

**3. BELFAST PARK PLAN CHANGE 43 - PRIVATE PLAN CHANGE REQUEST FOR THE REZONING OF RURAL LAND BETWEEN BELFAST ROAD AND THOMPSONS ROAD, EAST BELFAST, CHRISTCHURCH, TO LIVING G**



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**PURPOSE OF REPORT**

1. This report describes a privately requested plan change to the City Plan and recommends the process for dealing with the request, including whether it should proceed to notification, in terms of the provisions of the Resource Management Act 1991 (RMA). The plan change request seeks to rezone approximately 64 hectares of land at East Belfast from Rural 3 to Living G (East Belfast). It includes provision for commercial and industrial areas, and proposes additional controls on the existing Business 5 zone (which includes the now largely decommissioned Belfast freezing works) to limit the impact on the new residential areas proposed on the opposite side of Blakes Road.

**EXECUTIVE SUMMARY**

2. The purpose of this report is to recommend which of several options under the RMA is to be used in processing the change request. The consideration of the merits of the change request are not relevant at this stage, except in the limited circumstances where the effects and/or inconsistencies with the objectives and policies are clearly so significant that the plan change can be said to be not in accord with sound resource management practice or contrary to Part 5 of the RMA. The consideration of merits issues will normally occur after submissions have closed, if the decision on this report is to select one of the process options that lead to public notification.
3. The change request was lodged on 23 April 2009, with subsequent amended applications lodged in September and October 2009 in response to requests for further information. The application is considered to contain sufficient information for the Council to consider whether or not to notify the change.
4. The following options for processing the change request are available to the Council:
  - (a) Accept the change request as a private plan change and publicly notify it for submission and hearing at the cost of the applicant.
  - (b) Adopt the change request as the Council's own change and accept the responsibility and costs of processing it.
  - (c) Reject the change request due to it falling within one of the limited grounds set out in the RMA.
  - (d) Process the change request as a resource consent application.
5. The Council is obliged to consider this request under the due process set out in the RMA.
6. The majority of the plan change site is located within an area identified for future urban growth under the Greater Christchurch Urban Development Strategy (UDS) and the Regional Policy Statement Proposed Change No. 1 (PC1). The plan change request also seeks to include two parcels of land, outside of the areas identified for future residential urban growth, one of which is identified in PC1 for future industrial or business growth. The plan change seeks the development of this site now rather than within the 2017-2026 period indicated in PC1. Submissions have been lodged by the applicant on PC1 seeking to overcome these inconsistencies. Council staff confirm that, while the need for wastewater and water supply upgrades were previously a reason for delaying the development of this area, there is now provision within the LTCCP for the necessary wastewater and water supply upgrades to service the plan change site prior to 2017. Council traffic planners consider that the plan change will not significantly alter the level of service on the surrounding road network.

## **STAFF CONSIDERATION**

7. Staff consider that there are no issues that could justify rejecting the plan change. There are a number of key issues that have been identified in respect of the plan change request that the Council may subsequently decide to lodge submissions on. These relate to the provision of open space and esplanade reserves along the Kaputone Stream, protection of the heritage values of Spring Grove, a listed heritage building located within the plan change site, and the proposed provisions for stormwater management.
8. The plan change request is considered to be generally consistent with the Belfast Area Plan with the exception of the provision of open space and esplanade reserves along the Kaputone Stream and the sequencing of the plan change site ahead of the 2017-2026 period. Again, these matters can be dealt with through submissions on the plan change, if necessary.
9. The following information is attached to the report:
  - o **Attachment 1** – Belfast Park location plan
  - o **Attachment 2** – Outline Development Plan (East Belfast)
  - o **Attachment 3** – Conformity with PC1 Map

## **FINANCIAL IMPLICATIONS**

10. 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 Council regardless of the outcome. Costs cannot be predicted accurately but could be significant.
11. 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.
12. Should the Council adopt the change as its own then the Council will need to absorb all the costs, which could be considerable.

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

13. Yes.

## **LEGAL CONSIDERATIONS**

14. There is a statutory process that must be followed to determine if the plan change should be accepted and publicly notified, or otherwise. The applicant has the right to appeal this decision.
15. There is a legal process set out in the RMA of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed. This process is very familiar to the Council and should create no particular risks or liabilities if followed correctly.

## **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

16. Processing private plan change requests is a statutory Council process, and as such is consistent with the LTCCP and Activity Management Plans.

