

2. **PROPOSED PLAN CHANGE 28 – PRIVATE PLAN CHANGE APPLICATION FOR THE REZONING OF LAND AT 320 AND 320A CUMNOR TERRACE (KENNAWAY FARM) BOUNDED BY HEATHCOTE RIVER, TUNNEL ROAD, KENNAWAY ROAD AND LYTTTELTON RAILWAY (AVOCA VALLEY STREAM) FROM FERRYMEAD SPECIAL PURPOSE ZONE (RURAL 2 PROVISIONS) TO BUSINESS 4**

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PURPOSE OF REPORT

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

EXECUTIVE SUMMARY

2. The application is to rezone approximately 30ha of land bounded by Tunnel Road, Heathcote River, Kennaway Drive and Lyttelton Railway (Avoca Valley Stream) from Special Purpose Ferrymead zone (with underlying Rural 2 provisions) to Business 4 (suburban industrial) (see **attached** location plan).
3. The purpose of this report is to recommend which of several options under the RMA is to be used in processing the application.
4. In accordance with Schedule 1, Section 25 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) Part Acceptance of plan change
 - (c) Adopting the change as the Council's own change and accepting the responsibility and costs of processing it
 - (d) Part Adoption of plan change
 - (e) Rejecting the application
 - (f) 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.
6. This report recommends to accept part of the private plan change for notification. The area of non-acceptance is 50m inland from the current top of the Heathcote River Bank (see **Attachment 2**). This area includes road to be stopped, Council owned esplanade reserve, land shown for public use and for Business 4 development by the requested private plan change application.
7. The area within 50m of the river boundary has potential issues in relation to sea level rise and lateral spread (liquefaction). There are also issues in relation to protection of the potential esplanade reserve, including protection of bird habitat (eg Cormorant roosts), urban design and landscape issues. It may allow for the potential to enhance the river margin by gaining a sufficient buffer between the river and industrial areas.

(Note: A full copy of the Request for Plan Change (500 pages) is available on request.)

FINANCIAL IMPLICATIONS OF DECISION

8. The financial considerations will differ depending on how the Council chooses to handle this application. Should it reject the application or partly accept/adopt 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 in the vicinity of \$25,000 for this preliminary step.
9. Should the Council accept and notify the change at the expense of the applicant there will be no direct costs to Council as the Council's costs would be recoverable. However there would be an impost on staff time.

10. Should the Council convert the request into a resource consent the applicant may be required to meet the costs of undertaking a resource consent and the costs for the processing of the plan change. The applicant can 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 \$25,000 for this preliminary step.
11. 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 \$100,000.

FINANCIAL IMPLICATIONS OF PRIVATE PLAN CHANGE

Sewage

12. It is apparent that existing sewage infrastructure does not have capacity to receive the sewage from the site. Off-site works to a pump station and upgrades of pipe will be required to allow for future development.
13. This cost is directly attributable to the proposal so cannot be funded from Development Contributions.
14. The solution likely to be adopted is to require the applicant to upgrade the off-site infrastructure as required as a condition of subdivision consent

Drainage

15. The applicant has proposed two separate systems for the management of stormwater runoff. It is proposed to drain the stormwater runoff from roofs directly into the Heathcote river by one stormwater system and the runoff from roads and hard surface areas such as car parks will be captured in detention basins for treatment before discharge into the river.
16. The two systems will involve separate infrastructure for maintenance and ultimate replacement by the Council. Council staff advise that a dual system will be significantly more expensive to maintain than a single system, for little or no discernible benefit. Further, Council staff have advised against accepting the proposed dual system. Therefore the cost of a dual system will be a Council cost consideration.

