limits at Ferrymead, where the decision has negated the recent plan change introducing height limits. These aspects have been appealed to the High Court. A hearing is to take place in June.

13. **Heritage protection – Review of City Plan Provisions**

A consultant is assisting staff with the preparation of this plan change for Council consideration in mid 2008.

14. **Higher Density Living zones (Living 3 and 4) – Review Development Controls**

A consultant is assisting staff with the preparation of this plan change for Council consideration in mid 2008.

15. **Review of Elderly Person's Housing Provisions**

A Council seminar was held on this topic but little further progress has been possible on this due to staff shortages. With a recent appointment this project has just recommenced and should be reported to the Council again in late 2008.

16. **Motor Racing**

Staff have been involved with a joint Council team investigating options for the relocation of the Carr's Road Raceway at Awatea and for resolving noise issues at the Ruapuna Raceway. A report has been presented to the Council about options for Ruapuna. It is anticipated that the Carr's Road facility is likely to remain where it is unless agreement can be reached with Environment Canterbury about a possible site in West Melton.

17. **Review Special Amenity Areas**

Investigations and discussions with interested parties have been carried out. A Council seminar was conducted in mid 2007. Currently the Heritage Team is carrying out investigations into the possibility of establishing Residential Heritage Conservation Areas.

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18. **Banks Peninsula District Plan**

Environment Court appeals on ecological and landscape protection have taken up a great deal of time and budgets this year. Mediation and negotiation resulted in a settlement of the ecological issues, but a three week Court hearing was required on landscape issues. Other outstanding issues on the BP District Plan include financial contributions, and designations. These are both being pursued by consultants. It is anticipated that the Banks Peninsula District Plan should be able to be made operative, at least in part by the end of 2008, which represents a very significant piece of work since amalgamation.

19. **Private Plan Changes**

Twenty private plan changes are at various stages, with two completed and made operative. These were minor rezonings, at Barrington and Cranford Streets. Several others are at the final stages, unless appeals are lodged. Private plan changes range from single lot rezonings, through to major new urban growth areas for residential or business purposes. A process document has been prepared to guide staff and consultants about how to process these applications. On legal advice, applications are being very thoroughly assessed prior to being publicly notified, because the Council's powers to modify a private plan change are more limited after notification. The first cases have been valuable to fine tune this process. Recently, every application received has been contracted out to consultants for processing and reporting. This assists to free up staff, but consultants must still be managed and given feedback and assistance, particularly on the major applications which have considerable strategic significance. A list of private plan changes known to Council at this time will be tabled.

20. **Council Plan Changes**

Two plan changes have been publicly notified during the current financial year. Change 27 alters the zoning and height controls in central New Brighton. Change 29 introduces height controls into the Business 4 zones. A number of other plan changes are in preparation and will be reported to Council separately.

21. **Miscellaneous Minor Changes**

This is a database of approximately 500 items which has been accumulated since the City Plan was first notified. These are mostly low priority, anything of higher priority has already been included in the schedule of major projects. The database has been sorted and a process developed for addressing it but there has been insufficient staff time available to start addressing most of the items. A current recruitment process may enable this to be restarted in the second quarter of 2007.

22. **New Projects Arising**

As discussed in paragraph 9 above, it is recommended that a new project be added to the City Plan Work Programme, a Plan Change to alter the airport noise contours.

23. **Environment Court Decisions**

A number of substantive Environment Court decisions have been handed down, as follows

City Plan Variation 86 Retail Distribution

This variation altered the objectives, policies and rules relating to retailing in the City Plan. The particular focus was to return to a more centre-based approach and restrict the proliferation of retailing in the Business 4 (Suburban Industrial) Zone. A new Business Retail Park zone was also introduced and applied to selected existing "Big Box retail" developments such as Tower Junction. A wide range of appeals were lodged against the new framework and a number of landowners sought alternative zonings for their sites. In the end all the appeals relating to objectives and policies were settled by consent, leaving the proposed framework largely intact. All but three of the zoning appeals were also settled, leaving only two cases at Ferrymead and one at Moorhouse Avenue to be determined by the Court.