### ALIGNMENT WITH STRATEGIES

17. In part. The Greater Christchurch Urban Development Strategy sets out the proposed location, timing and form of future urban growth, which is largely reflected in the Regional Policy Statement Proposed Change No. 1 (PC1). The majority of the plan change site is located within a Residential Greenfield block identified in PC1 for future urban development (Area CN4). However, some aspects of the plan change are inconsistent with PCI. The plan change request also seeks residential development for a parcel of land that falls in another urban growth area, which PC1 identifies for future industrial or business purposes, rather than the residential development proposed in the plan change. It also seeks that a parcel of land which falls outside of the urban limits identified under PC1 be rezoned Business 4, an industrial zone. (Refer to Attachment 3 for the location of these land parcels). Finally, the plan change will allow the development of the site now, rather than in the 2017-2026 period indicated in PC1. PC1 also requires that an Outline Development Plan (ODP) be provided for the whole of any Greenfield Area, unless an Area Plan exists for the Area. The plan change, and the ODP contained in it, only covers approximately half of the CN4 Greenfield Area and the Belfast Area Plan is not yet finalised. There are submissions by the applicant on PC1 seeking to change this requirement for an ODP for the whole of the CN4 Greenfield Area.
18. The Belfast Area Plan, which has recently been approved for public consultation, provides an integrated land use plan for the Belfast area to 2041. The plan change request is considered to be generally consistent with the Belfast Area Plan with the exception of the proposed provisions for open space and esplanade reserves along the Kaputone Stream and the sequencing of development ahead of the 2017-2026 period. With the exception of the identified Spring Grove and Local Centre Reserves there is some uncertainty in respect of the Open Space shown on the ODP and adjacent to the Kaputone Stream. This is owing to the fact that the City Plan does not currently include an esplanade reserve requirement on this portion of the Kaputone Stream and none is proposed in the plan change. The Greenspace Team have indicated that they would be interested in acquiring the land in the open space network, if they were able to do so. However, the amount of development contributions for reserves would not be sufficient to acquire the network and the plan change allows any land not acquired for reserves to be used for residential development. The plan change is therefore inconsistent with the proposed Belfast Area Plan.
19. In respect of the proposed sequencing, advice from Council experts indicates the infrastructure upgrades required to service the plan change site are planned for within the LTCCP prior to 2017. The assessment contained in the plan change application indicates that the existing level of service on the road network and at key intersections will not be significantly altered, even without the northern arterial motorway.

### CONSULTATION

20. The applicant has undertaken consultation with a number of parties including Council and ECan officers, New Zealand Transport Agency, ONTRACK, New Zealand Historic Places Trust Pouhere Taonga (NZHPT) and tangata whenua through Mahaanui Kurataiao Ltd (MKT). A community Open Day and a Stakeholder Workshop were held in February 2009.
21. The plan change proposal has been presented to the Shirley-Papanui Community Board for their information. MKT were provided with a copy of the application by the Council and indicated that they wished to undertake a site visit before providing any response to the plan change request. A site visit has now occurred however there has been no response from MKT to requests from Council for input.

### STAFF RECOMMENDATION

That the Regulatory and Planning Committee recommends to the Council that it agrees to accept the plan change request pursuant to Schedule 1 Clause 25(2)(b), and that all costs shall rest with the applicant.

