

#### 45. PROPOSED PRIVATE PLAN CHANGE 58 – REZONING OF 98 WRIGHTS ROAD FROM OPEN SPACE 3B TO BUSINESS 4

<b>General Manager responsible:</b>	Acting General Manager, Strategy and Planning
<b>Officer responsible:</b>	Programme Manager, District Planning and Acting General Manager
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#### PURPOSE OF REPORT

1. This report describes a request to the Council for a private Plan Change (PC 58) to rezone 98 Wrights Road, Addington from Open Space 3B (underlying Zone Living 2) to Business 4, and recommends the process for dealing with the request in terms of the Resource Management Act 1991 (RMA) provisions. A decision is sought from the Council, pursuant to clause 25 of Schedule 1 of the RMA, on whether the proposed plan change should be publicly notified, and under what status.

#### EXECUTIVE SUMMARY

2. The request seeks to rezone approximately 2.1 hectares of land located at 98 Wrights Road (the site) from Open Space 3B (OS3B) to Business 4 (B4) see attachment one of the locality plan (**Attachment 1**). The site proposed for rezoning is part of the larger area (26.04 hectares) of the Addington Raceway complex zoned OS3B and is indicated as being surplus to the operational requirements of Addington Raceway Ltd.
3. The land comprising the site proposed to be rezoned is owned by Addington Raceway Ltd and currently contains several stable blocks, a soft training track and extensive hard surfacing. The site has an underlying zoning of Living 2, which is the zone that the City Plan identifies as being the most appropriate if the OS3B zone is up-lifted. The immediate environment has a dominance of business - type activities.
4. PC 58 proposes some site specific amendments to the current B4 rules. An Outline Development Plan showing the areas subject to additional landscaping requirements and site access restrictions is also proposed to be inserted into the City Plan. Refer to the proposed text changes and Appendix E in the Plan Change document (**Attachment 2**).
5. The purpose of this report is not to consider the requested plan change on its merits. Rather, it is to recommend which of the options under clause 25(2)-(4) of Schedule 1 of the RMA is to apply to the processing the plan change application. Consideration of merits of the application will occur after submissions have been received, as a part of the decision making process by the hearings panel.
6. The process options available to the Committee are set out in Schedule 1, clause 25, subclauses (2), (3) and (4) and clause 24 of the RMA, and are summarised below. The Committee may recommend to the Council that the requested private Plan Change 58 (Addington Raceway) be either:
  - (a) Rejected in whole or in part on one of the limited grounds set out in the Act;
  - (b) Dealt with as if it were an application for a resource consent (in which case the provisions of Part 6 of the Act would apply accordingly);
  - (c) Modified with the agreement of the person who made the request;
  - (d) Adopted in whole or in part, as if it were a plan change made by the Council itself (this means accepting the responsibility and costs of processing it);
  - (e) Accepted, in whole or in part, and that the Council proceed to notify the request, or part of the request, under clause 26, at the cost of the applicant.

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7. The implications of the options under clauses 24 and 25 of the first schedule of the Act are discussed below.

**Option 1 – Resolve to reject PC 58**

8. There are very limited grounds in the Act for rejecting an application. A Plan change can be rejected if:
  - (a) It is frivolous or vexatious;
  - (b) The substance of the change has been dealt with by the Council or the Environment Court in the last two years;
  - (c) The change is not in accordance with sound resource management practice;
  - (d) The change would make the District Plan inconsistent with Part 5 of the Act (other policies or plans, such as Regional Policy Statement or Plan); or
  - (e) The District Plan has not been operative for more than two years.
9. PC 58 cannot be said to be frivolous or vexatious. The applicants have invested significant time and financial resources in preparing the plan change and have made a case for the plan change that warrants consideration in the plan change process. The substance of the plan change has not been considered in the last two years and the relevant parts of the City Plan have been operative since November 2005. Both Council officers and external consultants have been involved in assessing various aspects of the proposal. No significant or fundamental issues have been raised that would suggest that the proposed change is so inappropriate that it could be considered not in accordance with sound resource management practice.

