

10. 12. 2009

**REGULATORY AND PLANNING COMMITTEE
3 DECEMBER 2009**

**A meeting of the Regulatory and Planning Committee
was held on Thursday 3 December 2009 at 9am**

PRESENT: Councillor Sue Wells (Chairperson from 9.14-11.10am),
Councillors Helen Broughton, Sally Buck, Ngaire Button, Yani
Johanson, Claudia Reid, Bob Shearing (Chairperson from 9.10-
9.14am) and Mike Wall (retired at 10.08 am and took no part in the
discussion or voting for items 3-6 and 8).

IN ATTENDANCE: Councillor Withers (until 10.08am).

APOLOGIES: Leave of absence was granted to Councillor Williams.

Councillor Wells arrived at 9.14am.

The Committee reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

**1. BELFAST PARK PLAN CHANGE 43 - PRIVATE PLAN CHANGE REQUEST FOR THE REZONING
OF RURAL LAND BETWEEN BELFAST ROAD AND THOMPSONS ROAD, EAST BELFAST,
CHRISTCHURCH, TO LIVING G**

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| General Manager responsible: | General Manager Strategy and Planning, DDI: 941 8281 |
| Officer responsible: | Team Leader, District Planning |
| Author: | Mal Nash, Planner |

PURPOSE OF REPORT

1. This report describes a privately requested plan change to the City Plan and recommends the process for dealing with the request, including whether it should proceed to notification, in terms of the provisions of the Resource Management Act 1991 (RMA). The plan change request seeks to rezone approximately 64 hectares of land at East Belfast from Rural 3 to Living G (East Belfast). It includes provision for commercial and industrial areas, and proposes additional controls on the existing Business 5 zone (which includes the now largely decommissioned Belfast freezing works) to limit the impact on the new residential areas proposed on the opposite side of Blakes Road.

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 change request. The consideration of the merits of the change request are not relevant at this stage, except in the limited circumstances where the effects and/or inconsistencies with the objectives and policies are clearly so significant that the plan change can be said to be not in accord with sound resource management practice or contrary to Part 5 of the RMA. The consideration of merits issues will normally occur after submissions have closed, if the decision on this report is to select one of the process options that lead to public notification.
3. The change request was lodged on 23 April 2009, with subsequent amended applications lodged in September and October 2009 in response to requests for further information. The application is considered to contain sufficient information for the Council to consider whether or not to notify the change.

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4. The following options for processing the change request are available to the Council:
 - (a) Accept the change request as a private plan change and publicly notify it for submission and hearing at the cost of the applicant.
 - (b) Adopt the change request as the Council's own change and accept the responsibility and costs of processing it.
 - (c) Reject the change request due to it falling within one of the limited grounds set out in the RMA.
 - (d) Process the change request as a resource consent application.
5. The Council is obliged to consider this request under the due process set out in the RMA.
6. The majority of the plan change site is located within an area identified for future urban growth under the Greater Christchurch Urban Development Strategy (UDS) and the Regional Policy Statement Proposed Change No. 1 (PC1). The plan change request also seeks to include two parcels of land, outside of the areas identified for future residential urban growth, one of which is identified in PC1 for future industrial or business growth. The plan change seeks the development of this site now rather than within the 2017-2026 period indicated in PC1. Submissions have been lodged by the applicant on PC1 seeking to overcome these inconsistencies. Council staff confirm that, while the need for wastewater and water supply upgrades were previously a reason for delaying the development of this area, there is now provision within the LTCCP for the necessary wastewater and water supply upgrades to service the plan change site prior to 2017. Council traffic planners consider that the plan change will not significantly alter the level of service on the surrounding road network.

STAFF CONSIDERATION

7. Staff consider that there are no issues that could justify rejecting the plan change. There are a number of key issues that have been identified in respect of the plan change request that the Council may subsequently decide to lodge submissions on. These relate to the provision of open space and esplanade reserves along the Kaputone Stream, protection of the heritage values of Spring Grove, a listed heritage building located within the plan change site, and the proposed provisions for stormwater management.
8. The plan change request is considered to be generally consistent with the Belfast Area Plan with the exception of the provision of open space and esplanade reserves along the Kaputone Stream and the sequencing of the plan change site ahead of the 2017-2026 period. Again, these matters can be dealt with through submissions on the plan change, if necessary.
9. The following information has been separately circulated to the report:
 - **Attachment 1** – Belfast Park location plan
 - **Attachment 2** – Outline Development Plan (East Belfast)
 - **Attachment 3** – Conformity with PC1 Map

FINANCIAL IMPLICATIONS

10. The financial considerations will differ depending on how the Council chooses to handle this application. Should it reject the application it is possible (and considered likely) that the applicant would challenge this decision in the Environment Court, which would be a costly process for Council regardless of the outcome. Costs cannot be predicted accurately but could be significant.
11. Should the Council accept and notify the change at the expense of the applicant there will be a no direct costs to the Council, as the Council's costs would be recovered. However, there would be an impost on staff time.
12. Should the Council adopt the change as its own then the Council will need to absorb all the costs, which could be considerable.

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

13. Yes.

LEGAL CONSIDERATIONS

14. 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.
15. There is a legal process set out in the RMA of notification, submissions, reporting, hearings, decisions and possible appeals which must be followed. This process is very familiar to the Council and should create no particular risks or liabilities if followed correctly.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

16. Processing private plan change requests is a statutory Council process, and as such is consistent with the LTCCP and Activity Management Plans.

ALIGNMENT WITH STRATEGIES

17. In part. The Greater Christchurch Urban Development Strategy sets out the proposed location, timing and form of future urban growth, which is largely reflected in the Regional Policy Statement Proposed Change No. 1 (PC1). The majority of the plan change site is located within a Residential Greenfield block identified in PC1 for future urban development (Area CN4). However, some aspects of the plan change are inconsistent with PC1. The plan change request also seeks residential development for a parcel of land that falls in another urban growth area, which PC1 identifies for future industrial or business purposes, rather than the residential development proposed in the plan change. It also seeks that a parcel of land which falls outside of the urban limits identified under PC1 be rezoned Business 4, an industrial zone. (Refer to Attachment 3 for the location of these land parcels). Finally, the plan change will allow the development of the site now, rather than in the 2017-2026 period indicated in PC1. PC1 also requires that an Outline Development Plan (ODP) be provided for the whole of any Greenfield Area, unless an Area Plan exists for the Area. The plan change, and the ODP contained in it, only covers approximately half of the CN4 Greenfield Area and the Belfast Area Plan is not yet finalised. There are submissions by the applicant on PC1 seeking to change this requirement for an ODP for the whole of the CN4 Greenfield Area.
18. The Belfast Area Plan, which has recently been approved for public consultation, provides an integrated land use plan for the Belfast area to 2041. The plan change request is considered to be generally consistent with the Belfast Area Plan with the exception of the proposed provisions for open space and esplanade reserves along the Kaputone Stream and the sequencing of development ahead of the 2017-2026 period. With the exception of the identified Spring Grove and Local Centre Reserves there is some uncertainty in respect of the Open Space shown on the ODP and adjacent to the Kaputone Stream. This is owing to the fact that the City Plan does not currently include an esplanade reserve requirement on this portion of the Kaputone Stream and none is proposed in the plan change. The Greenspace Team have indicated that they would be interested in acquiring the land in the open space network, if they were able to do so. However, the amount of development contributions for reserves would not be sufficient to acquire the network and the plan change allows any land not acquired for reserves to be used for residential development. The plan change is therefore inconsistent with the proposed Belfast Area Plan.
19. In respect of the proposed sequencing, advice from Council experts indicates the infrastructure upgrades required to service the plan change site are planned for within the LTCCP prior to 2017. The assessment contained in the plan change application indicates that the existing level of service on the road network and at key intersections will not be significantly altered, even without the northern arterial motorway.

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CONSULTATION

20. The applicant has undertaken consultation with a number of parties including Council and ECan officers, New Zealand Transport Agency, ONTRACK, New Zealand Historic Places Trust Pouhere Taonga (NZHPT) and tangata whenua through Mahaanui Kurataiao Ltd (MKT). A community Open Day and a Stakeholder Workshop were held in February 2009.
21. The plan change proposal has been presented to the Shirley-Papanui Community Board for their information. MKT were provided with a copy of the application by the Council and indicated that they wished to undertake a site visit before providing any response to the plan change request. A site visit has now occurred however there has been no response from MKT to requests from Council for input.

STAFF RECOMMENDATION

That the Council agrees to accept the plan change request pursuant to Schedule 1 Clause 25(2)(b), and that all costs shall rest with the applicant.

COMMITTEE RECOMMENDATION

The Committee recommends that:

- (a) The Council agrees to accept the plan change request pursuant to Schedule 1 Clause 25(2)(b), and that all costs shall rest with the applicant.
- (b) A report comes back to the Regulatory and Planning Committee as to whether the Council submits or not on this Plan Change.

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BACKGROUND AND DISCUSSION

The plan change request

22. The plan change request seeks to rezone approximately 64 hectares of land located at East Belfast from Rural 3 to Living G (East Belfast) zone in accordance with new plan provisions and an Outline Development Plan (ODP), including commercial and industrial areas. It also includes a package of amendments to the City Plan for the existing Business 5 zone to reduce its impact on the proposed housing on the other side of Blakes Road (refer to Attachment 2 for the ODP). The plan change site is located between Belfast Road (north) and Thomspsons Road (south) and east of the Main North Railway Line. To the west the site adjoins the Silver Ferns Farms Canterbury Freezing Works site and the existing residential area of Belfast, with adjoining rural land-uses to the south and east of the site. The Kaputone Stream forms the eastern boundary of the plan change site. The Northern Arterial Motorway designation crosses the eastern side of the plan change site.
23. The site is rural in character, largely comprising open pasture. There are a number of shelterbelts within the site, with established trees (typically exotic) over sections of the Kaputone Stream and lining Blakes Road. The site also contains Spring Grove, a heritage-listed building, which adjoins the Kaputone Stream, and is set within an established garden containing a number of mature, including eight, notable trees.
24. The Living G (East Belfast) zone provides primarily for mixed-density residential development, with provision for some business land also proposed. The plan change proposes an overall density of between 12-15 households per hectare so could result in an overall density somewhat less than the PC1 requirement for 15 households per hectare. The business zoned land will comprise a mix of Business 1, 4 and 5, with some additional standards proposed in respect of bulk, location, design and appearance of buildings for the B1 and B5 zones. The Business 1 land provides for a centrally located local business or commercial centre.
25. Blakes Road forms the main north-south transport route through the site, which is also proposed to be the bus route. The plan change request shows a linear open space network aligned with and including the Kaputone Stream. This open space network is also intended to provide for stormwater management areas. Two separate neighbourhood parks are proposed as reserve priorities (to be secured through Development Contributions under the Local Government Act provisions), in accordance with the priorities identified by the Greenspace Team. One park is 3000m² in area and centrally located east of the proposed local business centre on Blakes Road, and the other is 5000m² in area and located west of Spring Grove. Spring Grove homestead is proposed to be retained on a 3000m² site also zoned Living G, but with a community footprint overlay over the site and not within a reserve.
26. The plan change request includes information on proposed measures for the remediation of contaminated land located within the site, arising from past freezing works dumping.
27. The majority of the plan change site is located within the CN4 Residential Greenfield Area identified in PC1. The plan change request also seeks residential development for a parcel of land located on the southeast corner of Belfast and Blakes Roads that falls in another urban growth area (the CB1 Business Greenfield Area) that PC1 identifies for future industrial or business purposes. It also seeks that a parcel of land located on the southwest corner of Belfast and Blakes Roads that is not identified for future urban growth is zoned Business 4, an industrial zone (refer to Attachment 3 for the locations of these land parcels). Finally, the plan change will allow the development of the site now, rather than in the 2017-2026 period indicated in PC1. PC1 also requires that an ODP be provided for the whole of any Greenfield Area, unless an Area Plan exists for the Area. The plan change only covers approximately half of the CN4 Greenfield Area and the Belfast Area Plan is not yet finalised.

