

5. PRIVATE PLAN CHANGE 47 – SIR JAMES WATTIE DRIVE, HORNBY



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

1. This report describes and assesses a request for a private plan change (PC47 - Sir James Wattie Drive) to the City Plan. A decision is sought from the Council pursuant to clause 25 (2) of Schedule 1 to the Resource Management Act 1991 (RMA) on whether the proposed change should be publicly notified, and with what status.

EXECUTIVE SUMMARY

2. The site of PC 47 consists of 2.93 hectares of Rural 2 (Templeton – Halswell) zoned land, as shown in **Attachment 1**. It is currently vacant, although significantly modified by a gravelled surface. The request (appended in **Attachment 2**) seeks to rezone the site to Business 5 (General Industrial), in line with adjoining Business 5 zoned land to the north and west.
3. The land immediately to the south is zoned Rural 2, with the Territorial Local Authority Boundary with Selwyn District 370 metres to the south.
4. The subject site was outside the urban limit as notified in Proposed Change 1 to the Canterbury Regional Policy Statement (PC1), but has been included within the urban limits in PC1 as amended by the decision released in December 2009. **Attachment 1** shows the subject site in relation to the urban limit as notified in PC1 and the urban limit in the Canterbury Regional Council's (ECan) decision. PC1 is now subject to appeal, including appeals by this Council, and the owner of the subject site is a Section 274 party to these appeals.
5. Some weight should be afforded to PC1 as amended by the decisions. As discussed in paragraphs 25-27 of this report, the appeals process should not preclude PC 47 from being tested on its merits. Two site specific issues have also been identified which are relevant to this private plan change. These are the proposed route for the Southern Motorway Stage 2 and the lack of reticulated sewerage to the site. Neither of these two issues was found to be significant (see paragraphs 21 and 22 of this report for further discussion of these matters).
6. In order for the committee to decide whether to notify the private plan change and with what status the committee is directed to Schedule 1, Clause 25, subclauses (2), (3) and (4) of the Resource Management Act 1991 as set out below:

25. Local authority to consider request

(...)

(2) *The local authority may either—*

- (a) *adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, or*
- (b) *accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26.*

...

(3) *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.*

(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.*

(...)

7. A full analysis of the options listed under subclauses (2) and (3) can be found in paragraphs 31-45 of this report. The officer recommendation based on the analysis in the aforementioned sections is to accept PC47- Sir James Wattie Drive, Hornby, for notification.

CONSULTATION

8. PC47 has been presented to the Riccarton/Wigram Community Board, who expressed some concerns regarding the implications of the Southern Motorway Stage 2 alignment.

FINANCIAL IMPLICATIONS

9. Should the Council resolve to notify the plan change there are legal processes which must be followed in accordance with the First Schedule of Resource Management Act 1991 (the "Act") . This is a standard process that all plan changes must follow and if the processes are correctly followed, no particular financial risks are foreseen.
10. There would be costs arising at various stages of the plan change process relating to the preparation of officer reports and a hearing in response to submissions. The scale of costs would depend on the level and complexity of the submissions received. As this is a private plan change, these costs are largely recoverable from the proponent. Costs associated with responding to any Environment Court appeals received are not recoverable, except in instances where the court may award costs.

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

11. Yes. The 2010/11 budget for the District Planning work programme, adopted by the Council and provided for in the LTCCP, includes funding for processing the change. As a private plan change request, these costs are largely recoverable.

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

12. Yes.

LEGAL CONSIDERATIONS

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

13. The process set out in the Act must be followed. It includes public notification, submissions, reporting, hearings, decisions and possible appeals. Provided the process is followed correctly, there are no particular legal risks associated with this proposed plan change.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

14. The proposal is part of the district planning levels of service in the LTCCP.

ALIGNMENT WITH STRATEGIES

Do the recommendations align with the Council's strategies?

15. The proposal falls outside the urban area in the City Plan. The request is consistent with PC1 as amended by the decision on submissions.
16. The site is within the South-West Area Plan (SWAP) area. SWAP does not identify the site as future business or residential land.

