

3. **PRESTONS ROAD PROPOSED PLAN CHANGE 30 – PRIVATE PLAN CHANGE REQUEST FOR THE REZONING OF RURAL LAND BETWEEN LOWER STYX ROAD AND MAIREHAU ROAD, NORTH-EAST CHRISTCHURCH, TO LIVING G.**



General Manager responsible:	General Manager Strategy and Planning, DDI: 941-8281
Officer responsible:	Principal Professional Advisor Strategic Support Unit
Author:	Peter Eman, Principal Advisor Planning, District Planning Team

PURPOSE OF REPORT

1. The purpose of this report is to provide a recommendation on how to deal with the Prestons Road plan change request, including whether it should proceed to public notification, under the Resource Management Act (RMA). The request involves the rezoning of approximately 205 hectares of land between Lower Styx Road and Mairehau Road, to the east of Marshlands Road, from Rural to Living G (Prestons), including provision for commercial activities and a school. (Refer to **Attachment 1** for the plan change locality and **Attachment 2** for the proposed layout of land uses.)

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 application. The merits of the plan change are not relevant at this stage of the process, except in the limited circumstance where the effects and/or inconsistencies with the objectives and policies are clearly so significant that the change can be said to be not in accord with sound resource management practice.
3. The plan change request was lodged on 8 August 2008 and a number of requests for further information were made, with the applicant indicating in its last response received on 9 June that no further information would be provided.
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 it as a resource consent application.
5. The Council is obliged to consider this request under the due process set out in the RMA.
6. There are a number of issues that suggest that the plan change should be rejected. The most significant issues relate to information that has been requested which has not been provided and where the plan change creates expectations, and implicit obligations, that the Council will accept land as reserve, or commit to funding of the construction and/or the operation and depreciation of infrastructure that it has not agreed to. This leads to the conclusion that the plan change is not in accord with sound resource management practice and has not provided the information requested, both of which are grounds for rejecting a plan change. A further concern is that the plan change is considered to be inconsistent with, and would not implement, a number of objectives and policies. This is also grounds for rejecting the plan change as it would not be in accord with sound resource management practice and would be inconsistent with Part 5 of the Act.
7. The following information is attached to the report:
 - **Attachment 1** - Prestons Plan Change Location
 - **Attachment 2** - "Density Plan" showing proposed land uses

FINANCIAL IMPLICATIONS

8. 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 as this is likely to be a test case and the costs could be significant.
9. 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.
10. Should the Council adopt the change as its own then the Council will need to absorb all the costs. Considering the issues of concern, these could be considerable.

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

11. Yes.

LEGAL CONSIDERATIONS

12. 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.
13. There is a legal process of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed, set out in the RMA. This process is very familiar to the Council and should create no particular risks or liabilities if correctly followed.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

14. Processing private plan change requests is a statutory Council process, and as such is consistent with the LTCCP and Activity Management Plans. The plan change request itself raises issues of relevance to the LTCCP.

ALIGNMENT WITH STRATEGIES

15. No. The proposed private Plan Change conflicts with proposed residential urban growth areas in the UDS. However, a submission has been made to Proposed Change 1 to the Regional Policy Statement requesting that the area be recognised as within the Urban Limits.

CONSULTATION FULFILMENT

16. The applicant carried out consultation with the tangata whenua through Mahaanui Kurataiao Ltd (MKT) and that consultation is ongoing. MKT have advised that there are not likely to be significant tangata whenua issues that would prevent a rezoning of the land.

STAFF RECOMMENDATION

That the Regulatory and Planning Committee **recommends** to the Council that it agree to reject the plan change pursuant to Clauses 23 and 25 of the First Schedule to the Resource Management Act 1991.

3 Cont'd

BACKGROUND AND DISCUSSION

The plan change request

17. The request involves the rezoning of approximately 205 hectares of land between Lower Styx Road and Mairehau Road, to the east of Marshlands Road, from Rural to Living G (Prestons) zone (Refer to locality plan in **Attachment 1**). The site adjoins the existing urban area in the vicinity of Burwood for approximately one fifth of its boundary, with the remainder of the site extending north and west into rural areas, part of which adjoins the Windsor and Waitikiri Golf Courses. Rural land separates the site from Marshlands Road, except for the proposed main commercial area which extends to Marshlands Road on the southern side of Prestons Road (refer to the proposed layout of land uses in **Attachment 2**).
18. As well as some other smaller areas for commercial activities, the proposal includes a school site, a mixture of low to medium density residential development, and a linear park network that incorporates Marshlands Domain and also provides for stormwater management. The proposal provides for a minimum of 2275 households and a maximum of 2622 households in the residential areas, with provision for additional households in the commercial areas and, potentially, on the school site if the school were not to proceed.
19. The plan change is not located within one of the Greenfield Areas that urban growth is proposed to be limited to in Regional Policy Statement Proposed Change No.1 (PC1). There are submissions on PC1 seeking the inclusion of the land in the plan change site in a Greenfield area, as well as virtually all the rural land that adjoins the plan change site. The plan change does achieve some of the PC1 objectives and policies, such as providing a range of residential densities and has the potential to achieve a density for the plan change site overall of 15 households per hectare (although it allows it to be as low as 13 households per hectare).

RMA Timeframes

20. The plan change request was formally received on 8 August 2008. Further information was requested three times, in November 2008, and January and May 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. However, the last response from the applicant (received on 9 June) is that no further information will be provided, despite the fact that a number of the issues raised by Council staff have not been resolved. Under the RMA, the Council is required to make a decision whether to adopt, accept, or reject the application by 31 August 2009. (This reflects an extension of the 30 working day period within which the Council is required to make this decision, to the maximum permitted of 60 working days.)