**Option 2 - Resolve to deal with PC 58 as if it were an application for resource consent**

10. Under this option the Plan Change is converted to a resource consent application and is processed by the Council as such. The applicant bears all of the associated costs. Resource consent could provide for the establishment of business activities on the site as has occurred on land to the north along Wrights Road. This would in all likelihood require a number of separate resource consents and further any proposed change to approved consents would require additional expenditure on further consenting and variation processes. Such an alternative is not considered efficient, does not give certainty of outcome, and it does not allow for consideration of consistency with the City Plan objectives and policies or the benefits of other options.
11. In this case a change of zoning to more closely reflect the future use of the site may assist the Council in meeting its obligations to achieve integrated management of effects of activities under s31 of the Act. It also gives certainty to adjacent land owners. It is considered that it remains appropriate for the Council to continue processing the plan change request, rather than place reliance on the resource consent process.

**Option 3 - Resolve to modify PC 58 with the agreement of the person who made the request**

12. The Council may, within 30 working days of the receipt of the plan change request, as a result of further or additional information, commissioned reports, or other relevant matters, with the agreement of the person who made the request, modify the request. In this case the 30 working days have expired and it is not an option open to the Council.

**Option 4 - Resolve to adopt PC 58 and publicly notify it as if it were the Council's own plan change**

13. Under this option PC 58 becomes a Council plan change. It would be notified, heard and decided in the same way as a plan change prepared by the Council, that is, the Council bears all of the associated costs. Adopting the plan change would mean that:
  - (a) The Council is indicating that the plan change has merit and that it generally supports the proposal; and
  - (b) The Council bears the costs of managing and processing the plan change.
14. Adoption of a private plan change application would generally only occur where there is a wider public good flowing from the plan change. A plan change promoting wider public good would normally be one that addressed an existing city wide or multiple zone-wide adverse environmental effect, for example, a change to a bulk and location control that had lead to unexpected adverse outcomes. This private plan change application creates a zone that facilitates a private development with most economic benefit flowing to the applicant.

**Option 5 - Resolve to accept PC 58 and the Section 32 Assessment for public notification**

15. Under this option PC 58 would be notified in its current form as prepared by Aurecon (NZ) Ltd for Addington Raceway Ltd. Accepting the Plan Change means:
  - (a) Addington Raceway Limited determine the nature of the plan change that is notified;
  - (b) The Council remains neutral as to its position on the proposal but is satisfied that the Change includes sufficient information to be publicly notified; and
  - (c) Addington Raceway Limited bear the cost of the complete plan change process up until the point of any appeals.

Note that all reasonable associated costs will be borne by the applicant.

16. Any concerns the Council may have regarding the Plan Change, such as the format of the amendments to the City Plan, can be raised through the officer's Section 42A Report.
17. The officer recommendation based on the analysis in the aforementioned options is to accept PC 58 – Rezoning OS3B to B4, Addington, for notification.

**FINANCIAL IMPLICATIONS**

18. Should the Council resolve to notify the plan change there are legal processes which must be followed in accordance with the First Schedule of the RMA. This is a standard process that all plan changes must follow and if the processes are correctly followed, no particular financial risks are foreseen.
19. 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 of complexity of the submissions received. As this is a private plan change, these costs are largely recoverable from the applicant. Costs associated with responding to any Environment Court appeals received are not recoverable, except in instances where the court may award costs.
20. Should the Council resolve to adopt the plan change as its own, it will need to absorb all the processing costs.

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

21. Yes. The 2011/12 budget for the District Planning work programme, adopted by the Council and provided for in the LTCCP, includes funding for processing this plan change. As this is a private plan change request, these costs are largely recoverable.

**LEGAL CONSIDERATIONS**

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

22. There is a legal process set out in the RMA which must be followed. It includes public notification of the plan change followed by submissions, reporting, hearings, decisions and possible appeals. Provided the process is followed correctly there are no particular legal risks associated with this plan change.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

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

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

**ALIGNMENT WITH STRATEGIES**

**Do the recommendations align with the Council's strategies?**

24. Yes. PC 58 is of little strategic significance.

**CONSULTATION FULFILMENT**

25. A memo outlining the proposal has been sent to the Spreydon-Heathcote Community Board for information and feedback in July 2011.