STAFF RECOMMENDATION

That the Committee recommend to the Council that it:

- (a) Accept Plan Change 47 – Sir James Wattie Drive, Hornby (PC47) pursuant to Schedule 1 Clause 25(2)(b).
- (b) Accept the section 32 for PC 47 – Sir James Wattie Drive, Hornby.
- (c) Publically notify PC 47 – Sir James Wattie Drive, Hornby and the section 32 assessment, pursuant to Schedule 1, clause 5 of the Resource Management Act 1991.
- (d) Note that all associated costs will be borne by the applicant.

BACKGROUND AND DISCUSSION

17. Proposed Plan Change 47 (PC47) seeks to rezone 2.93 hectares of Rural 2 (Templeton – Halswell) zoned land to Business 5 (General Industrial). The site, identified in **Attachment 1**, is legally described as Lot 3 DP 49632. Lots 2 and 9 DP 49632 are on the same Certificate of Title but would retain their existing zoning (R2 and B5 respectively) and use. The request advises that Lot 2 may be used for custodial management of the plan change site in the medium term. Subdivision of the plan change site from Lots 2 and 9 would result in non-complying rural lots unless amalgamated with other lots. This is more a technical issue that would be addressed at the time of any subdivision application than at this stage of the plan change process. There are no real practical issues as Lots 2 and 9 would function post-subdivision as they do now.
18. It is bordered by the Shands Road Industrial Park (Business 5 zoning) to the north and west, and Rural 2 land to the south and east, including a dwelling nearby to the east over the Hornby Industrial Rail Line which adjoins the site. The site is currently vacant other than for some minor outdoor storage. It is significantly modified in terms of its surface being graded hard-fill. The site has about 100m of frontage to Sir James Wattie Drive, which is an existing cul-de-sac off Shands Road.
19. The Plan Change proposes to amend the City Plan as follows:
 - (a) Amend the relevant City Plan maps to show the site as B5.
 - (b) Include a rule requiring the retention of existing shelter belt planting.
 - (c) Include a rule restricting development of the site to dry industry only.
20. These amendments are highlighted in Part 1 of the request and are in addition to existing B5 provisions.
21. The Business 5 zone (B5) would allow development consistent with that to the north of the site. The zone allows for heavy industry; however it is unlikely to occur at this site because of the dry industry restriction and current lack of access to services. Dry industry is that which produces levels of wastewater approximately equivalent to that generated by residential activity.
22. The site is not currently able to be serviced adequately in terms of sewer. An upgrade to the western interceptor is scheduled in the LTCCP for completion in 2014 and the site could connect to that without affecting capacity of the Western Interceptor significantly. In the interim, ECan has issued a discharge consent for an on-site system. ECan also issued a discharge consent for on-site stormwater disposal, via septic tank and this method has been accepted as an interim measure by Council officers. The discharge consents expire in 2044 but it is expected that connection to the western interceptor would be made well before this time.
23. The proposed Southern Motorway Stage 2 is likely to pass close to or over the subject site. NZTA has identified two preferred options (**Attachment 3**), one of which is also preferred by this Council (shown in green). This option passes through the centre of the site, and likely width of the road and road reserve would take up the bulk of the site. No final decision is likely prior to 2012, when the designation process is scheduled to commence and submissions are sought. The request details several meetings between the applicant's consultant and New Zealand Transport Authority (NZTA) on this and other transport matters, indicating an awareness of this issue during preparation of the request.

24. Although the applicant has responded to the Council's Request for Further Information, there is not total agreement as to the effects, and significance of these effects, on the transport network. In particular, the safety of the Sir James Wattie Drive/Shands Road intersection is at issue. Based on advice from Council's traffic consultant to date, it is anticipated that additional provisions would need to be included in the proposed plan change to mitigate these concerns. It is considered however that this matter is best resolved through the hearings process.

