


31. 3. 2011

**REPORT BY THE CHAIRPERSON OF THE
REGULATORY AND PLANNING COMMITTEE
2 FEBRUARY 2011**

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. COUNCIL SUBMISSION ON THE BUILDING AMENDMENT BILL (NO 3)



General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Environmental Policy and Approvals Manager
Author:	Steve McCarthy and Judith Cheyne

PURPOSE OF REPORT

1. This report is to advise the Council about the Building Amendment Bill (No 3) ("the Bill") and for a submission (**Appendix 1**) to be approved by the Council on the Bill.

EXECUTIVE SUMMARY

2. The Bill is the first of two proposed by the Government that are aimed at implementing a number of policy decisions arising from the review of the Building Act 2004 in 2009/10. The Council made a submission on the review discussion document and a copy of the submission is attached to this report (**Appendix 2**).
3. The Bill provides for better regulation of building work, and adjusts the licensing regime for builders already in place under the Act. It seeks to promote accountability from those responsible for ensuring building work complies with the Building Code. The idea is that this should lead to a reduction in liability for Councils.
4. The Bills Digest (prepared for Parliament to assist it in its consideration of the Bill) is attached (**Appendix 3**) to this report, but in brief, the explanatory note to the Bill states that it:
 - (a) More clearly signals the accountabilities of participants involved in building design and construction.
 - (b) Enhances accountability under the licensed building practitioners' regime.
 - (c) Introduces a stepped risk-based approach to how building consent and inspection requirements are administered so that the role of the building consent authorities at each step is aligned with the risk involved.
 - (d) Repeals the offence of allowing the public use of a building without a Code Compliance Certificate for building work commenced between 1992 and 2005.
 - (e) Provides for an owner-builder exemption from the restricted building work provisions of the Building Act 2004.
 - (f) Makes a number of changes to enhance and clarify the building warrant of fitness regime.
 - (g) Makes a number of other minor and technical amendments.

The whole Bill, including its explanatory note, can be found at:

www.legislation.co.nz/bill/government/2010/0253/latest/viewpdf.aspx?search=ts_bill_building_resel&p=1

5. The review of the Building Act found that there is still a heavy reliance by the general public on building consent authorities for building quality. It also noted the concerns that were raised during the review raised about the costs, complexity, and delays in building consent processes.

1 Cont'd

The Government determined that change is needed to give incentives to building professionals and tradespeople to take responsibility for the quality of their work and to stand behind it. The current system is unbalanced because of the unduly heavy reliance on building consent authorities (who are mostly Councils) to identify and fix inadequacies in building design and construction. As a result building consent authorities have tended to be more cautious, and this has led to a level of checking and inspection that may be higher than necessary, particularly when low-risk building work is involved.

6. The Bill proposes to make it clearer to building consent authorities, builders, designers and building owners the various participants' accountabilities. One way it does this is through new sections proposed for the Act, set out in clause 10 of the Bill:
 - (a) Section 14B: **Owners** of building work are responsible for getting any necessary approvals. An owner is responsible for ensuring the building work complies with the building consent or, if there is no building consent, with the Building Code.
 - (b) Section 14C: **Owner-builders** are responsible for ensuring the work complies with the building consent, and the plans and specifications, to which the building relates.
 - (c) Section 14D: **Designers** are accountable for ensuring that their plans, specifications and advice will meet the requirements of the Building Code.
 - (d) Section 14E: **Builders** are responsible for building to any approved plans or specifications. If there are no approved plans or specifications, then builders are responsible for meeting the requirements of the Building Code. However, there is no requirement for a builder to be a licensed building practitioner or have carried out any particular training. There is also no requirement for a builder to have a guarantee or warranty system in place to cover any significant building work they might do, as was proposed in the Review discussion document.
 - (e) Section 14F: **Building consent authorities** are responsible for checking the Building Code compliance of plans and specifications that accompany a building consent application, and for checking that work is done according to the plans and specifications, as well as issuing the statutory consents and certificates. Building consent authorities must also approve any critical variations.
7. This structure implies that a building consent authority's responsibility should be better balanced with each party involved in a building project now with express responsibilities set out. However, there is no shift in the actual liability system provided for in the Bill. Although Councils have long submitted there should be a proportionate liability system introduced to replace joint and several liability, the Bill does not go that far.
8. Under a joint and several liability regime the injured party need not prove what contribution each wrongdoer made in causing the damage and he/she is not prejudiced if not all of the persons responsible for the loss can be found, or are solvent, or are insured. Where two or more wrongdoers cause the same damage to the one person, the person suffering the loss can recover their entire loss in full from all or any of those liable.
9. What this means for the Council in relation to building related claims is that it will often be the only party still available to be sued or able to pay any compensation that may be awarded by the Court, as others involved in a building project might be "phoenix" companies, formed just for that project and no longer in existence, an individual cannot be located, or the companies or individuals involved can be found but are insolvent.
10. Under a proportionate liability regime, the injured party can only recover from each liable person compensation of an amount that reflects that person's respective responsibility for the damage. The difference being, that the risk that one or more of the persons responsible for the loss will be unavailable to sue, or will be insolvent, or will be uninsured, rests on the person who has suffered the harm and not any other party.
11. However, it does introduce a new stepped risk-based approach to how building consent and inspection requirements are administered. The idea behind this is so the role of the building consent authority at each step is aligned with the risk involved, as well as the skills and capability of the people doing the work.