Sea Level Rise

17. The site borders the Heathcote River on two sides and is located upstream from the Avon/Heathcote Estuary (approx 1300m of river frontage). The river is subject to daily tidal flows. As such, the area bordering the river is currently being eroded.
18. Due to sea level rise, erosion of the banks is likely to accelerate. As the site is a Greenfield site (currently zoned for rural activities) and has little in the way of existing infrastructure or buildings there is an opportunity to obtain a larger area of sufficient distance from the river frontage to allow for natural erosion (managed retreat) or a future soft engineering solution whilst still allowing for ecological values (eg bird habitat) and public access via the esplanade reserve. This method of managing natural hazards is in accordance with the current and proposed New Zealand Coastal Policy Statement.
19. The alternative is to maintain land area by a hard engineering structure such as a "retention sea wall". However, this may not be as effective for the following reasons:
 - (a) Maintenance of the structure would be required by Council which would be an ongoing Council cost
 - (b) The structure is likely to be outflanked at the ends if not tied into other structures
 - (c) The combined effects of sea level rise and river flooding or extreme sea levels may result in failure of the walls resulting in water continuing to erode behind the walls
 - (d) Lost opportunity to allow for natural replacement of lost wetlands and bird habitat as the area is eroded .

Under both scenarios the Council may be expected to meet costs.

Liquefaction

20. A report completed in 1999 by Ian McMahon (Geotechnical consultant) has indicated that the area is susceptible to lateral spread and amplified ground shaking. Lateral spread occurs along river corridors due to wet soils. Buildings in this area will need to be engineered to withstand earthquake conditions under the provisions of the Building Act 2004. However, the Building Act will not extend to infrastructure such as roads, water and sewage pipes. Cost of replacement of infrastructure could be a financial consideration.

Traffic

21. Vehicle traffic movements to and from the site are limited to Kennaway Road which has a single connection to Chapmans Road in order to access the wider roading network. The proposal anticipates approximately 5,000 traffic movements per day, however this could be in excess of 10,000 movements per day if the development potential of the site is fully realised. The two major arterial roads which will service this site will be Port Hills Road and to a lesser extent, Garlands Road (State Highway 74A). Council staff have reviewed the application in terms of traffic impacts and anticipate that upgrades may be required for both these roads so as to maintain the current Level of Service. In addition, other local roads, cycleways and footpaths may also require improvement works in order to accommodate the traffic generated by the plan change. No mechanisms have been proposed by the Applicant for future upgrades of the wider transport network, only the immediate intersection of Chapmans and Kennaway Road. The Council will not be able to propose conditions at the time of subdivision, therefore, the private plan change will impose an unknown cost in upgrading the transport network to both the New Zealand Transport Agency and the Council in the future as a direct consequence of the plan change.

DO THE RECOMMENDATIONS OF THIS REPORT ALIGN WITH 2006-16 LTCCP BUDGETS?

22. Yes, private plan change applications are provided for in the LTCCP budgets.

LEGAL CONSIDERATIONS

23. There is a legal process of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed as set out in the RMA. This process includes both a submission and further submission process. The final decision can be appealed.
24. If a plan change is not fully accepted or adopted by Council then the decision can be challenged in the Environment Court within 15 days.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

25. Private Plan Changes are provided for in the District Plans Activity Management Plan.

ALIGNMENT WITH STRATEGIES

26. Yes – The proposed Plan change aligns with the Regional Policy Statement Plan Change 1 and the UDS as a possible growth area for industrial development.

CONSULTATION FULFILMENT

Council Staff:

27. The applicant has carried out some consultation with Council officers, but has not agreed to formally modify the application in regard to all the issues raised. This includes a larger buffer between the Heathcote River and the Business 4 zone for mitigation purposes. The applicant has included a number of more minor modifications to the Plan Change on the request of Council staff.

Public:

28. It is our understanding that the applicant has carried out public consultation on a previous Business 4 proposal for the site which included a wetland system, boardwalks and viewing platforms and a larger area of open space and the Outline Development Plan has been amended by the applicant since that time. The social impact report included in the application is based on this feedback.

Tangata Whenua:

29. To date no report on possible impacts on cultural values has been provided. The applicant has contacted Te Rūnanga o Ngāi Tahu (TronT) and Mahannui Kurataiao Ltd (MKT), which represents the six Ngai Tahu Runanga within the Christchurch Territory to give effect to Resource Management Act 1991. The applicant has agreed to provide information on impacts of this proposal on Tangata Whenua Values at the hearing. MKT has advised it is satisfied with this process and is content to see the application publicly notified. It will continue to work with the applicant to resolve any issues arising.