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28. There are submissions on PC1 that seek the inclusion of these additional land areas within the CN4 Residential Greenfield Area and the flexibility to substitute residential and business land through an ODP. Submissions also seek relief for an ODP to apply to a single landholding (rather than for an entire Greenfield Area) and provision to bring forward development of Greenfield areas in advance of sequencing in PC1 where key infrastructure is in place or can be economically and efficiently provided. Environment Canterbury is expected to release its decisions on submissions in December 2009.
29. In respect of the proposal to bring the development of the plan change site forward in terms of sequencing, PC1 provides flexibility for Greenfield areas to come forward in advance of their stated sequencing provided that they are substituting for other areas. The plan change request does not seek to substitute its development over another Residential Greenfield Area but rather relies on the availability of the necessary infrastructure to support development of the plan change site within this timeframe. Council planning engineers confirm that there is provision within the LTCCP for the necessary upgrades to existing wastewater and water supply infrastructure to support the development of the plan change site within the 2007-2016 period.
30. In respect of the transport network, the applicant's traffic assessment report indicates that the existing road network can support the development of approximately 650 households in the absence of the Northern Arterial Motorway. The applicant's traffic assessment assumes key upgrades to the intersections of Marshland/Belfast, Marshland/Prestons and Marshland/Radcliffe Roads. While these are also planned for within the LTCCP, it is noted that there is the possibility that some of these upgrades may be delayed. Should that occur the assessment provided demonstrates that there are sufficient alternative routes, so that the development of the plan change site would have a negligible effect on the level of service of these existing intersections and the road network.
31. The larger public suburban and community facilities (such as libraries), that would be necessary to cater for the population of this plan change site, as well as the wider Belfast growth area, are planned for within the Councils current and future facility provision for the Belfast area. The plan change itself has provision for business or commercial land that could cater for the immediate local demand for other services such as preschool and medical.
32. The density provisions proposed for the development of this site would result in between 550 and 700 households (approximately). In respect of the requirement under PC1 to provide an ODP that covers the entire Residential Greenfield Area, there are a number of relevant aspects of the plan change request that require discussion. PC1 identifies that the entire CN4 block is projected to achieve 1150 households overall, 1030 over the 2017-2026 period and a further 120 over the 2027-2041 period. The plan change site comprises approximately half of the CN4 block and as such would be required to achieve 575 households.
33. The plan change request does not indicate that developing this land would hinder efficient and effective provision of infrastructure for the remainder of the CN4 block.

RMA Timeframes

34. The change request was received on 23 April 2009. Further information was requested on 18 June 2009 and again on 15 October 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, with further information last lodged on 27 October 2009. Further information requests have now been satisfied. Under the RMA the Council is due to make a decision whether to adopt, accept, or reject the application by 7 December 2009.

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Processing of Private Plan Changes

35. The processing of private plan changes is set out in Clauses 21-29 of the first Schedule to the RMA. In summary this provides:
- Clause 21: Any person may make a request for a change to an operative district plan. The City Plan is operative.
 - Clause 22: Request to be in writing, with reasons, Assessment of Environmental Effects and assessment under section 32 of the RMA.
 - Clause 23: Further information may be required. The Council has done this in this case.
 - 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:
 - “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.
 - Clause 26: Where Council accepts the change it must publicly notify it within 4 months.
 - Clause 27: The applicant may appeal the Council decision made 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

36. Under this scenario the private plan change is notified in the form prepared by the applicant. The Council processes the plan change proposal in much the same way as a resource consent application. The applicant bears all of the costs. Accepting the plan change proposal means:
- (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 on a neutral position on the proposal, neither supporting or opposing the proposal.
 - (iii) The applicants will bear the cost of the complete plan change process (including costs associated with the resolution of appeals).
37. There may be reasons why the Council may seek to make submissions in opposition to the plan change. 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

38. 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.

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39. 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 Planning Teams. While processing privately requested plan changes are mandatory, this particular rezoning is not one of the Council-directed priorities. If the Council is concerned about significant aspects of the proposal, this would not be an appropriate course of action.

3. Reject the Plan Change

40. There are very limited grounds in the RMA for rejecting an application. 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.
41. The privately requested plan change cannot be said to be frivolous or vexatious. The applicants have made a case for the plan change that warrants consideration in the plan change process.
42. While PC1 addresses areas for future urban growth in a broad strategic sense, the substance of the plan change request has not been dealt by the Council through an RMA process within the last two years. The matter has been considered through the UDS process, but this is not considered to be sufficient grounds, by itself, to justify rejecting the plan change.

4. Treat the Plan Change as a Resource Consent

43. Under this scenario the Plan Change is converted to a resource consent application and is processed by the Council as such. The applicant bears all of the associated costs. In this case the application relates to the amendment of the planning maps and the imposition of a set of site specific rules which the applicant envisages will allow some flexibility in the management and development of the site should it be rezoned. It is considered, given the variable nature of the development sought to be permitted by the application, that it would be difficult to deal with it as a resource consent application.

ISSUES

44. There are no issues that would be considered grounds for rejecting the plan change. However, there are a number of issues that deserve some comment so that the Council is aware of the nature of the plan change or which are matters that the Council may wish to make submissions on. Only the more significant of these are discussed below.

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Open Space Network and Reserves

45. The ODP and Green Network Layer Diagram indicate a linear open space network located adjacent to the Kaputone Stream, noting that this network is in addition to the two neighbourhood parks agreed with Council's Greenspace Team. The Greenspace Team has indicated that they would be interested in acquiring the land in the open space network, if they were able to do so. However, the amount of development contributions for reserves would not be sufficient to acquire the network. The City Plan does not currently include an esplanade reserve requirement on this portion of the Kaputone Stream and none is proposed in the plan change. So, in the current form of the plan change, the Council would have to pay for the majority of the proposed open space network if it sought to establish it all as public open space.
46. The Council has obtained legal advice that as the plan change is seeking to rezone the land from rural to urban, it would be valid to consider whether the land should be subject to the esplanade reserve provisions of section 230 of the RMA. The Act requires that an esplanade reserve of 20 metres in width be vested in the Council along the bank of a river, where any allotment of less than 4 hectares is created, unless the Council decides otherwise. The issue could be raised by the Council through a submission on the plan change. The applicants have advised that they have received their own legal advice to the contrary, that esplanade reserves are not entitled to be required as part of the plan change process.
47. There have been discussions on the extent of the open space network that should be provided along the Kaputone Stream. The Greenspace Team has agreed that, along some sections of the stream, it would not be necessary to provide the full 20 metres that would normally be required for an esplanade reserve. However, no agreement has been reached on how much of that part of the open space network will be acquired by the Council or at what price, should the open space not be required to be vested in the Council following a successful submission on the plan change. This matter does not have to be resolved at this stage of the plan change process as the Council has received legal advice that the lack of an esplanade reserve, or agreement on other means of Council acquisition of the land, is not grounds for rejecting a plan change.
48. The plan change does not require the Council to acquire the land. Rather, it contains a provision that, should any part of the open space network not be acquired as a reserve, that land can be used for residential development, in conformity with the rules applying to the adjoining residential area. As such, the plan change being proposed should be understood as not providing any guarantee that all, or any, of the open space network shown in the ODP will be established as public open space. Rather, it could all be used for housing. The exception to this is the local centre and Spring Grove reserves, which are specifically identified as reserves to be vested in the Council.
49. The lack of certainty about the future availability of what is identified as "open space network" for public open space potentially raises a number of issues about the plan change, including the extent to which the areas of higher residential densities are provided with higher levels of public open space. However, the legal opinion obtained by the Council advises that these are merits issues, which would not be grounds for the Council rejecting the plan change. The Council may choose to submit on these issues.

Heritage

50. The plan change request proposes that the heritage-listed building Spring Grove be retained within a 3500m² site (Refer to Attachment 2 ODP for the location of Spring Grove). The proposed setting around the building is significantly less than the existing garden setting of the dwelling.

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51. However, it is proposed that the building and curtilage area be zoned Living G zoning with a community footprint overlay. The community footprint provisions essentially allow for some relaxation of the standards in respect of non-residential activities within Living zones (for example scale of activity and hours of operation). This planning framework would allow, in addition to residential development, scope for non-residential use of the site and buildings for a community or commercial use such as accommodation or a conference centre. The plan change request seeks to add two trees located within the open space network to the City Plan list of notable trees, however no additional rules are proposed in respect of the protection of the heritage values of any existing outbuildings on the site or the setting. This is an issue that the Council may wish to lodge a submission on, but is not grounds for rejecting the application.

Stormwater

52. The plan change request includes a Blue Network Layer Diagram that indicates a total of approximately 2.6 hectares of stormwater basins, in three locations adjacent to the Kaputone Stream. The stormwater management system proposes to combine stormwater treatment wetlands for stormwater detention (storage) also.
53. Council stormwater engineers consider this an unusual design and that it will lead to poorer wetland performance. There is also risk to the applicant that either the Council or ECan will not accept this design noting that the stormwater system proposed is smaller than that indicated within the Council design guide. Should the system need to be redesigned it is anticipated that more land will be required for this purpose. The runoff coefficient used has also been questioned as it is considered to underestimate the storage volume required. On this basis Council stormwater engineers consider it likely that more land will be required for stormwater detention and treatment than the 2.6 hectares indicated on the Blue Network Layer Diagram that forms part of the proposed ODP, and estimate that approximately 6 hectares may be required. It is acknowledged that there is scope within the plan change site to increase the size of the stormwater management system if required and as such there is agreement that this issues can be resolved at subdivision stage. However, these are not considered to be grounds for rejecting the plan change.

OTHER MATTERS

54. There are a number of other merits issues on which the Council may choose to lodge a submission. These include aspects of the proposed City Plan provisions and assessment matters for the Living G and Business zoned land in respect of the design and appearance of buildings. There is also some concern in respect of the density provisions and their ability to effectively limit the size of residential lots and the transfer of density provisions in respect of the permitted locations for such transfers.

Conclusions

55. In terms of matters to be considered under the Act, it is concluded:
- (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.

THE PREFERRED OPTION

56. It is recommended that the Council accept the plan change request pursuant to Schedule 1 Clause 25(2)(b), and that all costs shall rest with the applicant.

2. PROPOSED PLAN CHANGE 53 – LIVING 3 AND 4 ZONES

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| General Manager responsible: | General Manager Strategy and Planning, DDI: 941 8281 |
| Officer responsible: | Team Leader – District Planning |
| Author: | Caroline Rachlin, Senior Planner |

PURPOSE OF REPORT

1. This report provides background to the purpose and content of proposed Plan Change 53 - Living 3 and 4 Zones and seeks a Council decision on whether or not to proceed in notifying the proposed plan change. The recommendation is for the Council to notify the proposed plan change.