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The Court applied a Business 2 zoning to one site at Ferrymead and applied a 20 metre height limit, thus effectively reversing the Council's recent plan change to restrict height limits in Ferrymead. The other Ferrymead site has been left as Business 4 but a range of retailing and residential uses have also been permitted. The Court also made some surprising findings about traffic-related provisions and has not taken seriously the severe traffic congestion issues on Ferry Road. In all three cases there is a requirement for the parties to negotiate and produce outline development plans for the site. The Council has appealed the two Ferrymead decisions to the High Court. The other Variation 86 decision was for a site in Moorhouse Avenue where the Court has given a new Business Retail Park zoning.

Although none of the cases which actually went to the Court were decided in the Council's favour, this needs to be balanced against the fact that the objective and policy framework and most of the other zoning cases were resolved by agreement, and the overall result is very satisfactory indeed in terms of what the Council set out to achieve. The case has been the largest and most expensive City Plan project undertaken since the City Plan review itself and has cost approximately \$1.3m since notification in 2004.

Belfast Rezoning

The site known as the section 293 site at Johns Road/Main North Road, which has been in the Environment Court since 1999 has finally been rezoned by the Court as Living G, although aspects of the case have now been appealed to the High Court. This case has been reported to the Council, on a number of occasions. It has a somewhat ground-breaking feature under which the lead developers propose to construct a State Highway Western Belfast Bypass to mitigate projected traffic congestion, and the Council has agreed to collect financial contributions toward this bypass from other landowners. This development is important for the implementation of the Urban Development Strategy as one of the limited number of large Christchurch City sites available for development in the first 10 years of the Strategy.

Variation 2 to the Banks Peninsula District Plan

This decision settles the issue of landscape protection in the rural zones of Banks Peninsula case. It has been another very long-standing case, running since the notification of the BPDC plan in 1997. The Council funded and carried out a major study of landscape values on the Peninsula, along with an extensive public consultation. The Council and most of the landowners reached agreement after the study, but Environment Canterbury, and a number of individuals on both sides of the argument took the matter to the Court. The basis of the dispute is how extensive the Outstanding Natural Character Landscape and Coastal Natural Character Landscape overlays should be, with ECan and two suggesting areas much greater than Council, and two landowners suggesting they be reduced. The Court adopted the Council's position with two very minor amendments. The Court was extremely critical of the position taken by ECan and has reserved costs.

24. Summary of Progress on the City plan Programme 2007-2008

Items	Completed	Substantial progress	Not Progressed	Total
Priority 1	6	50	8	64
Priority 2	0	16	7	23
Priority 3	0	2	3	5
Total	4	70	18	92
New Projects	1			

25. Use of Consultants

Twenty-seven of the 70 active projects have involved the employment of consultants. These have been to:

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- Provide technical expertise in cases where the Council either does not have in-house expertise or staff are not available because of the extent of the proposal. Examples include Variations 86 and 48 to the City Plan.
- Process private plan changes.
- Undertake part of the City Plan workload, eg completing the Banks Peninsula Proposed District Plan.

To the end of May 2008 \$1.94m has been spent on consultants and legal advice, against a budget of \$1.01m. Further expenditure will be required in the rest of the year. The over-expenditure has largely been on the Environment Court cases on Variation 86 to the City Plan and Variation 2 to the Banks Peninsula District Plan. These were major cases where it is very difficult to estimate the amount of expenditure in advance of the hearings, or the timing and speed of the hearings and all the preliminary discussions, mediations etc. The over-expenditure has been partially off-set by savings in the salary budget due to recruitment difficulties and sick leave, and there will also be recoveries in respect of the private plan changes and designations, and the balance off-set against savings on other projects in the Strategy and Planning Group. There will not be nearly the same level of Environment Court activity in 2008-2009, which will enable more rapid progress on a number of cases.

In the same period \$739,215 was been spent on staff salaries against a budget of \$1,007,793.

**8. APPLICATION FOR AN OFF-LICENCE - GENERAL DISTRIBUTORS LTD -
COUNTDOWN LIQUOR**

The matter is brought forward for the information of the Committee.

5. 6. 2008

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SECTION 2 - WORKSHOP

9. WORK PROGRAMME FOR COMMITTEE/WORKSHOP TIMETABLE

Attached.