1 Cont'd

12. Instead of the one standard consent provided for in the current Act the Bill proposes four types of building consent:
 - (a) A **low-risk building consent** - this introduces a streamlined consent process for some low-risk work, such as a free-standing garage or a large rural shed. This process simply checks that certain conditions are met (for example, that the work is undertaken by a licensed building practitioner), but involves no further inspection by building consent authorities. Staff have identified some issues with the system proposed, as further discussed in the draft submission attached to this report (**Appendix 1**).
 - (b) A **simple residential building consent** - this provides for a simplified and more prescribed consenting process for certain simple residential building work that is at the lower-risk end of the spectrum. As an example, the Department of Building and Housing identify a single-storey house built using proven methods and design, with low structural and weathertightness risks.
 - (c) A **commercial building consent** - there will be new building consent processes and requirements for commercial buildings, that largely rely on third-party (non-building consent authority) review and assurance processes. These processes are an alternative to the current consenting and inspection requirements, provided certain conditions are met. Staff have also identified issues with these proposals, as further discussed in the draft submission attached to this report (**Appendix 1**).
 - (d) A **standard building consent** - essentially the consent that is currently provided for in the Act.
13. This four consent system proposed in the Bill is more or less the same risk-based system the Council has put in place following the earthquake, to process building consents under the current Act. A diagram of the Council's process is attached to this report (**Appendix 4**).
14. While the Bill makes a number of improvements compared to the current Act, and staff are satisfied with many of the new provisions, the proposals do not address all the matters raised by Council in its previous submission. It also leaves a lot of the detail around the types of consent, etc, to be made by regulations. For example, we do not yet know what type of building work will be low-risk building work, as the interpretation clause of the Bill provides it has the meaning given to it in regulations made under the Act. It is imperative that the Council also has input into the regulation-making process. Councils did not have a chance to provide input on the "change of use" regulations, and they do not work as effectively as they should.
15. The above concerns are set out in the attached draft submission, as well as other suggestions for further changes to the proposed Bill clauses and amendments to the Act.

FINANCIAL IMPLICATIONS

16. If an oral submission is to be made by the Council then there may be financial implications if the Council representatives need to travel to Wellington for the Select Committee hearing.

LEGAL CONSIDERATIONS

17. No legal considerations involved in making a submission on a Bill.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Not applicable.

ALIGNMENT WITH STRATEGIES

19. Not applicable.

1 Cont'd

CONSULTATION FULFILMENT

20. The Council would not need to consult with any member of the public in relation to its submission on the Bill, because any member of the public can also make their own submission. Staff from the Environmental Policy and Approvals Unit and the Legal Services Unit have worked on this report and submission.

STAFF RECOMMENDATION:

That the Council resolves to:

- (a) Approve the draft submission on the Building Amendment Bill (No 3) (Appendix 1).
- (b) Determine whether the Council should make an oral submission on the Bill and, if so, appoint a Councillor or Councillors to represent the Council at the Select Committee hearing.
- (c) If necessary, make provision for further amendments to be made to the submission by the Council if further information from other territorial authorities or Local Government New Zealand becomes available before the submissions closing date of 4 March 2011. Note that the Council has been granted an extension to the closing date for this submission.
- (d) That the Council write to the Government seeking to have input into the drafting of the regulations to be made as a consequence of the Bill.