EXECUTIVE SUMMARY

2. The Living 3 and 4 Zones provide for medium and higher density residential development. They are located mostly within, and close to the city centre, and adjoining larger suburban shopping malls. Within the last 10 to 15 years, much of the new residential development occurring in these areas has been of a less than satisfactory standard in terms of urban design, appearance and amenity (according to public and professional opinion).
3. It is recognised that poorly designed places can have a detrimental impact on the character of an area and on people's attitude to, experience and enjoyment of, a place. A key stimulus for this proposed plan change has been in response to feedback about the perceived poor quality of development occurring in the L3 and L4 Zones. This feedback has come from a range of sources including from Residents' Associations, Councillors, officers, professionals and the general public. A second key stimulus for the review comes as part of the Council's implementation of the Greater Christchurch Urban Development Strategy and the provisions of proposed Change 1 of the Regional Policy Statement which places increased emphasis on accommodating urban growth through the intensification of the existing urban area. For this growth management strategy to be effective, it is important that more intensive residential development achieves good standards of urban design and amenity.
4. Preparation for this Council initiated plan change has included consultation in 2007 in the form of two Issues and Options papers relating to design and appearance of buildings in the respective L3 and L4 zones. Subsequent research and technical analysis has been carried out to more clearly identify the issues and how improved built outcomes could be better achieved. An urban design site survey found some good examples of developments in the L3 and L4 Zones, although many were found to inadequately incorporate the principles of good urban design.
5. Having considered the type and scale of issues, community feedback and the existing regulatory and non-regulatory framework it was evident that changes to the City Plan's provisions were necessary. Consideration has been given to a wide range of options for bringing forward improvements. The purpose of the proposed change is to facilitate improved urban design, appearance and amenity outcomes in these existing medium and higher density living areas. It includes a set of amendments, additions and deletions to the City Plan provisions. The proposal does not recommend changes to the zone boundaries. It does not propose changes to the key density controls relating to building height or residential floor area ratios.
6. Amendments are recommended to the City Plan policies relating to City Identity, Urban Growth, Living and Transport. An emphasis is placed on achieving a good standard of urban design, appearance and amenity. In terms of the rules relating to the L3 and L4 Zones there are two main directions that this proposed plan change takes. The first includes a review of the existing rules. The traditional bulk and location approach to rules continues to be supported with some changes recommended. The second is that the majority of new developments in these zones would be assessed against a set of urban design criteria. The details of the proposed changes to the City Plan are provided in **Attachment 1** (available separately).

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7. Staff consider that the overall package of changes would assist in achieving improved urban design outcomes while still enabling medium and high density development to occur in these zones. It would also assist in meeting residential densities required under proposed Change 1 to the Regional Policy Statement. The proposed changes and additions to the City Plan are considered to be a more efficient and effective means of achieving the City Plan's objectives and policies than the current Plan's provisions. The recommendation is for the Council to notify the proposed plan change.

FINANCIAL IMPLICATIONS

8. Should the Council resolve to proceed with notifying the plan change there are legal processes which must be followed in accordance with the First Schedule of the Resource Management Act (RMA) 1991. This is a standard process that all plan changes must follow and there are no particular issues or risks that would be incurred if the processes are correctly followed. 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. There is the potential for costs associated with responding to any Environment Court appeals received. Funding is provided from existing budget as part of the District Planning work programme agreed by Council.

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

9. The recommendations and costs incurred align with the District Planning budget and work programme as provided for under the 2009-2019 LTCCP budget.

LEGAL CONSIDERATIONS

10. There is a legal process which must be followed for plan changes in accordance with the First Schedule of the RMA. Proceeding in accordance with these procedures should create no particular risks.

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

11. The legal process to be followed in accordance with the First Schedule of the RMA is familiar to the Council through both the private plan change process and in respect of Council initiated plan changes.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

12. The process of Council initiated plan changes is provided for under the LTCCP and Activity Management Plans. This proposed plan change is specifically identified as a project within the Council's District Planning Work Programme.

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

13. The LTCCP identifies an ongoing programme of maintaining and reviewing the City Plan improvements in respect of enhancements to ensure an attractive built environment and to minimise adverse effects on the environment. The proposed plan change is specifically identified as a project within the Council's District Planning work programme.

ALIGNMENT WITH STRATEGIES

14. The plan change aligns with: Greater Christchurch Urban Development Strategy (UDS); Proposed Change 1 to Chapter 12A of the Regional Policy Statement (RPS) and also with National Urban Design Protocol 2005.

2 Cont'd

Do the recommendations align with the Council's strategies?

15. The proposed plan change aligns with the Greater Christchurch Urban Development Strategy (UDS) particularly in respect of achieving well designed places in areas which are subject to residential intensification.

CONSULTATION FULFILMENT

16. Consultation was carried out in respect of two Issues and Options papers in July 2007. This included consulting with a range of representatives from the community including: Residents Associations and Groups; professionals; and developers. A more detailed discussion of the consultation is contained in the Section 32 report (**Attachment 2** (separately available)) and this report's consultation section.
17. During the preparation of this proposed plan change presentations were made to the Community Boards. This took the form of two Joint Community Board Seminars on 12 November 2008 and 8 September 2009.
18. Should the plan change be notified, a submission, further submissions and hearings process will follow thereby enabling interested and affected parties to comment formally on the proposal. The recent amendments to the RMA now mean that changes to rules proposed in plan changes (with some exceptions) do not generally have any effect until after decisions on submissions have been released. An exception is if an Environment Court order allows a rule to have legal effect on a different date. Prior to the recent RMA amendments, proposed rules had effect from the time they were publicly notified. This means that unlike past plan change processes, interested parties will now have the opportunity to submit on the proposed rule package and seek changes to that package prior to the proposed rules coming into force.

STAFF RECOMMENDATION

That the Council:

- (a) Adopt the attached proposed plan change and assessment under Section 32 of the Resource Management Act.
- (b) Proceed to publicly notify proposed Plan Change 53 to the City Plan pursuant to the provisions of the First Schedule of the Resource Management Act 1991.

COMMITTEE RECOMMENDATION

That the Council:

- (a) Adopt the attached proposed plan change and assessment under Section 32 of the Resource Management Act.
- (b) Proceed to publicly notify proposed Plan Change 53 to the City Plan pursuant to the provisions of the First Schedule of the Resource Management Act 1991.
- (c) Appoint a Hearings Panel to hear submissions on the Plan Change.

2 Cont'd

BACKGROUND AND ISSUES

LOCATION AND DESCRIPTION OF THE LIVING 3 AND 4 ZONES

19. The City Plan provides for a range of housing densities across the City. The L3 and L4 Zones are primarily sited close to and within the city centre and adjacent to some of the larger suburban shopping centres forming a core area of medium to higher density living accommodation. The L3 Zone is defined in the City Plan as a Medium Density zone. The L4 Zone is split into three sub zones comprising the Living 4A (Central City – Diverse); Living 4B (Central City and North Beach – High Rise); and Living 4C (Central City – Character). These zones provide for a higher density of residential development than the L3 Zones and are located inside of the Four Avenues, except for areas of L4C zone at New Brighton, and Living 4B at Carlton Mill and North Beach. A map showing a location of the zones is attached to the Section 32 report (Attachment 2) at Appendix 1.

CONSULTATION

20. The Council carried out consultation in 2007 in respect of two Issues and Options papers (one each for the respective L3 and L4 zones) relating to matters of design and appearance of buildings. The papers and related pamphlets were sent to Residents Associations in the subject zones, architectural firms, the Canterbury Property Investors Association and various house and building firms that have been involved in developments within these areas. The consultation was advertised in The Press and the Star. The consultation documents were made available at Council Services Centres and Libraries and on the Council website. Two public meetings were held. The first was for representatives of Residents Associations in the L4 Zones (with representatives from the L3 zones also in attendance). The second was held for members of the New Zealand Institute of Architects and Architectural Designers New Zealand.
21. Fifty responses were received. The consultation feedback highlighted that matters such as very dominant bulk buildings and the location and design of buildings were important issues. Concerns were raised about increasing residential activity in these areas resulting in a general increase in noise and disturbance (including from traffic noise). Whilst there was a range of perspectives about how the rules could be amended there was generally agreement that substantial improvements are needed.
22. The feedback was considered and a programme of work identified to ascertain the specific issues and how to address them. This included a number of technical surveys and reports. An urban design site survey of representative sites within the L3 and L4 Zones was undertaken. Further information about the consultation, supporting reports and options investigated is provided in the Section 32 report.
23. Two Joint Community Boards' Seminars were held on 12 November 2008 and 8 September 2009. The Boards were updated on the overall purpose and development of the plan change. There was a focus on discussing urban design issues and how these could be addressed. The main points raised at the Seminar on 8 September 2009 included the following: how prescriptive the proposed changes would be; what sort of development would require resource consent; proposed changes to the minimum car parking space requirements for developments in the L3 Zones; the extent that environmental efficiency and sustainable design measures have been considered; safety considerations; and the type and design of front boundary fencing. Officers consider that the matters raised have been considered satisfactorily throughout the development of this proposed plan change. Further discussion on the issues raised can be found within the Section 32 report.
24. Consultees as set out under Clause 3 of the First Schedule were advised in October 2009 of the more recent development and overall methodological approach adopted for the proposed plan change.

2 Cont'd

POLICY CONTEXT AND OBJECTIVES

**Greater Christchurch Urban Development Strategy, Urban Design Protocol 2005
Proposed Change 1 to Chapter 12a of the Regional Policy Statement**

25. The proceeding paragraphs highlight the more significant policy context for the development of this proposed plan change. An increased awareness and drive for good urban design is found in a range of strategies, protocols and policies. The more significant of these include:
- The Greater Christchurch Urban Development Strategy (UDS)
 - Proposed Change 1 to Chapter 12A of the Regional Policy Statement (RPS)
 - National Urban Design Protocol 2005.
26. The Greater Christchurch Urban Development Strategy (UDS) is a broad scale, long-term land use strategy. It guides the future development of Greater Christchurch. Achieving higher standards of urban design is embraced within the UDS. Some of the guiding principles directly relate to promoting well designed and attractive neighbourhoods which are safe, functional, well connected and liveable. A growth management assumption under Section 3.6 is that 'good urban design is an essential element of implementing this Strategy'. Clause 1.5.1 of the Strategy relates to community values and identifies that during the public consultation process the community asked for (amongst other matters): enhanced community character, diversity and facilities, and enhanced 'sense of place', heritage, open space networks, and urban and site design.
27. Proposed Change 1 (PPC1) to Chapter 12A of the Regional Policy Statement was notified in July 2007. It is an implementation method prescribed under the UDS. It was recently the subject of hearings. At the time of writing this report, the decisions on submissions had not been released. A range of policies and methods in PPC1 are very relevant to this proposal. An example relates to improving design quality under 'Policy 7 – Development Form and Design'. Policy 7 sets out a requirement to observe the principles of the Urban Design Protocol when preparing or assessing any urban development in an intensification area. The policy states matters to be provided for, including a high standard of visual interest and amenity. A method identified to implement the policy is that territorial authorities will apply the Urban Design Protocol. Preparing and implementing district plan changes to reflect the proposed change is a linked and top priority under the UDS.
28. The Council became a signatory to the National Urban Design Protocol in 2005. The Protocol Action pack contains a number of recommendations for local government including a recommendation to review district plans. This is to ensure that they include explicit urban design outcomes. This proposed plan change is one of a number of steps the Council is taking as part of its responsibilities under this Protocol. Under another initiative the Council has set up an Urban Design Panel. Whilst only voluntary at this stage (in terms of matters going before the Panel and the weight of the recommendations) the establishment of this Panel highlights the increasing desire and push to improve urban design outcomes within the City. When considering an application, the Panel, as for other Council officers, must rely on the quality of the City Plan provisions to facilitate improved outcomes.
29. The national, regional and local context is raising awareness of the benefits of good urban design, and the requirement for improvements. Officers consider that this proposed plan change is sufficiently well aligned with this policy context. It would be an important method to assist in improving the standard of urban design standard in the L3 and L4 Zones.

