

# 14. CITY PLAN CHANGE 54 – REZONING OF LAND BETWEEN SIR JAMES WATTIE DRIVE, SHANDS ROAD AND MARSHS ROAD FROM RURAL 2 TO BUSINESS 5

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

1. This report describes a request to the Council for a private Plan Change (PC54) to rezone 39.05 hectares of land at 201 and 305 Marshs Road, Hornby, from Rural 2 to Business 5 (Refer to **Attachment 1**). A decision is sought from the Council, pursuant to clause 25 of Schedule 1 of the Resource Management Act 1991 (RMA), on whether the proposed plan change should be publicly notified, and if so, with what status.

## EXECUTIVE SUMMARY

2. PC 54 is a request to rezone 39.05 hectares of land from Rural 2 to Business 5 (General Industrial). The subject site is bounded by Sir James Wattie Drive to the north, Shands Road to the west, the Hornby railway siding to the east, and Marshs Road to the south. It is immediately opposite Business 5 zoned land on Sir James Wattie Drive, including the site of private Plan Change 47 (PC 47). That private plan change, which rezoned 2.93ha of Rural 2 land to Business 5, was approved by the Council on 26 May 2011. The subject site is shown in **Attachment 1** and on the maps in **Attachment 3**.
3. PC 54 proposes to enable use of the site for general industrial land uses, although the storage and use of hazardous substances will be restricted in recognition of the site's location over a relatively shallow groundwater recharge zone. The change also incorporates a small café/retail amenity area, landscape buffer areas that include a stormwater infiltration system, and cycle and walkways. An internal loop road services the site which provides access to Sir James Wattie Drive and Marshs Road.
4. The applicant has consulted with Council officers and responded to requests for further information and to some suggested amendments in the preparation of this plan change. In particular, the traffic and landscape layout has been designed with input from officers', bearing in mind:
  - (a) the needs of the application site;
  - (b) opportunities to integrate with anticipated commercial growth on land to the west and north; and
  - (c) the maintenance of amenity of rural and rural/residential land to the south in the Selwyn District.
5. The Proposed Change is within the Urban Limits in Proposed Change 1 to the Canterbury Regional Policy Statement (PC1), but is contrary to PC1, Policy 6, which identifies the site as being in the post-2021 sequencing period. As that provision is subject to appeal, it is not considered this inconsistency is a sufficient reason to withhold notification of this plan change. The South West Area Plan (SWAP) excluded this land from industrial use, but the decisions on PC1 postdate the latest draft of the SWAP. The site in relation to PC 1 is shown in **Attachment 2**. The site in relation to the SWAP is shown in **Attachment 6**.
6. The landscape design of the proposal pays attention to the transition from a rural to urban landscape along the Shands and Marshs Road frontage, and desire to create an urban to rural buffer promoted in the officer reports on PC1 and in the SWAP. In addition, the proposal recognises the opportunity to provide a connection from the existing rail trail which is located along Shands Road.

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7. There are two infrastructural matters which are in the process of being resolved. One concerns the alignment of Stage 2 of the Christchurch Southern Motorway (CSM2), the other being capacity of the wastewater system. Various alignments for CSM2 have been suggested, some of which involve the motorway passing through the subject site. To date, however, no preferred alignment has been determined by the New Zealand Transport Agency (NZTA). While the SWAP indicates a preferred alignment, there has been no Notice of Requirement lodged by NZTA, nor a designation for the work included in the City Plan. It is the opinion of officers therefore that the notation in SWAP is not a sufficient reason to prevent the request being notified. **Attachment 7** shows the land development and major infrastructure improvements as envisioned by the SWAP.
8. Capacity in the wastewater network to meet the anticipated demand generated by PC 54 is dependent on the completion of the 'western interceptor', programmed for completion by 2014 at the earliest. The applicant acknowledges the current wastewater issue by proposing a rule providing that development of business activity on the site, prior to the ability of the site to be serviced by reticulated wastewater infrastructure will be a non-complying activity.
9. The applicant has made the request to change the City Plan in accordance with the relevant provisions of the RMA. It has responded to requests for further information and collaborated with Council officers to modify the proposals at their suggestions.
10. The process options available to the Committee are set out in Schedule 1, clause 25, sub-clauses (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 PC 54 be either:
  - (a) Rejected in whole or in part on one of the limited grounds set out in the Act; or
  - (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); or
  - (c) Modified with the agreement of the person who made the request; or
  - (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); or
  - (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.
11. It is considered that options (a) to c) are not available or are inappropriate in this case and that the choice is between (d) and (e). Option (e) is recommended. The full implications of the options under clauses 24 and 25 of the First schedule of the Act are discussed below.