Processing of Private Plan Changes

21. The processing of private plan changes is set out in Clauses 21-29 of the 1st Schedule to the RMA. In summary this provides:
 - 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, an assessment of potential environmental effects and assessment under section 32 of the RMA.
 - Clause 23 - Further information may be required to better understand the potential effects, possible alternatives, and the nature of consultation undertaken. Where the applicant declines to provide the further information requested the Council may reject the request (i.e. refuse to allow it to proceed to public notification) if it considers it has insufficient information.
 - 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:
 - (i) “Accept” it and proceed to public notification
 - (ii) “Adopt” it as if it were its own proposal, and publicly notify it
 - (iii) Reject it
 - (iv) Treat it as if it were a resource consent.
- 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 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

22. Under this scenario the private plan change is publicly 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. 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 a neutral position on the proposal, neither supporting or opposing the proposal.
 - (iii) The applicant will bear the cost of the complete plan change process (including costs associated with the resolution of appeals).
23. There may be reasons why the Council may wish to make submissions in opposition to the plan change, particularly in respect of the issues identified later in this report. 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

24. 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.
25. 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 Plan team. While processing privately requested plan changes are mandatory, this particular rezoning is not one of the Council directed priorities. If the Council were concerned about significant aspects of the proposal, this would not be an appropriate course of action.

3. Reject the Plan Change

26. There are very limited grounds in the Act for rejecting an application. In addition to the grounds under clause 23 that the applicant has declined to provide the further information requested, 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.
27. The privately requested plan change cannot be said to be frivolous or vexatious. The plan change has the potential to generate positive outcomes, as well as negative outcomes. The substance of the change has not been dealt with in the last two years and the City Plan has been operative for more than two years, so neither of those grounds are applicable.
28. As explained below, the principal issues of concern with this plan change request relate to the information the applicant has declined to provide and whether the change is not in accordance with sound resource management practice.
29. There could potentially be issues relating to whether the plan change would make the District Plan inconsistent with Part 5 of the Act, in that the change is inconsistent with PC1 (discussed more fully below). However, the submissions and further submissions on PC1 are still only currently being heard by the Regional Council. It is considered that the PC1 process is not sufficiently advanced for the requested plan change to be rejected solely because of the inconsistencies with PC1. However, it is a consideration, and would be particularly so should the Council consider adopting the plan change.

4. Treat the Plan Change as a Resource Consent

30. 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 rules which the applicant envisages will allow some flexibility in the management and development of the site, should it be rezoned. Given the variable nature of the potential developments sought to be permitted by the application, it is considered that it would be difficult to deal with it as a resource consent application.

ISSUES

31. What the Act requires, in essence, is that the applicant provide a section 32 assessment of the potential effects that may result from the plan change, particularly, in this case, what the proposed rules permit. The assessment needs to reflect the degree to which the proposed rules limit or do not limit the potential effects. The "worst case", but realistic, outcomes that the rules would permit in respect of any particular effect, such as traffic effects, need to be included in the assessment. It also needs to assess how consistent those outcomes are with the relevant objectives and policies.
32. Most of the issues in this case relate to two of the considerations that the Council is required to make at this stage. The first consideration regards issues relating to the lack of assessments of some of the relevant potential effects, including where assessment have not considered relevant factors. It is the issue of whether the assessment considers all the relevant factors that have led to considerable debate. This is a different issue from whether there is agreement on the conclusions reached in the assessment, i.e. the merits. The Act clearly indicates that the lack of requested assessments is grounds in itself for the Council to reject the notification of the plan change.

33. The second consideration regards issues that relate to whether the plan change is not in accordance with sound resource management practice. There is little case law on when this could apply, but this could apply where the plan change contains fundamental flaws or deficiencies such that it is not worthy of further consideration and testing through notification, public submission, and hearings. This may include where the request is clearly contrary to objectives and policies (that the plan change itself does not propose to amend), whether in the City Plan or higher level planning documents such as the RPS. This would be inconsistent with the Part 5 requirements of the Act that rules be consistent with objectives and policies, and that district plans be consistent with higher level documents, which is another of the grounds for rejecting a request. The plan change may also not be in accordance with sound resource management practice if the adverse effects of the change are so significant that it can be concluded that such effects should not be permitted in a district plan. Many of these reasons for rejecting the notification of a plan change require a consideration of the merits of the plan change. It should only be considered with some caution as the Act clearly intends that private plan changes should be able to be requested and invariably plan changes will have some negative and some positive effects. So the fact that the Council may have some concerns about the merits of a plan change should not necessarily mean that it would be appropriate to reject a plan change.
34. It is also noted that the Council has the option of raising issues by itself lodging a submission on the plan change. This may be a useful way of dealing with issues that could be made acceptable through amending the proposed Plan provisions of the plan change, and are not issues that question whether the plan change should proceed at all in any form. It is important to note that the concern about the Council not being able to hear the plan change if it makes a submission seems unlikely to be an issue in this case, as a commissioner may need to be used in any event due to the Council's support of UDS and PC1 to the RPS.
35. The following are the more major issues that have been identified in this plan change. There are many minor matters of detail that need to be resolved including some rules that lack clarity and provisions that require matching reasons for rules and assessment matters. Staff are continuing to work through these matters with the applicant. However, they have generally not been raised in this report where the intended outcomes are relatively clear, or when they are matters that would be unlikely to lead the Council to reject the notification of the plan change. They may, however, be matters that the Council may ultimately wish to make a submission on.

