

REPORT

TO: Chief Executive

FOR: Council meeting – 11 September 2013

FROM: Craig Friedel, Strategy and Policy Planner

DATE: 21 August 2013

SUBJECT: **Plan Change 41 - Decision on how to consider the plan change request received from D & S Anderson**

1. RECOMMENDATION

That in respect to Plan Change 41 to the Selwyn District Plan lodged by D & S Anderson, Council resolves:

- (i) **To accept the request for notification pursuant to Clause 25 (2)(b) of the RMA91**

2. PURPOSE

This report assesses the D & S Anderson ('the applicant') plan change request ('PC 41') against the relevant Resource Management Act 1991 (RMA) provisions. This assessment has been provided to assist Council to make a decision on how to process the request. This is a mandatory decision that must occur within 30 working days of receiving the request and any subsequent additional information necessary to enable a reasonable understanding of what is being proposed.

3. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT

This report does not trigger the Council's Significance Policy. This is a procedural requirement of the RMA.

4. HISTORY/BACKGROUND

A plan change request from the applicant was initially lodged with Council on 4 June 2013. Since lodgement the application has been reviewed in terms of the adequacy of the information provided, with peer review comments having been received on landscape, contamination, geotechnical, transport, infrastructural and planning matters. Several minor amendments have been made to the application in response to the above peer reviews and a request for further information issued on 2 July 2013. Officers' conclusions are that all the information necessary to understand the request has now been provided and that a decision can be made on how to process PC 41.

The site is located on the western side of Prebbleton's urban area and is bounded by Shands Road to the west, the Rural Inner Plains zone to the north, the Kingcraft Drive lifestyle blocks (Existing Development Area zone) to the east and Trents Road to the south (refer to Figure 1 on the following page). The site is wholly owned by the applicant. The property has a physical address of 311 Trents Road, is 9.2ha in size and is legally described as Lot 2 DP 51743. The property contains a single dwelling, with the balance of the land accommodating a horse training track and several ancillary facilities. A more detailed site description is provided in Section 2 of the plan change document.

Figure 1: Site plan



PC 41 facilitates the rezoning of the site to a Living 3 zone to accommodate approximately 14 rural residential households, with lot sizes generally being between 0.5 to 1ha.

The rule framework being sought by PC 41 relies on the existing Living 3 zone, with amendments to make specific reference to the site where appropriate. The request does not propose to make any changes to the operative Living 3 zone objectives or policies. Attachment 1 includes the Outline Development Plan for PC 41, with access to the full request having been provided to Councillors, and available to members of the public, on Council's website.

5. PROPOSAL

Statutory Requirements

Any person may request a change to a District Plan and Council must consider that request. Council must either reject, accept or adopt the request, or process it as a resource consent¹.

An assessment of each of these 'Options' is considered in the following section of this report.

6. OPTIONS

Option 1 - Reject the request

The grounds for rejecting PC 41 outright are:

- (a) That the request is frivolous or vexatious
- (b) The substance of the request has been dealt with by the Council or the Environment Court in the last two years
- (c) The request does not accord with sound resource management
- (d) The request would make the District Plan inconsistent with Part 5 of the RMA

¹ Pursuant to Clause 25 of the 1st Schedule - RMA

- (e) The District Plan has been operative for less than two years

Is the request frivolous and/or vexatious?

The content of the plan change request is not considered to be frivolous or vexatious. The request would have to be serving no serious purpose or value to be rejected on these grounds, which is not the case given the comprehensive nature of this application.

Has the substance of the request been dealt with in the last two years?

The substance of the request, being the provision and management of rural residential activities within the UDS area of the District, has been dealt with to a certain extent by the Council through the:

- operative Plan Changes 8 and 9 that formalised a Living 3 zone on the south-western boundary of Rolleston
- Council's adopted Rural Residential Background Report (RRBR)
- preparation of the Rural Residential Strategy – Consultation Draft
- Plan Change 32 that proposes a series of amendments to the Plan's rural residential objectives and policies and the Living 3 zone rule package

Whilst rural residential issues have been considered by the Council in the past two years, these issues have either been site-specific rezoning applications, or have yet to be fully settled because a formal decision has yet to be made. The PC 41 application is broadly consistent with the criteria and outcomes set out in the adopted Rural Residential Background Report. Likewise, the request is generally consistent with the Living 3 zone objectives and policies, and the amendments to these provisions proposed through Plan Change 32. It is not therefore considered that the substance of the request, either in a site-specific context or through a settled and operative strategic policy framework, has been considered by the Council or the Environment Court in the past two years.

Does the request accord with 'sound resource management'?