**FINANCIAL IMPLICATIONS**

12. 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.
13. 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.
14. 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?**

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

**LEGAL CONSIDERATIONS**

16. 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. Should the Council decide not to publicly notify the application for any reason, the decision could be appealed in the Environment Court.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

17. The matter accords with the LTCCP and relevant Activity Management Plans.

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

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

**ALIGNMENT WITH STRATEGIES**

19. The application is not in accordance with the South West Christchurch Area Plan but this document has been superseded by PC1.

**CONSULTATION FULFILMENT**

20. The applicant has informed Council officers that consultation has been undertaken with the NZTA, Te Runanga O Ngai Tahu, Environment Canterbury and the Selwyn District Council.
21. Officers are not aware whether or not the applicant has directly contacted the owners of properties in the vicinity of the site.
22. No consultation has occurred with the Riccarton/Wigram Community Board. However the proposal accords substantially with Proposed Change 1 to the RPS and the Urban Development Strategy, all of which will be familiar to the Community Board.

**STAFF RECOMMENDATION**

It is recommended that the Council:

- (a) Accepts the attached Section 32 assessment for public notification;
- (b) Accepts proposed private Plan Change 54, Rezoning Rural 2 land to Business 5, pursuant to Schedule 1, Clause 25(2)(b) of the Resource Management Act 1991 for public notification;
- (c) Notes that in accordance with Council policy, the costs of processing the private plan change are to be borne by the applicant up until the release of decisions.

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## BACKGROUND &amp; DISCUSSION

## Features of the Proposal

23. Proposed Plan Change 54 (PC 54) is a privately requested change to the City Plan to rezone 39.05 hectares of land from Rural 2 to Business 5. The land is bounded by Marshs and Shands Roads, Sir James Wattie Drive and the Hornby industrial rail siding. It is immediately across Sir James Wattie Drive from existing Business 5 land. The land has been identified for business use in the Commissioners decisions on Proposed Change No 1 to the Canterbury Regional Policy Statement (PC1), identified within the Urban Limits as area CB9, on map G5 of Proposed Change 1. The site is identified in the South West Area Plan (SWAP) as an area which was to remain rural, and where the long term goal under the SWAP is for a 'indigenous tree corridor' along the urban limits. The proposed provisions of the Change recognise this outcome sought from the SWAP and have sought to address it by way of the landscape buffer area.
24. While PC 54 is within the Urban Limits in PC1, it is contrary to the Council's current appeal position on Policy 6, Table 3 which seeks that the site be in the post-2021 sequencing period. That appeal point has been challenged by the applicant and the Council's position on sequencing is not considered to be a sufficient reason to withhold notification of this plan change. The SWAP excluded this land from industrial use, but the decisions on PC1 postdate the latest draft of the SWAP. The SWAP indicated that the land remain rural to retain a buffer area. The SWAP also indicates that the Christchurch Southern Motorway, Stage 2 (CSM2), may pass through the site. **Attachment 7** shows the SWAP, Plan 12; Land Development and Major Infrastructure Improvements.
25. No changes are proposed to the Objectives and Policies of the City Plan.
26. The rules package mostly follows the rules for the Business 5 zone, apart from where critical standards have been proposed to address the height of buildings located between the internal road, and Shands Road and Marshs Road frontages, wastewater provision and the upgrade of the Shands Road – Sir James Wattie Drive intersection. Additional development standards have been proposed to give effect to the landscaping and outline development plan, and to manage the use and storage of hazardous substances. **Attachment 4** shows the proposed changes to the City Plan.
27. The proposed development site is at the outer edge of the Metropolitan Urban Limit in PC1, and the outer boundaries of the site will be buffered with open space areas and tree plantings, stormwater ponds, and cycle and pedestrian linkages. PC 54 seeks to acknowledge the transition between the rural urban interface from the Prebbleton area heading north into Christchurch City, reflected in the landscape areas and building height and colour restrictions. The site overlies the groundwater recharge area and the stormwater disposal system has been designed to reflect this situation. In addition, the storage and use of hazardous will be subject to the 'Group 3 Hazardous Substances criteria' as described in the City Plan. Whereas typical Business 5 zoned sites are classified in the 'Group 4 criteria' grouping for hazardous substances. **Attachment 5** contains the proponents assessment of effects on the environment.
28. The urban design aspects of the proposal appears attentive to the location of the site on the urban periphery. Careful attention has been given to designing a business park that can be sympathetic to the wider rural environment to the south within the Selwyn district. A landscape buffer area is proposed along the Marshs and Shands Road boundaries, as are restrictions on building heights and colour palettes to buildings on the outer perimeter of the site.
29. The stormwater system will be largely constructed as a set of swales. Stormwater from the roads will be collected in sumps and piped to swales prior to entering infiltration basins. Stormwater from individual lots will be collected in sumps and passed through a sediment trap on each lot before being piped into swales prior to infiltration basins.
30. PC 54 includes provisions that will seek to preclude any development until the City wastewater system is in place, or where any site can demonstrate minimal impact. These are the same rules applied to Plan Change 62 (Wigram) and a resource consent authorised to establish business activities at 206 Shands Road which authorised a 40 ha site for business use.