Proposed Change 1 and the South-West Area Plan

25. The site is inside the urban limit as indicated on Map 1 to Proposed Change 1 to the Canterbury Regional Policy Statement as amended by decision. Some weight should be afforded to PC1 (as amended by the decision of 19 December 2009).
26. On 4 March 2010, the Council lodged two appeals against ECan's decision on PC1 which was released in December 2009. Both the joint appeal with Waimakariri District Council and Christchurch City Council's own sole appeal in particular, have been the subject of mediation. On 12 May 2010 an extraordinary meeting of the CCC was held to determine the outcome of the mediation and a modified position on the matter of appeal was put to the Environment Court on 18 June 2010. The modified position has been accepted by all members of the UDS Partnership, including ECan.
27. The relevance of the modified appeal position is that the PC47 land is now included in the modified appeal as a Stage 2 business greenfield area for release from 2021-41. The appeals will not be resolved before a decision on whether to notify this request is required to be made. However, if the decision is to accept or adopt the request for notification, there is the option for the staging issue to be raised by ECan or other UDS partners through submissions. The Council's appeal should, therefore, not preclude the request from being tested on its merits.
28. Another consideration in this instance is the small amount of land involved within the overall context of PC1. The site is 2.93ha and is inset into an existing Business 5 zone.
29. The South-West Area Plan (SWAP) shows an urban boundary (Figure 5 Land-use Scenario at 2041, included at Attachment 1). In the Sir James Wattie Drive area, the location of the urban boundary at Sir James Wattie Drive is consistent with the existing zoning pattern and provides a buffer is provided between business activities and the nearby Territorial Local Authority (TLA) boundary. The PC47 site is outside the urban boundary as identified by SWAP.
30. The request may still be able to achieve an adequate buffer to the TLA boundary. This issue is to be considered through the submissions and hearing processes.
31. For the above reasons, it is not considered that the option to reject the request on sound resource management grounds or on Part 5 matters is appropriate in this instance.

THE OPTIONS

32. The Council could have, within 30 working days of the receipt of the plan change request, as a result of further or additional information, commissioned reports, or other relevant matters, with the agreement of the person who made the request, modify the request. In this case the 30 working days have expired and it is no longer an option open to the Council. No modification was sought.

Option 1 - Resolve to reject PC47 (Sir James Wattie Drive) pursuant to Clause 25(4) of the First Schedule of the Resource Management Act 1991.

33. There are very limited grounds in the Act for rejecting an application. A Plan change can be rejected if:
- (a) It is frivolous or vexatious.
 - (b) The substance of the change has been dealt with by the Council or the Environment Court in the last two years.
 - (c) The change is not in accordance with sound resource management practice.

- (d) The change would make the District Plan inconsistent with Part 5 of the Act (other policies or plans, such as Regional Policies or Plans).
 - (e) The District Plan has not been operative for more than two years.
34. PC47 cannot be said to be frivolous or vexatious. The applicants have invested significant time and financial resources in preparing the plan change and have made a case for the plan change that warrants consideration in the plan change process.
 35. The substance of the plan change has been considered in the last two years as a consequence of the Council's involvement in the PC1 process and the Greater Christchurch Urban Development Strategy
 36. The UDS and PC1 represent Council's most recent consideration of the provision of business land and identify the subject site and other land at Hornby for future business use. The Council has an appeal lodged on PC1 in relation to the inclusion of additional greenfield business land, including this site. The appeal has been formally modified and the change is consistent with the appeal other than with regard to sequencing of land release. It is not considered that this is grounds exist to reject the request under (b) above.
 37. The substance of the plan change has also been considered through the development of SWAP, but not through the District Plan process.
 38. Whether the proposed change is not sound resource management practice is another relevant consideration. Firstly, the proposed Southern Motorway Stage 2 is likely to pass close to or partly over the subject site. The two options preferred by New Zealand Transport Authority (NZTA) would pass over the site, and the Council has signalled to NZTA that of these two options, it prefers the option shown in green on the map in Attachment 3 (the subject site is identified by NZTA on the map as property '43'). As the final location of Stage 2 will not be known before the decision whether to notify this request is required, and there are no designations in place, this issue is not considered sufficient grounds to reject the request.
 39. Secondly, reticulated sewerage is at capacity in this location and no further connections are permitted. The Council has, in its LTCCP, included funding for the 'Western Interceptor', scheduled for completion in 2014, to which the subject site could connect. ECan has issued a discharge consent for an on-site system and also a discharge consent for on-site stormwater disposal. A number of the Council staff have been involved in assessing various aspects of the proposal and no significant or fundamental issues have been raised that would suggest that the proposed change is so inappropriate such that it could be considered not sound resource management practice.