COMMITTEE RECOMMENDATION:

That the Council:

- (a) Adopt the staff recommendation.
- (b) That Councillor Wells present the Council submission to the Select Committee.
- (c) That the submission be forwarded to local Members of Parliament to highlight the Council's concerns.

BACKGROUND

- 21. A brief background is provided on the context of the Building Act review and the position the Council has taken regarding its discussions with the Department of Building and Housing and input to various discussion papers.
- 22. The Building Act 2004 introduced the requirement for Building Consent Authorities to become accredited and licensed by the Department of Building and Housing, operate within a quality management system and be audited by an audit body (IANZ - International Accreditation NZ). Council was accredited and licensed in 2008. The Building Act 2004 also introduced the requirement for licensed building practitioners to undertake all building works, effective in 2012.
- 23. 2007 - The Labour Government and Minister of Housing, Shane Jones indicated that it intended to reduce the scope of building works requiring a building consent, make PIMs (Project Information Memoranda) voluntary and look at reducing risk adverse consenting practices in BCAs. They passed regulations and amended the Building Act, Schedule 1 in 2007 to exempt more building work and make PIMs voluntary in 2007.
- 24. 2008 - Council Officers participated in a Metro Sector Group which commenced working closely with the DBH on developing a further package of initiatives to provide better regulation of building work, develop a more targeted risk-based approach, reduce the building industry reliance on BCAs to ensure work complied with the building code and for Licensed Building Practitioners (LBP) to take a greater responsibility for the work they carried out.
- 25. The Government decided to allow owners to undertake limited building works (including restricted building works) on their own homes and resolved to amend the legislation to allow this to happen.

1 Cont'd

26. 2010 - The Department of Building and Housing released a discussion document "Cost effective quality: Next generation building control in New Zealand". Council submitted an extensive response to the matters raised and supported the concepts of a streamlined, risk based approach to consent and inspection processes, building practitioners increasingly responsible for their work and lower risk consents and greater protection for customers through warranties, guarantees and contracts. Specifically, the Submissions Panel resolved on 16 April as follows:

"The panel directed staff to make the following amendments to the draft submission:

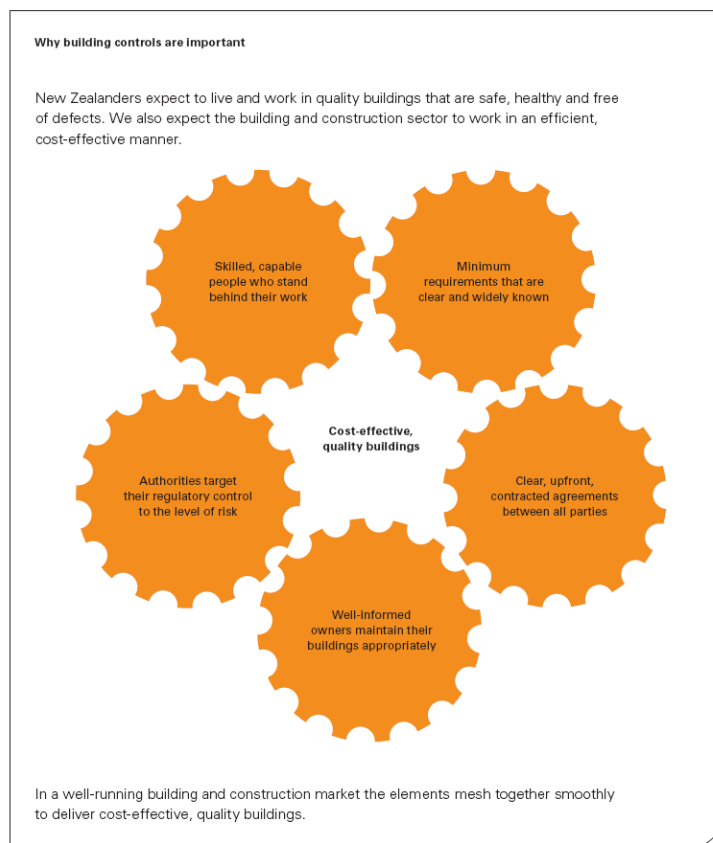
- *Submission to be signed by the Mayor and Chief Executive, not the Chairperson of the Submissions Panel.*
- *There are alternatives to the proposal which would achieve the same goals. For example territorial authorities could take a more risk-based approach if the DBH issued standards, such as the recent Simple House Compliance document.*
- *Submission 1: accepted but staff asked to moderate it a little.*
- *Submission 11 paragraph 4 needed to be more strongly expressed. The complexity of the forms are a barrier; cost of subscription to the standards is a barrier to small building firms. In this section also mention quality of housing and quality of licensing of the LBP.*
- *Submission 14: comment on Property records needs to be emphasised as it is really important. The history of a building is vital to homebuyers and the territorial authorities need knowledge of changes to the infrastructure, for example sewer connections.*
- *Submission 15: the Panel does not support the further potential exemptions listed in Table B. The Council needs an understanding of the load on its sewerage network and charges a connection fee. Solar water heaters are integral to the plumbing system and also penetrate the roof with weathertightness implications.*
- *Submission 18: this point is really important and needs more emphasis. An example is that the proposed new requirement of 1 metre from the boundary is in conflict with this Council's City Plan which requires 1.8 metres.*
- *Submission 78: include suggestion that consultation with the Insurance Council be carried out. Explain more clearly why costs to homeowners will go up.*
- *In general: the proposal will not make it easier to build, simply make it necessary for building practitioners to gain a qualification that may be beyond their reach. Refer to the Canadian system which uses a rigorous home building warranty system. Include a statement that the Christchurch City Council issues the greatest number of building permits in New Zealand and provide economic data.*

The panel agreed that staff make the amendments as directed and that these be e-mailed to members for approval before sending to the Department of Building and Housing."

27. The review of the Building Act found that there is still a heavy reliance by the general public on building consent authorities for building quality. It also noted the concerns that were raised during the review raised about the costs, complexity, and delays in building consent processes. The Government determined that change was needed to give incentives to building professionals and trades-people to take responsibility for the quality of their work and to stand behind it. The current system is unbalanced because of the unduly heavy reliance on building consent authorities (who are mostly Councils) to identify and fix inadequacies in building design and construction. As a result building consent authorities have tended to be more cautious, and this has led to a level of checking and inspection that may be higher than necessary, particularly when low-risk building work is involved.
28. The release of the Building Amendment Bill 2010 is the first of two Bills in response to the review. It addresses building consent and inspection requirements, building design and construction requirements, the Licensed Building Practitioners regime and the law related to DIY projects. However there were a number of other matters raised in the review which should be developed as part of the package. Each of the interdependent processes (outlined in an excerpt from the discussion paper below) relies on the other processes to deliver their part and the adoption of discrete parts will not deliver the intended benefits.

1 Cont'd

The ideal scenario



29. Next Steps - The Department of Building and Housing is presently looking to develop the regulations to support the Building Amendment Act (No 3) and the next Bill to implement the outcome of the Building Act review, concluded next year. The indications are that they intend to seek to achieve greater national consistency and standardisation of building regulatory requirements. This would be achieved by a more regionalised approach for building consent authorities and more use of private entities as BCAs - leading to improved sector productivity.

2. PROPOSED PRIVATE PLAN CHANGE 59 – REZONING OF 21A - 23 BECKFORD ROAD AND 22 WADES AVENUE, ST MARTINS, FROM LIVING 1 TO BUSINESS 2P

General Manager responsible:	General Manager, Strategy and Planning DDI 941-8281
Officer responsible:	Programme Manager, District Planning
Author:	Anita Hansbury, Assistant Planner, District Planning