The strategic planning framework for managing rural residential development within the Urban Development Strategy area of the District has undergone significant change in recent years. Including more specifically, through the Greater Christchurch Urban Development Strategy, the Land Use Recovery Plan and Change 1, Chapter 12A and Chapter 6 to the Regional Policy Statement. Council has advanced a number of initiatives over the past four years in response to the changing status of these strategies and statutory planning instruments, which have been evolving to sustainably manage growth and to guide the earthquake recovery across the Greater Christchurch sub-region.

The latest planning direction is contained within the draft Land Use Recovery Plan, which currently contains a statutory direction that requires a new Chapter 6 to be incorporated into the Canterbury Regional Policy Statement. The Selwyn District Plan must implement, or 'give effect' to, Chapter 6 once it is made operative, with Policy 6.3.9 having a specific focus on managing rural residential development. At a strategic level this policy requires Council to develop and adopt a Rural Residential Strategy that indicates where rural residential development is being provided for, while preventing any form of intensification of rural land from occurring beyond the identified areas.

The policy includes parameters for identifying suitable locations, including the need for the sites to avoid certain constraints and being able to satisfy certain servicing requirements. The criteria are not determinative, in the sense that plan changes are still required to consider the substantive merits of any changes to the District Plan under the 1st Schedule of the RMA. Although importantly, Policy 6.3.9 will be limiting as any Living 3 zone plan change request that does not align with the locations identified in an adopted Strategy would be inconsistent with the LURP and would fail to give effect to Chapter 6 of the Regional Policy Statement.

The District Plan currently manages rural residential development through the Living 3 zone, which is supported at a strategic level by the adopted Rural Residential Background Report and proposed Plan Change 32. There is currently a reliance on the private plan change process to consider the

appropriateness of additional Living 3 zone locations and any associated amendments to the District Plan.

Council officers are currently preparing a Rural Residential Strategy, drawing on the work already undertaken in developing the RRBR and PC 32. Legal advice is that this strategy will meet the Council's 'significance' criteria and as such should be released for public submissions and a hearing under the provisions of the LGA. The consultation draft of the Rural Residential Strategy has yet to be considered by the Council as there remains a degree of uncertainty in respect to when the Minister may choose to make the Recovery Plan and Chapter 6 operative, and the extent of any changes that may be made to the draft.

At this point in time, Council has no adopted Rural Residential Strategy to manage this form of development within the Urban Development Strategy area of the District. The Land Use Recovery Plan, and associated changes to the Regional Policy Statement, are not operative, and therefore are simply a matter to have regard to. Any inconsistency with the draft Land Use Recovery Plan is not in itself sufficient reason to refuse to accept a private plan change for notification. However, if the Minister were to make the Recovery Plan operative before a hearing and decision is released on PC 41, but prior to the Rural Residential Strategy being adopted, then the plan change would need to be declined due to it being inconsistent with the Recovery Plan and failing to give effect to Chapter 6.

The applicant has been made aware that Council Officers will be required to recommend the request is declined should it progress to a hearing in advance of an adopted Rural Residential Strategy. The applicant will have the option of requesting the application be placed on-hold to defer the hearing process until the Rural Residential Strategy is adopted, assuming the land Use Recovery Plan is made operative in September as expected.

At this point in time it is considered that accepting PC41 and proceeding with public notification accords with sound resource management.

Is PC 41 consistent with Part 5 of the RMA?

PC 41 is broadly consistent with the provisions of Part 5 – Standards, Policy Statements and Plans, pending the draft Land Use Recovery Plan and the need for any District Plan change to give effect to the higher order Regional Policy Statement.

PC 41 encompasses matters that are within the scope of the District Plan and has addressed all the relevant requirements of national policy statements and environmental standards, with the request containing contaminated land and geotechnical assessments to satisfy the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. The plan change is also considered to be broadly consistent with the Recovery Strategy for Greater Christchurch/ *Mahere Haumanutanga o Waitaha*.

Has the District Plan been operative for less than two years?

This matter for rejecting private plan change requests is not applicable as the District Plan was made operative in June 2008, with the two year moratorium having lapsed some time ago.

In conclusion, there are considered to be no sound reasons to reject the request under the current set of circumstances.

Option 2: Adopt the Plan Change request

Adopting the request means that the Council effectively takes over the application so that it becomes a council-initiated plan change rather than a private application. In order for Council to adopt the request, Council would need to be fully supportive of the proposal. This is not currently the case given that there remain a number of merit-based matters to consider at the substantive hearing stage, with the potential that other matters may be raised by other interested parties through the submissions process.

Adopting the request would result in Council having to fund the remainder of the process, thereby relinquishing the ability to recover costs from the applicant. It is not recommended that the Council adopt the request for the above reasons.