Option 2 - Resolve to deal with PC47 (Sir James Wattie Drive) as if it were an application for resource consent pursuant to Clause 25(3) of the first schedule of the Resource Management Act 1991.

40. Under this option 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.
41. The applicant has lodged a concurrent resource consent application for a steel fabrication plant including ancillary warehouse and office. The plan change request has not been withdrawn and there is nothing to preclude these two processes running concurrently. A change of zone to more closely reflect current and likely future use may assist the Council in meeting its obligations to promote integrated management of effects of activities under s31 of the Act. It is considered that it remains appropriate for Council to continue processing the plan change request, rather than place reliance on the resource consent process.

Option 3 - Resolve to adopt PC47 (Sir James Wattie Drive) 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.

42. Under this option PC47 becomes a Council plan change. It would be notified, heard and decided the same way as a plan change prepared by the Council, that is, the Council bear all of the associated costs. Adopting the private plan change would mean:
- (a) Council is indicating the plan change has merit and generally supports the proposal; and
 - (b) The Council bears the costs of managing and processing the plan change.
 - (c) The proposed plan change must be taken into consideration in the processing of any resource consents, i.e. the objectives and policies have some legal weight from time of notification.
43. Adoption of a private plan change application would generally only occur where there is a wider public good flowing from the plan change. A plan change addressing public good would normally be one that addressed an existing city wide or multiple zone-wide adverse environmental effect, for example, a change to a bulk and location control that had lead to unexpected adverse outcomes. This private plan change application is a spot zone that facilitates a private development with most economic benefit flowing to the resource users and land owners within the development area. While there would be some public good flowing from the plan change in terms of employment opportunity, this is not considered by officers to be of sufficient public good to the wider community to warrant the adoption of the plan change by the Council.
44. Further, in order to recommend adoption of the request, the Council should have no reservations about the content of the plan change. In this case officers are concerned about aspects of the proposal including transport and servicing matters and hold the opinion that adopting the plan change would not be an appropriate option.
45. The request is not consistent with the sequencing aspect of the Council's appeal on PC1. Although the issue could be covered through the Officer's Section 42A Report or raised through submissions, it is not considered appropriate for Council to adopt the request.
- Option 4 - Resolve to accept PC47 (Sir James Wattie Drive) and section 32 assessment for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.**
46. Under this option PC47 would be notified in its current form as prepared by John Jones Steel Ltd. Accepting PC47 proposal means:
- (a) John Jones Steel Ltd determines the nature of the plan change that is notified;
 - (b) The Council takes on a neutral position on the proposal but is satisfied that PC47 includes sufficient information to be publicly notified; and
 - (c) John Jones Steel Ltd bears the cost of the complete plan change process.
 - (d) Note that all associated costs will be borne by the applicant.
47. The only matter that could be an issue in terms of a decision under clause 25(4) is the inconsistencies with the sequencing aspect of the Council's appeal on PC1. However, any concerns ECan or any other UDS partner may have regarding sequencing can be raised through the submissions process or the Officer's Section 42A Report.
48. Having considered all the relevant matters, it is recommended that Council accept the request in whole and proceed to notification.

THE PREFERRED OPTION

Option 4 - to accept PC47 (Sir James Wattie Drive) for notification pursuant to Schedule 1, Clause 25(2)(b) of the Resource Management Act 1991- is the preferred option.