

REPORT

TO: Chief Executive Officer

FOR: Council Meeting – 27 April 2022

FROM: Strategy and Policy Planner, Rachael Carruthers

DATE: 13 April 2022

SUBJECT: PLAN CHANGE 74 WEST MELTON – DECISION ON HOW TO CONSIDER THE PRIVATE PLAN CHANGE REQUEST RECEIVED FROM HUGHES DEVELOPMENTS LIMITED

RECOMMENDATION

‘That in respect to Plan Change 74 to the Selwyn District Plan lodged by Hughes Developments Limited, Council resolves to accept the request for notification pursuant to Clause 25(2)(b) of the Resource Management Act 1991.’

1. PURPOSE

This report assesses Hughes Developments Limited (the proponent’s) plan change request (PC74) 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.

2. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT

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

3. HISTORY/BACKGROUND

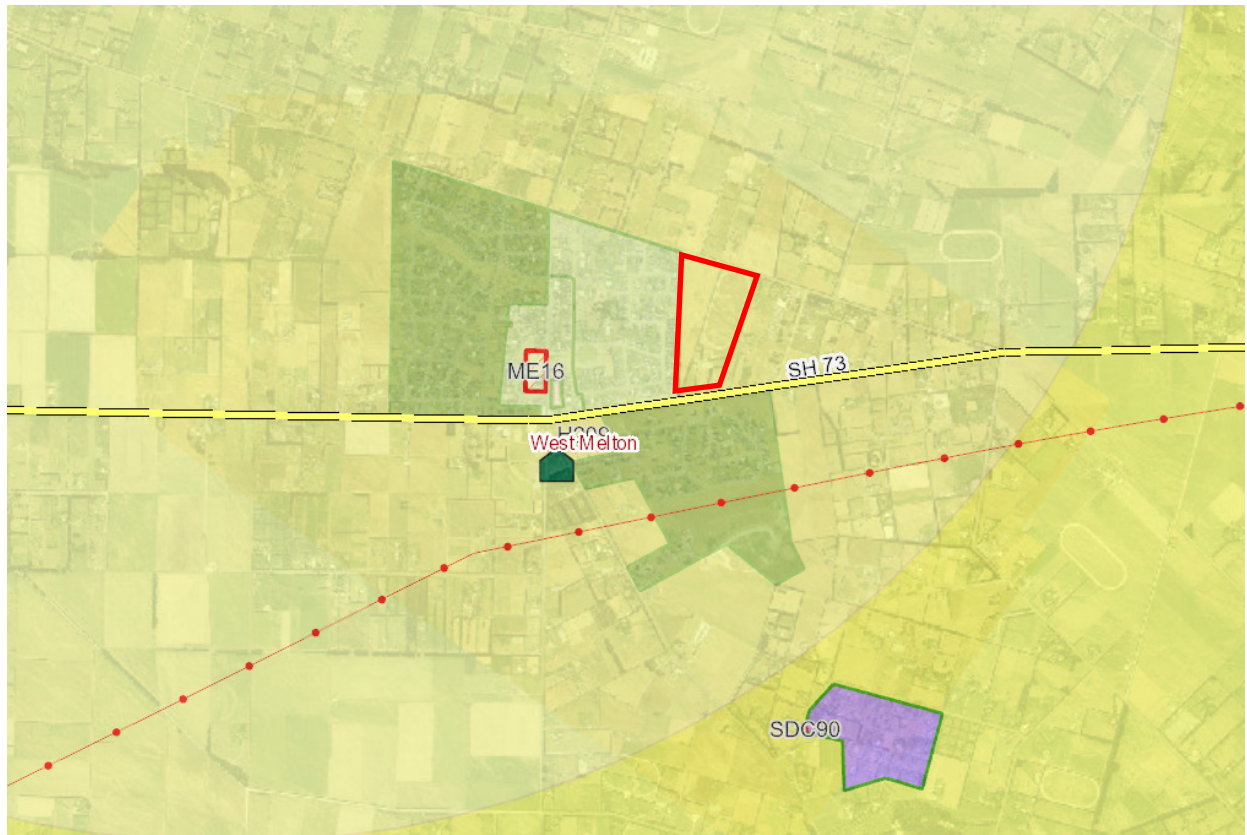
PC74 was formally received by Council on 20 November 2020. A Request for Further Information (‘RFI’) was made by the Council on 3 February 2021, with the final response received from the proponent on 15 December 2021.