2 Cont'd

CHRISTCHURCH CITY PLAN

30. It is useful to outline the manner in which the City Plan deals with matters of urban design within the L3 and L4 Zones. A number of the objectives are relevant to this plan change. Three significant objectives are: Objective 4.2 'A pleasant and attractive City'; Objective 6.1 'urban consolidation'; and Objective 11.5 'Good quality building and site design to achieve a high level of amenity throughout the living areas of the City'. The associated policy framework generally sets out a requirement for good design and high standards of residential amenity within the context of accommodating a portion of urban growth through intensification of the inner urban area. In some areas the Plan's policy package lacks a level of specificity and direction about how these objectives can be achieved.
31. The proposed changes to policies are mainly focused on the explanations and reasons to the policies. The proposed plan change text (Attachment 1) details the precise changes and the Section 32 report provides context and discussion thereof. The most substantial policy change recommended is to Policy 11.5.2 – 'Infill and redevelopment'. A new section 11.5.2(b) is proposed to apply to the L3 and L4 Zones. It states, 'To ensure that development in the Living 3 and 4 Zones is designed in accordance with the principles of good urban design, appearance and amenity, including: ...'. Beneath this policy are 13 bullet points which set out the urban design principles to be followed.
32. The L3 and L4 Zone rule package currently sets the specific standards by which new development should comply. Non-compliance with these rules can trigger the requirement for a resource consent for one or more matters. Resource consents may then be notified or non-notified. An example of such a rule is the street scene and building set back from side boundary rules. These rules prescribe the quantitative requirements of development (namely the minimum distances which buildings should be set back from road boundaries and neighbouring site boundaries respectively). Associated assessment matters for these rules enable consideration of those applications which breach the standards. For example, where there would be a reduced setback of building from the road boundary (other than specified within the Plan) consideration would be given to, 'the extent to which the proposed building will have a size, form, proportions, roof line, style, external materials and colour, which are similar to or in keeping with those of existing buildings on the site (clause (ix) of 7.2.3 Street scene). Results from the urban design site survey (appended to the Section 32 report) has shown that such an approach in the L3 and L4 Zones has not achieved a consistent level of good urban design.
33. In addition to the existing rule package, the Council introduced voluntary design guides for the these L3 and L4 zones in 1999. This was in response to community concerns about the poor levels of urban design being displayed in multi-unit developments. It was also an alternative method for achieving the Plan's objectives and policies relating to good design. The design guides are a useful tool for encouraging and guiding good quality design. However, the guides carry very little weight when it comes to assessing development proposals as they fall outside the City Plan. As such they lack sufficient regulatory status to actually require good design. The form of development which has occurred since 1999 has shown that the guides have actually had little influence in raising design standards.
34. The proposed amendments to the bulk and location rules will ensure a more appropriate building envelope is in place that sets the basic parameters for developments. Experience has shown that a bulk and location rule package, accompanied by voluntary design guides, is not sufficient for ensuring that acceptable levels of urban design are achieved. Therefore, the proposed plan change introduces a new requirement whereby most new developments would need to obtain a resource consent (even if the development complies with the general bulk and location rules). This is so that the proposal can be assessed in qualitative terms regarding urban design. The rule's assessment matters do not specify specific architectural styles or designs, rather they set out a series of well established urban design principles that a proposed design should address.

2 Cont'd

35. This resource consent requirement and associated assessment would capture most new developments in these zones, including all developments of three or more units on a site. It is linked to the policy changes (in particular 11.5.2 (b) as discussed above. Further discussion on the proposed new rule is found in the Section 32 report and within this report.

ISSUES AND PROPOSED CHANGES

36. To inform the development of this proposed plan change a series of reports were commissioned. Discussion regarding the various streams of work is contained in the Section 32 report. It also discusses the range of issues identified, options available and associated costs and benefits of different approaches. It provides considerable discussion about each issue and the associated change(s) recommended. For the purposes of this report a summary is provided in the following paragraphs regarding some of the more significant urban design issues identified. Discussion is also provided about some of the proposed changes. At the beginning of the Section 32 report there is a summary of the proposed new rules, those rules to be deleted and rules to be amended (Refer to the 'Executive Summary').

Issues

- Lack of landscaping and tree planting
 - Visual dominance of car parking areas and garaging
37. The Urban Design assessment highlighted that many developments have large areas of hard surfacing for access, manoeuvring and car parking. The current rules limits the ability to assess the suitability of the location and design of these areas. Incorporating more trees and soft landscaping within a site can substantially help to soften the appearance of a development. The current landscaping rules are inadequate in this respect. Amendments are proposed to ensure the inclusion of more strategic and well sited tree planting throughout a site (adjacent to the road boundary and one tree for every 250 square metres site area within the site) together with a 0.6 metre landscaping strip along internal driveways and areas at each unit entrance (Refer to proposed rule 4.2.13 'Landscaping and tree planting - residential and other activities' within the proposed plan change text at Attachment 1).
38. The dominance of hard surfacing is of further concern because it restricts the available land at ground floor level which could otherwise be used for indoor or outdoor living space. The existing rules specify a minimum car parking requirement per residential unit and for visiting car parking spaces. The minimum requirement in the L3 Zones is for two parking spaces for each residential unit (as opposed to one space in the L4 Zones). It is evident from the traffic assessment (appended to the Section 32 report) that the two space minimum requirement could be regarded as a slight over-provision of car parking in the L3 Zones when considered in relation to car ownership rates. A further issue with providing too much car parking is the impact it can have on promoting alternative modes of transport.
39. Changes are recommended to the car parking requirements. This is having considered the sometimes competing objectives of providing sufficient off-street parking, car ownership rates, and creating well designed developments in urban design terms. Consideration has also been given to the function of local, collector and arterial roads. To help address these concerns an amendment is proposed to reduce the minimum car parking requirement per residential unit in the L3 Zones from two spaces minimum to one space minimum. This change would be limited to new residential units which have a gross floor area less than 150 square metres and gain access from a local road. As such, much larger residential units would still be required to provide a minimum of two car parking spaces. It is important to note that this continues to be a minimum requirement only. It would not prevent applicants from proposing more car parking spaces should they wish to. This change should assist in achieving developments which are less dominated by hard surfacing. It will also enable more efficient use of sites with more ground floor area being available for either habitable rooms or outdoor living areas. The introduction of a new implementation method under Objectives 7.2 and 7.6 (as set out above and relating to investigation of residential car parking schemes) also highlights a non District Plan matter which could be pursued where there is a high demand for on-street car parking.

2 Cont'd

- Site layout and design failing to adequately support passive or informal surveillance
 - Location of pedestrian entrances to individual units not easily identifiable
 - Poorly designed and solid, non-transparent front fencing.
40. The Urban Design assessment highlighted a lack of habitable space at the ground floor level within new developments as well as insufficient overlooking of shared access ways (particularly at the ground floor level). Inclusion of such spaces can help support passive or informal surveillance. Moreover, pedestrian entrances to individual units are not always readily identifiable from the street. Such design considerations can assist with a more pleasant experience and feeling of safety when moving into and around a development. Similar safety and visual amenity concerns relate to the use of solid and non-transparent fencing which can limit views into and out of sites. The current provisions do not adequately enable consideration of these matters and changes are recommended.
- Unacceptable levels of overlooking and lack of privacy for occupants of residential units both within a site and for neighbouring occupiers.
 - Requirement for adequately sized and located outdoor and indoor storage space and outdoor living space which is directly accessible from habitable rooms.
 - High levels of traffic noise for habitable rooms sited near to road boundaries.
41. Issues of overlooking and loss of privacy for occupants both within and adjoining a site were identified. The Plan's objective and policy framework and rules recognise and require acceptable standards of amenity to be provided. However, the prescribed separation distances are proving inadequate in this respect, particularly between living room windows on adjoining sites. Amendments are recommended to the separation from neighbours rule. For more detail refer to rule 4.2.5 – 'Separation from neighbours – residential and other activities' within Attachment 1. Concerns have been identified about the provision of suitably sized and accessible indoor and outdoor living and storage space facilities. Proposed rule changes are also intend to address such issues.
42. Noise emanating from traffic can have a detrimental impact on residential amenity. It was considered whether it would be necessary to require minimum sound insulation for residential units which are more exposed to high levels of traffic noise. The acoustics report (which is appended to the Section 32 report) recommends a level of external sound insulation to be provided for habitable spaces in the L3 and L4 Zones within close proximity to collector and arterial roads. This recommendation is reflected within the proposed plan change.
- Buildings consistently sited at odd angles to the street and failing to address the street scene (inconsistent with traditional patterns of development).
 - Long bland building facades with limited detailing, variation and visual interest
 - Overly repetitive design and a lack of identity/individuality of individual residential units
 - Large projecting building overhangs which appear out of character with traditional depths of eaves and rendering a unbalanced appearance

2 Cont'd

43. A range of issues were found relating to the overall layout, design and appearance of buildings. Of general concern is the manner in which residential buildings address, or front the street. The long and narrow shape of many sites (especially in the L3 Zones) has often resulted in a 'sausage block' typology with residential units running side on to the boundary to nearly the full depth of the site. The cumulative effect of this type of development is a series of units which relate more to their side shared driveway than they do to the main street frontage. Development on these long, narrow and constrained sites can sometimes be achieved in a desirable manner and in fact some better examples were found during the site survey work. However, to generally achieve a higher standard of development more attention needs to be given to the siting, design and appearance of these developments. For instance, consideration needs to be given to how the facades of the buildings are visually articulated, whether there are sufficient breaks within the building form, and the location and extent of tree planting within and fronting the site. Improvements in such areas can be achieved by strengthening and amending the existing rules package (e.g. the tree planting and landscaping rule previously discussed). In respect of this issue and others raised above, an overall assessment of the design standard or quality is considered necessary to fully ascertain to what extent new development meets urban design principles. As discussed above such an urban design assessment would be triggered by the proposed urban design, appearance and amenity rule (refer wording of proposed rule 4.2.7 – 'Urban design, appearance and amenity – residential and other activities' within the attached proposed plan change text).
44. Under rule 4.2.7 a resource consent application would be required for developments of three or more residential units. The rule would also apply to one or two residential unit developments on sites less than 300 square metres and one to two unit developments that result in a residential floor area greater than 550 square metres. This is to ensure that applicants cannot circumvent the rule by arbitrarily dividing a six unit development into three lots of two unit developments on separate nominated 'sites'. It will also enable consideration of very large residential units. Proposals for buildings of over 40 square metres in size (to be used for other activities on a site) would also be subject to this rule. Accessory buildings, fences and walls associated with the above developments, alteration or additions are included within the scope of the rule. Applications under the above rule would be processed on a non-notified basis. It should be noted that the Council has the ability to override this clause within the Plan through consideration of special circumstances.
45. In considering applications under this rule the Council's discretion would be restricted to a set of assessment matters which set out the expectations for the urban design, appearance and amenity considerations of the development. The urban design assessment matters are contained within ten sub sections which together form a comprehensive set of assessment criteria. The overall impact of this assessment when combined with all other proposed changes is to provide a more comprehensive approach for considering and assessing urban design within the L3 and L4 Zones.

THE OPTIONS AND PREFERRED OPTION

46. A range of options were considered during the preparation of this proposed plan change. This includes options of doing nothing, the 'status quo', as well as various specific methods of amending the Plan provisions. The Section 32 assessment should be referred to for more detail in this regard. The do nothing option is not preferred as it has been demonstrated that the current regulatory framework with supporting design guides is not working. Consideration was given to updating the policies and amending the existing rules to a greater or lesser extent. Overall, a combination of changes to existing provisions and shifting to the inclusion of a more explicit assessment of urban design is considered to be a very effective way to achieve the desired outcomes.
47. It is also noted that in preparation for this proposed plan change, the various issues and options have been presented to the Council. This includes workshops on three occasions with the full Council and on six occasions with the Regulatory and Planning Committee.