**STAFF RECOMMENDATION**

It is recommended that the Council:

- (a) Accept the attached Section 32 assessment for public notification;
- (b) Accept Private Plan Change 58 – Rezoning open Space 3B land to Business 4, Addington pursuant to Schedule 1, Clause 25(2)(b) of the Resource Management Act 1991 for public notification;
- (c) Note that in accordance with Council policy, the cost of processing the private plan change are to be borne by the applicant.

## BACKGROUND & DISCUSSION

### Private Plan Change 58 (PC 58) Request

26. PC 58 (refer **Attachment 2**) is requested by Addington Raceway Ltd and seeks to rezone approximately 2.1 hectares of land located at 98 Wrights Road (the site) from Open Space 3B (OS3B) to Business 4 (B4). The site is part of the larger (26.04 hectare) Addington Raceway complex. Refer to the attached Planning Map 45A (**Attachment 1**) for the location and extent of the rezoning.
27. The Open Space 3B Zone covers nine sites within the living zones of the City, which contain major recreation facilities that are privately owned. These consist of Addington and Riccarton Racecourses, Lancaster, Wilding, Christchurch and Rugby Parks, and Shirley, Avondale and Waimairi Beach Golf Courses. These private recreation facilities play a significant role in providing for the outdoor recreational needs of the city's population, including for events of regional and national importance. These sites may contain substantial facilities in the form of grandstands; tracks, playing fields and courts; restaurants and bars; and associated facilities. The Open Space 3B Zone allows for the continued functioning, upgrading and expansion of these metropolitan facilities. As well as providing substantial facilities and recreational opportunities, the Addington and Riccarton Racecourse sites and the three golf courses, provide large areas of open space, including areas of planting and provide opportunities for large trees to grow.
28. The Business 4 (Suburban Industrial) Zone includes a number of light industrial and servicing areas in the city generally located within or adjoining suburban living areas. It also includes light industrial areas intended to serve as buffer zones between living zones and the Business 5 (General Industrial) Zone, and servicing areas adjoining some large suburban centres. It is characterised by significant variation in geographic location; nature of established activities and range in bulk of built form.
29. The rezoning is proposed to facilitate a planned redevelopment of land considered surplus to the operational requirements of Addington Raceway Ltd.

### Description of the Site and the Proposal

30. The land comprising the site proposed to be rezoned is owned by Addington Raceway Ltd and currently contains several stable blocks, a soft training track and extensive hard surfacing.
31. Land immediately to the north west of the site comprises several development allotments varying in size between 1,850m<sup>2</sup> and 8,050m<sup>2</sup>. Several of those allotments have been developed with a mixture of industrial and office activities, with some retailing components, in accordance with land use consent RMA 20014829, granted in April 2004.
32. Land to the west and south of the site, on the opposite side of Wrights Road, is zoned Business 5 (General Industrial) and comprises a mix of light industrial, trade and office based activities. The buildings are of varying ages, styles and colours.
33. Land to the north and northeast of the site is zoned Open Space 3B and forms part of the wider Addington Raceway complex. In accordance with its Open Space (Private Recreation Facilities) zoning, the site is dominated by extensive areas of impervious surfacing, grandstands, race tracks and soft landscaping. The Westpac Centre lies to the southeast of the principal grandstand.
34. Addington Raceway Ltd wish to develop the land subject to the plan change for business use in order to better and more economically use a part of the wider site identified as surplus to operational raceway requirements.

