

REPORT

TO: Chief Executive

FOR: Council meeting – 24 August 2016

FROM: Strategy and Policy Planner, Michael Rachlin

DATE: 2 August 2016

SUBJECT: **Plan Change 48 – Decision on how to consider the plan change request received from Judith Pascoe**

1. RECOMMENDATION

That in respect to Plan Change 48 to the Selwyn District Plan lodged by Mrs Judith Pascoe, Council resolves:

to accept the request for notification pursuant to Schedule 1, Clause 25(2)(b) of the Resource Management Act 91.

2. PURPOSE

This report assesses the Mrs Judith Pascoe ('the applicant') plan change request ('PC 48') 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 statutory decision that must occur within 30 working days of receiving the request (or from when the request is modified) 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 13 June 2016. Since lodgement the application has been reviewed in terms of the adequacy of the information provided and a Request for Further Information was issued. Further to this, the plan change was modified under Schedule 1, Clause 24 of the RMA and relevant technical reports (Transport Assessment, Acoustic Assessment etc.) updated accordingly. The final revised proposal was received on

25 July 2016. 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 48.

The site is located on the northern quadrant of the Creyke Road and Telegraph Road intersection and is currently zoned Living 2A Deferred in the Selwyn District Plan (Refer to Figure 1: Site plan for location). The site has a total area of approximately 13.5 hectares held in three existing titles (370020, CT33A/1134 and 370019) legally described as Lot 2 DP 56210, Lot 2 DP 391581, Lot 1 DP 56120 and Lot 1 DP 391581.

There are three existing dwellings established on the properties, with the balance of the land consisting of open grassed paddocks, shelter belts and a hazelnut orchard on one of the blocks.

Figure 1: Site plan



PC 48 seeks to rezone the site to Living 2 which provides for average lot sizes of 5000sqm and to rely on the existing Living 2 zone rules framework with amendments being limited to site specific matters. The latter are proposed to manage adverse noise effects from the Darfield Gun Club; located on the southern quadrant formed by the Creyke Road and Telegraph Road intersection. The Outline Development Plan (ODP) proposed for the site provides for a 2ha lot at the point of the site closest (in the apex formed by Creyke Road and Telegraph Road) to the gun club and a 1ha lot adjacent this 2ha lot, to front Telegraph Road. These larger allotments would contain two of the three existing dwellings on the site.

The request proposes a change to operative policy B4.3.28 in the District Plan as follows (**new wording shown in bold and underlined**):-

Policy B4.3.28

*To provide for mixed densities in the Living X Zone, and rural residential development around the township in the Living 2A (Deferred) Zone to a minimum average area of 1ha, **in the Living 2 Zone identified on Appendix 41A – Creyke Road Outline Development Plan to a minimum average of 0.5ha**, and in the Living 2A1 Zone to a minimum average area of 2ha, subject to the following:*

- That all new allotments are able to be serviced with a reticulated potable water supply;*
- That outline development plans have been incorporated into the Plan for the coordinated development of four identified areas of land in the Living 2A Zone, the Living X Zone and part of the Living 2 Zone to address roading, reserve, and pedestrian/cycle linkages;*
- Where applicable, provision has been made to address any reverse sensitivity Issues*

Attachment 1 includes the Outline Development Plan for PC 48, with access to the full plan change request having been forwarded to Councillors and made available to members of the public on the Council's website.

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.

5. OPTIONS

Option 1 - Reject the request

The grounds for rejecting PC 48 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
- (e) The District Plan has been operative for less than two years

Is the request frivolous and/or vexatious?

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

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 and the changes it seeks to the district plan.

Also whilst the review of the district plan has commenced it is at an early stage. Consequently the plan change cannot be considered frivolous against this criterion.

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

The PC48 request site originally formed part of the PC24 (Silverstream) plan change but was deleted from that proposal due to concerns about adverse effects of noise from the Darfield Gun Club and whether there was scope at that time to introduce rules to avoid, mitigate or remedy these effects. PC24, absent the current PC48 site, was made operative in 2013. The substance of the request has not, therefore, been considered by the Council or the Environment Court in the past two years.

Does the request accord with 'sound resource management'?

The property forms part of the Darfield township and in simple terms, the plan change seeks a rezoning of the land from one Living zone to another to enable a more intensive form of residential development (average lot sizes of 5000sqm instead of 1ha under the operative provisions) on the site. It is supported by relevant technical reports showing how the site can be serviced for water, wastewater and transport, together with an urban design assessment supporting it in terms of Darfield's urban form. The principle of the rezoning is consistent with the operative plan's urban growth framework as well as Council's strategic planning approach as set out in Selwyn 2031. The site specific provisions also seek to avoid or mitigate adverse effects including noise and reverse sensitivity issues from the Darfield Gun Club.

Overall, it is considered that accepting PC48 and proceeding with public notification accords with sound resource management.

Is the request consistent with Part 5 of the RMA?

PC 48 is consistent with the provisions of Part 5 to the Act. In particular the request incorporates matters that are within the scope of the District Plan and has addressed all the relevant requirements of national policy statements and environmental standards, together with the RPS. The request includes a contaminated land assessment to satisfy the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health and has had regard to Mahaanui Iwi Management Plan. It has also been subject to geotechnical assessments.

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

This matter for rejecting private plan change requests is not applicable as the relevant parts of the District Plan were 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 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 are merit-based matters to consider at the substantive hearing stage, with the potential that other matters of interest 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 48 will enable the application to be publicly notified and for the request to be subject to the participatory processes provided for under the RMA. This in turn, will provide Council with a more informed understanding of the community's views 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 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 48 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.

6. RECOMMENDATION

The consideration of the request at this stage is limited to an 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. Whilst a review of the operative district plan has commenced, it is at an early stage and it would not be appropriate to reject the plan change on this ground. The most appropriate course of action is to accept PC 48 for notification.²

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 PC48 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.

7. VIEWS OF THOSE AFFECTED/CONSULTATION

a) Views of those affected

The recommendation to accept the request for notification will require Council to publicly notify PC 48 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 Mahaanui Kurataioa Ltd (MKT) in preparing PC 48. As outlined above, the recommendation to accept PC 48 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.

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

c) Maori implications

Mahaanui Kurataiao Limited who represent Tangata Whenua interests have reviewed the request and provided preliminary comments following engagement by the applicant. The applicant has sought to address these comments. This matter will form part of the consideration of the proposal at the hearing.

8. RELEVANT POLICY/PLANS

The request generally aligns with the strategic principles set out in Selwyn 2031 and Chapter 5 to the RPS.

The extent, however, to which the request is consistent with relevant policies, plans and strategies will form part of the substantive consideration of the proposal at the hearing.

9. NEGATIVE IMPACTS

This request is required to be considered under the statutory consultation processes of the RMA, which will enable any interested parties to lodge submissions, further submissions and attend a public 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, although this is unlikely given that the recommendation is to support accepting the request for public notification.

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 have been discussed with the Strategic Asset Managers and their comments incorporated.

A handwritten signature in cursive script, reading "Michael D. Rachlin".

Michael Rachlin
STRATEGY AND POLICY PLANNER

ENDORSED FOR AGENDA

A handwritten signature in cursive script, reading "Jesse Burgess".

JESSE BURGESS
PLANNING MANAGER

A handwritten signature in cursive script, reading "Tim Harris".

TIM HARRIS
ENVIRONMENTAL SERVICES MANAGER

APPENDIX 1: PC48 OUTLINE DEVELOPMENT PLAN