PURPOSE OF REPORT

1. This report describes a request to the Council for a private Plan Change (PC59) to rezone 21A - 23 Beckford Road and 22 Wades Avenue, St Martins, from Living 1 to Business 2P, 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 2950 metres squared of land located at 21A - 23 Beckford Road and 22 Wades Avenue (the site) from Living 1 (L1) to Business 2P (B2P). The site is adjacent to the existing Business 2 (B2) zone which contains the St Martins district shopping centre comprising the New World supermarket, a smaller retail complex and a separate lawyer's office. Refer to the attached Planning Map 47A (**Attachment 1**) for the location and extent of the rezoning.
3. The three land parcels comprising the site proposed to be rezoned are owned by Foodstuffs (South Island) Ltd (Foodstuffs) and currently contain a single residential dwelling each. While rezoning the sites to B2P would lead to the loss of three houses in this predominantly suburban residential environment, the B2P (District Centre – Parking) zone has been designed to accommodate car parking requirements associated with adjacent suburban shopping centres, and to act as a buffer zone between business and residential activities.
4. Plan Change 59, however, does propose some site specific amendments to the current B2P rules. An Outline Development Plan showing the areas subject to additional landscaping requirements, the existing landscaping to be retained, the location of staff car parking and site access restrictions is also proposed to be inserted into the City Plan. Refer to the proposed text changes and Appendix 18 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 59 (St Martins) 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.
7. The implications of the options under clauses 24 and 25 of the first schedule of the Act are discussed below.

2 Cont'd

Option 1 – Resolve to reject Private Plan Change 59

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. Plan Change 59 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 Private Plan Change 59 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 car parking with one approved car parking layout. Any proposals to expand development in the adjacent B2 zone and utilise car parks not contained in the same zone, or any alterations to the car park layout would require further resource consents. Such an alternative is not considered efficient 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 Private Plan Change 59 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. Officers considered the inclusion of an outline development plan in the proposed rules as adding to the complexity of the City Plan unnecessarily and the matter was discussed with the applicant at the pre-application stage. The applicant viewed the outline plan as a crucial part of the proposed rules and was not willing to amend the proposed changes. In light of the applicant's position no formal modification was sought by the Council.

Option 4 - Resolve to adopt Private Plan Change 59 and publicly notify it as if it were the Council's own plan change

13. Under this option Private Plan Change 59 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.

2 Cont'd

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 Private Plan Change 59 and the Section 32 Assessment for public notification

15. Under this option Private Plan Change 59 would be notified in its current form as prepared by Aurecon (NZ) Ltd for Foodstuffs. Accepting the Plan Change means:
- (a) Foodstuffs 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) Foodstuffs 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 private Plan Change 59 – Rezoning L1 to B2P, St Martins, 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.

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

21. 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

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.

2 Cont'd

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. While Plan Change 59 is aimed primarily at expanding the car parking provision for the St Martins shopping centre, the proposal is consistent with:
- The Greater Christchurch Travel Demand Management Strategy accepted by the Urban Development Strategy Implementation Committee by providing a greater variety of goods and services on the St Martins supermarket site, and potentially reducing the current number of vehicle trips made by the local customers to buy goods;
 - The Council's Pedestrian Strategy for Christchurch City by providing an opportunity to improve the pedestrian links through the site,
 - The Cycle Strategy for Christchurch City by providing an opportunity to improve and increase the cycle parking facilities on site; and
 - The Parking Strategy for Christchurch City by meeting the minimum City Plan requirements for on-site car parking, reducing the risk of on-street parking, providing adequate disabled persons parking, and maintaining a high level of amenity without compromising the pedestrian or road safety, and without leading to significant effects on the surrounding road network.

CONSULTATION FULFILMENT

25. The applicant has directly contacted the owners of properties in the vicinity of the site by way of a letter. Two responses were received expressing concern relating to noise, visual effects, traffic, lighting and the extent of on-street parking. Preliminary consultation was also undertaken with some of the statutory bodies prescribed by the RMA but no feedback was received. Further feedback through submissions will be sought when the plan change is publicly notified.
26. A memo outlining the proposal has also been sent to the Spreydon-Heathcote Community Board for information and feedback in December 2010. No questions or feedback were received.

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Accept the attached Section 32 assessment for public notification.
- (b) Accept Private Plan Change 59 – Rezoning Living 1 land to Business 2P, St Martins 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.

COMMITTEE RECOMMENDATION

That the staff recommendation be adopted.