Wastewater

36. The Council requested that the applicant provide an assessment of whether the development of this site would result in the efficient provision and use of infrastructure, particularly in respect of waste water. The Council also requested that the applicant indicate how it intends to ensure the developer will pay for the cost of the infrastructure, as the infrastructure is not included in the LTCCP, or alternatively provide an assessment of the implications if that did not occur. The assessment sought by the Council was in respect of the construction, operational and depreciation costs of the wastewater infrastructure. There are a number of objectives and policies in the City Plan, the RPS, and PC1 that seek these outcomes. They have consistent themes of integrated financial and infrastructure planning, the efficient provision of infrastructure, and consideration of growth and servicing costs. They also reflect the requirements of the Act for the integrated management of resources.
37. The Council was concerned that developing the plan change site was not efficient compared to other options. Further, that the Council has planned for urban growth initially in two sectors of the City, whereas this proposal would introduce a new growth area requiring a third set of infrastructure. That would mean having to bear the costs of three infrastructure systems instead of just two, over a longer period, without any increase in population or development contributions under the Local Government Act to finance them. Even if the population growth increased as a result of the plan change, the development contributions are unlikely to cover the costs, because they were not set to take into account the cost of servicing of this site.

38. The applicant's response has been to accept that the development contributions should not be the sole source of funding the infrastructure required beyond the plan change site itself and to include the statement that "a specific requirement of the Plan Change approval" should be that there is no net cost to existing ratepayers. However, despite the Council requesting that the applicant indicate how it intends to ensure that this will happen, nothing has been proposed by the applicant to achieve it. If the plan change proceeds without a mechanism in place that clearly requires the applicant to pay the costs of the infrastructure, the implication will be that the Council will be prepared to provide the infrastructure. This is contrary to the relevant policies. The applicant also has not provided an assessment, as an alternative, of the implications if the developer was not committed to paying the full costs.
39. The Council's wastewater engineer advised that the plan change site is particularly expensive to service compared to the two growth areas in the south-west and north-west, particularly because the growth in those areas is able to piggy-back on the infrastructure upgrades that are required in any event for the existing urban area. Further, that the Council will incur significant operational and depreciation costs for the Prestons wastewater infrastructure. There has been, and still is, considerable debate between the applicant and Council staff over the relevant factors that should be taken into account and the impacts of those factors in determining the relative efficiency of providing infrastructure for the site and the operational and depreciation costs. However, the effect of the plan change will be that the Council will have to accept those costs irrespective of how significant they might prove. Further, the view of the Council's wastewater engineer is clearly that the proposal is not an efficient development of infrastructure. This suggests that the proposal is also contrary to the relevant policies relating to the development of infrastructure.
40. The Council could potentially seek to deal with the issue of ensuring the applicant pays for the cost of constructing the infrastructure, by making a submission on the plan change itself. It would be more difficult, if it is at all possible, to deal with the ongoing operational and depreciation costs through a submission on the plan change.
41. Legal advice on this issue confirms the concerns expressed above, and that there are reasonable grounds on which to conclude that the plan change should be rejected. In addition to the fact that the applicant has declined to provide the information requested on how it proposes to ensure that developer will pay the full costs of the infrastructure, the advice is that these issues raise concerns that the plan change is not in accord with sound resource management practice and are contrary to Part 5 of the Act in terms of the proposed rules not implementing the policies of the City Plan. There is little direct case law that assists in determining these particular issues and a degree of caution should apply when considering rejecting a plan change if the issues relate solely to the consistency with objectives and policies. However, in this case where the plan change imposes costs on the Council that it has not provided for in the LTCCP, has not agreed to, and a significant portion of which the applicant has acknowledged it should bear (in terms of construction costs) also leads to the conclusion that it would not be sound resource management practice for the plan change to proceed to notification.

Transportation

42. One of the principal transport issues is that the transport assessment is based on infrastructure that does not currently exist. The applicant has taken a particular stance on this issue, which requires some detailed comments to understand the current position.
43. The initial traffic assessment provided with the plan change considered the impact of the plan change in terms of the effects that would arise if a series of road improvements, including the Northern Arterial and a number of major improvements on Council roads, are completed in accordance with the timing planned by the relevant authorities. The Northern Arterial was planned to be completed by the NZ Transport Agency in 2016 and the Council road works at various times as indicated in the 2006-2016 LTCCP. The Council's transportation engineer has concerns about the model used and a number of other matters, including that the applicant's Transport Assessment Report indicates that the plan change will result in situations where the minimum levels of service set out in the Regional Land Transport Strategy will be exceeded. These are matters of merit that may be more appropriately dealt with through a Council submission on the plan change.

