2. APPLICATION FOR CHANGE TO CITY PLAN – 8 MANNING PLACE

General Manager responsible:	General Manager Strategy and Planning, DDI 941-8177
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PURPOSE OF REPORT

1. This report describes an application to the Council for a change to the City Plan and recommends the process for dealing with the application in terms of the provisions of the Resource Management Act 1991 (RMA).

EXECUTIVE SUMMARY

2. The application is to rezone 8 Manning Place in Woolston from Living 2 to Business 1. No changes are proposed to any of the Business 1 zone standards.

3. The purpose of this report is not to consider the requested plan change on its merits. Rather, it is to recommend which of several options under the RMA is to be used in processing the application. The consideration of the merits of the application will occur after submissions have closed, if the decision on this report is to select one of the process options that lead to public notification.

4. The process options available to the Council are to accept the request as a private plan change and publicly notifying it for submissions and a hearing at the cost of the applicant, to adopt the change as the Council's own change and accept the responsibility and costs of processing it, to treat it as a resource consent application, or to reject the request due to it falling within one of the limited grounds set out in the Act. The Council is obliged to consider this request under the due process set out in the RMA.

FINANCIAL IMPLICATIONS

5. The financial considerations will differ depending on how the Council chooses to handle this application. Should it reject the application or decide that it should be treated as a resource consent, 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 $20,000 for this preliminary step.

6. 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.

7. 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?

8. Yes.

LEGAL CONSIDERATIONS

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

9. 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. It is a process which is very familiar to Council and should create no particular risks or liabilities if followed correctly.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

10. City Development - ongoing programme of improvements (page 145 of the LTCCP) to enhance the planning documents of the City, to ensure an attractive built environment and minimise adverse effects on the environment.

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

11. Yes

ALIGNMENT WITH STRATEGIES

12. Yes

Do the recommendations align with the Council's strategies?

13. Yes

CONSULTATION FULFILMENT

14. The applicant is currently in the process of undertaking public consultation with neighbours to the subject site in 8 Manning Place, Woolston. The results of that consultation are still to be reported to Council. Statutory Council process will apply at later stages if the plan change is accepted for public notification.

STAFF RECOMMENDATION

It is recommended that the Community Board recommends to the Planning & Regulatory Committee to:

(a) Agree to accept the plan change pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly.

HAGLEY/FERRYMEAD COMMUNITY BOARD RECOMMENDATION

The Board considered a report regarding an application to the Council for a change to the City Plan and recommending a process for dealing with the application in terms of the provisions of the Resource Management Act 1991 at its meeting on 20 February 2008.

The Board resolved to recommend to the Regulatory and Planning Committee that the Council agree to accept the plan change pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly.

COMMITTEE RECOMMENDATION

It is recommended to the Council:

(a) That the Council agree to accept the plan change pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly.

(b) That the cost of any plan change, be borne by the applicant.

BACKGROUND & DISCUSSION

The Application

15. The application seeks to rezone a property at 8 Manning Place in Woolston from Living 2 to Business 1. The subject site is 629m^2 and is currently occupied by a single storey dwelling, approximately 50 to 60 years old and in a relatively poor condition of repair. The application states that this dwelling is occupied on a rental basis.

16. The Living 2 Zone encompasses the inner suburban living environments of the City and principally provides for low to medium density residential accommodation. It is anticipated that there is potential for infill and redevelopment within this zone at a higher density than the Living 1 Zone.

17. The Business 1 Zone is intended to provide for local shops and services activities. Many Business 1 Zoned sites are dominated by small scale retail shops, often in a "strip" immediately adjoining the road frontage. The zone provides for local employment and convenient access to goods and services.

18. A copy of the application is attached.

RMA Timeframes

19. The application was formally received on 2 November 2007. Consultant planners from Boffa Miskell Ltd are reviewing and processing the application on behalf of the Council. Further information was requested on 27 November 2007 on traffic related matters. That further information was received on the 20 December 2007. The next step in the process is for Council to make a decision in accordance with Clause 25 of the First Schedule of the RMA whether to accept, adopt or reject the application or to treat it as if it were a resource consent. The statutory time limits require this decision to be made by 22 February 2008. Due to the timing of the Community Board, Planning and Regulatory Committee and Council meeting dates this deadline is unrealistic and an extension has been made until the 1 April 2008. The applicant is required to be notified of the Council decision within 10 days.

Description of Proposal and Site

20. The subject site is located in Manning Place, which is a local road running between Ferry Road and Wildberry Street to the south. The Manning Place / Ferry Road intersection is approximately 120m east of the major intersection of Ferry, Ensors and Aldwins Roads.

21. This section of Ferry Road is classified as a Minor Arterial Road in the City Plan, however surveys undertaken in 2006 indicate that the road volumes are more characteristic of an Arterial Road with approximately 21,115 vehicles counted. A survey in 2003 indicated that Manning Place had a daily vehicle trip count of 609.

22. The subject site is located 2 properties depth back from the Ferry Road/Manning Place intersection. It is adjoined on two sides (the north and west) by Business 1 zoned land and to the south it is adjoined by the Living 2 Zone.

23. The adjoining Business 1 zoned sites are part of a row of properties which all front Ferry Road for the entire length of the block from Hart Street to Manning Place. This shopping strip is used for a number of take-away food premises as well as a variety of retail activities e.g., Super Cheap Auto, a pharmacy and hairdresser. The adjoining Living 2 Zone to the south is occupied by a dwelling.

24. Across Manning Place the site also faces Living 2 zoned sites occupied by houses of mixed age and condition. There is a small commercial premise on the opposite (eastern) corner of Manning Place and Ferry Road (also Living 2) selling Polynesian food and products.