2 Cont'd

BACKGROUND & DISCUSSION

The Private Plan Change Request

28. Private Plan Change 59 (refer **Attachment 2**) is requested by Foodstuffs and seeks to rezone approximately 2950 metres squared of land located at 21A - 23 Beckford Road and 22 Wades Avenue (the site) from Living 1 (L1) to Business 2P (B2P). The site is adjacent to the existing Business 2 (B2) zone which contains the St Martins district shopping centre comprising the New World supermarket, a smaller retail complex of several shops and a bank, and a separate lawyer's office. Refer to the attached Planning Map 47A (**Attachment 1**) for the location and extent of the rezoning.
29. The Living 1 (Outer Suburban) zone provides principally for low density and low height permanent living accommodation in most suburban environments. It is characterised by high level of amenity, generous open space, and ample landscape and garden plantings. Some non-residential activities are anticipated in the zone but are subject to standards ensuring that they are compatible with the character, scale and amenities of low density outer suburban living.
30. The Business 2P (District Centre – Parking) is a specialist zone used in association with adjacent suburban shopping/business centres (predominantly zoned B2) where there is insufficient space to provide the required number of car parks on site. It is designed to provide for ground level car parking, in keeping with the scale of the surrounding residential development, and to act as a buffer between business and residential areas. The rules applicable to B2P zone are those which apply to Living 2 (Inner Suburban) zone (L2), except that all of the B2P zone may be used for car parking associated with the adjoining district centre.
31. The rezoning is required to facilitate a planned expansion of the existing New World supermarket in the adjacent B2 St Martins shopping centre.

Description of the Site and the Proposal

32. Foodstuffs wish to develop the land subject to the plan change for car parking in order to support their future plans to expand the existing supermarket and provide a wider range of specialised food and grocery products. The planned supermarket ground floor extension would require additional car parking to be provided on site in compliance with the City Plan parking requirements. The additional car parking could not be accommodated within the boundaries of the existing B2 zone without the need to demolish the smaller retails shops or constructing a rooftop or underground car park. This type of expansion, involving the creation of B2P zone for car parks, is anticipated by the City Plan and is addressed by a number of policies relating to business activities and their effects on adjoining residential activities.
33. The proposed B2P zone can accommodate 75-80 car parking spaces and would facilitate a supermarket building extension of approximately 1600 metres squared (based on retail parking rate of 5.1 parking spaces per 100 metres squared GLFA). In reality such an expansion would result in significant loss of existing ground level parking or to avoid that, would need to be established partly on a second storey. Foodstuffs preliminary plans are for a single storey extension of approximately 1000 metres squared which will result in the loss of about 30 existing car parks out of 218 currently provided on site as per the City Plan requirements. With a 1000 metres squared extension, the total car parking numbers required for the B2 zone development would be approximately 270. The proposed B2P zone would facilitate meeting these parking requirements and reduce any adverse amenity effects arising from excessive on-street car parking or any two storey commercial development in this predominantly single storey residential environment.
34. The three L1 sites proposed to be rezoned are owned by Foodstuffs and currently contain a single residential dwelling each. The current L1 zoning of the subject land does not permit the development of car parking associated with the adjacent B2 zone district centre activities. Rezoning the sites to B2P would lead to the loss of three houses in this predominantly suburban residential environment.

2 Cont'd

35. The proposed B2P (District Centre – Parking) zone has been designed to accommodate car parking requirements associated with adjacent suburban shopping centres and act as a buffer zone. The parking can be provided at ground level only and requires landscaping between business and residential activities. Such specialist zone is therefore considered suitable in the St Martins environment. Should the car parking not be required, the land can be developed for the traditional L2 residential activities under the B2P zoning.
36. The current landscaping rules applicable to B2P are deficient in that they do not refer to Volume 3, Part 3, Rule 3.4.3(b), which requires additional landscaping and/or fencing along the site's boundary with a living zone. In recognition of that error, the applicant proposes to insert additional rules for the proposed St Martins B2P zone, which require visual and acoustic screening along the B2P/L1 interface by way of a fence and amenity landscaping along the entire boundary.
37. Some minor amendments are proposed to the B2P zone description and rules by adding references to St Martins as an area in which B2P zone is located. Additional amendments provide for acoustic screening and amenity landscaping along the L1 boundary and limit the B2P car park entry points to the existing district centre driveways. An Outline Development Plan showing the areas subject to additional landscaping requirements, the existing landscaping to be retained, the location of staff car parking and the site access restrictions, is also proposed. Refer to Appendix 18 in the Plan Change (**Attachment 2**).