The 20.687ha site is located to the east of the existing West Melton Living 1B zoned residential area (i.e. the Gainsborough subdivision). In addition to housing, West Melton includes small shopping area, school, and associated community facilities including a community hall, sports grounds, churches and pre-school.

The site is also bounded by Halkett Road to the north and West Coast Road (State Highway 73) to the south. Land on the northern side of Halkett Road and also to the east of the site is zoned Rural (Inner Plains) and is therefore primarily used for grazing

and other agricultural activities and on the southern side of West Coast Road the land is zoned Living West Melton (South), this land forms the Wilfield residential subdivision.

Figure 1. PC74 location (shown as red outline)



The entire site has a Rural (Inner Plains) Zoning in the Operative District Plan. The Plan Change request seeks for the site to be rezoned to Living West Melton and for a new Outline Development Plan, West Melton East to be inserted in Appendix 20 of Volume 1 Townships of the District Plan.

The request seeks that allotments are developed in accordance with the Living West Melton – Medium Density standards which have a minimum lot area of 500m² and a maximum lot area of 3000m². This would provide for an opportunity to develop approximately 130 residential allotments (with 134 shown on the draft plan of subdivision). Overall, it is set out that a total of 292 allotments must be achieved across the whole Living WM Zone (Including the existing homes in Gainsborough to the West of the Plan Change Site).

The application includes an Outline Development Plan ('ODP') which is based on the Living West Melton – Medium Density. While it is identified as a 'medium density' zone, this description is relative to West Melton i.e. the smallest lots are to be 500m² which is larger than other medium density areas elsewhere in the District. The ODP provides for the lower density (larger lots with a minimum size 1,00m²) alongside the boundaries with Halkett Road to the north, the Rural (Inner Plains) zoned land to the east and West Coast Road/SH73 to the south. The medium density sites can then be located centrally within the plan change site.

Key roading and pedestrian/cycle connections are shown, and include two main road connections into the plan change site from Halkett Road and SH73. There will be no further vehicle access along these road frontages. One further local road will be provided

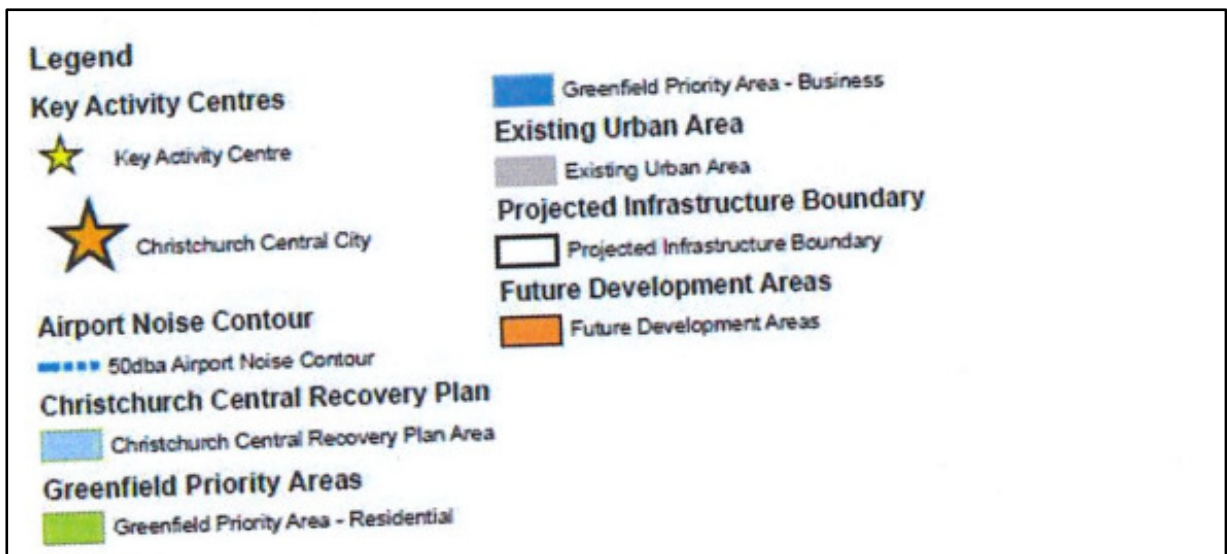
with a shared pedestrian/cycle link from the plan change site into the Gainsborough subdivision in the west and an eastern road connection is also shown for any future connections to land to the east.