44. The application did not assess the potential effects if development proceeded at a pace greater than the road infrastructure capacity planned for any particular year, nor if the works were not constructed in the years currently planned or not at all. Neither did the proposed plan change propose to set limits on the scale of permitted development based on whether some or all of the works have been completed.
45. The Council's first request for further information in November 2008 identified that there was a possibility that not all the State Highway and Council road projects would be completed by the times planned and that some form of sensitivity analysis was required from the applicant to assess the potential effects of these road works not proceeding as planned. The request stated that the plan change should identify what the consequences will be if those works do not proceed as planned and how it is proposed to avoid the resulting adverse effects. The Council transportation engineers suggested that a sensitivity test be undertaken by modelling an interim development period with 50 per cent of the development potential and without the Northern Arterial, but with all the Council road works. This was to give the Council some idea of how critical the road works were to ensure sufficient capacity for the development. The request also asked for clarification as to whether the applicant intended to commit to paying for the road works should the works not be completed by the authorities as planned, as seemed to be suggested in part of the application.
46. The applicant's response to this request was that it was not considered to be practical to assess all permutations associated with stages of development and various road upgrading projects, but the applicant agreed that it would model the interim network scenario without the Northern Arterial. The Council indicated in the subsequent request for further information (January 2009) that, if the results indicated that any of the development relied on the construction of the Northern Arterial, it would be appropriate to restrict development until there was sufficient capacity.
47. The modelling without the Northern Arterial was provided in March 2009 and concluded that in the worst case there would be sufficient capacity for at least 50 per cent of the Prestons development without the Northern Arterial. The Council's transportation engineer has been unable to make sense of the modelling provided as the reallocation of traffic without the Northern Arterial seems to have resulted in significant amounts of traffic disappearing, and so is not in a position to indicate whether the conclusions reached by the applicant are appropriate. In addition, the plan change provisions did not propose to limit development to match the road network capacity, despite the applicant's traffic experts acknowledging that with the potential timing changes of road projects it may be appropriate to either restrict development or offer a financial contribution.
48. The subsequent Council request for information (May 2009) reiterated the need for a limit on development until further capacity is provided. It also acknowledged the recent nationally significant status given to the Northern Arterial by the Government, but noted that the recently released draft 2009-2019 LTCCP proposed that many of the road works would not be fully funded over the development horizon of the plan change. This highlighted the uncertainty of the timing of the works in the LTCCP. The Council transportation engineers considered it necessary to seek an assessment of the effects if those road works did not proceed as originally planned. It was also suggested that the applicant develop a staged development programme that restricts development until certain road works that are necessary to manage the additional traffic demands of the Plan Change are completed, and that this be reflected in rules in the plan change.
49. The applicant's last response indicates that it does not consider, for various reasons discussed shortly, that it is necessary to "volunteer" any rules to limit development. Despite this the applicant has amended the proposed plan change to include a rule limiting development to 1300 residential units and 6,000 square metres of commercial development dependant on the Northern Arterial only. It does not propose any limits in respect of the Council road works and refuses to assess the potential effects that would arise if the works did not proceed as planned.

50. There are several reasons given in the latest response for the applicants stance. The applicant considers it inconsistent for the Council to be concerned about these matters when the Council and other organisations advocate a growth strategy dependant on the provision of this infrastructure through PC1 to the RPS, whilst at the same time asserting that the Prestons development is not entitled to rely upon it. This, however, ignores the differences in the two processes. PC1 does not rezone land for urban development. It identifies areas that can be suitable for rezoning from a broad sub-regional urban growth perspective based on information currently available. Prior to the urban development of any of the identified Greenfield areas, they must first go through an additional process of a plan change to assess, in detail, the suitability of the area for an urban zoning. There could be many factors that could prevent or delay the rezoning of all or part of the area. If at the time of the plan change the infrastructure that the area relied on was not in place, then the development of that area may also be delayed through rules limiting development, despite being included in PC1. PC1 specifically provides for the possibility that some of the identified Greenfield areas may not proceed at the time anticipated and allows for the alternative allocation of that growth.
51. The applicants also suggest that there need not be concerns about the Council road works because the Council will adjust future LTCCPs to match the higher priority now afforded to the Northern Arterial by the Government. However, it is understood that all the government has done to date has been to recognise the road as being of national significance and there is no indication that its timeframe has been changed in any significant way. There is also no certainty that the Council will be able to bring its road works forward considering all its other commitments.
52. Finally, the applicant has also questioned whether the Council can ask for assessment of the effects if the Council road works did not proceed, apparently on the basis that the Council did not ask for that in the initial information it required. Although the Council clearly raised concerns in respect of all the road works the plan change relies on, the only modelling it specifically required initially was that for the scenario without the Northern Arterial. It was only later when it was realised that the draft LTCCP changed the timing for many of the Council road works, that further assessment was specifically sought.
53. There is no case law on whether the Act limits the scope of the subsequent further information the Council can seek to only the specific assessments the Council first sought. The Act provides that the Council "may require additional information relating to the request" and the term "request" in that clause is used in reference to the request for a plan change (i.e. the application). It might be considered that the Council could only ask for information on issues that arise from the applicant's response to the initial information the Council requested. However, the Council has received a legal opinion that the Act does not limit subsequent Council requests to the scope of the original Council request.
54. On the basis of that legal opinion the Council's request for an assessment of the implications of development exceeding the road network capacity to be provided by the LTCCP works is valid. The applicant's indication that it is refusing to provide the information required is grounds for rejecting the application. The alternative for the Council in respect of this issue is that the Council raise it in a submission on the plan change.
55. There are also problems with the proposed rule itself which proposes to limit development subject to the Northern Arterial. Particularly, in that it proposes to remove the limit on development once an outline development plan or resource consent is approved, rather than when the Northern Arterial is completed, or at least work has begun. The assessment does not recognise that it could be years between any RMA approval and the road network capacity being available. Having queried the applicant's consultants on this, they have responded that it is not considered an issue because the assessment without the Northern Arterial was very conservative. This may mean that the applicant considers that any delay between receiving RMA approval and construction is unlikely to result in the level of development significantly exceeding the capacity of the network. Leaving aside the issue of whether even 50 per cent development would be appropriate without the Northern Arterial, this approach means that the community would bear the risk of significant traffic effects if there is in fact a considerable delay between any RMA approval and the completion of the road. However, this is a matter of merits, as the applicant has "assessed" this potential effect as not being significant. The matter could be addressed in a submission by the Council.