Description of Alternatives and Issues

38. The Section 32 Analysis (**Attachment 3 separately circulated**), including an Assessment of Environmental Effects, provides a detailed discussion of the proposal, the subject site, its surrounding environment, the potential effects of the proposal, and a costs/benefits analysis of different alternatives. These alternatives are summarised below:
39. Do nothing (status quo) – while retention of the three subject residential properties would be of benefit to residential coherence of the area, this option significantly limits the expansion options for the adjoining B2 district centre site.
40. Resource consent – could provide for the establishment of car parks with one approved car parking layout. Any proposals to expand development in the adjacent B2 zone and utilise car parks not contained in the same zone, or alterations to the car park layout would require further resource consents. Such alternative is not considered efficient and does not allow for consideration of consistency with the City Plan objectives and policies or the costs/benefits of other options.
41. Rezoning the site to Business 2 – would achieve the desired outcome in terms of car parking provision but has potential for greater adverse effects through allowing other business activities and buildings to establish on the subject site. It could potentially lead to greater loss of residential coherence, character and amenity by not providing a buffer zone between L1 and B2 zones.
42. Redevelopment within the existing B2 zone – would require the demolition of the existing supermarket and/or the smaller retail stores, and provision of rooftop or underground car parking. This option is not considered economically viable or desirable from the amenity and environmental perspective as it could give rise to noise, glare and loss of privacy and visual amenity issues. Alternatively a resource consent could be obtained for reduced car parking requirements for a supermarket extension within the existing B2 zone, which could result in increased on-street parking and loss of residential amenity.
43. The Section 32 assessment analyses the above options 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 B2P is the most appropriate option.

2 Cont'd

44. An analysis of potential adverse effects of the B2P rezoning on the adjacent environment is carried out in terms of loss of residential amenity and the possible traffic effects resulting from an increased number of vehicle trips generated by the commercial floor extension. The Transportation Assessment analyses the effects of increased traffic generation on the performance of the nearby intersections and roads. It concludes that such potential increase will have no more than minor effects on the environment and can be accommodated at an acceptable level of service (refer Appendix E to the Section 32 report in **Attachment 3** for further details – attached separately). A survey and analysis of parking demand concludes that the current City Plan parking requirements are appropriate for the shopping centre. Please note that pursuant to clause 23 of the first schedule of the RMA, further information/clarification was requested on transportation issues and subsequently provided by the applicant.
45. The Landscape Impact Assessment (refer to Appendix F in **Attachment 3** attached separately) discusses the potential effect of the future development of car parking on the landscape character, amenity and outlook of the site and the surrounding area. St Martins district centre, being an existing feature within the neighbourhood, already affects the environmental qualities of the surrounding living zone to some extent. The zoning sought will prevent built commercial development from occurring beyond the current B2 zone limits and incorporates sufficient controls, many site specific, to minimise potential adverse effects of the extended car park. The Landscape Assessment concludes that the proposal is likely to result in minor adverse effects in some places and some significant improvements in others.
46. Taking into account the proposed mitigation methods, the overall adverse effects of the rezoning, including the traffic and landscape effects, are considered to be no more than minor. The Section 32 report concludes that the proposed B2P zoning is consistent with the City Plan objectives. The applicant considers that by enabling an expansion, which is anticipated in the Plan objectives and policies, the plan change will better achieve the purpose of the Resource Management Act 1991.

OPTIONS

47. 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.(...)*

48. Option 1

Resolve to reject Plan Change 59 request pursuant to Clause 25(4) of the first schedule of the Resource Management Act 1991.

2 Cont'd

49. **Option 2**

Resolve to deal with Plan Change 59 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.

50. **Option 3**

Option no longer available (Resolve to modify Plan Change 59 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).

51. **Option 4**

Resolve to adopt Plan Change 59 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.

52. **Option 5**

Resolve to accept Plan Change 59 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.

53. 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

54. The preferred option is **Option 5** - accept Plan Change 59 (Rezoning L1 to B2P, St Martins) 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.