

3. REQUEST FOR CHANGE TO CITY PLAN – MADDISON PARK



General Manager responsible:	General Manager Strategy and Planning, DDI: 941 8281
Officer responsible:	Team Leader, District Planning
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PURPOSE OF REPORT

1. This report describes a privately requested plan change to rezone Lot 2 DP 315110, 185 Kirk Road, Templeton, from *Special Purpose (Hospital) (SPH)* to a new *Business 4M (B4M) zone*, and recommends the process for dealing with the request in terms of the provisions of the Resource Management Act 1991 (RMA).

EXECUTIVE SUMMARY

2. The change request seeks to rezone Lot 2 DP 315110, 185 Kirk Road, Templeton (**Attachment 1**), from *Special Purpose (Hospital) (SPH)* to a new *Business 4M (B4M) zone*. The stated purpose of the zone is to provide for light industry, warehousing, offices, storage activities educational and community activities, with some retail, particularly in the service area.
3. The purpose of this report is not to consider the change request on its merits. Rather, it is to recommend which of several options under the RMA is to be used in processing the change request. The consideration of the merits of the change request would occur after submissions have closed, if the decision on this report is to select one of the process options that lead to public notification.
4. The change request was lodged on 30 March 2007 and has been on hold during an extended Request for Information (RFI) process, pursuant to Schedule 1 of the RMA. An amended application was lodged on 3 April 2009 which is considered to respond to the RFI. The application is considered to contain sufficient information for the Council to consider whether or not to notify the change. A number of key issues have been identified:
 - Transportation
 - Water supply
 - Sensitivity and reverse sensitivity issues
 - Energy efficiency
 - Urban consolidation.
5. The options for processing the change request available to the Council are to:
 - Accept the change request as a private plan change and publicly notify it for submissions and a hearing at the cost of the applicant.
 - Adopt the change as the Council's own change and accept the responsibility and costs of processing it.
 - Treat it as a resource consent application.
 - To reject the change request due to it falling within one of the limited grounds set out in the RMA.
6. With regard to the above options, staff consider that the appropriate action is to accept the change request and publicly notify it.

CONSULTATION

7. Advice has been obtained from various Council units, including Strategy and Planning (central city, heritage, urban design, landscape), Inspections and Enforcement (environmental health), and Asset and Network Planning (transport, stormwater, water, wastewater, botany, open space, and greenspace). Council staff have also engaged external experts in relation to transport and cultural matters. This consultation is related to the RFI process (pursuant to Schedule 1 to the RMA).

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8. The matter has been presented to the Riccarton/Wigram Community Board for their consideration.

FINANCIAL IMPLICATIONS

9. The financial implications will differ depending on how the Council chooses to handle this change request. Should the Council accept and notify the change at the expense of the applicant, there will be minimal direct costs to the Council as the Council's costs are recoverable.
10. Should the Council adopt the change as its own then the Council will need to absorb all the costs, which may exceed \$50,000.
11. Should the Council decide that it be treated as a resource consent, the applicant may challenge this decision in the Environment Court. Costs could be in the vicinity of \$50,000. Costs of processing any consent applications are recoverable.
12. Should it reject the change request the applicant may challenge this decision in the Environment Court. Costs could be in the vicinity of \$50,000.

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

13. Should this request be approved there may be Council expenditure required for future infrastructure. There is currently no specific provision within the LTCCP for any operational, maintenance, or capital costs associated with the development of infrastructure or potential reserve land in this instance.

LEGAL CONSIDERATIONS

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

14. The process set out in the RMA must be followed. It includes initial consideration of what process to follow, then notification, submissions, reporting, hearings, decisions and possible appeals.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

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

15. Processing private plan change requests is a statutory Council process, and as such is consistent with the LTCCP and Activity Management Plans.
16. The planning aspects of this proposal are part of the District Planning levels of service within the LTCCP.

ALIGNMENT WITH STRATEGIES

17. The site is outside the Metropolitan Urban Limits in Proposed Change 1 (PC1) to the Regional Policy Statement. Until PC1 is operative the Council is not obliged to give effect to it, but must take it into account. This is a matter which goes to the merits of the current application, and will need to be considered at the hearing into the application. It is not a matter to consider at this stage.

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18. The only relevance would be if this inconsistency amounted to being contrary to sound resource management practice, in which case the plan change could be rejected at this stage. PC1 is at a relatively early stage, is controversial, and this applicant has submitted on it, seeking to have its site included within the urban limit. It is the view of staff that in these circumstances the application should not be considered contrary to sound resource management practice.
19. It is also noted that Clause 25 deals separately with this situation. One of the grounds for rejection is that the application would make the plan inconsistent with Part 5 of the RMA. Part 5 includes the requirement to give effect to an operative Regional Policy Statement, but to only take into account a proposed statement. As this situation is specifically provided for, it would be inappropriate to invoke the more general resource management practice ground.