56. In terms of the proposed rule, a further concern is that the limit on development, until the Northern Arterial receives RMA approval, only applies to subdivisions and no similar rule is included in the zone rules. The effect of this is that the limit would not apply to any developments not involving a subdivision, e.g. commercial development or multi-unit residential development. However, the applicant's consultants have recently indicated that the applicant is prepared to have a similar rule in the zone rules.
57. Another issue that has been raised by the Council's transportation engineer is that the Marshlands/Mairehau intersection will need upgrading to accommodate the Prestons development, but that there is no provision in the LTCCP for such upgrading. The engineer is concerned that the modelling does not accurately illustrate the likely effects of the Prestons development, particularly as the information from the applicant is that the intersection is already operating over capacity. The applicant has indicated that it does not consider any upgrading will be required. Again, this is a matter of merit that the Council could lodge a submission on.
58. Finally, the Council's transportation engineer is concerned about the safety along the proposed urban/rural interface road frontages of Mairehau Road and Lower Styx Road. The traffic speed limits are unlikely to be reduced to 50 kilometres per hour along these roads, potentially creating a traffic hazard with the residential properties fronting onto those roads. The applicant has indicated that the road environment will be modified into a more urban environment through the installation of a kerb, footpath and street lighting which will assist in reducing car speeds. Although it is agreed that this would assist in resolving the safety issues, there is no provision in the plan change requiring such works and they are not subdivision assessment matters in the existing City Plan. This is a matter that could be dealt with through a submission on the plan change.

Stormwater

59. The plan change request includes a Blue Network Diagram that indicates, amongst other things, a stormwater management system, including 14 stormwater retention basins. The plan change requires compliance with this diagram. The information accompanying the plan change includes an assessment of the stormwater system to determine whether a stormwater system is feasible. The plan change indicates that the retention basins in the Diagram will be dry most of the time (except in a one in 50 year storm event) and therefore can be used for recreational purposes.
60. The modelling is, however, based on four large retention basins, rather than the 14 basins in the diagram. This and a number of other matters have raised concerns for the Council's stormwater engineers regarding the proposed system. The Council engineers consider it likely that the area of land required for stormwater retention and treatment is likely to be bigger than indicated in the diagram, possibly twice that indicated (possibly 10-12 per cent of the plan change site), and that the basins are unlikely to be dry for most of the time, as the information provided by the applicant suggests a relatively high water table.
61. These concerns are issues of merit and are only relevant at this stage of the process if they could be said to be of such significance that the plan change is not in accord with sound resource management practice or would be inconsistent with Part 5 of the Act. The fact that the area of land required for stormwater management is likely to be greater than indicated is not necessarily a problem, provided there is no assumption that the Council accepts that the land indicated in the diagram will be sufficient for stormwater management. There is a risk that once the diagram is incorporated in the City Plan, it would be implied that the land area indicated was accepted by the Council as sufficient. This would be particularly problematic considering that approximately twice as much land may, in fact, be required. It may also lead to pressure on the Council to accept underground retention systems, rather than above ground naturalised systems as supported by the City Plan and the supporting material for the plan change. These issues could be addressed at the hearing of the plan change if the Council lodged a submission.

62. The greater area required for stormwater management is likely to result in a reduction in the number of households the plan change will provide for. However, this will not affect the issue of how consistent the change is with the density required to be achieved by PC1, as that density requirement is based on "net density" which excludes stormwater retention and treatment areas from the calculation.
63. More problematic is the fact that the basins are unlikely to be dry. This will significantly limit the recreational potential of the basins, generally limited to probably walking/cycling tracks along the top edge of the basins. The change includes a Green Network Layer Diagram identifying "Green Links/Linear Park" (the linear park), which includes all of the stormwater retention basins and the major waterways. As indicated earlier, the change includes higher density residential areas and these have been located, in part, on the basis of proximity to the linear park. This is consistent with the principle of ensuring higher density residential areas have access to higher levels of public open space, as contained in PC1 and the change itself. The open space potentially provides two benefits for higher density residents in the form of visual open space and recreational space that help compensate for the lack of private open space. If the basins are wet rather than dry, and therefore their recreational potential is considerably reduced, the location of the higher density areas proposed becomes questionable. This uncertainty about the appropriateness of the location of the higher density areas is increased in this case, where it appears that almost twice as much land as indicated in the plan change may be needed for stormwater management. This could result in most of the linear park being required for wet basins, as well as possibly other land. Further comment on this issue is contained below under the heading "Open Space".
64. A final stormwater matter is the potential operational costs of the proposed stormwater system. The applicant was asked to assess the potential operational costs comparing the proposed system of 14 basins in a linear design with an alternative of only two. A brief statement has been provided which indicates that there may be some difference in costs, but that the applicant is unable to provide an accurate cost. Initial calculations by the Council stormwater engineers conclude that the increased maintenance costs for 14 dry basins as compared to two, or even four basins, would be in the order of \$30-40,000 per year. Wet basins are estimated to cost 60-90 per cent more than dry basins, so the additional costs could exceed \$150,000 per year for basins of the same size. Considering the earlier comments that wet basins were likely, and that double the land area indicated in the plan change for basins may be required, the proposed design could result in considerable annual costs for the community. For this reason the stormwater engineers consider that the proposed stormwater design is inefficient compared to stormwater designs involving a few larger dry basins. On the basis that the ponds are, in fact, likely to be wet ponds, the plan change site is also not an efficient area for urban development from a stormwater perspective. Being a growth area that has not been identified in the City Plan or PC1, these additional costs will not have been taken into account in the LTCCP. In fact the development of this growth area at the same time as those that have been identified may well result in the operational budgets having to be spread more thinly over a larger number of areas.
65. As mentioned earlier, the City Plan contains policies that have consistent themes of the efficient provision of infrastructure and consideration of growth and servicing costs. This raises questions about whether the development of this site is consistent with Part 5 of the Act or is in accordance with sound resource management practice. To the extent that this is a merits issue, it is appropriate to be cautious about recommending rejecting the plan change on those grounds alone, particularly as there is little direct case law to provide guidance. However, this, on top of the fact that this plan change is likely to impose a cost on the community that has not been provided for in the LTCCP, and that the Council has not agreed to, suggests that the plan change is not in accordance with sound resource management practice. There may be difficulties in the Council lodging a submission on this issue, both because of the uncertainty as to what the final stormwater management system will be, and because of uncertainty regarding ongoing costs to the community.