## BACKGROUND AND DISCUSSION

### The plan change request

22. The plan change request seeks to rezone approximately 64 hectares of land located at East Belfast from Rural 3 to Living G (East Belfast) zone in accordance with new plan provisions and an Outline Development Plan (ODP), including commercial and industrial areas. It also includes a package of amendments to the City Plan for the existing Business 5 zone to reduce its impact on the proposed housing on the other side of Blakes Road (refer to Attachment 2 for the ODP). The plan change site is located between Belfast Road (north) and Thomsons Road (south) and east of the Main North Railway Line. To the west the site adjoins the Silver Ferns Farms Canterbury Freezing Works site and the existing residential area of Belfast, with adjoining rural land-uses to the south and east of the site. The Kaputone Stream forms the eastern boundary of the plan change site. The Northern Arterial Motorway designation crosses the eastern side of the plan change site.
23. The site is rural in character, largely comprising open pasture. There are a number of shelterbelts within the site, with established trees (typically exotic) over sections of the Kaputone Stream and lining Blakes Road. The site also contains Spring Grove, a heritage-listed building, which adjoins the Kaputone Stream, and is set within an established garden containing a number of mature, including eight, notable trees.
24. The Living G (East Belfast) zone provides primarily for mixed-density residential development, with provision for some business land also proposed. The plan change proposes an overall density of between 12-15 households per hectare so could result in an overall density somewhat less than the PC1 requirement for 15 households per hectare. The business zoned land will comprise a mix of Business 1, 4 and 5, with some additional standards proposed in respect of bulk, location, design and appearance of buildings for the B1 and B5 zones. The Business 1 land provides for a centrally located local business or commercial centre.
25. Blakes Road forms the main north-south transport route through the site, which is also proposed to be the bus route. The plan change request shows a linear open space network aligned with and including the Kaputone Stream. This open space network is also intended to provide for stormwater management areas. Two separate neighbourhood parks are proposed as reserve priorities (to be secured through Development Contributions under the Local Government Act provisions), in accordance with the priorities identified by the Greenspace Team. One park is 3000m<sup>2</sup> in area and centrally located east of the proposed local business centre on Blakes Road, and the other is 5000m<sup>2</sup> in area and located west of Spring Grove. Spring Grove homestead is proposed to be retained on a 3000m<sup>2</sup> site also zoned Living G, but with a community footprint overlay over the site and not within a reserve.
26. The plan change request includes information on proposed measures for the remediation of contaminated land located within the site, arising from past freezing works dumping.
27. The majority of the plan change site is located within the CN4 Residential Greenfield Area identified in PC1. The plan change request also seeks residential development for a parcel of land located on the southeast corner of Belfast and Blakes Roads that falls in another urban growth area (the CB1 Business Greenfield Area) that PC1 identifies for future industrial or business purposes. It also seeks that a parcel of land located on the southwest corner of Belfast and Blakes Roads that is not identified for future urban growth is zoned Business 4, an industrial zone (refer to Attachment 3 for the locations of these land parcels). Finally, the plan change will allow the development of the site now, rather than in the 2017-2026 period indicated in PC1. PC1 also requires that an ODP be provided for the whole of any Greenfield Area, unless an Area Plan exists for the Area. The plan change only covers approximately half of the CN4 Greenfield Area and the Belfast Area Plan is not yet finalised.

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28. There are submissions on PC1 that seek the inclusion of these additional land areas within the CN4 Residential Greenfield Area and the flexibility to substitute residential and business land through an ODP. Submissions also seek relief for an ODP to apply to a single landholding (rather than for an entire Greenfield Area) and provision to bring forward development of Greenfield areas in advance of sequencing in PC1 where key infrastructure is in place or can be economically and efficiently provided. Environment Canterbury is expected to release its decisions on submissions in December 2009.
29. In respect of the proposal to bring the development of the plan change site forward in terms of sequencing, PC1 provides flexibility for Greenfield areas to come forward in advance of their stated sequencing provided that they are substituting for other areas. The plan change request does not seek to substitute its development over another Residential Greenfield Area but rather relies on the availability of the necessary infrastructure to support development of the plan change site within this timeframe. Council planning engineers confirm that there is provision within the LTCCP for the necessary upgrades to existing wastewater and water supply infrastructure to support the development of the plan change site within the 2007-2016 period.
30. In respect of the transport network, the applicant's traffic assessment report indicates that the existing road network can support the development of approximately 650 households in the absence of the Northern Arterial Motorway. The applicant's traffic assessment assumes key upgrades to the intersections of Marshland/Belfast, Marshland/Prestons and Marshland/Radcliffe Roads. While these are also planned for within the LTCCP, it is noted that there is the possibility that some of these upgrades may be delayed. Should that occur the assessment provided demonstrates that there are sufficient alternative routes, so that the development of the plan change site would have a negligible effect on the level of service of these existing intersections and the road network.
31. The larger public suburban and community facilities (such as libraries), that would be necessary to cater for the population of this plan change site, as well as the wider Belfast growth area, are planned for within the Councils current and future facility provision for the Belfast area. The plan change itself has provision for business or commercial land that could cater for the immediate local demand for other services such as preschool and medical.
32. The density provisions proposed for the development of this site would result in between 550 and 700 households (approximately). In respect of the requirement under PC1 to provide an ODP that covers the entire Residential Greenfield Area, there are a number of relevant aspects of the plan change request that require discussion. PC1 identifies that the entire CN4 block is projected to achieve 1150 households overall, 1030 over the 2017-2026 period and a further 120 over the 2027-2041 period. The plan change site comprises approximately half of the CN4 block and as such would be required to achieve 575 households.
33. The plan change request does not indicate that developing this land would hinder efficient and effective provision of infrastructure for the remainder of the CN4 block.