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35. The applicant considers that the underlying zoning (Living 2) having effect when uses proposed are not associated with the non-motorised recreational activities anticipated by the OS3B zoning is inappropriate given the business and industrial uses in the immediate area. This issue is further compounded by the proximity of the southern motorway flyover and its current expansion.
36. The applicant states that the proposed rezoning will enable the development of the subject site for business purposes, subject to specific controls on landscaping and access. These controls will ensure that the surplus land can be developed in an efficient and effective manner, whilst ensuring any adverse effects on the surrounding area are appropriately mitigated. The applicant states also that the proposed rezoning will facilitate an appropriate use for the site (being business activities), as opposed to that use permitted by the site's underlying zoning (being residential activity).
37. Some minor amendments are proposed to the B4 zone rules by adding additional site specific landscaping requirements along the Wrights Road, Jack Hinton Drive and other zone boundaries; and rules restricting access to the Wrights Road frontage. Alteration to both assessment matters and reasons for rules are also proposed to address the above rule changes.
38. An Outline Development Plan showing the areas subject to additional landscaping requirements, and the site access restrictions, is also proposed. Refer to Appendix E in the Plan Change (**Attachment 2**).

**Description of Alternatives and Issues**

39. The Section 32 Analysis (within **Attachment 2**), and associated Assessment of Environmental Effects, provides a discussion of the proposal, the subject site, its surrounding environment, the potential effects of the proposal, and a costs/benefits analysis of the two alternatives. The "do nothing" alternative is summarised below:
40. Do nothing (status quo) – Retention of the OS3B zoning is not considered appropriate by the applicant as it limits potential uses of the land both through restrictions under current zone rules and uncertainty around resource consent processes. The underlying Living 2 zoning is not seen as appropriate given land uses in the general vicinity
41. The Section 32 assessment analyses the above option as well as the option promoted by this plan change in further detail. It includes the costs/benefits and the efficiency/effectiveness comparison of all options. The report concludes that the proposed rezoning of the subject site to B4 is the most appropriate option.
42. An analysis of potential adverse effects of the B4 rezoning on the adjacent environment is carried out in terms of loss of open space / landscape amenity and the possible traffic effects resulting from an increased number of vehicle trips generated by the proposed business use of the site. Overall, the Traffic Impact Assessment considers the plan change site is appropriately located within the existing road network, such that rezoning to Business 4 and subsequent development consistent with the Business 4 zone would have no more than a minor effect on the adjoining road network and would be consistent with the transport related objectives and policies of the City Plan (refer Appendix G in **Attachment 2** for further details).
43. The Landscape Impact Assessment (refer to Appendix H in **Attachment 2**) discusses the potential effect of the future development of the site for Business 4 use on the landscape character, amenity and outlook of the site and the surrounding area. The landscape assessment concludes that while the proposed plan change will have a noticeable landscape and visual effect on the immediate local landscape, the proposed mitigation measures, Outline Development Plan (Appendix E in **Attachment 2**) and existing rules contained within the CCP will guide development in a manner that is responsive and sympathetic to the evolving and existing forms of development adjacent to the site.

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44. Taking into account the proposed mitigation methods, the overall adverse effects of the rezoning, including the traffic and landscape effects, are considered by the applicant to be no more than minor. The Section 32 report concludes that the proposed B4 zoning is consistent with the City Plan objectives as they relate to business activities. The applicant considers that the proposed plan change will better achieve the purpose of the Resource Management Act 1991.

## OPTIONS

45. In order for the Council to decide whether to notify the plan change and with what status the committee is directed to Schedule 1, Clause 25, subclauses (2), (3) and (4) of the RMA as set out below:

**25. Local authority to consider request**

(...)

(2) *The local authority may either –*

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

(...)

(3) *The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6 shall apply accordingly.*

(4) *The local authority may reject the request in whole or in part, but only on the grounds that—*

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

(...)

46. **Option 1**

Resolve to reject PC 58 request pursuant to Clause 25(4) of the first schedule of the Resource Management Act 1991.

There are very limited grounds in the Act for rejecting an application. A Plan change can be rejected if:

- (a) It is frivolous or vexatious;
- (b) The substance of the change has been dealt with by the Council or the Environment Court in the last two years;
- (c) The change is not in accordance with sound resource management practice;
- (d) The change would make the District Plan inconsistent with Part 5 of the Act (other policies or plans, such as Regional Policy Statement or Plan); or
- (e) The District Plan has not been operative for more than two years.