A gateway and acoustic landscape treatment strip is identified on the ODP for land adjacent to SH73. Further, road boundary fencing and landscaping outcomes are anticipated as mitigation, particularly with respect to the rural urban interface and are to be secured via developer covenants on the titles or through standard subdivision consent processes (rather than District Plan rules). A reserve is identified on the ODP in a central location, with the size to be determined at the time of subdivision.

In terms of infrastructure, it is intended that primary stormwater from the site will be discharged to ground via soakholes on individual sites but drainage and soakholes associated with the roads will be constructed as part of any future subdivision and vested with Selwyn District Council. Wastewater is intended to be catered for through gravity connections to existing infrastructure or via low pressure sewer systems or a small sewerage pumping station installed in the road reserve and vested with Selwyn District Council. Water supply is intended to be provided via reticulated supply located within the road reserves and additional water required will be provided through increasing the capacity of the reservoir (located to the south west of the plan change area) through the current work undertaken by Council.

The site is not currently identified within the CRPS as a priority greenfield area or Future Development Area. The site also sits outside of the existing West Melton township boundary, and by extension, outside of the infrastructure boundary of the township (as shown red in Figure 2 below). As such there is a tension with the higher order direction regarding a change to Living West Melton Zone.

Figure 2. PC74 location relative to Projected Infrastructure Boundary (Site Shown in Red Outline)



The National Policy Statement on Urban Development (NPS-UD) does however provide a policy framework (Policy 8 in particular) that obliges Councils to be 'responsive' to considering proposed developments that would both provide 'significant capacity' and contribute to 'well-functioning urban environments', even where such development is unanticipated by RMA planning documents or out-of-sequence with planned land release. The NPS-UD therefore provides a pathway for the plan change to be accepted for notification and further processing even if that development sits uneasily against the existing CRPS direction. It is on the basis of the direction of the NPS-UD that the proponent has applied for the rezoning. The direction of the NPS-UD is discussed further below in Section 5.

The recent Resource Management (Enabling Housing Supply and Other Matters) Amendment Act has as its purpose a requirement to enable additional housing supply by way of introducing mandatory medium density residential standards (MDRS) for certain relevant residential zones at Tier 1 Local Authorities of which Selwyn District Council is. SDC has recently considered whether West Melton is to be considered as an area where the MDRS is to apply and have recently resolved (in February 2022) that West Melton is not to be included within the scope of this Act. Therefore, the private plan change does not need to be amended to align with the MDRS as Council has already resolved that West Melton is not subject to the MDRS rule framework or upcoming variation to the Proposed District Plan.

PC 74 seeks to largely adopt the provisions in the Operative District Plan. The proposed amendments are therefore limited to changes to the planning maps to show the new zoning, the inclusion of the proposed ODP and several consequential amendments to the subdivision rules to provide links to the ODP and the density outcomes sought.

The plan change request is supported by technical reports (updated through the RFI process) that address geotechnical and natural hazard matters, soil contamination, urban design and landscape outcomes, transport and an infrastructure report.

Access to the full request has been forwarded to Councillors and made available to members of the public on Council's website at <https://www.selwyn.govt.nz/property-And-building/planning/strategies-and-plans/selwyn-district-plan/plan-changes/plan-change-74,-rezone-20.687-hectares-of-land-from-rural-inner-plans-to-living-wm-east-zone,-west-melton>

4. PROPOSAL

Any person may request a change to a District Plan and Council must consider that request. Under Clause 25 of the First Schedule to the RMA, Council must either reject, accept, or adopt the request, or alternatively process it as a resource consent. An assessment of each of these options is considered in the following section of this report.

5. OPTIONS

Option 1: Reject the request

Under Clause 25(4), the grounds for rejecting PC74 are:

- a. That the request is frivolous or vexatious;
- b. The substance of the request has been considered by the Council or the Environment Court in the last two years;
- c. The request does not accord with sound resource management practice;
- 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.

In terms of (a), the request is not considered to be frivolous or vexatious. The need for additional land for housing, and consideration of the appropriate locations for such is neither a frivolous or vexatious issue. The application includes a suite of technical reports addressing the matters typically relevant to rezoning proposals and as such the

application cannot be said to be frivolous. Matter (a) is not therefore considered to be grounds for rejecting the plan change.