#### **RMA Timeframes**

34. The change request was received on 23 April 2009. Further information was requested on 18 June 2009 and again on 15 October 2009. A number of changes have been made to the proposed plan change, and additional information provided, in response to matters raised by Council staff, with further information last lodged on 27 October 2009. Further information requests have now been satisfied. Under the RMA the Council is due to make a decision whether to adopt, accept, or reject the application by 7 December 2009.

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#### Processing of Private Plan Changes

35. The processing of private plan changes is set out in Clauses 21-29 of the first Schedule to the RMA. In summary this provides:
- Clause 21: Any person may make a request 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 done this 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:
    - “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 if it falls within one of the limited grounds specified.
  - Clause 26: Where Council accepts the change it must publicly notify it within 4 months.
  - Clause 27: The applicant may appeal the Council decision made under clause 25.
  - 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

##### 1. Accept the Plan Change

36. 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 determines the nature of the plan change that is notified, and if changes to the proposal are considered necessary the Council may need to make a submission in opposition to the plan change.
  - (ii) The Council takes on a neutral position on the proposal, neither supporting or opposing the proposal.
  - (iii) The applicants will bear the cost of the complete plan change process (including costs associated with the resolution of appeals).
37. There may be reasons why the Council may seek to make submissions in opposition to the plan change. It is noted that if a submission is not received seeking an amendment to the plan change, the plan change cannot be amended in that respect in the decision following the hearing of submissions.

##### 2. Adopt the Plan Change

38. Under this scenario the plan change becomes a Council plan change. It is notified, heard and decided the same way as a 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 implies that the Council's initial assessment is that the plan change is appropriate.
  - (iii) The Council bears the costs of managing and processing the plan change.
39. 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 District Planning Teams. While processing privately requested plan changes are mandatory, this particular rezoning is not one of the Council-directed priorities. If the Council is concerned about significant aspects of the proposal, this would not be an appropriate course of action.

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#### 3. Reject the Plan Change

40. There are very limited grounds in the RMA for rejecting an application. A Plan change can be rejected if:
- it is frivolous or vexatious
  - the substance of the change has been dealt with by the Council or the Environment Court in the last two years
  - the change is not in accordance with sound resource management practice
  - the change would make the District Plan inconsistent with Part 5 of the Act (other policies or plans, such as Regional Policies or Plans), or
  - the District Plan has not been operative for more than two years.
41. 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.
42. While PC1 addresses areas for future urban growth in a broad strategic sense, the substance of the plan change request has not been dealt by the Council through an RMA process within the last two years. The matter has been considered through the UDS process, but this is not considered to be sufficient grounds, by itself, to justify rejecting the plan change.

#### 4. Treat the Plan Change as a Resource Consent

43. 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 variable nature of the development sought to be permitted by the application, that it would be difficult to deal with it as a resource consent application.

#### ISSUES

44. There are no issues that would be considered grounds for rejecting the plan change. However, there are a number of issues that deserve some comment so that the Council is aware of the nature of the plan change or which are matters that the Council may wish to make submissions on. Only the more significant of these are discussed below.

#### Open Space Network and Reserves

45. The ODP and Green Network Layer Diagram indicate a linear open space network located adjacent to the Kaputone Stream, noting that this network is in addition to the two neighbourhood parks agreed with Council's Greenspace Team. The Greenspace Team has indicated that they would be interested in acquiring the land in the open space network, if they were able to do so. However, the amount of development contributions for reserves would not be sufficient to acquire the network. The City Plan does not currently include an esplanade reserve requirement on this portion of the Kaputone Stream and none is proposed in the plan change. So, in the current form of the plan change, the Council would have to pay for the majority of the proposed open space network if it sought to establish it all as public open space.
46. The Council has obtained legal advice that as the plan change is seeking to rezone the land from rural to urban, it would be valid to consider whether the land should be subject to the esplanade reserve provisions of section 230 of the RMA. The Act requires that an esplanade reserve of 20 metres in width be vested in the Council along the bank of a river, where any allotment of less than 4 hectares is created, unless the Council decides otherwise. The issue could be raised by the Council through a submission on the plan change. The applicants have advised that they have received their own legal advice to the contrary, that esplanade reserves are not entitled to be required as part of the plan change process.