Open Space

66. The plan change indicates "Green Links/Linear Park" (linear park) as part of the design of the development. It predominantly runs north-south, linking either side of the existing Marshlands Domain, with a number of other less significant linear parks running east-west. The north-south linear park includes a waterway and the main stormwater management areas as well as other open space. The applicant has clarified that the Open Space 1 zone provisions of the Plan should apply to linear park. These provisions allow very little built development.
67. A significant issue raised by the Greenspace Team, and raised with the applicant a number of times, is that the linear park proposed does not accord with the reserve priorities the Council would have for this area if the plan change was implemented. The order of those priorities are as follows:
 - (1) Extending Marshlands Domain by 2-3 hectares (making a total of 4-5 ha.)
 - (2) Including neighbourhood parks of approximately 4,000 square metres, spaced at no more than 800 metres apart i.e. 2-4 additional parks in the Prestons site
 - (3) A central commercial area park of approximately 1 hectare
 - (4) Reduced green linkages.
68. The Greenspace Team indicate that parks in (1) and (2) at least, should not include stormwater management areas, but could adjoin such areas.
69. The Greenspace Team has also indicated that preliminary calculations suggest that the linear park shown exceeds the likely amount that could be achieved through reserve contributions, even excluding the indicated areas for stormwater management. That would leave the Council to fund, by other means, the reserves indicated in (1) to (3) above.
70. The issue with the plan change is that it indicates a different provision of open space from that sought by the Council, but also contains rules that require the development of the site to be in accordance with the open space indicated. If a subdivision application is made showing reserves in the areas indicated in the plan change, the Council could not refuse it, as it would be a controlled activity which only permits the Council to impose conditions. Therefore the effect of the change is to impose a provision of reserves that the Council does not agree with.
71. This is a fundamental issue that has arisen, and is arising, in other urban growth proposals. The provision of land for reserves is a matter that is governed by the Development Contribution Policy of the Council under the Local Government Act. This gives the Council the sole discretion to determine what land it takes as reserve. The Council can agree that land should become reserve and agree that this be included in the City Plan. However, it would be contrary to sound resource management practice to over-ride the Council's discretion and to create an expectation of, and implicit obligation for, a particular reserve provision that the Council does not agree to. The objectives and policies of the City Plan itself make it clear that the reserves are to be resolved in accordance with the Development Contributions Policy and that the selection of reserve land is to be a decision made by the Council .
72. The City Plan also includes under those policies an indication of what the Council will seek to provide, including neighbourhood parks at least 2-3,000 square metres that are accessible to the user population and land for district sports fields of at least 4 hectares, as well as linkages between areas of public open space. The reserve provision sought by the Greenspace Team is more consistent with this than those indicated in the plan change.
73. There are also a number of factors that create uncertainty about the outcomes of the plan change. Even if the Council did agree to take all the reserve contribution it could as land in the linear park, there would still be additional parts of the linear park not owned by the Council. The plan change provisions would still require them to be largely open space. But this could be privately owned open space, as there is nothing in the change that would require them to be accessible to the public. The establishment of green links indicated in the change, as public links, is therefore in doubt.

