

## 8. PROPOSED PRIVATE PLAN CHANGE 62 WIGRAM (PPC 62)

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### PURPOSE OF REPORT

1. This report discusses Proposed Private Plan Change 62 (PPC 62) Wigram lodged by Ngai Tahu Property Limited (NPL). The report seeks a decision, under Clause 25 of the First Schedule of the Resource Management Act 1991 (RMA), by Council as to whether it will accept, adopt, reject or treat as a resource consent application the private plan change application. This report also seeks that the 25 February resolution of Council in regard to Private Plan Change 24 (PPC 24) be revoked.

### EXECUTIVE SUMMARY

2. PPC 62 seeks the rezoning of Special Purpose (Wigram) Zone (approximately 153ha) to Living G (Wigram) Zone (120.7ha), Business 4 Zone (24.9ha), Conservation 3 Zone (8.11 ha) and Business 5 Zone (0.4 ha as part of a split zone boundary adjustment at 45, 57, and 63 Pilkington Way). A copy of PPC 62 is attached as **Attachment 1**. The area of PPC 62 is shown on **Attachment 3**.
3. PPC 62 is the same in content as PPC 24 was, with the exception of the urban design restricted discretionary activity rules and assessment criteria being deleted, and the correction of some minor drafting errors by the applicant.
4. PPC 62 is a new plan change.
5. At its meeting on the 4 February 2010 the Regulatory and Planning Committee resolved to recommend to the Council that PPC 24 be accepted for public notification. Subsequently, and pursuant to Clause 28(1) of the First Schedule of the RMA, NPL formally advised Council on 8 March 2010 of its withdrawal of PPC 24 and subsequent lodgement of a new private plan change - PPC 62 (see **Attachment 4** for a copy of the NPL letter). Clause 28(1) of the RMA provides that the applicant of a private plan change can withdraw the plan change any time before a decision on submissions on that private plan change has been publicly notified. The revocation of PPC 24 is therefore necessary in order to avoid the situation of two plan changes over the same land area.
6. The Officers report for PPC 24 recommended that the Council did not 'adopt' the plan change for notification – just accept it for notification. This recommendation was made because there were a number of differences between officers and NPL on the form and content of the rules. Two discrete but significant differences between Staff and NPL remained:
  - (i) Staff recommended that a restricted discretionary activity rule for urban design remain in the plan change; and
  - (ii) Staff recommended that 2000m<sup>2</sup> neighbourhood parks be deleted from the open space network layer diagram, supporting the outline development plan.
7. During negotiations with officers over the contents of PPC 24, prior to the 4 February 2010 resolution, NPL had expressed concern about the form and content of the rules i.e. NPL were not fully committed to these rules. The rules were, however, left in the PPC 24 on the basis that if the Council were to 'adopt' the plan change as its own then NPL would make a submission against this particular rule. These urban design rules have now been deleted in PPC 62 given that the Council decided to accept PPC 24 for public notification only.
8. PPC 24 also contained an open space network layer diagram that included 2000m<sup>2</sup> neighbourhood parks. As discussed in the PPC 24 report that was previously before the Regulatory and Planning Committee these parks cannot currently be provided for under the Long Term Council Community Plan (LTCCP) because the developer contributions (DCs) for reserves from the Household Unit Equivalent (HUE) yield will not cover the purchase of them.

Accordingly officers recommended that the PPC 24 be accepted for public notification and not adopted. PPC 62 retains the 2000m<sup>2</sup> neighbourhood parks on the open space layer diagram and this remains an issue which militates against a recommendation to adopt PPC 62 Wigram.

9. The options for the Committee are to recommend to the Council that the requested PPC 62 Wigram be:
  - (a) Accepted , in whole or in part, and that the Council proceed to notify the request, or part of the request; or
  - (b) Adopted in whole or part, as if it were a plan change made by the Council itself;
  - (c) Rejected in whole or in part; or
  - (d) Dealt with as if it were an application for a resource consent (in which case the provisions of Part 6 of the RMA would apply accordingly).
10. The withdrawal of the urban design rules from PPC 62 Wigram makes this proposed private plan change even less in accord with the directions of Council for future urban development in the City than PPC 24 was. . Officers have also concluded that in terms of the matters to be considered at this stage of the plan change there are not the grounds to reject the plan change. It therefore remains the officer's view that the new replacement PPC 62 Wigram should be accepted by Council for notification.