25. The private plan change application seeks to rezone the property from Living 2 to Business 1. The application notes that the subject site is unusual in that it is adjoined on two sides by the Business 1 Zone. The Planning Map shows that the Business 1 Zone boundary is not straight or regularised and dog-legs around 8 Manning Place. The applicant has raised concerns about the continued efficient use of the sites and reduced amenity for living purposes as a consequence of the property being adjoined predominantly by the Business 1 Zone.

26. The application does not seek to amend or add to any of the existing Business 1 Zone rules to accommodate any unusual features of the site. Accordingly, the existing provisions and controls of the Business 1 Zone would be applied to any future redevelopment or activities on the site. It is noted that the Business 1 Zone Statement acknowledges that the standards of the zone already control the effects of activities to a level that does not unduly impact on the amenities of adjoining living zones. The application therefore considers that no adverse development scenarios are created by the rezoning.

Description of Issues

27. The Section 32 assessment accompanying the application has identified a number of potential development scenarios for permitted commercial activities on the site. These include the possibility that 8 Manning Place could be redeveloped in conjunction with other sites in the Business 1 Zone to the north.

28. The traffic implications of these scenarios have been assessed. Although the traffic volumes associated with a business activity are likely to be greater than from a residential activity on the site, the overall impact on Ferry Road volumes, safety and efficiency have been assessed as minor. It is acknowledged that the City Plan already has in place a standard limiting vehicle movements to 250 per day. Any increase in traffic as a result of rezoning that exceeds this standard would trigger a resource consent, ensuring that the traffic impacts of a specific development proposal would be subject to a detailed assessment. The proposal for rezoning to a Business 1 Zone does not therefore result in any loss in the ability to address any new access arrangements or the effects of any increase in traffic volume.

29. The Section 32 assessment also identified the main differences in effects between the current Living 2 Zone standards and the Business 1 Zone. In summary, the comparison indicates that the maximum density of development likely under a Business zoning is not significantly greater than in the Living 2 Zone, taking into account the rules for setbacks, recession planes, car parking and landscape treatment. The maximum building height is 8m for both the Living 2 and Business 1 Zone, while a greater building setback from neighbours and landscape treatment are required for a building used for Business 1 activities than residential activities. A Business 1 Zone will enable a wider range of activities, however, the combined package of Business 1 Zone rules has been developed to specifically manage effects at the Business 1 – Living zone interface, reflecting the suburban setting of the Business 1 Zone.

30. The proposal for rezoning will shorten the Living/Business interface in this locality and will generate more options for efficient use of 8 Manning Place.

Processing of Private Plan Changes

31. The processing of private plan changes is set out in Clauses 21 -29 of the 1st Schedule to the RMA. In summary these provide the following:

- Clause 21 allows any person to make an application for a change to an operative district plan. The City Plan is operative.
- Clause 22 requires the request for a plan change to be made in writing with reasons and to be accompanied by an assessment of environmental effects and an assessment under Section 32 of the RMA.
- Clause 23 enables the Council to seek further information upon receiving the application (further information was requested for this application).
- Clause 24 allows the Council to modify a proposal, but only with the consent of the applicant.

- Clause 25 requires the Council to 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 requires the Council to publicly notify the proposed Plan Change within 4 months.
- Clause 27 sets out the circumstances where an applicant can appeal a Council's decision to adopt, accept in part only or reject a Plan Change request.
- Clause 28 provides for the withdrawal of a request.
- Clause 29 sets out the procedures for processing of the request including the following steps: public notification, submission, further submission, hearing, decision, and appeal (if any).

OPTIONS

32. The Council's options are:

    a. Reject the application;
    b. Accept the application, proceed to publicly notify and decide the application at the expense of the applicant;
    c. Adopt the change at its own and assume the responsibility for putting it through the process outlined in the RMA including all costs; or
    d. Treat the application as a resource consent application.

    There is no status quo, i.e. do nothing option. The application must be considered and either accepted, adopted, rejected, or treated as a resource consent.

33. There are very narrow grounds in the Act for rejecting an application. In short they are that the requested change is frivolous or vexatious, that the issue has been dealt with in the last 2 years or the Plan has been operative for less than 2 years, or that it is not in accord with sound resource management practice or would make the Plan inconsistent with the purpose of the Act. The change is not frivolous or vexatious and the relevant part of the Plan has been operative for 2 years. The legal advice we have received in respect of the matters of consistency with the purpose of the Act and sound resource management practice, is that those grounds could only be used for rejecting the application if there was no, or very little, merit in considering such a change to the Plan. The advice indicates that there is a presumption in the Act in favour of accepting plan change requests and testing them through the submission and hearing process. In this case grounds have been raised in the reasons given for the change, as outlined earlier, that at least merit consideration of the change.

34. There is a significant difference between "accepting" and "adopting" the application. If the application is accepted, the Council retains its independence and is able to consider it impartially at a hearing later in the process, rather like a resource consent process. The plan change remains a private change and the entire cost of the process can be charged to the applicant. If it adopts the application, the Council would be effectively promoting the application as if it had decided to propose the change itself and the Council would be unable to charge the applicant for the costs.

35. The subject of the plan change 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 apparent reason for the Council to adopt this plan change as its own priority.

36. The applicant is not seeking consent for one particular development but is seeking a rezoning to allow a range of potential uses of the site, therefore it would be difficult to deal with the application as a resource consent. To be able to grant such resource consent would require a set of conditions that mirrored the rules applying to the Business 1 zone, effectively re-zoning the site.

PREFERRED OPTION

37. The preferred option is Option b. - accept the application and proceed to publicly notify it. There are no reasons to reject the application. Accordingly, the application should be accepted and considered on its merits, following public notification and the hearing of submissions.