2 Cont'd

PROCESSING OF COUNCIL INITIATED PLAN CHANGES

48. This is a Council initiated plan change and is subject to the provisions of the First Schedule of the RMA. If the Council decides to notify the plan change then it would be notified in accordance with the provisions of this Schedule. The proposed plan change and Section 32 would be made available for submissions and further submissions. Submitters would then have the right to present their submission at a public hearing. Whether or not a hearing is held the Council would need to notify its decision. A right of appeal to the Environment Court would be available, for any person who made a submission on the proposed plan change.

SUMMARY

49. The stimulus for the preparation of the plan change has been the significant level of concern raised in recent years about the design and appearance of multi-unit developments in the L3 and L4 Zones. The proposal has been prepared following consultation and subsequent research into ways in which the City Plan could be amended to strengthen the existing provisions and where necessary incorporate new rules and discretionary assessment over urban design matters. The proposed amendments provide the basis for achieving improved outcomes. Overall, the proposed change is considered to be the most appropriate in terms of efficiency and effectiveness in achieving the Plan's objectives. Sufficient consideration has been given to various options for pursuing the change. It is recommended that the proposed plan change is accepted in its entirety for public notification.

3. TEMPLETON/OLD TAI TAPU ROAD BOUNDARY CHANGES

| | |
|-------------------------------------|--|
| General Manager responsible: | General Manager Strategy and Planning, DDI: 941 8281 |
| Officer responsible: | Unit Manager, Strategy and Planning Group |
| Author: | Michael Annear, Assistant Policy Planner |

PURPOSE OF REPORT

1. The purpose of this report is to obtain approval from the Council to submit two boundary alteration proposals to the Selwyn District Council for the areas of Templeton and Old Tai Tapu Road in accordance with Part 1, Schedule 3 of the Local Government Act 2002.
2. This report (the Templeton (**Attachment 1a**) (separately circulated) / Old Tai Tapu Road Boundary changes (**Attachment 2a**) (separately circulated) and any decisions associated with this report do not initiate a boundary change. Rather, the filing of the proposals with Selwyn District Council enacts the statutory process for beginning boundary alteration via the Local Government Act 2002.

EXECUTIVE SUMMARY

3. In February, 2002, the Council adopted a report recommending a boundary alteration in the vicinity of Templeton and authorised staff to consult with affected land owners to ascertain their views on a proposed boundary adjustment.
4. Staff have recently been asked to review existing work and advance the boundary alteration proposal to provide more certainty to land owners in the area and to create a more logical and coherent boundary in these areas.

3 Cont'd

5. Furthermore, since 2002, a new area has come to the attention of both the Christchurch City Council and Selwyn District Council (SDC). This is the property situated at 280 Old Tai Tapu Road and has been identified as a high priority (see **Appendix 2b**) (separately circulated). Staff have considered this option in the second boundary alteration proposal. An area immediately to the east of Templeton has also been recently suggested as a potential location for a boundary alteration (see **Appendix 1b**, letter F) (separately circulated). This area includes approximately 3.6 hectares of residential land and up to nine households. Discussions with SDC staff and affected landowners are ongoing. These discussions are for the purpose of information gathering and are non statutory. There will be further opportunities for affected land owners to participate in a later statutory consultation process once a draft reorganisation scheme has been prepared.
6. The main reason for undertaking a boundary change is because the present location of the Council's territorial boundary bisects a number of properties, creating difficulties and uncertainties in relation to bylaw administration, rates collection, service provision and electoral and census activities. Furthermore, the existing boundary also bisects the Templeton community into western and eastern sections, creating problems for neighbourhood identity and electoral and census activities.
7. In order to begin the boundary alteration process, a proposal must be initiated by the Council under section 1(1) of Schedule 3 of the Local Government Act 2002, as an affected local authority. The Council prepares the proposal and then files the proposal with any other affected local authorities. In this case, the Council would file the proposal with Selwyn District Council.
8. The proposals to alter the boundary between Christchurch and Selwyn has been formulated generally on the following basis:
 - (a) Meeting the requirements of Schedule 3 of the Local Government Act 2002.
 - (b) Creating greater coherence and rationality of the boundary in the areas of Templeton and Old Tai Tapu Road and improving local governance through the consolidation of distinct communities of interest.
 - (c) Aligning the boundary with existing cadastral boundaries and avoiding buildings and other major structures.
 - (d) Transferring the land in Templeton, which is currently in Selwyn and primarily developed for urban purposes into Christchurch.
 - (e) Transferring the land in Templeton and Old Tai Tapu Road that is currently in Christchurch and primarily developed for rural purposes to Selwyn.
9. This report promotes a rational boundary for administrative purposes. It does not investigate the possible advantages or disadvantages to the property owners involved. While some land owners may benefit as a result of any subsequent rezoning, rezoning is not a criterion for the consideration of the boundary alteration. However, should a boundary alteration proceed in the areas specified in this report, a reasonable zoning would need to be applied to the affected properties within two years of any decision.
10. Should the proposals be implemented, then it is likely that land being transferred into Christchurch City would attract an urban zoning, with land transferring into Selwyn attracting an appropriate rural zoning.

FINANCIAL IMPLICATIONS

11. There are costs associated with staff time in preparation of the reorganisation proposals and reorganisation schemes. Staff time is funded via the 2009/10 District Plan work programme and in part from legal services.

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

12. Yes. Covered by existing unit budget.

3 Cont'd

LEGAL CONSIDERATIONS

13. Legal advice has been sought, and the Legal Services Unit is reviewing all documents associated with the proposed boundary change.

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

14. Yes.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

15. Aligns with the District Plan Activity Management Plan.

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

16. Yes.

ALIGNMENT WITH STRATEGIES

17. The boundary alteration aligns with the objectives of the South-West Area Plan; notably, the objective to visibly define and reinforce the urban limit. The boundary proposal also aligns with the Greater Christchurch Urban Development Strategy, which seeks a well-defined district boundary, which creates a demarcation between urban and rural areas.

Do the recommendations align with the Council's strategies?

18. Yes.

CONSULTATION FULFILMENT

19. This proposal has been discussed with the Riccarton/Wigram Community Board. Meetings with all directly affected land owners have been coordinated for the purposes of information gathering and obtaining feedback on the proposal. The proposed boundary change has also been discussed with staff from the SDC, and representatives from Statistics New Zealand and the Local Government Commission, who have indicated their support for the proposed alteration.
20. Land owners were generally supportive of a boundary realignment; although some concerns were raised regarding possible rezoning (which is a secondary process following the boundary change), changes to rating arrangements and possible changes to service provision resulting from a boundary alteration.
21. Cookie Time Ltd. representatives indicated their desire to see all of their properties included within the Christchurch City boundary to facilitate future business expansion. One of the properties associated with Cookie Time Ltd. (19 Trents Road, Lot 1 DP 13960), however, has not been included within the proposed Christchurch City boundary because it has a separate title and has currently not been developed beyond a rural land use, which is inconsistent with the surrounding land uses.
22. The residents of 845 Main South Road would like their property, particularly the area surrounding the house, included within Christchurch due to existing water connections. Further discussions would need to be undertaken with SDC to determine whether all services would be transferred to Selwyn or whether the Council would continue to provide access to water reticulation. The property in question is currently on tank supply; however, the owners have indicated their desire to retain the option of moving to Council supply in the future.

3 Cont'd

23. Discussions with affected land owners to the east of Templeton are ongoing. These discussions are for the purpose of informing and are non statutory. There will be further opportunities for affected land owners to participate in a later statutory consultation process once a draft reorganisation scheme has been prepared.

STAFF RECOMMENDATION

That the Council:

- (a) Approve the two boundary alteration proposals for filing with the Selwyn District Council in accordance with Part 1, Schedule 3 of the Local Government Act 2002, to start the formal boundary alteration process.
- (b) Approve staff to prepare a draft reorganisation scheme in the likely event that the Christchurch City Council become the appointed local authority for the boundary alteration process (as indicated in early discussions with the Selwyn District Council).

COMMUNITY BOARD RECOMMENDATION

The Riccarton/Wigram Community Board supported the staff recommendation on the Templeton/Tai Tapu Boundary Alteration.

COMMITTEE RECOMMENDATION

That the Council:

- (a) Adopt the staff recommendation.
- (b) Ask the Chief Executive Officer to enter negotiations with Selwyn District Council regarding cost sharing associated with the boundary changes.
- (c) Note that in the event of the reorganisation taking place there will be a need for as yet unbudgeted plan changes to adjust the zone boundaries and undertake any necessary rezonings.

3 Cont'd

BACKGROUND (THE ISSUES)

24. The main driver for the proposed boundary alteration is to create a more rational and coherent boundary between Christchurch and Selwyn in the vicinity of Templeton and Old Tai Tapu Road. At present, the current boundary bisects a number of properties. Specific issues include the following:
- (a) The existing boundary bisects the bar area of the Golden Mile Tavern (10 Trents Road).
 - (b) The shop at the Cookie Time Factory is in Christchurch City while the factory is primarily within Selwyn District (789 Main South Road).
 - (c) Cookie Time Factory access, car parks and other facilities associated with the existing operation are also located outside the current Christchurch territorial boundary at 7 Trents Road, while some of the factory and shop are located within the boundary.
 - (d) The current, Christchurch territorial boundary bisects a property and buildings at 785 Main South Road.
 - (e) The boundary bisects a rural property and associated farm buildings at 845 Main South Road on the edge of Templeton.
 - (f) The boundary bisects a rural property at 280 Old Tai Tapu Road.
 - (g) A small grouping of residential properties immediately to the east of Templeton and north of Main South Road are currently within Selwyn District despite being inconsistent with Selwyn District Council zoning in the surrounding area and having a close association with Templeton.
25. Two proposals have been developed, one for Templeton and one for Old Tai Tapu Road. The alteration of the boundary at 280 Old Tai Tapu Road is relatively straight forward and involves only one property owner. The alteration of the boundary at Templeton involves more properties and is likely to be the subject of more discussion throughout the process. The two proposals will require the development of two separate reorganisation schemes. However, it is anticipated that the first steps in the boundary alteration process for both proposals can be undertaken at the same time.

3 Cont'd

26. Both proposals will promote good local government in both Christchurch City and Selwyn District. They relate to very small boundary adjustments and both Christchurch City Council and Selwyn District Council will continue to:
- (a) Have the resources necessary to enable them to carry out their responsibilities, duties and powers
 - (b) Have districts that are appropriate for the efficient and effective performance of their roles as specified in section 11 of the Local Government Act 2002
 - (c) Contain within their districts sufficiently distinct communities of interest, and
 - (d) Be able to meet the requirements of section 76 of the Local Government Act 2002.
27. Under the Local Government Act 2002, decision making criteria for determining the position of a boundary include statistical meshblock boundaries (important for electoral purposes), regional boundaries and catchment boundaries. Also of importance is the need to promote good local government as a consequence of a boundary change, which entails ensuring that each local government has sufficient resources to carry out its duties, responsibilities and powers, and contain a sufficiently distinct community of interest.
28. Should the Council approve the lodging of the boundary alteration proposals with the Selwyn District Council the following next steps would occur:
- (a) SDC has 60 days to review the proposals and decide whether the boundary change will be led by an appointed local authority, a joint committee (comprising equal numbers of persons from each affected territorial authority), or whether the Local Government Commission will oversee the boundary change.
 - (b) The appointed local authority or the joint committee prepare the draft reorganisation schemes for public consultation. Copies of the schemes are sent to relevant parties including the Local Government Commission and affected local authorities as specified in clause 12 of Schedule 3 of the Local Government Act 2002.
 - (c) A territorial authority has two years within which to make changes to its district plan to accommodate any new land areas included within its boundary once the reorganisation scheme has been formally adopted.