STAFF RECOMMENDATION

That the Regulatory and Planning Committee **recommend** to the Council that it:

- (a) Accept the change request and proceed to publicly notify the request pursuant to Schedule 1 Clause 25(2)(b) of the Resource Management Act 1991.
- (b) Notes that when accepting a private plan change, the costs of processing are borne in full by the applicant.

BACKGROUND AND DISCUSSION

The Change Request

20. The change seeks to rezone Lot 2 DP 315110 (known as 185 Kirk Road, Templeton) from *Special Purpose (Hospital) (SPH)* to a new *Business 4M (B4M)* zone.

RMA Timeframes

21. The change request was received on 30 March 2007. Further information was requested on 8 June 2007 (with an addendum for transport issues on 17 July 2007) and on 4 December 2007. Additional information was received on 23 October 2007 and 25 February 2008. An extension of time was approved on 12 March 2008 but the change request was placed on hold following a meeting between the Council and the applicant's consultant, held on 17 March 2008. Additional information was received on 17 November 2008 and on 3 April 2009. Under the RMA, the Council is required to make a decision whether to accept the change request or otherwise within 30 working days. The decision would therefore be required prior to 19 May 2009. An extension of time was required pursuant to Section 37 of the RMA, to provide the Council the opportunity to properly assess the new information, and to fit with the schedule of Regulatory and Planning Committee meetings. The extension allowed a further 30 working days (to 1 July 2009). To fit with the Regulatory and Planning Committee meeting schedule, a further extension pursuant to Section 37(2)(b) of the RMA was agreed to by the applicant. A maximum of 60 additional days is allowed under S37(2)(b).

Description of the site

22. The site is legally described as Lot 2 DP 315110, and is located at 185 Kirk Road, Templeton. Templeton Hospital previously occupied this site and a large number of hospital buildings remain, as well as a sports field, pool, hall, and infrastructure (including sewer and water). The site is now partly occupied by the Westmount School and a minor gravel stockpiling operation. Access to the site is from Kirk Road, although the site also has road frontage to Maddisons Road. The bulk of the site is grassed with established trees, including notable trees listed in the City Plan. The site is 66.4 hectares.
23. A number of notable trees are located on the site and although the proposal does not seek removal of such, it is possible that some may be removed in the future to accommodate roads, services, new commercial buildings, or car parks. Land-use consent would be required at that time. The site contains no registered historic places.
24. The subject site is zoned Special Purpose (Hospital) zone. The zone is intended to provide specifically for healthcare facilities. Where a use is proposed that is not a healthcare use, that use becomes subject to standards for the Rural 2 zone. The site has a land-use consent issued for an educational establishment.
25. Adjoining uses include the Brackenridge Estate (a residential facility for severely disabled people), an educational establishment (Waitaha Learning Centre), place of worship (Templeton Chapel of the Holy Trinity of the Family), and the Nova Trust (drug and alcohol rehabilitation centre). The Christchurch Men's and Christchurch Women's Prisons, Youth Detention Centre, and Ruapuna Raceway are also located in the area. Other surrounding land is rural land (some of which is owned by the Corrections Department). A number of dwellings are located in the area. Templeton township and State Highway 1 are approximately one kilometre south of the site. State Highway 73 is approximately two kilometres north of the site.

Description of the Change request

26. The requested plan change proposes to rezone the site to Business 4M, which is a new Business zone proposed by the applicant intended to provide for business uses in a 'park like' environment. The stated purpose of the zone is to provide for light industry, warehousing, offices, storage activities educational and community activities, with some retail, particularly in the service area. The proposed rules limit retail activities by floor area/percentage of floor area, and in the service area, to services required to service the B4M zone. The change request proposes to amend two planning maps and several rules, a policy and new zone description. The bulk of the proposed rules and standards are equivalent to those for other business 4 zones.
27. The proposed Outline Development Plan shows a primary road network within the site with access from Maddisons Road, and two accesses from Kirk Road. Significant open space is provided, and includes within it an existing sports field and proposed stormwater control functions.

Area	Minimum Lot Size	Maximum Building Density	Minimum Setbacks	Landscaping Requirement
LDBA	1000m ²	25%	Front – 15m Other – 5m	20%
MDBA	1000m ²	40%	Front – 15m Other – 5m	20%
Service Area	500m ²	No requirement	Front – 15m Other – 5m	No requirement

28. The setback provisions do contain some exceptions, for example on a corner site the setback is reduced to one road boundary, and in the service area the minimum is 5 metres. The setback to adjoining properties is 5 metres.