#### **FINANCIAL IMPLICATIONS**

11. Should the Council resolve to adopt PPC 62 Wigram as its own then the processing costs would lie with the Council. There is sufficient funding in this financial year to progress this option. The processing costs involve (i) public notification costs, (ii) Council administrative time, (iii) Officer report writing time (including specialist input as needed to respond to issues raised in submissions), (iv) hearing panel time, (v) decision writing time, (vi) notification of decisions. Items (iv), (v), and (vi) are unlikely to fall within this financial year. A best estimate of these costs at this stage is a total of \$50,000.00 - \$60,000.00.
12. Future amendment to the developer contributions (DCs) policy in the Long Term Council Community Plan (LTCCP) may be required to match DCs with the amount of open space shown in the master plan for the development.

#### **Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?**

13. Yes.

#### **LEGAL CONSIDERATIONS**

14. There is a legal process of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed set out in the RMA. Legal Services have advised that in relation to the 25 February 2010 resolution to accept PPC 24 for public notification that that resolution must be revoked before going onto consider PPC 62. Accordingly this report also seeks that the 25 February 2010 resolution of the Council relating to PPC 24 be revoked.

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

15. Aligns with Activity Management Plan for 2009 – 2019 LTCCP – Activity 1.3 District Plan: Prioritised programme of plan changes is prepared and approved by the Council on an annual basis.
16. Aligns with – A prioritised work programme, matched to staff capacity and availability, to be presented for Council approval annually by 30 June of the following financial year.

#### **ALIGNMENT WITH STRATEGIES**

17. Aligns with the South West Area Plan (SWAP) and Proposed Change 1 to the Regional Policy Statement. The Wigram block is shown as an urban growth area in both of these strategies.

## CONSULTATION FULFILMENT

18. Extensive consultation on the rezoning of the area was undertaken as part of the SWAP programme. NPL have presented the PPC 24 to the Riccarton-Wigram Community Board twice – the most recent in November of 2009. NPL and the District Planning Team held a combined consultation afternoon at Wigram on 14 October 2009 following a mail-out to approximately 850 surrounding property owners and occupiers inviting feedback on the proposed rezoning. The information afternoon was very well attended with an estimated excess of one hundred people attending. Attendees could ask questions of the NPL and District Planning representatives about the proposal. Written feedback was invited but to date District Planning has received few replies. Replies received have sought clarification and have not expressed any particular significant concerns.
19. On 12 February 2009 Mahaanui Kurataiao Limited (MKT) wrote to NPL to say that nga Rununga were satisfied with the level of consultation that NPL has undertaken with them. MKT represent Te Ngati Tuahuriri Rununga, Te Taumutu Rununga and Te Hapu o Ngati Wheke (Rapaki) Rununga. Outside of the above it is not known if NPL have consulted other parties such as the Ministry of Environment (MFE).

## STAFF RECOMMENDATION

That the Committee recommends to the Council that it:

- (a) Revoke the following resolution that it made on 25 February 2010:

*“That the Council:*

- (a) Accept the Section 32 Assessment for the Plan Change*
- (b) Accept Plan Change 24 for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.*
- (c) Note that all associated costs will be borne by the applicant.”*

- (b) Accept the Section 32 Assessment for the Proposed Private Plan Change 62 Wigram
- (c) Accept Proposed Private Plan Change 62 Wigram for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.
- (d) Note that all associated costs will be borne by the applicant.

## BACKGROUND

20. On 25 February 2010 the Council considered the recommendation of the Regulatory and Planning Committee of 4 February 2010 to publicly notify Proposed Private Plan Change 24. Specifically the Council resolved as follows:

*That the Council:*

- (a) *Accept the Section 32 Assessment for the Plan Change*
  - (b) *Accept Plan Change 24 for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.*
  - (c) *Note that all associated costs will be borne by the applicant.*
21. PPC 62 Wigram is a new private plan change. It is the same in content to PPC 24 apart from the now deleted urban design restricted discretionary activity rules and assessment criteria and the correction of some minor drafting errors by the applicant. The withdraw of PPC 24 and the subsequent replacement of it by the new PPC 62 Wigram, took place via a letter received from NPL on 8 March 2010 advising the Council of the withdraw and lodgement of PPC 62 Wigram (**Attachment 4**).
22. Legal Services have advised, in relation to the 25 February resolution of Council set out in paragraph 23 above, that the resolution will need to be revoked before the resolution in relation to PPC 62 is considered.