Other:

30. Contact has also been made with the Historic Places Trust as the oak trees indicate a site where the old Kennaway Homestead may have stood.
31. Council staff presented this plan change to the Hagley Ferrymead Community Board on 12 May 2008. Comments on subsidence issues and visual effects were noted.
32. Its our understanding the applicant has not contacted Environment Canterbury, Transit New Zealand or the Ministry for the Environment.

STAFF RECOMMENDATION

33. It is recommended:
- (a) That the Council agree to accept in full the private Plan Change pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly, subject to the inclusion of additional rules as set out in Attachment 3 on pages 95 and 96 of this agenda, the accompanying Outline Development Plan on page 97 and any necessary consequential amendments to text, planning maps and layer diagrams.
 - (b) That in accordance with the Council policy, the cost of processing the Plan Change be at the applicant's expense

COMMITTEE RECOMMENDATION

It is recommended:

- (a) That the Council agree to accept the private Plan Change pursuant to Clause 25 of the 1st Schedule to the Resource Management Act 1991 and publicly notify it accordingly, subject to an additional rule(s) being included that provide for a 50 metre setback from the Heathcote River as a critical standard.
- (b) That the additional rule(s) referred to in recommendation (a) be reported to the full Council at its meeting on 30 October 2008.
- (c) That it be noted that the applicant acquiesces to the additional setback for the purpose of public notification, but reserves its position to submit on that matter.
- (d) That in accordance with the Council policy, the cost of processing the Plan Change, be at the applicant's expense

The above motion when put to the meeting was declared **carried** on division no 2 by 6 votes to 2, the voting being as follows:

For (6): Councillors Button, Reid, Shearing, Wall, Wells and Williams.

Against (2): Councillors Broughton and Johanson.

BACKGROUND AND DISCUSSION

The application

34. This application seeks to rezone the subject site from Ferrymead Special Purpose Zone (Rural 2 provisions) to Business 4 provisions (Suburban Industrial). This change also seeks to introduce rules on landscape, building reflectivity, construction phase, outdoor advertising, an outline development plan for development of the site and Layer Diagrams which provide details on site development.

RMA Timeframes

35. The application was formally received on 2 August 2007. Further information was requested on how the plan change meets the environmental outcomes anticipated to change to the Ferrymead Special Purpose Zone, the plan change and Section 32 matters, proposal, rule format and the effects on visual effects along Tunnel Road, flooding and drainage and the landscape, ecology, ornithological (birds), trees, noise, contamination, traffic, social impact, stormwater, flooding, climate change and sea level rise, servicing, economics, urban design protocol, on 25 September 2007.
36. A response to the information request and a modified plan change (version 2) was received on 10 December 2007. The applicant had not responded to some information requested and a series of meetings were proposed by the applicant and council on the 29th February 2008 to clarify requested information. The application was put on hold until the agreed further information was finalised. A meeting on flood, storm water and sea level rise issues was attended by the applicant and their expert consultants on the 13th March and a meeting on ornithological issues was attended by the applicant and their expert consultant on the 19th March 2008.
37. A modified plan change (version 3) was received on 9 May 2008. This plan change provided for storm water storage areas instead of open swales and reduced other additional open space areas, such as reducing the proposed 25m setback along the Heathcote River bank to 20m. It introduced provisions in the ODP network plans to credit the detention basins and any landscaping against reserve contributions, other changes also made include introducing more detailed flood/drainage mitigation measures in the Blue Network and deletion of Green Network aims such as including the protection of the riparian margin of the Heathcote River and the aim of increasing bird populations. Assessment matters and reasons for rules was also introduced.
38. Additional Information was sought by Council staff on 10 June 2008 and a response was received on 7 July 2008 with a modified Plan Change (version 4). This version provides clarification for interpretation of rules and the ODP. It introduces new objectives in the Green network shrub (foliage) clear zone for safety purposes and a landscape planting plan. It deletes references to reserve contributions, introduces new rules in terms of building reflectivity, outdoor advertising and subdivisions and changed the assessment matters.
39. Council staff responded to these changes with suggestions for clarification. Version 5 was sent to Council on 15 August 2008. This change included making the Outline Development Plan limited discretionary to relevant matters rather than a controlled activity. Council responded on 5 September with suggestions on clarification of interpretation of the plan change.
40. Under the Resource Management Act 1991 (RMA) the Council is due to make a decision whether to adopt, accept, or reject the application by 29 September 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 due to modifications of plan change listed above.)