THE OBJECTIVES

29. To create a rational and coherent territorial boundary in the vicinity of Templeton and Old Tai Tapu Road that meets Local Government Act conditions for the alterations of boundaries.

THE OPTIONS

30. The Council may:
- (a) Confirm the boundary change proposals for lodgement with the Selwyn District Council for the initiation of the formal boundary change process.
- OR**
- (b) Maintain the status quo (i.e. no change to the existing boundary).
- OR**
- (c) Direct Council staff to consider a different boundary alteration option.

THE PREFERRED OPTION

31. The Council confirms the current proposals for lodgement with the Selwyn District Council.

3 Cont'd

ASSESSMENT OF OPTIONS

The Preferred Option

32. Option 1: Approve the boundary change proposals for lodgement with the Selwyn District Council for the initiation of the formal boundary change process.

| | Benefits (current and future) | Costs (current and future) |
|----------------------|---|--|
| Social | Improves local governance and creates a coherent community of interest. | Nil |
| Cultural | NA | NA |
| Environmental | Creates a more rational, western boundary for Christchurch. | Nil |
| Economic | Creates certainty for land owners regarding bylaws, rates collection and land zoning. | Small increase in costs associated with increased levels of service provision. In many cases; however, the Council already provides water and waste services to properties along the boundary. |

Extent to which community outcomes are achieved:

Primary alignment with the LTCCP community outcome *a well governed city*.

Impact on the Council's capacity and responsibilities:

Small increase in service provision is likely in the vicinity of Templeton.

Effects on Maori:

Nil.

Consistency with existing Council policies:

Supports the Council's 2009-2019 LTCCP.

Views and preferences of persons affected or likely to have an interest:

Consultation has been undertaken with affected property owners, the Riccarton/Wigram Community Board and officers from the Selwyn District Council to inform the proposed boundary change.

Land owners were supportive of boundary realignment; although some concerns were raised regarding possible rezoning, changes to rating arrangements and possible changes to service provision.

Cookie Time Ltd. representatives indicated their desire that all properties owned by Cookie Time Ltd and its associates be included within the Christchurch City boundary to facilitate future business expansion. One of the properties associated with Cookie Time (19 Trents Road); however, has not been included within the proposed Christchurch City boundary because it has a separate title and has currently not been developed beyond a rural land use. That is, it is more consistent with land uses in Selwyn than land uses in Christchurch.

The residents of 845 Main South Road would like their property, specifically the area surrounding the house, included within Christchurch due to existing water connections. Further discussions would need to be undertaken with the Selwyn District Council to determine whether all services would be transferred to Selwyn or whether the Christchurch City Council would continue to provide access to water services. The property in question is currently on tank supply; however, the owners have indicated their desire to retain the option of moving to Council supply in the future.

Other relevant matters:

Nil

33. Option 2: Maintain the status quo (no change to the existing boundary).

34. Option 3: Direct Council staff to consider a different boundary alteration option.

4. APPROVAL OF CHANGES TO PROVISIONS IN THE CITY PLAN

| | |
|-------------------------------------|---|
| General Manager responsible: | General Manager Strategy and Planning, DDI 941-8281 |
| Officer responsible: | Acting Programme Manager, District Planning |
| Author: | David Punselie |

PURPOSE OF REPORT

1. This report seeks a recommendation from the Council to approve changes to the City Plan introduced by an Environment Court consent order on an appeal against the Council's decision on Plan Change 37 to the City Plan.

EXECUTIVE SUMMARY

2. Plan Change 37 is a private change submitted by the owner of land at 458-464 Ferry Road, Woolston, situated at the corner of Ferry Road and Hopkins Street. The owner, Mullaly's Auto Centre Limited, sought to rezone the land from Living 2 to Business 1. The site was formerly a service station but is now used for the retailing of tyres and as a car sales yard.
3. Commissioner David Collins conducted a hearing on the plan change in October 2008. He heard evidence on behalf of the owner of the site and from the planning consultant engaged by the Council who recommended that the site should be rezoned as requested. Having heard the evidence the Commissioner concluded that the proposal would not meet the purpose of the Resource Management Act 1991 and would conflict with some important objectives and policies in the City Plan. He also concluded that rezoning this site would encourage applications for rezoning of many similar sites; would undermine the residential coherence of the immediate area, and would undermine the consolidation of commercial activity at existing zoned centres. His recommendation that the plan change request be declined was accepted by the Council on 19 December 2008.
4. The Council's decision was appealed to the Environment Court by Mullaly's Auto Centre Limited. The Court invited the parties to attempt mediation of the appeal and, following a number of meetings between the parties, the District Plan Appeals Subcommittee authorised staff to settle the appeal by agreeing to retain the Living 2 zoning with specific exemptions that would allow some business activities on the site. The consent order to this report sets out the agreed changes to the plan which the Court has directed are to be made (**Attachment 1**) (separately circulated).

FINANCIAL IMPLICATIONS

5. There are no direct financial implications.

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

6. Covered by existing budgets.

LEGAL CONSIDERATIONS

7. Approving provisions in the City Plan is a formal procedural step required by the Resource Management Act 1991 before those provisions can be made operative.

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

8. Yes, see above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

9. Aligns with District Plan Activity Plan.

4 Cont'd

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

10. Yes. Supports the maintenance and review of the District Plan project.

ALIGNMENT WITH STRATEGIES

11. Yes.

Do the recommendations align with the Council's strategies?

12. Yes.

CONSULTATION FULFILMENT

13. Approving changes to the City Plan under clause 17(2) of the First Schedule to the Resource Management Act 1991 is a procedural step that does not require consultation.

STAFF RECOMMENDATION

That the Council:

- (a) Approve, pursuant to clause 17(2) of Schedule 1 to the Resource Management Act 1991, the changes to City Plan provisions set out in the attached consent order.
- (b) Authorise the General Manager Strategy and Planning to determine the date on which the changes to plan provisions become operative.

COMMITTEE RECOMMENDATION

That the staff recommendation be adopted.

5. REVOCATION OF BANKS PENINSULA DISTRICT COUNCIL PUBLIC PLACES AND SIGNS BYLAW 2004

| | |
|-------------------------------------|---|
| General Manager responsible: | General Manager Strategy and Planning, DDI 941-8281 |
| Officer responsible: | Programme Manager Strong Communities |
| Author: | Terence Moody |

PURPOSE OF REPORT

1. The purpose of this report is to recommend the revocation of the remainder of the Banks Peninsula District Council Public Places and Signs Bylaw 2004 (the Bylaw) on the grounds that a review has shown that the provisions are covered by other bylaws or can be dealt with through Council operational policies.

EXECUTIVE SUMMARY

2. Following the review of bylaws undertaken in 2008 and 2009 the Banks Peninsula District Council Public Places and Signs Bylaw 2004 *Part 2 Liquor Control in Public Places* and *Part 3 Public Places* of the Bylaw were revoked and replaced by new provisions. These were replaced by the bylaws *Christchurch City Council Alcohol Restrictions in Public Places Bylaw 2009* and *Christchurch City Council Public Places Bylaw 2008* respectively. Some clauses of *Part 4 Signs* were also revoked by the latter bylaw.

5 Cont'd

3. Despite a new administrative bylaw having been introduced, the *Christchurch City Council General Bylaw 2008*, some administrative parts of The Bylaw and a section of *Part 4 Signs* relating to "remote signs", "remote sign frames", "rural information signs and frames", and "static information signs" were retained.
4. The Local Government Act 2002 (LGA) requires bylaws to be reviewed within five years of their adoption and The Bylaw must be reviewed by December 2009. Parts of the Bylaw have already been reviewed, revoked, and where appropriate, replaced as noted above.
5. The remaining parts of The Bylaw requiring consideration included the *Preamble*, *Part 1 Administration*, and clauses 4.1; 4.5; 4.6; 4.7; 4.8; 4.9; Schedule I; Schedule II; and Design Guidelines of *Part 4 Signs*. A clause by clause analysis of The Bylaw has been undertaken (**Attachment 1**) (separately circulated). This has revealed that many of the provisions in the *Preamble* and *Part 1 Administration* are contained in the Christchurch City Council General Bylaw 2008 and hence the Bylaw may be revoked.
6. The remaining provisions of *Part 4 Signs* relate to signage under the control of the Council, and do not need to be included in any bylaw. It provided for the Chief Executive to permit remote signs on sign frames provided by the Council in public places under the control of the Council. As far as it is known there have not been any "remote signs", "remote sign frames", "rural information signs and frames", and "static information signs" provided for in the Banks Peninsula ward under the Bylaw. The matters these provisions cover are addressed in the Christchurch City Public Places Bylaw 2008 which prohibits commercial use (such as signage) of public places without the Council's permission. Signage in public places will be further considered in the review of public places operational policies agreed by the Council at its meeting on the 24 September 2009.
7. Under the *Christchurch City Council Public Places Bylaw 2008* the Chief Executive has the delegated power to approve signs advertising commercial activities in public places and this could include such remote signs if that was desired. The review of operational policies regarding signs in public places will deal first with those in the Banks Peninsula Ward, however this delegation can be exercised to deal with any related issues that occur between the time the remaining parts of the Bylaw are revoked and the relevant operational policy review is completed. It should be noted there is no budget for erecting sign frames on roadways or in public places in the Banks Peninsula area.
8. Accordingly it will be recommended that the whole of The Bylaw may be revoked and the Special Consultative Procedure should be undertaken as required by sections 83 and 86 of the LGA.

FINANCIAL IMPLICATIONS

9. There are no other financial implications other than those associated with the Special Consultative Procedure which include printing of the Statement of Proposal and Summary of the Proposal, and the costs of Public Notices.

Do the Recommendations of this Report Align with 2009-2019 LTCCP budgets?

10. The budgets for the Regulatory Services group of activities in Our Community Plan 2009-2019 Volume 1 Page 89 make general provision for the enforcement of bylaws and the City Plan and investigation of complaints. It is not anticipated that the revocation of this bylaw will significantly impact on those budgets as similar provisions remain in the *Christchurch City Council General Bylaw 2008*.

5 Cont'd

LEGAL CONSIDERATIONS

11. The timeframes provided in section 158¹ of the LGA, that bylaws must be reviewed within five years of introduction, means The Bylaw must be reviewed by 15 December 2009. Section 160² of the LGA provides that a bylaw review is done by making the determinations required by section 155 as noted in paragraph 11 below. If, following the review, the Council determines that the bylaw should be amended, revoked, or revoked and replaced, it must act under section 156, and use the special consultative procedure to make, amend or revoke a bylaw.
12. The legal considerations in relation to the review of existing bylaws and adoption of a new bylaw largely arise from section 155 of the LGA. This sets out the matters that must be determined to decide whether a bylaw is appropriate, as follows:
 - (1) *A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.*
 - (2) *If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw—*
 - (a) *is the most appropriate form of bylaw; and*
 - (b) *gives rise to any implications under the New Zealand Bill of Rights Act 1990.*
 - (3) *No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act."*
13. In order to comply with section 155, the Council needs to identify the perceived problem and formally determine that a bylaw is the most appropriate way to deal with the perceived problem, and if so, that the proposed form of the bylaw is the most appropriate form, and that it is not inconsistent with the New Zealand Bill of Rights Act 1990. If the Council does not satisfy the requirements of section 155 appropriately, then it is at risk of a challenge to its decision by way of a judicial review application. For example, if it did not have sufficient evidence of a problem, or there was a problem but there were other more appropriate ways to deal with it than a bylaw, then the bylaw might be open to challenge. Conversely, if there was evidence of a problem and that a bylaw was the most appropriate way to deal with that problem, but the Council did not make a bylaw, then that decision might also be successfully challenged.