### The Differences between NPL and Council Staff on the structure of Proposed Plan Change 62.

23. It was reported in the PPC 24 report before the Council on 25 February 2010 that there were a number of outstanding differences between NPL and Council Staff on the contents of the rules package. These were reported as:
- *A limit on the floor area in the commercial area;*
  - *Changes to the height limit in the Special Building Height Area;*
  - *Design and appearance controls;*
  - *Non complying activity status for development prior to arrival of sewer;*
  - *Deletion of the smaller neighbourhood parks from the green network layer diagram; and*
  - *More restrictive hazardous substances controls*
24. All of the above, with the exception of the Urban Design restricted discretionary activity rules and the deletion of 2000m<sup>2</sup> neighbourhood parks, have now been resolved.

### **Urban Design Rules**

25. PPC 24 that the Council resolved to publicly notify contained an urban design rule as a restricted discretionary activity with assessment criteria. The rule and assessment criteria are a duplication of a rule in Proposed Plan Change 5 Awatea that the Council resolved to publicly notify at the same meeting. In negotiations with officers over the contents of the PPC 24, prior to this resolution, NPL had expressed concern about the form and content of the Urban Design rules.
26. Paragraph 34 of the PPC 24 report noted:
34. *One of the major innovations being introduced in the concurrent Awatea Plan change is a general resource consent as a restricted discretionary activity for design and appearance in both the residential Density A and Business Zones. Officers have alerted NPL that they think these controls should also extend to the Wigram plan change. The attached plan change has some design and appearance controls highlighted. NPL have indicated that they do not form part of their application but are there for discussion. To date they have stated that they do not wish to have these controls as they will add cost and time to consenting the development.*

27. Following the resolution to accept the PPC 24 for notification, NPL have formally, as is their right as the applicant, withdrawn PPC 24 containing the restricted discretionary activity rules and requested that a new plan change – PPC 62 Wigram – without the restricted discretionary activity rule – be publicly notified in its place. NPL have commented that because PPC 24 was only just accepted and not adopted they prefer not to send ‘mixed messages’ to the public through having to submit on its own plan change and consequently NPL have lodged the PPC 62 Wigram. While this position from NPL is disappointing to officers who have been negotiating with NPL, the plan change must still be considered and given the situation with the urban design rules and the green space (as set out in paragraphs 29-30 below) the recommendation is still that PPC 62 Wigram be accepted for public notification. The withdrawal of these urban design provisions makes PPC 62 Wigram less desirable in officer’s opinion, and the Council will need to address these matters once the plan change is publicly notified.

### **Open Space**

28. NPL attempted to resolve the matter of the 2000m<sup>2</sup> parks in the PPC 24 package that was put before the Council on 25 February 2010 by adding mechanisms to the PPC 24 that included:
- A notation on the green network layer diagram made reference to a new policy.
  - Addition of a new policy expressing the desirability of achieving the parks.
  - A new rule stating that the parks do not have to be provided.
29. Officers are concerned that the combined effect of the policy and the rule is that the 2000m<sup>2</sup> parks are interpreted as being desirable, thus setting up a conflict with the LTCCP. The report for PPC 24 sets out the problem with the 2000m<sup>2</sup> parks and the provision for them in the LTCCP. For ease of reference these paragraphs are shown in **Attachment 2**. PPC 62 should not be adopted as Council’s own Plan Change for public notification while these parks remain on the layer diagram and the policy and rules remain.

### **Options under Clause 25 of the RMA for progressing PPC 62 Wigram**

30. The process that the Council must follow in respect to private plan changes are set out in Clauses 21 – 29 of the 1st Schedule to the Resource Management Act 1991 (RMA). In particular clause 25 requires that the Council must consider the request and make a decision as to either:
- (a) Accept the request, in whole or in part, and proceed to notify the request, or part of the request;
  - (b) Adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself;
  - (c) The local authority may reject the request in whole or in part; or
  - (d) The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6 shall apply accordingly.
31. The implications of the options under Clause 25 are:
- 31.1 Accept the application, proceed to publicly notify and decide the application at the expense of the applicant:
- 31.1.1. Under this scenario the private plan change is notified in the form prepared by the applicant. The Council processes the plan change proposal but the applicant bears all of the costs of notification. Accepting the Proposed Plan Change proposal means:
- (i) the applicant decides what is notified.
  - (ii) implies the Council is taking a neutral position in the proposal. The public should perceive that the Council neither supports or opposes the proposal.
  - (iii) implies the applicants will bear the cost of the complete Proposed Plan Change process (including costs associated with the resolution of appeals).
- 31.2 Adopt the change as its own and assume the responsibility for putting it through the process outlined in the RMA including all costs.