45 Cont'd

PC 58 cannot be said to be frivolous or vexatious. The applicants have invested significant time and financial resources in preparing the plan change and have made a case for the plan change that warrants consideration in the plan change process. The substance of the plan change has not been considered in the last two years and the relevant parts of the City Plan have been operative since November 2005. Both Council officers and external consultants have been involved in assessing various aspects of the proposal. No significant or fundamental issues have been raised that would suggest that the proposed change is so inappropriate that it could be considered not in accordance with sound resource management practice.

47. **Option 2**

Resolve to deal with PC 58 request as if it were an application for resource consent pursuant to Clause 25(3) of the first schedule of the Resource Management Act 1991.

Under this option the Plan Change is converted to a resource consent application and is processed by the Council as such. The applicant bears all of the associated costs. Resource consent could provide for the establishment of business activities on the site as has occurred on land to the north along Wrights Road. This would in all likelihood require a number of separate resource consents and further any proposed change to approved consents would require additional expenditure on further consenting and variation processes. Such an alternative is not considered efficient, does not give certainty of outcome, and it does not allow for consideration of consistency with the City Plan objectives and policies or the benefits of other options.

In this case a change of zoning to more closely reflect the future use of the site may assist the Council in meeting its obligations to achieve integrated management of effects of activities under s31 of the Act. It also gives certainty to adjacent land owners. It is considered that it remains appropriate for the Council to continue processing the plan change request, rather than place reliance on the resource consent process.

48. **Option 3**

Resolve to modify PC 58 request with the agreement of the person who made the request pursuant to Clause 24 of the first schedule of the Resource Management Act 1991.

The Council may, within 30 working days of the receipt of the plan change request, as a result of further or additional information, commissioned reports, or other relevant matters, with the agreement of the person who made the request, modify the request. In this case the 30 working days have expired and this is not an option open to the Council.

49. **Option 4**

Resolve to adopt PC 58 request and publicly notify it as if it were the Council's own plan change pursuant to Clause 25(2)(a) of the first schedule of the Resource Management Act 1991.

Under this option PC 58 becomes a Council plan change. It would be notified, heard and decided in the same way as a plan change prepared by the Council, that is, the Council bears all of the associated costs. Adopting the plan change would mean that:

- (a) The Council is indicating that the plan change has merit and that it generally supports the proposal; and
- (b) The Council bears the costs of managing and processing the plan change.

Adoption of a private plan change application would generally only occur where there is a wider public good flowing from the plan change. A plan change promoting wider public good would normally be one that addressed an existing city wide or multiple zone-wide adverse environmental effect, for example, a change to a bulk and location control that had lead to unexpected adverse outcomes. This private plan change application creates a zone that facilitates a private development with most economic benefit flowing to the applicant.



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50. **Option 5**

Resolve to accept PC 58 request and the Section 32 Assessment for public notification pursuant to Clause 25(2)(b) of the first schedule of the Resource Management Act 1991.

Under this option PC 58 would be notified in its current form as prepared by Aurecon (NZ) Ltd for Addington Raceway Ltd. Accepting the Plan Change means that:

- (a) Addington Raceway Limited determine the nature of the plan change that is notified;
- (b) The Council remains neutral as to its position on the proposal but is satisfied that the Change includes sufficient information to be publicly notified; and
- (c) Addington Raceway Limited bear the cost of the complete plan change process up until the point of any appeals.

Note that all reasonable associated costs will be borne by the applicant.

Any concerns the Council may have regarding the Plan Change, such as the format of the amendments to the City Plan, can be raised through the officer's Section 42A Report.

51. The options were discussed in detail in paragraphs 6 - 17 above. Having considered all the relevant matters, it is recommended that the Council accept the request in whole and proceed to notification.

**THE PREFERRED OPTION**

52. The preferred option is **Option 5** - accept PC 58 (Rezoning OS3B to B4, Wrights Road, Addington) and its associated Section 32 Assessment in whole pursuant to Clause 25(2)(b) of Schedule 1 of the Resource Management Act 1991 and proceed to publicly notify it.