Description of proposal and site

41. The site is approximately 30 hectares in area, and is situated in Area A of the Special Purpose (Ferrymead) Zone within a flood management area. It is confined by the Tunnel Road on the east boundary, the Heathcote River on the west and northern boundary and an existing Business 4 development and Avoca Valley Stream on the southern boundary. The Business 5 Zone faces the site from the west side of the Heathcote River. At its south end, the site is adjacent to the existing Business 4 Zone in Kennaway Road. At its north end, it is opposite the Living 2 Zone and to the east Council owned Ferrymead Park. The Living 1 Zone is approximately 100m north of the site across Ferry Road (Woolston), and 300m south east of the site across the existing Business 4 Zone (Heathcote).

42. The site is generally flat and is currently void of structures apart from a residential dwelling, temporary paddocks and a shed over Lyttelton's water well (designated site). Uncontrolled fill to the North (entire top end of the site) and the west of the site has formed a shallow basin to the east where stormwater and floodwater from the Avoca Valley Stream pools. A number of shelter belts cross the site. An area of oak and eucalypts trees is found towards the north of the site. Pines and eucalyptus trees grow along the river bank which is a roosting area mainly for cormorants. It is known that threatened bird species may be found in the area. The lower areas of the site are marshy and support some wetland features. Stockpiles of dirt are located at the south end of the site. A dirt road along side the Heathcote River from Chapmans Road currently provides the main access to the site.

Ferrymead Special Purpose Zone and Rural 2 provisions

43. The application site is part of the Ferrymead Special Purpose Zone. This zone includes approximately 194 hectares, it is bounded by the Lyttelton railway line, Heathcote River, Bridle Path Road and Heathcote Village. Most of this area to the south east of Tunnel Road is in Council ownership and has a tourism and recreation function whilst the area to the north-west, subject to the plan change, is in private ownership.
44. As an interim measure, the land as a whole has been zoned Special Purpose (Ferrymead) to indicate that further investigation is required as to the appropriate land uses for the area. As part of this interim measure Rural 2 provisions apply to the subject site under Volume 3, Part 8, Special Purpose Zones Appendix 9.

Private Plan Change Application

45. The private plan change application seeks to rezone the subject land from Special Purpose Ferrymead Zone with Rural 2 provisions to Business 4 (Suburban Industrial). The development of the site may include limited retail and residential office and commercial activities, light industry and service industries. The application states Business 4 is the most appropriate District Plan zoning to apply in the circumstances. The Plan Change request seeks to apply the existing Business 4 Zone provisions and additional rules to mitigate effects. As part of these additional rules the applicant is proposing an Outline Development Plan (ODP) and supporting Layer Diagrams which provides specific ODP rules, objective and aims as well as additional site specific rules and assessment matters.
46. Rules include:
- (a) Business 4 zoning over the entire site. This includes proposed open space and designations.
 - (b) That any non-conformity with the ODP and layer diagrams is a discretionary activity limited to relevant matters for both subdivision and building consents
 - (c) Site specific landscape rule for development along Tunnel Road. This requires private owners to plant a 10m landscape strip at the Tunnel Road boundary
 - (d) Earthworks and ground preparation works only to be limited between one hour after sunrise and one hour before sunset
 - (e) No advertising in areas opposite living zones to the north
 - (f) If buildings are painted facing Tunnel Road or the Heathcote River then the colours should have a reflectivity of less than 35%
47. The Outline Development Plan and Layer Diagrams include the following:
- (a) Stormwater detention ponds
 - (b) Expansion of Avoca Valley Stream Channel
 - (c) 10m landscape strip along the length of Tunnel Road to provide for flood events greater than one in five (undertaken in four stages).
 - (d) Public open space which incorporates oak trees and eucalyptus trees
 - (e) A local road running length wise through the site to accommodate traffic and secondary roads or lanes running across the site to act as view corridors.
 - (f) Cycle and pedestrian networks to link Long Street via the barge over the Woolston Cut to the subject site, roads, green spaces and along side the Avoca River Channel
 - (g) A 20m landscaping strip space along Heathcote River which provides for pedestrian access and include enhancement planting.
 - (h) Landscape planting plan to integrate and provide continuity of streetscape, boundary and riparian margins.
 - (i) Mitigation of off street parking through landscaping along road frontages, attractive street lights and street furniture.
 - (j) Shrub clear zone for safety purposes between industrial and esplanade reserve.