In terms of matters (b) and (e), the substance of the request has not been considered by the Council or the Environment Court in the last two years and the District Plan was made fully operative in May 2016, meaning that it has been operative for more than two years.

In addition to these two matters, specific to the Greater Christchurch area, section 18 of the Greater Christchurch Regeneration Act 2016 (the GCRA) also provides that a Council may reject the request in whole or in part on the ground that, within the last two years, the substance of the request or part of the request has been considered and given effect to, or rejected, under the Canterbury Earthquake Recovery Act 2011. Urban growth matters have not been considered within the last two years under the CERA.

In terms of matters (c) and (d), such a determination involves a merits-based assessment of the plan change. A detailed assessment of the plan change merit will be undertaken following consideration of any matters raised by submissions. For a determination regarding notification, the plan change broadly aligns with sound resource management practice insofar as the specific merit of a given zone is a matter to be considered in detail through a publicly notified process, with the change sought assessed against s32 of the RMA.

In terms of (c) alone, it is considered that there is a very high legal threshold to be met for a decision to be made to reject a plan change on the basis that it does not accord with sound resource management practice. As noted above, the request is supported by a substantial body of documentation and analysis that, in the view of the proponent, concludes that the request does accord with sound resource management practice. It is appropriate therefore that the substantive nature of this material be tested through the appropriate process. Matter (c) is not therefore considered to be grounds for rejecting this plan change.

Council's roles and responsibilities in terms of resource management outcomes and the hierarchy of National Standards, policy statements and plans are set out in Part 5 RMA. Section 75(3)(c) requires the district plan to give effect to any regional policy statement. On initial assessment, PC74 would sit uneasily against the CRPS direction that new urban development should only be located in identified greenfield priority areas shown in Map A of Chapter 6 of the CRPS (which this site is not).

Generally, a change that would not give effect to the CRPS would be considered to result in the District Plan being inconsistent with council's functions under Part 5 RMA. However, with the introduction of the NPS-UD, this consideration is not so straightforward. As noted above, Policy 8 of the NPS-UD requires Council to be responsive to proposals that would add significantly to development capacity and would contribute to a 'well-functioning urban environment, even where such proposals are unanticipated or out-of-sequence with CRPS directions. Council has recently accepted Commissioner Caldwell's recommendation regarding PC67 which found that in that instance the plan change met the relevant statutory tests and that in the context of West Melton a development providing some 130 dwellings met the test of delivering 'significant capacity'.

The NPS-UD directs that the CRPS include criteria for determining what plan changes will be considered as adding significantly to development capacity. The CRPS does not yet contain such criteria. These criteria are being developed by Greater Christchurch Partnership local authorities, but it is only at very early stages. In the absence of this criteria, plan change proponents can apply to have plan changes accepted even where they potentially do not give effect to Chapter 6 of the CRPS. The proponent considers that the plan change request would add significantly to development capacity for West Melton township and has provided an analysis of such with the request.

While not specific to this plan change request, the Council has received legal advice on the conflict between the NPS-UD, the existing CRPS and the provisions for rejection of a plan change request under Clause 25(4). The advice outlined that Council need not reject a plan change under Clause 25 simply because the site of the plan change is outside of the 'greenfield' development areas identified on Map A of the CRPS. The NPS-UD therefore provides a pathway by which the plan change can be considered, in a manner that does not result in the District Plan being inconsistent with Part 5 RMA.

Overall, it is not considered that the plan change should be rejected under any of the matters set out in Clause 25(4).

Option 2: Adopt the Plan Change request

Under Clause 25(2)(a), Council may adopt the request, in whole or in part, as its own. Adopting the request means that the Council effectively takes over the plan change request so that it becomes a council-initiated plan change rather than a private plan change. Adopting PC74 would imply that Council generally supports the proposal.

Council should only consider adoption if the change has a strategic benefit, a substantial community benefit, a cost element which might require negotiations to occur between the council and the applicant, or involves a complex issue or a number of landowners that would benefit from Council coordinating the plan change process.

The plan change is geographically contained and does not present any significant strategic matters that would necessitate Council taking over the plan change at this point in the process. The merit of the plan change is a matter that is best considered at the substantive hearing stage, with the potential that other matters may be raised by other interested parties through the submission 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 plan change proponent.

It is not recommended that the Council adopt the request for the above reasons.