Discussion

29. Although the purpose of this report is not to discuss the merits of the change request, it is necessary to assess the change request in order to determine whether it is able to be notified. There are only very narrow grounds contained in section 25 of Schedule 1 to the RMA 1991 which would allow the Council to reject the change request. The Council may also reject the change request if the request contains insufficient information (section 23). The various options are discussed later in the report.
30. The change request consists largely of the section 32 assessment and attached expert evidence. The rest of the change request is made up of an introductory section and the proposed amendments to the City Plan.

Section 32 Assessment

31. The Section 32 assessment is complete in terms of RMA requirements and includes responses to the Council's RFI where appropriate (**Attachment 2**).
32. The application acknowledges that the site is not within the proposed urban limits in Proposed Change 1 to the RPS. Proposed Change 1 also includes a list of key activity and commercial centres. The list does not include this site. It could be argued that the proposal is not consistent with Proposed Change 1 or the Greater Christchurch Urban Development Strategy, largely due to the site's location. The location of the site also creates inconsistencies with the objectives of the Regional Land Transport Strategy (RLTS).
33. Relevant existing City Plan provisions are included in **Attachment 3** for the Council's information.

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Reports Appended to Section 32 Assessment

34. The Section 32 assessment included in the change request includes nine separate reports. The table below summarises whether they address the RFIs and includes relevant Council comments:

REPORT SUBJECT	RFI MET	COMMENT
Transport	Yes	Abley Transportation Engineers Ltd (Ableys) have been engaged to provide expert analysis of the change request and possible affects of the proposal as they relate to transport matters. The Request for Further Information (RFI) process sought significant additional information in relation to transport. Abley advises that the application documents have not changed greatly since the RFI, other than the inclusion of a 'trigger rule'. Abley considers the trigger rule should refer to actual traffic movements (e.g. intersection delay) rather than Gross Floor Area (GFA). A trigger based on GFA assumes that uses which may establish at the site would generate an average traffic count per square metre. Discussions with Ableys confirm that, notwithstanding the above issues, the GFA figure included in the trigger rule may be a reasonable estimate of when road network upgrades would be required. Ableys advise of continuing fundamental disagreement with the application.
Stormwater	Yes	Minor clarifications were sought in the RFI process. Council's engineering staff have advised of no significant issues.
Groundwater	Yes	Minor clarifications were sought in the RFI process. Council engineering staff advise of no significant issues.
Social Impact	Yes	The assessment identified a number of potential adverse effects, specifically with regard to noise, traffic, and landscape issues. The assessment concludes that the proposed B4M zoning and rules are appropriate.
Landscape	Yes	Two landscape reports have been prepared. The second report (by Eliot Sinclair) was submitted (on 3 April 2009 as part of the amended application) in response to the RFI for a visual representation of likely built form. The applicant has addressed the questions contained in the RFI. Urban design and landscape staff are not fully satisfied with the application.
Noise Impact	Yes	The report appears to contain adequate information. The proposed plan change seeks to rely on existing noise provisions and categories within the City Plan to protect adjoining sensitive land uses. It is critical that the adjoining sensitive land-uses are protected.
Servicing	Yes	A services assessment was prepared and amended following the RFI process. Council engineering staff advise that the proposal is adequate in relation to wastewater and stormwater. Issues remain in relation to water supply.
Soil Contamination	Yes	A preliminary contamination assessment has been undertaken and finds no significant issues. Council Environmental Health officers are satisfied with the report.
Cultural Impact	Yes	A cultural impact assessment was prepared. An Accidental Discovery Protocol will be part of the site management during construction. Mahaanui Kurataiao Ltd were engaged to assess the change request. They advise that the cultural impact assessment included in the change request is adequate, but note several requirements to be met during any subsequent consenting process.

General Comment

35. There are a number of significant issues raised in the table above, including:

- Transport issues, both with the report submitted and with the application as a whole
- Water supply issues
- Energy efficiency
- Urban consolidation
- Sensitivity and reverse sensitivity issues.

These issues may be resolved via the hearings process, if the decision on this report is to publicly notify the change request.

36. The purpose of this report is to determine how the change request should be processed. The presumption in the RMA is in favour of testing a change request through the hearing process, rather than rejecting the request. Options for processing the request are further detailed below.

Processing of Private Plan Changes

37. The processing of private plan changes is set out in Sections 21 - 29 of the 1st Schedule to the RMA. In summary this provides:

- Section 21: Any person may make an request for a change to an operative district plan. The City Plan is operative.
- Section 22: Request to be in writing, with reasons, Assessment of Environmental Effects and assessment under section 32 of the RMA.
- Section 23: Further information may be required. The Council has done this in this case.
- Section 24: Council may modify the proposal but only with the consent of the applicant.
- Section 25: Council must consider the request, and make a decision to either:
 - "accept" it and proceed to public notification, or
 - "adopt" it as if it were its own proposal, and publicly notify it, or
 - treat it as if it were a resource consent, or
 - "reject" it if it falls within one of the limited grounds specified.
- Section 26: Where the Council accepts the change it must publicly notify it within 4 months.
- Section 27: The applicant may appeal the Council decision made under clause 25.
- Section 28: Applications may be withdrawn.
- Section 29: Unless rejected, the application is put through the standard process of public notification, submission, hearing, decision, and appeal (if any).