48. The Plan Change adopts the existing provisions of the Business 4 Zoning including density, site size (500msq), setbacks, landscaping, recession planes, screening, on site residential security, retail areas, parking spaces, traffic generation and advertising along Tunnel Road. Under the City Plan there is currently no maximum height limits for B4 zones. However, under Plan Change 29 the proposed height is 15m with a critical height of 20m. A landscaping strip and setback is required along the main road frontage but not along lanes or secondary roads. The applicant has stated that this along with the rules above and ODP will be adequate to address issues and any effects.

Description of Issues

49. The plan change raises potential merit-based issues including (but not limited to) the following:
- (a) Potential traffic effects on Port Hills Rd and Garlands Road. Vehicle movements have the potential to affect the safety and efficiency of traffic flows on Port Hills Road and the surrounding road network.
 - (b) Potential effects of private ownership of areas required for stormwater detention (10m strip along Tunnel Road) in terms of maintenance.
 - (c) Potential visual amenity effects of advertising and bulk and height of buildings along Tunnel Road.
 - (d) Loss of visual amenity for Long Street and Gould Crescent. residents.
 - (e) Potential loss of rural amenity, views of Port Hills and visual impact of development on river (as an outstanding natural landscape)
 - (f) Potential loss of residential cohesion as all major roads (Ferry, Tunnel and Port Hills Road) leading to the Heathcote residents will be flanked by industrial areas.
 - (g) Potential loss of bird habitat (including threatened species as defined by Department of Conservation).
 - (h) Potential glare and disturbance of cormorant roosting areas along Heathcote River during building construction stage and in terms of night time lighting.
 - (i) Potential urban design issues including Interface between backs of industrial areas and public open space along the Heathcote river in terms of quality of space and crime prevention issues.
 - (j) Potential single cul-de-sac local road over 1km in length to convey approximately 5,000 plus vehicle trips per day, in terms of provisions for emergency services and network connectivity
 - (k) Potential for four retail areas along the length of the road (however, given the location it is assumed that this is unlikely)
 - (l) Potential ongoing maintenance of dual stormwater systems
 - (m) Potential that roading and infrastructure is built in areas highly prone to liquefaction (including lateral spread) without adequate mitigation.
 - (n) Potential contamination of well site.
 - (o) Potential lack of cycle/pedestrian links to south of the site
 - (p) Lack of public transport links.
 - (q) Inadequate sewer outfall
 - (r) Potential European Heritage issues
 - (s) Potential Tangata Whenua values
 - (t) Potential loss and maintenance of banks and 20m esplanade strip due to sea level rise and other natural processes.
 - (u) Filling within a flood plain management area.

Regional Policy Statement Plan Change 1

50. The area has been indicated as a Greenfield industrial site under the proposed Regional Policy Statement Plan Change 1. Therefore the plan change is consistent with this policy.

Accept the Private Plan Change in Part

51. Council has the option under section 25 of the Resource Management Act 1991, to accept part of the request. The area within 50m of the river boundary has potential issues in relation to sea level rise and lateral spread (liquefaction). There are also issues in relation to protection of the esplanade reserve, protection of bird habitat (eg cormorant roosts), urban design. It may also potentially allow for enhancing the river margin by gaining sufficient buffer between the river and industrial area which will aid in protection and enhancement of natural landscape values along the river, in accordance with section 6a and 7c of the Resource Management Act.

52. In order to protect the existing natural values in accordance with Council's biodiversity strategy, it is considered that a larger setback is required. In order to provide for potential issues along the river bank, it is proposed to accept the part of the plan change that is not within the 50m of the river bank.
53. The result of the part acceptance will reduce the development area by approximately three hectares.
54. It should be noted that under the current City Plan rules, any excavation, filling or erection of buildings within 30m of the river bank would require a resource consent.