Option 3: Accept the Plan Change request

Accepting PC74, under Clause 25(2)(b), would enable the request to be publicly notified and for the request to be subject to the substantive assessment and public participatory processes provided under the RMA. This, in turn, would provide Council with a more informed understanding of the community's view on this specific request. Accepting the plan change would mean that the costs associated with the continued

processing of the request would be the responsibility of the proponent and no direct costs would be incurred by the Council or rate payers, although the preparation of any Council submission (if appropriate) could not be on-charged. 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 plan change.

Whilst the request can be considered to provide significantly to development capacity, the NPS-UD direction does not mean that every development providing capacity is appropriate. A plan change proponent must also demonstrate that the plan change would contribute to a well-functioning urban environment. While the Council must be responsive to the development capacity provided, the Council may still determine that the proposal is not the most appropriate course of action, and any plan change still needs to be considered on its merits overall. This includes that PC74 must still meet RMA section 32 and Part 2 tests and be subject to a substantive assessment of these through the Schedule 1 process.

It is considered that the merits of the plan change proposal overall are best tested through the submission and hearing process. 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 74 as a resource consent.

The request seeks to rezone rural land for residential purposes, add an ODP in the Plan and amend the subdivision rules to guide future development in accordance with the ODP. These are matters best addressed through a comprehensive plan change process rather than reliance on resource consent applications which may not provide the outcomes anticipated by the District Plan. A resource consent would be assessed against the policy outcomes sought for the Rural (Inner Plains) Zone, whereas a plan change enables a more fundamental consideration of whether rural or urban outcomes are most appropriate for this particular block of land.

Processing the request as a resource consent is not therefore considered appropriate.

Recommended Option

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.

The RMA affords the opportunity for the plan change proponent 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 PC74 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 a subsequent hearing. The benefit in accepting the

request is that public input can be received to inform the overall assessment of the merits of the proposal.

Option 3, to accept PC74 for further consideration is therefore recommended.

6. VIEWS OF THOSE AFFECTED / CONSULTATION

(a) Views of those affected

If the recommendation to accept the request for continued processing is adopted, then the contents of PC 74 will be subject to the statutory consultative provisions of the RMA where the opportunity for public involvement is mandatory. Council will be required to publicly notify PC 74 and serve notice on all directly affected parties and organisations, who then have the opportunity to participate in the ongoing process.

(b) Consultation

The proponent held preliminary meetings with Council staff to inform the preparation of the plan change prior to lodgement. As addressed above, following lodgement the request has been peer reviewed by the relevant internal Council staff, as well as external peer reviewers as appropriate, to consider the adequacy of information provided. As a result of this initial review, additional information has been included in the request documentation, and some changes have been made to reflect the matters raised in the RFI. As outlined above, the recommendation to accept PC 74 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) Māori implications

The proponent has advised that Mahaanui Kurataiao Limited who represent Tangata Whenua interests have been asked to comment on the proposed plan change. Feedback from mana whenua has yet to be received.

It is noted that it is standard Council practice to directly serve notice to Mahaanui Kurataiao Limited when plan change requests are publicly notified, to ensure that mana whenua are provided with a formal opportunity to make submissions and provide feedback.

(d) Climate Change considerations

The request includes an assessment of the resilience of the proposal to the effects of climate change and notes that the primary manner in which this can be achieved within new urban development is through encouraging reduced greenhouse gas emissions and that the plan change supports this by promoting a consolidated urban form, cycle and pedestrian connectivity to community infrastructure and reduced reliance on vehicle travel. The adequacy of this assessment will be tested through the submission and hearings processes.

7. FUNDING IMPLICATIONS

The plan change proponent 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.

The provision of network infrastructure and associated funding is addressed through the Council's Development Contributions Policy prepared under the Local Government Act. Local infrastructure located within the plan change area is provided by the developer as part of the subdivision consent process. Feedback from Council's asset teams have confirmed that reticulated services are able to be upgraded so that they can be provided to the site.

8. INPUT FROM OTHER DEPARTMENTS

The contents of the request, including relevant technical reports, were circulated to Council's Asset Managers for review and comment. Queries received from them were incorporated into the Request for Further Information.



Rachael Carruthers
STRATEGY AND POLICY PLANNER

Endorsed For Agenda



Tim Harris
GROUP MANAGER ENVIRONMENTAL AND REGULATORY SERVICES