74. It is also not possible to determine which particular parts of the linear park would, in fact, be available to the public. This is an important consideration with respect to the location of the higher density residential areas proposed. These areas should be located close to open space, not just to provide some visual relief to compensate for the higher built density, but also to provide recreational opportunities to compensate for the reduced opportunities provided on their own properties. PC1 requires that the higher density areas be provided with a higher levels of **public** open space to meet their recreational needs. The uncertainty about the location of public open space means that it is not possible to determine whether the higher density residential areas proposed are appropriately located.
75. The Council could potentially seek to deal with these issues by making a submission on the plan change itself. It may be difficult to prepare a submission that is sufficiently specific on the amended reserve provisions sought without access to the applicants detailed knowledge and site. It is also likely to require major changes to other aspects of the development layout, such as the relocation of higher density residential areas. Leaving the matter to be resolved at that stage is also likely to limit options, as the choice for the provision of reserves would be limited to what is contained in the submission or that contained in the plan change. A better distribution of reserves and other land use activities than either of those options may exist that is more acceptable to both the Council and the applicant.
76. Legal advice received by the Council is that the concerns expressed above about the conflict with the principle of the Councils discretion to select reserve land, the view that the proposed provisions would not achieve the City Plan policies, and the uncertainty that would arise from notifying the change in its current form, are grounds on which it could be concluded that the plan change should be rejected. These issues raise concerns that the plan change is not in accord with sound resource management practice and, to some extent, is contrary to Part 5 of the Act in terms of the proposed rules not implementing parts of the policies of the City Plan.
77. It is also considered to be contrary to sound resource management practice to compel a local authority to accept reserves which are unwanted by it and/or the Council has other priorities for the acquisition and development of reserves.
78. For the all the reasons discussed above, it is the conclusion of staff that this aspect of the plan change is not in accordance with sound resource management practice. It would also appear to be inconsistent with Part 5 of the Act. As noted earlier, there are likely to be considerable difficulties in attempting to deal with this issue through a submission on the plan change.

Rural/Urban Boundary

79. The Council's first Request for Information (RFI) sought an assessment of how well the provisions of the plan change achieve Policy 6.3.10 of the City Plan, which requires a well defined barrier to further urban growth. The applicant's response was to modify the plan change to include rules limiting access to neighbouring rural land from the plan change site, require slightly lower density sites (800-1,000m²) on some rural boundaries, and require some form of landscaping on most rural boundaries. It also noted that the site is bordered in a number of places by roads, golf courses, and more productive and versatile soils (between the western boundary) and Marshlands Road. This is simply a statement of the measures the plan change is proposed to contain, not an assessment of how effective those measures will be. For example, there is no assessment of why a golf course should act as a barrier to urban growth, particularly as golf courses have been known to have sold land, in some cases the whole course, for residential development. Nor is there an assessment of how banning access between the plan change site and adjoining rural land will hinder the urban development of those adjoining sites, particularly as they have other access options to the surrounding road network. Although the response includes statements that these measures will be effective, no assessment is included to indicate the basis for these conclusions. Instead the latest response simply refers to parts of the applicant's landscape report which comment on landscape effects of the measures proposed, but do not comment on the effectiveness of those measures as a barrier to urban growth. The information requested by the Council on this issue has therefore not been provided. This is an issue of some significance in this case, as the nature of the plan change site, in terms of it's location and shape, means that there are aspects of it that would tend to encourage further urban growth in the locality.

80. As indicated above, the application now includes landscape requirements on some parts of the proposed urban/rural boundary. This was particularly in response to the Council request for an assessment on how well the plan change achieves Policy 6.3.12, which requires a transition of low density housing and an improved landscape quality on the urban/rural boundary. There are issues relating to whether what is now proposed is entirely consistent with this policy, and the assessments are not entirely clear in terms of the reasoning behind the different landscape provisions that apply to different parts of the urban/rural boundary. The latter is aggravated by the lack of any reasons for rules and assessment matters for the landscape provisions. However, these are not considered to be matters that would necessitate that the plan change be rejected, and not notified, and could potentially be dealt with through submissions on the change.
81. A final matter is that the applicant's consultants have acknowledged in a brief statement that there is a risk of damage/injury resulting from golf balls from the adjoining golf courses entering the residential areas. There is no detailed assessment of that risk and it has not been included in the assessment of effects to date.

Suburban Centre/ Retailing

82. There are two matters of some significance in respect of the suburban centre and retailing proposed. The plan change application proposes something in excess of 6 hectares. of land as Business 2, with the majority of it in a block extending to Marshlands Road. A second relatively significant commercial area is to be located generally around the Marshlands Domain which the plan change identifies as "urban village". The two commercial areas are separated by a distance of approximately 250 metres, which will be occupied predominantly by medium and low-medium density housing. The two commercial areas span a distance of approximately 880 metres.
83. The applicant was requested to provide an assessment of how such a commercial centre layout would affect such matters as accessibility, functionality and social cohesion, particularly compared to the option of a single centre. This issue was raised, in part, because Policy 6.2.2 of the City Plan seeks compact suburban centres. Although the initial response from the applicant was that a report was being prepared by the applicant's urban designers, the Council has only received a brief statement from the applicant's urban designers that they do not believe that the Masterplan creates two centres, as the residential area between them serves as a connector rather than a separator. It goes on to state that the two areas are linked by roads and pedestrian and cycle routes, and that the commercial areas will be accessible to the residents in the higher density areas and the retirement village to the east. This is little more than a conclusion/opinion, without an assessment that explains how the intervening land will act as a connector or how simply providing access routes will, in any way, increase the connectivity between the two separated areas, or accessibility as a whole. In particular, it does not provide the assessment requested, which sought a comparison between the effects of the two commercial areas proposed, even if the residential area does act as a connector of sorts, as compared to a single commercial area.
84. In terms of the connectivity issue alone, the urban design advice I have received is that whether people are likely to walk between the two areas is highly dependant on the quality of the connecting links. There are no provisions included in the plan change to ensure particularly high quality outcomes are achieved.
85. The second issue of significance was the potential retail distribution effects on other district centres of the commercial development permitted in the plan change. The assessment initially provided was of concern because it was based on a retail floor area of 8,000 square metres (plus the existing service station and produce store). However, the land area, particularly the main block that fronts Marshlands Road, was of a similar size to that which could, and does, accommodate much larger retail developments. The plan change has been amended a number of times, and the current version now limits retailing to a total floor area of 12,000 square metres. Although the only amended assessment of effects received assesses a slightly different option (10,000 square metres plus the existing service station and produce store), staff have now been advised that the difference is unlikely to result in significant effects on other district centres. As such the amended assessment provided is accepted as adequate in respect of this issue.