OPTIONS

38. The Council's options are:

- (a) Reject the request pursuant to either section 23 or 25 of Schedule 1.
- (b) Accept the request, proceed to publicly notify, and decide that the costs of processing the private plan change are borne in full by the applicant.
- (c) Adopt the change as its own and assume the responsibility for putting it through the process outlined in the RMA including all costs.
- (d) Treat the request as a resource consent application.

Rejecting the Change Request

39. There are very narrow grounds in the Act for rejecting a change request. These are discussed below. Schedule 1 Section 25(4) is as follows:

- (4) *The local authority may reject the request in whole or in part, but only on the grounds that—*
- (a) *The request or part of the request is frivolous or vexatious; or*
 - (b) *The substance of the request or part of the request has been considered and given effect to or rejected by the local authority or Environment Court within the last 2 years; or*
 - (c) *The request or part of the request is not in accordance with sound resource management practice; or*
 - (d) *The request or part of the request would make the policy statement or plan inconsistent with Part 5; or*
 - (e) *In the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.*

40. The change request is not frivolous or vexatious (a), the change request has not been considered within the last two years (b), and the relevant part of the Plan has been operative for more than two years (e).

41. Subsection (c) provides that the Council could reject a change request if the request or part thereof is not in accordance with sound resource management. In *Foodstuffs (Otago Southland) Properties v Dunedin City Council*, Judge Sheppard considered that the clear statutory intent was that in the normal course, private persons are entitled to apply for plan changes and to have their applications determined on their merits. There do not appear to be adequate grounds to reject the change request under subsection (c).

42. Subsection (d) provides that the change request must not be inconsistent with Part 5 (Standards, Policy Statements and Plans) of the RMA. Part 5 references sections 31 (functions of territorial authorities), 32 (consideration of alternatives, costs and benefits), 72 (purpose of district plans), 73 (preparation and change of district plans), 74 (matters to be considered by territorial authorities), and several others. This requires an overall judgement and the presumption again is that the change request should be tested through the submissions and hearing processes.

43. In this instance, it is considered that no grounds exist to reject the change request pursuant to Schedule 1 Section 25(4).

44. Schedule 1 Section 23(6) allows the Council to reject a change request where the applicant declines to provide the further or additional information, and it considers that it has insufficient information to enable it to consider or approve the change request. The applicant has the right of appeal against such a decision pursuant to Section 27(1A)(b) of Schedule 1 of the RMA. Section 23(6) is as follows:

- (6) *To avoid doubt, if the person who made the request declines under subclause (5) to provide the further or additional information, the local authority may at any time reject the request or decide not to approve the plan change requested, if it considers that it has insufficient information to enable it to consider or approve the request.*

45. The applicant has not declined to provide information. It is considered that no grounds exist to reject the change request pursuant to Schedule 1 Section 23(6).

Accepting or Adopting the Change Request

46. There is a presumption that where a change request includes sufficient and adequate information, that it be either accepted or adopted.

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47. With respect to the options of “accepting” and “adopting” the change request, there is a significant difference between the two. If the request is accepted, the plan change remains a private change and the entire cost of the process can be charged to the applicant. If it adopts the change request, the Council would be effectively promoting the request as if it had decided to propose the change itself, and the Council would be unable to charge the applicant for the costs incurred from this point.
48. The subject of the plan change is not a matter that the Council has identified as a project it wishes to pursue for itself. There is no apparent reason for the Council to adopt this plan change as its own.
49. Advice has been obtained from other Council units and external consultants where necessary, to assess the suitability of the change request documents. Two requests for further information were made by the Council. It is considered that the information requested has essentially been provided.
50. The Council is reminded that the required decision is not to be based on the merit of the change request.

Treating the Change Request as a Resource Consent

51. In terms of the option of dealing with the change request as a resource consent, it would be treated as a non-complying activity and, in our opinion, unlikely to meet the requirements for approval. It is considered that treating the request as a resource consent application would not promote integrated management of resources and is not appropriate in this instance.

Summary

52. In terms of matters to be considered under the RMA, we summarise as follows:
 - (a) There are not sufficient grounds to reject the change request.
 - (b) The change request would not be better dealt with as a resource consent.
 - (c) There is no known reason for the Council to adopt the change request as its own.
 - (d) The change request now includes sufficient information that it could be notified.
53. The Council has open to it the options outlined at paragraph 38, and it may decide to adopt any of these options. Therefore, the appropriate action is to accept the change request.

PREFERRED OPTION

54. The preferred option is **(b)**.