Legal requirements for the special consultative procedure

14. The special consultative procedure under the LGA when revoking a bylaw requires that the Council prepare a Statement of Proposal (**Attachment 2**) (separately circulated) that must include:
 - "(ii) a statement that the bylaw is to be revoked; and
 - (iii) the reasons for the proposal; and
 - (iv) a report on any relevant determinations by the local authority under section 155".
15. The Act also requires the Council to prepare a summary of the information in the Statement of proposal. Section 89(c) requires that the summary of information be distributed "*as widely as reasonably practicable (in such a manner as is determined appropriate by the local authority, having regard to the matter to which the proposal relates)...*" Section 83(e) of the LGA also requires the Council to give public notice of the proposal and the consultation being undertaken.

¹ Section 158 of the LGA requires bylaws made under the Act not later than 5 years after the bylaw was made if the bylaw was made after 1 July 2003. This applies to the Banks Peninsula District Council Public Places Bylaw 2004.

² Section 160 of the LGA requires the review under section 158 to be undertaken in accordance with section 155 including identifying the perceived problem to be addressed and whether a bylaw is the appropriate way of addressing the problem.

5 Cont'd

16. Since the revocation of this Bylaw is not likely to be a matter of significant interest throughout the Christchurch City Council district, it is proposed that the Summary of Information (**Attachment 3**) be published through local newspapers in the Banks Peninsula area, and that this also serve as public notice of the proposal, as required under section 83(e). Copies of the consultation documents will be available from the Civic Offices, and all Council service centres and libraries and on the Council's "Have Your Say" Website.
17. Submissions called for on the proposal will be considered by the Council and any persons wishing to present their submission orally will be heard prior to the final determination being made.

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

18. Yes, as above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

19. Under the Activity Management Plan provisions for Regulatory Services Enforcement and Inspections: *Enforce compliance through Inspection, Enforcement and Monitoring of statutory requirements: Building, Parking, Fencing of Swimming Pools, City Plan & bylaws.*

Do the recommendations of this report support a level of service or project in the 2009-2019 LTCCP?

20. Regulatory Services Enforcement and Inspection: *The Council's regulatory services make sure we follow all the laws and rules that apply in the city to keep our residents healthy and safe. This ensures that residents and businesses comply with rules for building, parking, and City Plan and bylaws.*³

ALIGNMENT WITH STRATEGIES

21. There are no specific strategies in relation to this issue.

Do the recommendations align with the Council's strategies?

22. See above.

CONSULTATION FULFILMENT

23. Consultation was undertaken with the Legal Services Unit and the Inspections and Enforcement Unit. It was accepted that the provisions of the Bylaw were adequately covered by the Christchurch City Council General Bylaw 2008, as well as other bylaws or operational policies as necessary.
24. Formal public consultation of any proposal adopted by the Council will go out for public consultation in accordance with the Special Consultative Procedure (section 83 of the LGA). Anyone can make a submission and will be given the opportunity to be heard before a hearing panel.

³ Our Community Plan 2009-2019 Volume 1, p 89

5 Cont'd

STAFF RECOMMENDATION

That the Council:

- (a) Resolve that it is satisfied that the Banks Peninsula District Council Public Places and Signs Bylaw 2004 is not necessary in terms of section 155 of the Local Government Act 2002 and therefore should be revoked.
- (b) Adopt the attached Statement of Proposal and Summary of Information and that it be made available for public inspection at all Council Service Centres, Council Libraries and on the Council's website.
- (c) Agree that public notice of the proposal be given in "The Press" on 27 January 2010 and in the appropriate community newspapers as close as possible to the 27 January 2010.
- (d) Agree that the period within which written submissions may be made to the Council be between 1 February 2010 and 5pm on the 5 March 2010.
- (e) Call for submissions, including any verbal submissions, which will be considered by the Council Hearings Panel on 30 March 2010.
- (f) Appoint a Hearings Panel to consider and where necessary hear any submissions on the revocation and to report back to the Council on its decision.

COMMITTEE RECOMMENDATION

That the Council:

- (a) Receive the report for information.
- (b) Agree that the matter lie on the table until February 2010 when it will be considered by the Regulatory and Planning Committee alongside the report of the Public Places Policy Working Party.

6. BYLAW REVIEW PROGRAMME FOR THE NEXT TEN YEARS

| | |
|-------------------------------------|--|
| General Manager responsible: | General Manager Strategy and Planning DDI 941-8281 |
| Officer responsible: | Programme Manager Strong Communities |
| Author: | Angela Cassidy, Principal Advisor Policy |

PURPOSE OF REPORT

1. This report sets out a timetable for the review of bylaws over the next ten years. The report proposes the establishment of a standing subcommittee to provide a regular meeting time for Council involvement in bylaw reviews, and thus make bylaw review processes and timeframes more predictable.

EXECUTIVE SUMMARY

2. On 23 April 2009, the Council agreed to "*adopt a ten-year bylaw review programme to coordinate the review of bylaws across the Council to avoid bottlenecks, local body elections and LTCCP consultation...*" This decision followed a review of the bylaws review process following a major review of bylaws in 2008.
3. Staff have developed a timetable for the review of bylaws over the next ten years, which is set out in Table One, and summarised in **Attachment 1** (separately circulated). The timetable reflects the statutory deadlines for completing each review, the estimated time required to undertake each review, the need to stagger reviews (effectively carrying out some reviews earlier than required by statute) so there are not too many being undertaken at any given time,

and the timing of LTCCP processes, local body elections and the Christmas breaks. The review programme only includes existing bylaws and bylaws that are currently under development. In practice, there is likely to be some movement in the timetable over time in order to reflect new developments and changing Council priorities.

4. Indicative timeframes for completing the main stages of a bylaw review are set out in Table Two. The total time varies from 50 to 58 weeks depending on the nature of the bylaw. The estimated timeframes reflect past experience and recognise that Councillors and staff are likely to have other work priorities competing for their time.
5. On 23 April 2009, the Council agreed that *"a seminar will be presented to relevant staff and Councillors at the beginning of each bylaw review."* This step has been included in the generic review process. In the past, subcommittees or working parties have also been established on an ad hoc basis to provide Councillors with the opportunity to consider the issues in more detail before proposals are developed. It is proposed that a standing 'bylaws' subcommittee now be established to provide a regular meeting time for Councillor involvement in bylaw reviews and make bylaw review processes and timeframes more predictable. The subcommittee would be charged with presenting recommendations to the Regulatory and Planning Committee for consideration.

FINANCIAL IMPLICATIONS

6. Any budget implications of the bylaw review programme will be addressed through the Annual Plan process and the next LTCCP.

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

7. As above

LEGAL CONSIDERATIONS

8. Section 158 of the Local Government Act 2002 requires local authorities to review a bylaw made under that Act, or the Local Government Act 1974, within five years of first being made (or by 1 July 2008 if made prior to 1 July 2003). Section 159 of the Local Government Act 2002 requires a further review of each bylaw within ten years of the date of the previous review.
9. Five-year reviews have been completed, or are nearing completion, for all of the Council's existing bylaws. The Council is now obliged to review each bylaw within ten years of the previous review. This programme provides a framework.

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

10. The statutory deadline for the review of each bylaw has been taken into account in developing the bylaw review programme.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

11. The bylaw review programme contributes to 'city planning and development: city and community long-term policy and planning' and 'democracy and governance: city governance and decision-making' in the 2009-19 LTCCP. The bylaws themselves contribute to a number of activity management plans; these links will be made explicit at the time of each bylaw review.

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

12. As above

ALIGNMENT WITH STRATEGIES

13. There are no Council strategies that relate to the process of making and reviewing bylaws. However, there are a number of strategies that are relevant to the subject matter of bylaws, which will be taken into account in the review of each bylaw.

6 Cont'd

Do the recommendations align with the Council's strategies?

14. As above

CONSULTATION FULFILMENT

15. Consultation is not required for the purpose of this paper. Consultation will be undertaken during each bylaw review.

STAFF RECOMMENDATION

That the Council:

- (a) Note the bylaw review programme for the next ten years, as set out in Table One of this paper and in Attachment 1.
- (b) Note the main stages of a bylaw review, as set out in Table Two of this paper.
- (c) Note that each bylaw review is likely to take 50 to 58 weeks to complete, depending on the nature of the bylaw.
- (d) Agree to establish a standing subcommittee of the Regulatory and Planning Committee to provide a regular ongoing opportunity for Councillors to be involved in bylaw reviews.
- (e) Agree to the following terms of reference for the subcommittee:

To work with staff on the review and development of bylaws and to present recommendations to the Planning and Regulatory Committee for consideration.

COMMITTEE RECOMMENDATION

That staff recommendations (a) - (c) be adopted.

BACKGROUND

Rationale for a ten year bylaw review programme

- 16. On 23 April 2009, the Council resolved to: *"adopt a ten-year bylaw review timetable which coordinates the review of bylaws across the Council in order to avoid bottlenecks, local body elections and LTCCP consultation...by December 2009."* The resolution stemmed from a review of the bylaws review process following a major review of bylaws in 2008.
- 17. The primary reason for having a ten-year bylaw review programme is that the Local Government Act 2002 requires local authorities to review bylaws at least every ten years. There is a need for some flexibility, however, as any new bylaws must be reviewed within five years (and then every ten years thereafter) and a bylaw review may be initiated before the statutory deadline for other reasons (for example, legislative changes, operational changes or political reasons).

6 Cont'd

Objectives

18. The aims of the ten year timetable are to:

- (a) Coordinate the bylaw reviews across units (i.e. to avoid multiple bylaw reviews needing to be done simultaneously by one unit)
- (b) Manage bylaw reviews so that the timing does not clash with LTCCP consideration, consultation and adoption processes
- (c) Manage bylaw reviews so that the timing does not clash with local body elections
- (d) Ensure bylaw reviews are initiated early enough so that adequate time is allowed for all the stages to be completed within one Council term, and
- (e) Meet statutory review requirements.

The ten year timetable

19. The proposed bylaw review programme for the next ten years is set out in the following table. Attachment 1 sets out the programme in calendar form and shows the number of reviews that would be underway at any given time.

Table One: Bylaw review programme 2010-2020

| Bylaw | Statutory deadline | Proposed completion date | Comment |
|---|---------------------------|---------------------------------|--|
| Trade Waste Bylaw 2006 | 1 January 2016 | November 2015 | Need to bring forward to end of previous year |
| Licensed Waste Handling Facilities Bylaw 2007 | 1 October 2017 | September 2017 | |
| Water Related Services Bylaw 2008 | 19 June 2018 | November 2014 | Need to stagger reviews due in 2018 |
| Cleanfill Licensing Bylaw 2008 | 1 November 2018 | November 2014 | Need to stagger reviews due in 2018 |
| Waste Management Bylaw 2009 | 1 February 2019 | November 2018 | Need to bring forward to end of previous year |
| Urban Fire Safety Bylaw 2007 | 15 October 2017 | November 2014 | Need to stagger reviews due in 2018 |
| Marine and River Facilities Bylaw 2008 | 19 June 2018 | November 2017 | Need to stagger reviews due in 2018 Could be impact if Foreshore and Seabed Act is repealed |
| Parks and Reserves Bylaw 2008 | 19 June 2018 | June 2016 | Need to stagger reviews due in 2018 |
| Traffic and Parking Bylaw 2008 | 19 June 2018 | November 2017 | Will be 2010 amendment to align with Road User Rule changes (e.g. grass verges and berms) Need to bring forward fundamental review to 2017 to stagger reviews |
| General Bylaw 2008 | 19 June 2018 | June 2016 | Need to stagger reviews due in 2018 |
| Public Places Bylaw 2008 | 19 June 2018 | November 2017 | Need to bring forward to avoid LTCCP process |
| Stock Control Bylaw 2008 | 19 June 2018 | November 2017 | Need to bring forward to avoid LTCCP process |
| Dog Control Bylaw 2008 | 19 June 2018 | June 2016 | Need to stagger reviews due in 2018 Possible impact if review of Dog Control Act impacts on either the policy or bylaw-making powers or requirements |

| Bylaw | Statutory deadline | Proposed completion date | Comment |
|--|--------------------|--------------------------|--|
| Alcohol Restrictions in Public Places Bylaw 2009 | 1 July 2019 | June 2019 | Possible impact if law changes to make intoxication and/or drinking in public an offence (Law Commission review) |
| Likely new speed limits bylaw | February 2020 | June 2019 | New bylaw due to be adopted in February 2010 Need to bring forward so within single Council term |
| Possible new cemeteries bylaw | Mid-late 2021 | November 2020 | Assume new cemeteries bylaw in mid-late 2011 Need to bring forward to avoid LTCCP process |

20. The timetable only includes existing bylaws and bylaws currently under development. Other possible bylaw reviews relate to any new bylaw the Council may adopt to regulate signs advertising brothels or to control, restrict or prohibit the "cruising" of vehicles.