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31. The roading system consists of an internal loop road, via an access onto Marshs and Shands Roads. There will be no direct access onto Shands or Marshes Roads from any lots within the site. The Change proposes that the internal road be a local road.
32. The applicant has consulted with Council officers and advisers in the preparation of this plan change. In particular, the wastewater, landscape buffer area and traffic components have been formulated largely to officers' satisfaction, bearing in mind the needs not just of the Application site but also of adjacent land uses with frontage Shands Road. The intention is to produce a package of roading, water and sewer reticulation, stormwater management and open space that is integrated economically and efficiently with the wider Hornby industrial and Selwyn District rural area.
33. The applicant has stated that consultation has been undertaken with tangata whenua, Selwyn District Council, Environment Canterbury and the NZTA. If not already canvassed, amendments to the proposal arising out of this process can be made through submissions, either by the iwi or the applicant.

**Resource Management Act Requirements**

34. The application has been lodged pursuant to Section 73 (2) of the Act. . The applicant has responded appropriately to requests for further information and collaborated with Council officers to modify the proposals at their suggestions. At this stage of the process, the Council must decide which of the options under Clauses 24 and 25 of the First Schedule to the Resource Management Act 1991 to employ.
35. 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 54**

There are very limited grounds in the Act for rejecting an application. A Plan change can be rejected if:<sup>1</sup>

- (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 policy statements or plans, such as Regional Policy Statement or Plan, iwi management plans); or
  - (e) The District Plan has not been operative for more than two years.
36. PC 54 cannot be said to be frivolous or vexatious. 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. 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. It is generally in accordance with PC1. 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 54 as if it were an application for resource consent**

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<sup>1</sup> Clause 25(4) of the First Schedule to the RMA.

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37. Under this option the plan change would be converted to a resource consent application and be processed by the Council as such. The applicant bears all of the associated costs. A resource consent could provide for the establishment of the proposed land uses and the subdivision of the land. It would be inappropriate to deal with a proposal of this magnitude as a resource consent which would be a non-complying activity. Notwithstanding the proposal's alignment with PC1, there would be difficulties meeting the objectives and policies of the City Plan while the site remained zoned Rural 2, too much detailed design would be required at this early stage and the result may be inflexible. This would not be an efficient option in terms of Section 32 of the RMA.
38. In this case a change of zoning to more closely reflect the future use of the site would assist the Council in meeting its obligations to achieve integrated management of effects of activities under s31 of the Act, and to have regard to the provisions of PC1. 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 54 with the agreement of the person who made the request**

39. 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. The applicant has made a number of changes to the proposal already, being a revised application in December 2010, and on 18 May 2011 an amendment to the rule relating to the upgrade of the Shands Road – Sir James Wattie Drive intersection as a result of discussions with Council officers and advisers, so this process has already taken place to an extent, although informally and not within the prescribed timeframe. However no further changes are recommended at this stage.

**Option 4 - Resolve to adopt PC 54 and publicly notify it as if it were the Council's own plan change**

40. Under this option PC 54 would become 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 would be indicating that the plan change has merit and that it generally supports the proposal; and
  - (b) The Council would bear the costs of managing and processing the plan change.
41. 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 effects, for example, a change to a bulk and location control that had lead to unexpected adverse outcomes. There may also be an argument that adopting this plan change would help to give effect to PC1, under which the land is identified for just this purpose. However there may be some aspects the Council would not choose to support. The applicant has not requested the Council to adopt the Change.

**Option 5 - Resolve to accept PC 54 and the Section 32 Assessment for public notification**

42. Under this option PC 54 would be notified in its current form as prepared by McCracken and Associates Ltd for Calder Stewart Industries Ltd. Accepting the plan change means:
  - (a) Calder Stewart Industries determines 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) Calder Stewart Industries bear the cost of the complete plan change process up until the point of any appeals.
43. Any concerns the Council may have regarding the plan change, such as the format of the amendments to the City Plan, could be raised through the officer's Section 42A Report.

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44. The recommendation, based on the analysis of the options, is to accept PC 54 for notification (Option 5).