Other issues

86. The plan change indicates a proposed bus route through the site, but no assessment was provided on the realistic possibility of bus services being extended into the plan change site. The Council asked for such an assessment and the response was that there is ongoing consultation with ECan on this issue, but the response also appears to indicate that ECan considers it unlikely that routes would be extended to the application site in the foreseeable future. To that extent it is accepted that an assessment has been provided.
87. Related to the previous issue is the accessibility of community facilities. The applicant was asked to assess this and the implications of this development on the efficient provision of community facilities. The applicant's responses do acknowledge that the size of the development will be such that it will exceed the capacity of the planned library network and would not be sufficient, in itself, to justify a new one for the site. It also identifies that it could not be efficiently serviced for a neighbourhood community building. In terms of how accessible community facilities will be for the plan change site, which will largely be facilities outside the plan change site on the basis of the above, the response has simply been that the site is extremely well connected by roading, cycling and pedestrian facilities and that consultation on public transport is ongoing. Leaving aside the merits of that conclusion, that statement is hardly an assessment. However, considering the information that the application now provides on the provision of community facilities and the likely extension of bus routes, what would be required to complete an assessment does not seem significant enough to be worth pursuing.
88. The original urban design assessment indicated that a number of outcomes were to be achieved through the plan change, including:
- (i) A limit on block sizes (the distance between streets)
 - (ii) Ensuring lots will face the street (avoiding long narrow sections that extend away from the street)
 - (iii) Achieving mixed building and plot typology types, including terrace housing and the development of a "high street" on Prestons Road and the achievement of mixed use for in the urban village (surrounding the domain), and
 - (iv) Achieving a high quality built environment.
89. The plan change rules do not include provisions to address the first two issues and the applicant has been asked to clarify what was being proposed. The applicant's final response is that it is not intending to address these issues in the plan change. The most recent urban design advice received is that the nature of the plan change, particularly the long narrow shape of the site and the required roading pattern make it unlikely that these will be significant issues for this site.
90. In respect of paragraph 88(iii), the applicant has also indicated that these are not intended to be addressed in the plan change. In respect of paragraph 88(iv) the plan change did at one stage include a provision for the design and appearance of buildings to be a controlled activity in the higher density residential areas (i.e. similar to Living 3), but this has been removed and the applicant has advised it is not intended to control this issue. The control of the design and appearance of higher density development has become relatively common, with the New Brighton plan change incorporating requirements for resource consents, and the Environment Court decisions on Masham and Belfast including controls on dwelling orientation to the street and the extent of frontages used for garaging. These are matters that could be dealt with through a submission on the plan change.
91. The plan change includes provisions that permit residential density areas to be transferred, subject to certain requirements. However, there are inconsistencies between the Living G zone rules and the corresponding subdivision rules relating to transfers. The zone rules include additional important location requirements, but these have been omitted in the subdivision rules. The subdivision rules indicate that such transfers are discretionary activities, but it is not clear whether the zone rules also require discretionary activity consent. Staff consider that the discrepancies may not be intentional, and that both rules are intended to require discretionary activity consent and that the location criteria were intended to apply to both sets of rules. Staff have recently been advised by the applicant's consultant that this assumption is correct.

92. The plan change includes a number of rule variations to the three different residential density areas that differ from the equivalent provisions that apply to residential development in comparable Living 1 to 3 zones. Generally they lead to less protection for adjoining neighbours or will have greater effects on the wider community. For example, the original change included no controls on retailing in the residential areas and the more liberal recession plane requirements of the Living 4 zone applied to the medium density zone (similar to Living 3). The applicant was asked to assess why these increased adverse effects are necessary. The applicant responded that it did not consider it necessary to address these issues because similar provisions had been included in the Masham rezoning. The applicant has, however, amended some of the rules identified, including the lack of restriction on retailing, to improve consistency. However, it has also made recent amendments to the rules which have increased site coverage and height, and reduced outdoor living space. These matters could be addressed through a Council submission.

Conclusions

93. The plan change has insufficient detail to enable it to be considered as a resource consent. There are a number of matters of concern with the plan change and there is no particular public benefit proposed, so it would not be appropriate for the Council to adopt the plan change.
94. There are a number of significant issues where the applicant has declined to provide the information sought by the Council. There are a number of significant issues, particularly relating to reserves and infrastructure, that lead to the conclusion that the plan change is not in accord with sound resource management practice. These are reasons that are grounds for refusing the plan change.
95. The alternative is for the Council to seek to deal with these issues through lodging a large number of submissions. To be able to submit on some of these issues would require significant assessments to be undertaken by the Council. For example, the transport issue relating to the limits that may need to be placed on the development until the LTCCP works are complete, will require considerable traffic modelling. Considering the Act places the obligation to provide an assessment of all the relevant factors on the applicant, these are not tasks that the Council should have to undertake. As also indicated earlier, some of the issues are likely to be difficult for the Council to deal with in a submission.

THE PREFERRED OPTION

96. The preferred option is **Option 3 - Reject the Plan Change** on the grounds that the applicant has declined to provide information requested and that the change is not in accordance with sound resource management practice and is inconsistent with Part 5 of the Act.