- 31.2.1. Under this scenario the Proposed Plan Change becomes a Council led 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 Proposed Plan Change proposal would mean:
- (i) The Council can control the proposal that is publicly notified.
  - (ii) It can be interpreted that the Council generally supports the proposal.
  - (iii) The Council bears the costs of managing and processing the Proposed Plan Change.
  - (iv) The proposed plan change must be taken into consideration in the processing of any resource consent ie it holds some legal weight from the time of public notification.
- 31.2.2. In regard to point 3.2.1(iii), 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. If the Council is concerned about significant aspects of the proposal, this would not be an appropriate course of action. Alternatively if the Council does wish to adopt the Proposed Plan Change little further work would be needed to be undertaken by the Council to amend the Proposed Plan Change to its satisfaction. However NPL as the applicant may have problems with this approach, as the onus would then go onto the Council
- 31.2.3. Adoption of the Proposed Plan change by the Council has some advantages to NPL. There are the obvious financial implications for NPL of the Council assuming the costs of the statutory process and the support of the Council for the Proposed Plan Change (now being Council's own plan change) during the statutory process.

### 32.3 Reject the application

- 32.3.1. There are very limited grounds in the Act for rejecting an application. A Proposed 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 V of the Act (other policies or plans, such as Regional Policies or Plans).
  - The District Plan has not been operative for more than two years.
- 32.3.2. This privately requested Proposed Plan Change cannot be said to be frivolous or vexatious. Staff and representatives of Ngai Tahu Property Limited have worked co-operatively on the rules package and format for the Proposed Plan Change and it is considered to be in accordance with sound resource management practice. The differences or concerns set out in paragraphs 19 and 20 of this report are not considered to be sufficient reason to reject the application. The Proposed Plan Change is largely in accordance with the South West Area Plan and is an important growth area in the UDS and Proposed Change 1 to the RPS.
- 32.3.3. Decisions have been released on Proposed Change 1 to the Regional Policy Statement. If processed through to the point where it is operative the Proposed Plan Change will not create an inconsistency with the Regional Policy Statement and other plans.
- 32.3.4. The City Plan has been operative for more than two years. Therefore this can not be considered as grounds to reject the application.

33.4 Treat the Proposed Plan change as a resource consent

- 33.4.1. It would not be appropriate to treat this Proposed Plan Change as a resource consent as Ngai Tahu are seeking to set up a framework in which the area will be developed, and under which activities will be permitted or consents will be applied for. A resource consent is more appropriate to a specific proposal with a much finer grain of detail. In addition a resource consent can be limited in its flexibility and in this situation would require constant amendment. Given the complexity of the proposal and need for some flexibility a resource consent is not considered to be appropriate.

**THE OPTIONS**

34. **Option 1**

Resolve to accept PPC 62 Wigram and section 32 assessment for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.

35. **Option 2**

Resolve to adopt PPC 62 Wigram and publicly notifying it as though it were the Council's own plan change pursuant to Clause 25(2)(a) of the first schedule of the Resource Management Act 1991.

36. **Option 3**

Resolve to reject PPC 62 Wigram pursuant to Clause 25(4) of the first schedule of the Resource Management Act 1991.

37. **Option 4**

Resolve to deal with the PPC 62 Wigram as if it were an application for resource consent pursuant to Clause 25(3) of the first schedule of the Resource Management Act 1991.

**THE PREFERRED OPTION**

38. Option 1 to accept Proposed Plan Change 62 – Wigram, is the preferred option. This will enable the development of an area of strategic significance to the South West Area Plan and Proposed Change 1 to the Regional Policy Statement while not taking Council ownership of it due to the situation with the urban design rules and the green space (as set out in paragraphs 27-29 above).