Key assumptions

21. The timetable reflects:
- (a) The statutory deadlines for completing each review
 - (b) The estimated time required to undertake each bylaw review
 - (c) The need to stagger reviews, particularly those due in 2018, so there are not too many reviews underway at any given time, and
 - (d) The timing of LTCCP processes, local body elections, and the Christmas break.
22. The timetable also assumes that the bylaws under review in any one year will all be adopted at the last Council meeting of the year (June in election year), unless a statutory deadline requires that it be reviewed sooner within that year.

Time taken to undertake each bylaw review

23. Indicative timeframes for completing the main stages of a bylaw review are set out in Table Two below. The total time varies from 50 to 58 weeks depending on the nature of the bylaw. While some of the stages may be completed in less time than indicated, the estimates reflect past experience and the likelihood that Councillors and staff will have other work priorities competing for their time.

Table Two: Estimated timeframes for main stages of a bylaw review

| Stage | Tasks to be completed | Who? | Estimated timeframe | Reasoning |
|-------|---|-------------|---------------------|--|
| 1 | Review of existing bylaw/s and preparation of clause by clause analysis | Staff | 4-6 weeks | Initial thinking, rationalisation of clauses, understanding of legal powers and peer review. |
| 2 | Councillor/ Community Board workshop or seminar | - | | Needs to be organised/booked weeks/months in advance |
| 3 | Bylaw reviews (or development) require different degrees of elected member involvement. This could be via a subcommittee. | Councillors | 8-16 weeks | Depends on whether the bylaw is largely social, social/technical or technical (see discussion below) |
| 4 | Report drafted, including statement of proposal, summary of information, and draft bylaw | Staff | 4-6 weeks | Considerable amounts of information to prepare and peer review to occur. |
| 5 | Proposed bylaw considered by the Regulatory and Planning | Councillors | 4-6 weeks | This includes sign-off and lodging with Democracy |

| Stage | Tasks to be completed | Who? | Estimated timeframe | Reasoning |
|-------|--|-------------|-----------------------|---|
| | Committee | | | Services. |
| 6 | Proposed bylaw adopted by Council for consultation | Councillors | 3 weeks | Three weeks between the Committee and the Council. |
| 7 | Public consultation | Staff | 6 weeks | The LGA requires at least one month's public consultation. Several weeks post-Council are needed for printing, public notices and so on (certainty required). |
| 8 | Summary and analysis of submissions | Staff | 2-4 weeks | Depends on the number of submissions. |
| 9 | Hearing of submissions and deliberations | Councillors | 1-3 weeks | Depends on how many are heard and how many changes to the proposal need to be discussed. |
| 10 | Hearing panel report prepared | Staff | 2-4 weeks | Report prepared on behalf of the hearing panel. Has to be agreed by the panel. |
| 11 | Adoption of new bylaw | Councillors | 3-4 weeks | Includes lodging with Democracy Services. |
| 12 | Implementation (including communication and signage) | Staff | Variable | Some activity is required immediately (i.e. public notices, sometimes signage, other communications). |
| | Total | | 50 to 58 weeks | |

Risks

24. In practice, there is likely to be some movement in the timetable to reflect new developments and changing priorities. For example:
- (a) Councillors may not reach agreement on a proposal quickly (either at subcommittee stage, or at Regulatory and Planning Committee or Council meetings).
 - (b) Councillors may decide against a proposal that has been consulted on, following submissions, and that decision may then require further analysis and consultation to be undertaken.
 - (c) Legislative changes may impact on the timetable – either through new bylaw-making powers or through legislative amendments requiring a review ahead of statutory deadlines.
 - (d) Operational changes may necessitate the review of bylaws ahead of their statutory review requirements.
 - (e) A bylaw review may be initiated for political reasons.
 - (f) A low priority may be given to bylaw review processes due to other Council priorities.
25. There may also be occasions where it is appropriate for the Council to depart from the standard process for developing or reviewing a bylaw. For example, subcommittee consideration is not proposed for the current review of the Banks Peninsula District Public Places and Signs Bylaw 2004 as the major parts of the bylaw have already been revoked and other aspects are covered by other bylaws.

6 Cont'd

Councillor involvement in bylaw reviews

26. On 23 April 2009, the Council agreed that *"a seminar will be presented to relevant staff and Councillors at the beginning of each bylaw review."* In practice, this will occur after staff have undertaken preliminary information gathering and analysis, and is represented as stage 2 in Table Two above.
27. Councillors may also wish to consider the issues in more detail before proposals are developed (for example, through a subcommittee). In the past, subcommittees or working parties have been established on an ad hoc basis, following a recommendation to the Regulatory and Planning Committee.

Opportunity for a standing bylaws subcommittee

28. There is an opportunity to establish a 'standing' or permanent subcommittee to address bylaw-related issues, such as bylaw reviews. This would provide for a regular meeting time and make bylaw review processes and timeframes more predictable. It would also remove the need for reports to the Regulatory and Planning Committee to establish or disestablish subcommittees or working parties for each bylaw review.
29. A subcommittee promotes "the open and public transaction of business" in line with the Local Government Official Information and Meetings Act 1987 (LGOIMA). However, if aspects of a bylaw review or the development of a bylaw are deemed sensitive, a 'bylaws subcommittee' seminar or workshop could be organised to allow for the free and frank discussion of those specific matters. Seminars and workshops are, by nature, public excluded. Alternatively, if there is a good reason for excluding the public, the grounds within the LGOIMA may be used to restrict attendance at a meeting of the subcommittee.
30. It is proposed that the terms of reference for the subcommittee be as follows:

To work with staff on the review and development of bylaws and to present recommendations to the Planning and Regulatory Committee for consideration.

Time required for subcommittee consideration

31. The time required for subcommittee consideration will depend on the nature of the bylaw. In general terms, there are three main categories of bylaw:
 - (a) Bylaws covering **social issues** – these tend to be of high public and Councillor interest and can be controversial. A long period of subcommittee time is required to enable Councillors to consider the issues and reach agreement on bylaws covering social issues (approximately 16 weeks).
 - (b) Bylaws that are **technical and cover social issues** – these tend to be of moderate to high interest and can be controversial, particularly as the technical aspects (e.g. any constraints on possible options) may be difficult to understand or communicate. A medium to long period of subcommittee time is required to enable Councillors to consider the issues and reach agreement (approximately 12 weeks).
 - (c) Bylaws that are largely **technical** – these tend to be of low to moderate interest, as the technical aspects may be difficult to understand or communicate. The technical nature of these bylaws can mean that options are limited and may not allow much opportunity for Councillor or public input. A short to medium period of subcommittee time is required to enable Councillors to consider the issues and reach agreement (approximately 8 weeks).
32. Table Three indicates which existing bylaws fall into each category.

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Table Three: Types of bylaws

| | |
|---|--|
| Bylaws covering social issues | <ul style="list-style-type: none"> Alcohol Restrictions in Public Places Bylaw Dog Control Bylaw Public Places Bylaw Brothels Bylaw |
| Bylaws that are technical and cover social issues | <ul style="list-style-type: none"> Waste Management Bylaw Marine and River Facilities Bylaw Parks and Reserves Bylaw Stock Control Bylaw Traffic and Parking Bylaw Cemeteries Bylaw Urban Fire Safety Bylaw |
| Bylaws that are largely technical | <ul style="list-style-type: none"> Cleanfill Licensing Bylaw Water Related Services Bylaw Trade Waste Bylaw Licensed Waste Handling Facilities Bylaw General Bylaw Speed Limits Bylaw |

Constraints on Councillors' time

33. There are some constraints on the time Councillors have available for bylaw review processes, bearing in mind LTCCP processes, local body elections and Christmas breaks. Table Four illustrates the opportunities and constraints for Councillor involvement in bylaw reviews during the standard three year cycle. This cycle has been taken into account in developing the bylaw review programme.

Table Four: The three year cycle

| | J | F | M | A | M | J | J | A | S | O | N | D |
|-------------------|---|---|---|---|---|---|---|---|---|----------------------|---|-----------------|
| Year One | First meeting of new Council usually in late Feb | | | | | | | | | | | Christmas break |
| Year Two | LTCCP – adoption of draft, consultation, hearings, deliberations and final adoption | | | | | | | | | | | Christmas break |
| Year Three | Christmas break | | | | | | Three months before the election – major decisions not usually made | | | Local body elections | New Council term – prioritised agenda items | |

Update on current bylaw reviews

34. Work is currently underway on four bylaw reviews. The following table provides an update on the status of these reviews. In addition, staff have started work on a possible bylaw to control, restrict or prohibit cruising, under a new bylaw-making power introduced under the Land Transport (Enforcement Powers) Amendment Act 2009.

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Table Five: Current bylaw reviews

| | Current status and timing |
|--|---|
| Christchurch City Brothels (Location and Signage) Bylaw 2004 | Review nearing completion. Hearing panel report to be considered by Council on 10 December 2009. Further work on a new bylaw may be required. |
| Christchurch City Speed Limits Bylaw 2005 Banks Peninsula District Council Speed Limits Bylaw 2005 | Review nearing completion. Hearing panel report likely to be considered by Council on 10 December 2009. |
| Christchurch City Bylaw No 110 (1980) Cemeteries Banks Peninsula District Council Cemeteries Bylaw 1996 Waimairi District Bylaw No 1 (1983) Cemeteries | Working party has been established for this review. Work is currently on hold until a draft management plan for cemeteries is prepared. This is likely to be ready in late 2010 or early 2011. |
| Banks Peninsula District Council Public Places and Signs Bylaw 2004 | Paper to be considered by Regulatory and Planning Committee on 3 December 2009. Subcommittee consideration not proposed for this review. |

PART C - REPORT ON DELEGATED DECISIONS TAKEN BY THE COMMITTEE

7. ELECTION OF ACTING CHAIRPERSON

The Committee **resolved** to appoint Councillor Shearing as acting Chairperson from 9.10-9.14am.

8. CORRECTION OF ERROR IN CHRISTCHURCH CITY DISTRICT PLAN

The Committee considered a report seeking approval to correct a minor error in the Christchurch City District Plan.

The Committee **resolved** that:

Pursuant to clause 16(2) of Schedule 1 to the Resource Management Act 1991, amend clause (x) of Appendix 10 in Part 6 of the Christchurch City District Plan to read:

*“(x) Stormwater disposal system, located along the site’s south-eastern boundary shall be designed to provide sufficient detention and attenuation so that flows from the proposed development **do not exceed 30 l/s** in all storm events up to and including a 50 year level of service. - - -”.*

The meeting concluded at 11.10am

CONSIDERED THIS 10TH DAY OF DECEMBER 2009

MAYOR