Processing of Private Plan Changes

55. 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) Section 21: Any person may make an application for a change to an operative district plan. The City Plan is operative.
 - (b) Section 22: Request to be in writing, with reasons, Assessment of Environmental Effects and assessment under section 32 of the RMA.
 - (c) Section 23: Further and additional information may be required. The Council has done this in this case. The applicant can decline further and additional information
 - (d) Section 24: The Council may modify the proposal but only with the consent of the applicant. The applicant has modified the plan change to provide clarity but has refused any major modifications.
 - (e) Section 25: The Council must consider the request, and make a decision to either:
 - (i) Accept the application or accept it in part and proceed to public notification, or
 - (ii) "Adopt" or adopt it in Part 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
 - (v) A combination of reject and accept/adopt in part.
 - (f) Section 26: Where the Council accepts the change it must publicly notify it within four months.
 - (g) Section 27: The applicant may appeal the decision to accept/adopt in part, convert to a resource consent or reject in part under clause 26.
 - (h) Section 28: Applications may be withdrawn.
 - (i) Section 29: Unless rejected or changed to a resource consent, the application is put through the standard process of public notification, submission, hearing, decision, and appeal (if any).

THE OPTIONS

56. 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) Accept in part, proceed to notify and decide part of the application at the expense of the applicant.
 - (d) Adopt in part, proceed to notify the application and assume responsibility for processing the application outlined in the RMA
 - (e) Reject the application
 - (f) Treat the plan change as a resource consent

1. Accept the Private Plan Change

57. 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:

- (a) The applicant decides what is notified. If changes to the proposal are considered necessary an appropriate mechanism needs to be found to provide jurisdictional basis for such amendments.
 - (b) The Council is taking a neutral position in the proposal. The public should perceive that the Council neither supports or opposes the proposal
 - (c) The applicants will bear the cost of the complete plan change process (including costs associated with the resolution of appeals).
58. There are potential reasons why the Council may wish to seek changes to the proposal. These are set out in paragraph 21 above.

2. Adopt the Private Plan Change

59. 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:
- (a) The Council can control the proposal that is publicly notified
 - (b) It can be interpreted that the Council generally supports the proposal
 - (c) The Council bears the costs of managing and processing the plan change.
60. 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 the 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.

3. Accept the Private Plan Change in Part

61. One of the major issues in the plan change is the treatment of the river margin. As set out already, it is considered that a wider buffer area is required on this site than the usual 20 metre esplanade reserve. The applicant has declined to modify the proposal to accommodate this. Therefore, it would be possible to accept the application in part by excluding the land within 50 metres of the river. Consequential amendments would be required to the Outline Development Plan and the layer diagrams. These adjustments can be made prior to the public notification.
62. If the applicant did not accept this, they would have the option of either appealing immediately to the Environment Court, or lodging a submission on the plan change opposing the reduction of the plan change area.

4. Reject the Private Plan Change

63. 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 Resource Management Act (other policies or plans, such as Regional Policies or Plans).
 - (e) The District Plan has not been operative for more than two years.
64. 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.
65. 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 taken place. 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.

66. The issues outlined in paragraph 21 could conceivably be considered sufficiently serious to be regarded as contrary to sound resource management practice. However they are all matters of merit capable of either being resolved in the course of deciding the application if sufficient jurisdiction exists. In the alternative the application could be declined after hearing if these matters cannot be resolved.
67. While submissions and further submissions on Change 1 to the Regional Policy Statement (RPS) 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.
68. The City Plan has been operative for more than two years. Therefore this can not be considered as grounds to reject the application.

4. Treat the Private Plan Change as a Resource Consent

69. 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. Without changing the zoning, it is likely that there would be objectives and policies in the plan which would make it extremely difficult to grant a non-complying activity of this magnitude. 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

70. The preferred option is Option 3. 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. In this case, to manage bank erosion in order to retain a 20m esplanade strip as well as to ensure enough buffer between the industrial area and the river to protect and enhance its natural values it is considered that the Council should only accept the plan change in part. As this area is part of the Ferrymead Special Purpose Zone, which is a plan change which the Council has identified on its City Plan Programme, it could adopt the change and pursue it for itself. However, in its current form, without modification, this option would be difficult to pursue. There do not appear to be sufficient reasons for rejecting it. Therefore the application should be part accepted and that considered on its merits, following public notification and the receipt of submissions.