Option 3: Accept the Plan Change request

Accepting PC 41 will enable the application to be publicly notified and for the request to be subject to the participatory processes provided under the RMA. This in turn, will provide Council with a more informed understanding of the community's stance on this specific proposal. Council retains the right to lodge submissions or further submissions to ensure there is sufficient scope to support amendments that may address any concerns with the potential zone change. No direct costs will be incurred by the Council or rate payers in accepting the request, although the preparation of any Council submission could not be on-charged.

Accepting the plan change request is the recommended option under the current set of circumstances.

Option 4: Convert to a Resource Consent Application

The final option open to the Council is to process PC 41 as a resource consent. The request seeks to amend the current zoning densities and development controls to guide the consideration of future land use and subdivision applications. These are matters best addressed through a comprehensive plan change process rather than a resource consent application. Processing the request as a resource consent is not therefore considered appropriate.

7. RECOMMENDATION

The consideration of the request at this stage is limited to a coarse scale assessment of the contents of the plan change to ensure that firstly, the content and implications of the proposal can be generally understood; and secondly that the request is not in direct conflict with other planning processes and statutory instruments.

There are not considered to be sufficient grounds to reject the plan change request when assessed against the statutory powers available to Council under the RMA. The most appropriate course of action is to accept PC 41 for notification².

The RMA affords the opportunity for the applicant to request changes to the District Plan and prescribes the timeframes that Council must adhere to in processing the request. The recommended option to accept PC 41 for notification will enable the request to be publicly notified, submissions and further submissions received and for the substantive merits of the proposal to be considered at a public hearing.

Accepting the request for notification does not signal that Council necessarily supports the proposal. The opportunity remains for Council to recommend that the request be supported, amended or opposed at the subsequent hearing through a formal submission or further submission. The benefit in accepting the request is that public input can be received to inform the overall assessment of the merits of the proposal.

8. VIEWS OF THOSE AFFECTED/CONSULTATION

a) Views of those affected

The future provision of rural residential development, either by way of a council initiated plan change or private plan change request, is subject to the statutory consultative provisions of the RMA where opportunity for public involvement is mandatory.

² Pursuant to Clause 25 (2)(b) of the 1st Schedule, RMA

The recommendation to accept the request for notification will require Council to publicly notify PC 41 and serve notice on all directly affected parties and organisations, who then have the opportunity to participate in the ongoing process.

b) Consultation

The request identifies that the applicant has consulted Selwyn District Council and MKT in preparing PC 41. As outlined above, the recommendation to accept PC 41 will advance the request to the point where members of the public and interested parties can participate in the process through submissions, further submissions and the hearing.

c) Maori implications

The applicant has consulted with MKT who represent tangata whenua interests. MKT have raised a number of merit-based concerns over the detail of the application, with these concerns able to be formally raised through the statutory submission and hearing process.

9. RELEVANT POLICY/PLANS

The request generally aligns with the strategic principles set out in Council's Rural Residential Background Report and the criteria that have been developed to assist in selecting additional Living 3 zone locations in the District. The application is also generally consistent with the locational criteria set out in the Chapter 6 to the Regional Policy Statement amendments that are proposed through the Land Use Recovery Plan. As discussed above, the timing of the application is problematic due to it being lodged in advance of an adopted Rural Residential Strategy, but these are not grounds to reject the request. The extent to which the request is consistent with other relevant policies, plans and strategies will form part of the substantive consideration of the proposal at the hearing.

10. LEGAL IMPLICATIONS

The private plan change request process is set out in the RMA. Council's decision can be appealed to the Environment Court.

Legal advice was provided by the Council's solicitors and has been incorporated into this report.

11. FUNDING IMPLICATIONS

The applicant is responsible for the costs associated with processing a private plan change request, with Council costs being fully recoverable. Council would be responsible for the cost of defending its decision should it be appealed to the Environment Court.

12. HAS THE INPUT/IMPACT FROM/ON OTHER DEPARTMENTS BEEN CONSIDERED?

The contents of the request, and the preferred option to accept the request for processing, have been discussed with the Strategic Asset Managers and their comments incorporated.

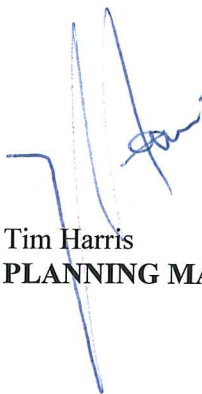


Craig Friedel
STRATEGY AND POLICY PLANNER

ENDORSED FOR AGENDA



David Smith
**TEAM LEADER: POLICY
AND STRATEGY**



Tim Harris
PLANNING MANAGER

ATTACHMENT 1

PC41 OUTLINE DEVELOPMENT PLAN