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47. There have been discussions on the extent of the open space network that should be provided along the Kaputone Stream. The Greenspace Team has agreed that, along some sections of the stream, it would not be necessary to provide the full 20 metres that would normally be required for an esplanade reserve. However, no agreement has been reached on how much of that part of the open space network will be acquired by the Council or at what price, should the open space not be required to be vested in the Council following a successful submission on the plan change. This matter does not have to be resolved at this stage of the plan change process as the Council has received legal advice that the lack of an esplanade reserve, or agreement on other means of Council acquisition of the land, is not grounds for rejecting a plan change.
48. The plan change does not require the Council to acquire the land. Rather, it contains a provision that, should any part of the open space network not be acquired as a reserve, that land can be used for residential development, in conformity with the rules applying to the adjoining residential area. As such, the plan change being proposed should be understood as not providing any guarantee that all, or any, of the open space network shown in the ODP will be established as public open space. Rather, it could all be used for housing. The exception to this is the local centre and Spring Grove reserves, which are specifically identified as reserves to be vested in the Council.
49. The lack of certainty about the future availability of what is identified as "open space network" for public open space potentially raises a number of issues about the plan change, including the extent to which the areas of higher residential densities are provided with higher levels of public open space. However, the legal opinion obtained by the Council advises that these are merits issues, which would not be grounds for the Council rejecting the plan change. The Council may choose to submit on these issues.

#### Heritage

50. The plan change request proposes that the heritage-listed building Spring Grove be retained within a 3500m<sup>2</sup> site (Refer to Attachment 2 ODP for the location of Spring Grove). The proposed setting around the building is significantly less than the existing garden setting of the dwelling.
51. However, it is proposed that the building and curtilage area be zoned Living G zoning with a community footprint overlay. The community footprint provisions essentially allow for some relaxation of the standards in respect of non-residential activities within Living zones (for example scale of activity and hours of operation). This planning framework would allow, in addition to residential development, scope for non-residential use of the site and buildings for a community or commercial use such as accommodation or a conference centre. The plan change request seeks to add two trees located within the open space network to the City Plan list of notable trees, however no additional rules are proposed in respect of the protection of the heritage values of any existing outbuildings on the site or the setting. This is an issue that the Council may wish to lodge a submission on, but is not grounds for rejecting the application.

#### Stormwater

52. The plan change request includes a Blue Network Layer Diagram that indicates a total of approximately 2.6 hectares of stormwater basins, in three locations adjacent to the Kaputone Stream. The stormwater management system proposes to combine stormwater treatment wetlands for stormwater detention (storage) also.



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53. Council stormwater engineers consider this an unusual design and that it will lead to poorer wetland performance. There is also risk to the applicant that either the Council or ECan will not accept this design noting that the stormwater system proposed is smaller than that indicated within the Council design guide. Should the system need to be redesigned it is anticipated that more land will be required for this purpose. The runoff coefficient used has also been questioned as it is considered to underestimate the storage volume required. On this basis Council stormwater engineers consider it likely that more land will be required for stormwater detention and treatment than the 2.6 hectares indicated on the Blue Network Layer Diagram that forms part of the proposed ODP, and estimate that approximately 6 hectares may be required. It is acknowledged that there is scope within the plan change site to increase the size of the stormwater management system if required and as such there is agreement that this issues can be resolved at subdivision stage. However, these are not considered to be grounds for rejecting the plan change.

### OTHER MATTERS

54. There are a number of other merits issues on which the Council may choose to lodge a submission. These include aspects of the proposed City Plan provisions and assessment matters for the Living G and Business zoned land in respect of the design and appearance of buildings. There is also some concern in respect of the density provisions and their ability to effectively limit the size of residential lots and the transfer of density provisions in respect of the permitted locations for such transfers.

### Conclusions

55. In terms of matters to be considered under the Act, it is concluded:
- (a) There are not sufficient grounds to reject the change request
  - (b) The change request would not be better dealt with as a resource consent
  - (c) There is no known reason for the Council to adopt the change request as its own
  - (d) The change request now includes sufficient information that it could be notified.

### THE PREFERRED OPTION

56. It is recommended that the Council accept the plan change request pursuant to Schedule 1 Clause 25(2)(b), and that all costs shall rest with the applicant.